

This is actually a proposal for two panels, both 'experimental' and both designed to encourage more Canadian participation in the ASLH meetings without taking up undue space on the programme. The proposal is a collaborative one among Constance Backhouse, Wesley Pue (University of British Columbia), and Jim Phillips (University of Toronto and Editor-in-Chief, Osgoode Society for Canadian Legal History).

The new format we propose is one that has been tried at a few Canadian legal history conferences in recent years. The idea is to have shorter presentations than is usual, to have more of them, and to dispense with a commentator. Some people participated reluctantly, with scepticism about the usefulness of such an exercise, but all came away very pleasantly surprised by how well it worked, for both presenters and audience. For presenters, having only 10-12 minutes required them to think hard about the most salient points they wanted to make, and also made them prepare a separate 10-minute version of their paper. Nobody took a much longer paper and cut it down, and the result was well-timed and very coherent presentations. Audience members found less inclination to have their attention wander. And the audience also had a lot of time and opportunity to participate. We are therefore proposing two 5-person panels, with each person having a maximum of twelve minutes to deliver their paper. The presentation part will therefore occupy an hour, with 30-45 minutes (depending on the length of the session) being left for audience questions and comments.

We suggest that it would be good to try this new format for its own sake. In addition, as noted above, we would like to also use it as a way to get more Canadian participation than usual in the ASLH. Last November an unprecedented number of Canadian legal historians presented papers at the Annual Meeting in Ottawa. We would like to do as well, if not better, when the meetings return to the United States.

In order to accommodate a wide range of people, our own 'call for papers' did not specify any particular area. As it turns out one panel, the first, has more similar papers than the other. Note that Jim Phillips is included as the chair of session 1. He is also submitting a separate proposal, for a 'standard' panel, with Philip Girard and Lauren Benton. If both these experimental panels and the standard panel are accepted, he will find a substitute chair.

Panel 1: Exploring The Distinctiveness of Canadian Legal History - 1

Chair: Jim Phillips, Faculty of Law, University of Toronto

Participants

1) Lyndsay Campbell, Law and Society, University of Calgary: Policing Decency: Obscene, Immoral and Indecent Literature in Early 19th-Century Nova Scotia and Massachusetts

The 1820s and 1830s saw several prosecutions over material deemed offensive to moral or religious sensibilities in Massachusetts but almost none in Nova Scotia. The pornographic classic *Fanny Hill*, for example, was the target of at least four prosecutions in Massachusetts in 1819-1820 but none in Nova Scotia. There are no signs of prosecutions over birth control literature in Nova Scotia in the 1830s either; a Massachusetts doctor who wrote one such tract was prosecuted at least three times over it in the early 1830s. Linked to the latter group of cases was, as well, the last blasphemy prosecution in Massachusetts. There are no signs of blasphemy prosecutions in Nova Scotia in the 1820s or 1830s either.

On the whole, it seems unlikely that Massachusetts was either greatly more “licentious” than Nova Scotia (which could lead to more prosecutions) or greatly less (which could lead to more anxiety about the literature). How, then, do we account for the difference in how the criminal law was mobilized against immoral and irreligious expression in these two places? Part of the answer may lie in attitudes to litigation and to structural factors that contributed to differences in how accessible the courts were, and this paper will briefly sketch some of these factors. More significantly, however, the paper will consider other ways in which decency and indecency, religion and irreligion were constructed in contemporary discourse. Newspapers, sermons, and other contemporary sources form the basis for this discussion. Overall, the paper will attempt to answer the question of what role legal strategies were supposed to take in the overall approach to expression that offended morals or religion

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2) Rick Clapton, University of British Columbia - Okanagan: Canada's Tenacious Frontier: The Commission on the Kelowna Police, British Columbia, 1929

In early-1929, the small interior community of Kelowna came under the spotlight when British Columbia Provincial Police Constable Paul Corrigan made allegations of corruption, graft and racketeering against Police Chief Robert Thomas (1914-29). At the trial of *Rex v Wong Shee* [1928] at the Vernon Fall Assizes, Corrigan stated that he was of the ‘opinion that a raid upon a Chinese house in Kelowna by the Mounted Police in search of opium or narcotics had failed because the Chinese were “tipped off” by the City Police. In the months that followed and after repeated insistence by Kelowna officials, BC's provincial government appointed sixty-two-year-old Lindley Crease, KC as commissioner to inquire into the accusations made by Corrigan.

Crease's inquiry lasted two weeks, generated voluminous testimony and related documentation, and was declared *sine die* after Thomas admitted that he gave false testimony.

Although improved transportation links pushed back Canada's frontier, it was the criminal justice system that acted as a catalyst to facilitate the transition between the frontier and civilization. Using Kelowna as a case study, this paper will argue that the law recognized this process; and rather than prosecuting outlaws and tyrants, it simply exposed them. Many, like Police Chief Robert Thomas, who enjoyed the spoils of corruption and vice offered in these frontier communities, simply faded into oblivion after their closed communities came under the scrutiny of the legal spotlight. Due to the sheer amount of circumstantial evidence, it was most likely that Thomas and number of others in Kelowna received graft. A number of authorities testified, compiling a body of evidence that implicated Chief Thomas, and members of the Police Commission and City Council. Crease reported that 'before me all the Board of Police Commissioners...gave evidence freely even to their own detriment.

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3) Shelley A.M. Gavigan, Osgoode Hall Law School, York University: High Law, Low Law and Discourses of Criminalization: Aboriginal Women and Girls in the Criminal Court on the Canadian Plains, 1876 – 1903

This paper engages with themes of high law, low law and criminalization in Canadian legal and socio-legal historical scholarship through cases of First Nations and Métis women and girls found in the criminal court records of Hugh Richardson, stipendiary magistrate (1876 – 1886) and justice of the Supreme Court of the North-West Territories (1887 – 1903). Legal (historical) scholarship continues to reflect a preoccupation with "high law" (Hay, 1992) and a corresponding neglect of the lowest courts where most accused persons, including Aboriginal accused, appeared without counsel, trials or appeals to higher courts. The paper examines cases in which Aboriginal women and girls participated as accused persons, as informants, and as witnesses. The paper argues that these cases demonstrate the importance of attending to law in the lowest courts in order to develop a better understanding of the relationship between the First Nations of the Plains and Canadian criminal law. The paper also argues that discourses of criminalization fail to capture the complexities and contradictions of that relationship.

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4) Jonathan Swainger, History Program, University of Northern British Columbia: Crime Histories and Community Identity in British Columbia's Peace River Country, 1910-1960

In *Peace Country*, Ralph Allen's 1958 novel about one family's search for a fresh beginning in the midst of the 1930s, the mythical attraction of a land promising peace, security, and perhaps even redemption, occupies a central place in the Sondern family's fervent desire to escape their past and dust bowl Saskatchewan. The Peace is special, claims Mrs. Sondern, because unlike

other places, it is famous for being good. Reality, of course, was considerably more complicated for the Sondern's and the thousands of farm families who pulled up stakes and headed for the Peace River country of Alberta and British Columbia in the half century after 1910. For while the region promised homestead lands on the northern edge of the Canadian prairies, and with that promise the opportunity of living what many believed to be the morally righteous existence of life on the land, the Peace was immune to neither hardship nor to the ills of Canadian society.

A primary concern of this paper and the larger project of which it is a part, is to uncover how the romanticized notions of the Peace were reconciled with the lived realities of life in the region and the extent to which these realities were colored by crime and disorder. In looking at the Peace during this half century we see, in the least, how self-perceptions of the community were continually reconstructed in the face of evidence which potentially spoke to a very different vision.

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5) Shirley Tillotson, Department of History, Dalhousie University: Partnership, individuality, and gender in the personal income tax, 1942 to 1970: The Canadian case

In 1948, the U.S. Treasury lost its 18-year-long battle to protect the base of the federal income tax from taxpayers who wanted to use family relationships as a means to reduce tax liability. After 1948, it became possible for spouses in the U.S. to declare both spouses' incomes together and then to divide their total into equal halves before calculating what each individual, husband and wife, would pay. Where there was a large difference between husbands' and wives' income, this "income splitting" technique allowed couples to reduce the overall rate at which the couple's combined income was taxed. As feminist legal scholars and other historians have shown, this battle forged some apparently odd alliances: on one hand, between some feminists and the federal revenue authorities and, on the other, between other feminists and the tax-avoiding husbands. At issue was not only the nation's taxable capacity, but also the conception of the family that would be recognized and rewarded in the income tax code.

In Canada, this same issue forged some similar alliances, but the outcome in tax law was different. This was so even though, after 1948, Canadian advocates of marital income splitting had the U.S. example to use as evidence that Canada's main tax competitor had corrected what they saw as the unfairness to women and male taxpayers (especially wealthy ones) of treating individuals, not families, as the unit of personal income taxation. In 1961, after 19 years of contest, the Department of National Revenue won the battle over marital income splitting in a decisive court case (*Sura*), and preserved from this line of attack the system of individual tax filing on which the interwar income tax had been based in both countries. This paper considers the context of social movements, popular culture, and constitutional politics in Canada which led these originally similar tax laws to diverge in this important respect.