4

Civilians Tried in Military Courts: Quebec, 1759–64*

DOUGLAS HAY

When Governor François-Pierre de Rigaud de Vaudreuil surrendered in September 1760, the last courts of the French regime ceased to function. Following the cession of 1763, the new British government of Quebec was constituted in August 1764. One of its first acts was to approve an ordinance on 17 September establishing a new system of courts. The interregnum of 1760-4, often named 'the military regime,' was the period when all the inhabitants came under the rule of the army of the conqueror, but in the region of Quebec, which fell in September 1759, British military government lasted five years. The administration of criminal justice, like most aspects of government, lay in the hands of the officers of the occupying British army.1 The experience of the army, the new French-speaking subjects of the crown, and the 'old subjects' - English-speaking civilian immigrants to Quebec - were all profoundly shaped by the absence of a structure of civilian courts. The expedient adopted by the English-speaking officers who effectively ruled Quebec was the one with which they were most familiar: military courts.

Those in Quebec, as everywhere the British army was stationed, were mainly concerned with the offences of soldiers. Of the almost 240 Quebec prosecutions that survive in the records of the War Office, at least 80 per cent were trials of soldiers for desertion, insubordination, conduct unbe-

^{*}The support of the Social Sciences and Humanities Research Council of Canada, and the assistance of Samual Marr and Daniel Condon, are gratefully acknowledged.

coming an officer, theft, rape, and other military and non-military offences. This was a jurisdiction conferred by the Articles of War, and it was a central part of military discipline and order. A few more prosecutions were of camp followers, womens or civilian employees of the army, whom it was generally agreed fell under the Articles of War.² The variable punishments inflicted were characteristic of the eighteenth-century British army: from a pardoning to a hanging for desertion (serious because it constantly eroded the size of armies), and a wide range of other punishments for that and other offences. There was no fixed sentence for a given crime. Sentences of 1000 lashes with a cat-o'-nine-tails were common; there were even sentences of 2000 lashes in Quebec. Often the most severe flogging sentences were remitted in part. These trials and sentences of soldiers were similar to those found wherever the British army was stationed, throughout the empire.

But between forty and fifty of the charges heard before the General Courts Martial in Quebec, Montreal, and Trois-Rivières were cases in which benches of British army officers tried, convicted, and punished civilians accused of criminal offences.3 In all, about twenty-one civilians with French names, another twenty-three with English names (some of them well known), and two women identified as 'a negro woman' and 'a negro slave' were tried by these military courts. The cases were almost all heard between 1761 and 1763: apparently, there were none in 1759 and 1760 and only two in 1764. The evidence strongly suggests that the army (or the civilians) only slowly came to the conclusion that courts martial were appropriate venues for trying even serious criminal cases. In 1761, the first year with a substantial number (about a dozen), the first cases, prosecutions of a Canadien's wife and of the two black women mentioned above for receiving and theft (by the slave), all resulted in acquittals, perhaps because the owner of the slave, La Corne Saint-Luc, did not offer any damning evidence.4 But serious crime demanded remedies. A few days later a former French soldier robbed and stabbed to death a family of four, including two children, in the parish of Saint Francis and burned the house to try to conceal the evidence. Within a week he had been arrested, prosecuted before a court martial with the assistance of the capitaines de milice and five other Canadien witnesses, convicted, and sentenced to be hanged, with his body 'hung in irons on a Jibbet, in the same manner as practised in England, until his bones shall drop asunder, as a terror to all evil minded persons.' He was executed eleven days after he committed the crime.5 A trial of a Canadien for killing another in a hunting accident resulted in an acquittal; one other man with a name that

might be French was acquitted of theft and attempted murder after being accused by two women of the British army.⁶

There were a few other prosecutions that year of both old and new subjects, apparently civilians, for theft. Yet, in general, English names appeared rarely; indeed, those civilians with English names who were accused in 1761 were all former soldiers, with two possible exceptions. By 1762, however, the General Courts Martial were dealing with more contentious cases. That year there were a dozen prosecutions. Three were of English merchants, and in 1763, when over twenty prosecutions occurred, including some highly contentious cases, the constitutional, legal, and political significance of military courts trying civilian offenders became a highly visible issue in Quebec, Montreal, and London. These cases probably helped to shape the meaning of government and of civil liberties in Quebec in the ensuing years, sharpening the disputes about law and military governance that arose in the period of the American revolution. In the final months of military government, January to August 1764, probably because of the controversy that had come to surround such cases, only two civilians appeared before a court martial.7

MILITARY COURTS AND PROCEDURE

For the military forces of the crown in the eighteenth century, the court martial, distinguished as either a Garrison Court Martial or a General Court Martial, was the fundamental instrument of order and discipline. Its punishments were harsh and its procedure significantly different from that of civilian courts.8 Thirteen officers filled the roles of both judge and jury: they collectively heard the evidence, decided guilt on a majority vote (two-thirds in capital cases), and ordered the punishment. The prosecutor was another officer; the sentence, if one was passed, was confirmed by the local commanding officer. Without legal training and with only the outlines of a legal code in the Mutiny Acts and Articles of War, the members of the court inevitably relied on their own judgment of what seemed equitable and what the situation required. Charges were not cast in the extremely formal language required in the indictment used in a civil court; the technicalities that could result in acquittals in the ordinary criminal law were largely absent. Although flogging and execution were the common punishments for petty and serious offences, there were also some unusual military specialties, such as running the gauntlet. And punishments could be arbitrary in the most exact sense: where several or many men were convicted of a serious offence, particularly desertion,

which carried the death penalty but which reduced military manpower, a few were sometimes selected for representative punishment, by lot. All sentences were reviewed by the commanding officer, and many were reduced.

Enlisted men, particularly those charged with desertion, generally received harsh punishment quickly decided upon, after a brief outline of the evidence and an even shorter defence. Such cases, and charges of theft and drunkeness, constituted the majority of cases. In serious cases of non-military offences such as murder, trials of soldiers were longer and punishments probably less harsh than those in civilian cases in England. In the rarer instances of officers charged with 'conduct unbecoming,' many witnesses might be called, the evidence sifted in detail over a period of days, and the sentences (often public apologies) contrived to restore army etiquette. Because all proceedings of General Courts Martial were transcribed and sent to London to the judge advocate general (and, if necessary, the king), there was in theory a further level of protection for the defendant from the ignorance or malice of the members of the court. In most cases sentence would already have been carried out, but review of a case might result in better treatment of later defendants.¹⁰

The court martial, and military law in general, was the subject of occasional, sometimes violent public criticism from civilians in Britain. Most often it was aroused by the severity of military punishments, seen by the general public when the army was encamped near a town in the mother country or billeted on populations abroad. Moreover, Englishmen confidently believed their civilian criminal law, particulary its procedure, to be the fairest in the world, and the obvious differences between that law and the proceedings of courts martial troubled them. But the army was the army; few disagreed that deserters had to be deterred by the most severe punishments, and that, if officers had made the court martial into a court of honour, one of the places where the definition of 'an officer and a gentleman' was worked out, that was their business. Yet a court that suited the army had very different connotations when it began to try civilians.

THE QUEBEC CASES

In Quebec, cases were tried before both General Courts Martial and Garrison Courts Martial, and civilians apparently appeared before the latter, too, fcr certain petty offences, although such cases are not considered here. Arguably the reactions of the accused differed somewhat by national origin. For the Canadiens, any comparisons they drew

were of course not to English criminal law but to that of the French regime. Apart from the significant fact that the military courts administered the law of the conqueror, and that much of the population seems in this period, as later, to have avoided the courts so far as possible, there were some striking similarities between English military justice and the criminal law of the ancien régime. French prosecutorial procedure emphasized separate examination of witnesses, the creation of a written dossier of evidence, trials in camera, few if any evidentiary rules, and active participation, with some distinctions, of both royal prosecutor and the judges in questioning and developing the case. In serious cases, where enough preliminary 'proofs' were held to exist, judicial torture could be applied. In all serious cases, too, appeal to higher levels was virtually automatic before sentence was carried out. Many of these characteristics (with the exception of judicial torture) were equally common in British army courts. Although the officers who tried cases did not have formal legal training, some of the chairmen and deputy judge advocates (the prosecutors) acquired a great deal of experience, in hundreds of cases.12

Military justice was charged with different emotional significance for some of the English-speaking 'old subjects' who found themselves accused before it. In the first place, as we have seen, there was a strong whiggish critique of military justice and military law in England, Scotland, and Ireland. Underlying it was the more general constitutional argument, since 1688, that British liberty should not be threatened by standing armies. One of the conventions of the constitution was that the administration of civilian justice should not be overawed by military force, and for that reason troops were almost always withdrawn from assize towns when the judges of assize, the circuit court that tried serious criminal and important civil cases, sat. Only serious disorder likely to threaten the administration of justice itself was considered to justify keeping soldiers nearby.

These political and constitutional positions were constantly sharpened, in Britain and in the colonies, by friction between soldiers and civilians wherever there were significant numbers of troops. Soldiers drank, they demanded loyalty toasts of suspected Jacobites in the period 1715 to 1760, they got into fights, and they often (both enlisted men and officers) scorned civilians. The fact that they were often billeted (as in Quebec) on local householders did not help matters. Taunts, alehouse brawls, and occasional riots were the consequence. And when large civil disorders in Britain, such as food riots, were put down by troops, any loss of life, or

resulting murder trials, further exacerbated ill feeling between army and populace.

It seems likely, therefore, that many of the English-speaking 'old subjects' who arrived in Quebec in the train of the army and later were appalled to discover that they would have to seek justice in military courts. As such cases began to take place, from 1762, it also seems likely that characteristics of court-martial procedure that the French-speaking population found relatively familiar (written dossiers, no juries, combined prosecutorial and judicial roles, discretionary penalties, closed courtrooms) were perceived as oppressive by English defendants precisely because of the parallels with French justice. For French inquisitorial procedure, in the lexicon of Englishmen, was a synonym for oppression by the absolutist state. It was epitomized by the contrast of the lettre de cachet, which Englishmen believed allowed the French state to imprison anyone on the most frivolous of grounds, with their own writ of habeas corpus, which required the British state to prove it had grounds for detention. The fact that it was English officers who were administering unconstitutional justice in a former French colony was striking; the fact that those officers admired many aspects of the old regime was probably well known. And legal counsellors of the old regime were certainly consulted by them. To an English merchant inclined to a dark view of the matter, even the fact that many of the prosecutions were conducted by an officer named Cramahé, of French and Irish background, was not reassuring.¹³

THE CONSTITUTIONAL ISSUE IN LAW

Article 2 of section xx of the Articles of War apparently gave General Courts Martial in jurisdictions without civil courts the power 'to try all persons guilty of wilful murder, theft, robbery, rapes, coining ... and all other capital crimes or other offences and punish offenders according to the known laws of the land, or as the nature of their crimes shall deserve.' The phrase 'all persons' was taken by the military in Quebec to include civilians, and article 2 was explicitly cited in one of the earliest cases as the basis for the conviction. But this was not the interpretation of the law in the judge advocate general's office at the Horse Guards. For the highest lawyers of the army fairly consistently took the position in the eighteenth century that not 'all persons,' but only army personnel, were subject to such courts. This doctrine in effect made the trial of civilians by courts martial unlawful, but the situation in Quebec did not arouse concern for some years. Official copies of the proceedings of General

Courts Martial were forwarded regularly to London, apparently without arousing comment. Most of them, of course, related the cases of soldiers, but even the index pages of the office copies of the judge advocate general clearly distinguished the trials of civilians.¹⁷ Perhaps they were read only by the clerks.

Dispute over the wide use of military law in Quebec apparently first arose over cases in other courts involving essentially civil matters. 18 Similar cases also came before the General Courts Martial. Some, like the proceedings taken against two servants (former soldiers) for running away from their master, Colonel Gabriel Christie, and the complaint of six canoemen against the Montreal merchant Edward Chinn that he had not paid their wages, fell in the category of what contemporaries called 'master and servant' cases. Christie lost at trial, for the contract was dissolved, but the 'sentence' was changed by the commanding officer and the men were forced to return to work for him, in spite of their complaints of great abuse at his hands.¹⁹ Chinn, in his case against the voyageurs, successfully proved a custom to retain wages when furs had gone missing, and he also made successful use of the court against another canoeman for alleged theft of the furs he was carrying. Chinn was probably less pleased that not all the disputed furs were returned to him; the court ordered some to be given to the 'motherless children' of two soldiers.20 There was also a successful prosecution of a publican for receiving stolen furs.21

This use of courts martial was a *de facto* recognition of the unsettled state of civilian justice in the colony and also of the importance of the fur trade. The employment cases perhaps seemed the most natural for the officers to consider, as master and servant cases in England could have penal consequences, at least for servants, and therefore straddled the distinction between criminal and civil cases. But in Quebec at least some such cases probably came before the military courts because English merchants insisted that they were not subject to French civil law, which was being concurrently administered by the *capitaines de milice*, and a military court of English officers was the only alternative.²² And, of course, merchants successfully used courts martial to prosecute in criminal cases affecting them, such as a case of fraud,²³ a theft from a house by a servant boy,²⁴ and a hogshead of rum taken by a soldier from a wharf.²⁵

Meanwhile, civil cases tried by the capitaines could be appealed to the governor, and by 1763 the military governor of Montreal, General Thomas Gage, was perplexed by the 'very ignorant lawyers of Montreal ... obstinate, Quibbling, Chicanning fellows,' who were exploiting 'a Labyrinth of the Law.' He appealed for advice from his superior in New York,

but with the Proclamation of October 1763, the issue, it was thought, could be left for the subsequent establishment of civilian courts. ²⁶ Moreover, the military jurisdiction of the province had already become highly contentious.

It was the famous and bloody case of Marie-Josephte Corriveau of Saint-Vallier, who murdered her husband with a hatchet and whose father was convicted of the crime before he implicated her, that forced the Judge Advocate General's Office in the summer of 1763 to realize that civilians were being tried and condemned by military courts in Quebec.²⁷ (See app. 3, D.) In the view of Charles Gould, the deputy judge advocate general, Corriveau's conviction, execution, and hanging in chains, her father's pardon - in short, all the proceedings - were irregular since there was no military jurisdiction. He was deeply embarrassed for not having noted earlier cases and for not being able to propose a solution that met both his assessment of military law and the acknowledged needs of the military governors of Quebec. General Gage, for one, thought the doctrine absurd and probably viewed Gould as another obstinate, quibbling lawyer. Lieutenant-Colonel Ralph Burton, who had succeeded Gage as military governor at Montreal and had continued with courts martial of civilians as late as June 1764, expressed the hope in July of that year that the 'good intentions' of officers would be taken into account in any litigation that might result against them.28

THE CONSTITUTIONAL ISSUE IN POLITICAL PRACTICE

The doctrine recognizing military jurisdiction over civilians in conquered territories without civilian courts came to be accepted in the early nine-teenth century. That it was not the law at the time of the conquest of Canada caused some anxiety and embarrassment, but no lawsuits, prosecutions, or other consequences appear to have troubled subsequently the officers who tried, convicted, and even executed civilians without legal mandate. Still, the use of such courts in Quebec arguably had more important consequences for the colony than the testy exchanges between military lawyers in London and military officers in Canada. In addition to the awkwardness of legally untrained officers dealing with civilian litigation, and the uncertain place of civil actions in the General Courts Martial, these courts exacerbated political passions in Quebec. We have already noted the prodisposition of English civilians, particularly 'middling men,' to suspect military justice of despotism and to draw parallels with French criminal procedure. Courts martial became even more problematic in the

eyes of 'old subjects' in Quebec when they tried civilians, English merchants, for insulting army officers. Such cases arose from the kinds of conflicts normal wherever armies lived with civilian populations, and particularly when there were other grounds for mutual suspicion and friction.

The first such cases, in 1762, brought the merchants William Grant, Edward Chinn, and Forrest Oakes before a General Court Martial in Montreal, charged with abusing, assaulting, and insulting Ensign Robert Nott.30 In a coffee-house brawl partly caused by a very drunken Nott pressing drink on the reluctant Chinn, Grant was said to have knocked down Nott, prompting a quartermaster to draw his sword and threaten to cut off the limb of any man attacking an officer. Grant's version was that he was disarming the drunken quartermaster. In any case, Nott called the guard and had Chinn and Grant arrested (Chinn was dragged out a window by his hair) and confined, demanding apologies; when they were not given, a court martial was ordered. There, one of the defence witnesses was not allowed to testify since he had been named by Nott as an offender; much of the testimony revolved around whether, and when, Nott had formally informed Chinn of the charge against him. The court found for their fellow officer, and Chinn and Grant were sentenced to fines and to make formal public apologies to Nott before the Montreal garrison, in words specified by the court. 31 The issue of honour and status informed all the proceedings. Oakes, Nott said, had declared that he was a gentleman and could not be sent to the guardhouse, and he had challenged Nott to fight to prove whether he was a gentleman or 'a damned scoundrel.' Oakes 'further said two hundred pounds made a gentleman in the army, and that [he] ... was a gentleman for he was worth ten thousand pounds.' The court sentenced Oakes to fourteen days' imprisonment for 'scurrilous reflections cast by him on the army'; he, too, was sentenced to make a dictated public apology.32

The second important case bringing officers and merchants into conflict was the prosecution in December 1763 of Isaac Todd, Richard McNeall, George Knaggs, John Blake, and William Haywood for abusing and assaulting Captain John Campbell in the execution of his duty.³³ Among the witnesses for the prosecution was La Corne Saint-Luc, recently returned to Quebec and busily building his career by supporting the English military in all things. Campbell, the alleged victim, had married La Corne's daughter, probably earlier that year.³⁴ McNeall and Todd, very drunk after St Andrew's day, had been arrested for having burst into the bedroom of Todd's landlady, who saved herself by jumping from the sec-

ond-storey window. (Todd claimed that he had offered apologies the next morning but that she was bent on a malicious prosecution.) During the arrest some hearty insults were exchanged, and the other defendants had tried to rescue Todd and McNeall from the army guard led by Campbell, who seems to have been very drunk himself. They were led off, partially clothed, surrounded by soldiers with fixed bayonets. Again, part of the issue in the court martial was the legality of the arrest and the right to bail. Again, five defence witnesses were not heard by the court on the grounds that they were somehow involved with the defendants and hence were 'accessories.' The court sentenced the defendants to stiff fines and specified public apologies to Campbell; Burton reduced the fines but enforced the apologies.

The Judge Advocate General's Office in London was already exercised by the Corriveau case of the previous year when the transcript of the Todd case arrived early in 1764. Charles Gould clearly feared that the court martial that convicted Todd et al. was not only ultra vires because the defendants were civilians but guilty of a range of procedural irregularities. In a letter to Burton at Montreal, Gould analysed the shortcomings of the case 'to prevent inconvenience in future': the embarrassment of lawsuits in England against the military. The court had refused evidence of defence witnesses on dubious grounds and had not allowed the defendants proper opportunity to prepare their defences.35 In short, to the general argument Gould mounted with respect to civilians - that courts martial strictly speaking had no jurisdiction over them, even in a country under military occupation - he now added the concern that irregularities because of military ignorance of the law, or because military standards of law were not acceptable to civilians, were a political problem. In the Corriveau case he had already stated the problem in explicit terms, undoubtedly referring to the contemporary Wilkite attack on authoritarian government in England and to recent controversies about impressment: 'Although there has been no Substantial injustice done in this case ... you are so well apprised, how many there are in this Kingdom, who view the Military Arm with a jealous Eye and are ever ready to take advantage of the least mistaken excess of Power.36 In the Todd case, he now admitted that substantial injustice had been done.

CONCLUSION

Military government, and particularly military justice, while necessary, was thus problematic in Quebec. As early as the 1760s its connotations of

authoritarian government were heightened, in the eyes of the Englishspeaking merchants' community, by cases in which they were humiliated before courts of English army officers intent upon upholding the honour of officers and gentlemen. The result could only be to reinforce the determination of some of the merchants to refuse to recognize the legitimacy of the military jurisdiction or of the French civil courts. The Todd case so enraged the Montreal merchants that many of them refused to attend the customary levee of the governor, as representative of the crown, on New Year's Day 1764.37 By that date Thomas Walker, a merchant from Boston, was a leading critic of military justice and army rule. A year later, having been made a magistrate and having curtailed soldiers' billeting privileges, he was beaten severely and had his ear cut off by masked men in his own house. This outrage and its aftermath convulsed the colony and made bad relations between soldiers and civilians much worse. The failure of the authorities to secure convictions of the soldiers whom Walker accused seemed, to some of the merchants, a continuation of the unconstitutional justice of the military regime. Governor James Murray wrote the Lords of Trade in March 1765:

The contempt which military men have ever entertained for mercantile peoples must have been greatly increased in this colony from the circumstances of it. The genteel people of the colony despise merchants and of course esteem the officers who shun them most. On the other hand our merchants are chiefly adventurers of mean education or if old traders such as have failed in other countries[;] all have their fortunes to make, and little solicitous about the means provided the end is obtained.

In Montreal, he added, relations between the military and merchants werer particularly bad:

... as there had been frequent disputes between them and merchants which had been decided by courts martial, it may be supposed the civil establishment was by no means relished by the troops, as the new magistracy must be composed agreable to my instructions, of the very merchants they held so much in contempt ... it happened unluckily the merchants at Montreal[,] the most proper from their circumstances and understanding to be made Justices of the Peace, were those who had had the most disputes with the troops. 38

Some of the merchants who had appeared as defendants before the courts martial of the 1760s continued to demand the constitutional rights of

Englishmen in the following decades. One of them, Isaac Todd, helped lead the merchants' protests against the Quebec Act in the 1770s. He nonetheless remained loyal to Britain during the American revolution and went on to become a very wealthy merchant and father-figure of the fur trade before retiring to Bath. 39 William Grant, who had been convicted in the 1762 case of abusing Ensign Nott, also became wealthy. He, too, supported government against the Americans, but by 1780 he was an opponent of Governor Frederick Haldimand, by 1784 he was calling for an assembly and habeas corpus, and within a few years he was one of the most outspoken critics of the 'French party' in Quebec, demanding English law and English justice. 40 Moreover, a few merchants in Quebec were tempted to join the American rebellion; others at least espoused its principles. The authoritarian cast of military government of Quebec intensified in the revolutionary years, and the conflict of army and civilian notions of freedom and justice became pronounced.41 Those conflicts, between merchants and officers, officers and lawyers, had been rehearsed in the courts martial of the military regime of 1759-64. The legitimacy of the justice to be found in Quebec courts, particularly when the forms and precedents of English common law were ignored, was to be repeatedly called into question in succeeding decades.

NOTES

- 1 Civil cases 'among the inhabitants' were to be tried before local capitaines de milice, with appeals to the local British officer and then the governor: Con Docs 1:at 38–41. See also text at n. 26.
- 2 The numbers are not exact because some accused are not clearly identified as civilians and may have been camp followers; there are also a few multiple charges.
- The sources are the entry books and transcripts (some originals, some office copies) of General Courts Martial kept by the Judge Advocate General's Office, now deposited at the PRO, London, as WO 71/45-/6, /49, /68-/74, /132, / 135-/8. Many but not all of these papers were used by Frederick Bernays Wiener, an American lawyer and reserve judge advocate, in his authoritative Civilians Under Military Justice: The British Practice since 1689 Especially in North America (Chicago: University of Chicago Press 1967). The records of the General Courte Cartial used here, apparently all those surviving for Quebec, Montreal, and Trois-Rivières, are those beginning on the following dates: Quebec: 26 Sept., 16 Nov., 13 Dec. 1759; 30 March, 31 May, 11 June, 11, 13, and 17 July,

11 and 28 Aug., 26 Oct. 1760; 8 Feb., 9 and 23 March, 6 April, 1 and 11 June, 27 July, 17 Aug., 25 Sept., 19 Nov. 1761; 8 Feb., 11 May, 11 June 1762; 29 March, 15 April, 4 July, 27 Sept., 6 Oct. 1763; 11 June 1764. Trois-Rivières: 13 Nov. 1760. Montreal: 8 Dec. 1760; 19 Jan., 15 and 27 Feb., 14 and 26 March, 1 April, 3 June, 3 Aug., 25 Nov. 1761; 15 Feb., 26 March, 22 June, 31 July, 9 Sept., 12 Nov. 1762; 22 Jan., 2 and 13 June, 18 July, 16 Aug., 12 Dec. 1763; 4 April, 14 May, 26 and 28 June 1764.

- 4 Cases of Katherine David, Etien, Joset, 4 March 1761, Montreal, WO 71/135 and WO 71/68.
- 5 14 March 1761, Montreal, WO 71/135 and WO 71/68.
- 6 3 June 1761, Montreal, WO 71/68. 15 March 1761, Montreal, WO 71/135 and WO 71/68.
- 7 See below, 'The Constitutional Issue in Political Practice.'
- 8 For an overview see three articles by Arthur N. Gilbert: 'Military and Civilian Justice in Eighteenth-Century England: An Assessment,' Journal of British Studies, vol. 17, no. 2 (spring 1978), 41; 'The Regimental Courts Martial in the Eighteenth Century,' Albion, vol. 8, no. 1 (spring 1976), 55, 'Law and Honor among Eighteenth Century British Army officers,' The Historical Journal, vol. 9 (March 1976), 75.
- 9 Wiener, Civilians, at 20. Two instances occurred in Quebec in 1759, under Murray: WO 71/68/29, WO 71/46/13.
- 10 See the comments of the deputy judge advocate general on the case of Todd et al., below. Gilbert, 'Military and Civilian Justice,' argues that court-martial proceedings against officers were probably fairer than trials in the civilian courts, largely because no limit was set for the length of a court martial, but the comparison made is with felony trials, which few gentlemen ever endured. On misdemeanour charges, civilians in civilian courts enjoyed the protections (although also the expense) of an unhurried process. They also had right to full counsel and a jury of gentlemen. On the other hand, in the matter of felonies, the short and informal hearings of the General Court Martial in ordinary cases were similar to those of the average criminal case at the Old Bailey.
- 11 Wiener, Civilians, at 46, citing a printed edition: the cases at Montreal included liquor offences, petty fraud, false weights, disorderly houses, small thefts and assaults, and insults; the court also examined debtors.
- 12 See following note.
- 13 Hector Theophilus Cramahé, later lieutenant governor of the province, acted from 1759 to 1764 as deputy judge advocate (prosecutor) in nost, if not all, the cases prosecuted in General Courts Martial held in Quebec City.
- 14 Quoted in Wiener, Civilians, at 23.

Civilians Tried in Military Courts 127

- 15 Joset, 4 March 1761. Murray, however, had doubts: A.L. Burt, The Old Province of Quebec, 2 vols. (Toronto: McClelland and Stewart 1968), 1: at 94-5.
- 16 Wiener, Civilians, ch. 1.
- 17 See WO 71/49, /70, /71, /74.
- 18 See the discussion below regarding appeals to the governor.
- 19 2 Aug. 1762, Montreal, WO 71/71. On master and servant cases in the empire, see P. Craven and Douglas Hay, 'The Criminalization of "free" labour: Master and Servant in Comparative Perspective,' Slavery and Abolition, vol. 15, no. 2 (August 1994), 71.
- 20 16 Dec. 1763, Montreal, WO 71/49. 17 and 20 Aug. 1763, Montreal, WO 71/73. He failed to get a conviction for theft against two men in another case, 22 Aug. 1763, Montreal, WO 71/73.
- 21 26 March 1762, WO 71/70.
- 22 Wiener, Civilians, at 39, 50.
- 23 17 March 1763, Montreal, WO 71/73.
- 24 8 Feb. 1762, Quebec, WO 71/136 and WO 71/70.
- 25 26 Oct. 1760, WO 71/68.
- 26 Wiener, Civilians, 50ff.
- 27 Luc Lacourcière, 'Corriveau, Marie-Josephte,' DCB 3: 142; WO 71/137. The case became a powerful image in Quebec popular culture. See the sources cited in Lacourcière, 'Corriveau, Marie-Josephte.'
- 28 June 1764, WO 71/138 and WO 71/74/213–16; Wiener, Civilians, 55ff and appendix I, D. Wiener's account suggests that Burton was making a general point; his remark, however, arose in reply to Gould's warnings in the Todd case: see below.
- 29 Wiener, Civilians, at 59-63.
- 30 15-20 Feb. 1762, Montreal, WO 71/136 and WO 71/70.
- 31 Gage reduced the fines.
- 32 Gage reduced the sentence to twenty-four hours' imprisonment, security for good behaviour, and no apology.
- 33 13 and 15 Dec. 1763, Montreal, WO 71/49.
- 34 Pierre Tousignant and Madeleine Dionne-Tousignant, 'La Corne, Lucde,' DCB 4:425. Campbell was later accused by Thomas Walker of being one of his attackers: see below.
- 35 Charles Gould to Ralph Burton, Montreal, 14 April 1764, WO 71/49/261-3.
- 36 Charles Gould to Governor James Murray, 11 Aug. 1763, Wiener, Civilians, appendix I, D, 2, 251–2.
- 37 Burt, Old Province, 1: at 96-8.
- 38 The attack on Walker took place in December 1764, after the establishment of civil government and courts, and the affair profoundly affected relations for

128 Canadian State Trials I

years. In the abortive trial of some soldiers for the offence in 1766, a 'French protestant' JP was active. This was probably Pierre Du Calvet, recently appointed to the bench, who became a famous victim of military justice in the 1780s, when Walker was still in touch with him. See Governor Murray to, the Lords of Trade, 2 March 1765, CO42/3, 559ff: Burt, Old Province, 1:102ff; Lewis H. Thomas, 'Walker, Thomas,' DCB 4:758; and Jean-Marie Fecteau and Douglas Hay, "Government by Will and Pleasure Instead of Law": Military Justice and the Legal System in Quebec, 1755–83,' in this volume.

- 39 Myron Manryk, Todd, Isaac, DCB 5: 818.
- 40 David Roberts, 'Grant, William,' DCB 5: 367.
- 41 See the chapter by Fecteau and Hay in this volume.