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THE STRUCTURE OF STATUTORY SENTENCING PROVISIONS
AND THE DEVELOPMENT OF PENAL LAW
IN CANADA IN THE MIDDLE OF THE NINETEENTH CENTURY :
THE CASE OF NOVA SCOTIA AND OF LOWER CANADA. (1851-1860)

PRESENTED BY

FAITH MCINTYRE
509874

SUBMITTED TO THE DEPARTMENT OF CRIMINOLOGY,
UNIVERSITY OF OTTAWA, IN PARTIAL FULFILMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTERS OF ARTS (M.A.)

JULY 1994



Faith Maureen McIntyre, Ottawa, Canada, 1994



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ABSTRACT

The 100th anniversary of the Canadian Criminal Code in 1992 has allowed for a time to reflect and ponder its background, development and past. With this year also comes many questions concerning the actual enactment of the first Criminal Code of 1892 and its development throughout the years. The lack of research in this area has prompted a need and a desire to trace the roots of the Criminal Code and, therefore, outline the background pre-1892 in order to attest to what types of laws existed before the first Criminal Code as well as its path through history.

The purpose of this particular research is to analyze statutory law that existed pre-1892 and consequently to present the backdrop of what existed before the actual Criminal Code. The research will concentrate specifically on the provinces of Lower Canada and of Nova Scotia for the time period of approximately 1850-1860 and will focus on the Revised Statutes of Nova Scotia of 1851 and the Consolidated Statutes of Lower Canada of 1860. The actual objective is twofold and will allow, firstly, for the presentation of the historical context and the development of penal law for these two provinces in order to demonstrate the emergence of the particular Statutes and, secondly, for the analysis of the actual sentencing provisions that are present in the two statutory documents. The research is based on document analysis taken from a qualitative standpoint and will involve consultation of various texts in order to fulfil the objective of the research.

The present work is shedding light on a rather untouched domain of history of law and of sentencing provisions. Very few researchers have studied these types of documents or even this area

of law and, in turn, the importance of this actual work is magnified. The research is thus innovative and will allow for further studies in the area.

The study reveals very interesting trends and patterns that have led to the development of these two statutory documents for each of the provinces concerned. One is able to see the importance of certain groups of elite in view of the existence of certain sanctioned behaviours as well as the whole process of legislative manoeuvres. As well, the contents of the Revised Statutes of Nova Scotia of 1851 and the Consolidated Statutes of Lower Canada of 1860 in terms of sentencing provisions, more specifically in reference to the Offences against the person, demonstrate riveting sanctions and fascinating comparisons.

In all, this research represents an important and relatively new view into the whole background of pre-1892 Criminal Code era in relation to statutory laws and sentencing provisions. The study provides for a window into the past that will serve to shed light on the laws of the present.

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I wish to express my sincere gratitude to my supervisors André Cellard and Fernando Acosta as without their support and hard work this thesis would not have been possible. I was also very fortunate to have been able to rely on the expertise of those in the Department both support staff and professors during my enrolment in the Program. I thank each and every one of them for everything that they have done for me.

I am dedicating this work to my father, Morris McIntyre, as without his inspiration and his graduation from the Masters of Criminology Applied (MCA) Program at the University of Ottawa in 1974 I would not have received the motivation to be here today. I am also very fortunate to have a strong base of family and friends who have stood behind me over the past few years. Thanks to them all, especially my brother and sisters, Darrell, Hope and Charity, my friends who I have met through the Masters program and my friends who have supported me throughout the whole process.

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INTRODUCTION

In 1992, the Criminal Code of Canada saw its 100th birthday. Several countries, including Canada, are questioning the reform of the penal code - in particular the representations and the values of the preceding centuries. Due to this, it is equally important to explore the consequences and impact of the reforms and evolutions that have taken place since the first Criminal Code in 1892 and the events that led up to its initial legislation.

Over time, the protected interests of the government in power have changed as have the sanctions attached to each infraction. In chiming with the anniversary of the Criminal Code it becomes necessary to view not only the principles upon which the legislation was drafted but also the specific sanctionary reforms initiated since that time and more specifically what precisely led to the Code of 1892 - in other words, what types of statutory provisions existed pre-1892 and where did the Canadian Criminal Code of July 9, 1892 receive its content. Along with this aspect follows that of the whole development of penal law and precisely how each Statute underwent its metamorphosis from idea to law. This area is one of great interest as to the path taken by each Statute and, in the end, the Criminal Code as we know it today.

This present work will undertake a two dimensional analysis involving a presentation of the development of penal law for two provinces in the middle of the 19th century as well as an analysis in view of the structure of sentencing provisions that would have existed in Canada in the middle of the 19th century. The study itself will comprise exploratory research which is descriptive and historical in nature. This examination, however, is a component of a larger analysis of the Canadian Criminal Code. The larger

research study aims at effectuating a socio-juridical analysis of the first Criminal Code and a socio-historical reconstruction of the Criminal Code reforms and attempted reforms in the past one hundred years. The goal of this particular part of the larger study consists of examining the pre-1892 backdrop in view of statutory law in order to examine what existed before the Criminal Code of 1892 and in order to allow for a continuance of research into this relatively unknown area.

This research will involve two dimensions, one being the whole elaboration upon the historical contexts and the development of penal law in view of the existence of the laws in each province from their beginnings to the enactment of the Revised Statutes of Nova Scotia of 1851 and the Consolidated Statutes of Lower Canada of 1860. The second area will involve a comparison between the Revised Statutes of Nova Scotia of 1851 and the Consolidated Statutes of Lower Canada of 1860 in order to determine what precisely existed in each province at that specific era in terms of sentencing provisions as well as establishing skeletal comparisons between the two documents and elaborate upon how sentencing as a whole has evolved during the target period in view of written law. Due to the specific nature of this study, as well as the limitations in view of length, this comparison will include solely the section of each Statute concerning Of offences against the person.

With this research, one is attempting to produce certain knowledge that would permit a fuller analysis of the conditions surrounding the development and roots of the Criminal Code of 1892. The conclusions of this study will enable one to comprehend the

heritage as well as the construction of this Code as this empirical work will set the background factors that led to the Code 1892.

The whole field of historical documentation in terms of statutory provisions and development in the 19th century is relatively untouched and, therefore, this research represents one of advances into an unknown area. Authors tend to concentrate their works on more present issues and tend to bypass the past and its intrigue. This document addresses this past in order to be able to further explain the present and the work thus represents an advancement in the fields of sociology, criminology and law. The weight of this document in terms of social law is thus very important and fascinating as it depicts uncharted territory which may lead to interesting conclusions and hypotheses.

It should be noted that this work is not attempting to form concrete and precise conclusions as to specific sections that were included in the Code of 1892, but rather produce an overview, based on two provincial statutory documents, of what existed prior to its enactment as well as presenting hypothetical viewpoints as to what influenced the impetus for the future.

This work constitutes, for the most part, one of documentary research which will take into account the qualitative aspects while hinting slightly on the quantitative. The empirical axis is founded not only on an elementary quantitative presentation of the sections of the Statutes presented in varying ways, but also based on a detailed qualitative explanation.

The present document is composed of five chapters. The first one will detail the methodological approach employed. One has decided to begin with this chapter in order to present the method

and reasoning behind the research. The second chapter will allow for a historical reconstitution of the time period and will present the socio-political history of the period studied for each of the provinces concerned. This section comprises an initial introduction to the first full dimension of the research being that of the development of penal law and thus offers a reconstruction of the time period. This chapter will be divided into sections allowing one to easily follow the general history; demographic considerations and political factors. The third chapter will present the first full dimension of the research, the development of penal law for each of the provinces studied as to what existed before each respective Statute and how they came to being enacted as legislation. The fourth chapter will contain the analysis of each of the documents, the second dimension of the research, first done separately for each province, then allowing for comparisons of similarities and differences. It should be noted once again that this analysis will be completed using the Section of the Statutes dealing with offences against the person. Finally, the conclusion shall present a statement of hypotheses that will attempt to present certain theories as to the development of the Criminal Code of 1892 as well as overall summary and general conclusions as to the documents studied.

CHAPTER I
RESEARCH METHCODOLOGY

The purpose of this chapter serves to delineate methodological approaches that were used throughout this research. To begin, it is imperative to underline that the method of data analysis that will be employed is primarily of a qualitative nature. Falling in a secondary instance, the research will quantify certain data on an elementary level in order to elaborate a simple count of criminal offences contained within the Statutes.

1.1 DOCUMENT ANALYSIS

The impetus of this research concerns the analysis of provincial statutory documents and due to the object of study, being that involving Statutes from the 19th century, one had no choice but to select this approach as the material available consists of law in written form. Documents themselves permit, as Cellard (1992) states, the addition of the dimension of time to social comprehension. As M.A. Tremblay (1968) wrote:

"...il nous permet une coupe longitudinale qui favorise l'observation du processus de maturation ou de développement d'individus, de groupes, de concepts, de connaissances, de comportements, de mentalités, de pratiques, etc.. et ce, de leur genèse à nos jours." (As cited in Cellard 1992 : 1)

Brimo (1972: 110) identifies document observation as the most ancient form of observation for social sciences. The study of the documents themselves can be completed at many different levels but the author stresses the need to establish a historical account and that this process is indispensable to the researcher.

Deslauriers (1991: 79) mentions that the goal of the analysis is to discover the links between the accumulated facts, between the elements of information that seem at first glance to be strangers

one to the other. It is this enchaining of links between the diverse observations that are taken from our documentation that permit the establishment of relationships that allow one to pull out a coherent interpretation of society for such a period.

Acosta (1984) states that :

"Les études basées sur des sources documentaires (...) posent de sérieux problèmes au moment de l'analyse. La pénurie de textes méthodologiques sur le traitement de l'information originaire d'archives publiques en est en partie responsable." (Page 89)

It is therefore important to elaborate a method which is proper to our object of study while also respecting the methods utilized in the field of social sciences.

Cellard (1992: 2) exemplifies documentary analysis as a method that eliminates the possibility of bias resulting from the presence or intervention of the researcher themselves and therefore presents a factual account of the source. This viewpoint is echoed by Li (1981 :105) as he refers to these methods of data collection as unobtrusive measure because "the researcher is directly removed from the events that are being studied." At the same time, due to the different types of documents, being either private or public, it becomes important to locate the written works and evaluate their authenticity. As per Cellard (1992), the written word "constitue une source extrêmement précieuse pour tout chercheur en sciences sociales." (Pg. 1)

Deslauriers (1991) details the process of analysis as a conscious activity that targets a determined end.

"Analyser le contenu (d'un document ou d'une communication), c'est rechercher les informations qui s'y trouvent, dégager le sens ou les sens de ce qui y est présenté, formuler et classer tout ce que 'contient' ce document ou communication." (Muchielli as cited in Deslauriers 1991 : 79)

The goal of this analysis is to reconstruct reality, to recreate it, to discover the social and structural psychological processes. (Deslauriers 1991: 83) It is thus necessary to produce an explanatory synthesis of the needed and collected information. Along these same lines, Berelson (in Brimo 1971: 141) defines content analysis as: "...une technique de recherche pour la description objective, systématique et quantitative du contenu manifeste des communications ayant pour but de les interpréter." He stresses the idea that all messages, no matter what type, allow for a content analysis that permits to explain the distinction between ... "le signe et la signification, le contenant et le contenu de la communication." (Brimo 1971: 142)

The specific documents that will be studied refer to public documents, being those of collections of laws into the form of Statutes - theses Statutes are taken from the 19th century. Li (1981) interprets these documents as valuable sources for studying law and feels that "archival materials provide contextual meanings to many social events." (Page 110) Therefore, the use of the Legislative and House of Assembly debates in order to reconstitute the enactment of these Statutes will allow for revelations to be made that will accentuate the importance of this work.

The actual research presented in this document involves a qualitative analysis of the Statutes. Therefore, the documents will be exposed in a qualitative fashion in order to allow for the attainment of the object of this study.

1.2 QUALITATIVE ANALYSIS

Deslauriers (1987) defines qualitative research as a flexible

method targeted to illustrate new data.

"Le terme de recherche qualitative est un terme générique qui désigne l'étude des phénomènes sociaux dans leur contexte ordinaire, habituel, pour ne pas dire naturel (...) elle vise d'abord à faire éclore des données nouvelles et à les traiter qualitativement au lieu de les soumettre à l'épreuve de la statistique (...) elle permet une adaptation constante du plan de recherche au fur et à mesure que les données s'amoncellent. " (Page 144)

This type of research ordinarily distinguishes research that produces and analyzes descriptive data, such as written or spoken words and observable behaviour of people. (Taylor and Bogden 1984 as cited in Deslauriers 1991 : 6) Qualitative research is not characterized by data but rather by its method of analysis which is not mathematical. This method does not reject numbers nor statistics, but simply does not delegate them first place, it concentrates rather on the analysis of social processes, on the meaning that people and the collective allot to an action, on daily life, on the construction of social reality. (Deslauriers 1991: 6)

Pires (1987: 91) presents qualitative research as the only type permitting a profound analysis of social reality and, in contrast, quantitative research as a form of surface precision as it would be incapable to deliver the true social signification of phenomenon. "...celles dont le matériau et les opérations de mesure (également au sens premier) sont faits de 'lettres' (recherches qualitatives)..." (Deslauriers 1991: 85)

In a more specific sense, in view of the object of the present study, the use of the qualitative method consists to exploit, in a systematic, constructed fashion, material that is essentially documentary (Statutes, parliamentary debates).

"L'analyse en recherche qualitative ne diffère pas des autres processus de pensée appliqués dans la vie quotidienne; cependant, si l'analyse est une activité

intermittente et aléatoire dans la vie courante, en recherche elle est une activité consciente et poursuivant une fin déterminée." (Schatzman et Strauss in Deslauriers 1991: 79)

The analysis will then involve a qualitative manipulation of documents in order to allow for a conscious research seeking a determined objective.

One shall now present the empirical axis in order to follow with a description of the methods of data analysis which will be used to effectuate the research.

1.3 EMPIRICAL AXIS:

The empirical axis for this research is based on provincial statutory documents as well as Legislature and House of Assembly Debates. The documents concern the province of Nova Scotia dating from 1851 and those of Lower Canada from 1860. The Statutes themselves were found in the Law Library at the University of Ottawa. Each one contains various sections outlining all variants of law such as relating to fiscal matters, political rights, public works, public defence etc... The sections utilized for this research concern those of the Criminal Law and the Administration of Criminal Justice as this is the area in which we are interested. Therefore, in reference to the Revised Statutes of Nova Scotia, our research will concern Title XI, Chapters 155 through to 170, and, in view of the Consolidated Statutes of Lower Canada, the research will include Title 11, Cap LXXXIX through to Cap CXI.

More specifically, in view of this research and due to the physical limitations that are present, the section of each Statute that will be analyzed is that concerning the Offences against the person. This area was chosen as it contains crimes such as murder

and rape which are quite difficult crimes for a population to deal with due to their heinous nature and also continue through to today in view of their severity of punishments and taboo character. Also, this section is one of the more lengthy sections of the Statutes with twenty articles for Nova Scotia and forty-seven for Lower Canada and will allow for further articles to establish a comparison between the two. (A copy of each of these Chapters is found in the Appendix)

On a larger scale, the Revised Statutes of Nova Scotia represent a document of approximately 500 pages and includes such Chapters as of public revenue, of immigrants, of highways, streets and bridges and so on. (See Figure 1, on the following page, for a duplication of a page from the Statutes) The Chapters are actually divided into Titles and there are forty-one titles and one hundred and seventy Chapters in all. The section of Criminal Law and the Administration of Criminal Justice is found in Part IV and has fifteen chapters of which Chapter 162 refers to the section of offences against the person. Each of these chapters involve areas such as offences against the government; against the person; against the habitation... The Section itself represents one of the more larger sections of the document and the Chapter of offences against the person which includes twenty-one articles contains the highest number of articles of sanctioned behaviour for each of the Chapters.

In view of the Consolidated Statutes of Lower Canada, the document totals approximately 1300 pages in which are included eleven Titles and one hundred and ten chapters. (See Figure 2, page 11b, for a duplication of a page from the Consolidated

CHAPTER 164.

OF FRAUDULENT APPROPRIATIONS.

SECTION

1. Punishment for robbing the person.
2. Punishment for an assault, with intent to rob.
3. Punishment for robbing the person and causing grievous bodily harm.
4. Punishment for an assault by one or more persons armed with intent to rob, and causing bodily harm.
5. Punishment for demanding property with menace or force, with intent to steal.
6. Punishment for stealing from or plundering a wreck.
7. Punishment for accusing or threatening to accuse, &c. a person with an abominable offence, and thereby extorting property.
8. Punishment for a theft committed by accusing or threatening to accuse a person of felony, &c.
9. Punishment for attempting to commit a theft by sending threatening letters, &c.
10. What shall be held sending threatening letters.
11. Punishment for larceny.

SECTION

12. Punishment for destroying or concealing wills, &c.
13. Punishment for stealing muniments of title.
14. Punishment for stealing valuable securities.
15. Punishment for stealing or killing cattle with intent to steal, &c.
16. Civil remedies not affected by the last four sections.
17. Punishment for a clerk or servant stealing from his master.
18. Punishment for obtaining articles by false pretences.
19. What shall be held "a false pretence."
20. Fraud in games, bets, or wagers to be held a false pretence.
21. When the offence proved is a larceny, in what case it shall be a defence on a charge of false pretence.
22. Punishment for clerk or servant embezzling his master's property.
23. Punishment for receiving goods, knowing them to have been stolen, obtained by false pretences, or embezzled.

Punishment for robbing the person.

Punishment for an assault with intent to rob.

Punishment for robbing the person and causing grievous bodily harm.

Punishment for an assault by one or more persons and with intent to rob and causing bodily harm.

Punishment for demanding property with menace or force, with intent to steal.

Punishment for stealing from or plundering a wreck.

1. Whosoever shall rob any person shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

2. Whosoever shall assault any person with intent to rob shall be guilty of felony, and shall be imprisoned for a term not exceeding three years.

3. Whosoever shall rob any person, and at the time of, or immediately before, or immediately after such robbery, shall cause any grievous bodily harm to any person, shall be guilty of felony, and be imprisoned for the term of his natural life or for any term not less than seven years.

4. Whosoever shall, being armed with any offensive weapon or instrument, or shall, together with one or more person or persons, assault any person with intent to rob, and at the time of, or immediately before, or immediately after such assault, shall cause any bodily harm or do any violence to the person of another, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

5. Whosoever shall with menaces, or by force, demand any property of any person, with intent to steal the same, shall be guilty of felony, and shall be imprisoned for a term not exceeding three years.

6. Whosoever shall plunder or steal any part of a ship or vessel wrecked or cast on shore, or any goods or articles of any kind

An Act respecting Land Surveyors and the Survey of
Lands.

11b

HER Majesty, by and with the advice and consent of the
Legislative Council and Assembly of Canada, enacts as
follows:

BOARDS OF EXAMINERS.

Two Boards of
Examiners—
one for Lower
and one for
Upper Canada,
to consist of
eight members
each.

1. There shall be two Boards of Examiners for the exami-
nation of Candidates for admission to practise as Land Sur-
veyors, one to consist of the Commissioner of Crown Lands,
and eight other competent persons to be appointed from time
to time by the Governor, and to meet at the City of Quebec for
the examination of Candidates for admission to practise as
Land Surveyors in Lower Canada, and the other to consist of
the said Commissioner of Crown Lands, and eight other com-
petent persons to be appointed from time to time by the Gover-
nor, and to meet at the City of Toronto for the examination of
Candidates for admission to practise as Land Surveyors in Up-
per Canada. 14, 15 V. c. 4, s. 2.

Members to
take an oath of
office.

2. Each Member of each of the said Boards shall take an
oath of Office, and any three of the Members of either of the
said Boards, shall form a quorum. 12 V. c. 35, s. 4, and 14,
15 V. c. 4, s. 2.

A Secretary to
each Board.

3. Each of the said Boards, or a majority thereof, shall from
time to time appoint a fit and proper person to be Secretary of
the Board, who shall attend the sittings thereof, and keep a
record of its proceedings. 14, 15 V. c. 4, s. 5,—12 V. c. 35,
s. 5.

Meetings when
and where to
be held.

4. Each of the said Boards shall meet at the Office of the Com-
missioner of Crown Lands, on the first Monday in each of the
months of January, April, July and October, in every year, un-
less such Monday be a Holiday, (in which case they shall
meet on the day next thereafter not being a holiday,) and
may adjourn such meeting from time to time if they deem it
necessary. 14, 15 V. c. 4, s. 6,—12 V. c. 35, s. 6.

LAND SURVEYORS.

Who may act
as Land Sur-
veyors.

5. No person shall act as a Surveyor of Lands within this
Province unless he has been duly authorized to practise as a
Land Surveyor according to the provisions of this Act, or had
been so authorized before the passing hereof, according to the
Laws then in force. 18 V. c. 83, s. 2.

APPRENTICES.

Statutes) The Titles include such matters as Legislature, Trade and Commerce, Religious Matters and Title 11 Criminal Law. Title eleven itself is actually not included in the document of Lower Canada but one is rather told to refer to the companion volume for the Consolidated Statutes of Canada of 1859. Here one denotes that there are twenty-two Chapters included in the section on Criminal Law and Chapter 91 refers to the offences against the person. The section on criminal law is by far the most lengthy Title contained in the document and the specific section of offences against the person contains forty-seven articles which is also quite numerous in view of articles of sanctioned behaviour.

It needs to be noted that the province of Nova Scotia was chosen as it represents a province of advanced standing for the period - as demonstrated by the socio-political overview presented in the preceding chapter - and the Statutes dating from 1851 represent the first document that amalgamated the statutes of the period for British North America and was thus the forerunner. In terms of Lower Canada, as a province, they based their laws from the reception of English laws in 1763 and are therefore different from the other provinces and can aid in constituting an interesting comparison. Lower Canada also had varying methods of government and politics as compared to Nova Scotia due to the constant and important French influence.

The documents needed to reconstruct the development of the penal law for these two provinces as well as other documents that were utilized throughout this research including Statistical Yearbooks and census reports to allow one to ascertain demographic considerations, employment statistics etc... were found at the

National Library of Canada. These documents were found with a certain degree of difficulty due to the time period involved as well as the lack of availability of all of the volumes needed. The parliamentary debates for the House of Assembly of Nova Scotia as well as the Legislature of Lower Canada were also consulted at the National Library and National Archives. These particular manuscripts were found in the special documents section whereby one needed to wear gloves in order to actually be able to consult the debates as well as not being able to photocopy any part thereof due to their fragility. In order to accentuate the findings in the actual debates the Canada Gazette , L'ordre social and the Revue de jurisprudence were also searched so as to interpret feelings and impressions in view of the Consolidated Statutes without the necessary political backdrop. These documents were also found after long searches at the National Library and the National Archives of Canada in Ottawa and they too had to be consulted with great fragility due to the condition of some of the documents (ie with gloves). It should also be noted that not all of the years or volumes were available for consultation as it appears that the National Library and Archives do not necessarily carry a complete collection of certain works.

The difficulty in finding any literature on this particular object of study needs to be noted in order to further indicate the importance of this work. Very few authors have written on the area of social law, or statutory provisions in the 19th century. Therefore, the search for any type of secondary documentation in the era pre-1892 was extremely difficult and, as indicated above, the primary documents consulted were also difficult to find and

could not be manipulated in certain manners.

The empirical axis needs to be in alignment with the object of study. In this case, one is observing the statutory sentencing provisions and the development of penal law in Canada in the middle of the 19th century and therefore the method used as well as the object are in a constant interdependence.

"Cela veut dire, entre autres choses, que lorsque l'on affirme que l'objet d'une recherche est toujours au moins en partie le résultat du choix de la méthode et du type de matériel empirique (lettres ou chiffres) effectué par le chercheur, on doit entendre du même coup qu'il y a certaines dimensions du problème ou de l'objet qui ne peuvent être saisies que par ce type précis de mesure (qualitative ou quantitative) ou de matériau. (Pires, 1987 : 12-13)

It is therefore important to go further than the Statutes themselves and the research will also focus on the parliamentary debates of the period which lead up to the passage of the law. This area will also represent a type of analysis into the whole context of the era studied and into the birth of the Statutory documents themselves.

Cellard (1992) highlights the important for the researcher to study the context in which the document was produced.

"L'étude du contexte social dans lequel a été produit le document, dans lequel baignait son auteur et ceux auxquels il était destiné est primordial, capital pour toutes les étapes d'une analyse documentaire, quelle que soit l'époque à laquelle le texte en question a été écrit." (Page 8)

This area will be presented in Chapter II and III shall constitute one of the two dimensions of this work in order to allow for a socio-political understanding of the laws that were enacted during the period studied.

1.5 DATA ANALYSIS

The goal of this study incorporates two dimensions. The first

being the reconstruction of the historical and more importantly the penal development of the periods involved and the second being the statutory sentencing provisions included in the two particular Statutes. Therefore, the data analysis will also be completed at two different levels.

First dimension:

To achieve the first goal, the analysis will involve literature surrounding the period for both Nova Scotia and Lower Canada as well as Legislature and House of Assembly debates in order to trace the actual emergence of the Statutes themselves. The goal of this dimension is to reconstruct the era involved in the research and this will be done through literature of both primary and secondary sources in order to compile a historical overview.

The reconstruction of the time period (1850-approximately 1860) essentially involved a literature review of the secondary documents written by authors on the history of each of the provinces. This review was accentuated by the use of primary sources such as census reports for the time periods in order to present certain demographic considerations. The second component of this first dimension is the actual development of penal law for each of the provinces. Since this area is found in very little secondary sources it becomes of the essence to consult primary materials such as legislative debates and journals in order to reconstruct the whole development of the history of statutory law for each of the provinces. Due to this shortage of literature, the present work is even more intriguing and needed.

Second dimension:

The second dimension will involve the analysis of the content of the data contained in the documents (Revised Statutes of Nova Scotia 1851, Consolidated Statutes of Lower Canada 1860) that will then be effectuated at three varying levels in order to facilitate the study of the statutory sentencing provisions and complete an eventual comparison. These levels shall now be exposed.

i) First level

The first section of this analysis shall be quite general and involve the structure of the sentences contained in each of the Statutes. This section represent a descriptive account of what is included in each Statute as well as of each of the infractions involved. It will allow one to grasp an overview of the sentences' stock that are present and to allow for a first glance comparison. To achieve this, one will undertake a radiography of each of the two documents in order to expose each section, the title of each article, the category of each infraction (felony or misdemeanor), and the sentence attached to each one. The following example relating to the Statute of Nova Scotia exemplifies the radiography.

STATUTES OF NOVA SCOTIA
PART IV
OF THE CRIMINAL LAW AND THE ADMINISTRATION OF CRIMINAL JUSTICE

TITLE XI - OF OFFENSES AGAINST THE GOVERNMENT

CHAPTER 155 - OF TREASON

TITLE	CATEGORY	SENTENCE
Treason defined: punishment Chp.155 sec. 1	felony	shall suffer death and forfeiture as in cases of high treason
Proceedings and evidence to be as in England Chp 155 Sec. 2	Procedural definition	

After these tables have been completed for both Statutes, one can easily begin a rudimentary comparison involving article and sentence structures.

Before continuing on, one will point out the differentiation present between the two categories of offences. A felony is of a graver character than a misdemeanor and can be compared with present-time indictable offences. Penalties for such a crime include death, and higher levels of imprisonment - usually over 2 years - in the Penitentiary and not in a prison. Whereas a misdemeanor is less serious and involves terms of imprisonment in a prison not exceeding two years and may even be only a fine. There is one exception to this description amidst the section studied, this consists of Article 19 which states that "Whosoever shall assault any person with intent to commit a felony, shall be imprisoned for a term not exceeding two years and fined at the discretion of the Court." (Statutes of Nova Scotia 1851)

ii) Second level

The second area of this analysis will be more specific and involve a look at the sanctions themselves in view of their leniency or severity. Therefore, an elementary quantification in terms of the recurrence of each sentence in each Statute will be done. This will allow, for example, to see how many times the sanction of death appears in each Statute and certain basic conclusions will begin to be formed. This area of analysis will therefore allow for certain tables to be drawn up in order to facilitate the overview of the analysis while also giving this numbered order to certain articles in the Statutes.

A pronouncement on severity becomes quite difficult to

develop. A basic discussion in reference to certain key infractions such as murder, rape, robbery... shall allow for the severity to be determined according to individual cases. Certain conclusions will be able to be drawn from this data.

A more detailed discussion is possible by presenting a view of the harshness of sentences on the whole - such as how many times capital punishment appears in each Statute, as well as in view of felonies versus misdemeanors.

It is also possible to undertake a fuller analysis of severity by the use of Lascoumes' method of incriminations (as will be presented in the third area). This will allow for the indications of the numbers of sanctioned behaviour that are apparent in each Statute - numbers that will help to reveal differences that are present.

It is obvious that this area is one that poses certain problems in terms of pronunciations of severity or harshness yet the manner in which it shall be undertaken in the analysis will take into account these concerns.

iii) Third level

Before presenting the third level of this section of the analysis one needs to understand the whole notion of infractions and protected legal interests (biens juridiques protégés). The whole question of what should constitute punishable acts and how these shall indeed be sanctioned are interesting questions that have been debated over time. The questions that arise for the present research concern the dimension of the need to compare statutory documents and assign a method of count. The right to

punish has been developed as a legal technic whereby an infraction is rather a construction of human selection; a translation of values of objective social interests. Lascoumes et al (1991) outline the discussion of law as an analysis of a system of values and protected interests. The incrimination of a behaviour corresponds to the defense of institutions and fundamental beliefs specific to each society and to a particular period of history. In fact, to study penal incriminations is to attach a study of the "mise en forme juridique de ces valeurs et intérêts, auxquels l'autorité politique entend à un moment donné accorder une protection particulière." (Lascoumes 1991: 11) Incriminations rather than infractions cut and define certain practices in view of their sanction in terms of a protected interest. However, the force of codification is to attach the arbitrary and artificial part that exists behind each legal and penal construction to allow one to believe in an atemporal order of defense.

"L'ensemble des incriminations formulées à un moment donné forme un tout structuré, un système, aux dimensions symboliques, axiologiques et utilitaristes, et poursuit ainsi l'affirmation de repères essentiels, le renforcement de valeurs ou la recherche d'utilités." (Lascoumes et al 1991: 12)

To incriminate, as viewed by Lascoumes et al (1991) serves three different functions. Firstly, incriminating serves an essentially symbolic function whereby the legislator seeks to remind or state a certain number of fundamental values. These measures serve to fix the conditions of survival of political institutions. Secondly, to incriminate can also possess an axiological value whereby one targets the knowledge of new social values by particular sanctions. And, finally, to incriminate can have a pragmatist or utilitarian target whereby one seeks a direct and

immediate modification of behaviours. These varying functions demonstrate the wide notion of incrimination in comparison with that of an infraction.

Therefore, this area of analysis will focus on a method of evaluation as developed by Lascoumes et al (1991) in order to further compare the content of the documents in question. The difficulty in previous instances has been the use of the infractions as an unit of measurement as demonstrated by the above elaboration. Yet, this poses certain difficulties as, depending on the infraction, there may exist numerous sanctioned actions within each one. An infraction "est un comportement (action ou omission) sanctionné." (Lascoumes et al 1991 : 26) Meanwhile, an incrimination, the unit of measurement as developed by the authors and as detailed above, "serait constituée d'un dispositif de qualification suivi d'un dispositif de peine... ceci est un schéma de principe de plus en plus inopérant." (IBID) It is therefore important to note that one article of sanction can target heterogeneous behaviours,

"l'inventaire des infractions ne peut plus se limiter au seul repérage des dispositions de peine. Il faut donc passer à un niveau plus complexe et déterminer une nouvelle unité de compte qui permette de raisonner infraction par infraction." (Op cit Pg. 29)

The criteria that was retained represents that of the 'comportement autonome sanctionné'. Each verb or substantive of action or omission indicates a behaviour. Each of these is therefore the first part of the incrimination, the second part being the punishment. The method itself has called for certain precisions to be made in order to allow for an easier operationalisation. The precisions that Lascoumes et al (1991) identified to facilitate the

count of incriminations include the following: first of all, one does not need to take into account verbs or substantives that are homonyms or that designate behaviour that is very closely linked. For example, in the Revised Statutes of Nova Scotia, Chapter 162, Section 7, the verbs are: "...maliciously cut, stab or wound..." would be cited as one incrimination as the verbs represent homonyms or closely related behaviour. On the other hand, from the same document, Section 9 : "...unlawfully set fire to, cast away, or in any wise destroy any ship or vessel..." we see that there exist three different verbs and therefore three incriminations. The second area of precision refers to the designations of the autonomous behaviour from other wordings such as the field of application as a same behaviour can be envisaged in contexts or on different objects such as is seen in the Consolidated Statutes of Lower Canada Cap XCI, Section 18, ".....knowingly makes or manufactures or has in his possession any gunpowder, explosive substance, or other dangerous or noxious thing...". Here one sees three verbs of which two are homonyms and then there are three different fields of application - therefore, there exists two incriminations and three different objects of possible application. Another area under this section is that of the places of the commission of the actual infraction. A similar action can take place in different places, Lascoumes et al (1991) determine that the list of these locations does not determine different incriminations. An example includes Section 33.3 from the Consolidated Statutes of Lower Canada: "...whilst on its way from any City, market-town, or other place with...." where we find three different locations however they would be considered as one

and not increase the number of incriminations.

The final area of concern is that of the people that are actually sanctioned in each section. Certain wordings of articles target different types of susceptible authors of identical crimes. This case would not call for noting a different incrimination. An example is found in the Consolidated Statutes of Lower Canada Sec. 29 : "...any Magistrate, Officer , or other person..." where we see three different possible actors listed yet this would also not increase the number of possible incriminations.

Therefore, to summarize the above precisions,

"...nous avons retenu comme unité de compte l'incrimination, entendue comme un comportement autonome (d'action ou d'omission) défini et sanctionné par le texte, quel que soit le nombre d'objets, de lieux, de conditions visés et de personnes punissables concernées."
(Lascoumes et al 1991: 31)

This citation is echoed through the present research as one has also decided to retain the unit of measurement to be the incrimination due to its detailed and substantive use of sanctioned behaviours. It should also be noted that during the course of the larger research in view of the Criminal Code of 1892, the method of Lascoumes et al (1991) was modified as the criteria posed certain difficulties and various exceptions were noted depending on the different sections. For the course of the present research, it was found that the above statement summarizing the Lascoumes criteria was sufficient for our purposes. In order to further explain this method one shall now allow for certain examples taken from the documents studied for the following articles:

"1. Every person convicted of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder shall be imprisoned for a term not exceeding fourteen years and fined at the discretion of the court."

(Revised Statutes of Nova Scotia - 1851)

Here one can see that there exist three different verbs or substantives being murder, accessory before the fact and accessory after the fact, therefore, there are three different incriminations as each represent sanctioned behaviours.

"2 Every offence which before the year on thousand eight hundred and forty-one would have amounted to petit treason shall be deemed to be murder only; and all persons guilty in respect thereof, whether as principals or accessories, shall be punished as principals and accessories to murder." (Revised Statutes of Nova Scotia - 1851)

This demonstrates that there exists only one incrimination being that of an offence of petit treason even though there exist two possible actors, principals or accessories.

"4. Provided that no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony." (IBID)

Here it is shown that there are no incriminations as there exists no behaviour that is criminally sanctioned. This article is an example of a clarification for previous articles included in this section as it demonstrates the principle of self-defence.

"3. Every person guilty of manslaughter shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years or shall pay such fine as the Court may impose." (Consolidated Statutes of Lower Canada - 1860)

This section has one criminally sanctioned behaviour, that of manslaughter, even though the punishment may vary depending on the Court there is only one verb that is followed by the sanction. Therefore, in this case, we have one incrimination.

"15. Any person who unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burns, maims, or disfigures, disables or does any grievous bodily harm to any person, shall be guilty of felony." (Consolidated Statutes of Lower Canada - 1860)

This example contains several verbs: burns, maims, disfigures, disables or does grievous bodily harm; as well as two different variants: by the explosion of gunpowder or other explosive substance. By using the criteria, one can determine that the verbs are homonyms or closely related and therefore represent one criminally sanctioned behaviour and therefore one incrimination.

In view of the research conducted through this document, Lascoumes' method of analysis will allow for a more in depth approach as to the amount of criminally sanctioned behaviours (incriminations) found in each Statute and a further comparison of the content of the Statutes.

This method will allow for a further use of the quantitative method in order to enumerate the number of incriminations while also analysing the qualitative content of each part.

An example of this will be drawn from the Consolidated Statutes of Lower Canada of 1860, Cap XCII Offences against Person and Property:

"21. Any person who steals any horse, mare, gelding, colt or filly or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep or lamb, or wilfully kills any of such cattle with intent to steal the carcass, or skin, or any part of the cattle so killed, shall be guilty of felony, and shall be imprisoned in the Penitentiary for any term not exceeding fourteen years nor less than two years or be imprisoned in any other prison or place of confinement for any term less than two years."

Through this article, as stated in the preamble next to it in the Statute, it aims at punishing horse and cattle stealing and therefore allows for one infraction which could be punishable in

varying manners. However, in counting the incrimination, one sees that the person may steal any of such cattle or wilfully kill with the intent to steal part of the carcass; these are two different sanctioned behaviours and thus represent two incriminations. This example helps to demonstrate the need for a differing unit of measurement being the incrimination rather than the infraction in order to further understand, evaluate and research such documents.

This method will help conduct a more in depth analysis of our documents in order to effectuate a comparison on the basis on the incrimination that are present. The number of incriminations for each article of each Chapter of each Statute shall be enumerated in order to further analyze each of the Statutes themselves and to further the comparison.

The above represent the methods in which the research on the Statutes of 1851 and 1860 will be completed. Briefly, the methodologies used, as presented, focus on the analysis of documents done on a qualitative level which will constitute the following chapters and the bulk of this thesis.

CHAPTER II
HISTORICAL CONTEXT

This chapter will serve to situate the research in view of establishing the historical context of the period. It will consist of a discussion regarding the general history of the time studied (app. 1800-1867) for both Nova Scotia and Lower Canada. This will involve the development of the socio-political framework in order to form the context of the discussions present in the following chapters.

2.1 Nova Scotia:

Beginnings:

The story of Nova Scotia begins with the story of Acadia. As far as can be learned with certainty, John Cabot and his crew of eighteen were the first Europeans to visit Nova Scotia. They came from England and arrived in 1497. In 1604, Samuel de Champlain had been sent to survey the Saint Lawrence Valley, however, he felt that Acadia would be more suitable for settlement and they landed at what they called Port Royal. The Treaty of Utrecht in the eighteenth-century began an era of peace for thirty years and it was through this treaty that the province became an official colony of Great Britain. However, the cycle of war was to continue as throughout the following years peace was far from this region. The English and the French continued to battle for the territory and was ended by the War of 1812 whereby the colony became loyal to Great Britain and began enjoying a rapid period of economic and social development.

Political History:

In view of the political history, one can easily see that it was quite shaky during the time of the English/French wars. Nova

Scotia came into the empire after the French were driven from the Port in 1710. It was decided that Nova Scotia should have a government of her own modelled on that of Virginia. (Campbell 1948: 246) In 1758, the first Assembly met in Halifax and it was quick to take up the struggle with the Executive. For the first time in Canada, common people could vote and elect men to represent them in government. (Blakeley 1970: 188) This system was a form of representative government.

The election in 1785 returned a House in which 1/3 of the members were Loyalists and they took an active part in the sessions and eventually altogether dominated the House. Over the next thirty odd years the struggle in the Assembly would continue, yet the Loyalists were able to hold onto their power. The War of 1812 came sufficiently close to home to cause a truce in the contest between Executive and Assembly. After the War was over, a succession of able governors kept friction to a minimum. In 1820, Cape Breton's stormy career as a separate Province came to an end when the Island was reunited to the government of Nova Scotia. Also, this year marked the appearance and wide dissemination of newspapers advocating the cause of reform. In 1829, Dr. Thomas McCullough, the Principal of Pictou Academy and future President of Dalhousie College was writing:

"Than Nova Scotia, there is not a more loyal section in the British Empire: but in Nova Scotia, there is not, we believe, a creek or corner which is not teeming with dissatisfaction at the materials and measures of His Majesty's provincial council..." (Martell in Campbell 1948 : Pg 258)

In 1847, one witnesses another set of elections where the people of the Province returned the Reformers with a substantial majority. Yet, when the Assembly met in 1848, a vote of want of

confidence was moved and Johnston's government was forced to resign. A coalition was then formed with Uniacke leading the Reformers and on February 2, 1848 Nova Scotia became the first of the British colonies to usher in responsible government. (Beck 1985: 131) This meant that the country was to be ruled by a Cabinet or Council of Advisors chosen from the party which had the most members in the Assembly. These advisors were responsible for their acts to the Assembly and so to the people. Joseph Howe has been the one thanked for having brought responsible government to Nova Scotia. "He won for them freedom of the press and responsible government and he helped to awaken in them a love for their country." (Beck 1964: 131) After Johnston's so-called defeat he perceived that the province :

"now possessed the most debased system of government imaginable.... that was sustained by a clique and an oligarchy operated upon by the corrupting influences of bitter party feeling. For that reason, true Conservatism must hereafter consist of a well adjusted, well regulated system of Democratic Institutions." (Beck 1985: 134)

Therefore, during the period of the institution of the concerned Statutes, the Reformers were leading a coalition government under the first sign of responsible government. At this time, Uniacke had become Attorney general as well as leader of the government and Joseph Howe was provincial secretary. And it must also be noted that the Reformers were soon to become known as the Liberals and after their victory on the issue of government they had for some years nothing to fear from their Conservative opponents. In Upper and Lower Canada during this period, Durham's report of Union was beginning to take effect as the first elected government of Baldwin and Lafontaine came into being and Lord Elgin had recently been sent from London in order to attempt to unite the

two Canadas. However in 1854, there was a rupture between the French Canadiens and the Reformers of Ontario due to the whole debate over representation by population. It was at this time that union became less of a possibility and Cartier led the French-Canadiens and Macdonald was in power in Ontario.

Shortly after this period (early 1850s), in Nova Scotia, arose Charles Tupper, a man who ran against Howe in an election in 1852 and became part of the Conservative government - this government was headed by Johnston with Tupper as Provincial secretary. Three years later the Liberals came back to power with Howe as a premier. Three years went by again and in 1863 Tupper came to power with a Conservative government. The new premier did not waste time and before two years had passed, he had rearranged the entire school system and had carried through a not very sympathetic House the bill providing for compulsory legislation for the support of schools. (Campbell 1948: 274) Tupper had in view the union of the three Atlantic colonies. Such a scheme had advocates in the other two colonies concerned and in September 1864, delegates from Nova Scotia, New Brunswick, and PEI met in Charlottetown to consider the matter. When the conference opened it was met with a despatch from the Government of Canada, asking if they would be welcome at the conference. They were cordially invited to send their delegates and another conference was held one year later in Quebec which led to the British North American Act of 1867. However, opposition began to gather way and Joseph Howe led the anti-Confederates and went as a representative to London to petition for the repeal of the British North America Act. This action was received with much concern by Sir John A. Macdonald and Tupper was sent off to try and

calm Howe's negative attitude.

Confederation seemed to many Nova Scotians to be the cause of, as it was the prelude to, a series of misfortunes which fell upon the Province in the closing decades of the century. Actually, Confederation was itself more a product of the times than it was a prime cause of the development which followed in its wake. New forces were at work in the province which included things such as the steamship, the telegraph and the submarine cable. The whole development of the marine industry continued to grow at this point in time. The need for ships allowed for growth in the shipbuilding industry which, in turn, compounded the importance of the entire marine commerce. This development lead to the creation of a group of elite businessmen who retained power in the marine industry. And a few years after Confederation, locomotives began steaming into view. Certain other developments, some the natural outcome of this age of change, others that were incidental, helped to make the post-Confederation period one of peculiar difficulty for the Province.

In the summer of 1867 three colonies had become four provinces. Confederation itself was proof that the divisions between a million French Canadians and two and a quarter million Canadians of British origin could be overcome. (Morton 1983: 10) It was Cartier, the man of action, not words, who had urged, cajoled, and manoeuvred his fellow French Canadians into Confederation. And it was Tupper who had done the same for his population in Nova Scotia. July 1, 1867, was a time of hope and fresh beginnings.

Demographic considerations:

The report compiled by Statistics Canada (1876) documents the demographics of the four initial provinces of Canada. It demonstrates statistics for Nova Scotia. To begin, one can point out the population of what was known as Acadia in 1671 was 441. (Introduction) Nearly two hundred years later, in 1807, the territory of Nova Scotia's population was found to be at 65,000. True that there were several factors that influenced the influx of people into the area as well as numerous occurrences over those two hundred years that would have affected the demographics of the area. The first census report that could be located for the area of Nova Scotia was that of 1827 as compiled and documented in 1979 by Dunlop. He states that the census previous to 1827, that of 1817, revealed a population of approximately 80,000 but that the author's sources revealed that it was grossly inaccurate. While it was claimed that the 1827 enumeration was made with great care and accuracy and lists the population of the area at 123,848 with the number of males at 57,986 versus females 56,509. At this time, the occupations listed included those of labourers listed at 5,783 for males and 3,913 for females. There also existed an indication that there was an increase in livestock with the number of cattle and sheep doubling between the two years of the censuses. The next census took place in 1851 (Censuses of Canada 1876: 232-238) and lists the population of the area at 276,854 with 138,612 males and 138,242 females. The population of Halifax is listed at 20,749. These numbers represent double those taken in the census taken nearly 25 years earlier and indicate the continuance in growth for the area. The religions that were noted during this census

include: Catholics : 69,131; Baptists: 42,643; Church of England: 36,115; and Methodists: 23,593. The influence of the Baptist and Methodist denominations would indicate the appearance of American immigrants who could have possibly been integrated into the area over the years. The number of those professing the Catholic faith, per 1000 population, was 249:7. During 1851, there were 2,808 deaths and 8,194 births as well as the division of the population includes 4,908 coloureds and 1056 Indians. It is interesting to note the grouping of the population in view of ages: Under ten: 88,452; between 10-20: 66,970; between 20-30: 42,662; between 30-40: 29,280; between 40-50: 20,889; and over 50: 28,601. Therefore, 56% of the population is under twenty years of age and this indicates a very young colony. Along with this, there were 1,096 schools with 31,354 pupils. This too is interesting as it seems that with the high number of children in the population a large number did not attend schools. In view of the older population, the occupations included agriculture (farmers, gardeners, florists...): 31,604 and industry (saw mills, fishermen, foundries, steam mills....) 22,819 (this number is not further divided so it cannot directly demonstrate the importance of the fisheries) as the two major areas with others such as professionals (teachers...) with 556. In the following census, that of 1861, (Censuses of Canada 1876: 300) one sees that the population has increased to 330,857 with the number of males at 165,584 and females at 165,273. The population of Halifax is listed at 25,026. These numbers represent an increase of approximately 16% in ten years. The occupations remained in the same order as agriculture was the top with 47,249, followed by industry at 25,091 but it is interesting

to note the emergence of professionals as they climbed to 2012.

The first to come to Nova Scotia were farmers from France who established at Port Royal. They lived in houses grouped around the fort yet after the English conquest they moved far from the central area to more fertile land in order to build villages. The Acadians thus began to build new settlements where the dykes were their mainstay and safeguard.

"Their very livelihood depended on the dykes and every Acadian from youth to age shared in the arduous labour of building and maintaining the long walls of earth that protected the fields." (Campbell 1948: 113)

Behind these dykes were fields consisting of wheat, rye and indian corn while fruits and vegetables were planted where the marshes rose towards the upland.

A few years before the expulsion of the Acadians, the English began its fortification of certain cities - including Halifax. The harbour began to take on a new importance for both trade and the naval base for the upcoming war. The city of Halifax became known as an international port for imports and exports and its prominence grew as the war came closer. This factor falls in line with the whole development of the marine industry and the establishment of fisheries and shipbuilding as important facets of the Nova Scotian economy.

Several other migrators continued to come into the region over the next 50 years including hundreds of New England farmers and fishermen who were glad of the new opportunities. Also, the late 1700s marked the appearance of over 30,000 Loyalists.

"The Loyalists were those people in the rebel colonies who left their homes as a result of the Revolution and moved into territories where they could continue to live under British rule." (Campbell 1948: 168)

Although farming proved to be an important focus for Nova Scotia, much of the province was quite unfit for cultivation. Even though agriculture still stood at the head of its industries in the 1850s, it was under the necessity of importing grain from the United States. Second in extent but first in significance stood the fisheries. Nova Scotia's maritime position gave a decided advantage over all competitors. "In no other part of British North America did fishing occupy so large a place in the economic life of the people...." (Whitelaw 1966: 21) Campbell (1948) stresses the importance of the marine industry as he states that one of the most spectacular developments following the War of 1812 was the rapid spread and development of the shipbuilding industry. Along with this stems the overpowering growth of all industries connected with the sea, fishing and trading, and how villages were established along the coast of the Province to support such enterprises. The numbers taken from the censuses do not directly confirm this growth as in 1851 there were 31,604 people employed as industry workers. This specification included saw mills, fishermen, foundries, steam mills, pulp and paper, and so on, however, with the marine aspect taking such an importance it can be stated with some certainty that the majority of this number were employed in this area.

Mining was also coming into prominence. There was much coal, considerable iron and gold in workable quantities. As a final industry, Nova Scotia had timber. Here only did it admit inferiority to New Brunswick, but lumbering was an important industry and provided the material for the shipbuilding industry. Thus were Nova Scotian land resources being used to support Nova Scotia's maritime position and to enhance the importance of the

seaways as a means of exportation.

The period of the 1850s is contained in the middle of the Industrial revolution whereby Canadian economies began to diversify in view of mechanisation and industrialisation of factories. This fact is true in terms of Nova Scotia as one does see the enlarging of industry such as mining, timber and even shipbuilding. But there was little progress towards industrialization on a scale that would have absorbed and supported a larger population. Moreover industrial development in other parts of the continent took place at too great a distance to make it possible for Nova Scotia to market her produce profitably. (Campbell 1948: 195) At the same time, farming continued to be of importance, particularly for survival in terms of food and dairy. Yet, farming was influenced by the period due to the introduction of machinery to facilitate certain routines.

The marine industry also continued to grow in importance as the economy of the province became embedded in the need to export materials as well as the ever continuing significance of the fisheries as both an export and a staple of the Nova Scotian people. Yet, the industrial revolution was slow to change the functioning of such an industry with the exception of the introduction of certain modes of machinery to expedite various tasks.

Due to this lack of forward move, the people of the province began to drain away. Sometimes the lure was gold as in 1849 many young men left in large numbers to take the long trail for California (Campbell 1948: 194); for others, it was a mere ambitious and adventurous spirit that led them away from the

Maritimes. As a result, the Province as a whole was inclined to be conservative and slow to change. True to this was the influence of religion towards the values of the period and it also promoted the slowness of change. Catholics, Protestants and Presbyterians were all in the midst of one Province attempting to instruct their own in the manner they saw fit. This led to several difficulties, particularly in terms of the educational system, yet also in view of strict morals for the period. Only one-third of the children in the province were going to school before 1860 (Blakeley 1970: 190). It did not seem right that children of well-to-do families could go to school and college while children of poor families had little chance of learning even how to read and write. The Churches strongly influenced the politicians in changing this statistic and in 1864 the Assembly passed the Free School Act which provided free schooling for all children living in every district of the province.

The people of the period can basically be described as hard-working, still mostly rural inhabitants who took pride on the simplicity of life and the hard work that went into each daily routine. Nova Scotians of the period were very different to those of the Canadas and it is no wonder that the whole issue of industrialisation as well as the urban move took a lot more time to be completed in such a province.

2.2 Lower Canada (Quebec):

Beginnings:

Many feel Canada's history began in 1534 when Jacques Cartier had made his landfall on the Gaspé shore of the Baie des Chaleurs. (Morton 1983: 16) By erecting a cross and claiming the continent

for His Majesty Francis I, Jacques Cartier had posted the French bid for North America. However, this bid ignored the claims of the Indians or Inuit established for thousands of years since their ancestors had cross the Alaska land-bridge from Asia.

Cartier made several trips back to Canada from his homeland. Seventy years later, Samuel de Champlain came to stay and this is where the French began to inhabit the area now known as Quebec. The French were then the conquerors of the territory that they referred to as New France.

Political history:

On the 13th of September, 1759, the English won the Battle of the Plains of Abraham that saw the deaths of Generals Montcalm and Wolfe. The transfer of New France was to the power of Great Britain and this condition was accepted in the Treaty of Paris which was understood between the two nations in 1763. This treaty allowed the conservation of the laws regulating such matter before the war - consequently the French statutes were kept in force for the newly acquired territory. Also in 1763, His Majesty, under Lord Hillsborough declared that all such part of Canada on the north side of the River of St. Lawrence and all such parts of His Majesty's ancient colonies of Nova Scotia, New England and New York on the south side of the said river as be within the limits above mentioned, and that it be called the province of Quebec. (Sulte 1908: 164)

During this time, all inhabitants were officially Catholics and this monopoly gave the church a strong influence over the whole view of cultural life. As demonstrated by Young and Dickinson (1988), in preindustrial Quebec, religion was a central feature of

popular culture and "...pilgrimages, religious clauses in wills, law rates of illegitimacy, the small number of children conceived out of wedlock, and participation in religious confraternities underlined this importance..." (Young and Dickinson 1988: 95)

With the ordinance of the 17th of September 1764 the governor and council introduced the civil and criminal laws of England into the colony. Sulte (1908: 170) views this action as by far the worst thing that had been done since the conquest of 1763.

The next piece of legislation to affect this colony was the Quebec bill which was introduced in the House of the Lords by Lord Dartmouth, May 2, 1774. This bill allowed the colony to retain their old laws for property and civil rights as well as their right to their religion - that being the Roman Catholic faith. The Constitutional Act of 1791 saw the enactment of Lower Canada and Upper Canada as provinces and the first legislative debate was held in 1792. Therefore, the first Assembly in Lower Canada was elected in 1792. It is interesting to note that the first order of business was the debate over the language in which the Minutes would be kept - whether French or English. After a lengthy discussion, the members decided that the Journals would be kept, separately, in both languages. (Sulte 1908 :277)

From the later beginnings to approximately 1815, Quebec began to create new economic opportunities for french immigrants being the fur trade and agriculture. This growth in agriculture marked the birth of a preindustrial agricultural society that endured into the 19th century. During this time, the state promoted a paternalistic concept of society where the principal goal was the maintenance of power while government structures remained those of

the Ancien Regime.

The War of 1812 involving certain parts of the territory in what is now considered Canada raged on until 1814 and included active participation by the two Canadas. The treaty of peace which was signed to end this conflict allowed for the boundaries of Upper and Lower Canada to remain undisturbed.

The revolution broke out in 1837 and this war was preceded by a long period of effervescence as Hamelin / Provencher (1981 : 80) wrote:

"...précédée d'une longue période d'effervescence, amorcée par les Quatre-vingt-douze résolutions de 1834. Ces résolutions constituent un requisitoire sévère, parfois violent, contre la politique coloniale de l'Angleterre. Elles dénoncent la curée des terres publiques, la partialité des juges, la mauvaise administration des gouverneurs..."

Louis-Joseph Papineau was to lead the Patriotes against the British - the latter proved victorious and the rebellions subsided. A second rebellion exploded with a more radical Robert Nelson as leader who took over from Papineau who had been exiled. The British once again proved to be stronger.

John Colborne, the then administrator for Upper Canada, abolished the Assembly Chamber and named a special council to administer Lower Canada until 1841. During this period, revolts also arose in Upper Canada and the colonies named Lord Durham, a radical british whig to investigate and report on the overall situation. Durham's initial findings stated that "...the inhabitants of Lower Canada were unhappily initiated into self-government at exactly the wrong end...." (Sulte 1908 :471)

The role of the Special Council which governed the province from 1838-1841 was quite important as it made fundamental changes

in view of the structure of Lower Canada. The state began to take on a new active role in organizing the financing of local institutions. While it also moved quickly to reassure the Catholic clergy as it recognized the Church's important social role and accorded it new corporate powers and reinforced property rights. The clergy therefore became an important influence on the government of the period due to its powers and role in society. Seigneurialism still existed yet large capitalists called for a legal system in which all individual creditors would receive equal treatment. Changes were made as were reforms in view of the law.

The rebellions represented a complete restructuring of Canadian public life, more particularly that of Lower Canada, as well as a watershed in terms of political development. The whole evolution of bourgeois democracy became apparent and as part of the realignment of the classes after 1838, "an important element in the Quebec bourgeoisie moved into alliance with the Roman Catholic Church." (Young\Dickinson 1999: 141) The church therefore gained an element of power and influence in such areas as social and educational institutions as well as in terms of governmental issues. The focus and function of the Catholic Church changed dramatically in the transitional period following the revolution as at the end of the preindustrial era the church was weak having lost leverage to Protestant influences. This decline in physical power is echoed through population numbers as in 1780 there were 750 Catholics per priest to, by 1830, 1834 Lower Canadian Catholics per priest. (Gagnon et Lebel-Gagnon 1983: 377) As the church had always been a constant supporter of established authority, as

symbolized by Bishops Lartigue's and Signay's description of "....insurrection and violence as criminal in the eyes of God and of our Holy Religion." (Gagnon et Lebel Gagnon 1983: 142), it became even more needed during the 1837-38 rebellions. Lord Durham himself recognized the importance of their intervention:

"The priests have an almost unlimited influence over the lower classes of Irish; and this influence is said to have been very vigorously exerted last winter, when it was much needed, to secure the loyalty of a part of the Irish during the troubles." (IBID)

Schools also began to develop in both elementary and higher education. At the same time, the church played an increasingly important role in view of the popular classes. After the rebellions, the mechanism of the Catholic Church grew quite rapidly - for example, the membership of female religious communities which had remained steady in the decades before 184- doubled and by 1881 had reached 3783. (Young/Dickinson 1988: 156) Lapointe-Roy (1987) point out that the church also found itself responsible for hospitals, orphanages, maternity hospitals, day-care centres, houses of industry, food depots, hospices and asylums for the indigent, elderly, and insane. This was partially due to the great Montreal fire in 1852 but also to the overwhelming extent of urban poverty and suffering.

In 1839, Durham presented his report. He, as stated earlier on, was a radical which who had been influenced by the Tories and merchants who detested French Canadians. He was harsh with their culture and described it as stagnant. (McInnis 1969: 263) Durham stated :

"There can hardly be conceived a nationality more destitute...than that which is exhibited by the descendants of the French in Lower Canada, owing to their peculiar language and manners. They are a people with no history and no literature." (Young/Dickinson 1988: 160)

His two major proposals were to unite Upper and Lower Canada and to let the colony conduct its own internal affairs by the granting of responsible government. Also, as enumerated by Hamelin and Provencher (1981: 82) :

"Durham recommande deux mesures essentielles pour rétablir la paix: assurer une majorité anglaise et loyale et, éventuellement, angliciser les Canadiens, qui n'ont aucune chance de survivre comme ethnie dans une Amérique anglo-saxonne...."

Joseph Howe, a member of the Assembly for Upper Canada, also felt the need to reform the system and stood behind the act to reunite the provinces of Upper and Lower Canada which was introduced by Lord John Russell in June 1839 and was postponed until the following year. The Honourable Charles Povlett Thompson was then sent as governor to Canada to obtain the consent of both provinces. The Act passed British parliament July 28, 1840 but not without protest. Lord Godsford (Sulte 1908 :473) considered the union of the two provinces a dangerous experiment and asked would it make united happy people?

The Union Act of 1840 united the two Canadas under one government. It was to allow for: responsible government under British Parliament; a legislative Council of 42 members for both Western (Upper) and Eastern (Lower) Canada and an executive council named by the Crown. At this time, Lower Canada had a significantly higher population, 650,000 compared to Upper Canada's 450,000. (Young/Dickinson 1988: 160) (The populations at the time were listed as 465,000 for Upper Canada and 691,000 for Lower Canada by Sulte 1908 :474) This Act also help generate resources of the united provinces behind the great transportation project of the Canadian railway. The industries were also able to develop and

became an enormous part of the future of Lower Canada. The Act also chose Kingston as the Capital of the united Canadas.

After 1840, the apparatus of the Catholic Church continued to expand quite rapidly as the number of priests in Quebec escalated quickly and according to authors such as Gagnon et Lebel-Gagnon (1983) the number of faithful per priest dropped from 1834 in 1830 to 1080 in 1850 and 510 in 1890. The population of religious communities, both male and female, also increased in membership. For example, the Congrégation Notre-Dame which never had more than 80 members in the years preceding the union, now saw its membership grown five times between 1830 and 1870. (Young and Dickinson 1983: Pg.156) The popular classes fully supported the clergy and they were included amidst the bourgeois elite and therefore represented the utmost of authority.

At this time, after the Union, four political parties existed: the family compact, the moderate conservatives or Tories, the moderate Reformers and the extreme Reformers these led by Neilson, Lafontaine, Morin and Baldwin.

In 1842, the Reform Party lead by Baldwin and Lafontaine lead the Assembly until 1844 when they lost yet they were called on by the Governor General Lord Elgin to form the government once again in 1847 - Baldwin as Representative for Upper Canada and Lafontaine as that for Lower Canada. This alliance represented a party-ministry which was the first in the British colonies. (Sulte 1908 :478)

The third administration was led by the Draper-Viger ministry from 1843-1848. In 1848, there began to show signs of the need for responsible government and the Reformers were led into power by a

sweeping victory. In 1854, the Parliament buildings in Quebec City were burnt to the ground and the elections held that year determined no majority so Macdonald arranged a compromise with the MacNab-Morin administration who were in power for eight years. By the late 1850s, the Reform Party had essentially become the Conservative Party. One of the Party's strengths was its alliance with the Catholic clergy. An alliance that prompted both the Party's influence as well as that of the Church in matters of the government.

The unofficial federalism and party system that had emerged from the Union Act broke down by the late 1850s under pressure of regionalism, increasing ethnic tensions, and the demands from Britain that Canada assume a larger share of the defense and administration costs. (Sulte 1908: 164)

In 1857, Ottawa was designated as the capital of the united Provinces and the population of Lower Canada was 1,111,566 while Upper Canada grew to 1,396,091. (Sulte 1908: 489)

Since 1858, no government can assure a majority in the chamber of deputies. George Brown, who lead the clear grits, in the Western section of Canada, reclaimed the annexation of the West, the proportional representation to the population, a system of non-confessional schools and favoured an economic policy that went towards the interests of the torontonians. The liberal-conservative coalition went against this view of the grits and being the majority catholic they doubt the policies of the protestant grits. The united country went through many governments in the next decade and the Union became jeopardized. John A Macdonald had appeared and he formed the power in the government.

In 1864, a coalition government was formed to resolve the serious problem of which Macdonald was a part. Confederation would stem from these difficulties.

Lower-Canadian Conservatives were early and enthusiastic supporters of movement to federation as were the Reform parties of both Upper and Lower Canada. Eight delegates were sent from the Canadas to the 1864 conference in Charlottetown. At the 1864 negotiations in Charlottetown and Quebec City, Lower Canadian delegations did not fight hard on specific issues, and, despite fierce opposition from the Rouges, they accepted a highly centralized state. The most important member was Cartier who supported the idea of a new political nationality while Rouge leader Antoine-Aime Dorion was enraged. Several of the delegates from this province rose to present moving speeches at the conferences. Taché spoke of the benefits of the union of Upper and Lower Canada and how this would double the population and that the proposed federal union would benefit all. (Sulte 1908: 492) Cartier also centred on the union of the two Canadas as he felt that it has achieved wonders for the two provinces and that "...prosperity to which we have risen under the union encourages still a larger combination..." (IBID) Due to financial dependency, as well as geographic location, the Lower-Canadians had to support the union in Confederation and the province of Quebec was formed with the British North American Act which received Royal Assent March 29, 1867 and became effective July 1st of that same year.

Demographic considerations:

The report of the Censuses of Canada. Vol. III (1876) allows

one to identify certain statistical information about Lower Canada. The first numbers of interest are those of the population of the two Canadas before their Union in 1840. In 1825, the population of Lower Canada is listed at 479,288 nearly four times that of Upper Canada at 157,923. After the unification of the two territories, the population of Lower Canada rose to 697,084 while that of Upper Canada increased considerably higher to 432,159. Despite nineteenth-century British immigration, Quebec remained overwhelmingly francophone as the province's overall population quadrupled from 340 000 in 1815 to 1 359 027 in 1881.(Bernier et Boily 1986) The population of the area in 1844 is seen at 690,782 while during the census of 1851 it is quoted at 890,261. The population of Montreal is at 57,715 and for Quebec, 42,052. The census report of that year (1851) also highlights those of the Catholic faith being at 746,866 while the Protestants were considerably lower with 45,402. The ratio of those of the Catholic religion per 1000 population is quoted at 838:9 while, for the same year, in Upper Canada it is viewed at 176:1. The main employer for this year was agriculture as 78,264 people were farmers; other professions included: Labourers: 63,365; Private business: 3,870; and female servants: 10,812. The leading cause of death was fever which claimed 904 lives followed by consumption which took 840. Of those of French-speaking origin, per 1000 population, the ratio is seen at 752:0 while, for Upper Canada, it is 27:7. (Censuses of Canada 1876 Vol. V) The census in 1861 demonstrates the Quebec population at 1,100,664 of which 75% were francophone. (Hamelin/Provencher 1981: 104) The census report (1861) itself identifies the ancestry of the population being that besides the

3\4 francophones there were 50,192 of Irish descent and 4876 Indians. It is also interesting to note the population of the two major cities being Montreal at 90,323 and Quebec at 51,109 - being considerably higher than those of 1851. The number of males just surpassed that of females being 567,865 to 543,701 while 942,724 were of a Catholic religion and 63,332 were Protestants. The census demonstrates a society which relied heavily on agriculture as 105,784 persons were employed as farmers. The other occupations of high numbers included: Labourers: 44,984; Female servants: 12,003; Carpenters: 7,291; Shoe makers: 4,916; Clerks: 4,717; Florists: 4,149; Lumbermen: 3,815; Blacksmiths: 3,460; Boatmen: 2,816 and Female teachers: 1,995. Therefore, many people worked in industries as the industrial era was upon them and tended to create a high influx of people into the urban areas which, in turn, added to the pressures of life in view of health, money and general well-being. The church continued to play an extremely important role in the lives of the general population as they built schools, ran hospitals and helped out the poor and destitute. During 1861, the leading cause of death was continued fever which claimed the lives of 983 persons and followed by croup at 587.

In comparing these two census reports one can determine that the population increased by 220,403 or by nearly 20% while the number of citizens practising the Catholic and Protestants faiths also increased by 21% and 28%. The fact that there would be more English descendants entering during this period would claim to be true due to the Act of Union of 1840 and the unification of the two Canadas. Agriculture remained as the most important means of employment. The census also echos, as presented in the political

summary, the extreme importance of Catholicism and the high numbers of religious followers. This fact demonstrates the incredible support that the Roman Catholic faith possesses from the people.

The first people to inhabit the area of Quebec were the natives - Algonquin, Iroquoian and Inuit. European contact first came in the sixteenth century whereby they too began to populate the land and attempted to assimilate those who had already existed for hundreds of years. Europeans and their trade therefore transformed the life of the native peoples who quickly adopted such commodities as dishes, tools, weapons etc... The European settlers also began to appreciate certain native products such as canoes, crops and tobacco. (Dickinson and Young 1988: 30)

Preindustrial Quebec from about 1650-1815 was based on three important cornerstones. (Dickinson & Young 1988: 37) The family was the centre of social and economic relations where the male was the head of the unit under the paternalistic French law. Agriculture was extremely important to the well-being of the society both for consumption and also for trade. Merchants began to emerge and the colony introduced various ways of commercialism. The third basis of this era was a very rigid, hierarchical social structure being that based on the Ancien Regime and the Custom of Paris. This structure formed the basis of seigneurialism and the importance of the elite, rich, and the clergy and therefore elicited demands from the peasants.

At the beginning of the nineteenth century Lower Canada was predominantly preindustrial. During the years to follow, they went through the transition to industrial capitalism where industrial production progressively replaced artisanal forms; market-oriented

agriculture increased; and capital became increasingly important to determine social relations. The cities began to grow as more people left their rural settings in order to follow the swing of the industrial revolution to the bigger centres. Agriculture remained in importance yet the process of exportation became more important with the development of new methods of production. Other areas of emergence were apprenticeships in view of shoemakers, blacksmiths, foundries and more clerical jobs came into being.

The function and importance of the Catholic Church changed dramatically during this era as its human resources were declining and its powers were in question from the British administration. The church therefore began to play an increasingly important role in controlling the lower classes due to their difficulty in the power struggle with the British.

Important social institutions were also created during this period as most Lower Canadians did not know how to read or write. The school system began to emerge based on religion whereby the popular classes were being introduced to elementary education and there began an expansion of higher education.

The area continued to grow and expand so as that the Quebec that existed at the time of Confederation was very different from that of the early 1800s. As stated by Young\Dickinson 1988: 172)

"The purging of 1837-38, parliamentary democracy, a new federal system, and the alliance of the clerical hierarchy and francophone bourgeoisie with the industrial producers left the province in the hands of conservative elements, forces that would effectively control Quebec well into the twentieth century."

CHAPTER III

DEVELOPMENT OF PENAL LAW

In order to ascertain the complete historical background it becomes imperative to present the details as to the development of penal law for each of the provinces studied. Therefore, this chapter, tackling a part of the object of study, will serve to present how each Statute was developed and in what context they appeared.

3.1 Nova Scotia

The province of Nova Scotia, as it is known as today, was settled by the British Crown in 1497 and when territory was taken over by settlement, or even occupancy for that matter, the settling British subjects were deemed to have brought the British Common Law with them. Clarke and Sheppard (1882) state that Nova Scotia represented a colony of the British Empire, yet, it was not perfectly clear under what mode of acquisition it could be classed - whether it be conquered or ceded. These authors feel that by the Treaty of Utrecht in 1713 the present province of Nova Scotia was ceded to Great Britain and due to this it seems to have been

"considered as a settled colony, in other words, as acquired by occupancy, a view which is strongly supported by the fact that the laws of England, both civil and criminal, with certain limitations and restrictions, prevail therein although never introduced by Imperial Statute or Proclamation. (Page 2)

Thus, from the moment of the first colonization, each part of Canada possessed the criminal law of England as the date of their settlement. (Clark and Sheppard 1882 & Mewitt and Manning 1978) The exact dates of reception of English Law in Nova are not clear as demonstrated by the difficulty that Clarke and Sheppard possess

in determining the method by which Nova Scotia was acquired. Brown (1986 : 207) puts the date at 1497, however, Coté (1977: 87) and Mewitt and Manning (1978: 4) have recorded the date as 1758 and, finally, Laskin (1969: 5) is rather specific as he states that English law was embraced in this province on October 3, 1758, as this date refers to the first legislative assembly of this colony. Laskin later states that Nova Scotia "which had earlier in force dates for English Law, adopted the enactments of parts of it by express legislation" (Laskin 1969: 5) Therefore, Nova Scotia did not accept English Statutes on or enacted after 1497 unless expressly adopted. As in all other colonies, a large portion of the law in Nova Scotia was the Common Law "which had been considered by the highest jurisdictions in the parent country, and by the legislatures of every colony, to be the prevailing law in all cases not expressly altered by statute or by an old local usage of the colonist." (Haliburton in Brown 1986: 42)

Brown (1986) demonstrates that the colony, in view of written law, drew from several sources including English Statute Law, the Bible and the settlers' own experience. So, in comparison with English Statute criminal law "that of the colonies was short, concise, and relatively benign... all of this and more, rather than the custom of Westminster, was the heritage of Nova Scotia." (Brown 1986: 178) However, one other element needs to be mentioned and that consists of the influence of New Englanders. Although the first wave of immigrants into Nova Scotia were British born, soon after New England traders became the dominant element as they were drawn to the region due to economic opportunity. This group then began to influence the legal system and laws of this colony to the

point where criminal law was patterned on that of Massachusetts. This influence is demonstrated by the following comparison of Acts in force during that time:

"...in contrast to the hundreds of penal Acts enforceable in England, essentially all indictable offences in Nova Scotia were laid down in two short, concise, almost code-like compilations. Moreover, whereas just one English Statute, the Waltham Black Act, defined fifty or more felonies and enumerated over two hundred capital offences whose focus was the protection of game, the entire substantive criminal law of Nova Scotia specified only sixteen felonies and defined fewer than seventy capital offences." (Brown 1986: 184)

Yet, during the next century, the winds of change began to blow and, in turn, there was a great deal of amendment and amelioration of criminal law in Nova Scotia. By 1841, the number of capital felonies were reduced to the extent that ten years later only 2 capital felonies remained: treason and murder. (IBID) And it is due to these, as to other, changes that Brown (1986) judges that Nova Scotia became the leader of the sections of British North America in view of attempting to rationalize and humanize criminal law.

Legislature in Nova Scotia began functioning in 1758 and it was early on that they began to recognize and address the problem of statutes. In 1805, this colony published the first authorized collection of statutes of the British Empire. "...Richard Uniacke, the Attorney General, promulgated the Statutes at Large of Nova Scotia, by order of the Assembly." (NS House of Assembly 1805 ix) This collection was then updated in 1818, 1825 and 1835, and, as stated by Brown (1986), however elegant at first glance and notwithstanding that they are a great improvement over previous volumes, they still remained quite difficult to work with and hard to comprehend unless one knew exactly what they were looking for.

In 1849, the same year in which the New Brunswick Acts were introduced, Nova Scotia's Assembly decided unanimously that the Statutes "be consolidated, simplified in one uniform code." (Commissioners' Report R.S.N.S. 1851; vii) This decision then led the government to appoint a commission to introduce this resolution. This committee was formed by four lawyers, two of whom were members of the legislature and they included: William Young, J McCully, J W Ritchie, and Joe Whidden. (Journals of the House of Assembly of Nova Scotia, January 21, 1850, Appendix 15) This Commission encountered certain difficulties and were faced with varying dilemmas as to determining how to order parts of the Statutes - whether chronologically as had been done in Upper Canada or in a topical order as in Lower Canada. The report of the Commissioners, as received by John Harvey, KCB, the Lieutenant Governor of Nova Scotia on January 21, 1850, demonstrate that the Statutes had undergone no systematic revision since the origin of the Legislature nearly a century ago and that so many of the earlier Statutes that were still in the written form had been repealed, "no more than 1\5th part is in force..." (Journals of the House of Assembly of NS, 1850, Appendix 15) The Commissioners had decided to preserve the framework of the present laws, to expunge some of the more useless expletives and phrases and to methodize and arrange them as much as possible without aiming at any material change. Eventually, the Commissioners based their revisions on the models of Massachusetts of 1836 and New York in 1828, these examples were written in a "short, concise, non-technical style and set out the law in one or two volumes in an integrated and topical layout." (IBID) The Committee, at this

point, therefore presented the layout of the Revised work that would consist of four parts: the first, Of Internal Administration of Government and would include twenty-three Titles and one hundred and five Chapters; the second, Of the acquisition, transmission and enjoyment of property, real and personal and would include six Titles and eleven Chapters; the third, Of Courts and Judicial Officers and proceedings in civil cases and would include six Titles and twenty-three Chapters and, finally, the fourth, Of the Criminal Law and Administration of Criminal Justice and would include two Titles and fourteen Chapters - one hundred and sixty Chapters in all. At this point in time, the Commissioners found it totally impossible to finish the work in one year due to their other duties and stated that they had finished certain parts including of Criminal law but the rest would have to wait until the following year. Therefore, the Journals of the House of Assembly of Nova Scotia demonstrate that the bill to revise and consolidate the laws of this province, as prepared by the Commissioners, was first read January 27, 1851 and later on that same session it received second reading and was committed to the Commissioners. Throughout this process, amendments were also received regarding the content of certain sections. An example taken from the (1851) includes an amendment proposed by Council to Chapter 162 - Of offences against the person and was read a first and second time and considered by the House as follows:

"13th clause - 4th line: instead of the words 'suffer death' insert the words 'be imprisoned for the term of his natural life or for any term not less than 7 years' and thereupon -

Mr. Marshall moved that the first amendment be not agreed upon to which being seconded and put and the House dividing thereon, there appeared for the motion 22 and against it 18. On motion of Mr. Marshall, resolved, that

the second amendment be not agreed to ordered that the clerk do carry the Chapter and amendments back to the council and acquaint them that this House have not agreed to the amendment." (March 28, 1851 pg. 772)

This example demonstrates that throughout the whole process of the consolidation of the Statutes of Nova Scotia debate was being heard concerning amendments to the Chapters themselves and, more precisely being the fact that debate was presented regarding the punishments involved for varying offences.

As the Bill was being passed through the Legislature a bill was also introduced regarding the method of publication of the Revised Statutes. On January 27, 1851, Mr. Fraser resolved that a select committee be appointed to examine into and report upon the subject of publication of the Revised Statutes. It was therefore ordered that Mr. Fraser, Mr McDonald, Mr. Fulton, Mr. McLeod, and Mr. Freeman be a committee for that purpose. The individuals involved in this committee were modified on February 7th to include Mr. McDougall, Mr. Almon and Mr Brown. The report of this committee was received by the House on Tuesday March 18, 1851 (Appendix 65) whereby it was ordered that the Revised Statutes be fairly copied out under the direction of the Law Commission at the least possible expense; and that Mr. Richard Nugent be engaged to print 250 copies of the first volume of the contemplated edition on superior paper and 800 on inferior paper. On April 2nd, 1851, the issue of the money incurred by such reprography was passed.

On Monday March 31, 1851, the House of Assembly received the final report of the Commissioners as having earlier been appointed by your Excellency Lt. General Sir John Harvey, KCB, to consolidate and simplify the laws of the province. The report was tabled and the following represents an extract:

"...the main advantage to be derived from the work will be that the Laws which regulate social life and protect and transmit property, determine political rights and define the punishment of the offences, have been reduced to system and clothed in simple and perspicuous language so as to be intelligible to all who may have occasion to consult or who may choose to study them.

William Young

J McCully

J W Ritchie

Joe Whidden"

(Journals of the House of Assembly of NS, 1850:1000)

The final step occurs on Monday April 7, 1851, whereby the Revised Statutes of Nova Scotia received Royal Assent and therefore became proclaimed as law in the colony. The Commissioners' first report states that they are developing a "philosophical and comprehensive arrangement of the law in one uniform code" (Commissioners' first report; January 16, 1850 vii) and this arrangement was avowedly inspired by American precedents.

According to authors such as Brown (1986) and Brierley (1968) this effort resulted in the first Code of Statute law in British North America and they became the foremost example of codification for this time period. ¹

The Revised Statutes of Nova Scotia produced an innovative work which made public statute law available to all. A topically

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Brown (1989) labels the Nova Scotia code as the "first code of statute law" (Pg. 255) and the New Brunswick code as "the first codified enactment of legislation". (Pg. 257) This differentiation exists due to the presentation of penal law in the province of New Brunswick while the Nova Scotia code concerns all statute law.

Many authors have differing opinions as to the definition of a 'Code' and the actual first code. (see Parker 1981; Law Reform Commission 1976; Brown 1989; Kasirer 1990; Brierley 1967...) The debate over the institution of codes and consolidations is controversial and difficult to ascertain as there does not seem to be one common meaning to the terms nor one common answer to the question. The discussion of this issue will not be presented in this thesis.

ordered table of contents reveal that the code was divide into four parts, forty-one titles and one hundred and sixty Chapters each of which consisted of one or more sections and ran to five hundred and seventy-eight pages. (See Figure 1, Page 11a for a duplication of a page from the Revised Statutes of Nova Scotia, 1851) In particular importance to this research is Part Four, Of the Criminal Law and the Administration of Criminal Justice, which comprised of fifteen chapters, set out the whole of statutory penal law. This document represented the first occasion when all substantive and procedural criminal law was found in one system.

Although Brown (1986) speaks highly of this enactment, it is not without defects. The Commissioners were able to develop a new style, yet they preserved the traditional English form of the section. This fact is demonstrated by the use of one sentence with no subdivisions and in view of the penal chapters, one had to read to the end of the sentence to discover the class of crime and the punishment. An example of this is found in the following section on Treason whereby it states:

"1. Whoever shall compass or imagine the death of the queen, or of her eldest son and heir, or shall levy war against her, or adhere to her enemies giving to them aid or comfort, and shall thereof be duly convicted, shall be declared and adjudged to be a traitor, and shall suffer death and forfeiture as in cases of high treason."
(Revised Statutes of Nova Scotia of 1851 : 443)

The author continues on with his criticisms of the document as he feels that much was still left to common law : "...there were no definitions of important terms such as larceny, murder, and the like; several major offences remained unenumerated, such as sedition and piracy...." (Brown 1986: 256) I tend to contend one aspect of Brown's thoughts, although the single sentences are

difficult to read, the section synopsis at the right hand side of each sub-section (as demonstrated in Figure 1 Page 11a) allow for one to anticipate the class of crime and the punishment. As well, the sections in each chapter are well enumerated at the beginning of each varying chapter and this too allows for ease in consultation.

In all, the Revised Statutes of Nova Scotia represents an elegant work, with a modern, functional appearance and a clear, concise and uniform style which makes it relatively easy to read and comprehend. Due to this, the Revised Statutes became a model for future statutory revisions for the provinces of British North America.

3.2 Lower Canada

"...with regard to Québec, which might otherwise be considered as a peculiarly distinct and self-conscious province, both jurisprudentially and culturally, the introduction and acceptance of English criminal law at an early stage was extremely important in relation to subsequent developments and, indeed, made such developments possible." (Mackay 1958)

The introduction of English law in the 18th and 19th centuries in to the then separate constituents of Canada was on the principle of conquest as was done in the case of Québec(Lower Canada), or on the half-truth of colonies by settlement such as was demonstrated by Nova Scotia. (Laskin 1969: 2) In the case of conquered or ceded territory which was already settled the rule first enunciated in Calvin's case, in 1608, applied "...the laws existing at the time of the conquest, except as such as are contrary to the laws of God, remain in force until altered by the conquering power." (Clarke and Sheppard 1882: 1) Clarke and Sheppard (1882) therefore

also adopt this position as they state that Quebec was acquired due to a cession founded on conquest. These authors then continue to state that the Criminal law in the Provinces of Ontario and Quebec had been introduced by statute in order to follow that the laws of the colony remain intact until changed by the conquerers.

"By the Royal Proclamation of 1763, the criminal law of England was made applicable to the Province of Quebec, as there defined; and by the Imperial statute, 14, Geo III, c.83 it was extended to the whole of the present Provinces of Ontario and Quebec. ...[it] took effect 1st May 1775... results in the use of criminal law... "
(Clarke and Sheppard 1882: 2)

Quebec therefore represented the post 1763 Canada for almost three decades, also had its in force date for English law, but as Laskin (1969) points out the extent of the application of these laws remained unclear for a decade - until the Quebec Act of 1774. It was thus the Royal Proclamation of October 7, 1763 which guaranteed to the Canadiens their "freedom of worship so far as the laws of Great Britain would permit" (Laskin 1969: 4) and thus they received "the enjoyment and benefit of the laws of our realm of England." (IBID) It is interesting to note that in 1763 Governor Murray was given the full rights to make laws so that they may be as agreeable and close to the statutes of Great Britain. Morel (1978) re-iterates this fact and as of 1764, the Proclamation announced the above measures that made it quite difficult for them to appreciate what all was involved and entailed.

"Quant aux loix du Royaume d'Angleterre qui étaient immédiatement mises en vigueur et suivant lesquelles les tribunaux devaient décider toutes causes tant criminelles que civiles, comment auraient-ils pu s'en faire une idée?" (Page 457)

This author points out that even with the conquest and the substitution of English law, the application was not automatic.

There was an immediate resistance to the use of English law to govern civil affairs. However, the Canadiens in view of English criminal law did not formally express an initial reaction, whether positive or negative. Morel points out that the absence of any significant reaction or apparent indifference should not be interpreted to mean complete satisfaction with the new regime. In fact, he claims that there were many reasons to be dissatisfied with English Criminal law, which in 1763 was extremely cruel.

"...on peut relever plusieurs indices qui nous portent à croire que des sentiments tantôt de malaise, tantôt de mécontentement véritable se sont développés non seulement dans le cercle plus ou moins étroit de la 'noblesse' mais dans la population en général. Malaise ou mécontentement devant certains 'raffinements' des exécutions capitales, devant les risques de dénonciations calomnieuses, devant la longueur des emprisonnements des accusés en attente de leur procès, devant certains archaïsmes absurdes de la procédure, devant l'inutile gravité des peines pour certains crimes....." (Morel 1978: 505)

It is evident that with the acceptance of the new system was born a reform movement of criminal law in this province between 1769 and 1774 in order to appease some of the above concerns. Morel suggests that the reality of a conquest is never simple and as François Joseph Cugnet stated :

"La conquête, avait-il écrit à Masères, est en soi un malheur, et les Canadiens doivent, dans une large mesure, en subir certaines conséquences éluçtables. L'application du droit criminel du conquérant est l'une de ces conséquences. Il ne peut en aller autrement, c'est 'la loi du prince' et le peuple conquis doit s'y soumettre." (Morel 1978: 507)

The sentiments of the Canadiens were therefore difficult to ascertain and Morel feels that perhaps they were more anxious to reinstate the laws of Canada as they felt it was a matter of justice, but the criminal law was not viewed in the same manner, but rather accepted as a consequence of the conquest. The

following passage from William Hey is demonstrative of these judgements founded on impressions, but formulated with an air of assurance: "...I much doubt whether the Canadians themselves are not, upon the whole, better satisfied with our modes of administering the criminal law and even with the law itself as far as they know it, than their own." (Morel 1978: 506) Therefore, Carleton concludes that while the Canadiens were longing to obtain the reinstatement of their French Civil Law, they were indifferent to the criminal law. This, however, is not demonstrated as an indifference, but rather a sad fact of the conquest as shown earlier, and fortified through the sentiments of Cugnet. These sentiments received confirmation by the General Advocat of England, James Marriott, as he stated that Cugnet was not the only one to think this way but his point of view was generally shared by a group of Canadien jurists.

"Il est vraisemblable d'imaginer que ses idées étaient connues également de ceux qui prenaient l'initiative de parler au nom de tous et d'adresser au roi des pétitions pour exposer leurs sujets de plaintes... Ce fait pourrait expliquer le quasi silence qu'ils observèrent, en ce qui concerne le droit criminel." (Morel 1978: 508)

Carleton therefore translated this sentiment into one of indifference on the question of criminal law - yet, it is through the above that this indifference can be explained. In this way, their indifference is not seen as a value judgement on English criminal law, that is, it does not signify satisfaction, but dissimilates to the contrary.

Resistance to English Civil Law however was apparent, contrary to that of criminal law. Governor Murray's ordinance of 1764 established a judicial system similar to that of the English, but the judges of the Civil Court of Common Pleas were enjoined thereby

"to determine agreeable to equity, having regard nevertheless to the laws of England as far as the circumstances and present situation of things will permit." (Laskin 1969 : 4) Therefore, the application of French Civil Law continued and there was confusion in the matter until the Quebec Act of 1774. This Act re-introduced French civil law and provided that "the criminal law of England...shall continue to be administered and shall be observed as the law of the province of Quebec." (Laskin 1969:5) Clause 11 of the Quebec Act stated:

"And whereas the certainty and lenity of the Criminal Laws of England, and the benefits and advantages resulting from the use of it, have been sensibly felt by the inhabitants, from an experience of more than nine years, during which it has been uniformly administered; be it therefore further enacted by the authority aforesaid, that the same shall continue to be administered, and shall be observed as Law in the Province of Quebec, as well in the description and quality of the offence, as in the method of prosecution and trial; and the punishments and forfeitures thereby inflicted, to the exclusion of every other rule of Criminal Law, or mode of proceeding thereof, which did or might prevail in the said province, before the year of our Lord 1764..." (Quebec Act 1774)

However, at this point, there were several discussions as to whether English law would continue to be applied in Quebec. Some wanted the re-introduction of French law, while others preferred some form of amalgamation of the two. Several differences existed between French and English criminal law and one of these differences was the potential use of judicial torture in France. This method of torture, that was primarily used for the extraction of confessions, had not been present in England for over 100 years and this form had not been eliminated in France until six years after the Quebec Act of 1774. Friedland 1984 supposes that had judicial torture been eliminated before the Conquest French law may

have remained applicable in Quebec. Yet, there are other factors that influenced this point as the climate of the time in both France and England was against the French system. Césaire Beccaria wrote his famous book, An Essay of Crimes and Punishments, criticizing the criminal process of the old régime while Blackstone (1769), in view of English law, showed a much more humane system which not only prevented torture but prevented any compulsory self-incrimination. Other differences between the two régimes did exist, mostly in view of harsher punishments, and it was the dark cloud cast on French Criminal Law that was probably the key factor in bringing about the use of the English system and it is interesting to note that Quebec did come to accept English Criminal Law and a Member of Parliament from Montmorency stated in the House: "For my own part, I infinitely prefer the criminal law of England to that of any other country. It affords more protection to the party accused, than, for instance the criminal code of France does...." (Friedland 1984: 5)

Morel (1978) feels that the apparition of English Criminal Law in Quebec does not only represent an initial historical event, but rather a whole succession of acts or decisions that were spread out over a whole century.

"...si le Québec a reçu cette partie du droit de l'Angleterre en 1763, puis à nouveau en 1774, il y eut ensuite comme une introduction continue du droit criminel métropolitain. Et celle-ci était, au plan de la civilisation, de beaucoup plus de conséquences que celle-là. " (Morel 1978: 479)

The Constitutional Act of 1791 allowed for the separation of English-speaking Upper Canada from Quebec (Lower Canada) - this, then, satisfied both english and french canadians. Lower Canada retained French law for civil matters, however English law was

maintained for criminal areas. In Upper Canada, the new legislature swept away French law and introduced English civil law and formally adopted the English criminal law.

Hence, as demonstrated earlier for Lower Canada, the criminal law was taken from the vast number of cruel English statutes of 1763 while Upper Canada whose criminal law was taken from 1792, was less cruel and more benign. The difficulty came in 1841 with the Act of Union when these two jurisdictions were united into one province as there was a need to consolidate the criminal law.

The bills introduced at this time made all laws relating to penal offences uniform across the province and therefore replaced all existing legislation. As mentioned above, for Lower Canada, the offences were punishable by more harsher sentences such as death, as for Upper Canada they had only eleven capital offences at the time of Union. So, when the bills to consolidate criminal law of the one province were introduced, the number of capital felonies was eleven. Therefore, this amount, which remained intact until Confederation, served to positively alter the laws of Lower Canada but not Upper Canada.

Brown (1986), as so far as his research was concerned, has determined that no statute law revision of the English variant had ever taken place in Lower Canada prior to 1841. Therefore, in that year, a commission was appointed by the Union to revise the statute law of Lower Canada. The Governor General appointed Charles Richard Ogden, Solicitor General for Lower Canada, Alexander Buchanan, a lawyer, Hughes Heney and Gustaves W. Wicksteed as Commissioners. (Canada Gazette March 26, 1842, Pg. 248) They were ordered in part to :

"examine and revise the several Statutes and Ordinances from time to time passed, and enacted and ordained in that part of the Province formerly called Lower Canada, and now in force and effect, and to consolidate such of the said Statutes and Ordinances as relate to the same subjects or can be advantageously consolidated." (IBID)

In the first report in March of 1843 the Commission had determined which of the enactments had been repealed and which were in force and the Commissioners arranged the latter under suitable headings - however, they backed away from consolidation and had developed The Code for Lower Canada with a topical Table of Contents noted to be the first in any British North American collection. The wording of each law was set out word for word as its predecessor yet the index allowed for a more comprehensive and easy to use Code modeled after that of the Revised Statutes of Massachusetts. Brown (1986) notes that while the Lower Canadian Commissioners had not gone the whole way to Consolidation at this time they did steer away from the past and provide impetus for future British North American Consolidations.

The idea of consolidation was retaken with vigour in May of 1846 by the Revue de Législation et de Jurisprudence. This document, as edited by Louis O Le Tourneux, validated the necessity and urgency to proceed to a general codification of all law - civil, commercial and criminal. It stated:

"Le Bas-Canada, d'abord colonie française puis après colonie anglaise, se trouve, à l'égard de son système de lois, dans une position tout-à-fait exceptionnelle. ...les lois publiques d'Angleterre, le régime constitutionnel colonial, le droit civil de la France.... un très grand nombre de statuts anglais dont les dispositions s'étendent aux colonies, forment les principales pièces de cette babel légale.Il est grandement temps de songer à co-ordonner tous ces systèmes et à opérer la codification de nos lois. La tâche est immense mais elle est réalisable. " (Pages 337-338)

The article presented the mixture of present laws as :

"Que de désordre et d'incertitude dans les lois qui régissent les personnes et les choses, les propriétés, le commerce, la police! Que d'anachronismes dans les dispositions les plus importantes à notre état social!"
(IBID)

It was felt that the laws needed to be assimilated as much as possible to those of England, the United States and Upper Canada due to the close ties that existed with these territories and that in view of the reconstruction, there needed to exist a system which would please all the people and allow them to be uniform, one distinct territory from the neighbours.

For criminal law, William Badgley, MLA for Missisquoi, during the session of 1850, deposed two projects of law which represented one of penal code and the other a code of criminal proceedings. This bill was introduced a year after Premier Wilmot's codification of criminal law in New Brunswick and served in effect to allow for a similar codification in Canada. Badgley had been inspired by projects of codes that were apparent in England. Maximilien Bibaud, in L'ordre social (a daily newspaper which spoke of politics, literature, industry, agriculture and temperance) wrote that the bill was very voluminous, contained a complete criminal code and distinguished itself by its lucidity, clarity and method. He states that he and others were quite surprised "...de ne pas y rencontrer l'assomante et inintelligible phraséologie qui fait des lois parlementaires un labyrinthe inextricable dans lequel on se perd." (L'ordre social Pg. 242-243) The bill itself was divided into Chapters and sections that were subdivided into articles and paragraphs. Examples of certain titles of Chapters included: Chapter fifteen, Of murder and other offences against the person

which included fifteen sections; and Chapter four, Offences against the government which included five sections. And he continues on to state:

"Avec deux semblables lois, toute personne qui n'a pas fait une étude spéciale des lois criminelles pourra les comprendre, les expliquer et surtout les appliquer avec la plus grande facilité." (L'ordre social, Vol 1 No 16, 11 juillet 1850, Pg. 242-243)

Bibaud then published a long analysis of the project of the code which he concluded by saying that he hoped that these bills would be adopted and that one would oversee that the french translation would be exact and correct as it was not always the case in the translation of their statutes. Papineau agreed that the bill should be referred to a committee and he also spoke re the need to abolish the punishment of death as had recently been done in Russia and certain United States territories. Baldwin objected to its reference to a select committee but eventually agreed to deal with it in the next session. (Nish : 139) However, as a law, presented by a simple deputy, its study was re-scheduled to the next session and there was no further discussion. This fact is seen in the Journals of the Legislative Assembly of Canada whereby on July 11, 1850, the second reading of the bill was postponed and later on it be said that the order of the day for the second reading of the Bill to amend and consolidate the criminal laws of the province be postponed indefinitely. (IBID) Brown's (1986) judgement in this area seems to centre around the fact that Badgley had been Attorney General in the Tory Administration of Henry Sherwood and when he introduced his criminal law bills he was Leader of the Opposition in the Reform administration of Baldwin and Lafontaine. It was demonstrated that during the debates, Baldwin and Lafontaine

refused to accept the proposal and second reading was postponed.

Badgley re-introduced the bills in the next session during the first year of the Hincks-Morin administration. This took place on July 11, 1851 whereby it was resolved:

"...be presented to the Governor General...appoint a Commission for revising the Statutes and ordinances of that part of this province formerly called Lower Canada...and Upper Canada...and the Statutes of the province of Canada and for consolidating such of the said Statutes and Ordinances as relate to the same subjects as can be advantageously consolidated...and assuring his Excellency that this House will make good such sum as may be recommended by his Excellency as requisite for defraying the expenses incurred in the execution of the said Commission..." (Journals of the Legislative Assembly of Canada, Pg. 156)

This time they passed second reading and went to a Committee where their report praised Badgley's bills yet refused to endorse them and recommended that a Commission be appointed to revise them for later consideration of the Assembly. Badgley so moved, the motion, as stated above, was passed but that was the last that was heard of the matter.

Throughout the following years, the Assembly turned their attention to the format and style of the statutes, due to the activity in Great Britain and the Maritimes. This activity allowed for changes such as the title of an act being printed in the centre of the page, sub-paragraphs were punctuated with semi-colons, and in 1855, a bill the style of Brougham's act of 1850, was passed to allow that the preamble of acts would be shortened and standardized. (Brown 1986: 259)

In the Journals of the Legislative Assembly of Canada one sees that in September of 1854 the same recommendation was brought back to the foreground by the Honourable Mr. Cameron whereby it was re-

ordered that a commission be set up to allow for the consolidation of the Statutes for the Province of Canada. It was read and altered to allow for the development of two commissions - however, nothing followed until 1856.

In 1856, the Attorney General of Upper Canada, John A Macdonald, appointed six Commissioners for both Upper and Lower Canada in order to revise and review the provincial statutes. In a letter to the Governor General on the 6th of February, 1856, Macdonald recommends six gentlemen as Commissioners. They included: The Honourables John Hilyard Cameron, Joseph Curran Morrison, Adam Wilson, Skeffinton Conor, Oliver Mowat and David Breakenridge. (MacDonald 1968: 350) The Commissioners reviewed the work of codified statutory documents in the United States as well as the codes of Nova Scotia and New Brunswick. The Commissioners presented drafts of the documents to the Legislative session of 1858 and they were ready for enactment in 1859. On March 4, Macdonald moved first reading of bills to consolidate the Statutes of Upper Canada and the Province of Canada. (Journals of the Legislative Assembly of Canada, March 4, 1859 Pg. 151) On March 8, the bill received second reading and was referred to a select committee composed of Attorney General Macdonald, Attorney General Cartier, Honourables M. Alleyne, M. Sherwood, M. Dorion, M. Mowat, M. Connor, M. Sicotte and M. Dunkin. (House of Assembly of NS, 1859 :169) On April 7 the first report of this committee was received and it presented amendments and revisions as well as first reading of the whole of the document. (House of Assembly of NS 1859: 343) On April 12th the document received second reading and Royal Assent was given on May 14th 1859 for the Consolidated

Statutes of Upper Canada and the Consolidated Statutes of Canada, those for Lower Canada would follow in 1860. The bill passed through the Assembly quite smoothly considering the size and complexity of the legislation. Judge Gowan, as cited in Brown (1986:262) states:

"Sir John A. Macdonald, when the volumes of the Consolidated Statutes were submitted to the old Parliament of Canada, had a representative committee appointed; he told them candidly it would take a quarter of a century in such a body following the usual rules to go over and test the correctness of the matter presented - he enlarged upon the advantages of having the whole statute law better expressed and condensed into a small compass and he suggested taking up some bit, testing that and judging the rest by it - an ex pede Herculum appeal - and so it was done - he got his measure through...."

The work of the Consolidated Statutes of Lower Canada is divided into eleven titles, twelve sub-titles, one hundred and eleven chapters and has three schedules to total 1377 pages. The final division, Title eleven, sets out the criminal law and consists of twenty-three chapters and two hundred and fifty-seven pages. Title eleven is found to be the same for both Upper and Lower Canada and the Title itself is not reproduced in the Consolidated Statutes of Lower Canada of 1860 as this collection refers to the Consolidated Statutes of Canada for matters of criminal law. The document, unlike the maritime legislation, was not a continuous text as each chapter stood alone. However, with the publication of the Consolidated Statutes of Canada and its companion volumes for Upper Canada in 1859 and Lower Canada in 1860, the code took on more of a modern form as they introduced arabic numerals to denote sections and separated sub-paragraphs. (See Figure 2, Page 11b for a duplication of a page from the Consolidated Statutes of Lower Canada)

CHAPTER IV
ANALYSIS

4.1 Nova Scotia

The Revised Statutes of Nova Scotia, in view of criminal law, are divided into fifteen different chapters, each of which concerns a varying type of crime such as against the habitation, against the administration of justice as well as procedural sections involving the application of certain articles - these sections do not involve a sanctioned act and are therefore not of direct concern to the research. The section that concerns this study is that referring to Offences against the person which contains twenty articles. From the twenty articles, there are two that represent clarification of terms and therefore do not involve any sentencing provisions. This section falls under Part IV, Of the criminal law and the administration of criminal justice, Title XI, Chapter 162. Each section of the Chapter is thus enumerated and there does not seem to exist any specific order as the section begins with murder followed by petit treason, then on to manslaughter, poisoning and setting fire to a vessel with intent to murder and concludes with assault. A copy of the Chapter is included in the Appendix so that one may view how it is presented. (Figure #3)

The wording of each article presents the act itself, the conditions surrounding the act, the category whether felony or misdemeanor and the prescribed punishment. It is apparent that the Statute was written in the 1800s due to the use of certain words such as whosoever, forfeiture, buggery, etc... as well as the use of masculine terms such as him, or mankind to denote any reference to persons. A typical article is elaborated as follows:

"Article 10: Whosoever shall maliciously impede any

person being on board of, or having quitted any ship or vessel which shall be in distress or wrecked, in his endeavour to save his life, shall be guilty of felony and shall be imprisoned for a term not exceeding fourteen years." (Revised Statutes of Nova Scotia - 1851)

First level of analysis:

In order to grasp a fuller handle on the content of this section, a radiography will follow including the title of each article, the category, whether felony or misdemeanor, and the punishment allotted. (Table 1)

TABLE 1

CHAPTER 162 - OF OFFENCES AGAINST THE PERSON

TITLE	CATEGORY	PUNISHMENT
Punishment for murder & c. being accessories Chp 162 Sec. 1	Felony	before the fact = suffer death after the fact = imprisoned for no more than 14 yrs & fined at the discretion of the court
Petit treason to be deemed and punished as murder Chp 162 Sec. 2	Felony	deemed and treated as murder - 162.1
Punishment for manslaughter Chp 162 Sec. 3	Felony	shall be committed to jail or imprisoned in the penitentiary for a term no more than 14 yrs or shall be fined at the discretion of the court
Killing by misfortune or in self-defence & c. not punishable Chp 162 Sec. 4	Clarification	
Punishment for poisoning Chp 162 Sec. 5	Felony	shall be imprisoned for a term not exceeding 14 yrs
Punishment for attempting to commit murder otherwise than by poisoning where no harm ensues Chp 162 Sec. 6	Felony	shall be imprisoned for a term not exceeding 7 yrs
Punishment for causing grievous bodily harm Chp 162 Sec. 7	Felony	shall be imprisoned for a term not exceeding 14 yrs

CHAPTER 162 - CONTINUED
Nova Scotia

TITLE	CATEGORY	PUNISHMENT
Punishment for attempting to cause grievous bodily harm Chp 162 Sec. 8	Felony	shall be imprisoned for a term not exceeding 4 yrs
Punishment for setting fire to cast away a vessel with intent to murder & e Chp 162 Sec. 9	Felony	shall be imprisoned for the term of his natural life or for any term not less than 7 yrs
Punishment for impeding escape from a wreck Chp 162 Sec. 10	Felony	shall be imprisoned for a term not exceeding 14 yrs
Punishment for attempting to procure abortion Chp 162 Sec 11	Felony	shall be imprisoned for a term not exceeding 14 yrs
Punishment for endeavouring to conceal the birth of a child Chp 162 Sec 12	Misdemeanor	shall be imprisoned for a term not exceeding 2 yrs
Punishment for rape Chp 162 Sec 13	Felony	shall be imprisoned for the term of his natural life or for any term not less than 7 yrs
Punishment for abusing a female under 10 yrs Chp 162 Sec 14	Felony	shall be imprisoned for the term of his natural life
Punishment for abusing a female between 10 - 12 yrs Chp 162 Sec 15	Felony	shall be imprisoned for a term not exceeding 7 yrs
Punishment for buggery Chp 162 Sec 16	Felony	shall be imprisoned for the term of his natural life or for any term not less than 7 yrs

CHAPTER 162 - CONTINUED
Nova Scotia

TITLE	CATEGORY	PUNISHMENT
Carnal knowledge what shall constitute Chp 162 Sec 17	Clarifies Sec. 13- 16	
Punishment of abduction of girls under 18 Chp 162 Sec 18	Not stipulated	shall suffer such punishment by fine or imprisonment or both, as the court shall award
Punishment for assault with intent to commit a felony Chp 162 Sec 19	Felony	shall be imprisoned for a term not more than 2 yrs and fined at the discretion of the court
Punishment for assault on a trial for a felony Chp 162 Sec 20	Felony	shall be committed to jail or imprisoned in the penitentiary as the court shall direct for a term not exceeding 5 yrs and shall be fined at the discretion of the court

1851

The section, of offences against the person, includes sixteen felonies and one misdemeanor as well as one article, being that of the abduction of girls under eighteen, where the category of offence was not stipulated in the article but due to the nature of the sanction and, in view of other offences, would be considered as a misdemeanor, and two procedural elements. The radiography allows one to identify, at a glance, to view the contents of the section of the Statute that will be studied.

Second level of analysis:

The next area that will help determine a skeletal outline of this section is an analysis of the most and least serious offences.

The most severe penalties are allotted to crimes of murder and petit treason - principals, not accessories - as they will suffer death. Next in line is abusing female under ten years, rape and buggery (sodomy; copulation with animals, same sex or opposite sex) as the maximum penalty for these offences is imprisonment for natural life. However, there is quite a spread for rape and buggery as it ranges from life to any term not less than seven years. The next punishments that are the harshest involve imprisonment for terms not exceeding fourteen years such as manslaughter, poisoning, causing bodily harm, impeding escape from a wreck and attempting to procure an abortion. It is interesting to note that manslaughter ranges in sanction from being committed to jail or imprisoned in the penitentiary for a term not more than fourteen years to OR shall be fined at the discretion of the court. This represents quite a wide range and involves the use or perhaps abuse of judge's discretionary powers and would most probably be dependent upon the circumstances of the case. The least serious offences are actually quite difficult to assess as it could possibly include manslaughter as it may just be a fine; abduction of girls under eighteen as it is left completely up to the discretion of the court or concealing the birth of a child as it is imprisonment not exceeding two years. As one can see the prescribed punishments vary and thus it cannot be solely pronounced that one offence is the least punished compared to the others. If one were to look at the manner in which the articles and sanctions were presented it could be deduced that Article 12: Concealing the birth of a child, would be the least serious of the offences.

The following tables identify the types of punishments and the

articles that fall under each one in order to further demonstrate the severity and rating of the punishments and articles.

TABLE 2

<u>SUFFER DEATH</u>	<u>IMPRISONED FOR NATURAL LIFE OR FOR ANY TERM NOT LESS THAN 7YRS</u>	<u>IMPRISONED FOR NATURAL LIFE</u>	<u>IMPRISONED FOR A TERM NOT EXCEEDING 14YRS & FINED AT THE DISCRETION OF THE COURT</u>	<u>IMPRISONED IN A PENITENTIARY FOR A TERM NOT EXCEEDING 14YRS OR FINED AT COURT'S DISCRETION</u>
Murder = before the fact	Setting fire to cast away a vessel with intent to murder	Abusing a female under 10 years	Murder = After the fact (Accessory)	Manslaughter
Petit treason	Rape		Petit treason - after the fact (accessory)	
	Buggery			

TABLE 2 - CONTINUED

<u>IMPRISONED FOR A TERM NOT EXCEEDING 14YRS</u>	<u>IMPRISONED FOR A TERM NOT EXCEEDING 7YRS</u>	<u>IMPRISONED FOR A TERM NOT EXCEEDING 5 YRS AND FINED AT DISCRETION OF THE COURT</u>	<u>IMPRISONED FOR A TERM NOT EXCEEDING 4YRS</u>	<u>IMPRISONED FOR A TERM NOT EXCEEDING 2 YRS AND FINED AT DISCRETION OF THE COURT</u>
Poisoning	Attempting to commit murder otherwise than by poisoning where no harm ensues	Assault while on trial for a felony	Attempting to cause grievous bodily harm	Assault with intent to commit a felony
Causing grievous bodily harm	Abusing a female between 10-12 years			
Impeding escape from a wreck				
Attempting to procure an abortion				

<u>IMPRISONED FOR A TERM NOT EXCEEDING 2 YEARS</u>	<u>SHALL SUFFER SUCH PUNISHMENT BY FINE OR IMPRISONMENT OR BOTH AS THE COURT MAY AWARD</u>
Endeavouring to conceal the birth of a child	Abduction of girls under 16

The two acts that are the most severely punished, those of murder and petit treason, also fall in line with the reasoning of the 1850s. Murder has always been and is still viewed as a heinous crime against humanity and is thus severely reprimanded. However, it is quite interesting to note that the sanctions involve imprisonment for fourteen years for an accessory as well as a fine.

Petit treason in this instance refers to a crime against the State - a capital offence - which is considered of the utmost severity as it involves complete opposition and mistrust of the government. Treason itself is included in Chapter 155(Of treason) and the sanction is death - whereas this refers to smaller cases and to a section that would have been in existence before 1841 as stipulated in the article and has been likened to murder.

The offences that reflect the lesser prescribed punishments seem quite routine as an attempt to cause grievous bodily harm is less serious than actually causing this harm as well as an assault is not as grave as manslaughter. However, the whole issue of manslaughter being possibly punishable by a mere fine is quite interesting.

Certain interesting comparisons shall now be presented in order to further enlighten the reader to the structure of this Section. To begin, rape, the unlawful and carnal knowledge of any women against her will, is punishable by a term of imprisonment of life or any term not less than seven years whereas the unlawful and carnal knowledge and abuse of any girl under ten receives a definite term of life imprisonment. Also, the punishment of this same type of behaviour involving a girl above the age of ten yet under twelve is a term of imprisonment not exceeding seven years. It seems quite obvious that these differences are quite explanatory of the value system invoked during the time period. Young girls or should I say children (below ten) are seen as innocent and naive and as definite victims whereas those between ten and twelve during the period are considered much more mature, practically women and are fully able to conduct themselves as adults. And, with age,

women are seen more as objects and treated as such by the men to do what they want with - this way of reasoning falls in line with the era being studied and the whole fact that women were seen as inferior to men ie not being able to vote, be in government etc.... However, the major discrepancy lies in the sanction of rape versus the for girls between 10-12 years as the latter does offer life imprisonment albeit only as an option, not as the ONLY sanction available. This presents quite an interesting area of study which may be enlightened by the parliamentary debates from the period in order to understand more of the mood of the period.

It is also interesting to note the hefty sanction that is associated with buggery (sodomy) - either with mankind or an animal - and this response falls directly in line with the thinking of the time period. Although bestiality is still present in modern criminal codes as well as public acts of anal intercourse without consent, it is the human aspect - revolving around the copulation with the same and opposite sex - that demonstrates a differing view. The whole issue of bestiality is one that is considered as one of the gross acts of all times and due to the particular value of livestock for survival in the 1800s this view is compounded. It also represents an act that is cruel to the animal itself. As to sodomy with humankind, the beliefs during the period were quite restricted and homosexual acts of any type were utterly abhorred as well as any form of unnatural sexual acts such as anal intercourse. The persons involved in such behaviours were viewed as outcasts and it was punished quite harshly as it represented extremely abnormal and immoral comportment.

Other areas of interest are the inclusions of the articles

concerning vessels: Section 9: setting fire to cast away a vessel with intent to murder or endanger and Section 10: maliciously impeding escape from a wreck. These articles denote the mode of transportation available during the period and the importance placed on the waterways. This magnitude of the naval industry was demonstrated through the presentation of context of Nova Scotia during the period studied and can be echoed through the inclusion of these articles in the Statute. The shipbuilding and marine industries were of extreme importance to the province and, in turn, the businessmen who managed such companies influenced the government in its decisions. This exertion of leverage by the marine businessmen explains the inclusion of such articles in the Statutes. The sanctions for the behaviours regarding marine incidents are quite high once again underlining the meaning that such an industry had on the population of the Province as well as highlights the significance of human life that is attached to each action. This fact also touches on a very intriguing point being the development of statutory law based on the contextual content of the region. So, Nova Scotia, being a marine based province, includes articles involving vessels and ships in its statutory law. It will be interesting to see if such is also true for Lower Canada.

Abortion is also included as a sanctioned act with a punishment not to exceed fourteen years of imprisonment - whether it be the women bearing the child or another attempting to procure it. At the time, religion was extremely important to society and such an act would be viewed as a full assault towards all that was proper and moral.

Third level of analysis:

The number of incriminations for each article are as follows: (Table 3)

TABLE 3

TITLE OF ARTICLE	# OF INCRIMINATIONS
1. Murder and being accessories	3
2. Petit treason	1
3. Manslaughter	1
4. Killing by misfortune & c.	Clarification
5. Poisoning	2
6. Poisoning with attempt to commit murder	1
7. Causing grievous bodily harm	3
8. Attempt to cause grievous bodily harm	1
9. Setting fire to cast away a vessel with intent to murder	3
10. Impeding escape from a wreck	1
11. Attempting to procure abortion	1
12. Concealing the birth of a child	1
13. Rape	1
14. Abusing a female under 10 years	1
15. Abusing a female between 10-12 years	1
16. Buggery	1
17. Constitution of carnal knowledge	Clarification

TABLE 3 CONTINUED

18. Abduction of girls under 16	1
19. Assault with intent to commit a felony	1
20. Assault while on trial for a felony	1
TOTAL	25

The total number of incriminations amount to twenty-five. This number translates into there being twenty-five sanctioned acts within the articles of this chapter. Therefore, out of twenty articles, of which two are clarifications, there are twenty-five different acts that are sanctioned - a number that exceeds the number of articles and thus demonstrates a section that can actually be considered high in acts of a criminal nature.

On the whole, this section of the Statute is quite representative of the period in view of prescribed punishments and it enables one to become more acquainted with the precursors to our first Criminal Code of 1892. In this instance, murder/petit treason are the most serious of the acts while the lesser of which are more difficult to ascertain. Certain interesting comparisons were discussed in order to offer a fuller demonstration of the particular section of the Statute. The number and type of incriminations present are also quite revealing as to what was punishable during the period.

From this analysis certain conclusions can be drawn. At first, the whole distinction of categories in terms of

felony/misdemeanor allow for one to see that even in 1851, in a province such as Nova Scotia, structure was present in their Statutes. It is also interesting as these terms are still used in the United States today while Canada has moved to other wording, more specifically that of summary conviction offence and indictable offence. The structure of the Statute itself also lends one to believe that Criminal law at the time was very thought out and well presented in Chapters, Sections, articles and even provided for clarifications and procedural information. This fact will help in tracing the emergence of the Code of 1892.

Also, it can be seen that the range of punishments have a certain order and set time - from death, to life imprisonment, to fourteen years, to seven years... and this also denotes a structural identity. It is delineated that murder and petit treason are the only two out of the twenty articles which merit death and thus its use is quite restricted as even for rape the maximum punishment allotted is life imprisonment.

A further conclusion to be drawn is the range of prescribed punishments for each article - for example, buggery which can be either life imprisonment or for any term not less than seven years. This decision would then be left up to the judge or justice of the peace and demonstrate even in the 1850s.

Before comparing these findings with those of Lower Canada one shall first expose the content of their Consolidated Statutes.

4.2 Lower Canada

In view of the Consolidated Statutes of Lower Canada, the

section on Criminal Justice begins at Title 11 and includes CAP LXXXIX to Cap CX (89-111) (this section is actually found in the Consolidated Statutes of Canada of 1859) - these vary from Acts respecting the Treaty between her Majesty and the USA regarding extradition to offences against the habitat, the person, morality and various procedural sections. The section regarding Offences against the person falls under CAP XCI (91) and includes forty-seven articles of which seventeen are procedural elements and therefore do not involve a sanctioned act and will not be directly considered through this research. The section begins with Petit Treason followed by murder and then includes other articles such as rape and attempting to procure and abortion. The actual sections themselves are set out differently from those of Nova Scotia as can be seen from a photocopy of the section found in the Appendix. (Figure #4) There are twenty-eight different section headings including petit treason, murder, felonious attempts to murder, explosive substances, summary proceedings... and each of the forty-seven articles fall under these headings. The wording of the articles is also quite demonstrative of the time period in question due to the use of terms such as Bowie-knife, Magistrate, buggery... and at the end of each article there is reference to its initial passing, so, where it came from. An example of the wording of an article can be demonstrated by the following:

"4. Any woman delivered of a child, who, by secret burying or otherwise disposing of the dead body of the said child, endeavours to conceal the birth thereof, shall be guilty of a misdemeanor, and shall be imprisoned for any term less than two years, and it shall not be necessary to prove whether the child died before, at, or after its birth. 4, 5 V. c. 27, s.14. (Pg. 958, Consolidated Statutes of Canada 1859)

First level of analysis:

A radiography of this section of the Statute is as follows:

TABLE 4

CAP XCI - AN ACT RESPECTING OFFENCES AGAINST THE PERSON

TITLE	CATEGORY	PUNISHMENT
Petit treason - place on the same footing as murder. Sec. 1.1	Felony	shall be dealt with, tried and punished as principals and accessories of murder
Murder and accessories before and after the fact. Sec. 2.2	Felony	shall suffer death if before the fact; after the fact = shall be imprisoned in the penitentiary for the term of his natural life or for any term not less than 2 yrs or be imprisoned in any prison or place of confinement for any term less than 2 yrs
Manslaughter. Sec. 3.3	Felony	shall be imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2 yrs or be imprisoned in any place of confinement for any term less than 2 yrs or pay such fine as the Court may impose
Concealing the birth of children Sec. 4.4	Misdemeanor	shall be imprisoned for any term less than 2 yrs
Poisoning and stabbing with intent to murder Sec. 5.5	Felony	shall suffer death

CAP XCI - OF OFFENCES AGAINST THE PERSON - CONTINUED

TITLE	CATEGORY	PUNISHMENT
Other attempts to murder Sec. 6.6	Felony	shall be imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2 yrs or in any place of confinement for any term less than 2 yrs
Maliciously shooting or attempting to stab, maim or disfigure. Sec. 7.7	Felony	shall be imprisoned in the Pen. for the term of his natural life or for any term not less than 2 yrs or be imprisoned in any other place of confinement for any term less than 2 yrs
Maliciously stabbing or inflicting other bodily injury Sec. 8.8	Misdemeanor	imprisoned with hard labour in any gaol or prison for any term less than 2 yrs or in the Pen for any term not less than 2 nor more than 5 yrs
Punishment for carrying certain weapons Sec. 9.9	Misdemeanor - exception for Her Majesty's Army, Navy, Militia, Volunteer Force or Society carrying arms for costume	shall pay a fine of not less than 10 nor more than \$40 & in default of payment shall be imprisoned for no more than 30 days
Offender shall be tried under Cap 105 Sec. 9.10	Procedural	
Weapons to be impounded Sec. 9.11	Procedural	

CAP XCI - OF OFFENCES AGAINST THE PERSON - CONTINUED

TITLE	CATEGORY	PUNISHMENT
Limitation of prosecutions; appeal allowed Sec. 9.12	Procedural	
Feloniously administering drugs Sec. 10.13	Felony	imprisoned in the Penitentiary for any term not less than 2 nor more than 5 yrs
Unlawful use of any explosive substance Sec. 11.14	Felony	imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2 yrs or be imprisoned in any other prison or place of confinement for any term less than 2 yrs
Bodily injury by explosion... Sec. 11.15	Felony	See 11.17
Attempts to inflict bodily injury by explosion... Sec. 11.16	felony	as Sec. 11.17
Punishment for Sec. 11.16 & 11.15	Felony	shall be imprisoned in the Penitentiary for any term not less than 7 yrs or be imprisoned in any common gaol for any term less than 2 yrs
Possessing explosive substances Sec. 12.18	Misdemeanor	shall be imprisoned in any gaol for any term less than 2yrs
Rape Sec. 13.19	Felony	shall suffer death

CAP XCI - OF OFFENCES AGAINST THE PERSON - CONTINUED

TITLE	CATEGORY	PUNISHMENT
Abusing infants under 10 yrs Sec. 14.20	Felony	shall suffer death
If above ten and under 12 yrs Sec. 15.21	Misdemeanor	shall be imprisoned for such term as the Court may award
Bestiality Sec. 16.22	Felony	shall suffer death
Assault with intent Sec. 17.23	Felony	shall be imprisoned in the Penitentiary for any term not exceeding 3 nor less than 2 yrs or be imprisoned in any other prison for any term less than 2 yrs
Attempts to procure abortion Sec. 18.24	Felony	shall be imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2 yrs or be imprisoned in any other prison for any term less than 2 yrs
Abduction of heiress Sec. 19.25	Felony	shall be imprisoned in the Penitentiary for any term not less than 2 yrs or be imprisoned in any other prison for any term less than 2 yrs
Abduction of girls under 16 Sec. 20.26	Misdemeanor	punished by fine or by imprisonment or by both as the Court shall award

CAP XCI - OF OFFENCES AGAINST THE PERSON - CONTINUED

TITLE	CATEGORY	PUNISHMENT
Decoying children under 10 with intent to steal wearing apparel - aiding or abetting Sec. 21.27	Felony	shall be imprisoned at hard labour in the Penitentiary for any term not less than 2 yrs or in any other prison for any term less than 2 yrs
Exception Sec. 21.28	Procedural	
Bigamy Sec. 22.29	Felony	Imprisoned in the Penitentiary for any term not less than 2 yrs or in other prison for any term less than 2 yrs
Exceptions Sec 22.30	Clarification	
Impeding the saving of shipwrecked persons Sec. 23.31	Felony	shall be imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2 yrs or in prison for any term less than 2yrs
Assaulting magistrates aiding vessels in distress or in saving goods stranded... Sec. 24.32	Felony	imprisoned in the Penitentiary for any term not less than 2 yrs or in prison for any term less than 2yrs
Hindering seamen from serving Sec. 25.33	Misdemeanor	imprisoned and kept to hard labour in the Gaol or House of Correction for any term not exceeding 3 mos
Offenders not to be punished twice Sec. 25.34	Clarification	

CAP XCI - OF OFFENCES AGAINST THE PERSON - CONTINUED

TITLE	CATEGORY	PUNISHMENT
Arrest of clergymen performing Divine Service Sec. 26.35	Misdemeanor	fine or imprisonment or both as the Court shall award
Assaulting persons arresting offenders caught in the act at night Sec. 27.36	Misdemeanor	shall be imprisoned with or without hard labour for any term not exceeding 2 yrs
Common assaults may be tried and disposed of Sec. 28.37	Procedural	
Punishment by fine Sec. 28.38	Procedural	
How fines to be disposed of Sec. 28.39	Procedural	
Competency of witnesses Sec. 28.40	Procedural	
If fine not paid offender may be committed Sec. 28.41	Procedural	if fine not paid then can be committed to gaol for any term not exceeding 2 mos
When the Justice may dismiss the case Sec. 28.42	procedural	
Costs Sec. 28.43	Procedural	
After being punished & acquitted no 2nd prosecution to take place Sec. 28.44	Procedural	

CAP XCI - OF OFFENCES AGAINST THE PERSON - CONTINUED

TITLE	CATEGORY	PUNISHMENT
The Justice may deal with aggravated assaults as if no summary jurisdiction had been conferred Sec. 28.45	Procedural	
Such jurisdiction not to be exercised when a question of title to land arises Sec. 28.46	Procedural	
J.P & recorders not to try for certain offences Sec. 28.47	Procedural	

In view of the Chapter of Offences against the person for Lower Canada there are twenty-one felonies and nine misdemeanors as well as seventeen procedural elements to come to a total of forty-seven articles.

Second level of analysis:

The next area that will help determine a skeletal outline of this section is an analysis of the most and least serious offences. The most severe penalties are allotted to crimes of murder, rape, bestiality, abusing infants under ten years, and poisoning and stabbing with intent to murder. Next in line is murder (accessories after the fact), petit treason, manslaughter, other attempts to murder, unlawful use of explosive substances, attempts to procure abortion, and impeding the saving of shipwrecked persons as the maximum for these offences is imprisonment for natural life.

The following tables identify the types of punishments and the articles that fall under each one in order to further demonstrate the severity and rating of the punishments and articles.

TABLE 5

<u>SUFFER DEATH</u>	<u>IMPRISONED IN THE PENITENTIARY FOR NATURAL LIFE OR FOR ANY TERM NOT LESS THAN 2YRS OR BE IMPRISONED IN ANY PRISON OR PLACE OF CONFINEMENT FOR ANY TERM LESS THAN 2YRS</u>	<u>IMPRISONED IN THE PENITENTIARY FOR NATURAL LIFE OR FOR ANY TERM NOT LESS THAN 2YRS OR BE IMPRISONED IN ANY PRISON OR PLACE OF CONFINEMENT FOR ANY TERM LESS THAN 2YRS OR PAY SUCH FINE AS THE COURT MAY IMPOSE</u>	<u>IMPRISONED IN THE PENITENTIARY FOR ANY TERM NOT LESS THAN 7YRS OR BE IMPRISONED IN ANY COMMON GOAL FOR ANY TERM LESS THAN 2YRS</u>
Murder & accessories before the fact S 2.2	Murder & accessories after the fact S 2.2	Manslaughter S.3.3	Bodily injury by explosion S. 11.15
Petit treason & accessory before the fact S 1.1	Petit treason after the fact S.1.1		Attempts to inflict bodily injury by explosion S. 11.16
Abusing infants under 10yrs S. 14.20	Other attempts to murder S.6.6		
Bestiality S. 16.22	Maliciously shooting or attempting to stab, maim or disfigure S. 7.7		
Poisoning and stabbing with intent to murder S 5.5	Unlawful use of any explosive substance S.11.14		
Rape S.13.19	Attempts to procure abortion S. 18.24		
	Impeding the saving of shipwrecked persons S. 23.31		

TABLE 5 CONTINUED

<u>IMPRISONED IN THE PENITENTIARY FOR A ANY TERM NOT LESS THAN 2 NOR MORE THAN 5YRS</u>	<u>IMPRISONED WITH HARD LABOUR IN ANY GAOL OR PRISON FOR ANY TERM LESS THAN 2YRS OR IN THE PENITENTIARY FOR ANY TERM NOT LESS THAN 2 NOR MORE THAN 5YRS</u>	<u>IMPRISONED IN THE PENITENTIARY FOR ANY TERM NOT EXCEEDING 3 NOR LESS THAN 2YRS OR BE IMPRISONED IN ANY OTHER PRISON FOR ANY TERM LESS THAN 2YRS</u>	<u>IMPRISONED WITH OR WITHOUT HARD LABOUR FOR ANY TERM NOT EXCEEDING 2YRS</u>
Feloniously administering drugs S. 10.13	Maliciously stabbing or inflicting other bodily injury S.8.8	Assault with intent S. 17.23	Assaulting persons arresting offenders caught in the act at night S. 27.36

<u>IMPRISONED AT HARD LABOUR IN THE PENITENTIARY FOR ANY TERM NOT LESS THAN 2YRS OR IN ANY OTHER PRISON FOR ANY TERM LESS THAN 2YRS</u>	<u>IMPRISONED IN THE PENITENTIARY FOR ANY TERM NOT LESS THAN 2YRS OR BE IMPRISONED IN ANY OTHER PRISON FOR ANY TERM LESS THAN 2YRS</u>	<u>IMPRISONED FOR ANY TERM LESS THAN 2YRS</u>
Decoying children under 10 with intent to steal S. 21.27	Abduction of heiress S. 19.25	Concealing the birth of a child S. 4.4
	Bigamy S. 22.29	Possessing explosive substances S. 12.18
	Assaulting magistrates aiding vessels in distress or in saving goods stranded S. 24.32	

TABLE 5 CONTINUED

<u>IMPRISONED AND KEPT TO HARD LABOUR IN THE GAOL OR HOUSE OF CORRECTION FOR ANY TERM NOT EXCEEDING 3 MOS</u>	<u>PUNISHED BY FINE OR BY IMPRISONMENT OR BY BOTH AS THE COURT SHALL AWARD</u>	<u>SHALL PAY A FINE OF NOT LESS THAN 10 NOR MORE THAN \$40 & IN DEFAULT OF PAYMENT SHALL BE IMPRISONED FOR NO MORE THAN 30 DAYS</u>	<u>SHALL BE IMPRISONED FOR SUCH TERM AS THE COURT MAY AWARD</u>
Hindering seamen from serving S. 25.33	Abduction of girls under 16 S. 20.26	Punishment for carrying certain weapons S. 9.9	Abusing if above ten and under 12yrs S. 15.21
	Arrest of clergymen performing divine service S. 26.35		

As was noted earlier on, the Section for the Statutes of Lower Canada contain over twice the amount of articles than its companion for Nova Scotia. The sanctions for this province become quite interesting when one views the acts that are attached to each. Poisoning with intent to murder, murder itself, rape, abusing infants under ten years and bestiality are considered more severe than murder, in terms of being an accessory after the fact, petit treason, manslaughter, abusing infants above ten as well as all other behaviours listed. This categorization is quite demonstrative of the era concerned as religion and morals were quite important, particularly to the Canadiens as demonstrated in the socio-political outline, and therefore acts such as bestiality were considered as amoral as well as the abuse of infants under ten, whereas over that age, in the 1850s one could be considered near adulthood.

The range of sanctions extend from death to a fine of not less

than ten nor more than forty dollars to imprisonment for any term that the Court may award. As well, it is interesting to note the specific range of punishment for each particular offence - such as manslaughter which varies from imprisonment in the penitentiary for life to any term not less than two years or to pay a fine. Therefore, one who commits manslaughter could technically be fined for their actions and be punished less severely than for offences such as carrying a weapon, bigamy and hindering seamen.

The Consolidated Statutes of Lower Canada also include the use of hard labour as an option for several offences including maliciously stabbing or inflicting bodily injury, assaulting persons arresting offenders caught in the act at night, decoying children under ten with intent to steal, and hindering seamen from serving. This sanction is not represented in the Revised Statutes of Nova Scotia and, therefore, the stock of the two documents in view of sanctions is different. This option tends to echo the work ethic mentality of the 1850s whereby an individual who denoted apparent physical abilities and was a hard worker was known favourably in the community.

Certain interesting comparisons exist in view of offences synonymous with rape. Rape itself is punishable by death as is the abuse of infants under ten years whereas abuse if above ten and under twelve is punishable by imprisonment for such term that the court may award - could possibly be up to life or as low as five to ten days. This difference demonstrates the overall sexual taboos during the time period where the sexual act itself was only condoned inside the institution of marriage and rape was seen as one of the most indecent acts of the period, as was the abuse of

infants under ten while those between ten and twelve were already seen as entering the stage of adulthood.

A particular area of great interest is the inclusion of the arrest of clergymen performing divine service. This article fully demonstrates the significance that the clergy possessed during this time period as presented in the context outlining the era for Lower Canada. The clergy were viewed as elite, as powerful, and after the Rebellions of 1838 they increased in numbers as did their domination. This article therefore highlights the importance of religion - particularly for the French Canadians - as catholicism was predominant in Lower Canada. The article itself stipulates that any person who arrests any Clergyman while they are performing divine service, while they are going to perform the service, or even on their way back shall be guilty and shall be assigned a punishment as the Court may award - there are no minimum or maximum sanctions set. The inclusion of this article in the Statutes therefore places the clergy above all others as they are considered precious and elite. The political power of the clergy can also be seen through this sanctioned behaviour having been included in governmental statutes as the government in power support the clergy directly through their legislative law. This article can also be used to support the view of the development of penal law in accordance with the context of each region, as touched on early with Nova Scotia. The government would not have been prone to enact such an article if the clergy had not assumed as much power as they had after the Rebellions of 1838. The prominence of religion for Lower Canadians can also be shown by the hefty penalty for attempting to procure an abortion which varies from

imprisonment for life to any term less than two years as the Catholic faith values the right to life.

Third level of analysis:

The number of incriminations for each article are as follows:

TABLE 6

TITLE OF ARTICLE	# OF INCRIMINATIONS
1. Petit treason place on same footing as murder	1
2. Murder	3
3. Manslaughter	1
4. Concealing the birth	1
5. Poisoning & stabbing with intent to murder	4
6. Felonious attempts to murder	3
7. Attempts to stab maim or disfigure	3
8. Malicious stabbing or inflicting other bodily injury	2
9. Carrying bowie-knives, daggers etc...	3
10. The offender shall be tried under Cap 105	Procedural
11. Weapons to be impounded	Procedural
12. Limitation of prosecutions	Procedural
13. Feloniously administering drugs	2
14. Unlawful use of explosive substance	3
15. Bodily injury by use of explosive substance	1
16. Attempts to inflict bodily injury by use of explosive substance	1
17. Punishment for two preceding articles	

TABLE 6 CONTINUED

18. Possessing explosive substances with illegal intents	2
19. Rape	1
20. Abusing infants under ten yrs	1
21. Abusing infants above ten and under twelve yrs	1
22. Bestiality	1
23. Assault with intent	2
24. Attempts to procure abortion	1
25. Abduction of heiress	2
26. Abduction of females under 16	1
27. Maliciously decoying children under ten years of age	1
28. Exception to above article	
29. Bigamy	1
30. Exceptions to above article	
31. Impeding shipwrecked persons	1
32. Assaults on persons aiding vessels in distress or wrecked	1
33. .1 Hindering seamen from serving .2 obstructing the sale of provisions .3 assaulting persons on their way to market &c. with grain Punishment	2 1 1
34. Offenders not to be punished twice	Procedural
35. Arrest of Clergyman	1

TABLE 6 CONTINUED

36. Assaulting persons apprehending offenders in the night	2
37. Common assaults may be tried and disposed of	Procedural
38. Punishment by fine & c.	Procedural
39. How fines to be disposed of	Procedural
40. Competency of witnesses	Procedural
41. If fine not paid offender may be committed	Procedural
42. When the Justice may dismiss the case	Procedural
43. Costs and how enforced	Procedural
44. After being punished and acquitted no second prosecution to take place	Procedural
45. The Justice may deal with aggravated assaults as if no summary jurisdiction had been conferred	Procedural
46. Such jurisdiction not to be exercised when a question of title to land arises & c.	Procedural
47. J.P and recorders not to try for certain offences	Procedural
TOTAL	51

The total number of incriminations amount to fifty-one. This number translates into there being fifty-one sanctioned acts within the articles of this chapter. Therefore, out of forty-seven articles, of which twenty-seven refer to procedural data or are

exceptions, there are fifty-one different acts that are sanctioned - a number that exceeds the number of articles (being twenty due to the procedural elements) and thus demonstrates a section that can actually be considered high in acts of a criminal nature.

4.3 Comparison between the two sections of each Statute

Having therefore presented the content of each of the Sections Of offences against the person for each of the two Statutes, one now comes to the task of comparing and contrasting the substance.

To begin, it is necessary to identify the roots of the two documents. For Nova Scotia, a settled territory by the British Crown in 1497, they possessed the criminal law of England. In 1849, the government decided to consolidate the Statutes and a committee was appointed. The Commissioners based their revisions on the models of Massachusetts and of New York. The layout consisted of four parts of which the fourth represented the Section on Criminal Law and the Administration of Criminal Justice. The volume totalled approximately five hundred pages and consisted of one hundred and six Chapters. The Chapter 162, Of offences against the person includes twenty articles. The beginning of each Chapter includes a list of all of the twenty sections followed by the full enumeration of each with a summary punishment on the left\right of each article.

In contrast, Lower Canada (Quebec) was conquered by English settlers and through the proclamation of 1763 the criminal law of England was made applicable to the Province. The English law was therefore different than that of Nova Scotia due to the dates of

initial enactment of the laws. With the Union of the two Canadas, a commission was appointed to consolidate the criminal laws. The process continued for quite a few years and it is interesting to note that the Commissioners reviewed the work of the province of Nova Scotia for reference as this was considered by some authors to be the first true consolidation and led the way for future revisions. (See Brown 1986) The work is divided into eleven titles with one hundred and eleven chapters with the final division, Title eleven, setting out Criminal Law. The volume consists of approximately 1300 pages and Chapter 91 Of offences against the person includes forty-seven articles. The Chapter itself differs from that of Nova Scotia as it is divided into subsections including Petit treason, murder, explosive substances etc... as well as the summaries at the right\left of each article are condensed and simpler in wording. Each article also includes, at the end, a reference to the law through which it was enacted and can therefore allow for the reader to make reference to its onset. The Chapter does lack an introductory list of the articles as presented in that of Nova Scotia however it is interesting to note the use of arabic numerals in view of the Chapters instead of numeric values. The consolidation, on the whole, is nearly three times the size of that for Nova Scotia and contains such sections as Religious Matters, Public Education... which are not found in the volume for the Eastern province.

Brierley (1968 : 558) views the Revised Statutes of Nova Scotia of 1851 as

"...a formal arrangement into titles, chapters and sections, and the consecutive numbering of its provisions suggested the form of a continental code, its content was

made up principally of such subjects as the internal administration of government, judicial organization, criminal law, and its administration etc.. The editions of Consolidated Statutes of Upper and Lower Canada....somewhat less sophisticated in arrangement were similar in content, despite the differences in their private law origins."

As an initial comparison, one will look at the specific content of each of the articles. Out of the twenty for Nova Scotia and the forty-seven for Lower Canada, there are twelve that are of a similar wording - see Table 7 - an example can be seen with the following:

"Every person guilty of the abominable crime of Buggery, committed either with mankind or with any animal, shall suffer death as a felon. 4, 5 V. c.27, s.15"
(Consolidated Statutes of Canada of 1859, Pg. 956)

"Whosoever shall commit the crime of buggery, either with mankind or with any animal, shall be guilty of felony, and be imprisoned for the term of his natural life, or for any term not less than seven years." (Revised Statutes of Nova Scotia of 1851, Pg. 451)

However, it is interesting to point out that for Nova Scotia, the article referring to the abduction of girls under sixteen refers to the age of eighteen in the summary in the right hand margin, but in the explication of the article refers to the age of sixteen. There is thus a mistake in the elaboration of the age limit, most probably in the summary in the margin. Therefore, for the purposes of this thesis, the article shall be viewed as referring to the abduction of girls under sixteen.

TABLE 7

WORDING COMPARISONS OF ARTICLES
STATUTES OF NOVA SCOTIA AND OF LOWER CANADA

SIMILAR WORDINGS:

TITLE OF ARTICLE	NOVA SCOTIA	LOWER CANADA
Murder	Chapter 162 Sec.1	Cap XCI Sec. 2.2
Petit Treason	Section 2	Section 1.1
Manslaughter	Section 3	Section 3.3
Concealing Birth of a child	Section 12	Section 4.4
Felonious attempts	Section 6	Section 6.6
Rape	Section 13	Section 13.19
Abuse under 10 years	Section 14	Section 14.20
Abuse between the ages of 10-12 yrs	Section 15	Section 15.21
Buggery	Section 16	Section 16.22
Assault with intent	Section 19	Section 17.23
Attempts to procure an abortion	Section 11	Section 18.24
Impeding a shipwreck	Section 10	Section 23.31
Abduction of girls under sixteen	Section 18	Section 20.26

There are also two articles where the wording is slightly different - see Table 8 - such as poisoning and attempts to maim or disfigure. An example will be drawn from the following:

"Any person who unlawfully and maliciously shoots at any person, or by drawing a trigger or in any other manner, attempts to discharge any kind of loaded arms at any person, or stabs, cuts or wounds any person, with intent in any of the cases aforesaid to maim, disfigure or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. 4, 5 V. c.27, s.11" (Consolidated Statutes of Canada, 1859, Pg. 954)

"Whosoever shall maliciously cut, stab or wound, or shall maliciously maim, disfigure or disable any person, or shall maliciously cause to any person any other grievous bodily harm, shall be guilty of felony and be imprisoned for a term not exceeding fourteen years." (Revised Statutes of Nova Scotia, 1851, Pg. 450)

The difference here is that the Statute of Lower Canada contains a much more detailed account of what constitutes bodily harm and includes more sanctioned acts than that of Nova Scotia and therefore a comparison of the punishments needs to be undertaken cautiously, if at all.

TABLE 8

DIFFERENCES IN WORDINGS:

TITLE OF ARTICLE	NOVA SCOTIA	LOWER CANADA
Poisoning	Chapter 162 Sec. 5	Cap XCI Sec. 5.5 : this article includes "or stabs, cuts, or wounds..."
Attempts to maim or disfigure	Section 7	Sections 7.7 & 8.8 : much more detailed and divided into two articles

The comparisons that will be undertaken will involve the articles with similar wordings yet certain pronunciations will be made regarding the differences in articles that are present in the two statutes. It is important to note that there are certain articles that are found in one province in the Section Of offences against the person and in the other province under a different Section. These articles include: bigamy which is included in the Section Of offences against the person for Lower Canada yet is found in Chapter 159, Of offences against the law of marriage for Nova Scotia; carrying certain weapons which is included in the Section Of offences against the person for Lower Canada yet in Chapter 160, Of offences against public peace for Nova Scotia; and, setting fire to a cast away vessel with intent to murder which is found in the Section Of offences against the person for Nova Scotia, yet is included in Cap XCIII An act respecting arson and other malicious injuries to property for Lower Canada. This fact demonstrates that both documents were constructed differently and there are not fully the same. This finding also demonstrates that each of the provinces has divided the offences into different categories depending on their interpretation of matters. These articles (which are highlighted in Tables 9 and 10) will not constitute the shell of the comparison yet will however be utilized in the tables denoting the sanctions attached to each behaviour.

For Lower Canada, there are twenty-nine articles that do not exist in the comparative volume for Nova Scotia and out of this twenty-nine, eleven are procedural elements relating to the summary proceedings for the offences.

For Nova Scotia, out of the twenty articles, there are four

which are not included in the volume for Lower Canada - see Table 10. Out of this number, one represents a definition of terminology while the offence of setting fire to a cast away vessel is similar to Section 9 of Cap XCIII in Lower Canada.

TABLE 9

The following offences are only present in the Statute of Lower Canada:

 Section 9.9 : Carrying bowie-knives, daggers etc... about the person **Similar article included in Statute of Nova Scotia under Chapter 160 Sec. 8 - Offences against the public peace - Punishment for carrying dangerous weapons

Section 9.10 : Clarification

Section 9.11 : Article stating that the weapons shall be impounded

Section 9.12 : Limitations of prosecutions

Section 10.13 : Feloniously administering drugs

Section 11.14 : Unlawful use of any explosive substance

Section 11.15 : Bodily injury by explosive substance

Section 11.16 : Attempts to inflict bodily injury by use of explosive substances

Section 11.17: Punishment for two preceding sections

Section 12.18 : Possessing explosive substances with illegal intents

Section 21.27 : Maliciously decoying children under 10 yrs

Section 21. 28 : Exceptions to previous article

Section 22.29: Bigamy **Included in Statute of Nova Scotia under Chapter 159 Sec. 1 - Against the law of marriage.

Section 22.30: Exceptions to previous article

Section 23.32: Assaults on persons aiding vessels in distress or wrecked

Section 25.33.1 (.2 & .3) : Hindering seamen from serving; obstructing the sale of provisions; assaulting persons on their way to market with grain

Section 25.34: Offenders not to be punished twice

Section 26.35 : Arrest of clergymen performing Divine Service

Section 27.36 : Assaulting persons apprehending offenders caught in the act at night

Section 28.37 - 28.47 : Summary proceedings

TABLE 10

The following articles are only present in the Statute of Nova Scotia:

Chapter 162 Sec. 4: Killing by misfortune or in self-defence and not punishable

Section 9 : Punishment for setting fire to cast away a vessel with intent to murder & c. ****Similar article included in Statute of Lower Canada Cap XCIII Sec. 9 - Setting fire to ships & c. with malicious intents**

Section 20 : Punishment for assault on a trial for a felony

Section 17 : Definition of carnal knowledge

These differences allow for certain pronunciations as to the reasoning. First of all, the document for Lower Canada demonstrates a detailed list of procedural elements, clarifications and exceptions for possible articles. It can be stated then that, for this province, the proceedings were found to be more detailed than those for Nova Scotia, or, perhaps, the Legislature found it necessary to state clarifications for sections so that they could easily be understood. An example of this element is found in the following article:

"Section 28.42 If the Justice, upon the hearing of any such case, deems the offence not proved, or finds the assault or battery justified, or so trifling as not to merit any punishment, he shall dismiss the complying with or without costs in his discretion, and shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint has been preferred."
(Consolidated Statutes of Canada, 1859, Pg. 960)

The articles that are found to not be included for Nova Scotia include certain offences in view of vessels and seamen, arrest of clergymen performing Divine service as well as assaulting persons apprehending offenders caught at night and use of explosive substances. For Lower Canada, as highlighted in Chapter II and previously in Chapter IV, religion was based on Catholicism and therefore found to be quite uncompromising in comparison to the Protestant foundation of Nova Scotia. So, the offence of arresting a clergyman performing Divine service can easily be seen as included for this province and not for Nova Scotia more particularly due to the power of the clergy in the French speaking province. As for Nova Scotia, certain offences affecting the hinderance of seamen, or the setting fire to a cast away vessel, which are included in the section of offences against the person,

denote the significance of the sea as an industry. This fact was also presented in the contextual development for the province concerned and is demonstrated as being different than its companion province, Lower Canada. These distinctions are quite fascinating as they demonstrate the extreme importance of the social and political contexts of the region and how this, in turn, affects statutory law. So, for Lower Canada, an area greatly affected and determined by the religious background at this point in their history, arresting a clergyman performing divine service is included as a criminal act, whereas, for Nova Scotia, a marine province, offences against vessels are included in the section of offences against the person, in the forefront, and not in other sections as for Lower Canada. It also demonstrates the extreme power that the elite held in terms of their influence over the government. The clergy, in Lower Canada, after the rebellions of 1830, were considered to be the upper class elite and therefore held leverage not only on the popular classes but also in terms of the government in power. This, then, can be converted directly into the clergy having affected the statutory law of the period in pressuring for the inclusion of certain articles such as the arrest of clergymen performing divine service as well as even the harsh penalties for bestiality and procuring an abortion. The same can be viewed as true for Nova Scotia as the marine and naval industry proved to delineate an extreme amount of power on the economy and, in turn, in terms of the government in power. Therefore, their interests, being that of protecting the sea are directly reflected in the statutory law for the period. The popular classes thus do not have direct influence on the inclusion of articles in the codes

of the time period, but this rather falls to the elite, the higher powers of the era.

Comparison at first level of analysis:

The first level of analysis allows a comparison of the radiographies of each Statute. For Nova Scotia, the Chapter of Offences against the person includes sixteen felonies and one misdemeanor as well as an article which was not stipulated in the article but can be labelled a misdemeanor due to the nature of the sanction and two procedural elements. In view of Lower Canada, there are twenty-one felonies, nine misdemeanors and seventeen procedural elements out of the forty-seven included. If one were to establish a ratio for each of the Statutes in terms of felonies and misdemeanors, only including the sanctioned offences, it could be stipulated as the following: for Lower Canada: felonies represent 70% of the total of punishable offences whereas for Nova Scotia, felonies represent 88% of the total of these same offences. These numbers allow one to see that, in accordance with the number of sanctioned offences, Nova Scotia demonstrates a higher percentage of felonies - however, these numbers are quite close as both provinces tend to contain more felony offences than misdemeanors.

Comparison at second level of analysis:

This level of analysis extends to the actual punishments themselves in terms of severity. Table 11 delineates the similar offences and the sanctions assigned to each by the two Statutes. Table 12 identifies the sanctions on a continuum of minimum and maximum penalties to clarify the scale of punishments for certain offences.

TABLE 11COMPARISON OF PUNISHMENTS OF SIMILAR ARTICLES

Title	1851 - Nova Scotia	1859 - Lower Canada
Murder	Before the fact = suffer death; after the fact = imprisoned for no more than 14yrs & fined at the discretion of the court Felony	Before the fact = suffer death; after the fact = imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2yrs or be imprisoned in any prison or place of confinement for any term less than 2yrs Felony
Petit treason	Deemed and treated as murder Felony	Shall be dealt with, tried and punished as principals and accessories of murder Felony
Other attempts to murder	Shall be imprisoned for a term not exceeding 7yrs Felony	Shall be imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2yrs or in place of confinement for any term less than 2yrs Felony
Manslaughter	Shall be committed to jail or imprisoned in the Penitentiary for a term no more than 14yrs or shall be fined at the discretion of the court Felony	Shall be imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2yrs or be imprisoned in any place of confinement for any term less than 2yrs or pay such fine as the court may impose Felony

TABLE 11 CONTINUED

Title	1851 - Nova Scotia	1859 - Lower Canada
Rape	Shall be imprisoned for the term of his natural life or for any term not less than 7yrs Felony	Shall suffer death Felony
Abuse of infants under ten years	Shall be imprisoned for the term of his natural life Felony	Shall suffer death Felony
Bestiality	Shall be imprisoned for a term of his natural life or for any term not less than 7yrs Felony	Shall suffer death Felony
Attempt to procure an abortion	Shall be imprisoned for a term not exceeding 14yrs Felony	Shall be imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2yrs or be imprisoned in any other prison for any term less than 2yrs Felony
Impeding escape from wreck	Shall be imprisoned for a term not exceeding 14yrs Felony	Shall be imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2yrs or in prison for any term less than 2yrs Felony
Assault with intent	Shall be imprisoned for a term not more than 2yrs and fined at the discretion of the Court Felony	Shall be imprisoned in the Penitentiary for any term not exceeding 3 nor less than 2yrs or be imprisoned in any other prison for any term less than 2yrs Felony

Title	1851 - Nova Scotia	1859 - Lower Canada
Concealing the birth of a child	Shall be imprisoned for a term not exceeding 2yrs Misdemeanor	Shall be imprisoned for any term less than 2yrs Misdemeanor
Abduction of girls under sixteen	Shall suffer such punishment by fine or imprisonment or both, as the Court shall award Not stated	Shall be punished by fine or imprisonment, or by both, as the Court shall award Misdemeanor
Bigamy	Shall be imprisoned for a term not more than 2yrs and fined at the discretion of the court CHAPTER 159 - Of offences against the law of marriage Felony	Shall be imprisoned in the Penitentiary for any term not less than 2yrs or be imprisoned in any other prison for any term less than 2yrs Felony
Carrying certain weapons	Shall be committed to jail for a term not exceeding 12mos CHAPTER 160 - Of offences against the public peace Misdemeanor	Shall be subject, on conviction, to a fine of not less than ten nor more than forty dollars, and in default of payment thereof, to imprisonment for a term not exceeding thirty days, at the discretion of the Court Misdemeanor
Setting fire to a cast away vessel with intent to murder	Shall be imprisoned for the term of his natural life or for any term not less than 7yrs Felony	Imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2yrs or in prison for any term less than 2yrs CAP XCIII An Act respecting arson and other malicious injuries to property Felony

TABLE 11 CONTINUED

Title	1851 - Nova Scotia	1859 - Lower Canada
***Punishment for poisoning	Shall be imprisoned for a term not exceeding 14 yrs Felony	Shall suffer death Felony
***Causing grievous bodily harm	Shall be imprisoned for a term not exceeding 14 yrs Felony Attempt to: Shall be imprisoned for a term not exceeding 4 yrs Felony	Shall be imprisoned in the Penitentiary for the term of his natural life or for any term not less than 2yrs or be imprisoned in any other prison for any term less than 2yrs Felony Attempt to: Shall be imprisoned with hard labour in any gaol or prison for any term less than 2yrs or in the Penitentiary for any term not less than 2 nor more than 5yrs Felony

*** refers to the articles where the wording is somewhat different between the two Statutes

TABLE 12Comparison of maximum and minimum penalties for similar articles

Title	1851 - Nova Scotia	1859 - Lower Canada
Murder	Maximum (before the fact)= death Minimum (after the fact)= imprisonment for no more than 14 years and fined	Maximum (before the fact) = death Minimum (after the fact) = imprisoned in any prison for any term less than 2yrs
Petit treason	Same as above	Same as above
Other attempts to murder	Maximum and minimum = imprisoned for a term not exceeding 7yrs	Maximum = life imprisonment Minimum = in place of confinement for any term less than 2yrs
Manslaughter	Maximum = imprisoned for no more than 14yrs Minimum = fined	Maximum = life imprisonment Minimum = fined
Rape	Maximum = life imprisonment Minimum = for any term not less than 2yrs	Maximum and minimum = death
Abuse of infants under ten years	Maximum and minimum = life imprisonment	Maximum and minimum = death
Bestiality	Maximum = life imprisonment Minimum = any term not less than 7yrs	Maximum and minimum = death
Attempt to procure an abortion	Maximum and minimum = imprisoned for a term not exceeding 14yrs	Maximum = life imprisonment Minimum = in prison for any term less than 2yrs

Title	1851 - Nova Scotia	1859 - Lower Canada
Impeding from escape from a wreck	Maximum and minimum = imprisoned for a term not exceeding 14 yrs	Maximum = life imprisonment Minimum = in prison for any term less than 2yrs
Assault with intent	Maximum and minimum = imprisoned for a term no more than 2yrs and fined	Maximum = imprisoned for term not more than 3 nor less than 2 Minimum = in prison for any term less than 2yrs
Concealing the birth of a child	Maximum and minimum = imprisoned for a term not exceeding 2yrs	Maximum and minimum = imprisoned for any term less than 2yrs
Abduction of girls under sixteen	Maximum and minimum = shall suffer such punishment by fine or imprisonment or both as the Court shall award	Maximum and minimum = shall be punished by fine or imprisonment or both as the Court shall award
Bigamy	Maximum and minimum = imprisoned for a term no more than 2yrs and fined	Maximum = imprisoned for any term not less than 2 yrs Minimum = in prison for any term less than 2yrs
Carrying weapons	Maximum and minimum = imprisoned for a term not exceeding 12 months	Maximum = fine of 40 dollars Minimum = fine of ten dollars - if default, imprisonment for a term not exceeding 30 days
Setting fire to a cast away vessel	Maximum = life imprisonment Minimum = term not less than 7yrs	Maximum and minimum = death

The above tables include a wealth of information that shall be explained and contrasted in the following pages. The offence of murder as an accessory before or after the fact carries the same penalty for both Nova Scotia and Lower Canada. Yet, accessory after the fact for Nova Scotia includes imprisonment for a maximum of fourteen years and fined at the discretion of the Court while for Lower Canada the penalty varies from imprisonment in the penitentiary for natural life as a maximum to imprisonment in a prison for any term less than two years as a minimum.

Petit treason is viewed as the same as murder for both of the provinces concerned and therefore carries the same differences for before and after the fact as stated above.

The third similar offence is that of other attempts to murder. For Nova Scotia, the penalty is imprisonment for no more than seven years while for Lower Canada it may vary from a maximum of imprisonment for natural life in a penitentiary to a minimum of less than two years in prison.

Next, manslaughter, where for Nova Scotia the maximum penalty allotted is committal to jail or a penitentiary for no more than fourteen years and a minimum of a fine as for Lower Canada the maximum is life imprisonment to a minimum of a fine.

The offence of rape carries a sanction of death for Lower Canada while for Nova Scotia the maximum penalty is life imprisonment to a minimum of any term not less than seven years. The same distinction is present for the offence of bestiality and abuse of infants under ten except for the latter, Nova Scotia has no minimum, only life imprisonment as a sanction.

Attempts to procure an abortion and impeding escape from a

shipwreck carry a term of imprisonment of less than fourteen years for Nova Scotia and a range of imprisonment for life to less than two years for Lower Canada. While, assault with intent, for Nova Scotia, would allot no more than two years in prison and fined and for Lower Canada, no more than three nor less than two years in a penitentiary or under two years in a prison. The offence of concealing the birth of a child and the abduction of girls under sixteen involve the same sanctions for both provinces.

In view of the three articles that are found in different Chapters one sees that the offence of bigamy, found in Chapter 159 of the Revised Statutes of Nova Scotia, Of offences against marriage, the penalty is imprisonment for no more than two years and fined while for Lower Canada the maximum is imprisonment for not less than two years and the minimum is imprisonment for less than two years. The offence of carrying a weapon is found in Chapter 160 of the Revised Statutes of Nova Scotia, Of offences against public peace, stipulates imprisonment for no more than twelve months while for Lower Canada the penalty is a fine and in default of payment imprisonment for no more than thirty days. The final one is that of setting fire to a cast away vessel which is found under Cap XCIII of the Consolidated Statutes of Lower Canada, An act respecting arson and other malicious injury to property, where the penalty is death and for Nova Scotia the maximum is life imprisonment and minimum imprisonment for not less than seven years.

On the whole, each Statute carries the same label for each of the similar offences - being either felony or misdemeanor. The only exception may possibly be the offence of abduction of girls

under sixteen whereby the Revised Statutes of Nova Scotia do not iterate a specific category, yet, by the penalty, one can assume that it is a misdemeanor.

The Consolidated Statutes of Lower Canada tend to carry a wider range of sanctions varying at times from imprisonment for a term of natural life to a fine. Nova Scotia, on the other hand, tends to delineate a specific range such as a term not exceeding seven years rather than one of maximums and minimums and if these are presented they are much less variant than those for Lower Canada.

The major differences are present for the offences of: rape, bestiality, and abuse of infants under ten where Lower Canada extends a penalty of death in comparison to life imprisonment for Nova Scotia as a maximum or for any term not less than seven years for bestiality and rape as a minimum. The difference here may be due to the stronger religious faith in terms of Catholicism for the French Canadians and their harsh view of sexual deviance. This harsh view of deviance was iterated by the dominant clergy who then passed it on to the people as well as to the government so as to influence legislative decisions. Whereas, in Nova Scotia, the more liberal Protestantism still viewed such acts as immoral, particularly the abuse of infants, yet, not as to suffer death but anywhere from life imprisonment to a term not less than seven years. Here, once again, one denotes the whole importance of the elite in their leverage with the government as well as the extreme prominence of the context in deciding statutory law.

More subtle differences exist for accessory after the fact to murder and petit treason, manslaughter, other attempts to murder,

attempts to procure an abortion and impeding escape from a wreck. Here the maximum penalty for Lower Canada is imprisonment for life whereas for Nova Scotia, for all but other attempts to murder where the maximum is imprisonment for no more than seven years, the maximum is no more than fourteen years. However, the minimum penalties for Lower Canada fall, in most cases, to a term in prison for under two years or a fine. Therefore, the maximum sanctions tend to be more severe for Lower Canada than Nova Scotia, yet with the minimum allotments in place the sanctions vary and are at the discretion of the Court.

Then, in terms of the three extra offences that are found in other areas there also exist certain differences. Once again the Consolidated Statutes of Lower Canada allow for the death penalty for setting fire to a cast away vessel while Nova Scotia has as a maximum life imprisonment and imprisonment for a term not less than seven years as a minimum. This differentiation may be due to the whole nature of Lower Canada as a province to allow for the death penalty as they have in certain other offences. On the other hand, the only offence of those similar of the two whereby Nova Scotia allows for this penalty is principals to murder and petit treason.

Overall, Lower Canada, for these similar offences, allows for the use of more severe penalties or harsher maximum sanctions than Nova Scotia - particularly in terms of its use of the death penalty. This severity may be associated with the harshness of the initial laws stemming from 1763 after the British conquest or may perhaps reflect the religious nature of the powerful elite, the clergy, during the time period who then influenced the population and the sinful nature of certain acts as stated earlier on.

Lower Canada also employs the use of hard labour as a sanction for certain offences whereby Nova Scotia does not use this punishment in any instance. This fact demonstrates that the whole structure of the sanctions for these two provinces is different and this point is reinforced by the presentation of the distinctive and more severe maximum penalties employed by Lower Canada.

Therefore, in all, the comparisons of the sanctions for certain acts have allowed a more complete view as to the content and methods of these two Statutes and two provinces.

Comparison at third level of analysis:

Lascoumes' method of count has allowed for a rather new and innovative method of presenting data surrounding sanctioned acts. Table 13 presents a comparison of the number of incriminations for each of the similar articles.

TABLE 13
COMPARISON OF INCRIMINATIONS OF SIMILAR ARTICLES

Title	1851 - Nova Scotia	1859 - Lower Canada
Murder	3	3
Petit treason	1	1
Other attempts to murder	1	1
Manslaughter	1	1
Rape	1	1
Abuse of infants under ten	1	1
Bestiality	1	1
Attempts to procure an abortion	1	1
Impeding escape from a wreck	1	1
Assault with intent	1	2
Concealing the birth of a child	1	1
Abduction of girls under sixteen	1	1
Bigamy	1	1
Carrying certain weapons	1	3
Setting fire to a cast away vessel with intent	3	3
***Poisoning	3	4
***Attempts to maim or disfigure	1	1
***Causing grievous bodily harm	3	4

*** refers to the articles where the wording is somewhat different between the two Statutes

This table presents the same number of incriminations for each of the articles within the two Statutes with the exception of four of them. In these four instances, Lower Canada incorporates more incriminations for the specified article than does Nova Scotia. An example can be seen through the following article dealing with the offence of carrying certain weapons:

"If two or more persons shall openly carry dangerous and unusual weapons in any public place, in such manner and under such circumstances as are calculated to create terror and alarm amongst her majesty's subjects, such persons shall be committed to a jail term not exceeding twelve months." (Revised Statutes of Nova Scotia, 1851, Pg. 448)

"Any person who carries about his person any Bowie-knife, Dagger or Dirk, or any weapons called or known as Iron Knuckles, Skull-crackers, of Slung Shot, or other offensive weapons of a like character, or who secretly carries about the person any instrument loaded at the end, or who sells or exposes for sale, publicly or privately, any such weapon, shall be subject on conviction, to a fine of not less than ten nor more than forty dollars, and in default of payment thereof, to imprisonment for a term not exceeding thirty days, at the discretion of the Court wherein the offence is tried; But nothing in this section contained shall apply to Her Majesty's Army or Navy, or Militia, or Volunteer Force, nor to any Highland or National Society carrying arms as part of their national costume. 22 V. c. 26, s. 1, (1859)" (Consolidated Statutes of Canada, 1859, Pg. 954)

In this example, one can see that for Nova Scotia, the article contains one sanctioned act, one incrimination, that being the carrying of weapons whereas for Lower Canada, the article contains three different sanctioned acts, three separate incriminations, being the carrying of weapons, secretly carrying them and the selling or exposition of the weapons. In the other three cases where the number of incriminations vary, the case is quite similar as Lower Canada includes one other sanctioned act that Nova Scotia. Therefore, on the whole, the two Statutes relate quite closely to

the number of incriminations per specific article. Minor differences do exist however and it can be stipulated that Lower Canada denotes a slight increase in criminally sanctioned acts for comparable offences.

The first edition of the Canadian Criminal Code received royal assent on July 9, 1892. Prior to this, statutory documents existed for each of the provinces and these laws can be traced back to the initial conquest or settlement of each of the areas. The research contained in this thesis set out to examine what existed pre-1892, so, before the actual appearance of the first official Criminal Code. Specifically, the goal of this study consisted of examining the emergence and content of two of these statutory documents - being the Revised Statutes of Nova Scotia of 1851 and the Consolidated Statutes of Lower Canada of 1860 - specifically the section Of offences against the person. This study therefore involved documentary analysis which was elaborated on primarily from a qualitative angle.

In order to examine the penal evolution and the statutory sentencing provisions of these two documents this thesis was divided into four chapters. The first chapter presented the research methodology utilized throughout the research. The first dimension being based on document analysis to provide the development of penal law and a historic reconstruction of the time period. The second dimension was developed to include three different levels of analysis for each of the Statutes. The first included the radiographies presenting each article, the sanction and its category; the second included a presentation of the actual sanctions themselves in terms of severity; and, finally, the third level included the development of a method of count for incriminations as initially documented by Lascoumes (1988) and modified to use for our purposes. The second chapter, an introduction to the first dimension of the thesis, traced the

historical context of each of the provinces for the period studied. (approximately 1850-1860) This context included three variants being the actual beginnings of the province themselves, the political history and the demographic considerations of the area in order to shed light on the environment studied and analyze and interpret the differences. The third chapter, the presentation of the first dimension of the research, served to expose the development of penal law in each of the two provinces. This section therefore allowed for a detailed view as to the actual emergence of statutory law and statutory documents which eventually led to the consolidations studied in this thesis. The fourth chapter, the second dimension of the work, documented the analysis of each of the Statutes themselves, the section Of offences against the person, in terms of the three levels and an eventual comparison of the data.

With respect to the development of penal law for each of the provinces, this research proved to be quite innovative as this area is rather uncharted. It therefore became extremely interesting to follow the emergence of the Revised Statutes of Nova Scotia from the initial settlement of the province by the English to the eventual passing of the Act in the House of Assembly in 1851. The process of its acceptance involved a passing through several motions in the House of Assembly as well as its study by Commissioners. The development in Nova Scotia was also quite engaging due to it being the first province to actually consolidate their laws and their having to rely on American models in order to fully complete the project. In terms of Lower Canada, the development of the Consolidated Statutes proved to follow a similar

route to those of Nova Scotia with the exception of extremely fascinating Legislature debates to the point where one could in fact see the effect of behind the scenes work as Sir John A MacDonald worked laboriously to enact the Consolidations. As well, the contrast in terms of the French influence throughout the years leading up to the Union of Upper and Lower Canada had an enormous impact on what was eventually included in the final document. It is this French background that can most probably account for the major differences in view of sanctions and articles between Nova Scotia and Lower Canada.

The background that can account for the differences refers directly to the initial laws of the colony of Lower Canada being those of France and, in turn, the eventual initiation of the laws of England whereby the harsher influence of French sanctions was still present. At the same time, the cultural differences between these two colonies due to language variants are apparent. The French being strong Roman Catholics who follow the lead of the powerful clergy view certain immoral acts, such as buggery and rape, as sinful and more punishable in nature than the English culture. The forceful religious ties of the colony of Lower Canada are directly represented in their statutory law and can be cited as a partial reason for the anomalies between the two provinces studied.

On the whole, the actual presentation of the two documents is similar and can be explained by the fact that the Commissioners in Lower Canada relied on the document from its Nova Scotian counterpart to construct their version. And the differences that do exist are apparent due to the size variation for the two

provinces, Lower Canada being considerably larger population wise than Nova Scotia. Therefore, the Consolidated Statutes for Lower Canada are much more voluminous and include extra sections, articles and Chapters in order to delineate further proceedings and data. The wording presented can also be said to be much more English in the Revised Statutes of Nova Scotia as it employs words such as whosoever, buggery, etc... whereas for Lower Canada the French influence is also apparent more than the British through the use of more easily translatable terminology and phrases. Another difference that is present concerns the inclusion of certain articles in the Section Of offences against the person for one Statute and found in another Section in another Statute. An example of this is the offence of bigamy as presented earlier in Chapter IV. This point demonstrates that each of the Statutes is based on different constructions and stem from provinces who divided certain infractions into different categories depending on the behaviour.

The overall analysis of the two documents presents interesting conclusions. It must be noted that certain of these conclusions are made with a inevitable degree of precaution due to the minimal number of similar articles that were included in the comparison. However, one believes that a pronouncement can be made as to the data present. The Consolidated Statutes of Lower Canada, in view of offences against the person, incorporated the death penalty as a sanction in more instances than its Eastern counterpart. Along with this, Lower Canada incorporated more severe maximum penalties as sanctions than did Nova Scotia. One can then conclude, on a small scale, that the Statutes for Lower Canada can be considered

more severe and harsh than Nova Scotia. This differentiation can be due to a number of factors as have already been explained, in Chapter IV, such as the influence of the clergy vis à vis the government and the population in view of severity of immoral acts as well as the early influence of the harsher French criminal law.

The whole presentation of criminal law for each of the provinces was developed from a British forefront due to the colonization of each of the areas. Even with this similarity, the content of the Statutes for each of the areas are still different. This anomaly can be explained through the historical contexts of each of the regions. The influence of varying factors, including the clergy for Lower Canada and the marine industry for Nova Scotia, resulted in the establishment of unique penal law. Each province is highly influenced by the elite, those who retain power and authority and are able to dictate certain legislative concerns to the government. It is interesting to note that it is not the public, but rather these groups of elite, that tend to be able to assume leverage with the government. The distinctions between the two provinces in view of statutory law can be directly related to their own contexts of developments; to their own personal histories. What we have is two colonies, before Confederation, where their contexts are paramount in determining penal law and the differences between these two provinces is directly related to this specific and distinctive contextual development. This point then stresses the importance and need for contextual development in terms of the reformulation and presentation of law as well as a requirement to forge the differences between provinces due to their particular contexts. Overall, this fascinating conclusion based on

these two particular statutory documents has one wondering about the future success of regional contexts in the development of further penal law as well as the influence of the elite in this same area.

In general, the examination of the statutory sentencing provisions for these two provinces presented a close and detailed view into the actual content of Statutes for that time period. The Statutes themselves proved to be similar in certain areas and it can therefore also be concluded that the influence of neighbouring regions in the 1800s existed in view of a legal nature, however, at the same time, the differences that do exist can be explained due to the distinct developments of each of the provinces concerned. The tracing of their development allowed for an innovative and eye-opening account of the appearance of the Statutes and will serve as a tool for future works.

The questions that remain to be answered are in reference to the influence of these documents in terms of the Criminal Code of 1892 and thus our present day statutory sentencing provisions and overall development. More specifically, the speculation as to the influence of the contextual development of the regions and the elite on advancement of penal law.

What, if any, influence did these documents have on the future of criminal law and codes for Canada? Did the actual content and statutory sentencing provisions continue on into the era after Confederation? Will the contextual variants of each of the colonies affect statutory development at the time of Confederation? Will the elite of the provinces continue to exert influence in view of statutory laws? Will these two factors, the elite and the

regional contexts, continue to influence penal law up to and including present-day documents?

This research does not offer direct answers to these questions but does shed a hint of prediction into what might become of the development and sentencing provisions of statutory law after the 1850s. This work marks an important beginning in the whole area of history of social law and will serve as an significant tool for future research.

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APPENDIX

of any other person for any offence for which he may be liable to be apprehended or detained, shall be committed to jail for a term not exceeding two years and fined at the discretion of the court.

3. Whosoever shall maliciously shoot at any person, or shall attempt to discharge any kind of loaded arms at any person, or shall maliciously stab, cut or wound any person, with intent to resist the lawful apprehension or detainer of a party accused of any offence for which he may be liable to be apprehended, shall be imprisoned for a term not exceeding seven years.

4. Whosoever shall be convicted of perjury or subornation of perjury, shall be imprisoned for a term not exceeding seven years.

5. Whosoever shall be convicted of any rescue or breach of prison, shall be imprisoned for a term not exceeding two years.

6. Whosoever having the custody of any public records, shall certify an order as true, knowing the same to be false, or make any false copy or certificate of any indictment or conviction, or shall utter any such copy or certificate with a false or forged signature thereto, or make any false certificate of registry, knowing the same to be false or forged, shall be imprisoned for a term not exceeding three years.

7. Whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall maliciously obliterate, injure or destroy any document connected with the administration of justice, shall be imprisoned for a term not exceeding two years and fined at the discretion of the court.

8. Whosoever shall corruptly take any money or other reward under pretence of helping any person to any chattel, valuable security or moveable thing, which shall have been stolen, taken, detained or converted, shall, unless the person so taking such money or reward shall cause the offender to be apprehended and brought to trial for the same, be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

CHAPTER 162.

OF OFFENCES AGAINST THE PERSON.

SECTION	SECTION
1. Punishment for murder, &c., being accessories.	6. Punishment for attempting to commit murder otherwise than by poisoning where no harm ensues.
2. Petit treason to be deemed and punished as murder.	7. Punishment for causing grievous bodily harm.
3. Punishment for manslaughter.	8. Punishment for attempting to cause grievous bodily harm.
4. Killing by misfortune or in self-defence, &c. not punishable.	
5. Punishment for poisoning.	

Chapter 162. Of Offences against the Person. Revised Statutes of Nova Scotia. 1851.

SECTION

9. Punishment for setting fire to cast away a vessel with intent to murder, &c.
10. Punishment for impeding escape from a wreck.
11. Punishment for attempting to procure abortion.
12. Punishment for endeavoring to conceal the birth of a child.
13. Punishment for rape.
14. Punishment for abusing a female under ten years.

SECTION

15. Punishment for abusing a female between ten and twelve years.
16. Punishment for buggery.
17. Carnal knowledge, what shall constitute.
18. Punishment of abduction of girls under eighteen.
19. Punishment for assault, with intent to commit a felony.
20. Punishment for assault on a trial for a felony.

Punishment for murder, &c. being accessories.

1. Every person convicted of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder shall be imprisoned for a term not exceeding fourteen years, and fined at the discretion of the court.

Petit treason to be deemed and punished as murder.

2. Every offence which before the year one thousand eight hundred and forty-one would have amounted to petit treason, shall be deemed to be murder only; and all persons guilty in respect thereof, whether as principals or accessories, shall be punished as principals and accessories to murder.

Punishment for manslaughter.

3. Any person convicted of manslaughter shall be committed to jail or imprisoned in the penitentiary, as the court shall direct, for a term not exceeding fourteen years, or shall be fined at the discretion of the court.

Killing by misfortune or in self-defence, &c. not punishable.

4. Provided that no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

Punishment for poisoning.

5. Whosoever shall administer to or cause to be taken by any person, any poison or other destructive thing, or shall cause bodily harm to any person with intent to commit murder, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for attempting to commit murder otherwise than by poisoning where no harm ensues.

6. Whosoever shall by any means, other than the actually administering or causing to be taken poison or other destructive thing, attempt to commit murder, shall, although no bodily harm be caused, be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for causing grievous bodily harm.

7. Whosoever shall maliciously cut, stab or wound, or shall maliciously maim, disfigure or disable any person, or shall maliciously cause to any person any other grievous bodily harm, shall be guilty of felony, and be imprisoned for a term not exceeding fourteen years.

Punishment for attempting to cause grievous bodily harm.

8. Whosoever shall maliciously attempt to cause grievous bodily harm to any person, shall, whether any bodily harm be caused to such person or not, be imprisoned for a term not exceeding four years.

Punishment for setting fire to cast away a vessel with intent to murder, &c.

9. Whosoever shall unlawfully set fire to, cast away, or in any wise destroy any ship or vessel either with intent to murder any person or whereby the life of any person shall be put in danger,

shall be guilty of felony, and be imprisoned for the term of his natural life or for any term not less than seven years.

10. Whosoever shall maliciously impede any person being on board of, or having quitted any ship or vessel which shall be in distress or wrecked, in his endeavour to save his life, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for impeding escape from a wreck.

11. Every woman being with child who, with intent to procure her own miscarriage, shall maliciously administer to herself any poison or other noxious thing, or use any instrument or other means whatever, and every person who, with intent to procure the miscarriage of any woman, shall maliciously administer to, or cause to be taken by her, any poison or other noxious thing, or shall use any instrument or other means whatsoever, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for attempting to procure abortion.

12. Where a woman shall have been delivered of a child, any person who shall by any secret disposition of the dead body of such child, whether such child died before, at, or after its birth, endeavour to conceal the birth of such child, shall be imprisoned for a term not exceeding two years.

Punishment for endeavoring to conceal the birth of a child.

13. Whosoever shall unlawfully and carnally know any woman against her will and by force or whilst she is insensible, shall be guilty of rape, and shall be imprisoned for the term of his natural life, or for any term not less than seven years.

Punishment for rape.

14. Whosoever shall unlawfully and carnally know and abuse any girl under the age of ten years, shall be guilty of felony, and be imprisoned for the term of his natural life.

Punishment for abusing a female under ten years.

15. Whosoever shall unlawfully and carnally know and abuse any girl being above the age of ten years and under the age of twelve years, shall be imprisoned for a term not exceeding seven years.

Punishment for abusing a female between ten and twelve years.

16. Whosoever shall commit the crime of buggery, either with mankind or with any animal, shall be guilty of felony, and be imprisoned for the term of his natural life, or for any term not less than seven years.

Punishment for buggery.

17. Any the least degree of penetration, though there be no emission of seed, shall be sufficient to constitute carnal knowledge as regards the crimes mentioned in sections thirteen, fourteen, fifteen and sixteen of this chapter.

Carnal knowledge what shall constitute.

18. Whosoever shall unlawfully take, or cause to be taken, any unmarried girl under the age of sixteen years out of the possession or against the will of her father or mother or any other person having the lawful charge of her, shall suffer such punishment by fine or imprisonment, or both, as the court shall award.

Punishment of abduction of girls under eighteen.

19. Whosoever shall assault any person with intent to commit a felony, shall be imprisoned for a term not exceeding two years, and fined at the discretion of the court.

Punishment for assault with intent to commit a felony.

20. Whosoever on trial for any felony whatever, and which shall include an assault, shall be convicted of assault, shall be com-

Punishment for assault on a trial for a felony.

mitted to jail or imprisoned in the penitentiary as the court shall direct for a term not exceeding five years, and shall be fined at the discretion of the court.

CHAPTER 163.

OF OFFENCES AGAINST THE HABITATION.

SECTION	SECTION
1. Punishment for burglary.	ing a dwelling house, office, church, &c. with intent to commit a felony.
2. Breaking out of a house in the night, having entered with intent to commit felony, &c. to be burglary.	8. Punishment where the burglary charged is not clearly proven but the breaking, &c. is proven.
3. Same subject.	9. When proof of a burglary committed shall not be a defence to a charge of breaking, &c. with intent only, and when offender may be again indicted for burglary.
4. Punishment for burglariously entering a house and assaulting a person with intent to commit murder.	10. Punishment for maliciously firing a dwelling house, a person being therein.
5. Punishment for entering other buildings by night for the purpose of burglary.	11. Punishment for damaging a dwelling house with powder, a person being therein.
6. Night defined for settling questions of burglary.	
7. Penalty for unlawfully breaking and enter-	

Punishment for burglary.

Breaking out of a house in the night, having entered with intent to commit felony, &c. to be burglary.

Same subject.

Punishment for burglariously entering a house and assaulting a person with intent to commit murder.

Punishment for entering other buildings by night for the purpose of burglary.

1. Whosoever shall commit burglary shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

2. If any person shall enter the dwelling house of another with intent to commit felony, or being in such dwelling house shall commit a felony, and shall in either case break out of the house in the night time, such person shall be deemed guilty of burglary.

3. Provided always, that no building, although within the same curtilage with the dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for the purpose of burglary, unless there shall be a communication between such building and dwelling house, either immediately or by means of a covered and enclosed passage leading from one to the other.

4. Whosoever shall burglariously break and enter into any dwelling house, or any inner part thereof, and shall assault with intent to murder any person being therein, or shall cause any bodily harm, or do any personal violence to such person, shall be guilty of felony, and be imprisoned for the term of his natural life, or for any term not less than seven years.

5. If any person shall in the night time break and enter any building, being within the curtilage of a dwelling house and occupied therewith, but not being part thereof, according to the provisions in the third section of this chapter, or any public office, public building, or other building not being a dwelling house for the purpose of burglary, with intent to commit a felony, every such

How penalties
may be re-
covered.

32. Such penalty may be recovered, with costs, in a summary manner, on the oath of one credible witness, other than the informer, before any Justice of the Peace, who, if such penalty and costs be not forthwith paid, may commit the offender to the Common Gaol of the District, County or place for a time not exceeding eight days, or until the same be paid, if sooner paid. 4, 5 V. c. 17, s. 7.

Application of
penalties.

33. One moiety of all the penalties imposed by the twenty-six to the thirty-second sections of this Act, (but not the Coins or Tokens forfeited under the provisions thereof) shall go to the informer or person suing for the same, and the other moiety shall belong to Her Majesty, for the public uses of this Province. 4, 5 V. c. 17, s. 8. *See Gazette 21st October, 1841.*

6. RETURNING FROM TRANSPORTATION.

Returning
from trans-
portation.

34. If any person sentenced or ordered to be transported or banished, or who having agreed to transport or banish himself on certain conditions, either for life or for any number of years, be afterwards at large within any part of this Province, contrary to such sentence, order or agreement, without some lawful cause, before the expiration of his term of transportation or banishment, such offender shall be guilty of felony, and shall be imprisoned for any term not exceeding four years. 4, 5 V. c. 24, s. 25.

Figure 4

C A P. X C I.

An Act respecting Offences against the Person.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. PETIT TREASON.

Petit treason
placed on the
same footing
as murder.

Punishment.

1. Every offence, which on or before the first of January, 1842, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in murder. 4, 5 V. c. 27, s. 2.

2. MURDER.

Murder and
accessories
before and
after the fact.

2. Every person guilty of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder, shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. 4, 5 V. c. 27, s. 3,—6 V. c. 5, s. 2,—and 14, 15 V. c. 2, s. 2.

CAP. XCI. An Act respecting Offences against the Person.
Consolidated Statutes of Lower Canada. 1860.

3. Every person guilty of manslaughter shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years, or shall pay such fine as the Court may impose. 4, 5 V. c. 27, s. 7. Manslaughter.
Punishment.

4. CONCEALING THE BIRTH.

4. Any woman delivered of a child, who, by secret burying or otherwise disposing of the dead body of the said child, endeavours to conceal the birth thereof, shall be guilty of a misdemeanor, and shall be imprisoned for any term less than two years, and it shall not be necessary to prove whether the child died before, at, or after its birth. 4, 5 V. c. 27, s. 14. Concealing the birth of children to be a misdemeanor.
Punishment.

5. POISONING,—STABBING, &C. WITH INTENT TO MURDER.

5. Any person who administers to or causes to be taken by any person, any poison or other destructive thing, or stabs, cuts or wounds, any person, or by any means whatsoever causes any bodily injury dangerous to life, to any person with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and shall suffer death. 4, 5 V. c. 27, s. 9. Poisoning, stabbing, &c., with intent to murder.
Punishment.

6. FELONIOUS ATTEMPTS TO MURDER.

6. Any person who attempts to administer to any person any poison or other destructive thing, or shoots at any person, or by drawing a trigger or in any other manner, attempts to discharge any kind of loaded arms at any person, or attempts to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall, although no bodily injury be effected, be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. 4, 5 V. c. 27, s. 10. Other attempts to murder.
How punishable.

7. ATTEMPTS TO STAB, MAIM OR DISFIGURE.

7. Any person who unlawfully and maliciously shoots at any person, or by drawing a trigger, or in any other manner, attempts to discharge any kind of loaded arms at any person, or stabs, cuts or wounds any person, with intent in any of the cases aforesaid to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison. Maliciously shooting or attempting to stab, maim or disfigure.
How punishable.

prison or place of confinement for any term less than two years,
4, 5 V. c. 27, s. 11.

8. MALICIOUSLY STABBING, &c.

Maliciously
stabbing or
inflicting other
bodily injury—
a misdemeanor.

How punish-
able.

8. Any person who unlawfully and maliciously inflicts upon any other person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully and maliciously cuts, stabs or wounds any other person, shall be guilty of a misdemeanor, and shall be imprisoned, with hard labour, in any gaol or prison for any term less than two years, or in the Penitentiary for any term not less than two nor more than five years. 18 V. c. 92, s. 30.

9. CARRYING BOWIE-KNIVES, DAGGERS, ETC., ABOUT THE PERSON.

Punishment
for carrying
certain wea-
pons.

This section
not to apply to
certain cases.

9. Any person who carries about his person any Bowie-knife, Dagger or Dirk, or any weapons called or known as Iron Knuckles, Skull-crackers, or Slung Shot, or other offensive weapons of a like character, or who secretly carries about the person any instrument loaded at the end, or who sells or exposes for sale, publicly or privately, any such weapon, shall be subject, on conviction, to a fine of not less than ten nor more than forty dollars, and in default of payment thereof, to imprisonment for a term not exceeding thirty days, at the discretion of the Court wherein the offence is tried; But nothing in this section contained shall apply to Her Majesty's Army or Navy, or Militia, or Volunteer Force, nor to any Highland or National Society carrying arms as part of their national costume. 22 V. c. 26, s. 1, (1859).

The offender
shall be tried
under cap. 105.

10. Any person charged with having committed any offence against the provisions of the last preceding section of this Act, may be tried and dealt with in pursuance of the Consolidated Statute of Canada respecting the prompt and Summary Administration of Criminal Justice in certain cases. *Ibid*, s. 2.

Weapons to be
impounded.

11. It shall be the duty of the Court or Magistrate before whom any person is convicted under the two last preceding sections of this Act, to impound the weapon for carrying which such person is convicted, and to cause the same to be destroyed. *Ibid*, s. 3.

Limitation of
prosecutions.
Appeal allow-
ed.

12. All prosecutions under the preceding ninth and tenth sections of this Act shall be commenced within one month from the offence charged; and from any conviction or decision under the said ninth and tenth sections, an appeal shall lie to the Court of General Quarter Sessions of the Peace for the County in Upper Canada or District in Lower Canada wherein the same takes place, subject in Upper Canada to the provisions of the Consolidated Statute for Upper Canada respecting appeals in cases of Summary Conviction, and in Lower Canada to the provisions of law regulating appeals to the Quarter Sessions generally. *Ibid*, s. 4.

10.

10. FELONIOUSLY ADMINISTERING DRUGS.

13. Any person who unlawfully applies or administers or attempts to apply or administer to any other person, any chloroform, laudanum, or other stupifying or overpowering drug, matter or thing, with intent thereby to enable or to assist such offender or any other person to commit any felony, shall be guilty of felony, and shall be imprisoned in the Penitentiary, for any term not less than two nor more than five years. ^{Feloniously administering drugs.} ^{How punishable.}
18 V. c. 92, s. 29.

11. EXPLOSIVE SUBSTANCES.

14. Any person who unlawfully and maliciously sends or delivers to or causes to be taken, or received by any person, any explosive substance, or any other dangerous or noxious thing, or casts or throws upon or otherwise applies to any person, any corrosive fluid, or other destructive matter, with intent in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby in any of the cases aforesaid any person is burnt, maimed, disfigured or disabled, or receives some other grievous bodily harm, shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. ^{Unlawful use of any explosive substance.} ^{Felony.} ^{Punishment.}
4, 5 V. c. 27, s. 12.

15. Any person who unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burns, maims, or disfigures, disables or does any grievous bodily harm to any person, shall be guilty of felony. ^{Bodily injury by.} ^{Felony.}
10, 11 V. c. 4, s. 3.

16. Any person who unlawfully and maliciously causes any gunpowder or other explosive substance to explode, or sends or delivers to or causes to be taken or received by any person any explosive substance, or any other dangerous or noxious thing, or casts or throws at or upon, or otherwise applies to any person any corrosive fluid, or other destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure or disable any person, or do some grievous bodily harm to any person, shall, although no bodily injury be effected, be guilty of felony. ^{Attempts to inflict bodily injury by.} ^{Felony.}
10, 11 V. c. 4, s. 4.

17. Any person guilty of any felony in the two last preceding sections mentioned, shall be imprisoned in the Penitentiary for any term not less than seven years, or be imprisoned in any common gaol for any term less than two years. ^{Punishment.}
10, 11 V. c. 4, s. 5.

12. POSSESSING EXPLOSIVE SUBSTANCES WITH ILLEGAL INTENTS.

18. Any person who knowingly makes, or manufactures, or has in his possession, any gunpowder, explosive substance ^{Possessing explosive sub-}
or

stances with
illegal intents,
a misdemeanor.

Punishment.

or other dangerous or noxious thing, or any machine, engine, instrument or other thing with intent by means thereof to commit or for the purpose of enabling any other person to commit any offence against this Act, shall be guilty of a misdemeanor, and shall be imprisoned in any Common Gaol for any term less than two years. 10, 11 V. c. 4, s. 8.

13. RAPE.

Rape.

19. Every person guilty of the crime of rape, shall suffer death as a felon. 4, 5 V. c. 27, s. 16.

14. ABUSING INFANTS UNDER THE AGE OF TEN YEARS.

Abusing infants
under ten years
of age.

20. Any person who unlawfully and carnally knows and abuses any girl under the age of ten years, shall be guilty of felony, and shall suffer death as a felon. 4, 5 V. c. 27, s. 17.

15. INFANTS ABOVE THE AGE OF TEN.

If above ten
and under
twelve years.

21. Any person who unlawfully and carnally knows and abuses any girl, being above the age of ten years, and under the age of twelve years, shall be guilty of a misdemeanor, and shall be imprisoned for such term as the Court may award. 4, 5 V. c. 27, s. 17.

16. BESTIALITY

Bestiality.

22. Every person guilty of the abominable crime of Buggery, committed either with mankind or with any animal, shall suffer death as a felon. 4, 5 V. c. 27, s. 15.

17. ASSAULT WITH INTENT.

Assault with
intent.

Punishment.

23. Any person who commits an assault with intent to commit rape, or an assault with intent to commit the abominable crime of buggery either with mankind or with any animal, shall be imprisoned in the Penitentiary for any term not exceeding three nor less than two years, or be imprisoned in any other Prison or place of confinement for any term less than two years. 6 V. c. 5, s. 5.

18. ATTEMPTS TO PROCURE ABORTION.

Attempts to
procure abor-
tion.

Felony.

Punishment.

24. Any person who with intent to procure the miscarriage of any woman, unlawfully administers to her, or causes to be taken by her, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. 4, 5 V. c. 27, s. 13.

19. ABDUCTION OF HEIRESS.

25. In case any woman has an interest, whether legal or equitable, present or future, absolute, conditional, or contingent in any real or personal estate, or be an Heiress presumptive or next of kin to any one having such interest, any person who, from motives of lucre, takes away or detains such woman against her will with intent to marry or defile her, or to cause her to be married or defiled by any other person, and every person counselling, aiding or abetting such offender, shall be guilty of felony, and shall respectively be imprisoned in the Penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. 4, 5 V. c. 27, s. 19.

Abduction of heiresses.

Felony.

Punishment.

20. ABDUCTION OF FEMALES UNDER 16.

26. Any person who unlawfully takes or causes to be taken, any unmarried girl being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanor, and shall be punished by fine or imprisonment, or by both, as the Court shall award. 4, 5 V. c. 27, s. 20.

Abduction of girls under 16.

Misdemeanor.

Punishment.

21. MALICIOUSLY DECOYING CHILDREN UNDER 10 YEARS OF AGE.

27. Any person who maliciously, either by force or fraud, leads or takes away, or decoys, or entices away or detains, any child under the age of ten years with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child to whomsoever such article may belong; and any person who, with any such intent, receives or harbours any such child, knowing the same to have been by force or fraud, led, taken, decoyed, enticed away or detained as hereinbefore mentioned, and any person who counsels, aids or abets any such offender, shall respectively be guilty of felony, and shall be imprisoned at hard labour in the Penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement, for any term less than two years. 4, 5 V. c. 27, s. 21.

Decoying children under ten years of age with intent to steal wearing apparel—aiding or abetting.

Felony.

Punishment.

28. No person who claims to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue of the last section, on account of his getting possession of such child, or taking such child out of the possession of the mother, or any other person having the lawful charge thereof. 4, 5 V. c. 27, s. 21.

Exception.

Bigamy.

29. Any person who, being married, marries any other person during the life of the former husband or wife, whether the second marriage takes place in this Province or elsewhere, and every person who counsels, aids, or abets such offender, shall respectively be guilty of felony; and shall be imprisoned in the Penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. 4, 5 V. c. 27, s. 22.

Felony.

Punishment.

Exceptions.

30. Nothing in the last section contained shall extend,—

Firstly. To any second marriage contracted out of this Province by any other than a subject of Her Majesty resident in this Province, and leaving the same with intent to commit the offence; or

Secondly. To any person marrying a second time, whose husband or wife had been continually absent from such person for the space of seven years then last past, and was not known by such person to be living within that time; or

Thirdly. To any person, who, at the time of such second marriage, had been divorced from the bond of the first marriage; or

Fourthly. To any person whose former marriage had been declared void by the sentence of any Court of competent jurisdiction. 4, 5 V. c. 27, s. 22.

23. IMPEDING SHIPWRECKED PERSONS.

Impeding the saving of shipwrecked persons.

Felony.

Punishment.

31. Any person who by force prevents or impedes any person endeavouring to save his life from any ship or vessel in distress, or wrecked, stranded, or cast on shore, (whether he be on board of or has quitted the same) shall be guilty of felony, and shall be imprisoned in the Penitentiary for the term of his natural life, or for any term not less than two years, or be imprisoned in any other Prison or place of confinement for any term less than two years. 4, 5 V. c. 26, s. 10.

24. ASSAULTS ON PERSONS AIDING VESSELS IN DISTRESS OR WRECKED.

Assaulting Magistrates aiding vessels in distress or in saving goods stranded, &c.

Punishment.

32. Any person who assaults and strikes or wounds any Magistrate, Officer, or other person, lawfully authorized, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of felony, and be imprisoned in the Penitentiary for any term not less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. 4, 5 V. c. 27, s. 24.—6 V. c. 5.

25.

33. Any person who unlawfully and with force,—

1. Hinders any seaman from working at or exercising his lawful trade, business or occupation, or beats, wounds, or uses any other violence to him with intent to deter or hinder him from working at or exercising the same; Hindering seamen from serving, &c.

2. Beats, wounds, or uses any other violence to any person, with intent to deter or hinder him from selling or buying any wheat or other grain, flour, meal or malt, in any market or other place; Obstructing the sale of provisions.

3. Beats, wounds, or uses any other violence to any person having the care or charge of any wheat or other grain, flour, meal, or malt, whilst on its way to or from any City, market-town, or other place with intent to stop the conveyance of the same, may be convicted thereof before two Justices of the Peace, and imprisoned and kept to hard labour in the Common Gaol or House of Correction for any term not exceeding three months. 4, 5 V. c. 27, s. 26. Assaulting persons on their way to market, &c., with grain.

Punishment.

34. No person having been punished for any such offence by virtue of the foregoing provision, shall be punished for the same offence by virtue of any other law whatsoever. 4, 5 V. c. 27, s. 26. Offenders not to be twice punished.

26. ARREST OF CLERGYMEN.

35. Any person who upon any civil process arrests any Clergyman or Minister of the Gospel while he is performing divine service, or who so arrests him while he is going to perform the same, or while he is returning from the performance thereof, knowing that he is so going or returning, shall be guilty of a misdemeanor, and shall suffer such punishment by fine or imprisonment, or by both, as the Court shall award. 4, 5 V. c. 27, s. 23. Arrest of Clergymen performing Divine Service, *sundum morando et redeundo.*

27. ASSAULTING PERSONS APPREHENDING OFFENDERS IN THE NIGHT.

36. If any person found committing an indictable offence in the night and apprehended thereon, assaults or offers any violence to any person, by law authorized to apprehend or detain him, or to any person acting in the aid or assistance of the person so authorized, such offender shall be guilty of a misdemeanor, and shall be imprisoned with or without hard labour for any term not exceeding two years. 18 V. c. 92, ss. 40, 41. Assaulting persons arresting offenders caught in the act at night.

28. SUMMARY PROCEEDINGS.

37. If any person unlawfully assaults or beats any other person, any Justice of the Peace, upon complaint of the party aggrieved Common assaults may be

tried and disposed of.

aggrieved praying him to proceed summarily under this Act may hear and determine such offence. 4, 5 V. c. 27, s. 27.

Punishment by fine, &c.

38. The offender, upon conviction before such Justice, shall forfeit and pay such fine as may to him appear meet, not exceeding (together with costs, if ordered), the sum of twenty dollars.

How fines to be disposed of.

39. Such fine shall be paid to the Treasurer of the Municipality in which the offence was committed, and shall make part of the funds thereof, or if the conviction be had in a place not within any Municipality, the fine shall be paid over to such Officer, and be applicable to such purposes as other fines and penalties not specially appropriated.

Competency of witnesses.

40. The evidence of any inhabitant of the Municipality or place interested as aforesaid, shall be admitted in proof of the offence.

If fine not paid offender may be committed.

41. If the fine awarded by the said Justice together with the costs (if ordered) be not paid, either immediately after the conviction, or within such period as the said Justice at the time of the conviction appoints, he may commit the offender to the Common Gaol or House of Correction, there to be imprisoned for any term not exceeding two months, unless such fine and costs be sooner paid.

When the Justice may dismiss the case.

42. If the Justice, upon the hearing of any such case, deems the offence not proved, or finds the assault or battery justified, or so trifling as not to merit any punishment, he shall dismiss the complaint with or without costs in his discretion, and shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint has been preferred.

Costs.

43. If costs be ordered upon such dismissal, and such costs be not paid immediately or within such period as such Justice, at the time of the dismissal appoints, he shall issue his warrant to levy the amount thereof within a certain time to be in the said warrant expressed, and in case no distress sufficient to satisfy

How enforced.

the amount of such warrant can be found, he shall commit the party ordered to pay the costs to the Common Gaol of the District, County or Division, where the offence was alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless such costs be sooner paid. 4, 5 V. c. 27, s. 27.

After being punished and acquitted no second prosecution to take place.

44. If the person against whom such a complaint has been preferred for a common assault or battery, obtains such certificate as aforesaid, or having been convicted, pays the whole amount adjudged to be paid under such conviction, or suffers the imprisonment awarded for non-payment thereof, he shall be released.

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Offences against the Person.

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released from all further or other proceedings, civil or criminal, for the same cause. 4, 5 V. c. 27, s. 28.

45. In case the Justice finds the assault or battery complained of to have been accompanied by any attempt to commit felony, or is of opinion that the same is, from any other circumstance, a fit subject for a prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as he would have done, had no such summary jurisdiction been conferred upon him. 4, 5 V. c. 27, s. 30.

The Justice may deal with aggravated assaults as if no summary jurisdiction had been conferred.

46. Nothing in the last section contained shall authorize any Justice of the Peace to hear and determine any case of assault or battery in which any question arises as to the title to any lands, tenements or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or as to any execution under the process of any Court of Justice. 4, 5 V. c. 27, s. 30.

Such jurisdiction not to be exercised when a question of title to land arises, &c.

47. Neither of the Justices of the Peace acting in and for any District, County, Division, or City, nor the Recorder of any City, shall, at any Session of the Peace, or at any adjournment thereof, try any person for any offence under the 15th, 16th and 18th Sections of this Act. 10, 11 V. c. 4, s. 16.

J. P. and recorder not to try for certain offences.

CAP. XCII.

An Act respecting Offences against Person and Property.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

OFFENCES AGAINST THE PERSON.

1. *Robbery.*

1. Any person who robs any other person, and at the time of robbery, or immediately before or immediately after such robbery, when a Capital offence. stabs, cuts or wounds any person, shall be guilty of felony, and shall suffer death. 4, 5 V. c. 25, s. 6.

2. Any person who robs any other person, or steals any chattel, money, or valuable security from the person of another, shall be imprisoned in the Penitentiary for any term not exceeding fourteen years nor less than two years, or be imprisoned in any other prison or place of confinement for any term less than two years. 4, 5 V. c. 25, s. 9,—6 V. c. 5, s. 2.

When not Capital—and how punishable.

3. Any person who assaults any other person, with intent to rob, shall be guilty of felony, and (except in cases where a greater Assaulting with intent to rob—felony.

CAP. XCI. An Act respecting Offences against the Person.
Consolidated Statutes of Lower Canada. 1860.