

Analysis of the *Magistrate's Manual*:

An Illustration of the Time Period and Attitudes

While researching the criminal justice system of pre-confederation Canada, I came across a large document detailing the laws in place in 1843, and the protocols for maintaining those laws. The document in discussion is *The Provincial Justice, or Magistrate's Manual, Being a Complete Digest of the Criminal Law of Canada, and A Compendious and General View of the Provincial Law of Upper Canada; With Practical Forms, For the Use of The Magistracy*, by W. C. Keele. This document was written in 1843 and is an updated version from the previous manual written in 1835, which I was unable to find during my research. Since the document has 640 pages, I am specifically dissecting the section titled "Execution" found on pages 254-256. In this section of the document, the readers can get a general idea of the time period and the attitudes surrounding the laws and execution, while getting a glimpse of life in Upper Canada.

Beginning with the time period, one can conclude that Upper Canada was under strong British rule, religious, valued their resources, and did not have near the scientific information available in Canada today. It is important to note that execution was not the answer to all crimes, and primarily treason and murder are discussed in this part of the document. Execution for the most part was done by hanging of the neck, and depending on the reason for execution, some of the bodies would be given to the King, allowing him to decide the method of disposal¹. This shows that Upper Canada at this time was highly influenced by the Crown, and most likely under

¹ W.C. Keele, *The Provincial Justice, or Magistrate's Manual, Being a Complete Digest of the Criminal Law of Canada, and A Compendious and General View of the Provincial Law of Upper Canada; With Practical Forms, For the Use of The Magistracy*, (Toronto, H. & W. Rowsell, 1843), 255.

British control. The British settlers at this time were also highly influenced by religion. When the judge gives the execution order it may take long periods of time for the execution to occur, except in the case of a murder². Murderers are typically dealt with the following day, unless that day is a Sunday³. Sunday is generally known in the Christian and Catholic religions as a day to rest, outlined more in *The Bible*. By not executing felons on Sundays, the readers can take away that religion has a big role in how the society is run. Criminals awaiting death row were also separated from fellow prisoners and only given bread and water to stay alive⁴. It can be seen that the powers in charge did not want to essentially waste valuable food on criminals who would be dying shortly anyways. They value the food they grow and catch, and the least valuable food is most likely bread and water; simultaneously conveying that fruits, vegetables, and meat are worth more in this society. Another aspect that can be gathered is that this society has much less scientific information than what is available today in 2018. The way they execute is through hanging, which is a basic method but occasionally may not work, followed by the criminal being hanged again⁵. At this point in history, the technology was not advanced enough to discover the lethal injection technique. Through hanging it is also noted that the deaths were less torturous when comparing to earlier methods⁶. In the text it is noted that treason was historically dealt by disembowelment and dismembering of the body⁷. This document states that treason cases in 1843, would first involve being hanged to ensure death, and then dissected and anatomized⁸. By

² Keele, *Magistrate's Manual*, 254.

³ *Ibid.*

⁴ *Ibid*, 255.

⁵ *Ibid*, 254.

⁶ *Ibid*, 255.

⁷ *Ibid.*

⁸ *Ibid.*

taking apart the body more carefully, this could allow for research to be done on the anatomy of the human body, though not specifically stated in the document⁹.

The next notable feature about the document is that one can infer the attitudes that the people had surrounding laws and execution including which crimes were considered the worst. Judges throughout the text are described to have great power when it comes to the matter of life or death¹⁰. For example, it is mentioned that judges are the ones who can sentence executions and are also the ones who can either temporarily postpone or permanently relieve these sentences¹¹. This can lead readers to assume that judges are highly respected within the society due to their powerful roles. Criminals in the text are also characterized by their actions, rather than their gender. Men and women are essentially treated equally in regard to their crimes. There is one exception however, and that is if the convicted woman is pregnant¹². In this case the woman would be assessed and if she is found to be “quick with child” the execution is postponed until after the birth¹³. If the assessment comes back and there is a chance that the woman is pregnant, the execution will be postponed until birth, or until it is seen that there is no child¹⁴. This shows the pro-life aspect within the lawmakers, although it is not said that they are exactly pro-life. They are allowing the child to be born regardless of the actions of their parent, and they are not executing the child with their parent¹⁵. It is easy to see that some crimes are worse than others when it comes to their punishments. For example, the death penalty is not used excessively, but rather to highlight the extreme crimes of murder and treason¹⁶. This tells the

⁹ Keele, *Magistrate's Manual*, 255.

¹⁰ *Ibid*, 254-255.

¹¹ *Ibid*, 255.

¹² *Ibid*.

¹³ *Ibid*.

¹⁴ *Ibid*.

¹⁵ *Ibid*.

¹⁶ *Ibid*, 254-255.

readers and the people of 1843 Upper Canada that the attitudes towards murder and treason are very serious and should not be performed. Those who decide to go against these laws are then used as a scare tactic to frighten others from following the same path¹⁷. For example, the hanging and then dissection of someone who commits treason should hopefully scare others from committing treason, and that is likely the thought process of those in charge¹⁸.

The creator of this document, W. C. Keele, was an attorney and solicitor so it can be said with confidence that this document was created with top knowledge of the subject matter. It also refrains from having many biases due to the contents being the laws of Upper Canada, which overall is not based on different interpretations. The technical language used throughout the document reinforces the educational background of the author, making this a credible primary source. Overall, the main purpose of this document is to outline in great detail the many laws in Upper Canada in 1843, so that people can be informed of what is and is not allowed. It also serves as a resource for lawyers, justices, and for lawmaking in the future.

¹⁷ Keele, *Magistrate's Manual*, 255.

¹⁸ *Ibid.*