"HE WAS ALWAYS A MENTAL DEFECTIVE": PSYCHIATRIC CONVERSATIONS AND THE EXECUTION OF BENNIE SWIM IN NEW BRUNSWICK, 1922

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Abstract

This article examines the murder of Olive Trenholm by Bennie Swim in 1922 near Woodstock, New Brunswick, along with Swim's trial. It also explores the competing views of Swim's mental fitness, including those of his defence counsel, the Crown, the judge, psychiatrists, and local residents. Moreover, this article discusses how these views, or conversations, contributed to the creation of knowledge about who was sane and insane. What the conversations about Bennie Swim's mental capacity determined was that while he was not a "*fully* responsible agent," he was responsible enough to pay the ultimate price for his crime.

Résumé

Le présent article permet d'examiner le meurtre d'Olive Trenholm par Bennie Swim en 1922 près de Woodstock, au Nouveau-Brunswick, ainsi que le procès de ce dernier. Il porte aussi sur les points de vue divergents quant à la santé mentale de M. Swim, notamment ceux de son avocat, de la Couronne, du juge, des psychiatres et des résidents de la région. Qui plus est, cet article permet d'étudier comment ces points de vue ou conversations ont contribué à la création de connaissances sur les personnes saines d'esprit et les personnes aliénées. Les conversations sur la capacité mentale de M. Swim ont permis de déterminer que même s'il n'était pas « *entièrement* responsable », il était suffisamment responsable pour payer le prix ultime de son crime.

In a letter to the federal minister of justice in May of 1922, S. Stanley King, a psychiatrist in Saint John, informed Lomer Gouin that in his expert opinion, Bennie Swim, who was awaiting execution in the Carleton County jail, which was scheduled for 18 July, "is seriously mentally deranged, and...there is evidence...that he was always a mental defective of the imbecile type."[1] While King's assessment of Swim's mental state did not save him from the gallows, it does underscore the competing psychological narratives, or conversations, that arose in the wake of Bennie Swim's conviction for the murder of Olive Swim Trenholm in 1922 in the village of Benton Ridge near Woodstock, New Brunswick. Swim also murdered her husband, Harvey Trenholm, but since he was sentenced to death for killing Olive, the Crown decided not to proceed with a second trial for the murder of Harvey. The question of Swim's sanity at the time of the murders was first raised by his defence counsel, but to no avail. And then during the review of Swim's case to determine if his death sentence should be commuted to life imprisonment, some members of the local community (including the County Sheriff) expressed their views about his mental capacity. Ultimately, however, the determination of Swim's sanity for the purposes of staying or confirming his execution rested with four "mental specialists" who examined Bennie Swim and his socioeconomic background.

This article will provide an overview of the crime and Swim's trial and critically assess the competing views of Swim's mental fitness, including that of his defence counsel, the Crown, the presiding judge, the psychiatrists (or "alienists") who reviewed his case, and New Brunswick residents. Moreover, this article will discuss how these types of conversations contributed to the creation of knowledge about who was sane and insane. This knowledge was popular with some in the criminal justice system because it provided a secular scientific language for discussing, and possibly solving, the seemingly intractable problem of criminal and antisocial tendencies that allegedly prompted some people to commit murder. Such knowledge also allowed the state to justify the execution of some "sane" offenders, notably those who possessed limited intellectual capacity.

It was not often that someone accused of murder in mid-twentieth century Canada escaped either conviction or execution by proving insanity. According to Kimberley White, between 1920 and 1950, 1,443 individuals were charged with murder. Of this number, 12 percent were deemed to have had "lunacy" and did not face trial. Another 48 percent were either acquitted or charged with a lesser offence, while 40 percent were convicted of murder. And of those who were convicted of murder, 55 percent (319) were executed.[2] Similarly, for the years 1879 to 1957, 291 persons who had been charged with murder were "detained for insanity" in asylums and hospitals across the country.[3] In New Brunswick, of the twenty-six cases in the period from 1869 to 1957 that resulted in executions (which form the parameters of my larger study on capital punishment in this province), eight (30 percent) relied upon insanity as a formal defence, as grounds to appeal a conviction, or as a reason to commute a death sentence.[4] In two other cases (Arthur and Daniel Bannister, 1936 and Clifford Ayles, 1956) petitions and letters were sent to the federal government imploring officials not to execute these men on the basis of their perceived "imbecility," but no formal attempts were made to plead or prove insanity. In all of these cases, however, the insanity defence failed to prevent these men from being executed. The law in Canada presumed that an individual accused of committing an offence was sane. The *Criminal Code* stated that "Everyone shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved."[5] Therefore, the onus to prove insanity rested with the defence.

At the centre of efforts to illustrate to a jury or to members of the federal cabinet whether or not an accused was insane were psychiatrists. As Cheryl Krasnick Warsh has posited, the expansion of psychiatry outside of asylums "upgraded the profession as a whole and established psychiatrists as experts on the mind."[6] By establishing themselves as experts, psychiatrists gained a measure of credibility with judges and juries. But this credibility was at times questioned by the criminal justice system, generating a sense a frustration among alienists and forcing them, at least prior to 1950, to constantly reaffirm their position as experts of the mind.[7] The tests that alienists administered to determine a person's mental health, as Mona Gleason has keenly observed, "presupposed a certain model of normalcy as an obtainable commodity, controlled and defined in psychological discourse."[8] In the opinions of two mental specialists, Bennie Swim did indeed fit a "model of normalcy," which ultimately cost him his life. But in the eyes of some in the local community, Swim did not necessarily fit either a psychiatric or a societal construct of "normalcy," due primarily to his allegedly wretched childhood and bellicose behaviour, combined with his "unnatural" attraction to his cousin, Olive Swim. This meant that Bennie Swim was a menace to society, which was reinforced for the jury by the violent, if not calculated, nature of the murders. If so, the threat that Swim posed to social order was not one that could be defined and treated by "medicine of the mind"; rather, his form of "social uselessness," as described by Foucault, could be dealt with only by the supreme sanction of the criminal justice system.[9]

The determination of Bennie Swim's sanity was part of a wider discussion in Canada about "mental deficiency" and "feeble-mindedness." Beginning in the late nineteenth century, the mentally deficient were considered by many to be a scourge upon society. They were viewed as socially and economically incompetent deviants who threatened the economic, social, and moral well-being of their communities. Similarly, these individuals were linked with poverty, crime, and a "myriad of other forms of 'immoral' and 'antisocial' behaviours [and] with the biological degeneration of the human race."[10] Social and medical historians have charted the rise and the implications of this eugenics thought on children and adults in this country, and they have identified the various causes and definitions of mental deficiency and feeble-mindedness.[11] In particular, these studies have revealed the competing notions of the curability of feeble-mindedness, mental deficiency, and insanity, and how these socially and medically constructed conditions were sometimes interchangeable.

Many experts were steadfast in their belief that the feeble-minded could not be cured. Central to this position was the idea that mental deficiency (which included "idiot," "imbecile," and "moron") was attributable to poor parenting and/or a hereditary defect. This made mental deficiency an intractable condition of "arrested mental development," unlike insanity, which was felt to be a curable disease of a "normally developed mind."[12] These hereditarian concerns about "mental defectives," as Geoffrey Reaume reminds us, were rooted in class biases. It was the poor and the working class, like Bennie Swim (along with Indigenous peoples and ethnic minorities) who were assumed to be more susceptible to criminal tendencies because they were "weak-minded."[13] Moreover, as Carolyn Strange has revealed, in the 1867 to 1976 period, young, working-class males and men from ethnic minorities suffered the most in terms of their death sentences not being commuted by the federal government.[14] This article will highlight how these medical assumptions about mental deficiency shaped the various interpretations of Bennie Swim's alleged insanity, or moral weakness, which in turn determined his fate.

"I Suppose I Will Hang for This": The Murder of Olive and Harvey Trenholm

On 27 March 1922, twenty-year old Bennie Swim murdered Olive Swim Trenholm, his cousin and "sweetheart," and her husband, Harvey Trenholm. The murders were committed at Benton Ridge, Carleton County, New Brunswick. This was a small rural community whose residents relied primarily upon farming and forestry for employment. In 1921 the combined population of Carleton and Victoria Counties was 33,900, the nearby town of Woodstock, the "shiretown" of Carleton County, had 3,600 residents, and New Brunswick's population in 1921 was 387,876.[15] Harvey Trenholm was a veteran of the First World War and he and Olive Swim had only been married for less than two weeks before they were "sent into eternity with tragic suddenness."[16] Swim's guilt was not necessarily in doubt since he confessed to the murders. As Swim had allegedly said upon his arrest by Sheriff Albion Foster, "It's awful what a woman will bring a man down to...this is a bad scrape. I suppose I will hang for this."[17]

During Swim's trial, which was held in the Supreme Court, King's Bench Division, Carleton County, the Crown cast the murder of Olive and Harvey Trenholm as premeditated and Swim as a cold-blooded murderer. One witness, Henry Carr, who had spoken with Swim on the night of the shootings, testified that Swim had readily shared with him the details of the events that had transpired: "He seemed to be calm, not excited. He talked cool like."[18] Swim had grown quite fond of Olive Swim while he had been living with Olive and her father. According to Olive's father, she and Swim had for all intents and purposes lived as husband and wife for over a year. But while Bennie had hoped to formalize this conjugal arrangement through marriage—he had even given Olive a ring—she spurned his offer of

matrimony and instead became betrothed to Harvey Trenholm. After Bennie learned of their marriage, he travelled to their home hoping to convince Olive to leave Harvey. Prior to departing, however, he purchased a "five-shooter" revolver. When Swim arrived at their home, he shot Harvey Trenholm following a brief confrontation on the front porch. When Olive heard the gun shot she came to the door. Swim begged her to come with him, and when she refused, he shot her in the side, just below her right arm. Olive then staggered back into the house and Swim followed and shot her through the heart. Dr. T.W. Griffin, a surgeon from Woodstock who had examined the bodies, informed the court that he had discovered that "pieces of the [parietal] bone were driven into the brain substance" of Harvey Trenholm which would have resulted in "almost instant death."[19] When asked by Crown counsel Peter J. Hughes to describe the extent of Olive Trenholm's injuries, Dr. Griffin stated that while the first bullet did not produce the fatal injury, the second shot perforated her heart, causing "almost instantaneous death."[20] One newspaper attributed the murders to pure jealousy, and claimed that Bennie Swim had said, "I am willing to die for this girl....It was all over ten minutes after my arrival at the house."[21]

After Swim had killed Harvey and Olive Trenholm, he fled and hid in the surrounding woods where he tried, unsuccessfully, to commit suicide by shooting himself in the head. The police were able to capture Swim by following the trail of blood from his wound.[22] In many ways Swim was a "typical" murderer. In a study of 440 capital cases between 1926 and 1957, Kenneth L. Avio compiled a list of statistically representative characteristics of those individuals who had been condemned to die. The "representative offender" was male, thirty-three years of age, an Anglo-Canadian, held a "low status occupation," and had no dependents. Swim generally fit this profile, including the fact that he had little formal education and he worked for a local company peeling pulp.[23] His trial lasted three days in April 1922 and the jury took less than an hour to find Bennie Swim guilty of the wilful murder of Olive Trenholm. The jury did not, however, recommend to the court that mercy be shown to Swim. The jury's decision not to recommend mercy was somewhat unusual, as juries often recommended mercy in part to soothe the "consciences of jurors who did not want to feel personally responsible for bringing about the death of another person."[24] This suggests that the members of the jury were persuaded by the Crown's argument that Swim was sane when he committed the murders and that he displayed little remorse for his actions. Since he had been charged with the "highest offence known before the law," the judge sentenced Bennie Swim to be "hanged by the neck until...dead."[25]

"A Species of Insanity": Defence Counsel's Efforts to Establish "Disease of the Mind"

Swim's attorney, Frederick Charles Squires, whom the court had appointed on the opening day of the trial to represent him, attempted to establish an insanity defence for his client. After completing a Bachelor of Arts degree at the University of New Brunswick (UNB) in 1906, Squires, who was born in Carleton County in 1881, studied law at Harvard University, and was admitted to the New Brunswick bar in 1916. By 1922 he had established a reputation as a competent and reliable defence attorney in criminal cases.[26] Considering Swim's confession, Squires may have felt that an insanity defence was the most logical course of action. As Ken Leyton-Brown has noted, the insanity defence was introduced "as a matter of course" in most capital murder cases.[27] Squires was given little time to prepare a proper defence for Swim. After he agreed to take the case, Squires pointed out that "I really know nothing of the case," and asked if the proceedings could be postponed until the next day. The presiding judge, Chief Justice Harrison McKeown, who was appointed chief justice in 1916 after establishing himself as a "rising star in criminal defence," was reluctant to do so, stating that he had hoped that the trial would

resume that afternoon.[28] But when Squires declared that after reading some of the depositions and speaking with Swim, "I do not feel in justice to the defence that I should go on with the case this afternoon," McKeown granted Squires's request.[29]

The *Criminal Code of Canada* stipulated that "No person shall be convicted of an offence by reason of an act done or omitted by him when laboring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such an act or omission was wrong."[30] Canada's insanity defence was based on the "M'Naghten rules," which were developed by the High Court Judges of the British House of Lords in 1843 following the *R v M'Naghten* case (1843). In essence, a jury had to be satisfied that an accused was suffering from a "disease of the mind" to the point where they were unaware of the nature, character, and consequences of what they were doing. Moreover, the question of whether a person's condition constituted a "disease of the mind" was a legal, as opposed to a medical, question, which meant that the testimony of medical and psychiatric experts could be, and indeed were at times, ignored by juries and judges.[31]

The M'Naghten rules were contentious. Supporters contended that such phrases as "nature and quality of the act" gave juries tremendous latitude to use their common sense to determine if an accused should be held criminally responsible for their actions. This belief reinforced the notion that the role of experts was not to determine if legal insanity existed, but to provide the court with their opinion, which the court could then consider when it determined the issue of insanity. Critics, on the other hand, argued that the M'Naghten rules narrowly identified insanity with "disordered reason," and that they failed to acknowledge that insanity affected a person's "total personality which includes both the will and the emotions," thus making it difficult to establish insanity as a defence.[32] One such critic was Dr. C.K. Clarke, medical superintendent of the Rockwood Hospital in Kingston, Ontario. In an article published in 1904 in the *Canadian Journal of Medicine and Surgery*, Clarke, a prominent eugenicist, stressed that courts and the criminal law did not provide adequate means to detect criminal insanity, nor did they fully understand the condition. And as a result, Clarke boldly proclaimed that "it is morally certain that several insane murderers were hanged in Canada during the last few years." Clarke also lamented that far too many "insane" criminals languished in prisons, where they would inevitably become "that scourge of society known as the habitual criminal." But if given the proper care in an asylum, Clarke was confident that they would become "useful citizen[s]."[33] The task that Swim's lawyer faced in proving his insanity at the time of the murder was anything but straightforward.

Squires intended to highlight for the jury Swim's "natural imbecility" by revealing the hereditary nature of his condition. Swim, Squires declared, hailed from a family that possessed a "species of insanity," and some of the members of his family "were outright insane." Squires also hoped to convince the jury that Bennie and Olive Swim had been living together "quite happily" for over a year, but when Olive married Harvey Trenholm, the anguish that Swim faced was "unbearable." And while an "ordinary man" could have dealt with the "irritation" that this situation caused, such was not the case for a "man having the same kind of blood in his veins that Bennie Swim had." Squires pointed out to the jury that for much of the last year Swim "has not been in a normal condition" and occasionally he was "out of his mind."[34]

Instead of relying on psychiatric experts to validate Swim's "disease of the mind," Squires called upon Swim's close and extended family members to chronicle the family's history of insanity. While it is uncertain why Squires chose not to call any alienists to testify on Swim's behalf, even though by 1870

they had become integral to an insanity defence, he may have surmised that Swim's relatives would have been seen by the jury as more reliable "experts" than men of science. Moreover, with such little time to prepare his case, Squires simply could not have made the necessary arrangements to have a psychiatrist examine Swim and testify as to whether he was suffering from a "disease of the mind" at the time he committed the murders.[35] Similarly, Squires did not call Bennie Swim to the witness stand, concerned as he may have been about what Swim might have said, especially under cross-examination by the Crown. Swim's mother, Eva May Swim, told the court that her father, brother, and sister had long suffered from violent "fits." Her father's fits would lead him to "grab you if he could get hold of you and bite a piece right out of you. He seems to be ugly, goes mad." When Squires asked Mrs. Swim if her son behaved in a "peculiar way," she replied that he would often "kind of get out of his mind and get down on the floor on his knees and grab hold of things and twist them." And after Olive left Bennie, Mrs. Swim felt that her son "seemed to be out of his mind."[36]

Bennie Swim's father, William Swim, corroborated Mrs. Swim's testimony. As a boy Swim had experienced seizures, and when he came out of these "spells" he acted "kind of dumb." Mr. Swim also testified that prior to the murders Swim had "acted queer. He could not stay still or do anything."[37] Jesse Foster, Swim's uncle, confirmed that the Swim family had long struggled with mental illness and that in the week before he killed Olive and Harvey, Swim did not appear to be "natural."[38] On the basis of this testimony, Squires implored the jury to believe that insanity was "working upon [Swim's] mind" at the time of the murders and acquit him. Squires may have hoped to persuade the jury that even if they felt that Swim was sane, he was at least suffering from "delusions," which could be grounds to acquit if the delusions "caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act."[39] But as Roger Smith has demonstrated, during Victorian-era trials, while some alienists "accepted epilepsy as *prima facie* evidence for a lack of responsibility" on the part of an accused who had experienced "fits," juries "stuck to the specific deed." And in Swim's case, the jury had perhaps surmised that the brutality of the shootings was more the result of misguided jealousy than insane delusions.[40]

During his cross-examination of these witnesses, Crown prosecutor P.J. Hughes tried to refute the claims of familial insanity. He pressed Mrs. Swim to clarify that her brother (Swim's uncle) had not experienced any fits since he was fourteen, and that while he may still occasionally become angry, this anger did not result in violence: "That is the kind of insanity that you find in him?" Hughes asked, to which Mrs. Swim quipped, "Yes." When he questioned Swim's father, Hughes had him admit that he did not really understand what his son's fits meant, including when Swim came out of these "spells":

Q: You say he was dumb?

A: Yes.

Q: But you don't hardly know what it means?

A: No.[41]

Hughes stressed to the jury that the defence had not presented credible (i.e., expert) evidence to prove that Bennie Swim had displayed any signs of insanity or delusions when he killed Olive and Harvey Trenholm, and so they could not find him innocent on these grounds.[42]

In his charge to the jury before they began their deliberations, Chief Justice McKeown seemed to side with the Crown's argument regarding the question of Swim's sanity. McKeown reminded the

members of the jury that while insanity is a legal defence, the accused must "prove it to the satisfaction of the jury." In noting that several of Swim's relatives had testified as to the history of insanity in their family, McKeown asked the jury, "Does that prove to your reasonable satisfaction that he was insane at the time he committed this offence?" McKeown did, however, place some of the blame for the murders on Olive's and Bennie's families: "If either her family or his family had insisted that they be married, this trouble would never have arisen." McKeown's statement implied that Olive bore some of the responsibility for her fate because she had rejected Swim's proposal of marriage. Moreover, it downplays the gravity of the crime by describing Olive Trenholm's murder as merely "trouble" for the community.[43]

McKeown proffered his own version of the insanity defence as it related to Swim's actions: "It means did the man know the kind of deed he was doing? Did he know what he was doing? Did he know he was doing wrong? Did he understand the consequences to Olive Trenholm of his shooting at her?" McKeown's learned opinion on these questions was conveyed rather obliquely to the jury in the form of a seemingly leading question: "Is not everything—his approach to the place, his preparations to go to the place, his going away afterwards, to his remark to the sheriff, pointing the other way?"[44]

This pronouncement may have tipped the scales of justice against Swim, for the jury no doubt considered Swim's comment to Sheriff Foster—"I suppose I will hang for this"—as proof that he was aware of the consequences of his actions at the time of the shooting. After the jury had delivered its guilty verdict and Swim was sentenced to be hanged, Chief Justice McKeown confidently announced that during these proceedings "everything which could be said in [Swim's] behalf was said and everything which could be done was done."[45] But if McKeown had hoped that by uttering these words he would stifle any criticism of how the trial was conducted, including the question of Swim's sanity, and its penultimate outcome, he was sadly mistaken. Within weeks of the trial's conclusion, fiery critiques of Swim's fate and competing narratives of his state of mind swirled throughout New Brunswick, with reverberations in Ottawa, where Swim's case was eventually scrutinized.

Bennie Swim: Of "Sound" or "Unsound" Mind?

Because Bennie Swim was sentenced to hang, his case was automatically reviewed by the Federal Department of Justice to decide if his death sentence should be commuted to life imprisonment. During the department's investigation, the issue of Swim's sanity was raised first by local criminal justice officials and those members of the community who were sympathetic to Swim's plight and/or opponents of capital punishment. Shortly after the trial had ended, Albion Foster, Carleton County's Sheriff, who oversaw the arrangements for Swim's execution, pointed out that from what he had observed, Swim might be suffering from some sort of mental disease. Foster alleged that Swim was in control of his faculties until his death sentence was pronounced and then he became enraged and refused to eat. Foster noted that Swim did not recognize anyone who came to see him, including his parents. He spent most of his time praying and ranting "almost incessantly about cattle and sheep...and on other strains." Foster's concerns about Swim's mental state were echoed in a letter, signed by sixteen people from Carleton County, to the Federal Minister of Justice, dated 15 May 1922. The letter claimed that Swim was of "unsound mind" and the petitioners implored the Minister to appoint a commission to examine Swim's mental condition so that his case could be presented to the Governor General "in order to have him removed to a proper institution for care."[46]

This letter was part of a movement initiated by a few members of the community to save the "half-witted" Swim from the gallows. The *Hartland Observer* argued that Swim was "born amid squalor, reared in surroundings of depravity and all his life subject only to the greatest law in the world—that of self-preservation," and as a result he was "undoubtedly of feeble and unsound mind, little short of an imbecile." According to the *Observer*, in Swim's "undeveloped mind," he and Olive were married. This meant that when Swim was placed in stressful situations, such as losing his "wife" to another man, he "goes completely beside himself," and a battle ensued that "under such circumstances is common to any denizens of the forest." The only ones who are to blame for this tragedy, the *Observer* argued, are those people in the communities of Hartland and Woodstock who did nothing to improve the "deplorable conditions" that precipitated this crime; they are the "culpable ones and the ones who should...be hanged." The article concluded with the desperate plea: "DON'T HANG BENNIE SWIM!"[47]

When compared with other campaigns in New Brunswick and elsewhere in Canada, the call to save Bennie Swim from the gallows was tepid. For example, in 1942, sixty-three-year old John Oliver was sentenced to death for shooting Staff Sergeant Herbert Lobb, a World War I veteran and the father of five children, in Saint John. The local community sent a deluge of letters and petitions to the federal government calling for Oliver's death sentence to be commuted. One such petition contained five hundred signatures. The crux of their argument was that to execute Oliver, and thus leave his wife and seven children (the oldest of whom was thirteen) to bear the stigma of a husband and a father who had been hanged, was not "justice." They also felt that given Oliver's age (sixty-three), executing him would be an act of cruelty. This was also one of the first cases in New Brunswick where several members of the clergy entered the debate over the morality of capital punishment. As one minister asserted, "I feel that capital punishment is both un-orthodox and unchristian."[48] Despite this outpouring of support for Oliver, he was executed, in part, similar to the Swim case, because his crime appeared to be premediated. Moreover, many residents of Woodstock, and Carleton County generally, may have felt that the callous nature of Swim's crime did not make him worthy of mercy, despite his alleged insanity.

The doubts about Swim's mental competency gained official credibility after he had been examined by two alienists. The purpose of their examinations was to ascertain if Swim was now suffering from a "disease of the mind" that might prevent him from being executed. According to Carolyn Strange, as the psychiatric profession grew in stature, psychiatrists began to appear more frequently in the review process of capital cases. Their expertise, Strange argues, rested on the notion that they could uncover the underlying causes of criminality, whether it was degeneracy, mania, alcoholism, or pathological jealousy. Psychiatrists were considered by some to be truth assessors, which lent greater credibility to their conversations, or narratives, about a criminal's sanity.[49] At the behest of the province of New Brunswick, following a request from Sheriff Foster who felt that someone other than the jail's physician should assess Swim, S. Stanley King, a "mental specialist," provided his professional opinion of Swim's state of mind. King believed that Swim was "of the imbecile type" and urged the Minister of Justice to initiate a formal investigation into Swim's mental state so as to secure "some modification of his sentence and institutional care."[50]

King and other alienists belonged to the new sciences of criminology and psychiatry which, as Ruth Harris has deduced in the context of fin de siècle Paris, "alter[ed] substantially the notion of what real justice was." Justice came to depend upon an analysis of psychosocial disposition, along with motive. This meant that individuals who had been accused of a crime had a central role to play in the determination of "justice." "By accepting criminological precepts," Harris contends, "representatives of

the law, psychiatry, and penal administration created an arena in which the criminal and not the crime was the supreme object of judicial workings."[51] At the same time that the debate raged about Swim's mental state, King spoke publicly about criminals and insanity. King was adamant that courts had failed to realize that most murderers were insane. King pleaded with society to cease equating abnormality with immorality:

> We who are normal, and love to think of ourselves as belonging to one of the foremost of civilized nations...still insist in looking upon and treating our abnormal human beings as immoral. And abnormal here means but one thing, mental illness, an illness needing our sympathy and care and understanding as much if not more than any of the various physical illnesses.

Rather than punish mentally ill criminals through imprisonment or death, King, and New Brunswick's Committee on Mental Hygiene, of which he was a member, prescribed a course of action whereby psychiatric experts would detect individuals' abnormality, and, with the "necessary care or treatment," prevent them from descending further into criminality.[52]

King's contention that Swim was "mentally deranged" was echoed by Dr. J.V. Anglin, medical director of the New Brunswick Insane Asylum (Saint John Hospital) who examined Swim in the Woodstock jail on 31 May. Anglin, who was the hospital's longest-serving medical director (1904–1934), was a protege of C.K. Clarke and worked at the Rockwood Asylum and the Protestant Asylum in Montréal before coming to Saint John. Like Clarke, Anglin was skeptical of Canada's insanity laws. In a speech before the American Psychiatric Association in 1918 in Chicago, Anglin was hopeful that the trauma experienced by soldiers in the First World War would pave the way for improved "lunacy" laws. "The trouble arises," Anglin declared, "from the fact that the laws governing these matters were framed by lawyers who are concerned in arranging how people are to be protected. But public health asks how mental sufferers are to be best treated so they may be cured. The lawyers' viewpoint, though important, has been allowed to outweigh all others. The war has made it necessary to deal with it in a fresh, untrammeled way."[53] Anglin was attempting, just as Clarke did before him, to remind, if not convince, the criminal justice system not to marginalize the opinions of mental specialists.

Given Anglin's views of how to treat the "insane," it is perhaps not surprising that he deemed Swim to be suffering from insanity. In 1905, one year into his job as medical director, Anglin noted in his annual report that when treating patients "medicine has its place, [but] work is beneficial, and so likewise recreation, open air exercise, good and abundant food, comfortable beds, and warm ventilated apartments." Anglin clung to this maxim throughout his tenure at the Saint John Hospital. In 1930, nearing the end of his career, Anglin wrote: "Broadly speaking, the foundations of recovery in the insane, and failing recovery, contentment, are found in pleasant surroundings, attention to physical comfort, freedom as far as compatible with [public] safety, and provision of suitable entertainment and employment."[54] This notion of holding out the possibility of curing insanity, all the while underscoring the "contentment" of patients in mental hospitals, was shared by other medical directors in Canada as a way to justify their practices and public funding of their institutions.[55] Moreover, when Anglin examined Swim in the Woodstock jail, he would have found the decrepit conditions of the cells anything but the "pleasant surroundings" that were conducive to the "contentment" of those who were afflicted with a "disease of the mind."

In a report to Chief Justice McKeown and J.P. Byrne, the province's Attorney General, Anglin surmised that Swim's mind was "disordered to an extreme degree" and his mental trouble is of the "demented type." Anglin noted that he could not induce Swim to speak, prompting Anglin to conclude that Swim's "mind is blank" and his appearance is that of a "groveling idiot; he suggests the brute rather than the human." Similarly, Swim's actions, notably crawling around the floor of his cell and picking at scraps of food and other debris, reminded Anglin of a "panting dog." There "is no doubt," Anglin concluded, "that [Swim] has inherited mental instability and was a degenerate and the bullet through his head probably has had some share in inducing his present condition....I believe him to be insane in your legal sense as well as in the medical."[56] Anglin's description of Bennie Swim as a "brute" and a "degenerate" suggests that he believed that Swim's family history and his poverty (in other words, Swim's class) were direct causes of his insanity. Anglin also felt that recovery "is a possibility" for Swim, but he would require prolonged institutionalization. He also assured McKeown and the attorney general that Swim did not need to be examined by any other experts; "the man is clearly demented." McKeown, however, remained steadfast in his belief that Swim was "perfectly sane when he committed the double murder, and…when he was tried. He has been acting very badly since the sentence was passed…trying to work himself into such a condition as to escape the penalty."[57]

But the federal government at first did not agree. A report from the federal Deputy Minister of Justice to the Minister of Justice recommended, on the basis of Dr. Anglin's findings, that the death sentence "in this case should be commuted to imprisonment for life." However, this report was "cancelled" and in a handwritten note on the bottom of the page. Someone (probably the Minister) asserted that more expert opinion was required to properly ascertain Swim's mental condition.[58] This intervention in the review process underscores the contested nature of experts' findings, especially when, in the Swim case at least, these findings did not align with what may have been a predetermined outcome for this review, that Swim's execution should proceed. As Carolyn Strange has insightfully concluded about capital case files, "Neither true nor false, case file texts represented various players' strategic attempts to order disturbing events into credible narratives of justice."[59] In a telegram to New Brunswick's Attorney General, the Deputy Minister of Justice indicated that the Minister of Justice "considers it would be advisable that the execution of Swim be postponed in order to ascertain more definitely whether convict's mentality is permanently impaired." Swim's execution, which was scheduled to occur on 15 July, was delayed until 15 September.[60]

In the interim, the federal government dispatched to Woodstock two mental experts, Dr. Phelan, surgeon at the Kingston Penitentiary, and Dr. F.E. Devlin, superintendent of the Saint-Jean-de-Dieu Hospital in Montréal, to examine Bennie Swim. Both determined that Swim was of "sound mind and fully understands the nature and quality of his acts." Phelan, who conducted six interviews with Swim, was not surprised that since Swim's life "was not far removed from that of the ordinary animal" and that he had lived "in open concubinage" with Olive Trenholm, this "tragedy may be considered the result of a depraved rather than a diseased mind." Given how methodically the murders were planned and carried out, and that Swim's actions since his conviction were not out of the ordinary (including picking at pieces of food on the floor of his cell) for someone with a "depraved" mind, Phelan felt compelled to conclude that Swim was not suffering from a "disease of the mind to such an extent as to be incapable of appreciating the fact that he has been convicted for the crime of murder and sentenced to death therefor."[61]

Dr. Devlin, who also interviewed Swim on six occasions, concurred with Phelan's findings. During these interviews, Devlin found Swim to be "clear and collected and never showed the slightest

symptom of insanity." Devlin also interviewed some members of Swim's family whom he found to be in a "state of moral callousness but not of insanity in their mental make-up."[62] For both of these experts of the mind, moral depravity, which they believed had enveloped Swim's life, did not equate to criminal insanity. In their minds, Swim was poor, uncouth, and perhaps even dim-witted, but he was not insane. Indeed, as Joan Sangster has found in cases of violence, including incest, against children in the rural townships of Peterborough County, Ontario, the families who occupied "the badlands"—a phrase that was also used to describe rural New Brunswick, including where Swim had lived—criminal justice officials equated "lower class" people with immorality.[63] What Anglin viewed as causes of Swim's insanity (his heredity and poverty), Phelan and Devlin considered to be symbols of Swim's moral depravity, befitting of his socioeconomic status, and thus not an indication of insanity.

Unlike Drs. King and Anglin, Drs. Phelan and Devlin were convinced that Swim was feigning insanity. In their estimation, he was merely acting "silly" because another inmate had told him to do so to escape the gallows.[64] And Swim had apparently admitted to Devlin that "he had been feigning." Some experts claimed that those prisoners who feigned insanity required sleep, while the real manic could forgo sleep for extended periods of time. In this vein, Phelan recorded that Swim ate well and slept a "great deal"; he simply wanted to be released "so that he may go back on the farm to engage in ploughing. A very sensible remark," especially, Phelan no doubt believed, for someone of Swim's economically and socially marginalized place in society.[65] Phelan also claimed, in a separate report to M.F. Gallagher in the federal remissions office, marked "Private & Confidential," that Swim's lawyer ("a fourth class one") had told Swim to "act silly" in order to secure his release. Phelan accused Squires of being "at the bottom of the whole thing" and he kept "the pot boiling" to save Swim from the death penalty and thus enhance his reputation as a lawyer.[66] Rev. Hedley Bragdon, who served as Swim's spiritual adviser as he awaited his execution, later revealed that Swim had confessed to him that he had faked his insanity in the hopes of avoiding death.[67] Based upon Drs. Phelan's and Devlin's reports, the Minister of Justice recommended to the Governor General that the "law be allowed to take its course." A terse statement from the Clerk of the Privy Council, dated 11 September 1922, indicated that on the advice of the Minister, the Governor General "is unable to order any interference with the sentence of the Court in the capital case of Bennie Swim."[68] And with that, Bennie Swim had run out of options; his execution was set to proceed four days later on 15 September. It was then rescheduled to 6 October because the Sheriff had encountered difficulty locating a hangman.[69]

Despite this formal conclusion to Swim's case, doubts lingered about his sanity. In a letter to the federal Minister of Justice, dated 11 September 1922, John Kidman, honorary secretary of the Canadian Prisoners' Welfare Association, informed the Minister that "considerable doubt [remains] as to the condition of [the] mind of the condemned man." Kidman conceded that "this was rather a bad crime if the man was in a proper state of sanity," but before the death sentence was carried out, Kidman implored the Minister to be absolutely certain that Swim was "really responsible for his actions." The Deputy Minister replied the next day, assuring Kidman that Swim had been thoroughly examined by "expert alienists" and "as a result of the investigation made it appears most conclusively that Swim is not insane."[70] The federal government had thus decided that of all the conversations and competing narratives that had occurred surrounding Swim's sanity/insanity, that Drs. Phelan's and Devlin's expertise and their diagnosis was the most convincing, in part, one can surmise, because their claim that Swim was sane was the most logical (given Swim's background) and acceptable conclusion to this case.

Conclusion

In an effort to offer an explanation for why Bennie Swim murdered Olive and Harvey Trenholm, Woodstock's *The Press* concluded that Swim was "a poor half-witted creature whose surroundings and instruction from his youth led him into such evil ways."[71] Swim was, in other words, a "social failure." And, as Natalie Spagnuolo has suggested, "social failure" was code for feeble-mindedness and insanity.[72] Yet two mental specialists who examined Swim did not believe that he was legally, or medically, insane. As was the case across the country in the early decades of the twentieth century, alienists differed in what they felt constituted mental deficiency, which resulted in divergent diagnoses of insanity. In Swim's case, his socioeconomic status, combined with his hereditary taint, was enough for some members of the community and two experts to deem him insane. But for others, Swim's immoral and criminal behaviour (notably coveting his cousin and taking Olive Trenholm's life after she had rejected him) was a symptom of life in "the badlands" of rural New Brunswick, and not a sign of his insanity.

Bennie Swim's encounter with the criminal justice system underscores a generalized belief for some residents of New Brunswick that an accused's "helplessness," their social failure, especially their poverty, lack of formal education, and perceived immorality, could be equated with insanity. However, this link was neither accepted nor contemplated by the law or some mental experts. In his study of criminal responsibility in nineteenth-century England, Martin J. Wiener discovered that "rather than [their] *situation*, the defendant's *constitution* became the key to [the] mitigation of [their] sentence." The law's presumption of sanity implied that an "ordinary" person was expected to control their passions in the face of provocation (such as Bennie Swim's jealously over losing his "wife" to another man). Therefore, one way that an accused could be found not guilty by reason of insanity, or have their death sentence commuted because they suffered from a "disease of the mind," was to prove that they were not "ordinary," that they were constitutionally incapable of self-control while under duress.

But for Bennie Swim, neither his "*situation*" (poverty and moral depravity) nor his "*constitution*" ("undeveloped mind") were sufficiently abnormal to render him insane.[73] Bennie Swim represented, in the words of Nicole Hahn Rafter, the "white Other": native-born, rural, impoverished, and morally bankrupt.[74] And for those members of the white Other who did not pose a serious threat to social order, it was hoped that their lives could be improved to the point where they were no longer a burden to society. But those individuals such as Swim, who represented a grave danger to civil society and who were devoid of social worth, often faced the severity of the criminal justice system.[75] Indeed, only people who were "*fully* responsible agents were those who would never depart from the law's behavioural norms—those who would never commit a crime."[76] What the conversations about Bennie Swim's mental capacity determined was that while he was not a "*fully* responsible agent," he was responsible enough to pay the ultimate price for his crime.

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Notes

[1] Library and Archives Canada (hereafter LAC), Bennie Swim, Capital Case File, RG13, Volume 1519, file cc183, Part 2.

[2] Kimberley White, *Negotiating Responsibility: Law, Murder, and States of Mind* (Vancouver: UBC Press, 2008), 18–9.

[3] This figure of 291 represented 9.2 percent of the total number of individuals who were charged with murder (3,161) in this period. *Historical Homicide Data and other Data Relevant to the Capital Punishment Issue* (Canadian Centre for Justice Statistics, 1987), 33.

[4] These cases are: Thomas O'Neil (1876), William Vaughan (1878), George Gee (1904), Robert Kierstead (1918), Bennie Swim (1922), Harry D. Williams (1925), John Oliver (1942), and Thomas Heffernan (1946–47). Similar to Swim, many of these men were under the age of forty; hailed from poor, working-class backgrounds; lacked a formal education; and grew up in squalid, if not "depraved," conditions. For an analysis of the profiles of the "criminally insane," see Robert Menzies, "Historical Profiles of Criminal Insanity," *International Journal of Law and Psychiatry* 25 (2002), 379–404. Menzies's study focuses on British Columbia between 1874 and 1950 and contains a sample size of 100 individuals (eighty-nine men and eleven women).

[5] "An Act respecting the Criminal Law," *The Revised Statutes of Canada*, 1906, Volume III, (Ottawa: King's Printer, 1906), Chapter 146, Part I, 9. Section 19.3, *Crankshaw's Criminal Code of Canada*, 5th ed. (Toronto: Carswell Co. Ltd., 1924).

[6] Cheryl Krasnick Warsh, *Moments of Unreason: The Practice of Canadian Psychiatry and the Homewood Retreat, 1883–1923* (Montréal and Kingston: McGill-Queen's University Press, 1989), 36.

[7] As Christopher Dummitt has argued, it was not until the post-World War Two era that the criminal justice system, and the public generally, increasingly turned to psychiatrists and psychologists for explanations as to why an individual committed murder. Christopher Dummitt, *The Manly Modern: Masculinity in Postwar Canada* (Vancouver: UBC Press, 2007), 102.

[8] Mona Gleason, *Normalizing the Ideal: Psychology, Schooling, and the Family in Postwar Canada* (Toronto: University of Toronto Press, 1999), 24.

[9] Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason*, translated by Richard Howard (New York: Vintage Books, 1988), 58, 182.

[10] Nic Clarke, "Sacred Daemons: Exploring British Columbian Society's Perceptions of 'Mentally Deficient' Children, 1870–1930," *BC Studies* 144 (Winter 2004/2005), 66.

[11] Some of the key works on eugenics in Canada are the following: Angus McLaren, *Our Own Master Race: Eugenics in Canada, 1885–1945* (Toronto: McClelland and Stewart, 1990); Erika Dyck, *Facing Eugenics: Reproduction, Sterilization, and the Politics of Choice* (Toronto: University of Toronto Press, 2013); Gleason, *Normalizing the Ideal*; Clarke, "Sacred Daemons"; Jessa Chupik and David Wright, "Treating the 'Idiot' Child in Early 20th-Century Ontario," *Disability & Society* 21, 1 (January 2006), 77–90; and Jason Ellis, "Early Educational Exclusion: 'Idiotic' and 'Imbecilic' Children, their Families, and the Toronto Public School System, 1914–50," *Canadian Historical Review* 98, 3 (September 2017), 483–504.

[12] Clarke, "Sacred Daemons," 70 and Chupik and Wright, "Treating the 'Idiot' Child in Early 20th-Century Ontario," 79.

[13] Geoffrey Reaume, *Remembrance of Patients Past: Patient Life at the Toronto Hospital for the Insane, 1870–1940* (Toronto: University of Toronto Press, 2010), 182 and Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 190. Andrew Scull contends that by the 1850s most of those who were identified as insane hailed from the "lower orders" of society. Andrew Scull, *Madness in Civilization: A Cultural History of Insanity from the Bible to Freud, from the Madhouse to Modern Medicine* (Princeton and Oxford: Princeton University Press, 2015), 229.

[14] In addition, men between the ages of twenty-one and thirty were executed at a rate of 76 percent in the years 1867 to 1976. Carolyn Strange, "The Lottery of Death: Capital Punishment, 1867–1976," *Manitoba Law Journal* 23 (1995), 595; 610, note 46.

[15] *Sixth Census of Canada, 1921, Volume I* (Ottawa: King's Printer, 1924), Table 7 and Peter McGahan, *Crime and Policing in Woodstock, New Brunswick, 1900–1910* (Halifax: Atlantic Institute of Criminology, 1989), 2.

[16] *The Observer* (Hartland, New Brunswick), 30 March 1922.

[17] Ibid and LAC, The King vs. Bennie Swim, RG13, Volume 1519, cc183, Part 1, 72.

[18] LAC, The King vs. Bennie Swim, 131–38.

[19] Ibid., 153–55.

[20] Ibid., 149–52.

[21] *Carleton Sentinel* (Woodstock, New Brunswick), 31 March 1922.

[22] *The Observer*, 30 March 1922.

[23] Kenneth L. Avio, "The Quality of Mercy: Exercise of the Royal Prerogative in Canada," *Canadian Public Policy* 13, 3 (1987), 368, and *Carleton Sentinel*, 31 March 1922.

[24] Ken Leyton-Brown, *The Practice of Execution in Canada* (Vancouver: UBC Press, 2010), 23.

[25] LAC, The King vs. Bennie Swim, 250–51.

[26] Befitting his middle-class status, Squires was a member of several fraternal organizations, including the Masonic Order, the Knights of Pythias, the Woodstock Rotary Club, and the New Brunswick Orange Lodge (for which he served as provincial grand master). He died in Fredericton in 1960 at the age of seventy-nine. *Speakers of the Legislative Assembly, Province of New Brunswick, 1786–1985. Legislative Assembly, Province of New Brunswick, Office of the Clerk, Fredericton, N.B.*, https://www.gnb.ca/legis/speakers/bios/squires-frederick-e.asp.

[27] Leyton-Brown, *The Practice of Execution in Canada*, 31–2.

[28] McKeown (1861–1932) was educated at Mount Allison University and Victoria College (LLB) in Cobourg, Ontario. He was called to the New Brunswick bar in 1885 and appointed King's Counsel in 1901. He served as Dean of the UNB Law School and he oversaw the school's transition to a stand-alone law faculty (severing ties with the University of King's College in Halifax). Described as a "quintessential public servant," McKeown resigned as chief justice and dean in 1924 to serve as chair of the federal Board of Railway Commissions. He also chaired a provincial commission on tuberculosis, along with the Saint John school board and public health centre. A devout Methodist, McKeown believed that he had an obligation to work for the betterment of society. Barry Cahill, "McKeown, Harrison Andrew," *Dictionary of Canadian Biography*, vol. 16, University of Toronto/Université Laval, 2003, accessed 8 July 2020, http://www.biographi.ca/en/bio/mckeown_harrison_andrew_16E.html.

[29] Squires reiterated this point in his closing address to the jury: "I have not been in a position to make preparation for a defence of this seriousness." LAC, The King vs. Bennie Swim, 1–2, 177.

[30] "An Act Respecting the Criminal Law," Chapter 146, Part I, 9.

[31] J. Arboleda-Florez, "Insanity Defence in Canada," *Canadian Psychiatric Association Journal* 23, 1 (1978), 23–7 and Benjamin Andoh, "The M'Naghten Rules—The story so far," *Medico-Legal Journal* 61, 2 (June 1993), 94–5.

[32] Andoh, "The M'Naghten Rules," 97.

[33] C.K. Clarke, "The Care and Treatment of the Criminal," *The Canadian Journal of Medicine and Surgery* 15, 1 (January 1904), 2–4. For more on Clarke see Ian Dowbiggin, "'Keeping This Young Country Sane': C.K. Clarke, Immigration Restriction, and Canadian Psychiatry, 1890–1925," *Canadian Historical Review* 76, 4 (December 1995), 598–627.

[34] LAC, The King vs. Bennie Swim, 177–79.

[35] Allison Kirk-Montgomery, "'Loaded Revolvers': Ontario's First Forensic Psychiatrists," in *Mental Health and Canadian Society: Historical Perspectives*, ed. James E. Moran and David Wright (Montréal and Kingston: McGill-Queen's University Press, 2006), 119.

[36] LAC, The King vs. Bennie Swim, 193–200.

[37] Ibid., 217–19.

[38] Ibid., 192–93.

[39] "An Act Respecting the Criminal Law," Chapter 146, Part I, 9.

[40] Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh University Press, 1981), 100.

[41] LAC, The King vs. Bennie Swim, 203–4, 221.

[42] *The Press* (Woodstock, New Brunswick), 2 May 1922.

[43] As Carolyn Strange has perceptively noted, violence, notably violence against women, is one way that men "accomplished masculinity." Carolyn Strange, "Masculinities, Intimate Femicide and the Death Penalty in Australia, 1890–1920," *British Journal of Criminology* 43, 2 (2003), 333.

[44] LAC, The King vs. Bennie Swim, 240–43 and 247.

[45] Ibid., 250.

[46] LAC, RG13, Volume 1519, cc183, Part 2.

[47] As quoted in *Carleton Sentinel*, 2 June 1922.

[48] John Arthur Oliver, LAC, Capital Case File, RG13, Volume 1637, file cc542, Parts 1and 2. The debate over the morality, and efficacy, of capital punishment continued into the late-twentieth century in New Brunswick. Amy Helen Bell, "Cop-Killers, Emotion, and Capital Punishment in Moncton, New Brunswick: The Ambrose and Hutchinson Case, 1974–5," *Canadian Historical Review* 101, 3 (2020), 346–69. For examples of other prominent campaigns to convince the federal government to commute a death sentence, some of which were successful, see F. Murray Greenwood and Beverley Boissery, *Uncertain Justice: Canadian Women and Capital Punishment, 1754–1953* (Toronto: The Osgoode Society for Canadian Legal History, 2000); Karen Dubinsky and Franca Iacovetta, "Murder, Womanly Virtue, and Motherhood: The Case of Angelina Napolitano, 1911–1922," *Canadian Historical Review* 72, 4 (1991), 505–31; and Sharon Myers, "The Apocrypha of Minnie McGee: The Murderous Mother and the Multivocal State in 20th-Century Prince Edward Island," *Acadiensis* XXXVIII, 2 (Summer/Autumn 2009), 5–28.

[49] Carolyn Strange, "Stories of Their Lives: The Historian and the Capital Case File" in *On the Case: Explorations in Social History*, ed. Franca Iacovetta and Wendy Mitchinson (Toronto: University of Toronto Press, 1998), 29.

[50] LAC, RG13, Volume 1519, cc183, Part 2.

[51] Ruth Harris, *Murder and Madness: Medicine, Law, and Society in the fin de siècle* (New York: Oxford University Press, 1989), 124.

[52] *Carleton Sentinel*, 2 June 1922.

[53] Dr. Anglin served as President of the American Psychiatric Association in 1918. He died shortly after he retired as medical director, on 8 July 1937. David Goss, *150 Years of Caring: The Continuing History of Canada's Oldest Mental Health Facility* (Saint John, New Brunswick: Mind Care New Brunswick, 1998), 66.

[54] Goss, *150 Years of Caring*, 65.

[55] Clarke, "Sacred Daemons" and Myers, "The Apocrypha of Minnie McGee."

[56] LAC, RG13, Volume 1519, cc183, Part 2.

[57] Ibid.

[58] LAC, RG13, Volume 1519, cc183, Part 3.

[59] Strange, "Stories of Their Lives," 43. The request for additional examinations of Swim's mental competency may also have been seen by the justice minister's office as due diligence on their part.

[60] LAC, RG13, Volume 1519, cc183, Part 2.

[61] Ibid.

[62] Ibid.

[63] Joan Sangster, "Masking and Unmasking the Sexual Abuse of Children: Perceptions of Violence against Children in 'The Badlands' of Ontario, 1916–1930," *Journal of Family History* 25, 4 (October 2000), 511–12. William Guy Carr, from Lancashire, England, spent two years in what he called the "bad lands" of rural New Brunswick with the "back landers," including Bennie Swim and Olive Trenholm. William Guy Carr, *High and Dry: The Post-War Experience of the Author of "By Guess and by God"* (London: Hutchinson and Company, 1938).

[64] LAC, RG13, Volume 1519, cc183, Part 2 (emphasis in original).

[65] Ibid. For more on how alienists detected feigning, see Jeffrey L. Geller, Jonathan Erlen, Neil S. Kaye, and William H. Fisher, "Feigned Insanity in Nineteenth-Century America: Tactics, Trials, and Truth," *Behavioral Sciences and the Law* 8 (1990): 3–26. Some prison physicians in the United Kingdom in the late-nineteenth century viewed feigning insanity as a form of deviance and immorality. Catherine Cox and Hilary Marland, "'Unfit for reform or punishment': Mental Disorder and Discipline in Liverpool Borough Prison in the Late Nineteenth Century," *Social History* 44, 2 (2019), 187. For the Canadian context, see McCoy, *Hard Time*, Chapter 5.

[66] LAC, RG13, Volume 1519, cc183, Part 2. From 1924 to 1953, Gallagher served as Chief Remissions Officer, a position that was responsible for receiving and arranging capital case file documentation. White, *Negotiating Responsibility*, 21. While it is difficult to substantiate Phelan's claim that Squires used the publicity garnered from the Swim case to bolster his reputation, he did go on to have a successful political career. Squires was first elected to the provincial assembly for Carleton County in 1925, a position that he held until his defeat in 1948. Moreover, he served as Speaker of the House from 1931 to 1935. *Speakers of the Legislative Assembly, Province of New Brunswick, 1786–1985*, https://www.gnb.ca/legis/speakers/bios/squires-frederick-e.asp.

[67] Rev. Bragdon was unable to provide any evidence to corroborate Swim's confession. *The Press*, 10 October 1922.

[68] LAC, RG13, Volume 1519, cc183, part 2 and *Daily Gleaner* (Fredericton, New Brunswick), 12 September 1922. From 1867 to 1930, close to 50 percent of those individuals who were sentenced to die were executed. Carolyn Strange, "The Undercurrents of Penal Culture: Punishment of the Body in Mid-Twentieth-Century Canada," *Law and History Review* 19, 2 (Summer 2001), 352, note 22.

[69] Swim's execution, however, was anything but routine. By most accounts, his hanging was a "terrible affair" and "horrendous." Following a last meal of grapefruit and a few sips of tea, Swim "walked to his doom, leaning on the arm of the executioner, and mounted the gallow steps with bowed head and tottering footsteps." Swim's final words before the hangman placed a black cap over his head, were a plea to God to have mercy on his soul. At six minutes past 5:00 a.m., the trap door was sprung and "all that was mortal of the unhappy man dangled at the end of the eight-foot drop." The drop, however, did not kill Swim because he was cut down too soon. Normally, a body would be allowed to hang for fifteen to twenty minutes (and in some cases up to an hour) to ensure that the neck was broken. But for some reason Swim's body was cut down within a few minutes after his fall. When examined by the prison doctor it was discovered that Swim's neck had not been snapped and he still had a pulse. So, almost an hour later, while still unconscious, Swim was hanged again, this time successfully. *Daily Telegraph* (Saint John, New Brunswick), 7 October 1922 and *Daily Gleaner*, 12 September 1922.

[70] LAC, RG13, Volume 1519, cc183, Part 3.

[71] *The Press*, 26 September 1922.

[72] Natalie Spagnuolo, "Defining Dependency, Constructing Curability: The Deportation of 'Feebleminded' Patients from the Toronto Asylum, 1920-1925," *Histoire sociale/Social History* 49, 98 (May 2016), 133.

[73] Martin J. Wiener, "Judges v. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth-Century England," *Law and History Review* 17, 3 (Fall 1999), 504. Bennie Swim's case and execution still resonates in parts of New Brunswick. In August 2009 the play "The Trials of Benny Swim" was staged in the Old County Courthouse in Woodstock (program in author's possession). Awarding-winning poet and author Alden Nowlan has memorialized Swim in the short-story "The Execution of Clemmie Lake." Lake (Swim) had a "crazy temper." Alden Nowlan, *Miracle at Indian River* (Toronto and Vancouver: Clarke, Irwin and Company Limited, 1968), 91–6. The most recent installment in the memorialization of the Bennie Swim case is Dominique Perrin's *Twice to the Gallows, Bennie Swim and the Benton Ridge Murders: A New Brunswick Non-Fiction Novel* (Woodstock, New Brunswick: Chapel Street Editions, 2019).

[74] Nicole Hahn Rafter, *Creating Born Criminals* (Urbana and Chicago: University of Illinois Press, 1997), 50.

[75] According to Natalie Spagnuolo, in the liberal humanist context of the first half of the twentieth century, "Negative perceptions of individuals' productive potential and their level of dependency were attributed to an inherent form of mental capacity and general social worth." Spagnuolo, "Defining Dependency, Constructing Curability," 136.

[76] Susanna L. Blumenthal, *Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture* (Cambridge, MA: Harvard University Press, 2016), 10.