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On the Case:  
Explorations in  
Social History

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## Introduction

### Social History and Case Files Research

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The historian's craft is comparable to the work of a detective 'on the case.' We check for clues about intriguing or informative events and people, track down leads in libraries and archives, and sometimes conduct interviews with 'eye witnesses' to the past. We examine diverse and fragmentary evidence, revise theories or common-sense assumptions against the materials gathered – all the while aiming to reach a resolution. But historians do not simply gather 'facts' about the past and tell them to others. We make choices about who and what we deem worthy of study and which questions we wish to explore. We hope to discover new things, but our gaze is also informed by our own world-view and social location and by compelling theories and analytical approaches. We read our sources carefully, paying attention to detail, nuance, and context, but we also assess them, deciding what to preserve or discard. And we assemble our findings on a topic into an intellectually coherent whole, even when we emphasize the messy or contradictory character of the past. The process is not a straightforward one, and few scholars, even as they interpret data and draw conclusions, would claim to have found 'the truth'; indeed, many historians today would reject the notion that the truth is there to be found.<sup>1</sup>

In this book we also use the phrase 'on the case' literally. All the authors focus on a particular type of source, namely case files or case records, in order to examine a variety of subjects and discuss theoretical and methodological issues that such sources raise. The term *case file*, broadly defined, refers to the records generated by political, social, legal, and other institutions entrusted with the task of categorizing and assessing certain populations, usually with the purpose of supervising, treating, punishing, servicing, and/or reforming individuals or groups deemed in some way deviants or victims.<sup>2</sup> Case files may be an administrative convenience and/or central to the workings, identity, and power of a bureaucracy. Unlike the census, case files are not always routinely gener-

ated and they usually contain a great deal of non-standardized verbal information, such as testimony.

Readers will encounter a wide range of case files in this book, including psychiatrists' case histories of sexual deviants, employment records of sailors, court proceedings and capital-offence case files, state welfare and Indian Affairs reports, refugee reception records, the patient records of hospital and asylum doctors, and state security files. The diversity itself suggests a significant aspect of our modern world – the desire to keep track of people and have a tracking record. The authors have mined these records in an effort to expose the words and actions of authorities and experts, and to recover the lives of the less powerful. A wide array of groups are studied. They include members of Protestant religious sects, the elderly, Native farmers on marginal lands, single mothers, refugee women, political activists, female hospital patients, and people who appeared in court: abused women, men arrested for assault and murder, girls charged with delinquency, and men accused of homosexual acts. The themes addressed are equally diverse: the rise of middle-class institutions during an era of capitalist transformation; state, moral, religious, and medical regulation of adults and children; constructions of femininity and masculinity; professionalization; the racialized character of laws and politics; state repression; and the subcultures of so-called deviants. The essays emerge from differing intellectual perspectives and research methodologies. Though all of them consider questions of theory and method, those in part I deal at length with these issues, while the remainder are demonstrations of case files research and have been grouped under broad thematic topics that reflect current research trends in social history. Together, the essays reflect the continuing energy and exuberance of Canadian social history and the concerns of those writing it. If some historians bemoan the loss of a unified vision of Canada owing to the diversity of peoples and themes being researched, an accusation hurled at social historians rewriting history from the vantage points of marginal groups, none of our contributors is among them. We happily accept responsibility for fracturing the Canadian 'story' by writing about people and events ignored in so-called national histories of Canada.<sup>3</sup>

### Doing Case Files Research

Case files are not entirely new sources for historians, of course. Influential studies by European scholars such as Carlo Ginsberg and Natalie Zemon Davis revealed the significance of similar types of sources.<sup>4</sup> So did Joy Parr's pioneering work on British juvenile immigration schemes to Canada.<sup>5</sup> In recent years, growing numbers of scholars in Canada and elsewhere have become interested

in case files research or collecting records that bear similarities (as well as differences) with modern case files.<sup>6</sup> Yet, despite this, scholars have lacked a forum to debate the merits (and potential pitfalls) of such work, discuss varying perspectives and approaches, and compare research findings with colleagues outside their specialized fields of study.

This volume began as a workshop of invited colleagues doing archives-based research with case files in a number of different fields. It offered a three-day forum for comparative analysis, debate, and feedback on each other's work. A serious dose of irony was injected into our discussions by Province of Ontario archivist Jack Choules, who noted that current interest in case files is occurring at a time when funding crises and lack of storage space mean that archives across Canada (and elsewhere) must consider the option of preserving only selective samples of legal, medical, and other case records. Selective preservation means a loss of valuable material; also, today's criteria of selection likely will not reflect all the concerns of subsequent generations. That historians cannot afford to be passive users of archives but should lobby for both preservation of records and access to restricted materials are points underscored in Gregory Kealey's essay on the origins of Canada's security system. Indeed, recent access to security records has helped to reinvigorate a topic once considered the prerogative of political historians.

Case files have a long history and are incredibly varied. Even in periods before the rise of modern casework methods we associate with twentieth-century health-care, social-work, and legal professionals, the materials generated by earlier record-keepers are familiar: serialized instalments of fragmentary information on specific individuals. Such elements are evident in the nineteenth-century Catholic nuns' registries used by Bettina Bradbury to reconstruct the institutional regimes of Montreal's elderly, and in the entries documenting the nineteenth-century Baptist and Methodist church misconduct trials examined by Lynne Marks. Frequently, the clients' voices and actions are evident in case file records, though they may appear in muted forms, such as witness courtroom testimony shaped by lawyers and procedural rules of trials examined by Lynne Marks. Frequently, the clients' voices and actions are evident in case file records, though they may appear in muted forms, such as witness courtroom testimony shaped by lawyers and procedural rules of evidence and summaries of interviews conducted by investigating officers. Such sources cannot be read as though they represented an unmediated text on a person's life. Often case files are not even single documents. For example, the legal 'dossier' usually is composed of different types of materials, such as trial transcripts, medical evaluations, psychiatric case histories, and perhaps letters of character or affidavits signed by the client or friends and family. As Steven Maynard observes, historians sometimes mistreat the case file as a monolithic whole, haphazardly pulling fragments of information and quotations from various parts of the file as it fits their narrative and interpretive

slant. Different case files can contain different things. In some case files, intimate details of an individual's life are methodically recorded with clinical precision, while in other files, personal histories are brief or obscured by religious exhortations or the professional vocabulary of the authorities producing the records.

The creation of a case file implies the intervention of institutional and bureaucratic power into people's lives. The (usually middle-class) staff associated with these sources of power, whether professionals or volunteers, generally were concerned to resolve conflicts, bring their clients into conformity with dominant social and political norms, and/or punish political, sexual, and other transgressors. Whether dealing with 'public' or 'private' behaviour, the interface of such contact usually results in the institution 'taking over,' significantly shaping the environment and limiting the choices of the subject populations.<sup>7</sup> The irony is that it is not always clear why particular individuals ended up having a specific type of case file produced on them. Sexual deviants who found themselves in criminal courts could just as easily have been incarcerated in psychiatric hospitals or escaped detection altogether. Yet, whatever the specifics of any individual case, as Karen Dubinsky observes, case file records are qualitatively rich sources, which is why we are drawn to them. They reveal the vulnerability of many in the past, but also illustrate the resilience of individuals. In uncovering their agency we face a paradox: our legal obligations as researchers to protect the privacy of individuals in the past can lead us to write the marginal into history by writing their names and faces out of it. But even this problem is not uniform across sources. Collections of records with varying provenance have different restrictions. The holders of some files place little if any restrictions on their use, others insist on name changes, while still others require anonymity to the point that a reader cannot trace the person through footnotes back to the original records.

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Historians have turned to case files because they offer us a rare window on human interactions and conflict. Complex power relations play themselves out at the local level, sometimes with unpredictable outcomes. If case files do not provide the client's unmediated voice, they help us explore still compelling questions, such as how certain populations became subject to the institutional power of medicine and the law, or how the ascendancy of industrial capitalist relations and middle-class hegemony in Western societies shaped institutional practices and everyday assumptions regarding appropriate conduct. These records can illuminate the ways in which dominant class, gender, and racial ideologies shaped official discourses and action, and relations between experts and clients. In still other cases, client voices are recorded, however distorted, leaving us to debate the status of transcribed interviews and court testimony.<sup>8</sup>

### Social History, Past and Present

Social historians are not sole custodians of the case files in the archives, and we intend this book to be relevant to case files scholars in other disciplines. Still, we want to place these essays within the larger context of social-history scholarship to underscore the point that recent historical work with case files reflects both continuities and new trends in the field. Social history in Canada and elsewhere in the last three decades was largely committed to the recovery of the lives of those individuals and groups (including workers, women, farmers, and the poor) traditionally dismissed or ignored as marginal, inarticulate, and powerless. Influenced by the New Left and feminist politics of the 1960s and 1970s, the field's early practitioners launched an ambitious project to redefine who constituted legitimate historical subjects.<sup>9</sup> Younger scholars have inherited, as well as challenged, the questions and frameworks that have marked the field. In Canada, this large scholarly output, most of which dates from the 1970s,<sup>10</sup> has transformed the writing and teaching of history. Alongside the many studies in Canadian working-class, women's, immigrant, and family history,<sup>11</sup> important research exists on institutional populations, such as workhouse and asylum residents and prisoners,<sup>12</sup> and on the origins, the policies, and, to a lesser extent, the recipients of philanthropic or state welfare systems.<sup>13</sup> New specializations, such as gay/lesbian history, and animated debates over the role of theory, and which theory, to be used in history have helped ensure that social history remains a rich and rigorous field of enquiry.<sup>14</sup>

Notwithstanding social history's early association with neglected subjects, from the start scholars on the international scene were doing more than recovering individuals and groups. They explored critical historical processes – the transition from feudalism to capitalism, land-tenure systems and pre-industrial social relations, the rise of institutions – and how such developments reconfigured people's lives and options. Social histories of Canada produced in the last two decades similarly reflect a long-standing interest in the differential impact of economic transformations on women, workers, and families; daily life and work; and people's lives and options. Social histories of Canada produced in the last two decades similarly reflect a long-standing interest in the differential impact of economic transformations on women, workers, and families; daily life and conflict in pre-industrial and industrial settings; and mobility in rural and urban locales. Whether considering the class structure of commercial cities, rural or emigrant families 'on the move,' or early Quebec, these studies offered detailed household, business, and community reconstructions based on painstaking statistical gathering and demographic modes of analysis.<sup>15</sup> While some works were criticized, quite rightly, for lack of attention to gender differences and women's lives in particular, continuing important work in these areas attests to the need to revisit such topics.

The family, for example, receives attention here in several essays, all of them

informed by feminist analyses that seek to disentangle the family, to recognize it as a flexible institution but also as an arena of negotiation and conflict among members with unequal resources. AnnaLee Golz's analysis of the scripted language of battered wives who exposed their abusive men in nineteenth-century Ontario courts, Franca Iacovetta's discussion of working-class parents who used the family court to punish disobedient daughters, and Marlene Epp's study of post-1945 Mennonite refugee women and the various people who formed their 'grab bag' families suggest how the insights of women's and gender history have helped to rewrite (dis-aggregate) family-history. Often drawing on case files, recent scholarship on marital cruelty and domestic conflict are valuable correctives to a family history literature that once focused largely on the cooperative aspects of family-based economic strategies of survival and success.<sup>16</sup> Marks's effort to map the transitions from premodern (church-based) to modern (state-based) forms of regulating people's behaviour also reflects an ongoing interest in charting the implications for family relations and other aspects of everyday life of major societal transformations. In addressing issues of conflict within religious communities, she draws on sources that religious historians have largely neglected, and contributes towards a developing social history of religious activity.<sup>17</sup> Robin Brownlie's study of government plans to transform World War One Native veterans into 'petty patriarchs' of agriculturally settled families charts some depressingly predictable features, including parsimonious state officials and patronizing Indian agents.<sup>18</sup> But her analysis of Native men's rejection of the Indian agents' disparaging profiles reveals little-explored aspects of Native masculinity that incorporated notions of breadwinner and family provider.

Since the 1970s, social historians in Canada and abroad have also been interested in the campaigns that accompanied the rise and ascendancy of the middle classes. Such an interest was evident in the early 'social control' literature that probed the programs of middle-class reformers involved in movements as seemingly diverse as schooling reform and delinquency laws, temperance and prohibition, female suffrage, sabbatarianism, eugenics, regulation of prostitution, charity-giving, and state welfare.<sup>19</sup> While this scholarship told us considerably more about the anxieties, activities, and limitations of bourgeois reformers and civic authorities than about the targets of reform, some efforts were made to understand how the working classes and poor responded to these innovations. Given the current preoccupation of many case files scholars with probing both the processes by which the state and regulatory agencies intervened in people's lives and how people resisted or negotiated such intrusions, the value of this earlier work should not be forgotten. Either implicitly or explicitly, several essays in this collection, including those by Eric Sager, Kealey, Maynard,

Margaret Little, Golz, Iacovetta, and Geoffrey Reaume and Lykke de la Cour reveal the influence of earlier Marxist-inspired studies of state power. Scholars of capitalist state formation and the concomitant creation of a moral culture infused by bourgeois values, and of the ideological power of the legal system, highlighted the processes whereby the state and its related agencies could rule effectively over a citizenry without persistent recourse to coercion. They did (and do) so by legitimizing certain behaviours and ideas and encouraging conformity to them. Such ideological processes, if need be, could be enforced through repression and punishment.<sup>20</sup> The 'dossier' can be seen as the product of authorities exercising power over their citizens, or of a dialectic encounter between experts backed by state, medical, or religious power, and clients possessing far fewer resources. It thus offers us a way of examining in specific contexts the complex power dynamics that characterized relations between dominant and subordinate groups. Sager's discussion of the non-coercive means by which British imperial authorities maintained supervision over work crews aboard ocean-going ships is one such example. Others examine how family, households, religious and secular courts, welfare offices, and hospitals became dramatic sites of contestation. The degree of intrusion and coercion, the moral and social pressures to conform, link all the papers. Scholars using any set of case files must understand how the institution producing them exercised its power.

An interest in how state institutions both imposed conformity and encouraged its citizens to censor voluntarily their actions has links with Gramsci's notion of hegemony, a concept on which several authors draw. It is an explanatory tool for understanding how state-sanctioned ideas and behaviours that actually reflect and serve the interests of the dominant classes can take on a status as the 'natural' order of things or be internalized by many (though never all) of its citizens as appropriate.<sup>21</sup> Though perhaps leery of the overdrawn conspiratorial tone present in some earlier analyses, many contemporary historians have shared similar research goals. And, of course, social historians of various persuasions have always hoped to find resistant and alternative actions of those who opposed the mainstream. Here, Wendy Mitchinson's discussion of the physical pain that many Canadian women endured before seeking medical aid and James Walker's examination of Chinese restaurant owner Quong Wing's stand against labour laws prohibiting his hiring of white women offer analyses of how competing claims about rights and entitlement can inform community standards. They plot the defiance of modest citizens who, as in the case of women patients, tried to influence their encounters with doctors or, as in Wing's case, challenged a democratic liberal society to live up to its rhetoric of rights and tolerance.

Also revealing some important continuities with earlier literatures on reform and social control is recent work in the area of moral regulation. These scholars are particularly interested in exposing the processes whereby certain behaviours and values become marginalized as deviant while others are legitimated as moral, at least on the part of mainstream society. This literature has been influenced by Michel Foucault, whose work shifted the lens from state formation (the focus of many Marxist scholars) to the ways in which state power infiltrated civil society, defining standards of conduct and otherwise shaping social and moral behaviour. More particularly, he considered the rise of specialized expert discourses<sup>22</sup> within various professionalizing disciplines, such as medicine, psychiatry, and criminology, and their role in defining and enforcing proscribed sexual and non-sexual conduct.<sup>23</sup> As Carolyn Strange observes, Foucault argued that these new scientific discourses supplanted earlier religious and 'superstitious' authority not because they discovered previously unknown truths but, rather, because they succeeded in constructing new ways of distinguishing truth from falsity, natural from the unnatural. Angus McLaren's reading of the British Columbia murder trials explores contemporary notions of acceptable and unacceptable forms of masculine aggression. Little, Epp, de la Cour/Reaume, Golz, and Iacovetta do the same for sexual and other transgressors. Several authors, including Maynard and Strange, have taken up Foucault's analysis of the dossier and his famous axiom, that knowledge is power, as a way of exploring the competing truth claims and expert opinions that shaped criminal case histories. Strange's essay challenges us to resist the temptation to read 'the truth' in the remarkably rich and compelling materials contained in the capital-offence case files of convicted murderers. Maynard illustrates how Ontario psychiatrists actively constructed and pathologized men's homosexual experiences into cases of insanity, perversion, and criminal behaviour. These discursive practices, he adds, were steeped in and generated relations of power that could be used to limit homosexual men's freedom. Significantly, none of the essays on regulation have adopted a dichotomous position in favour of Marx or Foucault, or between discourse analysis and materialist approaches, preferring instead to integrate useful insights from these and other perspectives.

Where the social-control literature was weakest was on the question of women and gender, and the differential impact that the state, law, and professions could have on female and male clients. Historians of women have documented how gender mediated class and power relations, developing analytical frameworks that acknowledged patriarchal forms of oppression as well as female agency – that is, women's capacity to pursue choices and strategies amid constrained and bleak conditions. The continuing importance of female agency as a descriptive and analytical tool in women's history links all of the essays

here dealing with women's and girls' lives. But perhaps the most explicit assertion of the theme of the agency of the oppressed is in de la Cour's and Reaume's descriptions of how psychiatric patients, in this instance both women and men, defied medical authorities by constructing their own definitions of illness and developing their own social practices within the asylum. That medical history has long produced 'top-down' approaches celebrating professional, institutional, and therapeutic developments partially explains why recent contributions to this field so strenuously stress patient agency.<sup>24</sup>

Contributors addressing the dialectical tensions between oppression and the agency of women and other marginal groups have drawn on a diverse scholarship. Particularly influential, however, as Dubinsky's afterword notes, is Linda Gordon's work on domestic violence and on the welfare state. Her *Heroes of Their Own Lives* argues that women social-welfare clients, more than simply relinquishing autonomy in return for material assistance, were active players, sometimes inviting, sometimes resisting agency intervention, and thus shaping the nature of 'the social control experience'.<sup>25</sup> For several contributors, but especially Little in her essay on single-mother welfare recipients, Gordon's modified social-control model is important. Little's portrayal of the travelling caseworkers who evaluated the eligibility of poor women in southern Ontario also reminds us that our studies of marginal people cannot simply dismiss the social-control agents as 'unwelcome intruders' into our research.<sup>26</sup> Nor can we treat them in monolithic terms, as simply the faceless agents of the state or patriarchy. Their varied backgrounds, front-line work, relations with superiors, and other features must also be scrutinized. The relationship of power is always a dynamic one. And if agents were not monolithic, neither were the institutions they represented, some of which created enduring regimes while others failed to do so.

### Reading Case Files after 'The Linguistic Turn'

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Reading Case Files after 'The Linguistic Turn'

In exploring poorly understood populations, processes, and phenomena, the pioneering generation of social historians were optimistic about the potentially transformative impact their work might have on historical practice and understanding. They set into motion an ambitious project. More than thirty years of scholarly output has not erased the central epistemological challenges facing researchers in the field, namely: how do we interpret the experiences, strategies, and perceptions of those women, men, and children who did not leave behind their own written record and who appear in the historical record only fleetingly and usually as the objects or targets of more powerful others? Complicating matters is the nature of our evidence, which usually does not come in the form

of private diaries or other first-hand accounts of those whose lives we hope to illuminate. Observations, reports, surveys, and other records are generated by outsiders, be they middle-class reformers, professional social experts, and officials connected with growing state bureaucracies and social institutions. (Of course, elite diaries and journals also raise challenges.) Even the records produced by what we might call plebian organizations, such as trade unions, were often penned by elites rather than rank-and-file women and men. As Parr put it, social historians, then and now, face the twin challenges of understanding the observers and of mining effectively their observations for the observed.<sup>27</sup>

In recent years, postmodern and post-structuralist theorists have not only aggressively visited these epistemological questions; some have questioned the foundations of established historical practice and the status of historical evidence by rejecting the premise that we can arrive at a definitive meaning for any document or text we read. If social historians want to view the past from the people's perspective, postmodernists warn, we must be aware of the dangers of essentializing 'the people,' whether they be women or men, old or young, Black or white, and so on. The quicksand of linguistic meaning makes it difficult to know what such terms mean. For example, to whom does 'people of colour' refer: does such a group exist, divided as they surely must be by gender, class, age, ability, religion, and other distinctions? Some post-structuralist critics also boldly denied the possibility of our truly knowing the material reality of the past, and called upon historians to employ the literary tools of discourse analysis to deconstruct the multiple, competing, and fractured meanings of categories, texts, and identities, and to give up the struggle to discern objective conditions or structures. Such critiques provoked angry responses from Marxists and historical materialists, resulting in heavily polarized debates in which scholars have presented discourse analysis and materialist approaches as mutually exclusive.<sup>28</sup> Social history became characterized by 'the conceptual opposition of representation and reality.'<sup>29</sup> Scholarship based on case files generated some of these polarized debates, including the polemical exchange between Linda Gordon and Joan Scott over Gordon's use of the case files of child-tion of representation and reality.'<sup>49</sup> Scholarship based on case files generated some of these polarized debates, including the polemical exchange between Linda Gordon and Joan Scott over Gordon's use of the case files of child-protection agencies.<sup>30</sup> More recently, however, some scholars, including historians of women and sexuality, have moved beyond a dichotomized debate by suggesting how a sensitivity to representation, discourses, and the fractured nature of experience and identity can be integrated with materialist and feminist analyses of class, patriarchy, and power.<sup>31</sup>

This book does not offer easy answers to current debates regarding historical practice after 'the linguistic turn.' Many of our contributors are clearly influenced by linguistic theories that have heightened awareness of the meaning of words and concepts and the difficulties of ever knowing their essential meaning.

Several essays probe the meanings of complex terms such as race, illness, sexuality, and family. The concern about essentializing or generalizing groups is addressed in some articles through attention to the individual. The narrative line is strong in the stories of people that so many of the contributors delight in recounting. Yet out of those specific stories, generalizations are drawn and need to be drawn. As Jane Roland Martin has argued, 'if categories exist that do not conceal difference, they will be so specific as to stultify intellectual inquiry.'<sup>32</sup> While some authors remain committed to Marxist (in the case of Kealey and Iacovetta) or neo-Marxist (Sager) approaches, none finds a need for blanket dismissals of new approaches, especially when current notions about the decentred nature of power and competition over meanings can be integrated into class analyses of power, ideology, and resistance. Others, including Strange, offer concrete suggestions as to how post-structuralist insights can generate new questions. She uses the capital-offence case files to illustrate 'the textual production of truth,' and invites us to see the case file as a textual artefact of competing truth claims and narratives by the various parties involved. Maynard's analysis of psychiatric case histories offers another effort to work through 'the material-idealist impasse' by situating expert discourses within their larger social and material context – a feature that distinguishes several other contributions. Still other authors have not felt compelled to respond directly to postmodern critiques, in part because debates regarding the limitations of sources or interpretive challenges raised by our sources are not new to historians.<sup>33</sup> It may even be counter-productive to expect more of case files than of other types of historical records, since the challenges they raise for us may differ in degree not kind.

### Case Files in Context

Historians are practitioners of an imperfect craft. Yet, none of us feels compelled to abandon the archives or quit the trade. Case files are not clear windows on the past, but they can be read in judicious ways. They expose interesting, indeed fascinating, things about the past, even if they cannot provide us with answers to our original questions. While offering different solutions, all the contributors agree that a central challenge concerns inherent biases in the records. As Sager notes, they describe certain people in words and categories that serve the official purposes of other people. They not only represent the views, perceptions, and responses, but also the prejudices and ideological lens, of the gazer. Neither is any collection of cases the universe of files. How effectively can we read such records 'against the grain,' that is, for reasons other than those the record-makers intended and for the clients' voices? If, as Foucault suggested, such records represent a kind of archives of repression,



then can researchers use them in subversive ways? How do we discern the patient's perspective, the battered wife's strategies, and the bad girl's street culture when little of the evidence available comes to us directly from these people? In response, the authors have advocated different methods, including quantitative and qualitative forms of data analyses. But all have acknowledged that we must be clear about the linkages between a particular set of records and the larger institution and record-keepers producing them. Whether tackling a sample of records or a sensational single case, we need a sense of the whole in order to make sense of the part we are examining, to be able to talk about its typicality (or not), and whether it is illustrative of certain historical patterns.

For some, this task meant reconfirming a long-standing methodological premise in social history, namely, understanding the records' provenance – their nature, structure, and original purpose. Case files reflect the workings of bureaucracies and authorities intervening in people's lives; we thus need to clarify where the files fit within their appropriate institution, the intent of the file-makers, and the various contexts in which the files are produced. This point is made explicitly in essays that are otherwise quite dissimilar in method and approach. In drawing a statistical profile of the labour contracts signed by sailors who joined Britain's ocean-going ships, Sager explains how any viable assessment of these contracts requires understanding how they fit into Britain's imperial strategy, and how sailors' defiant actions provoked particular state responses. Maynard reminds us that we need to be aware that the case file, as well as the discreet materials (including psychiatric case histories) that constitute it, each have a history. Epp demonstrates how probing the context in which a set of case records is produced can lead us to discern discrepancies in evidence, contested definitions, and even the wilful distortions created by the record-keepers. All the essays act as a caution against the easy assumption that we can merely read off the case file all that is required to know about a given subject. The richness of these records does not free us from the search for contextualizing and corroborating evidence.

Issues of representativeness and selection are crucial when faced with case files. What is the most appropriate way to proceed: exploring the most interesting or illustrative cases or applying random sampling techniques? Do we adopt a narrative framework in which the stories occupy centre stage, or do we collect and describe quantifiable material? How do we generalize or make comparisons among cases when every story is in some respects unique? Again, the book offers differing approaches. The most obvious difference concerns quantitative versus qualitative approaches – a debate that is nicely encapsulated in the Sager and Strange pieces. But even here, dichotomized positions are avoided. Sager's call for social-science techniques in history makes some points on which all

contributors agree – the dangers of implicit quantification, for instance, and the need for methodological pluralism – and is fully consistent with a Foucauldian analysis of state regulation. Strange and Dubinsky offer some differing insights, but both caution against naïve interpretations and call for a greater sensitivity to language, scripted narratives, and the production of the records.

Historians and historical social scientists have long grappled with the challenges of interpreting and evaluating texts. Even the current heated battles over the status of historical evidence do not negate the immense contributions made by several generations of social historians to the shape of history and historical knowledge. Today, few Canadian historians would teach a history that entirely ignores women, workers, Natives, and racial-ethnic minorities. We know about the struggles and accomplishments of ordinary and non-privileged people, be they skilled artisans demanding the nine-hour day in the 1870s, Jewish communist women staging consumer boycotts during the 1920s, or working mothers stretching limited family budgets across time and household. While the contributors differ in choice of subject and methodological and theoretical orientations, we share a basic commitment to the original and enduring aims of social history – writing people's history and thereby rewriting all history. While our individual essays differ in their focus on the powerful or marginal, we confirm the progressive impulses and humanist tradition of social history, its commitment to politically engaged scholarship, its optimistic reading of the agency of the oppressed, and its potential for arming us with the critical intellectual tools for affecting social change.

## Notes

- 1 This debate has a history: consider, for example, E.H. Carr, *What Is History?* (Middlesex 1967); Peter Novick, *That Noble Dream: The 'Objectivity Question' and the American Historical Profession* (New York 1988); and Joy Parr, 'Gender History and Historical Practice,' *Canadian Historical Review* 76:3 (1995) is history; (Middlesex 1967); Peter Novick, *That Noble Dream: The 'Objectivity Question' and the American Historical Profession* (New York 1988); and Joy Parr, 'Gender History and Historical Practice,' *Canadian Historical Review* 76:3 (1995).
- 2 We have not placed quotation marks around terms such as deviant, experts, and knowing, but we view them as ideologically charged terms requiring critical dissection.
- 3 Michael Bliss, 'Privatizing the Mind: The Sundering of Canadian History, the Sundering of Canada,' *Journal of Canadian Studies* 26:4 (Winter 1991–2); for a critique, see responses in *ibid.*, 27:2 (Summer 1992); Ruth Roach Pierson, 'Colonization and Canadian Women's History,' *Journal of Women's History* 4:2 (Fall 1992); and Veronica Strong-Boag, 'Contested Space: The Politics of Canadian Memory,' *Journal of the Canadian Historical Association*, new series, 5 (1994).



- 4 Davis's *The Return of Martin Guerre* (Cambridge, Mass., 1983), a masterful study of peasants and gender relations, isolated the illuminating single case; her *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Cambridge, Mass., 1988 [1987]) showed the folly of reading legal records as unmediated texts. Cultural historian Carlo Ginzburg 'found' heretics and pagans in the Roman inquisition records by noting the discrepancies between the inquisitors' questions and the respondents' replies; see *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller* (New York 1976).
- 5 'Introduction,' *Labouring Children: British Immigrant Apprentices to Canada, 1869-1924*, 2nd ed. (Toronto 1994)
- 6 Examples in women's history include Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence: Boston, 1880-1960* (New York 1988); Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto 1991); Wendy Mitchinson, *The Nature of Their Bodies: Women and Their Doctors in Victorian Canada* (Toronto 1991); and Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago 1993).
- 7 Thanks to Jim Phillips, a workshop participant, for this and other insights.
- 8 Davis, *Fiction*; William Cronin, 'A Place for Stories: Nature, History, and Narrative,' *Journal of American History* 29 (1992); essays in this volume. On voice in oral history see Ronald J. Grele, ed., *Envelopes of Sound* (Chicago 1975); Sherna Gluck and Daphne Patai, eds, *Women's Words* (New York 1991); and Mary Cmovich, ed., *Gossip: A Spoken History of Women in the North* (Ottawa 1990).
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- 29 Regina Kunzel, 'Pulp Fiction and Problem Girls: Reading and Rewriting Single Pregnancy in the Postwar United States,' *American Historical Review* 100 (Dec. 1995).
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## Stories of Their Lives: The Historian and the Capital Case File

CAROLYN STRANGE

There are two kinds of tales, one true and one false.

Socrates, in *The Republic*

Every word of this memoir is true.

James Ellroy, 'Dick Contino's Blues,' *Granta* 46 (Winter 1994)

True-crime writers establish their legitimacy simply by asserting the veracity of their stories, no matter how much they alter them through artistic licence. In contrast, criminal justice historians rarely proclaim that 'every word' in our 'stories' is 'true.' Ironically, making such claims would make readers suspicious. Instead, we qualify our interpretations with caveats about the incompleteness of the records, the biases of our sources, and (when we are honest) our own peculiar selection priorities. Even if we do not consider ourselves chroniclers of the truth, we state at least some things with confidence: person X really did kill person Y, and newspaper Z really wrote a column about it. Professional historians underline their commitment as truth tellers by planting footnotes that flag the truth, we state at least some things with confidence: person X really did kill person Y, and newspaper Z really wrote a column about it. Professional historians underline their commitment as truth tellers by planting footnotes that flag our journeys into the past. Should anyone care to question our claims, they need only tread the same ground.

Recently historians' flirtation with post-structuralist theory has left us considerably more reluctant to make even the most modest truth claims about the past.<sup>1</sup> Unlike Socrates, who philosophized that true stories could be distinguished from false ones, many historians, along with scholars in other disciplines, have their doubts. Indeed, the interest of post-structuralists in discourse over 'facts' is based on the assumption that trying to distinguish falsehood from veracity is not only fruitless but meaningless.<sup>2</sup>

In spite of these intellectual anxieties, historians' hearts still race when we uncover intriguing historical evidence, particularly what has previously been overlooked. Capital case files offer an example. These dossiers of legal evidence, maintained by the federal justice department and rigorously organized by the National Archives of Canada, document the fate of persons sentenced to death. As a historical data set, the case files inspire certitude: not only is the collection remarkably complete (ranging from 1867 to 1976, when capital punishment was abolished), but the vast majority of case files include all the information they were meant to contain about condemned persons: trial transcripts, judges' reports, justice department evaluations, and cabinet decisions. Individuals' files tell the stories both of those whose sentences were commuted and those who perished on the gallows. Remarkably few Canadian researchers have mined this rich vein of evidence (although several writers and film-makers have focused on noteworthy cases, such as those of Valentine Shortiss, Louisa Blake, Angelina Napolitano, and Leo Mantha, to say nothing of Louis Riel).<sup>3</sup> Encountering this evidence is like being dropped on the peak of a mountain blanketed in snow: these are records that historians dream of ploughing through.

I want to explore my own encounter with this evidence and to build on my experience of studying capital cases records to reflect on the confidence-inspiring nature of these files. As I will argue, it is tempting to believe that file contents represent the 'true' stories of people condemned to death. After all, they include not only official records, such as coroners' reports, but a range of material, including newspaper editorials, photographs, and letters and petitions. Compared to most other types of case files, they are amazingly rich in qualitative evidence, and as such they seem to be stories waiting to be written. Yet they are much more than raw material for 'true crime' stories. Reading the files as transparent tales of crime and punishment may satisfy our urge to construct coherent narratives, but it leaves critical methodological questions unaddressed. *How* should they be read? How much remains unknown? Most important, how was the information in the files interpreted and manipulated by historical actors who wielded the power to spare or execute people sentenced to death?

No one method could adequately analyse capital cases. Quantitative methodologies, such as Eric Sager discusses in this volume, allow us to evaluate broad trends, such as offenders' likelihood of execution based on their race, sex, class, age, and so forth.<sup>4</sup> But qualitative methodologies are more appropriate if we want to know how truth was asserted, disputed, and adjudicated in capital case dispositions. Cultural historians and scholars influenced by post-structuralist literary theory work with tools of textual analysis in order to question how apparently 'true' facts and events are constructed through language.<sup>5</sup> What does this mean for those studying case files? Approaching file contents as 'text,' we can see more than words or pictures on paper: we can analyse how meanings

were organized and, furthermore, how meanings informed social action.<sup>6</sup> Capital case files are tangled texts, some recognizably modern (notably medical and psychiatric assessments) and others (juridical, religious, confessional) linked to long-established practices.<sup>7</sup> In this jumble were competing claims to the truth about convicted criminals. Sorting them out through case deliberations resulted in decisions either to hang or to commute. Unlike trials, in which the prosecution and the defence presented two opposing versions of cases, the post-conviction phase, in which the executive decided whether or not to let the law take its course, allowed a wide variety of claimants to introduce knowledge about events and characters. In this sense, the capital case file can be approached as a textual artefact of *competing* truths – multiple, discordant interpretations of condemned persons' lives.

To illustrate the merits of exploring case files' 'textuality' I will focus on one case, which in some respects is typical and in others unique. The circumstances leading up to the murder, a single woman's unwanted pregnancy, were depressingly common in early-twentieth-century Canada, where abortion was illegal and even information about birth control was prohibited. The fact that Mary Dolan and her paramour, Thomas McNulty, a married man, resorted to infanticide was certainly an atypical solution for persons in their predicament. Yet they were hardly the only ones in early-twentieth-century Ontario to consider it an option.<sup>8</sup> What made the case unusual was that both were convicted and sentenced to death for the full capital offence (rather than the lesser offence of concealment of birth).<sup>9</sup> Both received commuted life sentences – a less startling outcome given that no executions for infanticide had taken place since the mid-nineteenth century.<sup>10</sup>

If we want to understand how this case turned out as it did, we need to listen intently to the stories of the convicted persons' lives as they were told and retold by different narrators – some formal and authoritative, and others, without official standing, eloquent in their humility and awkwardness. Although we can gain an impression of how the case was decided, we still cannot speak with assurance about why it followed its particular course. Accordingly, we will not conclude with a definitive evaluation of the truths and lies of this 'he said, she said' crime. We can never satisfactorily penetrate the minds of the accused, but we can tune our ears to the many voices that struggled to be heard. In the process we can suggest why some stories about the crime and the defendants were considered truthful, while others were disbelieved or suppressed.

### The Capital Case File as a Historian's Dream

Paradoxically, capital case files are first and foremost life stories. The official purpose of the capital case file was to provide the governor-general with a paper

trail to help him (on the advice of cabinet) to decide who among the condemned would die and who would live. With the formation of a federal union in 1867, the national government assumed jurisdiction over criminal legal matters, including the review of every capital conviction in the provinces. Justice ministers (usually the prime minister himself in the first few decades of Confederation) were assigned the task of reviewing the records of each case to determine whether or not the royal prerogative of mercy was warranted. Since each person's fate was decided on a case-by-case basis, establishing a minimum standard of evidence rendered decision making marginally systematic. Justice Department regulations stipulated that before a decision could be made by the governor-general-in-council, several reports had to be sent to Ottawa: a verbatim transcript of the trial, the convicting judge's trial report, and his account impressions of the penalty's deservedness.

Even if case files contained nothing more than these required items they would be a boon to criminal-justice research. Few full trial transcripts have survived for any crimes other than capital ones; furthermore, judges' summaries and reports to the minister of justice dropped legalese in favour of full-blown narrative, often expressed in a conversational tone. Stripped of their stiffness, these statements seemingly lay bare the 'real' feelings of men who had no choice but to pronounce the death penalty, but who sometimes expressed personal reservations about its appropriateness for particular offenders. For historians resigned to making do with fragmentary sources, sources this rich understandably make us feel as if we have hit the jackpot of truth.

Aside from these required items the capital case file was a magnet for other texts that were produced incidentally rather than in response to administrative directives. It was common for the Department of Justice to be sent coroners' reports and police accounts of prior criminal records. Coroners had wide latitude in questioning witnesses about the habits and relations of deceased persons and their suspected killers. More than accounts of death, capital case files provide portraits of both the victim and the accused in life. The great majority of killers were at least acquainted with, if not closely related to, their victims. At and their suspected killers. More than accounts of death, capital case files provide portraits of both the victim and the accused in life. The great majority of killers were at least acquainted with, if not closely related to, their victims. At the turn of the century, as now, most people killed family members, lovers, friends, acquaintances, and peers. Police reports submitted after the conviction also provide background material that would have been dismissed as hearsay at the trial stage.

By the late nineteenth century, psychiatric assessments began to appear as well. In most cases, they were ordered by the Crown if prosecutors suspected that insanity might warrant a commutation. Only in the early twentieth century, as the criminal defence bar gradually professionalized, did defence lawyers begin to throw their resources into psychiatric evaluations of their clients.

Although psychiatrists deployed a professional, scientific discourse they did not always agree with each other, particularly when they were hired by legal adversaries. Thus, even those who operated within the same truth-seeking discourses could utter different truths.

As new medical and psychiatric experts took over from phrenologists and anthropometrists, they claimed to hold superior means of determining the truth about defendants' motivations. By the 1910s, psychiatrists began to make regular appearances in the post-trial phase as their profession grew in status. Their expertise rested on claims that they could uncover underlying causes of criminality, including degeneracy, alcoholism, religious mania, or pathological jealousy.<sup>11</sup> Not surprisingly, the growing professionalization of these truth assessors meant case file contents grew as well. Positioning themselves above the police, coroners, and jurors, psychiatrists typically asserted that they alone could explain why accused persons *really* committed crimes.

Petitions from relatives and concerned citizens offered compelling stories, albeit tales lacking the official cachet of judicial officers' and professionals' reports. Petitions were appeals for the life of the convicted person whose personal history (unfortunate, unremarkable, or exemplary) offered explanations for the crime and rationales for mercy. They came from everyone imaginable: ten-year-olds who wrote piteous, scrawled letters begging for their father to be released; prominent businessmen and clergy who lent their extravagant signatures to formally worded appeals; 'sob sisters' who could not bear to see handsome young men hanged; devout Christians who called upon the government to act mercifully; members of ethnic minorities who were desperate to protect one of their own from state violence; and feminists who called on men to act chivalrously toward women defendants. Petitions could be organized, containing up to tens of thousands of signatures, or they could be hastily written personal letters, naively addressed to the governor-general or the king. No matter what their form, they never reached the eyes of the monarch or his representative; unbeknownst to most petitioners, other than Crown and defence lawyers, they were processed along with the rest of the Ministry of Justice's correspondence. Nevertheless, all petitions, no matter what their source or form, eventually found their way into capital case files (sometimes filling several boxes).

Petitions can be read as counter-narratives set against the dominant narrative of conviction and condemnation.<sup>12</sup> To be successful, petitions for mercy had to reveal compelling truths about a condemned person's life. In some cases, casting aspersions on the victim's character helped to construct the defendant as a worthy recipient of mercy. Every petition attempted to alert the executive to something missed in the trial – either inadvertently, owing to a poor defence, or on account of strict rules of evidence. Petitions expressed an intuitive, subject-

tive version of truth that could not be recognized formally at the trial stage. Here again the case files permit us to see beyond official courtroom evidence to the family background, medical conditions, money problems, mental aberrations, or good character of the condemned. Trials determined legal guilt or innocence, but petitions sought higher truths.

Case reports prepared for the minister of justice were unlike any other documents in the files because they summarized the file contents, including the nature and number of petitions received. The ministry section responsible for administering capital cases was the Remissions Branch, and its chief officer prepared summaries for the minister's and cabinet's review. In effect, these reports allow us to peep through the keyhole of the cabinet doors, even if we cannot throw them open. The remissions reports followed narrative conventions patterned after case-disposition protocols developed by the Home Office, the branch that dealt with capital cases in England.

In Canada these practices were upheld by Augustus Power, a lawyer and the first chief remissions officer in the Department of Justice. He headed the branch from the 1890s to the 1910s, eventually retiring in 1914. He put his personal stamp on the protocol that, for decades, would govern the preparation of reports to the minister of justice. Each remission officer's report began with a précis of the trial, setting the cast of victim, accused, lawyers, judges, and other actors, including petitioners, doctors, police officers, accused persons, and any other parties whose wishes and actions came to the attention of the ministry. After summarizing the trial transcript (the official story of crime and guilt), remissions officers introduced the judge's rendition of that same story, complete with his subjective assessment of witnesses' veracity, his interpretation of the accused's willingness or reluctance to testify, the quality of the defence, and his impression of the convicted person's moral responsibility. Judges' impressions of the trial and the condemned person were always highlighted in remissions reports since judges offered both expert knowledge of the law as well as their personal sentiments about culpability. In their private transmissions to the ministry, judges felt free to be opinionated, dismissing some killers as vicious while reports since judges offered both expert knowledge of the law as well as their personal sentiments about culpability. In their private transmissions to the ministry, judges felt free to be opinionated, dismissing some killers as vicious while urging sympathy for prisoners whom they believed to be victims of circumstance. In the end, though, the report was a meta-narrative that combined elements from all the documents but positioned itself above them all. Remissions officers' reports were more than summary statements: they textually reconstituted each case into a form designed to guide the minister to execute or commute.

Reading capital case files this way hints that it might be possible to determine why the executive decided to hang some and spare others. But let us not forget cabinet privilege. The executive was resolutely tight-lipped when reporters,



Witnesses at Louis Riel's trial. (Archives of the History of Canadian Psychiatry and Mental Health Services, Griffin-Greenland slides, 1X-6)

petitioners, lawyers, and the condemned themselves pressed them to disclose how they reached their decisions. As a matter of unswerving policy, ministers of justice refused to explain why they decided to commute or execute decisions.<sup>13</sup> By comparing remissions officers' recommendations to the ultimate decision announced by ministers of justice we can see that cabinets rarely contradicted bureaucrats' suggested course of action. But we will never know why.

#### **The Dilemma of Plenitude (or, the Capital Case File as a Historian's Nightmare)**

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Ironically, the richness and relative completeness of capital case files presents a problem: how to analyse so much data? what to exclude? One obvious solution to the dilemma of plenitude is to subject data to quantitative analysis. The National Archives of Canada has made this prospect more attractive by creating a data set of capital case files contents in DBase4 format. This makes it possible to generalize about a wide range of characteristics, including offenders' and victims' gender, age, race, occupation, marital status, and religion.<sup>14</sup> In addition, one can chart trends over time regarding different judges' conviction records, the jurisdictions in which offences took place, the types of weapons



used, and the apparent motives for murders. With a data set of 1533 cases, and from eight to fifteen codable characteristics, quantitative analysis permits historians to determine changing trends both in the administration of justice and in the profile of relationships between victims and offenders. Quantitative analysis also allows us to contextualize individual cases. Thus far the most ambitious analyses of this nature have been conducted by Kenneth Avio, who has convincingly demonstrated that offenders' gender, ethnicity, and status, along with victim-offender relationships and the circumstances of the crime, swayed cabinets towards mercy or severity.<sup>15</sup>

Like any methodology, quantitative analysis has its pitfalls. Aside from the usual concerns about the reliability of the data and the appropriateness of specific statistical techniques, there is the seductiveness of numbers. Statistical sciences evolved in the same positivistic climate that gave rise to the case file method: both seek out facts and categorize, describe, and analyse them to determine truth. In statistics, numbers count: 'only the repetition of a particular social fact, its multiple occurrences, can give it meaning.' As François Ewald contends, 'the more frequently a particular sort of event occurs statistically, the more real it becomes ... Inversely, a single exceptional event counts for less in statistical terms because it occurs so rarely.'<sup>16</sup> Although statisticians do not necessarily examine facts as if they have 'no cause, or past, or future,' as Ewald claims they do, it is certainly true that data analysis can easily be skewed, both consciously and unconsciously, to produce spurious results. For instance, generalizations about long-term trends regarding capital case dispositions are always suspicious because information in late-nineteenth-century files is considerably sketchier than in mid-twentieth-century files.<sup>17</sup> Kenneth Avio has criticized quantitative studies that focus on one or two characteristics (such as gender or age) rather than engaging in multivariate analysis. The more sophisticated the analysis, the more reliable the results, but even Avio issues a caveat: '[T]he nature of the research requires scoring variables which are qualitative and, in certain instances, subject to personal interpretation.'<sup>18</sup> Given that people lived or died on the basis of these 'subjective' decisions, this is a telling warning indeed.

As much as quantitative analysis may paint a broad canvas of capital crime and justice, it can obscure the most compelling features of the files. Take motive. Many of the cases in the National Archives data set include entries under this category – motives such as jealousy, robbery, or the acquisition of insurance money. If we piece together the data, we can construct mini-narratives: nineteen-year-old William Bennett shot Bruce Leitch out of jealousy; twenty-year-old Frank McCullough shot a police constable in an 'attempt to escape'; showman Sidney Murrell, aged twenty-six, shot a man in the context

of committing a bank robbery; Catherine Hawryluk, an eighteen-year-old, murdered her newborn twins.<sup>19</sup> In each of these cases, the motive is either stated or implied in the files. But what would we gain by quantifying motive? First, in recording motive from the transcript or the Remissions Branch report, we accept the official version of the case: the convicted person not only committed the act, but for *this* reason as opposed to others. Second, what do we learn by discovering that a young woman killed her newborns, or that a man was jealous of his former girlfriend's new husband? Can we pretend to get inside the head of a killer, let alone generalize about murderers' motivations? Is jealousy interpreted differently (by the principals, the court, the jury, the press, and the cabinet) when expressed by Aborigines, Euro-Canadians, or Asians, or when manifested in men, as opposed to women? Are the rape-murderer's motivations assessed differently by a parish priest in 1872 than by a government psychologist in 1956? These questions are not meant to imply that we should abandon quantitative analysis, but that it is more appropriate to analyse evidence about which little doubt can be entertained, such as the identity of convicting judge, the time and place of the crime, the murder weapon, and the final case outcome.

Finally, quantitative methods lead us no closer than do qualitative approaches to solving the greatest mystery of all: the motives of cabinet members. We can say that, on balance, the executive discriminated in racist, classist, and ethnocentric ways. Yet these patterns were produced over years of ad hoc decisions made by a constantly shifting cast of men from different political parties, operating in the context of changing economic, political, and cultural circumstances. Examining specific cases is the only way to place a finer mesh over the statistical matrix of general tendencies. It is the closest we can come to understanding why and how cabinet members made life-and-death decisions.

### The Textual Production of Truth

Wringing meanings from case files calls for alternative interpretive strategies. Qualitative methodologies are better suited to explore how 'facts' are distin-

Wringing meanings from case files calls for alternative interpretive strategies. Qualitative methodologies are better suited to explore how 'facts' are distinguished from 'fiction' in textual forms. Using textual analysis, one can approach capital case files not only as material artefacts but as a discursive means of organizing knowledge and producing meaning.<sup>20</sup> File contents allow historians to trace how various players attributed meanings to particular aspects of cases, both those that emerged during trials and those previously undisclosed. In documenting deliberations over the fate of the condemned, case files recorded how discordance erupted between competing voices, each claiming to speak the truth about this person, this crime, and this punishment. Executive review seldom questioned trial verdicts, but it always involved arbitrating

between opposing constructions of the truth and their relevance to the critical question: Should this condemned person live or die?

Before the 1940s no rules existed to help ministers decide whom to hang and whom to spare. However, in practice, Canadian cabinets generally rubber-stamped bureaucratic recommendations. The federal justice bureaucracy in turn followed precedents set in England. The English Royal Commission on Capital Punishment in 1867 had suggested that persons whom judges had recommended to mercy would normally be suitable subjects for commutation, and bureaucrats in the ministry adopted this guideline in Canada as well. In addition, rules of thumb operated on an informal basis. For instance, the very young, the very old, mentally deranged people, and pregnant women were typically spared the gallows. Aside from these exceptions, however, remissions officers operated according to the principle that each case was to be determined on its own merits. Consequently, the official interpretation of competing truth claims in case files literally spelled the difference between life and death.

The bureaucrat who collated the various documents in the files, and who prepared a summary report based on his evaluations of their contents, occupied a critical position as an arbiter of truth. Like a character in a Dickens novel, Augustus Power QC was aptly named for his role in the tragedies and comedies of capital case reviews during his long tenure as Canada's chief remissions officer. He and his underlings in the Remissions Branch of the Department of Justice were rarely overruled by cabinets unless enormous political pressure swayed the government in a contrary direction. Ministers of justice rarely read more than the remissions officer's report, and cabinet colleagues generally supported the ministers' recommendations. The remissions officer's report, then, was the most important document in case files because it summarized the other texts received in the period between sentencing and scheduled execution. More important, it positioned itself *above* the other materials through its authoritative claims to objectivity. In other words, this practice of summary report-writing was a means through which many voices, often in opposition, were reduced to one voice in a coherent case narrative.

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Power and his associate officers were trained lawyers well versed in the legal matters discussed in transcripts and judges' reports. Stylistically, their reports were more than mere summaries of evidence and judges' impressions; rather they were legal texts that tied disparate narrative strands into an epitome. In these tales of crime and appropriate punishment, remissions officers' recommendations for or against mercy represented the punch line – the moral of the story. As we will see in the cases of Mary Dolan and Thomas McNulty, however, punch lines did not necessarily bring stories to an end.

### Love, Betrayal, and Murder

On 7 December 1910 Augustus Power prepared a memorandum for Alan Aylesworth, the Dominion minister of justice, concerning the case of Mary Dolan, a young unmarried woman who was scheduled to hang a week later for the murder of her infant son.<sup>21</sup> The memorandum opened by stating her name, her crime, and the place and time of her conviction, then it quickly branched out in reference to the case of her co-accused, the man whom she claimed had fathered the child. The opening précis proceeded to mention that both the jury and judge had recommended mercy, the judge so enthusiastically that he 'took the somewhat unusual course of telling [the accused] that he agreed with the recommendation of the Jury.' Thus, before Aylesworth had finished the first paragraph, Augustus Power drew his attention to the judge's and jury's depiction of Dolan as a pitiable creature.

In fact, the memorandum regarding the Dolan case is atypical because the Crown and the defence essentially agreed that the defendant had committed the crime. The evidence was clear that the child was Dolan's, and that she had intentionally killed it, albeit under pressure from her married lover. The 'unlawful intimacy' between the twenty-four-year-old servant, the daughter of a respectable farmer, and Thomas McNulty, a forty-year-old tavern keeper, had undoubtedly inspired gossip in the small town of Orillia for years. In her confession to the murder, Dolan admitted that McNulty had earlier fathered another child, and that he had sent her to Buffalo to have it, forcing her to give it up for adoption. When she became pregnant again in the fall of 1909, she claimed that he had forced her to hide in an unheated barn, supplying her with barely enough food and water to live. Closer to her confinement, he sent her to a Toronto midwife, but he refused to give her the money necessary to dispatch their baby to an infants' home. In fact, he had suggested that she abandon the infant in Toronto; when she refused, he told her to do away with their son. Distraught, she took a train to Orillia on 26 March 1910, proceeded to a secluded area, and strangled her two-week-old son. After wrapping him in a blanket stuffed with rocks, she tossed the bundle over a bridge. Had fishermen not found the gruesome remains in a river four months later, she might never have been apprehended. But the open secret of the Dolan-McNulty affair soon put the spotlight on the couple.

Two highly experienced trial lawyers, T.C. Robinette for the defence and George T. Blackstock for the Crown, argued the case. The men conducted the trial amiably, as if it were a gentlemen's disagreement rather than an adversarial battle. Blackstock adopted an apologetic demeanour, openly expressing his concern that the men of the jury not consider that he enjoyed his role as prosecutor:

'It is my painful duty ... to lay before you one of the saddest and most distressing cases that it has ever been my misfortune to come into contact with. [And] that, I am sure, will test your manhood and our feelings to the utmost limit.' Urging the jurymen to rise above their 'profound sympathy for this poor young girl,' he reminded them of their 'higher duty' to uphold the norms of a civilized community. True, she was young and apparently guileless, but she had confessed that she had strangled the life out of her baby.<sup>22</sup>

T.C. Robinette, who had travelled from Toronto to Barrie to take on the case *pro bono*, faced the task of defending a woman who had freely confessed to murder. The wily Robinette had squeaked out of tighter corners than this in his illustrious career.<sup>23</sup> His strategy was to complement Blackstock's characterization of the defendant by portraying her as a woman who had loved too much. She had sinned, surely, but she had been forced by her cruel lover to destroy the life she had yearned to nurture. Always on the cutting edge of medico-legal knowledge, Robinette suggested that Dolan had been clinically depressed. Perhaps she was suffering the effects of 'puerperal insanity' (what we would now term post-partum depression)? Maybe she was epileptic?<sup>24</sup> Ultimately Robinette emphasized that the case called for judgment based not on facts, but character: her lover, older and married, had abused her to hide his dishonourable affair; unable to seek counsel for fear of exposing her shame, she reluctantly obeyed his orders. According to the defence, this was not so much a crime as the familiar, sad story of the woman scorned.

Pressed by Blackstock to do their duty, the jurymen decided that they had to render a guilty verdict. However, their 'very strong recommendation to mercy' enhanced Dolan's portrait as the weak puppet of an evil master. No doubt her fainting spells on the stand lent theatrical flair to this courtroom drama. Judge Britton, as Augustus Power later commented, took the extraordinary step of endorsing the jury recommendation in open court. 'You went astray, but you have paid very dearly for your moments of pleasure,' Britton commiserated with Dolan. Echoing Blackstock's discomfort over prosecuting a woman on a capital charge, Britton added that he too found the prospect of executing a have paid very dearly for your moments of pleasure,' Britton commiserated with Dolan. Echoing Blackstock's discomfort over prosecuting a woman on a capital charge, Britton added that he too found the prospect of executing a woman distressing. Pronouncing the death sentence was never agreeable, he admitted, 'but it is the first time I have had the pain put upon me of passing sentence upon one of your sex.'<sup>25</sup> If the trial had not already staged the case as a heterosexual melodrama, Britton's summation reminded the audience that gender relations would play a critical role in the post-trial phase. Distressed by the prospect of hanging a woman (an event that had not occurred in Canada for eleven years at that point), Britton, the jury, counsel, and spectators assumed that the all-male executive would exercise its discretion to commute Dolan's death sentence.<sup>26</sup>



The nineteenth-century psychiatrist at work. Dr A.H. Beaton in his office at the Orillia (Ontario) Asylum. (Archives of the History of Canadian Psychiatry and Mental Health Services, Griffin-Greenland slides, 8-0031)

Augustus Power's memorandum for the minister of justice reinforced these expectations of mercy. Unusual in its exclusion of counter-narratives, Power's report stitched together fragments from letters, police reports, petitions, and the trial transcript to compose a straightforward recommendation for mercy. In this most authoritative rendering of the tale, Mary Dolan's case was, according to Power, a 'pathetic' story of an 'unfortunate girl' who was more 'sinned against than sinning,' as she had been 'very heartlessly treated' by her paramour. Although Power typically cited his sources to establish critical distance between himself and the opinions of others, his reading of this case cohered so closely with that of Dolan's supporters that he freely plagiarized. One of the letters Power sampled had been sent by Mrs Blanche Johnson, the editor of the WCTU Sunday School quarterly and the Dominion Superintendent of the Salvation Army Rescue and Prison Board. Shortly after Dolan's trial she had written the minister of justice: 'I have visited this pitiful and broken-hearted creature [in jail] and while she has sinned previously she has been deeply sinned against.' In another letter on Dolan's behalf, a Vancouver shingle manu-

facturer surmised that she had been 'under the influence of a vicious man ... Was there ever a more pitiful case in the history of the Canadian Courts?'<sup>27</sup> In adopting these interpretations of the case as his own, rather than inserting them as quotes, Power legitimated their claim that McNulty ('who is a man about twice her age and the father of a family,' he added gratuitously) had been the guiltier party. Thus, executive-style justice could achieve what the judge and jury were not allowed: the opportunity to arrive at a more richly contextualized truth than evidentiary rules allowed.

Although the remissions officer's memorandum was distinguished in this case by the absence of counter-narratives, Power nonetheless discriminated tellingly in his sampling of texts and arguments. Competing truth claims circulated in the file and none but the story of the poor, sinned-against creature surfaced in the official report. Absent, for instance, were selections from a letter sent to the minister of justice by a correspondent who called herself 'Portia.' In her eyes, executing Dolan would be unjust, not because she was duped by a man, but because she did not deserve to be granted special consideration: '[S]he only did what thousands & thousands of other women have done only they did not wait so long. Every one knows that the birth rate both among married & unmarried women of all classes is suppressed & if every woman who has committed the same crime as Mary Dolan with so much less reason were hanged, there would be grave fears of exterminating the race altogether.' Waxing bolder, Portia uttered the words that may have been whispered in chambers and parlours, and sniggered in bar-rooms and farmers' fields: 'Is the child not better dead?' In Portia's eyes, Mary Dolan had effectively nipped an unpromising bud from an already-weak branch. In her estimation, 'children born under such unfortunate conditions are more likely than not to propagate a race of either weaklings or criminals.' This pseudo-scientific assertion, reinforced by medical reports of Dolan's defence of mental and physical weakness, failed to surface in Power's memorandum. For Power, conventional melodramatic tropes of seduced maidens and manipulative villains evidently rang truer than more modern, medicalized rationales for mercy. In any event, the cabinet agreed that this was a case memorandum. For Power, conventional melodramatic tropes of seduced maidens and manipulative villains evidently rang truer than more modern, medicalized rationales for mercy. In any event, the cabinet agreed that this was a case for commutation to life in prison.

Over the course of the following four years further reports about Dolan's health were produced but her moral fitness, more than her physical and emotional condition, became the focus. Although Power's memorandum and the cabinet's merciful decision seemed to end the story, it opened up the possibilities for new stories to emerge. Throughout the period when the death penalty was still applied, commuted life sentences were more symbolic than literal because executive decisions are always subject to subsequent executive review. Friendless, poverty-stricken prisoners, and people who spoke neither French

nor English tended to languish the longest; in contrast, imprisoned murderers who were supported by tireless advocates rarely spent more than ten years behind bars. Evidence of serious illness often prompted favourable reviews of commuted sentences.<sup>28</sup> In Dolan's case, medical reports of her epilepsy and lady prison visitors' repeated assurances of her penitence convinced the ministry that three years' detention would suffice. In support of a bid to secure her early release, the prison chaplain at the Kingston Penitentiary lent an archetypal Christian gloss to her tale of sin and redemption: 'a very Magdalen and like her prototype, [she] has long since fallen on her knees at the Divine Master's feet.'<sup>29</sup> On Christmas Eve, 1913, three years after having her death sentence commuted to life in prison, Dolan received an early Christmas present: she was granted an unconditional release on a ticket of leave.<sup>30</sup>

### Villain or Victim?

Where did that leave the heartless McNulty? The alleged mastermind of the infanticide plot was tried directly after Dolan in the same courtroom by the same jury. Robinette's assistant in the Dolan trial, Melville B. Tudhope, pitched in – not for the defence this time, but for the Crown! Having reluctantly prosecuted the young woman, Blackstock warmed to his task of hauling in the bigger catch. Once again, Dolan was the star witness, only this time her testimony damned her former lover. Rather than trying to pretend that McNulty and Dolan had not been intimate, McNulty's defence lawyer, A.E.H. Creswicke, suggested she had doled out sexual favours to half the male population of Orillia. Under dogged cross-examination Dolan feebly demurred, claiming that she had loved only this one man. With this statement, she fainted again and required medical attention.

Unlike Dolan, McNulty did not testify on his own behalf; instead, his case hinged on branding Dolan as a liar and a harlot, willing to drag her paramour down with her. Besides, Dolan had admitted that she, not McNulty, had strangled the baby. Unfortunately for McNulty, the jury had listened intently when she hinged on branding Dolan as a liar and a harlot, willing to drag her paramour down with her. Besides, Dolan had admitted that she, not McNulty, had strangled the baby. Unfortunately for McNulty, the jury had listened intently when Judge Britton charged them that counselling to murder is legally the equivalent of committing murder: they convicted him, adding a recommendation for mercy.<sup>31</sup> Britton's earlier sympathy toward Dolan, the woman he had reluctantly sentenced to death, evaporated when he came to sentence McNulty. 'I advise you to hold out no hope of a reprieve,' he grimly counselled the condemned man.

Power's Remissions Branch memorandum regarding McNulty's death sentence, written the same day as his memorandum regarding Dolan's report, was legalistic rather than sentimental. Had he maintained the script he recounted in

Dolan's report, with McNulty cast as the primary player, recommending him to mercy would have seemed anomalous. Yet Power did recommend that McNulty be spared. '[H]owever abhorrent the prisoner's conduct appears to be,' he confided to the minister of justice, 'I confess that I should have the utmost hesitation in recommending that the extreme penalty be allowed to be inflicted on the unsupported evidence of the girl.'<sup>32</sup> During the trial, Power argued, emotions had been heated and McNulty had been convicted by men overcome with sympathy toward Dolan. Her fainting spells, her tales of confinement in an unheated barn, McNulty's betrayal of his wife and children – each of these factors tugged on the jurymen's heartstrings, drowning out the judge's warning about convicting without corroboration. Cued by Power's report, the executive could deliberate with cooler heads and commute his sentence, as they did one week before his scheduled execution. Power redrafted a highly charged melodrama, featuring a duped maiden and an evil villain, into a dry argument about trial procedure and rules of evidence. McNulty's story had been rewritten from a tale of moral fall into a straightforward legal text.

Although McNulty's trial was marred by irregularities, it was a tightly scripted event rather than a forum for improvisation. Trials close off possibilities: only certain actors (lawyers, witnesses, the foreman of the jury, and the judge) are allowed to speak, and they are bound to speak in predetermined, even arcane, ways. Jurors are instructed that they must choose between a limited number of options in rendering their verdicts, and if they fail to agree they are warned against improvising alternative verdicts. Finally, capital statutes in this period required judges to pass the death sentence against those found guilty. As Lawrence Douglas puts it, Western legal discourse has been intolerant of 'moral ambiguity and situational complexity.'<sup>33</sup> In marked contrast to the reliance of trials on rational-legal adjudication, post-commutation deliberation allowed new narrative possibilities. Anyone, no matter how humble, could scratch an 'X' on a petition. Petitioners who supplied their signatures wrote with greater confidence, and people who wrote on fancy letterhead, or who comfortably addressed the minister of justice as 'my dear Allen' were even better positioned 'X' on a petition. Petitioners who supplied their signatures wrote with greater confidence, and people who wrote on fancy letterhead, or who comfortably addressed the minister of justice as 'my dear Allen' were even better positioned to influence case outcomes. Dolan had charitable women, medical doctors, and prison chaplains on her side. But McNulty had his supporters too.

Once commutations were granted, narrative coherence, temporarily anchored in Remissions Branch reports, could break down under the influence of petitioners' protests. McNulty, whose adultery and entanglement in a premeditated murder had stirred his neighbours into moral outrage, was to benefit from the circulation of new truth claims. The McNulty family managed to secure a lawyer who offered a version of the crime that had not fully flowered in court. McNulty, in Thomas Mulcahy's words, was 'more led than leading, the evi-

dence to the contrary notwithstanding.'<sup>34</sup> To advance his client's interests, he recognized that he first had to erase Dolan's sketch as a woman 'more sinned against than sinning.'

Petitioners' assertions, unlike courtroom arguments, required no substantiating evidence; instead, they produced new stories. At the mitigation stage of case disposition, narratives are spun to stress subjective truths. In Robyn West's words, 'stories expand our knowledge not only of objective history, but also of what is inaccessible, the subjective life of the other.'<sup>35</sup> Thus, petitioning storytellers reinterpreted evidence in an effort to substitute happier conclusions for otherwise sombre endings.

As an 'oppositional storyteller,' McNulty's lawyer, Thomas Mulcahy, petitioned for his client's release in the fall of 1914. Casting his request as a plea for Christian mercy, Mulcahy wrote the new minister of justice, Charles Doherty, a revised version of McNulty's story, complete with new cast members. He dismissed Dolan as a 'bad woman,' contrasting her with the new tragic star: the noble and self-sacrificing Mrs McNulty, the loving wife who yearned for her husband's release. Mulcahy implied that she would 'die of a broken heart' if the prisoner were not released by Christmas. The trial and three years' imprisonment had taught McNulty his lesson, but he could only prove his redemption if he were released and restored to his natural role as husband, father, and provider. In other words, Mulcahy tried to rescript the case as a story of a happy family torn asunder by a 'bad woman.' The illegitimate baby and his murder all but disappeared from the narrative frame of reference.

Mulcahy had already laid the groundwork for this redrafting a year earlier. His aim at that stage had been to demonstrate that sentiment among respectable folk had swung decidedly toward the man and away from the woman. As other historians of justice and mercy have observed, the condemned and the incarcerated have always been best served by elite advocates or people, at the very least, with claims to respectability.<sup>36</sup> Mulcahy followed this ancient tradition and chose his petitioners carefully, gathering signatures from 87 of Orillia's approximately 120 businessmen. 'None of them,' Mulcahy emphasized, 'are engaged in business other than as principals. No clerks or subordinates appear thereon. To put it clearly, the men whose names are there are the thinking business element of our community.'

Gentlemen of discernment were selected to lend an air of credibility to McNulty's revamped story, but the ploy initially failed to sway the executive, who in 1912 were still preoccupied with Dolan's ailments. Once they released her in 1913, however, the injustice of McNulty's continued imprisonment became a local cause in Orillia (and a matter of interest to Stephen Leacock, who lobbied on behalf of 'that unhappy man').<sup>37</sup> Other 'thinking men' in the



district were deeply offended that Dolan had returned to the locality, 'disport[ing] herself as if she had no remorse for the past or trouble about its consequences.' As former Orillia Judge Gunn surmised in 1914, 'public opinion is fast turning towards McNulty.'<sup>38</sup>

These supplementary accounts, sent by lawyers, judges, and 'thinking business elements,' as well as by the bereaved wife and her relatives, were not officially recognized until November 1914. Once again, a report prepared by the Remissions Branch spurred the executive into action. In four brief paragraphs, the new chief officer, Pierre M. Coté, reconceived the case as one meriting mercy. Beginning with a reminder that McNulty's accomplice had been released a year earlier, he set the tone for a straightforward call for equal justice. In his first draft to the Justice Minister he wrote: 'McNulty did not actually commit murder.' In the second, he decided to be more explicit: 'McNulty did not by his own hand commit murder.' From his role as the heartless villain in Power's first report on Dolan, McNulty now appeared as the 'alleged father' of the child and the man who had been sent away for life 'upon the sole evidence of Mary Dolan.' Recycling Mulcahy's sentimental appeal on behalf of the prisoner's family, Coté cast Mrs McNulty as the wounded woman 'who, with her little children, are reported to be in distressing circumstances.' For these reasons, Coté argued that 'the ends of justice' would be met if the minister were to commute the sentence to ten years, and to release McNulty on ticket of leave. Five official signatures of approval – Coté's, Charles Doherty's (minister of justice), Arthur Meighen's (solicitor-general), Louis Coderre's (secretary of state), and the Duke of Connaught and Strathearn's (governor-general) – conferred authority on this final version of the crime and the characters.

## Conclusion

At this point in their stories we reach the final pages of McNulty's and Dolan's case files. The story that had opened with the discovery of a dead infant had unfolded into a sordid tale of illicit love, betrayal, and murder. Trial and punishment were the next chapters, followed by mercy and redemption. Both convicted murderers seem to have drifted back into the currents of small-town life after their release. Since neither of them faced the glare of publicity in a capital trial again, their stint as criminals was notorious but brief.

But are we any closer to the truth? In actual fact, we are no closer *after* reading the files than when we began. What, for instance, was Mary Dolan's motive? Shame? Spite? Fear? Malice? Was she a designing prostitute who callously implicated one of her lovers in a cold-blooded murder? Or was she the

cowed and gullible plaything of an adulterous man? The answers to these questions do not lie in the case files. Rather, what we find is a miscellany of truth claims, some vested with the authority of letterhead that proclaimed 'Judge's Chambers,' and others, shakily penned on newsprint, cloaked in moral conviction, if not the niceties of spelling and grammar. Narratives of crime, guilt, innocence, and mitigation circulated at various points, but only some were deemed *the* truth at any one time. Authorities in the Remissions Branch and the executive adopted some versions of the truth and discarded others, constituting and reconstituting the official version of the story.

There is no greater illustration of the 'power/knowledge' nexus than the textual production of truth in capital case files.<sup>39</sup> In the post-Confederation federal bureaucracy it was no longer considered adequate to leave the fate of the capital convicted to a sovereign's hunch. Indeed, both the sovereign and her or his representatives were far removed from the process by the late nineteenth century. Mrs McNulty's petition to King George and her assurance that she would 'never cease to pray for our King and Queen' (if only her husband were released) never reached the king's eyes. Instead, her petition and the other items that found their way into capital case files were subjected to bureaucrats' narrative reworkings. The production of knowledge was routinized in the form of the remissions officer's memorandum, an amalgam of information reconstituted into a format that facilitated life-and-death decision making.<sup>40</sup>

Analysing capital case files as texts is not meant to deny that every file documented the tragedy of at least one death, or that hundreds of people were executed or incarcerated for long periods of time as a result of the information contained therein. Instead, this methodology focuses on the textual processes that fed to and flowed from material practices and events. Not only does it expose the justice bureaucracy's informal, deductive means of arriving at the truth about the condemned person's appropriate fate, but it suggests how we might speak more broadly about the cultural construction of culpability. In the Dolan-McNulty case, tropes of gender informed not one, but two divergent readings of the principals' characters. The range of possible readings in capital cases was not unlimited, however.<sup>41</sup> Remission Branch officials, like local worthies and common folk, interpreted capital cases through culturally informed calculations of criminal culpability. Neither true nor false, case file texts represented various players' strategic attempts to order disturbing events into credible narratives of justice. Whether we link fragments in hundreds of case files to profile many people's fates, or zero in on a single case to make broader observations, historians inevitably invent new narratives without ever bringing the stories of the condemned to a close.

## Notes

- 1 For important discussions of post-structuralist theory and history, see Joan Scott, *Gender and the Politics of History* (New York 1988), and Derek Attridge, Geoff Bennington, and Robert Young, eds, *Post-Structuralism and the Question of History* (Cambridge, Eng., 1987).
- 2 Jeffrey Weeks defines discourse as 'a linguistic unity or group of statements which constitutes and delimits a specific area of concern, governed by its own rules of formation with its own modes of distinguishing truth from falsity.' 'Foucault for Historians,' *History Workshop Journal* 14 (Autumn 1982), 106–20, 111.
- 3 The following works (with the exception of Mitchell's article) are based on capital case files: Neil Boyd, *The Last Dance: Murder in Canada* (Scarborough 1986); Alan Hustak, *They Were Hanged* (Toronto 1987); Martin Friedland, *The Case of Valentine Shortiss: A True Story of Crime and Politics in Canada* (Toronto 1985); Tom Mitchell, "'Blood with the Taint of Cain": Immigrant Labouring Children, Manitoba Politics, and the Execution of Emily Hilda Blake,' *Journal of Canadian Studies* (Winter 1993/4), 47–71; Franca Iacovetta and Karen Dubinsky, 'Murder, Womanly Virtue, and Motherhood: The Case of Angelina Napolitano, 1911–1922,' *Canadian Historical Review* 72:4 (1991), 505–31; Desmond Morton, ed., *The Queen v Louis Riel* (Toronto 1974); and Thomas Flanagan, *Louis 'David' Riel: Prophet of the New World* (Toronto 1979). Blake's file is one of the few missing from the RG13 holdings at the National Archives of Canada (hereafter NAC). For a comprehensive listing of files, see Loraine Gadoury and Antonio Lechasseur, *Persons Sentenced to Death in Canada, 1867–1976: An Inventory of Case Files in the Records of the Department of Justice (RG 13)* (Ottawa 1992).
- 4 Kenneth Avio, 'The Quality of Mercy: Exercise of the Royal Prerogative in Canada,' *Canadian Public Policy* 13 (1987), 366–79. For further statistical studies, see Avio, 'Capital Punishment: Statistical Evidence and Constitutional Issues,' *Canadian Journal of Criminology* 30:3 (October 1988), 331–49; David Chandler, *Capital Punishment in Canada* (Toronto 1976); and C.H.S. Jayewardene, *The Penalty of Death: Capital Punishment: Statistical Evidence and Constitutional Issues*, *Canadian Journal of Criminology* 30:3 (October 1988), 331–49; David Chandler, *Capital Punishment in Canada* (Toronto 1976); and C.H.S. Jayewardene, *The Penalty of Death: The Canadian Experiment* (Lexington, Mass., 1977).
- 5 See, for instance, Lynn Hunt, ed., *The New Cultural History* (Berkeley 1989); Domenick LaCapra, *History and Criticism* (Berkeley 1985); Attridge et al., *Post-structuralism*; and Scott, *Gender*. For an informed critique of Canadian historians' failings in applying this methodology, see Lorna Weir, 'The Wanderings of the Linguistic Turn in Anglophone Historical Writing,' *Historical Sociology* 6:2 (June 1993), 227–45.
- 6 On the question of language as power see Pierre Bourdieu, *Language and Symbolic Power* (Cambridge, Mass., 1991).
- 7 The classic study of a case file, or 'dossier,' is Michel Foucault, ed. (trans. Frank

- Jellinek), *I, Pierre Riviere, having slaughtered my sister, and my brother ...: A Case of Parricide in the 19th Century* (New York 1975). See also Patrizia Guarnieri (trans. Claudia Mieville), *A Case of Child Murder: Law and Science in Nineteenth-Century Tuscany* (Cambridge 1993 [1988]). Both of these books analyse the emergent discourse of psychiatry. Natalie Zemon Davis discusses narrative traditions deployed in letters of remission in *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Cambridge, Eng., 1988 [1987]).
- 8 As the Children's Aid Society assumed responsibility for adoptions in the 1890s, the practice of infanticide gradually declined in large cities such as Toronto. Carolyn Strange, *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880–1930* (Toronto 1995), 72–6, 112–13. On the frequency of infanticide before that period see Constance Backhouse, 'Desperate Women and Compassionate Courts: Infanticide in Nineteenth-Century Canada,' *University of Toronto Law Journal* 31 (1984), 447–78.
  - 9 In spite of infanticide's frequency, or, perhaps, because of it, conviction rates have historically been very low on the full charge of murder. As historians have recognized, jurors were reluctant to convict single mothers who killed their infants out of desperation and shame. See Rachel Fuchs, *Poor and Pregnant in Paris: Strategies for Survival in the Nineteenth Century* (New Brunswick, NJ, 1992), 203.
  - 10 The NAC guide to capital case files covers the post-Confederation period. Before that period each colony disposed of cases through its own colonial bureaucracy. The only women executed after Confederation were those who had killed adults (in most cases their husbands or other men).
  - 11 Foucault observed that scientific discourses, like the religious and 'superstitious' discourses they supplanted, constructed new ways of distinguishing truth from falsity. Professions like psychiatry and criminology did not 'discover' previously hidden truths; rather, they produced new means of constituting truths. Foucault elaborates this point in 'Scientia Sexualis,' *The History of Sexuality*, vol. 1, *An Introduction* (New York 1978), 53–73.
  - 12 For an excellent analysis of counter-hegemonic storytelling strategies, see Patricia Ewick and Susan S. Silbey, 'Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative,' *Law and Society Review* 29:2 (1995): 107–226.
  - 13 For an excellent analysis of counter-hegemonic storytelling strategies, see Patricia Ewick and Susan S. Silbey, 'Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative,' *Law and Society Review* 29:2 (1995): 197–226.
  - 14 Judges were required by law to pronounce the death sentence when defendants were convicted of capital crimes. In the case of rape (after 1873), they had the option of sentencing convicted men to imprisonment, but in murder cases they had no choice. Judges did have the option to 'record' rather than pronounce a sentence of death in order to cue the cabinet that the accused might deserve mercy. Similarly, juries could recommend mercy, but judges were not obliged to convey their sentiments to the cabinet.
  - 15 There are, as one would expect, missing files and missing values. The data set is nonetheless remarkably complete.



- 15 Avio, 'The Quality of Mercy,' 366. Avio has devised the 'statistically representative' case for the period he covers (1926–57): the offender was most likely to be a low-status Anglo male in his early thirties with no dependants; the typical victim was a white male or, if female, a person related in some way to the killer. The circumstances were typically that of a premeditated murder, without provocation, and for which neither jury nor judge had recommended mercy. Persons who ran higher risks of being executed had different characteristics and backgrounds: offenders with prior criminal records; labourers; Aborigines, ethnic minorities or French Canadians; murderers of policemen or high-status persons; those whose crimes were particularly brutal, or who committed murder in the course of another felony. Avio, 'The Quality of Mercy,' 368–9.
- 16 François Ewald, 'Norms, Discipline, and the Law,' *Representations* 30 (Spring 1990), 144. I am grateful to Lorna Weir and Mariana Valverde for bringing Ewald's work to my attention.
- 17 Eric Monkkonen notes that official homicide data are remarkably inconsistent over time. 'New York City Homicides: A Research Note,' *Social Science History* 19:2 (Summer 1995), 201–15.
- 18 Multivariate analysis determines the importance of more than one variable (such as age or sex) simultaneously. Multivariate regression analysis ranks variables in order of their importance in a given set of relationships.
- 19 NAC, RG13, Capital Case Files, v. 1489, f. 600A; v. 1499, f. 619A; v. 1529, f. 723A; v. 1479, f. 521A (hereafter Capital Case Files).
- 20 For a review of semiotics and hermeneutics as methods of textual analysis, see Bernard S. Jackson, 'Narrative, History, and Truth,' in *Law, Fact, and Narrative Coherence* (Merseyside, Eng., 1988), 155–74.
- 21 Capital Case Files, v. 1461, f. 459A, Power to Minister of Justice, 7 Dec. 1910 (hereafter 'Dolan').
- 22 Transcript of Evidence, *R. v. Dolan*, 26–29 Sept. 1910, in Dolan.
- 23 Thomas Cowper Robinette was arguably the finest defence lawyer of his day, and one of the first to specialize as a defender (appearing frequently without pay). On his success in defending accused rapists, see Carolyn Strange, 'Patriarchy Modified: The Criminal Prosecution of Rape in Toronto, 1880–1930,' in Susan Lewthwaite, Tina Loo, and Jim Phillips, eds. *Essays in the History of Canadian Law*, vol. 5, *Crime and Criminal Justice* (Toronto 1994), 207–51, 248 n.59.
- 24 Dr Bruce Smith, the Ontario inspector of prisons and public charities and a medical authority often called upon by the province to determine the mental state of offenders, later diagnosed Dolan as 'an absolute and confirmed epileptic.' This mitigating factor was not emphasized in the trial because the defence could not afford to hire the expert. Melville B. Tudhope to Power, 6 Dec. 1910, in Dolan.
- 25 The second time proved more notorious. Seven months after the Dolan trial Britton was the judge assigned to the case of Angelina Napolitano. His enthusiasm to see Napolitano convicted suggests that he had managed to overcome his squeamishness about convicting women on capital charges. On his courtroom demeanour in the Napolitano case, see Iacovetta and Dubinsky, 'Womanly Virtue.'
- 26 From 1899, when Emily Hilda Blake was hanged in Brandon for the shooting death of her mistress, to 1923, when Florence Lassandro was hanged in Fort Saskatchewan, Alberta, for her involvement in the death of a constable, every woman sentenced to death was spared. Gadoury and Lechasseur, *Persons Sentenced*, 323.
- 27 Johnson to Minister of Justice, 15 Oct. 1910; shingle manufacturer to Minister of Justice, 4 Nov. 1910, in Dolan.
- 28 On broader patterns of commutation, see Carolyn Strange, 'The Lottery of Death: Capital Punishment in Canada, 1867–1976,' *Manitoba Law Journal* 23:3 (January 1996), 594–619.
- 29 M. McDonald to Minister of Justice, 3 Dec. 1913, in Dolan.
- 30 Her sentence was officially amended to ten years, meaning that if she committed any other offence in that period her life sentence would be reinstated and she would be returned to prison. As a rule, women were not required to report to authorities while released on a ticket of leave.
- 31 McNulty's conviction hinged on Dolan's uncorroborated evidence. This was noteworthy, since the judge had cautioned the jury, as he was required to do in cases without direct evidence, that the defendant *could* be so convicted, but that the law did not *require* a conviction.
- 32 NAC, Capital Case Files, RG13, v. 1462, f. 460A, Power to Minister of Justice, 7 Dec. 1910 (hereafter 'McNulty').
- 33 Lawrence Douglas, 'Discursive Limits: Narrative and Judgement in *Billy Budd*,' *Mosaic* 27:4 (December 1994), 141–61, 142.
- 34 Mulcahy to Minister of Justice, 13 Dec. 1913, in McNulty.
- 35 Robyn West, 'Narrative, Responsibility, and Death,' in *Narrative, Authority, and the Law* (Ann Arbor 1993), 419–39, 425. The use of narrative strategies in pursuit of racial justice is considered in Richard Delgado, 'Storytelling for Oppositionists and Others,' *Michigan Law Review* 87 (1989), 2411–41.
- 36 The definitive work in this area remains Douglas Hay, 'Property, Authority, and the Criminal Law,' in Douglas Hay, Peter Linebaugh, and E.P. Thompson, eds. *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London 1975), 17–63. For interpretations that place less emphasis on class, see John M. Beattie, 'The Royal Pardon and Criminal Procedure in Early Modern England,' *Canadian Historical Association, Historical Papers*, 1987, 9–22; and Peter King, 'Decision-makers and Decision-making in the English Criminal Law, 1750–1800,' *Historical Journal* 27 (1984), 25–58.

- 37 Leacock to Minister of Justice, 11 Jan. 1914, in McNulty. Leacock avidly supported the Conservative party and was a personal friend of Charles Doherty. In this letter he mentioned that he had previously met with Doherty about the case in 1913.
- 38 Gunn to Pierre M. Coté, 9 Dec. 1914, in McNulty. Coté replaced Power after his retirement. This was not the first allegation that Dolan was immoral. In 1911, Mrs McNulty petitioned 'His Royal Highness King George V' for her 'dear husband's' release, claiming that he had been convicted on the word of 'a common proscute [sic].' Mrs McNulty, 9 June 1911, in McNulty
- 39 This Foucauldian concept, that knowledge is power and that power is constituted through and conferred by knowledge, is elaborated in Colin Gordon, ed., *Power/Knowledge – Selected Interviews and Other Writings, 1972–1977* (Brighton, Eng., 1980).
- 40 On the deadliness of law, see Robert Cover, 'Violence and the Word,' *Yale Law Journal* 95 (July 1986), 1601–29. For further interpretations of Cover's work, particularly in relation to his criticism of capital punishment, see Austin Sarat and Thomas R. Kearns, eds, *Law's Violence* (Ann Arbor 1993).
- 41 For this reason, some scholars question whether discretionary decision making is as arbitrary as is commonly assumed. See Keith Hawkins, ed., *The Uses of Discretion* (Oxford 1992), and Carolyn Strange, ed., *Qualities of Mercy: Justice, Punishment, and Discretion* (Vancouver 1996).

## 2

## Employment Contracts in Merchant Shipping: An Argument for Social Science History

ERIC W. SAGER

My argument is an old one applied in a new context. The old argument is that social historians have much to learn from the methods of social scientists. The new context is that of the 1990s, when many historians in Canada and elsewhere, often influenced by impressive developments in gender history and cultural history, are making extensive use of 'case files.' I suggest that historians who use such files necessarily confront a common problem: how do we deal with the bias inherent in documents that describe certain people in words and categories that serve the official purposes of other people? The problem arises because most collections of individual case records that historians encounter in the archives were generated in an institutional context: an officer of an institution recorded information about persons or subjects of interest to the institution. My argument begins with this problem, and suggests an approach that derives from my work with crew agreements – employment contracts that sailors signed when they joined the crews of ocean-going ships of Britain or the British colonies. The conclusion is that, different as crew agreements may be from many case files, nevertheless the methods of social science, and especially the use of social statistics and computing, are powerful tools for the unpacking of meaning in case files and for resolving the problem of bias in institutional many case files, nevertheless the methods of social science, and especially the use of social statistics and computing, are powerful tools for the unpacking of meaning in case files and for resolving the problem of bias in institutional records.

The problem of bias in institutional records is hardly a new one. Many years ago Charles Tilly was calling for 'a new form of historiography,' one concerned with the nature and properties of historical sources, especially sources generated by administrative systems.<sup>2</sup> Decades ago archivists began the systematic study of the provenance of historical records (by provenance I mean the nature, structure, and intent of the records in the context of their creation).<sup>3</sup> The need to attend carefully to the provenance of official records has also been demonstrated by historians who use census records. So deep is our awareness of the