

WESTWARD BOUND

SEX, VIOLENCE,
THE LAW, AND THE MAKING
OF A SETTLER SOCIETY

BY LESLEY ERICKSON

Westward Bound

Sex, Violence, the Law, and the
Making of a Settler Society

LESLEY ERICKSON

PUBLISHED BY UBC PRESS FOR
THE OSGOODE SOCIETY
FOR CANADIAN LEGAL HISTORY



UBC Press • Vancouver • Toronto

Sample Material © 2011 UBC Press

HISTORIANS
ARE THE QUINTESSENTIAL VOYEURS,
NOSES PRESSED
TO TIME'S GLASS WINDOW.

– Margaret Atwood, *The Robber Bride*

Contents

- List of Figures and Tables / ix
- Foreword / xi
- Acknowledgments / xiii
- Introduction / 1
- 1 Fruitful Land, Happy Homes, Manly Titans: Settlement Frontiers, Law, and the Intimate in Colonialism and Nation Building / 16
 - 2 They Know No Better: Maintaining Race and Managing Domestic Space at the Fringes of Civilization / 44
 - 3 The Most Public of Private Women: Prostitutes, Reformers, and Police Courts / 78
 - 4 The Farmer, the Pioneer Woman, and the Hired Hand: Sexual Violence, Seduction, and the Boundaries of Class / 115
 - 5 For Family, Nation, and Empire: Policing Drugs, Abortion, and Heterosexuality in the Interwar City / 142

- 6 The Might of a Good Strong Hand: Domestic Violence, Wife Murder, and Incest / 174
- 7 She Is to Be Pitied, Not Punished: The Murderess, the Woman Question, and the Capital Punishment Debate / 201
- Conclusion / 229
- Notes / 239
- Bibliography / 292
- Index / 321

Figures and Tables

FIGURES

- 1 Judicial districts: Manitoba and North-West Territories, 1889-1907 / 5
- 2 Map of selected judicial districts, 1917 / 5
- 3 Images of domestic life: The pioneer family, 1931 / 23
- 4 “The Right Land for the Right Man” / 27
- 5 Canadian Pacific Railway poster, c. 1920 / 28
- 6 Henri Julien, “Sitting Bull on Dominion Territory” / 30
- 7 “Turning Out Prisoners for Work” / 31
- 8 Henri Julien, “The Criminals’ Millennium” / 32
- 9 Law courts, Kennedy Street, Winnipeg, c. 1910 / 34
- 10 First Supreme Court Judiciary of the North-West Territories / 49
- 11 Map of the Kainai Reserve / 61
- 12 Prairie prostitute, 1919 / 80
- 13 “The Door Steadily Opens,” *Grain Grower’s Guide*, 1910 / 92
- 14 Emily Murphy, Edmonton Police Court / 98
- 15 Amy Warwick, acquitted of murder, 1913 / 206
- 16 The Warwick trial, *Regina Morning Leader* / 207

TABLES

- 1 Female offenders and the superior courts, 1886-1940 / 100
- 2 Female offenders, superior and police courts, Edmonton, 1892-1939 / 100
- 3 Female offenders, reported summary offences, Winnipeg Police Court / 101
- 4 Types of crimes as percentage of total female offences, Winnipeg Police Court / 102
- 5 Ratio of female to male arrests for inmates and keepers of bawdy houses, Winnipeg Police Court / 103
- 6 Sex crimes as a percentage of total charges, 1886-1940 / 119
- 7 Conviction patterns, sex crime prosecutions: Agricultural labourers vs. farmers / 125
- 8 Sex crime prosecutions, urban centres, 1886-1940 / 161
- 9 Domestic abuse and neglect cases, Winnipeg Police Court / 182
- 10 Prosecution and sentencing patterns, domestic violence, Winnipeg Police Court / 183
- 11 Outcome of child murder or concealment of birth cases, 1896-1940 / 209
- 12 Outcome of murder trials involving convicted female offenders, 1886-1940 / 214

Foreword

The Osgoode Society for Canadian Legal History

The history of crime and punishment is one of the principal lenses through which historians of the law investigate the relationship between the law in the books and the law in action, and the uses of law to regulate relations among social groups. Lesley Erickson's account of the operation of the criminal law in the prairie West in the late nineteenth and first half of the twentieth centuries performs both tasks admirably. Using local court records and a rich variety of other sources, Erickson examines the use of the law on reserves, in the cities, and in the countryside, from high-profile cases to day-to-day policing and punishment practices. This is an invaluable addition to the Osgoode Society's socio-legal history collection by a young historian who we hope to publish again in the future.

The purpose of the Osgoode Society for Canadian Legal History is to encourage research and writing in the history of Canadian law. The Society, which was incorporated in 1979 and is registered as a charity, was founded at the initiative of the Honourable R. Roy McMurtry, formerly attorney general for Ontario and chief justice of the province, and officials of the Law Society of Upper Canada. The Society seeks to stimulate the study of legal history in Canada by supporting researchers, collecting oral histories, and publishing volumes that contribute to legal-historical scholarship in Canada. It has published 84 books on the courts, the judiciary, and the legal profession, as well as on the history of crime and punishment, women and law, law and economy, the legal treatment of ethnic minorities, and famous cases and significant trials in all areas of the law.

Current directors of the Osgoode Society for Canadian Legal History are Robert Armstrong, Christopher Bentley, Kenneth Binks, Patrick Brode, Brian Bucknall, David Chernos, Kirby Chown, J. Douglas Ewart, Martin Friedland, John Honsberger, Horace Krever, C. Ian Kyer, Virginia MacLean, Patricia McMahon, Roy McMurtry, Laurie Pawlitza, Jim Phillips, Paul Reinhardt, Joel Richler, William Ross, Paul Schabas, Robert Sharpe, James Spence, Richard Tinsley, and Michael Tulloch.

The annual report and information about membership may be obtained by writing to the Osgoode Society for Canadian Legal History, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N6. Telephone: 416-947-3321. E-mail: mmacfarl@lsuc.on.ca. Website: <http://www.osgoode.society.ca>.

R. Roy McMurtry
President

Jim Phillips
Editor-in-Chief

Acknowledgments

Researching and writing a book is often a long and, by necessity, lonely process. Yet many institutions and people come together to produce the final product. This book began in the mid-1990s as a study of women and crime in western Canada, and it took on new layers of meaning as time passed. I have many people to thank for that. Louis Knafla, Sarah Carter, and Constance Backhouse have been an inspiration, not only in the encouragement they have shown for this book and my work in general but also in the care and enthusiasm they bring to their own scholarship and writing. Special thanks are also due to Warren Elofson, Chris Levy, Veronica Strong-Boag, Erin Van Brunschott, Kerry Abel, and the anonymous peer reviewers for their thoughtful comments and suggestions.

In addition to receiving financial assistance and support from the Department of History at the University of Calgary, I was fortunate to receive doctoral and postdoctoral grants from the Social Sciences and Humanities Research Council of Canada that allowed me to concentrate on research and writing at the University of Calgary and at McMaster University. I'd like to thank John Weaver and David Wright for making my time in Hamilton truly enjoyable. The research for this book also owes much to the expertise of the knowledgeable staffs at Library and Archives Canada, the Glenbow Archives, and the Provincial Archives of Manitoba, Saskatchewan, and Alberta, who responded to my requests for information sometimes with puzzlement but always with enthusiasm.

Throughout the publishing process, I have had the good fortune to work with an excellent group of editors. Randy Schmidt at UBC Press was instrumental in shepherding the manuscript through the peer review process and finding a home for it in the Law and Society series and with the Osgoode Society for Canadian Legal History. I am also indebted to Wes Pue and Jim Phillips, editors of each series, for their support, and to Ann Macklem, project editor, for her expert editorial suggestions and eagle eye. Ann brought together a crack team to produce the best book possible. Thanks to Audrey McClellan, copy editor, for her careful eye and for pointing out infelicities in logic or language in the kindest way possible; Mauve Page, for designing the cover; Eric Leinberger for producing the maps; Irma Rodriguez, for typesetting; Jenna Newman, for proofreading; and Patricia Buchanan, for preparing the index.

Finally, this book would not have been possible without friends and family. My grandmother, Anna Kristina Erickson, drove home the importance of getting an education and fostered in me a true love of learning – perhaps I took the lessons a little too much to heart. My parents, Lynne and Gary Erickson, and my brother, Neil, have always encouraged my long-term interest in Canadian and legal history, while my partner, Roland Longpré, has provided invaluable moral support, taking the time over the years to read manuscripts, attend conferences, and listen to papers and lectures – tasks truly not in the job description. I dedicate this book to him.

Introduction

In 1997, investigations into the murder of Pamela George, a Saulteaux woman of the Sakimay Reserve in southern Saskatchewan, culminated in a trial before the Regina Court of Queen's Bench that provoked debates about the nature of violence in the prairie West and the function of law and legal institutions in Canada. The controversy began on 30 January, when Justice Ted Malone sentenced two university students, Steven Tyler Kummerfield and Alexander Dennis Ternowesky, to six and a half years in prison for a killing he described as cruel, cowardly, and despicable.¹ On the evening of 18 April 1995, the two men – journalists called them white, middle-class southenders – had cruised the inner-city streets of Regina in search of a prostitute. After repeated rejections, Ternowesky hid in the trunk, and Kummerfield persuaded George to get into the car. The next morning a motorist discovered George's battered body lying facedown in a ditch near the airport on the city's western margins. According to the Crown's forensic pathologist, George died from a blow from a blunt instrument. During the trial, which lasted for six weeks, the accused claimed that George had performed oral sex on Kummerfield and was in the process of doing the same to Ternowesky when something went wrong. Kummerfield pulled George from the car and began to beat her. Ternowesky joined in. The accused claimed that George was screaming, but alive, when they drove away. The pair never explained why they beat George, but Crown prosecutor Matt Miazga offered the victim's race, gender, and occupation as motivating factors. In his opinion, George's death constituted first-degree murder because the

defendants had sexually assaulted and forcibly confined the victim. Justice Malone galvanized public controversy, however, when he charged the jury to remember that George was indeed a prostitute as they deliberated on the issue of murder.² The jury found Kummerfield and Ternowesky guilty only of manslaughter on the grounds that the defendants' drunkenness mitigated their intent.

The Pamela George case provoked discussions about inequalities in prairie society and exposés on discrimination in Canada's criminal justice system. Kripa Sekhar, Saskatchewan's representative to the National Action Committee on the Status of Women, argued that Malone's charge dehumanized women who worked the streets and trivialized the murder. Aboriginal people, supported by the Saskatchewan Coalition against Racism, denounced the case as a miscarriage of justice and charged that there were two systems of law in prairie Canada: one for whites and another for Aboriginal people. Academic Ron Bourgeault argued that the case reflected disparities and discrimination that lurked beneath the surface of prairie communities, while sociologist Sherene Razack argued that the trial outcome showed how violence and justice systems have helped to build and reproduce social boundaries and hierarchies of difference in settler societies.³ Within the local community, people debated the case, took sides, and tried to determine what it said about them.

Pamela George's body was found on a field near where I used to live, where the neighbourhood kids and I used to play. I was drawn to the case because of my connection to the place and because of my long-term interest in the history of women in the Canadian and American Wests, particularly the idea – developed by Peggy Pascoe, an advocate of the new Western history – that a more inclusive history of the North American West, one that surmounted the colonialist and paternalistic assumptions that underlay the idea of the frontier, could be written if we focused on women who stood at its cultural crossroads.⁴ In other words, the Pamela George case gave me the original premise or inspiration for this book. It suggested the fruitfulness of focusing on criminal cases that involved women – as either victims or perpetrators – to open a door into the lives of women who lacked the time, desire, or ability to leave behind written accounts of their thoughts, experiences, and dreams. Although the history of the American West continues to evoke images of prostitutes, saloons, and gunslingers, the settlement of the Canadian Prairies is dominated by the equally sensational story of the Mountie and the mild West he allegedly produced. But surely the arrival and accommodation of over 1.5 million European and American immigrants had been accompanied by conflict

and strife, by social dislocation and crime? Surely the criminal courts of the past – which served as local centres of law and government but also as cultural hubs and social gathering places – had been the scene for sensational trials such as the Pamela George case, cases that constitute what Natalie Zemon Davis, a pioneer in the use of non-traditional sources such as legal records to explore the past, calls telling events that speak beyond themselves?⁵ What could these cases, if their records still existed, tell me about the lives of women in the past; their treatment by police, judges, and juries; and how race, class, and gender shaped their treatment by the courts?

Historians at that time, in the mid- to late 1990s, in Canada and abroad, were approaching the history of women, crime, and the law either from the perspective of women who had been accused of crime – for instance, prostitution, theft, abortion, infanticide, or murder – or from the perspective of women and girls who had been the victims of rape, assault and domestic violence, or what was then known as the crime of seduction. Some focused on sensational trials; others documented day-to-day interactions between women and the courts. Regardless of the approach, the stories that emerged from the courts' archives illuminated aspects of the past, such as power relationships in the family or among groups, that had previously eluded the grasp of historians. These studies traced how legislators, judges, and all-male juries had held men and women to different sexual standards and punished victims of rape or seduction for transgressing prohibitions of female desire. They showed how some women offenders, in turn, had manipulated notions of a passive, submissive womanhood in their favour to avoid punishment. The lenient treatment these women received, however, was often no more than paternalism in disguise. And historians demonstrated that battered wives' appeals for justice belied the ideal of companionate marriage that had begun to take shape in Western society in the early twentieth century and that early historians had taken for granted.⁶ Although they varied in approach, these studies offered important insights into the present-day treatment of women in the criminal justice system and a fresh perspective on issues such as abortion.

Given the fruitfulness of these approaches – qualitative case studies or quantitative case file analyses; focusing on victims or focusing on perpetrators – I wanted to harness them to explore prairie women's engagements with the criminal justice system not only during the settlement period but also during the interwar years, an under-examined period in history. I was particularly intrigued that the accounts of abused prairie women in historian Terry Chapman's pioneering studies of wife battery and sex crimes

contradicted popular or frontier-inspired depictions of prairie Canada (or, as its boosters had raved, “the Last, Best West”) as an environment that had offered single gentlewomen a flannel shirt and liberty, prostitutes a happy hunting ground, and married women a pioneering partnership with men. A spirit of frontier egalitarianism, some proponents of this view argued, had produced a society open to innovations such as votes for women and the first female magistrates in the British Empire.⁷ No doubt some women experienced new freedoms after immigrating to the New World. But Canada’s prairie West – what would become the provinces of Manitoba, Saskatchewan, and Alberta – was settled during a period of rapid and profound economic, social, and political change. Between 1886 and 1940, the outside dates of this study, Aboriginal women encountered European and Canadian settlers and their institutions, including the law, in a sustained way; immigrant women built farms and homes alongside their husbands and children; middle-class women fought a successful suffrage campaign; and women of all ages, races, classes, and ethnic backgrounds experienced urbanization, the First World War, and the Depression. I wanted to develop a criminal case file sample that would capture how women in all of their diversity experienced these changes.

Doug Owram, a prominent Canadian intellectual historian, has commented that the case file method poses particular challenges because historians must make choices to deal with too many rather than too few sources.⁸ This was particularly true given that I wanted to explore more than five decades of women’s engagement with the law, at all levels of the criminal justice system, via a case file sample that would also reflect the region’s geographical, economic, and cultural diversity. I discovered that cases involving women as victims or perpetrators accounted for approximately 10 percent of the courts’ caseloads in the region during these decades. Murder or child murder cases that resulted in conviction and the death penalty posed no problem because those that involved women as either victims or perpetrators were fairly uncommon: they happened approximately once a year throughout the region as a whole, for a total of fifty-one cases.⁹ The extensive yet erratic nature of the provincial archives’ collections made it more difficult to create a representative sample of indictable and summary offences, however. The superior court records for the three prairie provinces (formerly Manitoba and the North-West Territories) are filed according to judicial district, the names and boundaries of which were subject to change over time. I decided to focus on five districts (see Figures 1 and 2). Because criminal case files for all judicial

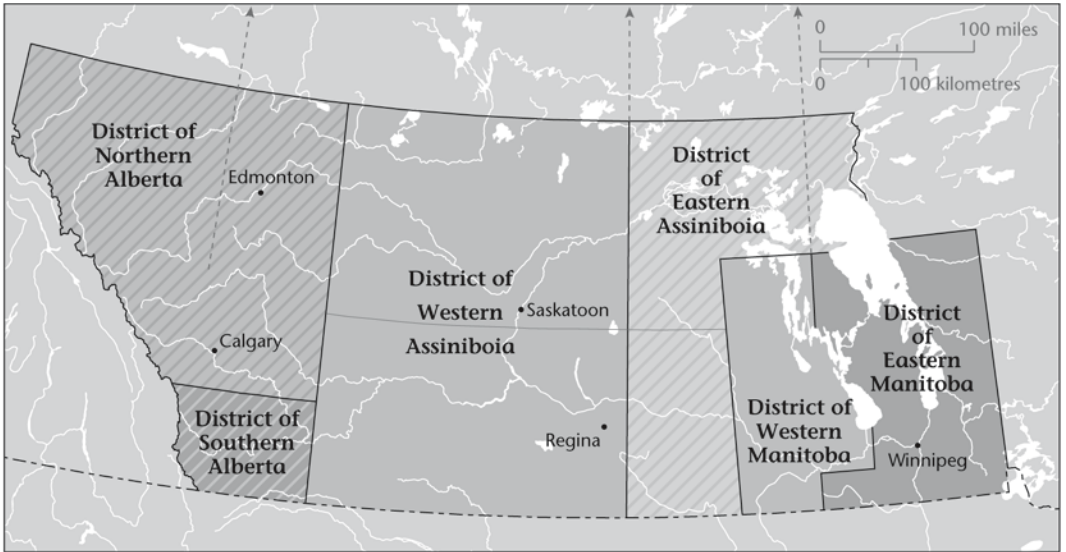


FIGURE 1 Judicial districts: Manitoba and North-West Territories, 1889-1907. | Map of judicial districts, Department of the Interior, RG 15, Series D-II-1, vol. 549, Reel T-13803, f. 161696, Library and Archives Canada; H7 614.2, fb 1884, Provincial Archives of Manitoba.

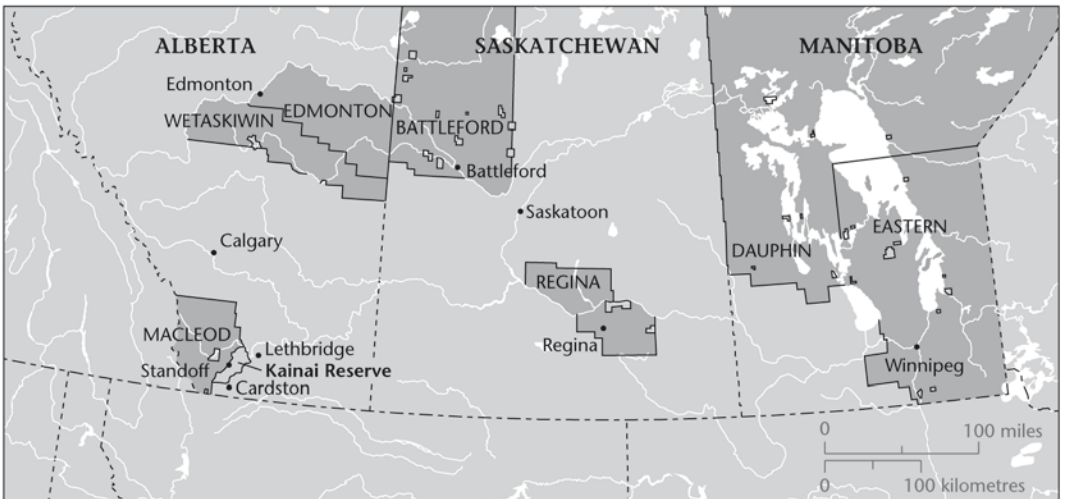


FIGURE 2 Selected judicial districts: Manitoba, Saskatchewan, and Alberta, 1917. | Department of the Interior, Map of Land Registration and Judicial Districts, 1917, Glenbow Archives.

districts in Manitoba and Alberta have been processed, I chose the judicial districts of Winnipeg (formerly Eastern Manitoba); Dauphin, Manitoba; Macleod (formerly Southern Alberta); and Edmonton-Wetaskiwin (formerly Northern Alberta) because they encompass certain urban, rural, immigrant, and Aboriginal populations.¹⁰ In addition, these judicial districts included regional economies – wheat- and mixed-farming districts in the plains and parkland, and ranching and mining communities in southern Alberta – that might have influenced local attitudes toward crime. In Saskatchewan, I limited the analysis to the records of the Regina Judicial District (formerly Western Assiniboia) because they remain the only processed series of criminal case files in the province's collection. The remainder of the criminal court records are accessible to researchers, but a flood damaged or destroyed many series. In some cases, I consulted the criminal registers for these judicial districts to engage in comparative analysis.

Judges and juries in the superior courts of the selected districts in this period heard 202 cases with women offenders and 624 cases with women victims. Many of the cases that involved women were not heard in the superior courts, however, but in the intermediary (county or district) and summary courts. To overcome a potential bias in favour of certain types of cases and offenders, I also consulted records from these lower courts if they were available, but I learned that the lower the court's position in the legal hierarchy, the less likely its records had been preserved. Fortunately, the Provincial Archives of Manitoba's collections for the Winnipeg Judicial District include the registers and case files of the county criminal court and the record books of Winnipeg's Police Court. Unfortunately, the district court records for all judicial districts in Alberta were destroyed. But because of an unusual filing system, cases heard by Edmonton's Police Court and appeals of decisions in the superior courts have been preserved and are filed chronologically among the records of the superior court for the Northern Alberta–Edmonton Judicial District. In Saskatchewan, the records of the Regina Police Court are not open to researchers, but Regina's district criminal court records survive for the brief period between 1932 and 1940. The records for many of these courts are incomplete, but they are among the only existing sources we have for exploring magistrates' and judges' responses to domestic violence in marginalized working-class, immigrant, and Aboriginal communities. And these record series also include offences related to prostitution and vagrancy that are absent when superior court records are relied on exclusively.

Finally, to explore the impact that British Canadian systems of law had on Aboriginal reserve communities, I drew on the records of the Department

of Indian Affairs and the North West Mounted Police (NWMP), particularly for the Kainai (Blood) Agency in the Macleod Judicial District. Available at Library and Archives Canada and at the Glenbow Archives, these record series include legal documents and correspondence regarding NWMP investigations of complaints and summary offences tried by Indian agents between 1899 and 1910 and from 1929 to 1941.

Over a number of years, I gathered information on well over a thousand cases that, centred as they were on diverse women offenders and victims, crossed race and class boundaries and were unique to no particular geographical area or cultural community. As other social and cultural historians discovered before me, however, there are other issues involved with using case file collections as a foundation to examine interactions between ordinary people, institutions, and the state. When historians Franca Iacovetta and Wendy Mitchinson published the edited volume *On the Case: Explorations in Social History* in 1998, for instance, the book led to debate about the nature of historical evidence and its production, the possibility of arriving at a historical truth, and the issues of relevance and representation.¹¹ The editors defined case files as fragmentary records generated by state officials or administrators in other institutions to categorize and assess a given population. The goal, they argued, was to supervise, treat, punish, or reform individuals or groups deemed in some way deviant.¹² In her critique of the book, however, criminologist Mariana Valverde pointed out that not all records designated as case files by historians and commentators fit the bill. The term *case file*, Valverde argued, was being used inaccurately in their work as an umbrella term for three different types of information format: the register, the clinically oriented case file, and records produced in and for the legal process.¹³ Only the latter two categories deserve to be called case files.

The importance of these distinctions was apparent as I sifted through countless registers and legal documents that, depending on the court and the nature of the criminal process documented, generated different types of knowledge about cases and the individuals and groups involved. The Winnipeg Police Court record books and the criminal registers and docket books for the superior courts are registers in the sense that they were produced to document the court's business. As a result, they tell us nothing about the feelings of victims or defendants or why magistrates, judges, or juries made the decisions they did. Arranged chronologically, registers include the date of the trial, the name of the accused, the charge or indictment, the verdict, and the sentence. Recorders for Manitoba's Court of King's Bench also included the accused's age, occupation, marital status,

level of education, religion, race or ethnicity, and sex. Registers allowed me to know individuals only in a generic sense or in aggregate terms.¹⁴ Because magistrates in Winnipeg's police court heard thousands of cases each year, I decided to restrict my analysis of the court's record books to eight-year intervals, beginning in 1886. When I discovered that the court's business boomed in the interwar years because of population increases, an expanding police force, and the prosecution of municipal bylaws, I was forced, for the sake of expediency, to limit my analysis for the years 1918, 1926, and 1934 to alternate months, beginning with January.

The capital case files and superior and intermediate court records I consulted likewise contained information that had been generated in a specific context, for a specific purpose. Criminal case files were not produced to gather clinical knowledge about individuals, their feelings, or their actions but rather to provide textual documentation for the purpose of legally resolving a case.¹⁵ Clerks produced and gathered superior court records to help public prosecutors decide whether a high probability of guilt had been established at the preliminary hearing. These records are highly formatted documents that contain a copy of the information (the formal criminal charge lodged by the prosecutor), depositions of witnesses, the indictment, and the trial outcome and sentence. The case file may or may not include a Statistics Canada form that details the accused's personal information. (Because hearings and trials were matters of public record played out in the courtroom, the media, and the local community, I chose not to disguise the identity of the parties involved.) Depositions were taken down in the accused's presence during the preliminary hearing. Unless the accused called witnesses to establish direct evidence of his or her innocence (or to explain away circumstances cited in evidence by the prosecution), depositions usually include only the testimony of witnesses for the prosecution. In certain instances – particularly when the accused was unrepresented by counsel – the case file may also contain a written statement by the accused. I discovered that in rural areas and most jurisdictions before 1905, depositions were short and often written in the witness's own hand. If the witness was illiterate or spoke no English, a court official, with the assistance of a translator, took down his or her statement. After the First World War, when the accused was more likely to be represented by defence counsel, a stenographer recorded the examinations of witnesses. Superior court case files do not contain trial transcripts. To offset this limitation, I consulted newspaper accounts of trials to gather clues about defence strategies, trial outcomes, and the public's response to each case.

As Annalee Lepp, a historian who has used legal records to study family violence, notes, criminal case files from all levels of the criminal trial process are incomplete and riddled with frustrating gaps and silences. Lepp observes that it is difficult (and sometimes impossible) to get at the truth behind allegations, the accused's response to them, or how the jury rationalized its decision. When individuals enter a court of law – regardless of whether they are the victim, the accused, an attorney, or a witness – they tend to use repetitive rhetorical strategies shaped by the evidentiary requirements of the case and the formal structure of the legal process. Depositions and trial testimonies, therefore, often blur the line between truth and narrative.¹⁶ This limitation could be considered an inherent weakness of case file research, but determining which rhetorical strategies held the most weight in the courtroom and whether they reflected common assumptions about individuals or groups proved to be one of the most fruitful, and telling, aspects of this study.

This was particularly true of capital case files and the legal records generated by or for the Department of Indian Affairs (DIA). Unlike superior court records, federal agencies produced these two series of documents to collect information on accused individuals, convicted offenders, and certain cases or behaviours. In all circumstances, government officials wanted information on the current state of public opinion to help them arrive at and justify decisions. The DIA's records include correspondence between Indian agents and their superiors regarding the handling of specific cases or categories of offences, newspaper items that criticize department policy, NWMP arrest and investigation reports, and trial summaries. Read alongside criminal registers and case files for the superior courts, these records allowed me to trace, almost literally, the movements of a few Aboriginal men and women over an extended period of time. The records are riddled with negative stereotypes that might have shaped Indian agents' and police officers' treatment of Aboriginal offenders and victims. But they contain few clues that indicate how Aboriginal communities felt about particular cases or their treatment by the police or the courts.

By contrast, capital case files, which were gathered after a jury decided to convict and a judge sentenced the accused to hang, include extensive information on the various meanings that were attached to a given case. Murder and child murder cases that ended in guilty verdicts often triggered public debate, outrage, and clemency campaigns on behalf of the convicted offender. The final prerogative of mercy, however, resided with the federal government. Following a conviction, the trial judge forwarded to the

secretary of state a copy of the trial transcript, the jury's recommendation of mercy, and a personal assessment of the case. The secretary of state would then transfer all papers, including any petitions for mercy received from the public, to the Department of Justice. The minister of justice briefed cabinet members, and cabinet members reported their final recommendation to the governor general, who officially decided whether the accused would live or die. Each capital case file includes all of this information alongside transcripts of retrials or appeals of decisions, police investigation reports, newspaper accounts of trials, editorials, prison reports, and pleas made on the convicted offender's behalf to the Remission Branch, the department responsible for receiving and arranging the documents. The chief remissions officer wrote a summary report of the case and appended documents such as medical or psychiatric assessments. The judge's report and the summary report from the remissions officer were among the most influential documents in clemency decisions.¹⁷

Just as the Pamela George case had suggested, capital case files offered a rich and rare documentary source to probe the multiple layers of meanings that were attached to crime and the criminal justice system by law officials, social reformers, neighbours, family members, and the convicted offender. Legal historian Carolyn Strange argues that capital case files should be approached as textual artifacts of competing truths that, when analyzed, result in new narratives of invention that are unsettlingly inconclusive.¹⁸ Yet official government decisions – commutations of death sentences, for example – followed capital cases, and capital case files reveal which truth claims resonated the most with government officials and which official decisions ran against the grain of public opinion. As historian Karen Dubinsky has argued, the biases of the legal process often work to our advantage because case files suggest whether discrimination shaped the victim's or perpetrator's reception in the courtroom, local community, or government bureaucracy.¹⁹ Although the very existence of a case file implies the intrusive and coercive power of the state over people's lives, capital case files include unsolicited opinions and narratives that give voice to the thoughts and experiences of those who lived in communities far from the centres of power.²⁰

Taken together, these various sources yielded both quantitative and qualitative evidence of trends. Registers and record books are imprinted with traces of prosecution and sentencing patterns that suggest deep-seated prejudices among judges and juries. I also used these sources to render collective portraits of victims and perpetrators within a long-term chronological framework, and I chose representative cases that illustrate how the

accused and the victim constructed or manipulated their account of events – either to meet the evidentiary and procedural requirements of the court or to play upon popular prejudice. To offer a fuller account of the possible meanings and implications of individual cases or trends, I also drew on demographic data, social surveys, commissions of inquiry, popular imagery and novels, law and procedure manuals, and federal criminal law legislation.

Finally, I decided to include sensational cases that were not representative but were telling events, much like the Pamela George case. As a number of historians have revealed, accounts of sensational murders or acts of violence – whether those accounts originate from members of the public, the judiciary, the police, or the media – often contain oblique references to popular assumptions about crime and violence that are only rarely articulated in official forums or documents.²¹ Because they centre on extreme acts of violence, public reactions to sensational trials often contain verbalizations of widely held beliefs regarding what constitutes normal or acceptable behaviour – for instance, justifiable homicide or child beating. As Sander Gilman, a leading cultural historian, has argued, the way that people in the past conceived the normal is reflected in their treatment of the Other – in other words, marginalized individuals or groups.²² Depending upon the race, class, or ethnicity of the accused, the judge's, jury's, or public's response could vary from empathy to condemnation. Natalie Zemon Davis and other advocates of microhistory and anthropological approaches to the past, such as Carlo Ginzburg and Edward Muir, argue that historians can use uniquely revealing documents, interrogations, or individual case files to recapture interactions between elite and popular cultures.²³

Historians often compare the criminal trial to the stage. When I began this study, I planned to focus the spotlight on women, and my research did produce the expected stock of female characters – abused wives and victims of sexual assault, prostitutes and murderesses, unwed mothers and seduced daughters. But the male members of the cast – pimps, johns, and procurers; seducers and abortionists; social reformers and police officials; wife abusers and rapists; and murdered husbands or victims of theft – kept creeping into the limelight. Cases involving women introduced me to Aboriginal women, urban domestic servants and housewives, unwed mothers, farm wives, and farm daughters whose experiences with prostitution, abortion and infanticide, and domestic and sexual violence opened a window to explore not only the relationship between the law and the status of women but also the role that criminal courts and trials played in

the construction of femininity – or, rather, femininities – in prairie Canada. But these same cases also proved to be an entry point into the lives of Aboriginal men, farmers, urban professionals, and labourers. Historian Garthine Walker has observed that although we know a lot about the history of women and crime, we have scarcely begun to address how criminality and violence were related to masculinity.²⁴

By pulling together a sample of diverse cases, similarities in the treatment of different groups and the strategies of different offenders became more apparent, as did the underlying logic, or assumptions, of the criminal law. For example, except in a few high-profile cases, victims of rape and sexual assault from marginalized communities were less likely to convince the courts of their veracity. But farm labourers, men who failed to meet the masculine ideal, who were accused of sexually assaulting or seducing farmers' wives or daughters, faced a similar problem. Prairie women accused of violent crimes such as husband or child murder tried to manipulate trials in their favour by conforming to the script for a passive and submissive womanhood. But Aboriginal men accused of violent crimes against women likewise played to settlers' idea of a weak, ignorant, and infantile indigenous masculinity to evade punishment. The criminal courts – which sat at the intersection of law and society – reflected and helped to shape perceptions of Aboriginal people, white settlers, immigrants, and the working class relative to one another.²⁵ Because they stood at the cultural crossroads, criminal cases that involved women served as a stage upon which larger developments and conflicts – between Native and newcomer, men and women, capital and labour, and adults and youths – played out.

The explicit, and often inexplicable, narratives of sex and violence that I discovered in criminal case files sat uncomfortably with mythic images of Canada's prairie West as a land of opportunity, a place of fruitful land and happy homes, a settlement frontier where law and order, embodied by the North West Mounted Police, preceded settlement. As Peggy Pascoe had predicted, by focusing on cases that would make it possible to reimagine the so-called frontier as a cultural crossroads or intercultural dialogue rather than as a geographical freeway, a more nuanced image of the region emerged, one in which it was possible to explore how complex variables such as class, race, ethnicity, age, and gender influenced power relationships in the region.²⁶ By focusing on cases that stood at the cultural crossroads, the traditional narrative of the Canadian Prairies – and the false dichotomy of the mild versus the wild West on which it rested – gave way to narratives of intercultural exchange that were sometimes defined by

cooperation and sometimes by conflict. The traditional narrative of western exceptionalism gave way to narratives that drew the region's past not only into the larger story of nation building in Canadian and North American history but also into the history of the British Empire and the creation of settler societies such as Australia and New Zealand (the subject of Chapter 1).

As I read the burgeoning literature on these larger developments – particularly works that addressed the role of the law and the role of the intimate in colonialism and nation building – I realized that the cases I had gathered offered a unique opportunity to explore how the criminal courts reflected and reinforced the social boundaries and discourses of difference that underpinned the construction of a settler society and a liberal economic order on Canada's settlement frontier. One of the central projects of colonialism – a practice of domination that involves the subjugation of one people to another and the transfer of a population to a new territory – was defining the cultural boundary between colonized and colonizer.²⁷ As Stuart Hall, a prominent cultural theorist and sociologist, has argued, discourses of difference – beliefs and practices that define who does not belong to a given community – were central to colonialism, and they were fundamental to the construction of national identities.²⁸ Criminal case files are replete with sensational stories of men and women who defied these beliefs and practices and the erection of cultural boundaries and hierarchies. Aboriginal men and women resisted attempts to restrict their movement and behaviour. Agricultural labourers defied their employers' attempts to limit access to their daughters. Farmers' daughters defied their parents' and the authorities' attempts to regulate their sexuality. Wives refused to be locked into the role of submissive helpmates. And victims of rape refused to be cast as the promiscuous woman undeserving of the courts' protection. The intimate frontiers that these ordinary people inhabited were as much a part of the region's history as the triumphant march of the NWMP, the building of the railroad, and the construction of a vast agricultural settlement frontier. As places in which redemption and punishment were offered in equal measure, criminal courts were arbiters of belonging in the colonial and nation-building projects.

The alternative narrative of the prairie West that I pieced together from the courts' records took shape in a thematic rather than a chronological manner as I sought explanations for particular classes of cases or prosecutorial trends: the treatment of Aboriginal victims and accused (Chapter 2); the relationship between prostitutes, social reform, and police courts

(Chapter 3); the overrepresentation of farm labourers in rural sex crime and seduction cases (Chapter 4); cases of sexual violence, drug possession, abortion, and seduction that highlighted the girl in the city in the Roaring Twenties and the Dirty Thirties (Chapter 5); judges' and juries' responses to incest, wife beating, and wife murder in the domestic sphere (Chapter 6); and the treatment of violent female offenders and the capital punishment debate (Chapter 7). The chapters describe developments that occurred simultaneously in discrete settings in both the public and private spheres. In each of the four social settings examined – the reserve, the city, the countryside, and the home – I move the locus of regulatory power from the pronouncements of federal policy makers and legislation to the proceedings of local courts, where federal power was only one of many factors involved in the attempt to regulate people's lives. Brad Asher, a scholar of Native American history, has argued that local courts are a critical, if under-examined, element of colonialism and nation building.²⁹ In *Westward Bound* I examine their contribution to this process during decades when dreams of nation and empire came to reside on Canada's settlement frontier.

At the turn of the twenty-first century, criminal cases such as the Pamela George murder provoke social criticism and debate among competing interest groups in Canadian society. At the turn of the twentieth century, however, criminal cases involving women often played themselves out within a cultural milieu that desired a single truth or narrative, in an era when dominant groups and interests believed that the challenges of modernity – labour movements, colonial unrest, and the woman's suffrage movement – were blurring boundaries between the classes, races, and sexes.³⁰ Constructed visions of the Prairies as the last, best West served this narrative function in Canada. Canadian government officials and propagandists and British travel writers promised potential immigrants that life in the region would be free from the hierarchies and constraints that typified life in the Old World, and western judges and juries maintained an invested interest in ensuring that this vision remained uncontested. Although millions of immigrants were westward bound in search of land and opportunity, their interactions and confrontations with Aboriginal peoples and the criminal courts reveal that they helped to create, and encountered, old hierarchies and new constraints. Testimonies by witnesses, victims, and defendants belie mythic visions of the Prairies as a region built upon the foundations of law, order, and pioneering partnerships between men and women, capital and labour, and Native and

newcomer. Although the testimonies they contain were often disguised, suppressed, or manipulated, criminal case files give a voice to men, women, and youths who lived life in the margins but who nonetheless contributed to the creation of a distinct legal and socio-economic culture that continues to influence attitudes toward sexuality, gender, crime, violence, and law and order in postcolonial societies.

I

Fruitful Land, Happy Homes, Manly Titans

Settlement Frontiers, Law, and the Intimate in Colonialism and Nation Building

In 1889, the city of Calgary in Canada's North-West Territories was the scene of a murder and trial that cast doubt on the quality of justice on the Prairies. On 1 March 1889, a journalist with the *Herald* reported that the police had discovered the "mutilated body of a murdered squaw" in William "Jumbo" Fisk's living quarters above the Turf Club restaurant. The case went to trial in April, and an all-male, white jury brought in a verdict of not guilty. The verdict flew in the face of Crown evidence that Fisk, an avowed aficionado of the Jack the Ripper murders that had terrified Londoners in 1888, had admitted to taking a woman known as Rosalie, an alleged prostitute, up to his rooms. George Kelsy testified that he had heard strange noises coming from his friend's room on the evening of 28 February. Upon investigation, he found Jumbo in the room and a bloodstained woman lying on the bed. Kelsy claimed that Rosalie was still alive when the two men went to dinner. A North West Mounted Police (NWMP) detective testified that the murderer had ripped apart the victim's abdomen with his bare hands and that investigators had found a bloody handprint that matched Fisk's on the wall. Given this evidence, Justice Charles B. Rouleau emphasized the need for inter-racial equity in his charge to the jury and demanded a retrial following the verdict. During the second murder trial, which occurred in July, Justice Rouleau asked the jury to "forget the woman's race and consider only the evidence at hand," and he declared, "It made no difference whether Rosalie was white or black, an Indian or a negro. In the eyes of the law, every British subject is equal."¹ Despite Rouleau's admonition, the jury found Fisk guilty only of

manslaughter, and the judge sentenced him to fourteen years of hard labour at Stony Mountain Penitentiary.

William Fisk did not conform to Calgarians' image of the rapist and murderer. He hailed from a well-established eastern Canadian family and had migrated to the West in 1882. He had worked on a Canadian Pacific Railway construction crew and served during the 1885 Northwest Rebellion. One of his uncles was a doctor in Ontario, and another had found a vocation as a clergyman in Quebec. Buckboard Williams, the famous reporter for the Toronto *Globe*, was also his uncle. After coming home from the Rebellion, Fisk became part owner of the Turf Club. Although Justice Rouleau pushed for a life sentence for murder, petitions by members of Parliament and members of the Calgary elite warned him that such an outcome would be ill-advised because Calgarians' sympathies lay with the accused. As far as white Calgarians were concerned, Rosalie conformed to popular perceptions of a dangerous and dissolute Aboriginal womanhood, while Fisk embodied the British Canadian, middle-class ideal of frontier masculinity. The lesson learned from the case was that it was best to "keep the Indians out of town."²

Was Justice Rouleau's emphasis and insistence on the rule of law and inter-racial equality typical, or did it run against the grain of judicial practice in the British Empire and Canada? Was Fisk's social status and Rosalie's sex as important to the trial outcome as his or her race? In the jury members' opinion, did Fisk's ethnicity or masculinity weigh more in his favour than Rosalie's class? What was more damaging, the victim's race or her alleged profession? The multiple layers of interpretation and meaning that can be attached to this single case suggest how criminal cases both reflected and contributed to local, national, and global developments that were transforming prairie Canada from a place where a common or middle ground between Aboriginal peoples and newcomers was still possible into an established white settler society in a vast colonial empire and liberal economic order.³

FROM REGION TO EMPIRE: WIDENING THE LENS

Settled by Europeans whose descendants remain politically dominant over the indigenous peoples they dispossessed, settler societies such as Canada, Australia, the United States, Aotearoa New Zealand, and South Africa once loomed large in the imagination of imperialists, novelists, and historians. Following the Second World War, however, historians lost interest

in exploring common developments and connections among settler colonies and their settlement frontiers and instead wrote historical narratives of their home and native land. Within the nation, the practice of history writing fragmented further as historians focused on the so-called limited identities of race, gender, class, and region. In the past twenty years, however, globalization, decolonization, transnational immigration, and the growth of multinational corporations have compelled us to step back to broaden our view of region, nation, and empire and the role these limited identities played in their creation.⁴ This new perspective has reignited interest in tracing how imperial and national administrators tried to build an extension, or replica, of British society overseas.⁵ This new scholarship has encouraged historians to once again place the history of Canada between Confederation and the 1950s within the larger context of the British world. Even though Canada became a self-governing colony in 1867 (and a dominion after 1907), most members of the English Canadian majority, those who held economic and political power, wanted Canada to remain with the Empire and continued to self-consciously define their country as a British nation until the 1950s. The Dominion of Canada was essentially a “larger British colony with imperial ambitions of its own – in particular, to spread across the continent before the Americans beat them to it.”⁶ The settlement of the prairie West, preferably with Canadian or British citizens, was a cornerstone of Canada’s own colonial and nation-building project.⁷

A renewed interest in colonial and nation-building projects has also produced a growing body of scholarship that highlights how both the law and gender – the cultural construction of masculinities and femininities – produced the boundaries and hierarchies of difference upon which white settler societies were built.⁸ As the Rosalie trials illustrate, criminal case files involving women provide an exceptional vehicle to examine these larger processes because they reveal how the law constituted race, class, and gender in colonial settings and how, in turn, these tensions and divisions shaped trial outcomes. Throughout the British Empire, judges such as Rouleau used the charge to the jury as an opportunity to assert the superiority of English justice and the legitimacy of British rule and middle-class dominance over what were deemed the primitive and the pauper.⁹ To borrow a phrase from legal historian Martin Chanock, the law served as colonialism’s cutting edge and, in white settler societies such as Canada, national governments wielded it to maintain social order in the face of resistance from indigenous peoples and to contain conflicts between Native peoples and newcomers, capital and labour, and men and women. Because the criminal

courts were connected intimately to the institutional apparatus of the empire or nation-state, they served as the law's leading edge: imperial agents and government officials harnessed their ability to define crime and control systems of punishment to their larger project – to order the political and moral allegiance of indigenous and immigrant groups and to communicate new notions of sovereignty.¹⁰

Anthropologist John Comaroff argues, however, that the law's function was complicated by the ontological contradiction at the core of nineteenth-century colonialism: colonialists rationalized dispossession in the name of a humane, enlightened universalism, and they legitimated it by promising to usher non-Europeans into the citizenship of the modern world.¹¹ The divergence between white Calgarians' and Justice Rouleau's response to the Rosalie trial suggests that this inherent contradiction complicated the law's function in colonial settings. Rouleau's insistence on the rule of law and inter-racial equity illustrates how, in one instance, imperialists and nationalists in Britain and Canada sought to dispossess and regulate by "inclusion and domestication rather than by confrontation."¹² The criminal courts, consequently, served not only as sites for dominant groups to impose their vision of society, law, and morality, they also provided a forum for subordinates to resist those visions or propose alternatives.¹³ In prairie Canada, white Calgarians understood that the stability of their settler society – in other words, the settler construct – depended on the application of a system of law that was both discretionary and discriminatory. Fisk's sexual relationship with an Aboriginal woman and Rosalie's presence off the Indian reserve and outside the bounds of the patriarchal family flew in the face of policies that were being put in place to manage domestic and sexual relationships to maintain the social categories and hierarchies upon which colonial and national rule depended. As cultural and post-colonial historians have demonstrated, discouraging and prohibiting sexual relations between colonized and colonizer was integral to colonial and nation-building projects, and the British, more so than the French or the Spanish, attempted to impose their system of monogamous heterosexuality and patriarchal household governance on so-called problem indigenous, working-class, and immigrant populations.¹⁴

FRUITFUL LAND: DREAMS OF NATION AND EMPIRE

Rosalie's death and the trials that followed reflected tensions of empire and nation and the challenges of modernity as they were beginning to play

out on Canada's settlement frontier. The Canadian government opened the Prairies to white settlement during the first crisis of modernity in the history of the empire and nation.¹⁵ The Canadian government's military victory over Louis Riel, his Metis followers, and a handful of Indian rebels during the 1885 Northwest Rebellion reconfirmed the region's status as a colony of the Canadian federal government and as a colonial outpost of an empire that advocates of the New Imperialism were doing their best to refashion in the face of mounting challenges to traditional authority. Imperialists such as British prime minister Benjamin Disraeli began to perceive the colonies as bulwarks against German, Italian, and American threats to England's colonial markets. Challenges to empire came also from within: working-class radicals were demanding an honest wage for honest work; suffragists were campaigning for political and social equality; and social Darwinists and the pseudo-science of eugenics were giving birth to fears of race suicide and national degeneracy. In response, and to counter their political opponents, New Imperialists advocated a spirit of defensive aggressiveness against external threats and internal decay. Proclaiming the superiority of the Anglo-Saxon race, Rudyard Kipling, for instance, declared it the white man's burden to civilize the unfortunate races of Asia, Africa, Australia, and Canada. By the mid-1880s, many of those who held positions of power and authority believed that the future vitality and strength of the British Empire would come from the colonial frontier.¹⁶

Dreams of nation also settled on the Canadian Prairies. The Northwest Rebellion coincided with the completion of the Canadian Pacific Railway, an accomplishment that (at least symbolically) consolidated Canada as a country from sea to shining sea. The elements of Prime Minister Sir John A. Macdonald's national policy to broaden the base of Canada's economy and restore faith in the country's development were falling into place. All that remained was to ensure that the Prairies were safe for white settlers.

Although most Aboriginal peoples had remained loyal to the Crown during the Rebellion, Macdonald's Conservative government manipulated the idea of a general Indian uprising to rationalize and reinforce its policy to dismantle the tribal system and place Aboriginal peoples more thoroughly under the authority of the Department of Indian Affairs and the North West Mounted Police.¹⁷ The new era opened with the trial and execution of Louis Riel and with the hanging of eight Indian men who stood trial for murder before Charles Rouleau and a white jury at North Battleford. The trials and the executions served a performative function. Their purpose was to demonstrate to Aboriginal people, in the most effective way possible, the consequences of disloyalty to the Crown.¹⁸ Government officials

forced students of the Battleford Industrial School to witness the executions. The events of 1885 proved to be a turning point for the people of prairie Canada, for they “put to rest any hopes or possibilities for a progressive partnership, a shared common world” between Native peoples and newcomers.¹⁹ Prime Minister Macdonald remarked that “the execution of the Indians ... ought to convince the Red man that the White man governs.”²⁰

The Rosalie trials also occurred at a moment when British and Canadian government officials, journalists, social gossellers, and travel writers were selling the prairie West to potential immigrants as a land of equal opportunity and as a woman’s paradise. Throughout the 1880s it became increasingly apparent that the region’s population imbalance in favour of bachelors was a problem. In 1888, Scottish author and journalist Jessie Saxby tried to coax unmarried British women to the region by promising them a landscape where “the men treat the women with a chivalry and tenderness which cannot fail to bind the feebler sex in willing chains”: “It is refreshing to eyes accustomed to the tired, anxious faces, and listless or stilted gait of the average Briton, to look on the manly Titans of the west. They are Britons, yes, but Britons of larger body and larger heart than those at home. There is a freedom of gait, a heartiness of manner, a hopefulness of expression, a frank courtesy, a liberal-mindedness which impresses me profoundly. You feel that here is a race of men who must be winners in life’s battle, and who can keep what they win ‘by the might of a good strong hand.’”²¹ Two years after the Rosalie trials, Nicholas Flood Davin, a Conservative member of Parliament and publisher, wrote *Homes for Millions*, which ignored the presence of indigenous peoples in the West and likewise promised potential male immigrants, particularly farmers and farm labourers, a landscape “where they can have fruitful land for nothing; happy homes; independence.”²²

Davin’s emphasis on fruitful land and freedom reflected the new utopian vision of the prairie West held by Canadian expansionists and British imperialists who viewed “frontiers” as potential places for settlement and economic development. What were once considered wastelands were transformed in the imaginations of their promoters as gardens of the Lord that begged for British Canadian appropriation, rationalized freehold land tenure, crop production and export, and resource exploitation.²³ Images of the Prairies changed from 1850 onward as policy makers and imperialists tried to extend a liberal economic order – the political form of modernity that remained hegemonic through to the 1940s – across the North American continent. Turning dream into reality required that liberal

nationalists extend across time and space a belief in the primacy of the category “individual.” Davin’s emphasis on independence, consequently, reflected nineteenth-century liberal conceptions of the law as a system that did not place limits upon the individual (whose freedom should be constrained only by obligations to others or to God) but instead protected his right to self-preservation and the pursuit of property. As my use of the masculine pronoun suggests, liberals envisaged the rights-bearing individual as the rational male: in opposition, they constructed women, indigenous peoples, and the unpropertied as deficient individuals. If Canadian history is reconceived as a project of rule, as historian Ian McKay suggests it should be, it is the historian’s task to map not only the grids of power (the application of federal criminal law, for instance) that constructed a given hegemonic social order but also the forces of resistance that threatened or changed the larger project.²⁴ The colonization and settlement of the West from the 1880s onward, McKay contends, is a key chapter in this story because the liberalization of the Prairies and British Columbia was a highly contentious and endangered program.

HAPPY HOMES: FAMILY, NATION, EMPIRE

Davin emphasized the West as a place that would foster happy homes because colonialism and nation building were also about making families. The late Ann Leger-Anderson, a historian of prairie women, wrote that the “sod hut or tar paper shack – a sort of pioneer icon – is also a symbol, or signifier, of imperialism as much as the machine-gun or the braided uniforms of proconsuls or generals.”²⁵ As her observation suggests, imperialists and nationalists incorporated images of domestic life into an ideology of domination: white women served as harbingers of civilization, and colonies served as stages for a reinvented, or reinvigorated, patriarchy (see Figure 3).²⁶

The Prairies were settled during an era when the ideal of companionate marriage was emerging as a cornerstone of modernity and liberalism in Western industrializing nations. The early- and mid-nineteenth-century middle-class ideal of the chaste and diligent wife who focused on being a loving mother with few needs and rights of her own was giving way to the ideal of the modern woman as a partner in a new model of marriage based on greater moral and spiritual equality. The change partly reflected the decline of kinship ties and economic considerations in the choice of spouse, and it partly reflected the influence of liberal and democratic ideologies



FIGURE 3 Images of domestic life were incorporated into an ideology of colonial and national domination as illustrated by M. Leone Bracker's "Pioneer Settlers," created for a Canadian Pacific Railway fiftieth anniversary menu cover in 1931. | Canadian Pacific Archives, BR 183.

in the United States and England. As feminist historians have pointed out, however, the ideal of companionate marriage softened patriarchy but did not eliminate it. The ideal wife was still portrayed as a helpmate because, in nineteenth-century liberalism, moral and spiritual equality was not the same as social equality. The companionate ideal did not eliminate hierarchy – but it did lead to rising expectations for marriage, and it did contribute to new standards for acceptable masculine behaviour.²⁷ (The discrepancy between expectation and reality sometimes led to conflicts between husbands and wives, and the acts of violence that ensued often found their way into the criminal courts.)

Although the ideal of companionate marriage led to a new willingness to reconsider and reform married women's property law in other parts of North America, Britain, and colonies such as Australia and New Zealand, on the Canadian Prairies, to simplify land transfers and remove possible encumbrances to title, federal and provincial legislators designated the region's land – and therefore wealth – as an almost exclusively male preserve. The Dominion Lands Act of 1872 precluded all but widows and divorced or deserted wives with dependent children from taking up eligible homesteads. Provincial legislators in Manitoba abolished dower – the widow's life-interest in one-third of her husband's freehold property – completely in 1885, and federal legislators followed suit with the Territories' Real Property Act of 1886. Although the prairie farm wife could own property separate from her husband, she had no right to the matrimonial home, which was held in her husband's name, or to property or income acquired by the couple's joint labour. She also did not have the right to be consulted about the disposition of the family farm by sale, mortgage, or gift. Women who moved to the Prairies from other parts of the common law world did not have the same dower rights in their husband's new homestead as they would have had back home.²⁸ Property law for married women in prairie Canada belied the ideal of companionate marriage that was taking hold in other Western industrializing nations; it made, from the outset, a true pioneering partnership between husbands and wives difficult, if not impossible.

As it was imagined, however, the liberal economic order presumed separate, ostensibly equal, spheres for men and women. Although civil society (the public world of men) rested on the tenets of freedom, equality, reason, contract, impartial law, and property for individuals, the domestic domain (the private world of women, children, and unwaged work) was associated with particularity, subjection, blood, emotion, love, and sex. The development of a distinct domestic domain was a corollary of industrial

capitalism and central to bourgeois ideology. Nineteenth-century liberal theorists, however, represented the family as an “apolitical, altruistic haven from the heartless capitalistic world of rational self-interest.”²⁹ In truth, marriage and family stood at the threshold between the private world of the household and the public world of the state. Family was the foundation of freedom in the liberal order, the core from which radiated outward all other civil rights, with the husband and father serving as intermediary. In the eyes of policy makers, marriage was “a civilizing force and a measure of civilization.”³⁰

Policy makers passed legislation that restricted married women’s access to property in prairie Canada because they recognized that the domestic domain was a “hot zone where the new liberal order was created or contested.”³¹ Legislators, who likely had one eye on developments in the American West, believed that shoring up the patriarchal family on the Prairies would tame the acquisitive individualism that would accompany the progress of liberal capitalism in the region. Constructing the domestic domain was imperative in a region that had a large Aboriginal population with fluid notions of marriage, family, and gender and, in the first decades of settlement, a rural male-to-female ratio that was as high as 202 to 100 in some non-Aboriginal communities. Liberals, reformers, and legislators viewed the arrival of marriageable white women, the maintenance of strict boundaries between colonized and colonizer, and the formation of families on middle-class models as panaceas for unregulated male desire, which posed dangers to the social structure.³² Maintaining and imposing a strict division between public and private was therefore a key factor in colonialism and nation building: the autonomy of liberalism’s free man rested not only on the subordination of women but also on the domination and exploitation of indigenous peoples and the working class.³³ Maintaining these lines or boundaries was also, in the eyes of imperialists who feared that British men were becoming devitalized, necessary for the future of the British race.

MANLY TITANS: REINVIGORATED MASCULINITY
ON THE SETTLEMENT FRONTIER

Jessie Saxby, whose writings on prairie Canada were sparked by a trip to visit two sons homesteading in the Qu’Appelle Valley, emphasized the physical fitness, health, and vitality of the region’s manly titans because Canadian expansionists and imperialists envisaged colonialism and nation

building as more than the Canadian Pacific Railway, staples export, and industrialization. Their goal was to recruit male heads of households who would produce a morally and physically healthy citizenry based on love for and loyalty to Canada and the Empire.³⁴ The colonial frontier was more than a space for the creation of a liberal economic order and white Christian settlement; it was also imagined as an environment that would foster a reinvigorated masculinity: “British manhood would bring civilization to the hinterlands of the world; in turn, the hinterlands of the world would save British manhood for civilization.” For Canadian nationalists, the making of the man would likewise be the making of the nation.³⁵ Late-nineteenth- and early-twentieth-century posters not only promised potential immigrants land for nothing but also promised “the right land for the right man” (see Figure 4).

Settlers flooded the Prairies during a renaissance of manliness, and William “Jumbo” Fisk embodied the new, hegemonic ideal of white, middle-class masculinity as it was evolving in North America and throughout the British Empire. In the late nineteenth century, middle-class men became preoccupied (some would argue obsessed) with manhood and with men’s right to wield power. Discourses on freedom and the frontier as a space for a reinvigorated masculinity reflected this obsession.³⁶ Between 1880 and the First World War, the middle class increasingly adopted the term *masculinity* over *manliness* in a spirited defence against the demands of modernity – against the threat that labour unrest, feminism, and colonial rebellion posed to their authority and the threat that city living and industrialization posed to men’s vitality. Victorian manliness – which was distinguished by honour, high-mindedness, respectability, domesticity, and strength from self-mastery – faltered as middle-class men began to fear that they were losing control of nation and empire. In response, a reinvented, muscular form of imperial masculinity emerged to fend off the anxiety and lassitude triggered by the perceived paradoxes of modernity and overcivilization.³⁷

Hegemonic, imperial masculinity varied from nation to nation. As defined by the new men’s historians, hegemonic masculinity is the configuration of gender practices that legitimates patriarchy. It ensures that men have superior control over goods and property, over the state and the military, and over women’s bodies. Masculinity, however, is also about differentiation between men, and historians, the new men’s historians argue, must trace how notions of race and class constructed subordinate masculinities in distinct historical contexts.³⁸ By the late nineteenth century, for instance, the normative middle-class Englishman exuded muscular



FIGURE 4 Canadian immigration posters not only promised land for nothing but also promised “The Right Land for the Right Man.” | Glenbow Archives, Poster-13.



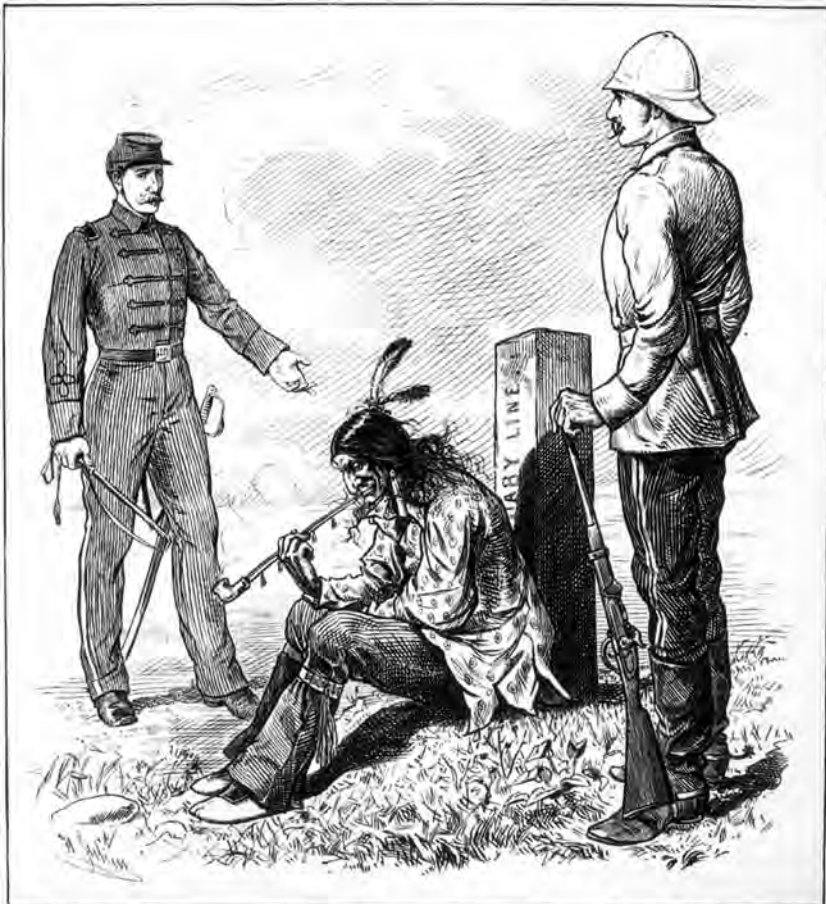
FIGURE 5 Graphic images and art on Canadian Pacific Railway posters, like this one, c. 1920, featured visions of muscular, Anglo-Saxon men taming the wilderness. | Courtesy Canadian Pacific Archives, A.6199.

Christianity, while his American counterpart, typified by Teddy Roosevelt, represented a racialized, imperial masculinity: he was an adventurous, but civilized man who tamed or defeated savage men of colour.³⁹ On the Canadian Prairies, popular authors such as Ralph Connor (a pseudonym for the Reverend Dr. Charles William Gordon) and Robert J.C. Stead fashioned a Protestant masculinity of work that they felt was suited to civilizing the West. In Connor's fiction, the West was a place that assimilated foreign cultural identities, thereby creating a new breed of Anglo-Saxon man who tempered his rugged strength and forceful courage with hard work.⁴⁰ Graphic images of muscular, Anglo-Saxon men taming the wilderness were featured in the artwork on Canadian railway posters (see Figures 4 and 5).

The British Canadian preference for law, order, and authority over brasher American claims to freedom and liberty also moderated imperial masculinity on the Prairies. In his novel *Corporal Cameron* (1912), Ralph Connor tells the story of an agricultural labourer who travels west with the NWMP to do great work and make the dominion a great empire. As Connor's choice of hero suggests, the Mountie, and legal officials in general, epitomized normative British Canadian masculinity (see Figure 6). In non-fiction narratives, novels, and journalism, authors portrayed the Mountie as a white, middle-class, masculine hero who vanquished the enemies of modernity: the savage, working-class, or foreign criminal (see Figure 7).⁴¹

ON THE CHARACTER OF CRIME AND VIOLENCE

Just as normative masculinity underwent transformation in the late nineteenth and early twentieth centuries, so too did representations of the criminal. Whereas people in the early Victorian period tended to view the criminal as a product of triumphant individualism, those late Victorians and early Edwardians who accepted the ideas of Darwinian evolution and biological determinism began to fear that repressive control of the self-will, or excessive civilization, was creating devitalized individuals or social wreckage. Cesare Lombroso's *L'Uomo delinquente* (Criminal Man), which was published in 1876, refashioned the criminal in the image of primitive man (or woman) by drawing upon recapitulation theory in evolutionary anthropology. Henri Julien, who accompanied the NWMP on their march west, played upon prevailing stereotypes of the criminal in his illustration



SITTING BULL ON DOMINION TERRITORY.

U. S. SOLDIER :—Send him over to our side of the line and we'll take care of him.

N. W. MOUNTED POLICE OFFICER :—So long as he behaves himself, the British right of asylum is as sacred for this poor Indian as for any royal refugee.

FIGURE 6 As Henri Julien's cartoon "Sitting Bull on Dominion Territory" suggests, normative British Canadian masculinity (epitomized by the NWMP) was built by constructing Aboriginal masculinity, in opposition, as inferior. The cartoon appeared in the *Canadian Illustrated News* of 22 September 1877. | Library and Archives Canada, C66055.

"The Criminals' Millennium," which depicts a gallery of rogues – a tramp, an Irishman, an African American, a remittance man, a Metis, and a prostitute – taking refuge on the American side of the border (see Figure 8).⁴²

The mass hanging of Aboriginal men that followed the Northwest Rebellion, and the death of Rosalie and the trials that followed, however,

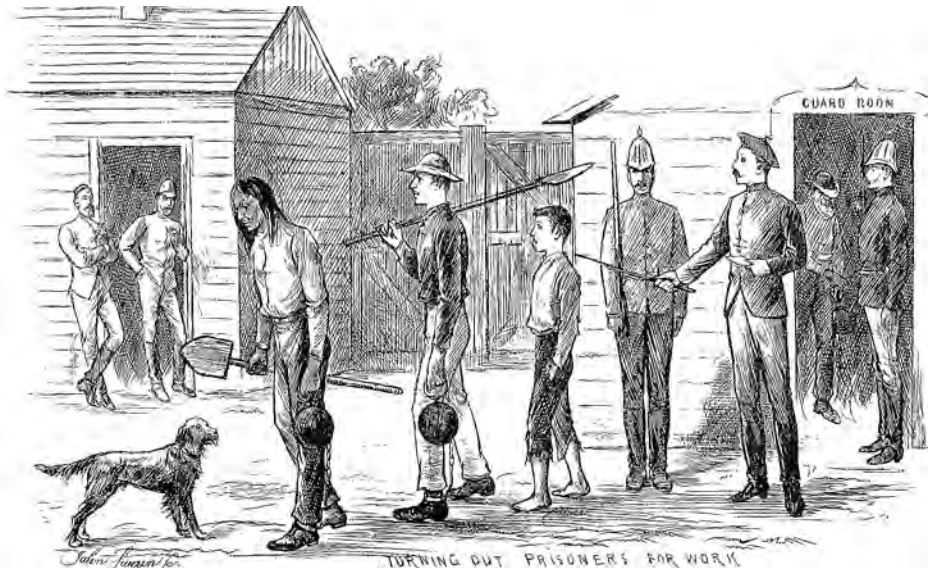
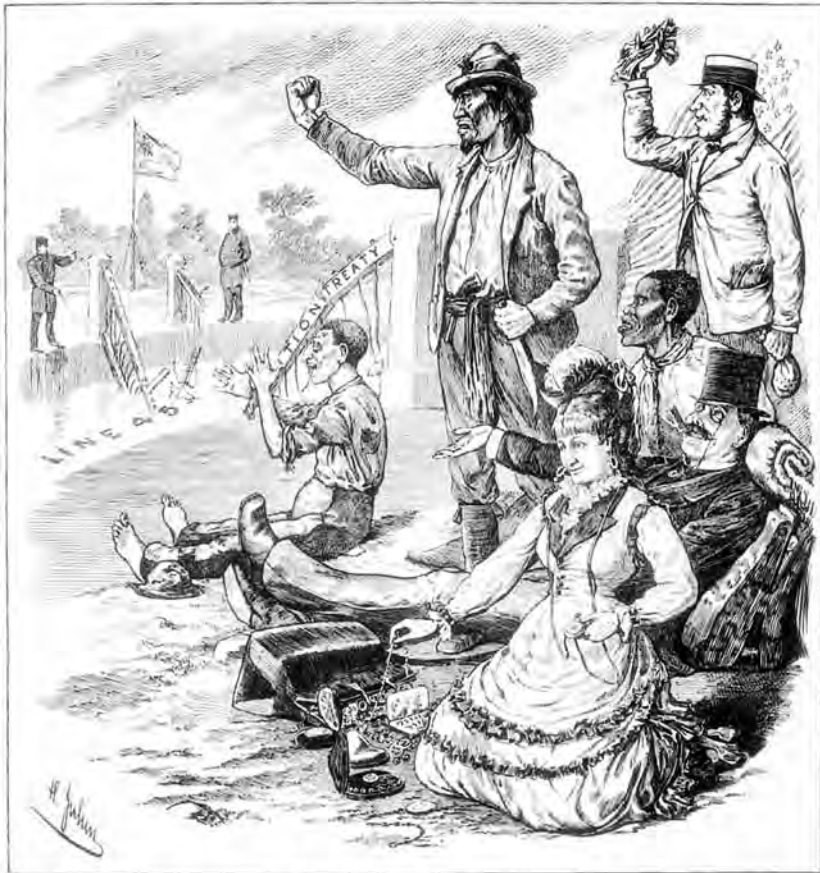


FIGURE 7 The Mountie epitomized normative, British Canadian masculinity on the Prairies, exemplified by the illustration “Turning Out Prisoners for Work,” which appeared in the *Illustrated Sporting and Dramatic News* of 28 November 1883. | Glenbow Archives, NA-2275-3.

expose the degree to which the exceptional story of the mythic, masculine Mountie and the mild West has obscured the dark side of the settlement process. Historians often interpret violence against women and indigenous people as indicative of a crisis in masculinity, but historian Toby Ditz asks the following: could it have simply been one of the sanctioned methods that some men used to maintain gender, race, and class privileges over women and other men?⁴³ Physical and sexual violence fit uneasily into Canada’s classic narrative of western expansion. As the story goes, Prime Minister Sir John A. Macdonald created the NWMP in 1873 to save the Prairies west of Manitoba from American annexation and to protect Aboriginal peoples from unscrupulous whiskey traders and intertribal warfare. On the completion of the march west in 1874, the Mounties had an immediate, transformative impact: they handily put American whiskey traders out of business, they established Canadian sovereignty north of the forty-ninth parallel, and they persuaded warring factions of Indians to adhere to British Canadian systems of law and to sign treaties with the Crown. Unlike their American counterparts, the NWMP established the rule of law in the West without recourse to violence and by administering justice irrespective of social class or skin colour.⁴⁴



THE ORIGINALS' MILLENNIUM

FIGURE 8 Henri Julien, who accompanied the NWMP on their march west, plays upon prevailing stereotypes in “The Criminals’ Millennium,” which appeared in the *Canadian Illustrated News* of 26 August 1876. Julien depicts a gallery of rogues taking refuge on the American side of the border: a tramp, a Metis, an Irishman, an African American, a remittance man, and a prostitute. | Library and Archives Canada, C4515.

Although historians have since demystified dime-novel depictions of the Mountie, he continues to grip the popular and academic imagination as a moral icon. With the exception of Terry Chapman’s pioneer study of sex crimes and domestic violence in Alberta, only a few historians of prairie Canada have chosen to systematically explore the law’s function in society beyond the early settlement period.⁴⁵ And many remain preoccupied with exploring the issue of crime and violence within a comparative framework.

Their research has exposed the mild versus wild West paradigm as a false dichotomy that draws attention away from the law's contributions to imperial and national projects on both sides of the Canadian-American border. However, by focusing on homicide, range wars, and cattle and horse theft, this research continues to conceptualize the issue of frontier crime and violence in exclusively masculine terms.⁴⁶ *Westward Bound* moves beyond the NWMP to examine the criminal courts they served and gender as a category of historical analysis during decades when indigenous peoples' and immigrants' acceptance of the rule of law and the white settler construct that the Mountie represented was far from certain.

CRIMINAL COURTS FOR A SETTLER SOCIETY

In the aftermath of the 1869-70 Riel Resistance and the 1885 Rebellion, Canadian legislators officially extended British Canadian law across the Prairies by creating a regular system of judicial districts and criminal courts for the province of Manitoba and for the North-West Territories (which became the provinces of Alberta and Saskatchewan in 1905).⁴⁷ Although many historians have drawn attention to the boundary survey, the arrival of white women, and the Mountie as symbols of cultural or national sovereignty, few have noted the symbolic importance of this legislation. Much like the act of mapping land that was described by Europeans as unknown territory, the creation of a judicial district and the erection of a courthouse (which dominated the landscape of prairie towns and cities) signalled for many white pioneers the arrival of civilization and British Canadian law in their community (see Figure 9). Myron Noonkester argues that the implantation of counties (see Figures 1 and 2 for a map of judicial districts) was crucial to an English conquest of global proportions: "The spatial notion of shire was readily translated into a mental universe populated by officials possessing a socially ordained right to rule."⁴⁸

When Canadian legislators created an official court system for Manitoba in 1872 and for the North-West Territories in 1886, they borrowed from English common law tradition but adapted it to regional circumstance. The Manitoba Court of Queen's Bench and the Supreme Court of the North-West Territories consisted of a chief justice and *puisne* judges appointed by the Crown. The judges had complete original and appellate jurisdiction until the provinces created higher courts of appeal for Manitoba in 1906 and for Saskatchewan and Alberta one year later. At that time, the superior courts in Alberta and Saskatchewan became the

PATRONS OF THE OSGOODE SOCIETY

Blake, Cassels & Graydon LLP
Gowlings
Lax O'Sullivan Scott Lisus LLP
McCarthy Tétrault LLP
Osler, Hoskin & Harcourt LLP
Paliare Roland Rosenberg Rothstein LLP
Torkin Manes LLP
Torys LLP
WeirFoulds LLP

The Osgoode Society is supported by a grant from
The Law Foundation of Ontario.



The Society also thanks the Law Society of Upper Canada
for its continuing support.

LAW AND SOCIETY SERIES W. Wesley Pue, General Editor



The Law and Society Series explores law as a socially embedded phenomenon. It is premised on the understanding that the conventional division of law from society creates false dichotomies in thinking, scholarship, educational practice, and social life. Books in the series treat law and society as mutually constitutive and seek to bridge scholarship emerging from interdisciplinary engagement of law with disciplines such as politics, social theory, history, political economy, and gender studies.

A list of titles in the series appears at the end of the book.

Sample Material © 2011 UBC Press

© UBC Press 2011

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without prior written permission of the publisher, or, in Canada, in the case of photocopying or other reprographic copying, a licence from Access Copyright, www.accesscopyright.ca.

20 19 18 17 16 15 14 13 12 11 5 4 3 2 1

Printed in Canada on paper that is processed chlorine- and acid-free, with vegetable-based inks.

Library and Archives Canada Cataloguing in Publication

Erickson, Lesley, 1971-

Westward bound : sex, violence, the law, and the making of a settler society / Lesley Erickson.

(Law & society series, 1496-4953)

Includes bibliographical references and index.

Also issued in electronic format.

ISBN 978-0-7748-1858-2 (bound); ISBN 978-0-7748-1859-9 (pbk.)

1. Criminal justice, Administration of – Canada, Western – History. 2. Sex discrimination in criminal justice administration – Canada, Western – History. 3. Women – Crimes against – Canada, Western – History. 4. Female offenders – Canada, Western – History. 5. Criminal law – Social aspects – Canada, Western. I. Title. II. Series: Law and society series (Vancouver, B.C.)

HV9960.C2E75 2011

364.082'09712

C2011-903598-7

e-book ISBNs: 978-0-7748-1860-5 (pdf); 978-0-7748-5995-0 (epub)

Canada

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada (through the Canada Book Fund), the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Aid to Scholarly Publications Program, using funds provided by the Social Sciences and Humanities Research Council of Canada.

Printed and bound in Canada by Friesens
Set in Garamond by Artegraphica Design Co. Ltd.
Copy editor: Audrey McClellan
Proofreader: Jenna Newman
Indexer: Patricia Buchanan

UBC Press
The University of British Columbia
2029 West Mall
Vancouver, BC V6T 1Z2
www.ubcpress.ca

Sample Material © 2011 UBC Press