

## **“The disgust of the community against hanging” The Execution of Bennie Swim and the Debate over Capital Punishment in New Brunswick**

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Résumé de l'article

Cet article examine l'exécution bâclée de Bennie Swim survenue à Woodstock, au Nouveau-Brunswick, en 1922, à la suite de son procès et de sa condamnation pour le meurtre d'Olive Swim Trenholm. Il explore les critiques soulevées par l'exécution de Swim et le débat qui s'ensuivit entourant la peine de mort, à savoir notamment si la pendaison était une méthode humaine pour exécuter un prisonnier condamné. De plus, il évalue la construction sociale selon laquelle les habitants des régions rurales du Nouveau-Brunswick étaient des « bêtes de somme » et le Nouveau-Brunswick rural, des « badlands », et s'interroge sur la façon dont ces images influèrent sur l'opinion de certains observateurs au sujet d'Olive Swim Trenholm et de Bennie Swim, y compris ses actions et son exécution.

# **“The disgust of the community against hanging”: The Execution of Bennie Swim and the Debate over Capital Punishment in New Brunswick**

MICHAEL BOUDREAU

Cet article examine l'exécution bâclée de Bennie Swim survenue à Woodstock, au Nouveau-Brunswick, en 1922, à la suite de son procès et de sa condamnation pour le meurtre d'Olive Swim Trenholm. Il explore les critiques soulevées par l'exécution de Swim et le débat qui s'ensuivit entourant la peine de mort, à savoir notamment si la pendaison était une méthode humaine pour exécuter un prisonnier condamné. De plus, il évalue la construction sociale selon laquelle les habitants des régions rurales du Nouveau-Brunswick étaient des « bêtes de somme » et le Nouveau-Brunswick rural, des « bad-lands », et s'interroge sur la façon dont ces images influèrent sur l'opinion de certains observateurs au sujet d'Olive Swim Trenholm et de Bennie Swim, y compris ses actions et son exécution.

This article examines the bungled execution of Bennie Swim in Woodstock, New Brunswick, in 1922 following his trial and conviction for the murder of Olive Swim Trenholm. It explores the criticism over Swim's execution and the subsequent debate about capital punishment, including whether hanging was a humane method of executing a condemned prisoner. It also assesses the social construction of the rural New Brunswicker as a "beast of the field" and rural New Brunswick as the "bad lands," and how these images informed some observers' views of Olive Swim Trenholm and Bennie Swim, including his actions and his execution.

**BENNIE SWIM WAS EXECUTED ON 6 OCTOBER 1922** in Woodstock, New Brunswick . . . twice! By most accounts Swim's hanging was a "terrible affair" and "horrendous."<sup>1</sup> One newspaper set the stage for this grim event. While Swim's parents visited him in his jail cell to say their last good-byes, they could hear "in the yard below the screeching song of saws and the ringing of steel

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1 *Daily Telegraph* (Saint John), 7 October 1922. Research funding for this article has been generously provided by the Senate Research Committee, St. Thomas University. My sincere thanks to Alison Forshner for her excellent research assistance and to the three anonymous assessors whose incisive comments helped to improve this manuscript.

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against steel, as workmen bus[ied] themselves with . . . building . . . the scaffold that will swing [their] son . . . into eternity.” After a last meal of grapefruit and a few sips of tea, Swim “walked to his doom, leaning on the arm of the executioner, and mounted the gallow steps with bowed head and tottering footsteps.” Swim’s final words before the hangman placed a black hood over his head were a plea to God to have mercy on his soul. At six minutes past 5:00 am, the trap door was sprung and “all that was mortal of the unhappy man dangled at the end of the eight-foot drop.” The drop, however, did not kill Bennie Swim. Normally, if the prisoner’s neck was not broken by the fall, their body would be allowed to hang for 15 to 20 minutes to ensure that they strangled to death. But for some reason Swim’s body was cut down within a few minutes of his fall. When examined by the prison doctor, it was discovered that Swim’s neck had not snapped and he still had a pulse. So, almost an hour later, and while still unconscious, Swim was hanged again, this time successfully.<sup>2</sup>

The bungled execution of Bennie Swim generated a heated debate about the efficacy of capital punishment and whether hanging was a humane method of execution. Indeed, this debate challenged the moral basis of the death penalty and the legal authority of the state to kill. The abolition of public executions, which last occurred in Canada in 1869, meant that the state was solely responsible for meting out punishment and “justice” to criminals. Citizens, in other words, were stripped of their role as witnesses to the ultimate form of punishment that the criminal justice system could administer. As David Garland has perceptively noted, by moving executions from the “political space of the town square” to the “penal space of the jail yard,” they became a legal sanction rather than a political spectacle.<sup>3</sup> The public’s gaze was thus limited to newspaper reports and first-hand accounts from the few legal officials, family members, and invited individuals who attended executions. But the outcry that

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2 *Daily Gleaner* (Fredericton), 12 September 1922. There was some fear that Bennie Swim might regain consciousness, which would have added to the tragedy, and the drama, of his execution. His second execution was conducted by F.G. Gill, from Montreal, who Sheriff Albion Foster had hired as a “back-up” to W.A. Doyle, also from Montreal, who performed the first hanging.

3 David Garland, “Modes of Capital Punishment: The Death Penalty in Historical Perspective,” in *America’s Death Penalty: Between Past and Present*, ed. David Garland, Randall McGowen, and Michael Meranze (New York: New York University Press, 2011), 31, 56. Britain outlawed public executions in 1868. Public executions, it was felt, no longer served as a deterrent to crime and in many communities they had become rowdy events that were difficult for local criminal justice officials to control; see Ken Leyton-Brown, *The Practice of Execution in Canada* (Vancouver: UBC Press, 2010), 9 and Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002), 168.

followed in the wake of Swim's ill-fated hanging suggests that the community, at least in New Brunswick, was not necessarily ready to relinquish its role of witness to, and regulator of, executions. The provincial government tacitly acknowledged this fact when it appointed a public inquiry to investigate this "disgraceful mess." Moreover, Swim's execution unintentionally re-introduced an element of spectacle into the "theatre of justice" and made Bennie Swim, not Olive and Harvey Trenholm, whom Swim had murdered, the victim in this case.<sup>4</sup>

This article will provide a brief overview of the murder of Olive and Harvey Trenholm and Bennie Swim's resulting trial for Olive's death. It will also explore the outpouring of criticism over Swim's execution and the subsequent debate about capital punishment in Canada, and whether hanging was a humane method of executing a condemned prisoner and how the practice of executions should be overhauled. This study will also assess the social construction of the rural New Brunswicker as a "beast of the field" and rural New Brunswick as the "bad lands," and how these images informed some observers' views of Bennie Swim and Olive Trenholm, along with Swim's actions and his execution. In so doing, this article contributes to the history of capital punishment in Canada and deepens our understanding of how Canadians viewed the death penalty and hanging as a mode of execution in the 1920s.

Botched executions, Kathy Laster contends, haunt both the state and the community.<sup>5</sup> This was certainly the case in New Brunswick, as Swim's gruesome death reverberated throughout the province. One popular history of capital punishment in Canada contends that Swim's case was "one of the most terrible dramas in Canadian executions," while a recently published "non-fiction novel" contains accounts of Bennie Swim's ghost haunting the Woodstock Jail as if in purgatory.<sup>6</sup> Between 1869 and 1957, 26 New Brunswick residents, all of whom were men, were executed for the capital crime of murder. Of these 26 executions only Bennie Swim's did not end in a quick death, which

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4 Bennie Swim was only prosecuted for the murder of Olive Trenholm. Since he was sentenced to death for this capital crime, the Crown decided not to proceed with a second trial for the killing of Harvey Trenholm; see John McGuire, "Judicial Violence and the 'Civilizing Process': Race and the Transition from Public to Private Executions in Colonial Australia," *Australian Historical Studies* 29, iss. 111 (1998): 208.

5 Kathy Laster, "Famous Last Words: Criminals on the Scaffold, Victoria, Australia, 1842-1967," *International Journal of the Sociology of Law* 22 (1994): 15.

6 Frank W. Anderson, *A Concise History of Capital Punishment in Canada* (Calgary: Frontier Publishing, 1973), 61 and Dominique Perrin, *Twice to the Gallows: Bennie Swim and the Benton Ridge Murders, A New Brunswick Non-Fiction Novel* (Woodstock, NB: Chapel Street Editions, 2019).

helps to explain why it has entered the realm of popular culture in the province. According to Ken Leyton-Brown, however, botched, or mishandled, executions were common in Canada. He estimates that one-third to half of all hangings – which was the only method of execution that Canada employed during the 20th century until the death penalty was abolished in 1976 – were improperly conducted, resulting in the condemned being decapitated or experiencing prolonged suffering and agony if they took too long to die. Leyton-Brown chronicles several executions that had gone awry, including that of Eugene Poitras; he was hanged twice in 1869 in Malbaie, Quebec.<sup>7</sup> In the United States in the period from 1890 to 2010, roughly three per cent of all executions were botched. This included George Robinson, an African American man who, following a conviction for murdering his wife, was hanged twice in 1902 in Virginia. These “gruesome spectacles,” Austin Sarat argues, “signal a break in the ritualization and routinization of state killing,” and they expose the “violence and disorder of capital punishment.”<sup>8</sup> The gruesome execution of Bennie Swim was an ordeal that sparked a gambit of emotions and contentious debate about the legitimacy of capital punishment, and hanging specifically.

### **The “highest offence known before the law”: The trial of Bennie Swim for the murder of Olive Swim Trenholm**

On 27 March 1922, 20-year-old Bennie Swim murdered his cousin and “sweetheart” Olive Swim Trenholm and her husband Harvey Trenholm.<sup>9</sup> The murders were committed at Benton Ridge, Carleton County, near Woodstock, New Brunswick. These were small communities – in 1921 Woodstock, the “shiretown” of Carleton County, had 1,480 residents and in 1921 the combined population of Carleton and Victoria counties was 33,900 – which meant that many residents were keenly aware of their deaths and Swim’s subsequent trial and execution.<sup>10</sup> Harvey Trenholm was a veteran of the First World War, and

7 In a brief discussion of the Swim case, Leyton-Brown notes that the public was “thoroughly appalled” by his execution; see Leyton-Brown, *Practice of Execution in Canada*, 89, 98, 129–31.

8 Of the 9,000 executions that occurred between 1890 and 2010 in America, 276 were botched; see Austin Sarat, *Gruesome Spectacles: Botched Executions and America’s Death Penalty* (Stanford, CA: Stanford Law Books, 2014), 5–6, 174.

9 Capital Case File, Swim B. Supreme Court Transcript, 25–28 April 1922, *King vs. Bennie Swim*, RG13, vol. 1519, cc183, pt. 1, pp. 250–1, Library and Archives Canada (LAC).

10 New Brunswick’s population in 1921 was 387,876; see *Sixth Census of Canada, 1921, Volume I* (Ottawa: King’s Printer, 1924), Table 7 and Table 8, pp. 7, 24 and Peter McGahan, *Crime and Policing in Woodstock, New Brunswick, 1900–1910* (Halifax: Atlantic Institute of Criminology, 1989), 2.

he and Olive had been married for less than two weeks before they were “sent into eternity with tragic suddenness.” The question of Swim’s guilt was not in doubt since he allegedly confessed to the murders; upon his arrest, Swim had reportedly stated to Sheriff Albion Foster “Its awful what a woman will bring a man down to. . . . I will hang for this.”<sup>11</sup>

Bennie Swim’s trial lasted three days in April of 1922, and the jury took under an hour to find Swim guilty of the murder of Olive Trenholm. The jury did not recommend to the court that mercy be shown to Bennie Swim. While the short duration of the trial and the quick verdict were generally indicative of judicial proceedings in this period, in most capital cases in Canada juries tended to recommend mercy. They did so, in part, to absolve themselves of the guilt some jury members may have felt over sending an accused to their death.<sup>12</sup> The jury’s decision not to recommend mercy in this case, however, suggests that they were convinced by the Crown’s assertion that the murder of Olive Trenholm was a calculated act of revenge by a spurned suitor. Bennie had grown quite fond of Olive while he was living with her and her father. According to several members of the community, including Olive’s father and Bennie’s parents, Olive and Bennie had lived informally as man and wife for over a year. When asked in court by Swim’s counsel, F.C. Squires, “Did they pass as man and wife,” Jesse Foster, Swim’s uncle, replied emphatically that “They certainly did.” But while Bennie had hoped to marry Olive (he had given her a wedding ring), she rejected his offer of matrimony and instead became betrothed to Harvey Trenholm. Swim’s mother told the court that when Swim learned of their marriage he “seemed to be out of his mind” and he “did not know how he was going to live without her.”<sup>13</sup> Swim purchased a “five-shooter” revolver and traveled to their home to convince Olive to leave Harvey. When he arrived at their home, Swim shot Harvey Trenholm following a brief confrontation on the front doorstep. When Olive heard the gunshot, she came to the front door. Bennie begged her to come with him, and, when she refused, Bennie shot her in the chest. Olive then staggered back into the house and Bennie followed and shot her through the heart. One newspaper attributed

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11 *The Observer* (Hartland), 30 March 1922.

12 Carolyn Strange, “The Lottery of Death: Capital Punishment, 1867-1976,” *Manitoba Law Journal* 23 (1995): 594-619.

13 Capital Case File, Swim B. Supreme Court Transcript, 25-28 April 1922, *King vs. Bennie Swim*, RG13, vol. 1519, cc183, pt. 1, pp. 186, 200.

the murder to jealousy and claimed that Swim had said “I am willing to die for this girl. . . . It was all over ten minutes after my arrival at the house.”<sup>14</sup>

Later that evening Sherriff Foster called “different men I knew” in the surrounding communities to spread the word that a murder suspect was at large and that he would need their assistance to apprehend him. Early the next morning Foster discovered Swim at James Doherty’s farm in Debec, which was approximately six miles from the Maine border. Doherty testified that Swim, who had “kind of a downward look to him,” asked if he could stay the night, a request that Doherty granted. When Foster arrived at Doherty’s farm he informed Swim that he was there to arrest him for the murders of Olive and Harvey Trenholm and he said to Swim “You are not bound to make any statement, you are arrested on a serious charge and whatever you say may be used against you [at] your trial.” Foster assured the court that it was only after he gave Swim this warning that Swim said to him “This is a bad scrape. I suppose I will hang for this.” Swim’s lawyer attempted to have Foster’s testimony deemed inadmissible, citing case law and arguing that courts “seem to be very much more particular about shutting out confessions in cases of capital crimes than they do in ordinary cases.” Crown counsel Peter Hughes countered that Swim was properly instructed as to his rights before he had made this statement to Sherriff Foster and Chief Justice McKeown concurred, saying to Squires “You will get the benefit of the objection [i.e., appeal] if I am wrong.”<sup>15</sup>

In order to secure Swim’s acquittal on the charge of murder, Squires hoped to prove to the court that Swim was suffering from insanity at the time of Olive Trenholm’s death. In his efforts to do so, however, Squires did not call Swim to the witness stand, nor did he rely upon testimony from psychiatric experts (or “alienists”).<sup>16</sup> Instead, Squires had members of Swim’s immediate and extended family, along with a few friends, regale the court with accounts of Swim’s apparent “fits” and his alleged familial history of inbreeding and insanity. Squires may have relied upon these anecdotal narratives out of desperation. Squires

14 *Carleton Sentinel* (Woodstock), 31 March 1922.

15 Capital Case File, Swim B. Supreme Court Transcript, 25–28 April 1922, *King vs. Bennie Swim*, RG13, vol. 1519, cc183, pt. 1, pp. 61, 68–9, 138–40. After he had shot Olive and Harvey Trenholm, Swim shot himself in his right temple. Foster was able to track Swim to Doherty’s farm by following the trail of blood; see *Observer*, 30 March 1922.

16 For more on alienists in Canada, see Allison Kirk-Montgomery, “Loaded Revolvers’: Ontario’s First Forensic Psychiatrists,” in *Mental Health and Canadian Society: Historical Perspectives*, ed. James E. Moran and David Wright (Montreal and Kingston: McGill-Queen’s University Press, 2006), 117–48.

was appointed to represent Swim on the first day of his trial and Squires made the point on more than one occasion, including to the jury, that “I have not been in a position to make preparation for a defense of this seriousness.” Chief Justice McKeown, however, refuted this claim. In his charge to the jury, McKeown sardonically noted that “of course the opportunity which Mr. Squires had was not as good a one as it might have been had he been engaged [earlier], but that is not a matter that he or you or I have anything to do with.” Indeed, McKeown applauded Squires’s handling of Swim’s defence in that it contributed to an expeditious trial: Squires “has not consumed time in lengthy cross-examination which would have led nowhere except taking up the time of the Court.”<sup>17</sup>

McKeown dismissed the defence’s arguments and expressed his belief to the jury that the Crown had demonstrated that no one other than Bennie Swim had committed this crime. On the issue of Swim’s apparent hereditary insanity, McKeown reminded the members of the jury that the law presumed that everyone was sane when they committed an offence and that the onus rests with the defence to prove otherwise: according to the Criminal Code, “Everyone shall be presumed to be sane at the time of doing . . . any act until the contrary is proved.” In McKeown’s opinion, Swim’s premeditated actions (including purchasing a weapon before going to Olive and Harvey Trenholm’s home) and his remark to Sheriff Foster (“This is a bad scrape. I suppose I will hang for this”), pointed to Swim being aware of the “nature and quality” of his actions.<sup>18</sup> Justice McKeown also stressed the importance of maintaining law and order in the face of an individual who seemingly had taken the law into his own hands and meted out death “in such a summary and awful manner.” McKeown urged the jury not to be unduly swayed by sympathy given the gravity of the punishment for this “highest offence known before the law.” “In some circumstances,” McKeown mused, “juries are apt to look for an opportunity perhaps of evading a grave responsibility or to give a fuller play to sympathy, are apt to create a doubt where no doubt exists. That is turning ones back upon the part which a jury occupies in the administration of justice

17 Capital Case File, Swim B. Supreme Court Transcript, 25–28 April 1922, *King vs. Bennie Swim*, RG13, vol. 1519, cc183, pt. 1, pp. 69–71, 177, 225–6.

18 With regards to “insanity,” the *Criminal Code* stated “No person shall be convicted of an offence by reason of an act done . . . by him when laboring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act . . . and of knowing that such an act . . . was wrong”; see *Criminal Code of Canada, Revised Statutes of Canada, 1906, Vol. III* (Ottawa: King’s Printer, 1906), chap. 146, pt. I, p. 9.



throughout the country.”<sup>19</sup> In this case, however, the members of the jury did not evade their “grave responsibility.” The jury’s guilty verdict may have been a reflection of their belief that since Bennie Swim had not taken moral responsibility for his actions, as befitting the “ideals of British citizenship and masculine Anglo character,” he should certainly take legal responsibility for Olive Trenholm’s tragic death.<sup>20</sup>

Before handing down his sentence, McKeown concluded that this was a trial “in which everything which could be said in your behalf was said and everything which could be done was done.” McKeown then sentenced Bennie Swim to be “hanged by the neck until . . . dead [and] may God have mercy upon your soul.” He also told Swim that in the time that he had remaining on this earth, he should “call in the services of the clergymen of your faith and throw yourself unreservedly in [his] hands in order that you may to some degree prepare for the ordeal which awaits you and for the passage to that higher tribunal before which all of us must ultimately stand.”<sup>21</sup> While some residents wrote letters and signed petitions (one petition contained 16 signatures) imploring the federal minister of justice not to execute Bennie Swim, the campaign to save Swim from the gallows was neither widespread nor vocal. Ultimately the minister of justice recommended to the governor general that the “law be allowed to take its course.” A terse statement from the clerk of the Privy Council, dated 11 September 1922, indicated that on the advice of the minister, the governor general “is unable to order any interference with the sentence of the Court in the capital case of Bennie Swim.”<sup>22</sup> It is not necessarily surprising that Swim’s death sentence was not commuted. From 1867 to 1930, close to 50 per cent of those individuals who were sentenced to

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19 Capital Case File, Swim B. Supreme Court Transcript, 25–28 April 1922, *King vs. Bennie Swim*, RG13, vol. 1519, cc183, pt. 1, pp. 227, 233, 240–3, 245–6, 248, LAC. Justice McKeown also rejected the notion, raised by the defence, that Swim could be found guilty of the lesser charge of manslaughter. Since ample time had elapsed between Swim’s learning of Olive and Harvey Trenholm’s marriage and their murders, McKeown surmised that Swim’s actions were not committed in the “heat of passion.” For more on Bennie Swim’s trial, and his insanity defence, see Michael Boudreau, “He Was Always a Mental Defective’: Psychiatric Conversations and the Execution of Bennie Swim in New Brunswick, 1922,” *Journal of New Brunswick Studies/Revue d’études sur le Nouveau-Brunswick* 12 (Fall 2020): 25–43.

20 Kimberley White, *Negotiating Responsibility: Law, Murder, and States of Mind* (Vancouver: UBC Press, 2008), 75.

21 Capital Case File, Swim B. Supreme Court Transcript, 25–28 April 1922, *King vs. Bennie Swim*, RG13, vol. 1519, cc183, pt. 1, pp. 250–1, LAC.

22 Capital Case File, Swim B. Supreme Court Transcript, 25–28 April 1922, *King vs. Bennie Swim*, RG13, vol. 1519, cc183, pt. 2, LAC, and *Daily Gleaner*, 12 September 1922.

die were executed, and between 1922 and 1923 a total of 22 Canadians were executed.<sup>23</sup> The commutation process, moreover, was often politicized, depending upon the nature of the crime, the victim (especially if it was a child), and the condemned. Carolyn Strange, in her recent study of the death penalty in Canadian history, has deftly revealed the political calculations that members of the federal cabinet made when deciding whether or not to commute a death sentence, especially in those cases that had attracted a great deal of national media attention and a public demand for justice. But the hue and cry over Swim's pending execution was muted, which meant that there would be few, if any, political repercussions if Swim's execution was allowed to proceed.<sup>24</sup> Swim's execution was set for 15 September, but had to be re-scheduled to 6 October because Sheriff Foster could not locate a hangman. And the events of that day served to undermine public confidence in hanging as a humane form of execution and generated a fierce debate about the necessity of capital punishment in Canada.

### **A "terrible affair:" The execution of Bennie Swim and the community's reaction**

Capital punishment, so Carolyn Strange has argued, is the "most spectacular symbol of justice in action" for a democracy.<sup>25</sup> Executions embody justice because they are meant to punish and to deter. This was especially true for public executions, which "justified justice" and restored respect for the "sovereign" that had been damaged by the capital crime. An execution, if done properly, re-established justice and reactivated the power and authority of the state.<sup>26</sup> And whereas an execution was intended to strip the accused of their humanity, a bungled execution restored their humanity because it created sympathy for the condemned and cast them in the role of victim of an inept

23 Carolyn Strange, "The Undercurrents of Penal Culture: Punishment of the Body in Mid-Twentieth-Century Canada," *Law and History Review* 19, no. 2 (Summer 2001), 352n22. In 1922-1923, 104 individuals were charged with murder: 61 were acquitted, 13 had their death sentences commuted, and eight were "Detained for Insanity"; see Canadian Centre for Justice Statistics, *Historical Homicide Data and other Data Relevant to the Capital Punishment Issue* (1987), 33.

24 Carolyn Strange, *The Death Penalty and Sex Murder in Canadian History* (Toronto: Osgoode Society for Canadian Legal History and the University of Toronto Press, 2020).

25 Strange, "Lottery of Death," 596.

26 Philip Smith, "Executing Executions: Aesthetics, Identity, and the Problematic Narratives of Capital Punishment Ritual," *Theory and Society* Volume 25, no. 2 (April 1996): 241 and Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1979), 44, 48-9.

criminal justice system. Indeed, sympathy for the condemned, as Daniel Beer has noted, often spilled over into public condemnation of the state. Similarly, a bungled hanging raised doubts about the legitimacy of the law and unwittingly produced a public demand for a more humane form of execution.<sup>27</sup>

When the news of the fate that had befallen Bennie Swim had eventually reached the community, rumours began to quickly swirl about what had actually happened. Some claimed that the hangman was intoxicated during the proceedings and that he had treated Swim disrespectfully. It was reported that the hangman, W.A. Doyle from Montreal, had sworn at Swim and pulled the trapdoor before he had finished praying. As well, before Swim was cut down the first time, Doyle looked at his limp body and exclaimed; “Splendid job ain’t it? The man is as dead as a door-nail.”<sup>28</sup> These innuendos further inflamed the anger of local residents who “became greatly wrought up over the details [of the hanging] and even threatened hanging the man from Montreal.”<sup>29</sup> Sheriff Foster placed Doyle in a cell at the Carleton County Gaol to protect him from a mob that had formed seeking to enact revenge upon him. Later that evening, Doyle returned to Montreal secreted on a train.<sup>30</sup> Doyle’s mishandling of the execution meant that Bennie Swim was no longer only a murderer, but also the recipient of empathy from many in the community. As Woodstock’s *Press* noted in its coverage of Swim’s funeral: “It was very largely attended. There were 150 [horse-drawn] teams in the procession. The large number of people attending . . . testified to the disgust of the community against hanging, a relic of the dark ages.”<sup>31</sup> Moreover, this feeling of sympathy for Swim tended to overshadow, at least in the public discourse about the case, Swim’s victims.

In an attempt to quell the growing public outrage over the handling of Swim’s execution, and to determine the nature of the events surrounding his death, New Brunswick’s Attorney General J.P. Bryne appointed the Commission to Inquire into the Execution of Benny Swim. In Bryne’s opinion, Swim’s execution was a matter “which calls for the fullest investigation in

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27 Foucault, *Discipline and Punish*, 61–3; Laster, “Famous Last Words,” 15–6; and Daniel Beer, “Civil Death, Radical Protest and the Theatre of Punishment in the Reign of Alexander II,” *Past and Present* 250, no. 1 (February 2021): 177.

28 *Daily Telegraph*, 7 October and 13 November 1922 as well as New Brunswick, Commission to Inquire into the Execution of Benny Swim (1923), 5. Occasionally the spelling of Swim’s first name appeared as “Benny.” But in most of the sources, notably newspapers and court records, his first name was spelled Bennie.

29 *Daily Telegraph*, 2 November 1922.

30 *Aroostook Times* (Houlton, ME), 11 October 1922.

31 *Press*, 17 October 1922.

order that the innocent may be freed from blame which might otherwise attach to them because of their connection with the affair and that the blame may be fixed where it properly belongs.”<sup>32</sup> Commissioner J. Bacon Dickson, a lawyer from Fredericton, heard from 21 witnesses over the course of 2 days in November 1922. While several who testified indicated that Doyle appeared to be drinking, no one could provide conclusive evidence to that effect. One witness, Rev. Hedley Bragdon, assumed that Doyle was inebriated because “anyone that hangs a man [had] to be drinking.” In the absence of solid proof, however, the commission’s report stated “if Doyle had taken any liquor he did not show signs of it to any marked degree on the morning of the execution. It certainly had not affected him to such an extent as to interfere with his carrying out the execution.”<sup>33</sup> As to Doyle’s treatment of Swim, Dickson believed that he “was not as considerate of Swim’s feelings as he should have been under the circumstances.” And even though some observers felt that there was “hilarity” amongst those who were present at the execution, and that it was not conducted with “fitting solemnity,” Dickson commended Sheriff Foster “for the order kept, especially after the first attempt to hang Swim proved unsuccessful.” Ultimately, while this was a “regrettable affair,” and Doyle should have waited for instructions from the attending physician before cutting down Swim’s body, Dickson concluded that he could find nothing to “throw discredit on any other person taking part in the execution.”<sup>34</sup>

But this finding did not mark the end of Dickson’s report. Although it was not part of the commission’s mandate, Dickson decided to address “our system of capital punishment.” Dickson took issue with the fact that local sheriffs had to make the necessary arrangements for carrying out executions, including hiring a hangman. And since sheriffs had little training in these matters, and “quite naturally, dependable citizens are not making their living by hanging,” Woodstock’s sheriff had to rely upon a recommendation to retain Doyle, which in this case proved to be problematic. Sheriff Foster had initially

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32 Appointment of J. Bacon Dickson as Commissioner, 11 October 1922, RS 641/1, Provincial Archives of New Brunswick, Fredericton. The *Press* felt that the inquiry should be held “on account of the feeling which has been aroused throughout the province, and especially in the vicinity of Woodstock, owing to the different versions of the nature of the execution”; see *Press*, 17 October 1922.

33 New Brunswick, Commission to Inquire into the Execution of Benny Swim, 6-7. Ken Leyton-Brown states that Canada’s hangmen “had an excessive fondness for drink and exhibited few of the characteristics demanded of their role”; see Leyton-Brown, *Practice of Execution in Canada*, 75.

34 New Brunswick, Commission to Inquire into the Execution of Benny Swim, 5, 8.

retained the services of Canada's "unofficial" hangman, Arthur Ellis, but when Swim's execution had been postponed Ellis was no longer available on the rescheduled date. Foster encountered tremendous difficulty trying to locate another hangman. He had received "offers from men around here," he told the commission, but he refused their offers because they were "merely adventurers" who knew nothing about conducting a hanging.<sup>35</sup> As Dickson noted, rather ominously, the "wonder is that there are not more affairs of this nature." The commissioner also criticized the standard practice of holding executions in county jails (as opposed to a centralized location for the province) that are often located in densely populated areas. In Woodstock, the jail yard where Swim's execution took place was bordered by streets and homes and there was little to obstruct the public's view of the event. Said Dickson, "The Swim hanging would have been hardly more public if the scaffold had been erected on the street." Dickson continued: "This state of affairs might well be remedied by providing that executions take place at some central prison under the supervision of a competent and experienced man and where proper equipment has been provided."<sup>36</sup> This sentiment was shared by the *Globe and Mail*, which described the existing procedures involved in arranging executions as a "bad system" and called for the appointment of a public executioner.<sup>37</sup>

This desire to further shield the public's gaze from executions suggests that the shift in Canada from "public" to "private" executions during this period was incomplete. The public, in other words, had not completely abandoned its desire to literally see justice served, and some still attempted to view executions that were held in local jail yards. Fred Arsenault, who was present at the execution, recalls that at least 50 people, both in the jail yard and perched in surrounding trees and on rooftops, witnessed Swim's

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35 When Foster expressed some reservations about Doyle, he was told by the people he had spoken with in Montreal that he would not be able to secure any "saints" to perform the job; see *Daily Telegraph*, 3 November 1922 and *Daily Gleaner*, 14 September 1922.

36 New Brunswick, Commission to Inquire into the Execution of Benny Swim, 8-9. Dickson's concerns about hangings taking place in small towns like Woodstock were shared by civic and criminal justice officials throughout the Maritimes, Quebec, and Ontario, who faced a similar dilemma. Similarly, Dickson's call to centralize executions in federal penitentiaries was reiterated by a 1954 parliamentary committee that studied the death penalty. This committee felt that conducting hangings in a central locale, far removed from populated centres, would ensure that the death sentence would be carried out "in an atmosphere of greater decency and dignity"; see Strange, "Undercurrents of Penal Culture," 378-81.

37 *Globe and Mail*, 18 September 1922.

hanging.<sup>38</sup> This is a key reason why Swim's hanging galvanized public opinion in New Brunswick; many people actually witnessed the execution and were able to share a narrative of what had transpired before an "official" version of the event was circulated. From the perspective of the state, by removing executions from public view, as Philip Smith has asserted, it was hoped that prison officials could reclaim their monopoly over the meaning of the deed and the events that surrounded it. Yet, as Swim's execution proved, residents still viewed executions, albeit from afar, and the machinery of death could still malfunction and create multiple discourses about what had occurred, thereby embarrassing the criminal justice system and raising doubts about the efficacy of state-sponsored killing.<sup>39</sup> As Arsenault asserted, Swim "did not deserve to be hanged twice."<sup>40</sup> In this sense, the public inquiry, by essentially absolving all of those who were involved in Swim's execution, attempted to restore faith in the ability of officials to administer punishment in an efficient and solemn manner. This was important, because without such faith the public fear that hanging was inhumane and uncivilized would no doubt have significantly increased. And this was precisely the outcome of Bennie Swim's botched hanging. As an editorial in the *Woodstock Press* concluded: "It is degrading to a community to endure such ordeals and a negative influence on all concerned."<sup>41</sup>

Dickson's call to standardize the practice of executions was echoed by W.P. Jones, counsel for the commission. He described hanging as a "barbarous custom" – a relic of former centuries when men were strung up on street corners and left there for days as a way to deter others from breaking the law. Jones claimed that Canadians were now a "trifle ashamed of this custom," and while they acknowledged that hanging was the law "they greatly resented

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38 Arsenault stated that Swim's hands were tied behind his back, his legs were bound together, and a hood was placed over his head; see interview with Fred Arsenault, 1977, Collection 142 – Catherine Jolicoeur Collection, recording #14004, Centre d'études acadiennes Anselme-Chiasson, Université de Moncton, Moncton, NB. I am grateful to Robert Richard, archivist at the Université de Moncton, for providing me with a copy of the transcript of this interview and to Dr. Jean Sauvageau, Department of Criminology and Criminal Justice, St. Thomas University, for assisting me with translating this document.

39 Smith, "Executing executions," 251 and Strange, "Undercurrents of Penal Culture," 356. Amy Bell explores a more recent debate over capital punishment in New Brunswick in "Cop-Killers, Emotion and Capital Punishment in Moncton, New Brunswick: The Ambrose and Hutchinson Case, 1974-5," *Canadian Historical Review* 101, no. 3 (September 2020): 346-69.

40 Fred Arsenault interview, 1977.

41 Strange, "Undercurrents of Penal Culture," 349 and *Press*, 10 October 1922.

any excessive suffering on the part of the condemned man.”<sup>42</sup> This harsh criticism of hanging, and the law that sanctioned capital punishment, was expressed by several newspapers in New Brunswick. These accounts, while often bombastic, were also politicized insofar as they attempted to reconstruct what had happened to Bennie Swim to spark a debate about capital punishment and provide a form of macabre entertainment for their readers. Indeed, in the context of reporting on executions, and crime generally, the media can “help create opinions on events never to be experienced firsthand on the basis of evidence presented by people one will never meet.”<sup>43</sup> The Saint John *Daily Telegraph*, for instance, felt that the Swim case had sparked a national debate about the steps that should be taken to avoid another such debacle. One suggestion, which was apparently gaining acceptance, was to replace hanging with electrocution, which would temper the “seeming barbarity” of executions. But, as the *Telegraph* also noted, “One is quite as unpleasant as the other.” Even though death may be instantaneous with electricity, those who had witnessed electrocutions, according to the *Telegraph*, “are by no means always persuaded that the method is preferable to hanging.”<sup>44</sup> Fredericton’s *Daily Gleaner* felt that the outcome of Swim’s execution would breathe new life into the campaign to abolish the death penalty. The “gruesome bungling at the execution of Swim,” the *Gleaner* declared, “has caused a revulsion of public feeling against hangings throughout Canada.” For too long hanging has been a “blot on our criminal code and a dark shadow on our humanity,” wrote the *Gleaner*, underscoring the fact that any hanging that had gone horribly wrong offended the sensibilities of many Canadians – even those who ardently supported the death penalty

42 *Daily Telegraph*, 4 November 1922. For more on public executions in Canada, see Peter N. Moogk, “The Liturgy of Humiliation, Pain, and Death: The Execution of Criminals in New France,” *Canadian Historical Review* 88, no. 1 (March 2007): 89–112; Donald Fyson, “The Spectacle of State Violence: Executions in Quebec, 1759–1872” in *Violence, Order, and Unrest: A History of British North America, 1749–1876*, ed. Elizabeth Mancke, Jerry Bannister, Denis McKim, and Scott W. See (Toronto: University of Toronto Press, 2019), 383–407; and Robert Lanning, “Launched into Eternity: Sympathetic Interaction as a Response to Public Executions in Canada West, 1847–1869,” *Journal of Historical Sociology* 13, no. 3 (September 2000): 365–86.

43 Chris McCormick, *Constructing Danger: The Mis/Representation of Crime in the News* (Halifax: Fernwood Publishing, 1995), 3. For more on the importance of newspapers in crime reporting and shaping public opinion about crime, criminals, and victims of crime, see Michael Boudreau, *City of Order: Crime and Society in Halifax, 1918–1935* (Vancouver: UBC Press, 2012).

44 *Daily Telegraph*, 13 October and 9 November 1922. The 1954 parliamentary committee that examined capital punishment also recommended that the “modern method of electrocution” be adopted, but the federal government did not accept this recommendation; see Strange, “Undercurrents of Penal Culture,” 81, 385.



– along with their belief that justice, in order to be respected, had to be seen to be applied fairly and humanely.<sup>45</sup>

The *Daily Telegraph* endorsed the need to centralize executions in penitentiaries and to have the federal government co-ordinate their implementation. The *Daily Telegraph* also felt that the state must ensure that “provision is made for carrying out the demands of the law in a decent and orderly manner.” If the death penalty was to remain a part of Canadian law, and the *Daily Telegraph* noted that public opinion “is by no means unanimous on the subject of the death penalty,” then this sentence must be carried out “in such a manner that there need be no more harrowing of the feelings of the public.” If this was not done, then the wisdom of capital punishment would continue to be debated and the “majesty of the law,” in the eyes of the public, so the paper deduced, would not be vindicated. If the government is “well guided,” then it should learn from the mistakes of the Swim case and the “business of inflicting capital punishment should be systematized, controlled, and carried out . . . expeditiously, humanely, and with all the dignity that can clothe such a proceeding, so much at least is due the public and the criminal alike.”<sup>46</sup>

A more forceful condemnation of the death penalty was made by the Woodstock *Carleton Sentinel*. The *Sentinel*, in an editorial entitled “A Barbarous Custom,” mockingly, but with no acknowledgement of the racialized undercurrents of its words, announced that with Swim’s execution the “Dominion of Canada will have another scalp on its belt.” The death of Bennie Swim, it proclaimed, will not allow the residents of New Brunswick to breathe a sigh of relief or to feel safer in their homes and neighbourhoods. The “spectacle” of hanging a man, or a woman, the paper believed, was not something in which Canadians should take pride. Instead, the *Sentinel* asked, “Why not say Canada shall not take human life? Why not be content with confining murderers for the remainder of their life, and leave the taking of life to the Great Power that gives it?” Swim’s death served “no good purpose” – rather it was “simply . . . one more gravestone in some burying ground and one mouth less to feed” in prison. The *Sentinel* also challenged one of the central arguments espoused by advocates of the death penalty, namely its ability to

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45 *Daily Gleaner*, 7, 13, and 14 October 1922. The *Gleaner* assumed that a New Brunswick member of Parliament would table a bill calling for all executions to be conducted using the electric chair. And Carolyn Strange has indicated that in 1924 a private member’s bill to abolish the death penalty was defeated in the House of Commons; see Strange, “Undercurrents of Penal Culture,” 350.

46 *Daily Telegraph*, 9 November 1922.



deter others from committing serious crimes: “If capital punishment were capable of ending monstrous crimes,” the *Sentinel* concluded, “they would have been ended long before this.”<sup>47</sup>

The Saint John *Daily Journal* fervently disagreed with this logic. The “greatest reason” for capital punishment, in the *Daily Journal*’s view, “is the psychological effect it has on others.” The *Daily Journal* did concede that “perhaps it is useless to take a life legally because one has been taken illegally,” but to question the validity of capital punishment would be to “condemn our whole system of justice.”<sup>48</sup> Woodstock’s *Press* had a more practical view of capital punishment: in light of the fact that murder was an “awful” crime, then the punishment must be commensurate with the terrible nature of the act. But since most Canadians had made up their minds that hanging must cease because it is “disgusting and inhuman,” and if the government did not address this genuine concern, the *Press* predicted that “public opinion will demand that not only hanging but capital punishment must be discarded.” For the *Press*, however, this would be an unfortunate outcome because “the lives of the worthy members of the community are more precious than the lives of those who take life” – an argument that undoubtedly resonated with many people, especially since Bennie Swim, at least prior to his bungled execution, was not considered to be a “worthy member of the community.”<sup>49</sup>

Bennie Swim’s fate also attracted attention and commentary beyond New Brunswick. The *Aroostook Times* in Houlton, Maine, decried the “whole affair [as] a disgraceful mess [that] has aroused much comment among the Canadian people” and it condemned hanging as a “primitive form of capital punishment.”<sup>50</sup> A letter to the editor of the *Ottawa Citizen* from J.W. Hinchcliffe used Swim’s hanging as the focus of a diatribe against capital punishment. Swim’s execution, “with its attendant horrors not paralleled by the cruelties of the Spanish Inquisition,” should, Hinchcliffe argued, prompt supporters of the death penalty – a “relic of barbarism . . . to pause and think.” He reminded readers that Swim had slowly strangled to death and that “nothing could have been more revolting.” Capital punishment, Hinchcliffe asserted, has “outlived its day” because it had failed to prevent the outbreak of crime. This was due primarily to the fact that society produces criminals in “rum holes,

47 *Carleton Sentinel*, and published in the *Daily Journal* (Saint John), 9 October 1922.

48 *Daily Journal*, 9 October 1922.

49 *Press*, 31 October 1922.

50 *Aroostook Times*, 11 October 1922.

prisons, gang-infested street corners and [because of] economic inequality,” and the individuals who are ensnared by these symptoms of modernity are not frightened by the prospect of facing the gallows.<sup>51</sup> In a similar vein, and in response to Swim’s death, the 16th annual convention of the New Brunswick and Prince Edward Island Woman’s Christian Temperance Union unanimously passed a resolution opposing all forms of capital punishment given the futility of this legal sanction.<sup>52</sup>

The memory of Bennie Swim’s execution haunted New Brunswick beyond 1922. Moreover, it became a central part of the national debate about the humanity of hanging specifically and capital punishment generally. In 1937 a special committee of the House of Commons released a report affirming that hanging should remain the only method of execution that Canada utilized. As part of its deliberations, the committee had asked each provincial attorney general for their thoughts about whether or not the country should adopt a different method of conducting executions (in particular, the gas chamber). While some of the attorneys general equivocated in their responses, citing the need for more information to make an informed decision, New Brunswick was perhaps the most assertive and direct in its opinion. The province argued that the “form of punishment should be changed from hanging to the electric chair or lethal chamber.” And while New Brunswick did not officially favour one of these methods over the other, Attorney General John B. McNair believed that the “lethal chamber has some advantages.” Most provinces agreed, however, that whatever method was used to perform executions, it must be humane. As the special committee noted, evidence existed in Canada, including the Swim case, that there had been “grave errors of judgment in the carrying out of executions. These errors created a revulsion of public feeling and no doubt are largely responsible for the present investigation.” New Brunswick also supported a “change in the system so that all executions may be carried out at the Penitentiaries,” which echoed a similar recommendation made by the 1923 Commission to Inquire into the Execution of Benny Swim.<sup>53</sup> Clearly, New Brunswickers continued to struggle with the aftermath of Swim’s execution to

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51 *Ottawa Citizen*, 20 October 1922. I am extremely grateful to Dr. Carolyn Strange, School of History, Australian National University, for bringing this letter to my attention.

52 *Moncton Transcript*, 11 October 1922.

53 Given the difficulties that Sheriff Foster had in securing an executioner for Bennie Swim, the province also hoped that by conducting executions in Dorchester Penitentiary the federal government would oversee the arrangements for hangings; see *Journals of the House of Commons of the Dominion of Canada, Session 1937* (Ottawa: King’s Printer, 1937), 257.

the point where the provincial government, perhaps taking a cue from public opinion, felt that hanging was no longer a humane way for the state to execute a condemned prisoner.

In the minds of many residents of New Brunswick, and others across the country, the Bennie Swim case had brought hanging, and the criminal justice system that utilized it, into moral disrepute. And while Swim's death was not necessarily a watershed moment in the history of the movement to abolish capital punishment in Canada, it did help to ignite another important debate about the utility, and the morality, of the death penalty and particularly of hanging as the country's sole method of execution. Even though the *Carleton Sentinel's* lament of Swim's execution – "The pity, the valuelessness of it all" – is fitting, it also minimizes the deeper significance of this event in terms of galvanizing opposition in New Brunswick to capital punishment and hanging. At the same time, however, not everyone mourned the passing of Bennie Swim for, in the minds of some, death at the hands of the criminal justice system was an inevitable conclusion for someone like Swim who was a "beast of the field."<sup>54</sup>

### **The "beasts of the field" in the "bad lands" of New Brunswick**

Beginning in the early 1920s, as Ian McKay has demonstrated, a widespread urban-based fascination with the "folk," and their rural ways, had emerged. The folk were constructed as a sub-set of the population: they were surrounded by modernity, but not a part of it. In the eyes of some writers, and other cultural producers, the folk represented a natural cultural essence that had not been corrupted by modernity. In this sense, the folk became "objects of contemplation" for those members of middle-class society who embraced many of the social, economic, and cultural elements of modernity but who, at the same time, felt alienated by their experiences under conditions of modernity.<sup>55</sup> William Guy Carr, who was born in Lancashire, England, belonged to this antimodernist wave in North America. The third instalment of his autobiography, *High and Dry* (1938), recounted his life in Canada, since 1920, when he left the British navy to pursue new adventures. Once he had arrived

54 The source for the "pity" quotation is the *Carleton Sentinel*, and published in the *Daily Journal* (Saint John), 9 October 1922. The source for the "beast of the field" quotation is William Guy Carr, *High and Dry: The Post-War Experience of the Author of "By Guess and By God"* (London: Hutchinson & Company, 1938), 84.

55 Ian McKay, *The Quest of the Folk: Antimodernism and Cultural Selection in Twentieth-Century Nova Scotia* (Montreal and Kingston: McGill-Queen's University Press, 1994), 9-12, 225.

in Canada, Carr farmed and then worked as a police officer and a journalist and served as a member of a welfare committee and a social hygiene council.<sup>56</sup> A contemporary reviewer stated that *High and Dry* “provides an interesting picture of life in the Dominion after the war.”<sup>57</sup>

One part of this “interesting picture of life in the Dominion” was captured by Carr during the two years that he had spent in what he called the “bad lands” of New Brunswick. While Carr embellished life in rural New Brunswick to sensationalize his time in the province to no doubt sell more copies of his book, it is important to remember that Carr was able to grossly exaggerate the province’s socio-economic conditions because of the belief that the rural poor lived immoral and primitive lives. According to Joan Sangster, the “Badlands,” in Sangster’s case Peterborough County, Ontario, were a “geographical space of immorality, family pathology, and lawlessness.”<sup>58</sup> During his time in New Brunswick’s “bad lands,” Carr hunted and fished and conversed with the “folk,” who were “from a monetary point of view, the poorest human beings I ever met in a civilized country.” They had been “forced to cut themselves adrift from civilization . . . [and] forced to revert to a level of living not far above that of the beasts of the forests; [only] the beasts are more fortunate.” They nevertheless occupied what Carr felt was an “earthly paradise,” which he, more so than they, could enjoy, trapped as they were “on the fringe of civilization” in a constant struggle for survival. As Carr surveyed a row of houses where six families lived, he remarked that only one of these families “could boast that none of its members had been charged with murder or incest within the past few years. The practice of incest is common.” These “Back Landers” valued their privacy and were “intensely jealous of their womenfolk.” Indeed, most of them, including Bennie Swim, “settled their quarrels with a rifle or an axe” rather than with reasoned debate and dialogue.<sup>59</sup> Besides utilizing antimodernist discourse, *High and Dry* is reminiscent of the 19th-century narratives that were penned by sportsmen and travel writers who, as Jeffrey McNairn maintains, often described rural Maritimers as “reckless and ignorant” and uncouth.<sup>60</sup>

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56 Carr, *High and Dry*, 104. He does not indicate where in Canada he performed these duties.

57 *Geographical Journal* 92, no. 1 (July 1938): 80-1.

58 Joan Sangster, “Masking and Unmasking the Sexual Abuse of Children: Perceptions of Violence Against Children in ‘The Badlands’ of Ontario, 1916-1930,” *Journal of Family History* 25, no. 4 (October 2000): 515.

59 Carr, *High and Dry*, 85-9.

60 Jeffrey L. McNairn, “Meaning and Markets: Hunting, Economic Development and British Imperialism in Maritime Travel Narratives to 1870,” *Acadiensis* 34, no. 2 (Spring 2005): 22.

Carr's portrayal of Bennie Swim certainly fits this genre. Carr had apparently met Bennie and Olive Swim shortly before the murder and he hoped that his book would be an exhaustive, and accurate, account of their tragic lives and deaths. Carr wanted to help those who were less fortunate than himself by drawing attention to their plight because "indifference to the welfare of those less fortunate than ourselves is a terrible sin." Although Carr did not wish to completely absolve Bennie Swim of his crime, he was convinced that given his flawed upbringing Swim did not receive "justice" before the court. From his childhood onwards, Bennie Swim had endured a hard life. "No child," Carr explained, "forced to live as [Swim] lived can be expected to grow up any more enlightened than the beasts of the field." Swim was raised in abject poverty and he was told that "Might was Right." His father taught him how to shoot at an early age and he "grew up to believe that the gun he carried was for two purposes . . . to provide food . . . [and] . . . to protect his life and property."<sup>61</sup>

Some members of the community shared Carr's views about Swim's penchant for violence that was a result of his miserable childhood. A report in the *Hartland Observer* indicated that muted opposition had arisen against Swim's pending execution. Swim was "born amidst squalor, reared in surroundings of depravity, and all his life subject only to the greatest law in the world – that of self-preservation." As a result he was "undoubtedly of feeble and unsound mind, little short of an imbecile." According to the *Observer*, this meant that when Swim was placed in stressful situations, such as losing his "wife" Olive to another man, he "goes completely beside himself." The only people who are to blame for this tragedy, the paper declared, are those individuals in the communities of Hartland and Woodstock who did nothing to improve the "deplorable conditions" that precipitated this crime; they are the "culpable ones and the ones who should . . . be hanged."<sup>62</sup> This admonishment of the community for failing to prevent this crime is underscored by Carolyn Strange and Tina Loo, who argue that "spectacular" criminal trials that grip a community's attention often remind residents "if only momentarily, of social fragility, because they expose the limits of community regulation" and culpability.<sup>63</sup>

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61 Carr, *High and Dry*, 84, 99, 101-2.

62 As quoted in *Carleton Sentinel*, 2 June 1922.

63 Carolyn Strange and Tina Loo, "Spectacular Justice: The Circus on Trial, and the Trial as Circus, Picton, 1903," *Canadian Historical Review* 77, no. 2 (June 1996): 184.

Shortly before he turned 12, Bennie Swim went to live with his uncle Jim – “old man Swim” – and his daughter, Olive, in a tar-paper shack. One day Bennie came home from school, “his face black with passion,” his eyes “hot and dry, unable to shed tears,” and he stood before his uncle and asked: “How can I stop those kids at school plaguing the life outta me?” His uncle blurted out “Rip their bloody guts out.” The next day, rather than run from his tormentors, Swim stood his ground. He unsheathed a knife and “into the bunch he tore wildly, slashing right and left, burning with the desire to be revenged, to inflict pain and injury in measure to the pain and injury he had been forced to suffer.” Swim never returned to school and the police did not arrest him because supposedly once he had disappeared into the “bad lands” they could not find him. And while the other boys and girls became his enemies, Bennie Swim’s “crying days were over forever.” He was now “friendless and alone,” except for his uncle and Olive.<sup>64</sup>

Eventually Bennie and Olive Swim lived together as man and wife. Carr felt that Olive did not mind sleeping with Bennie since the modesty and secrecy of sex with which “civilized individuals” were familiar were unknown to her. The folk, as a “natural people,” apparently lived according to a freer sexual code that “respectable” men such as Carr imposed upon them as a way to separate himself from the depravity of the “bad lands,” while at the same time engaging in sexual voyeurism.<sup>65</sup> Carr depicted Olive as virginal and as a vixen. Despite living in the same filth as “old man Swim,” Olive kept herself neat and tidy and seductive; her jet black hair “accentuated the whiteness of her beautifully-moulded neck” and her legs, which Carr could see beneath her “plain gingham house dress,” were as white as “riven snow.” Olive was also a vivacious young woman (she was 19 when she died) who had used her feminine wiles to manipulate men, including Bennie: “She had been the storm-centre of love quarrels in that section of the country ever since she was twelve years old.” Carr could also see the devil in her eyes. But she was not a “bad devil, rather a mischievous devil . . . one which loved to tease . . . to hurt a little, so as to be able afterwards to enjoy the task of easing the pain.” Unlike other young women, Olive did not desire clothing and jewelry since she knew that these accoutrements of “civilized” life were beyond her reach; instead, “she simply

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64 Carr, *High and Dry*, 101-3.

65 McKay, *Quest of the Folk*, 251-2.

craved the admiration of men and things of the flesh. Her whole attitude advertised the fact that she was over-sexed.”<sup>66</sup>

Carr’s depiction of Olive as innocent, cunning, and promiscuous was meant to contextualize for his readers, and possibly to excuse, Bennie Swim’s jealousy that fueled his murderous rage. At first Bennie and Olive had given in to their primal instincts. In the “bad lands” of rural New Brunswick, “human emotions descend from the elevated plane to which civilization and Christianity have attempted to raise them and revert to plain carnal appetite.” But eventually Olive grew tired of Bennie and how he “lorded over her.” He was to Olive “just plain buckwheat pancakes, without butter or wild honey,” and Olive, in Carr’s mind, craved both of these sweet delicacies. As his love for Olive grew, so too, apparently, did Bennie’s possessiveness to the point where he had warned her “If I catch you cheating . . . I’ll kill you and the guy I catch you with.” According to the code of ethics that Bennie lived by, this, as Carr noted, should have been enough warning for Olive. But alas it was not, and when one summer a “stranger” came to visit – a man who could read and write and tell Olive stories about the foreign countries that he had visited, which neither she nor Bennie had ever seen – Olive became smitten and abandoned Bennie for Harvey Trenholm. Heart-broken, Bennie planned his revenge “cold-bloodedly” and he pursued Olive and Harvey Trenholm to their home in Benton Ridge where he murdered them.<sup>67</sup>

William Guy Carr wanted to draw attention to the circumstances that plagued the inhabitants of the “bad lands” of New Brunswick because, from his middle-class perspective, the conditions that propelled Bennie Swim towards murder, and eventually execution, could be improved for other residents of the “bad lands.” By acting irrationally over the loss of his “wife” Olive, Swim had not lived up to the ideal of the modern man who, as Christopher Dummitt surmised, “kept his cool, reigned in his passions, and acted responsibly.”<sup>68</sup> While it was too late for Bennie and Olive, Carr had hoped that others like them could be rescued. Carr, and other members of the middle class who

66 Carr, *High and Dry*, 94-5, 102-3.

67 Similar to his other descriptions of Olive, Carr eroticized her murder. In Carr’s version of events, when Bennie followed Olive into the house after firing the first shot, which had struck her in the chest, he “tore open her blouse, bared her breasts, and placing the barrel of the revolver square between them [he] pulled the trigger”; see Carr, *High and Dry*, 107. Fred Arsenault, who had witnessed Swim’s execution, believed that Olive was the “cause of all this”; see Fred Arsenault interview.

68 Christopher Dummitt, *The Manly Modern: Masculinity in Postwar Canada* (Vancouver: UBC Press, 2007), 108.

looked upon the men and women of rural society with nostalgia and pity, believed that they could save these “beasts of the field” by shining the light of modernity upon their depraved lives. Moreover, the life and death of Bennie Swim and Olive Trenholm represented a cautionary tale for many in urban Canada to avoid the “bad lands” and the way of life that flourished therein. The Fredericton *Daily Gleaner* told its readers that it was not surprising that Bennie and Olive had essentially lived as man and wife because a “Free Love sect” was “more or less prevalent” in Carleton County.<sup>69</sup> And if modern society was not careful, this “Free Love” mentality could easily infect the country’s cities and spread quickly amongst its unsuspecting youth.<sup>70</sup> As Ruth Harris has argued, while late-19th- and early-20th-century campaigns to battle crime and vice were meant to improve the lot of the poor “they were usually aimed at containing their contaminating effects and preventing them from taking over the ‘civilized’ quarters of the city.”<sup>71</sup> This was not necessarily a crusade by Carr, and other antimodernists, to elevate the lives of the “Back Landers,” and the memory of Bennie Swim, to their middle-class status, but rather to enrich their lives to the point where the “beasts” and the “bad lands” no longer posed a danger to urban morality and social order.<sup>72</sup> But, at the same time, Carr and others recognized that Swim had committed murder and if he was hanged twice, then that was “poetic justice.”<sup>73</sup>

The execution of Bennie Swim unleashed a ferocious debate in New Brunswick over the death penalty and hanging, and it helped to elicit a measure of sympathy for a convicted killer. A bungled execution served as a reminder for many New Brunswickers, and Canadians generally, that the death penalty was an imperfect mechanism to deal with the crime of murder. Similarly, Bennie Swim’s hanging, along with other executions that had gone awry, brought into stark relief for modern, “civilized” Canadians that hanging,

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69 *Daily Gleaner*, 29 March 1922.

70 For more on this theme of Canada’s youth falling prey to the corrupting influences of free love and other immoral elements of modern society, see Cynthia Comacchio, “Dancing to Perdition: Adolescence and Leisure in Interwar English Canada,” *Journal of Canadian Studies* 32, no. 3 (Fall 1997): 5–35 and Comacchio, *The Dominion of Youth: Adolescence and the Making of Modern Canada, 1920 to 1950* (Waterloo, ON: Wilfrid Laurier University Press, 2006).

71 Ruth Harris, *Murder and Madness: Medicine, Law, and Society in the Fin de Siècle* (New York: Oxford University Press, 1989), 328.

72 For more on antimodernist strains in the Maritimes, see Ian McKay and Robin Bates, *In the Province of History: The Making of the Public Past in Twentieth-Century Nova Scotia* (Montreal and Kingston: McGill–Queen’s University Press, 2010).

73 Carr, *High and Dry*, 100.



if not capital punishment itself, was a barbaric legal custom.<sup>74</sup> Moreover, the fate of Bennie Swim and Olive Trenholm captured the voyeuristic gaze of William Guy Carr, whose sensationalized recounting of their lives and deaths as “Back Landers” served as a cautionary tale for those middle-class Canadians who wanted to curb the outbreak of crime and may have thought that capital punishment was an effective deterrent. Even though Swim, who grew up in the “bad lands” of New Brunswick, was not one of the “worthy members of the community,” he did not, so it was argued, deserve a gruesome death at the hands of the criminal justice system. And while the execution of Bennie Swim did not completely shatter the public’s faith in the death penalty, it did confirm for many the inhumanity of hanging as a form of execution and thus helped strengthen the growing opposition to the legal and moral foundations of capital punishment.

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74 Carolyn Strange notes that two celebrated cases of botched hangings in 1935, one in Montreal and another in Winnipeg, helped to pave the way for the creation of a parliamentary committee that reviewed the future of the death penalty in Canada; see Strange, “Undercurrents of Penal Culture,” 351-2. For an account of a late-19th-century bungled hanging of two farm workers (George Lowder and Joseph Thomset), who, like Bennie Swim, were poor and lacked a formal education, and the condemnation of their hanging in the local press, see Robert J. Sharpe, *The Lazier Murder: Prince Edward County, 1884* (Toronto: University of Toronto Press, 2011).