

## LAWS3305 from Thurs, October 3

**The future of prisons** - what will happen? Ex: the Kingston Penitentiary is now closed; prisoners forwarded on to other prisons in Canada.

- Ex: California - turned down 60,000 non-violent inmates, whereas Canada is trying to hang onto them, imprison them.

### ***An Utterly Impartial History of Britain***

- by John O'Farrell

- discusses the enlightenment and how it relates to law

- "challenging everything that had been accepted because of tradition over superstition"

- **Mary Wollstonecraft**: philosopher, historian and author. Regarded as the very root of modern feminism, all the way back to the 18th+19th centuries. She wondered how we could take the moral highground when the state executes people, which only creates animosity and hatred. Essay idea -- trace her impact and look at her situation at the time.

### **The Great Reforms and their Collateral Aspect:**

- legal reforms segued into the creation of the state police - how do we get there?

- historically, there was something called the **Statute of Winchester -- about the administration of criminal law; created the justice of the peace (link between the victim and the process); institutionalized sheriff and constables who were elected by the community, preserved the local order, and preserved judgments; also references citizen responsibilities (ex: the watch and the human cry.)**

- but some of these early provisions faded (esp. the watch and the human cry; people now more concerned w/surviving and weren't so eager to perform duties for fellow citizens.)

- **18th C: things started picking up** -- private watchmen being hired, insurance companies providing own police; prosecution societies getting together and protecting themselves

- **the Watching Acts** - passed in the 18th C. Largely in concern w/property crime -- mercantile class wanting to secure their goods and services. In some town corporations, a private watchmen was hired to patrol the streets. Rewards were given for apprehension of miscreants.

- in certain communities, there was an honorarium paid to watchmen. For a while, people would pay others to take over their duties.

- eventually, in some communities, there was a 24h watchman.

- also, **thieftakers** -- ex: **Johnathan Wilde**.

- **Thieftakers**: played the system by extorting goods from thieves for resale in newspapers and getting money for them; even turned in people who worked for him

- he was hanged for receiving goods

### **The earliest form of policing took place at Bow Street Magistrate's Court.**

- in about 1740, Henry Fielding was the JP (justice of the peace / magistrate) there

- Fielding was paid by the local government

- Bow Street runners were people Fielding sent out to arrest and make warrants all across the country, reported back to magistrate

- **an attempt to administer the criminal law**

- when Henry died, John Fielding, his brother, organized a further provision of his brother's act: **the mounted police**

- there was already a harbour police along the Thymes in London, but they were not germane to the communities throughout the country

- Henry Fielding said crime was committed by the poor because they were too lazy to work -- were trying to take what wasn't theirs.

- the great hurdle for policing is the British sense of civil liberty; not much left to the working man at this time because he'd be uneducated, hopeless and into heavy drinking. Last thing s/he wants is a state force patrolling the streets to keep the peace.

### **The key thing about Bow Street: there was a formal attachment to the magistrate's office: some form of organization.**

#### **Sir Robert Peel:**

- entered into the fray in the late 1820s

- in many ways, became the voice for Bentham's enthusiasm

- was a Tory

- 1823: **took over the reform movement. He appreciated that extreme severe penalties had not resulted in social security.**

- said death was not serving the public cause

- modern society requires a more responsive criminal law system that is more in control

- argued that there should be a police force to enforce the laws: state intervention in public behaviour

- tried first in the early 1820s

- was the most informed person; knew what he was talking about

- between 1822 and 27, he overhauled over 220 statutes

- opened a committee to investigate possibilities of a state police force -- got voted down

- BUT the Duke supported Peel in this because he knew the military were unfit for the streets -- they were for killing & attacking

- The Met: created in 1829 (*Metropolitan Police Act*.) Suggested that senior ranks should be filled from those below; those experienced in the streets. **Headquartered at the Scotland Yard.** 1000 men initially recruited, full time occupation, had a uniform. Selected, trained, and principle job was to police the community.

- demonstrated peace and order, someone you could call upon when in danger
- Wellington saw the merit behind Peel's initiative and supported it
- **police also decentralized to local detachments:** whole thing controlled by Scotland Yard

#### **The County and Burgh Police Act:**

- every community in Great Britain would have to have a police detachment
- for Brits, was an unprecedented **surveillance program**
- but was, in another way, an effort to create a social/moral regime and enforce it

#### **Sir General James Wolfe, Painting of *On the Plains of Abraham***

- 1759: very dramatic painting
- violent colours, dramatic sky, but a balanced presentation w/the dying Wolfe in the center
- Aboriginal in bottom left pondering this great moment
- that morning, on the cliffs, Abraham, 15-minute gunfire
- Louis Manquant led the French against Wolfe
- Brits held their fire
- on this morning, many things changed: French said that from that moment on, they were victims of conquest
- the British imposed Marshall Law (military law)
- imposed inquisitorial law (**judge-driven**)
- **the judge did the inquiring (questioning)** – no jury
- **as well, the presumption of guilt**
- but France was well-policed (state police)
- when a charge was laid there, it was a serious thing
- whereas in Britain, it happened all the time
- in France, when a charge did materialize, it was a serious matter. For a conviction, they had to have a confession and there had to be 2 witnesses.
- Sometimes in this period there was interrogation w/torture
- the British conquerers were driven to create a compromise: see this compromise in a couple of documents, one is called the *Treaty of Paris*, aka the *Royal Proclamation*. What this did was **end the 7-Years War (French-British conflict in North America)**
- **France chose to give up New France, all its holdings, in exchange for getting Guadeloupe**
- it was because of this settlement of the 1763 declaration that the tea party happened, the American Revolution, etc.
- With the **Treaty of Paris**, the province of Quebec was created
- France gave up new France, went for Guadeloupe, relinquished all its claims to the Mississippi and Ohio
- **After 1763, aboriginals were consulted before anything was done to their ancestral lands.** Anything to do with First Nations land should be done by the public and there would be written treaties resulting from such negotiations (**as outlined in the Treaty of Paris**)
- **The Quebec Act:**
- consolidated the British experience in conquering New France
- under this act, which the Roman Catholic society (French-Canadian upper class) benefitted from, priests could still gather tides up and down the St Lawrence; **the French Civil Law Code could be retained in Quebec;** in addition, French Canadian merchants; prosecution to be done by the crown (rather than some competing commercial interest)
- the boundaries of Quebec were extended to accommodate the fur traders
- there was a governor and council system; no freely elected legislative assembly yet

- in many ways, French Canadian historians were 'honest' – this act was the source of why French Canadians still feel they have a special place in the country because they were given these concessions
- but at the same time, by pacifying the locals, it reinstated the Catholic hierarchy for centuries
- the colonial office still approved a lot of legislation.

**We only got legislative autonomy in Canada (lost the oversight of the British Colonial Office) in 1931, by the Statute of Westminster**

- our Supreme Court only came the court of last truly in 1949
- until that period of time, if you had a basis for appeal under the Supreme Court of Canada, you could go to England and take one more shot – this was until 1949

**The Garrows (Post-1949):**

(Garrow's Law)

- a British period legal drama about 18<sup>th</sup> C lawyer Willian Barrow
- whole origin of theory of council: what we now call the “**adversary system**” -- the ultimate extension of trial by ordeal in the medieval times
- idea: from 2 equal, impartial persons emerges the truth. Very rarely does the truth emerge, but sometimes justice does.

Next week: arrival of British in New France, moving to Great North West, RCMP, Wild West of Canada