

## **“A Very Garden of the Lord”? Hired Hands, Farm Women, and Sex Crime Prosecutions on the Prairies, 1914-1929**

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### Article abstract

In the brief fifteen-year period between the outbreak of World War I and the onset of the Depression a significant number of agricultural labourers stood accused in western Canadian criminal courts for raping, indecently assaulting, or seducing farm women or their daughters. These “hired hand” cases provide an opportunity to explore how considerations of class, ethnicity, and gender shaped both the nature of sexual conflict and violence during the settlement period and the meanings that western Canadians attached to it. Cases of gender and class conflict between farm hands and farm women belied Utopian visions of the West that depicted the region as a land that was free of the class and gender restraints that typified the Old World. Sex crime prosecutions served as a means for the criminal courts and farm families to identify and punish men and women, who, for complex reasons, did not share the values or live up to the ideals of the emerging capitalistic society.

## “A Very Garden of the Lord”? Hired Hands, Farm Women, and Sex Crime Prosecutions on the Prairies, 1914-1929

LESLEY A. ERICKSON

In 1915, officials with the Saskatchewan Department of Agriculture felt compelled to publish *Practical Pointers for Farm Hands*. The forty-eight page pamphlet provided potential and employed agricultural labourers with two hundred “do’s and don’ts” that would guarantee their employers’ satisfaction and, more importantly, the smooth and efficient operation of the family farm. In particular, a number of the rules were designed to create distance, or boundaries, between farm women and agricultural labourers. Rule thirty-eight suggested that, when the farm hand was in the presence of women, he “was to be decent in conduct, clean and well-groomed in appearance, and polite and gentlemanly in demeanour, never calling elder daughters by their first names until requested to ‘drop such formalities.’”<sup>1</sup> Rule forty went on to address specifically the issue of relations between farm hands and farm wives: agricultural labourers were forbidden from “calling the wife by her first name no matter how young and pretty she is nor how much she does to make you feel at home...if she likes to have you call her by name, so much the more you should refrain...She needs a little training herself.”<sup>2</sup>

The advice and admonitions came at a time when the outbreak of the First World War had revived the western Canadian agricultural economy. Between 1914 and 1918, wheat production doubled to exceed 360 million bushels and the number of farms increased by more than twenty-five percent. As a consequence, prairie farmers began to demand more agricultural labour at a time

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1 Saskatchewan Department of Agriculture, *Practical Pointers for Farm Hands* (Regina: J. W. Reid, 1914). Also quoted in W. J. C. Cherwinski, “In Search of Jake Trumper: The Farm Hand and the Prairie Farm Family,” in *Building Beyond the Homestead: Rural History on the Prairie*, eds. David C. Jones and Ian MacPherson (Calgary: University of Calgary Press, 1985), 114.

2 Ibid.

when the war was simultaneously siphoning thousands of the region's young men to the front.<sup>3</sup> Government officials and policy-makers feared that only the most cowardly and degenerate men would remain behind. Their anxiety both fuelled, and was fuelled by, rumours that began to circulate – from farm-to-farm and from the country to the city – about “hired hands” who had unscrupulously taken sexual advantage of farm wives or their daughters.<sup>4</sup>

Were these rumours simply the western Canadian version of an ancient cliché, or did they reflect the realities of class and gender conflict in prairie society? An exploration of the criminal records from the higher courts of the Regina, Winnipeg, Wetaskiwin/Edmonton, Macleod, and Dauphin judicial districts reveals that, between 1886 and 1940, agricultural labourers did indeed stand as the most visible accused in sex crime prosecutions that took place in rural society. In this period, the superior criminal courts tried 213 men for committing rape, unlawful carnal knowledge, and indecent assault on farm women and girls.<sup>5</sup> Although agricultural labourers made up no more than one-fifth of the rural population at any given time, they stood as the accused in approximately thirty-seven percent of the cases. In addition, farm hands were the majority of defendants in the thirty-eight crimes of seduction and abduction that were tried during this period. These “hired hand” cases provide an opportunity to explore how considerations of class, ethnicity, and gender shaped both the nature of sexual conflict during the settlement period and the meanings that

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3 Cecilia Danysk, *Hired Hands: Labour and the Development of Prairie Agriculture, 1880-1930* (Toronto: McClelland and Stewart, 1995), 50-52. For a critical assessment of the impact of World War I on prairie agriculture see chapter three of John Herd Thompson, *The Harvests of War: The Prairie West, 1914-1918* (Toronto: McClelland and Stewart, 1983).

4 Cherwinski, “In Search of Jake Trumper,” 124. See also “Wooden Horses and Rubber Cows: Training British Agricultural Labour for the Canadian Prairies, 1890-1930,” Canadian Historical Association, *Historical Papers* (1980): 133-154.

5 These five judicial districts were selected to reflect the geographical, ethnic/racial, and economic diversity of the three prairie provinces. The availability and condition of the extant legal records also determined the selection process. Approximately 391 sex-crime prosecutions occurred during the period studied – 178 took place in rural towns and cities and their records will form the basis for a future study of sex crimes in urban western Canada. Crimes of incest and seduction are treated separately. This study is based upon an analysis of all indictable sex crime cases involving women that came before the Court of King's Bench (MCKB) in Manitoba and the Supreme Court of the North-West Territories (SCNWT). The latter court was brought into being by the North-West Territories Act of 1886. It consisted of five judges who had complete original and appellate jurisdiction, but the majority of the court's business was conducted in the assize or circuit courts in each judicial district and dealt with indictable offences of the worst degree. After the Territories gained provincial status, the court became the Supreme Court of Alberta (SCA) and Saskatchewan (SCS) respectively. In 1917, the Supreme Court of Saskatchewan became the Saskatchewan Court of King's Bench (SCKB). The courts' records are housed in the corresponding archives of the three prairie provinces and include a copy of the information or complaint, depositions taken before the justice of the peace at the preliminary hearing, and the trial outcome.

western Canadians attached to it. Sex crime prosecutions ultimately served as a means for the criminal courts and farm families to identify and punish men and women, who, for complex reasons, did not meet the values or live up to the ideals of the emerging capitalistic society. Sexual violence, and the western Canadian courts' treatment of it, in turn, contributed to class, gender, and ethnic divisions during a significant period in the region's development.<sup>6</sup>

The contemporary women's movement brought sexual violence to the forefront of modern debates, beginning with a theory that associated rape with the maintenance of patriarchal power. In her classic 1975 study *Against Our Will*, for instance, Susan Brownmiller argued that vulnerability to rape and the construction of women's bodies as male property ensured that all women would remain subordinate.<sup>7</sup> As recent studies of sexual violence in Canada have demonstrated, however, sexual violence (and the criminal court's treatment of it) has historically served a more complex function in society. On the one hand, sex crime trials served to define which men should and could have access to women's bodies. In her study of rape in York County, Ontario, between 1880 and 1930, for instance, Carolyn Strange turned the discussion of sexual violence on its head by asking the question: Why were some men convicted? She discovered that the class, status, and ethnicity of the accused played a vital role in rape trials. The criminal courts were more likely to punish the accused if he represented a segment of the population that was deemed to be a threat to the moral, social, and political foundations of Ontario society.<sup>8</sup> On the other hand, historians like Karen Dubinsky have argued that sexual violence in the past held a different meaning for women themselves. Sexual violence was wrong in women's eyes not simply because it threatened their physical safety, but because it could bring shame upon them, which undercut their moral standing in the community. Sexual shame determined whether a woman confronted her assailant – in person or in the court – or remained silent.<sup>9</sup>

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6 Sarah Carter makes a similar argument in *Capturing Women: The Manipulation of Cultural Imagery in Canada's Prairie West* (Montreal and Kingston: McGill-Queen's University Press, 1997). She argues that images of Native and European women were manipulated – for instance, Native women were depicted as dangerous and dissolute – in order to establish boundaries between Native peoples and white settlers and to justify repressive legislation which contained Native communities.

7 Susan Brownmiller, *Against Our Will* (New York: Bantam, 1975).

8 Carolyn Strange, "Patriarchy Modified: The Criminal Prosecution of Rape in York County, Ontario, 1880-1930," in *Crime and Criminal Justice: Essays in the History of Criminal Law*, eds. Jim Phillips, et al. (Toronto: The Osgoode Society for Canadian Legal History, 1994), 207-251. Karen Dubinsky and Adam Givertz adopt a similar approach in "It Was Only a Matter of Passion": Masculinity and Sexual Danger," in *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, eds. Kathryn McPherson, et al. (Oxford: Oxford University Press, 1999), 65-79.

9 For a critical analysis of the academic treatment of sexual violence, see Karen Dubinsky, "Sex and Shame: Some Thoughts on the Social and Historical Meaning of Rape," in *Rethinking*

Sexual violence and its prosecution served similar functions in the development of the Canadian West. Between 1880 and 1914, some western Canadian policy-makers and propagandists promoted an idea of the West as a classless frontier. Nicholas Flood Davin, Irish-Canadian lawyer, Conservative politician, and founder of the *Regina Leader*, exemplified utopian visions of the West when he published *Homes for Millions* in 1891. Davin hoped to draw thousands of immigrants to western Canada by promising men and women a society free of the hierarchies and constraints that typified the Old World:

The following pages are addressed to the farmers and farm labourers of Europe. They show them where they can have fruitful land for nothing; happy homes; independence; where careers are free; where there is no landlord to grind the tiller of the soil; no military conscription; no gilded idleness to cast a slur on labour; no aristocracy; where the phrases "lower classes," "humbler classes" are unknown...<sup>10</sup>

A more conservative vision for the West was promoted by a majority of Euro- or Anglo-Canadian legal and political authorities, who saw the economic, social, and moral development of the region as being built upon the foundations of the small-scale family farm (headed by a man) and the conservative values that farm was thought to embody.<sup>11</sup> Between 1891 and 1915, the number of prairie farms doubled to more than forty-five thousand, and by the time that western Canadian soldiers returned from the front, the region's sparsely settled and underdeveloped farm land had been transformed into mature agricultural and capitalistic communities.<sup>12</sup> Although this transformation would not have

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*Canada: The Promise of Women's History*, 164-173, eds. Veronica Strong-Boag, et al. (Oxford: Oxford University Press, 4<sup>th</sup> ed., 2002) and her full-length study, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929*, (Chicago: University of Chicago Press, 1993). Studies that tend to interpret sexual violence and its prosecution as being grounded in the patriarchal structure of Canadian society include the following: Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth Century Canada* (Toronto: The Osgoode Society and the Women's Press, 1991) and "Nineteenth Century Judicial Attitudes Toward Child Custody, Rape and Prostitution," in *Equality and Judicial Neutrality*, eds. Sheilah L. Martin and Kathleen E. Mahoney, (Calgary: Carswell, 1987), 271-281; Graham Parker, "The Legal Regulation of Sexual Activity and the Protection of Females," *Osgoode Hall Law Journal* 21 (June 1983): 187-224; Terry L. Chapman, "Sex Crimes in the West, 1890-1920," *Alberta History* 35 (Autumn 1987): 6-21; and "Sex Crimes in Western Canada, 1890-1920," (Ph.D. thesis, University of Alberta, 1984).

10 Nicholas Flood Davin, ed., *Homes for Millions: The Great Canadian North-West: Its Resources Fully Described* (Ottawa, 1891), 3.

11 Cecelia Danysk, "'A Bachelor's Paradise': Homesteaders, Hired Hands, and the Construction of Masculinity," in *Making Western Canada: Essays on European Colonization and Settlement*, eds. Catherine Cavanaugh and Jeremy Mouat (Toronto: Garamond Press, 1996), 157-158.

12 Dominion Bureau of Statistics, *The Prairie Provinces in Their Relation to the National Economy of Canada: A Statistical Study of Their Social and Economic Condition in the Twentieth Century* (Ottawa: 1934), 30-31; Danysk, *Hired Hands*, 188.

been possible without the labour of women, bachelor homesteaders, and agricultural labourers, government officials and policy-makers overlooked their contributions by shaping legislation and social policy exclusively to meet the needs of the patriarchal family.<sup>13</sup>

Within this context, the bachelor homesteader, once an integral and accepted figure on the prairie landscape, was transformed into the vilified "hired hand."<sup>14</sup> The disappearance of free or cheap farm land was fundamental to this transformation: by the 1920s and 1930s, thousands of immigrants who had headed west as "would-be" farmers, found themselves among the ranks of the wage-earning working class which constituted one-fifth of the total agricultural workforce.<sup>15</sup> They earned low wages, suffered high job insecurity and, consequently, they tended to be transient. The 1920 annual report of the Manitoba Department of Agriculture went so far as to characterise farm hands as "men who had failed in pretty nearly every walk of life."<sup>16</sup>

The attitudes of public officials were paralleled by farm families themselves. In 1922, the women's section of the *Grain Grower's Guide* ran a contest in which farm women were asked: "Do you want your daughter to marry a farmer?"<sup>17</sup> The overwhelming majority of respondents answered the question in the affirmative – revealing a fundamental satisfaction with a rural lifestyle rooted in the intimate circle of the immediate family. The letters reflected the western Canadian agrarian community's adherence to a "Country Life Ideology" that served as a defensive mechanism against the "perils and pleasures" of the city and the threat that industry posed to agriculture in the 1920s. In this context, farmers began to perceive the agricultural labourer – poor, itin-

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13 See Catherine Cavanaugh, "The Limitations of the Pioneering Partnership: The Alberta Campaign for Homestead Dower, 1909-1925," in *Making Western Canada*, 186-214; Sheila McManus, "Gender(ed) Tensions in the Work and Politics of Alberta Farm Women, 1905-29," in *Telling Tales: Essays in Western Women's History*, eds. Catherine A. Cavanaugh and Randi R. Warne, (Vancouver: University of British Columbia, 2000), 123-146.

14 See chapter five "Class, Culture, and Community," in Danyusk, *Hired Hands* and "A Bachelor's Paradise."

15 In 1921, paid workers constituted eighteen percent of the agricultural labour force, while in 1931 they had increased to twenty percent. Farmers and their sons represented the other two components of the work force. Danyusk, "A Bachelor's Paradise," 167, and *Hired Hands*, 178; Census of Canada, 1921, Vol. IV, Table 4, pp. 242-45, 270-71, 292-93; Census of Canada, 1931, Vol. VII, Table 40, pp.134-35, 146-47, 167-77.

16 Manitoba Department of Agriculture, *Annual Report*, 1920, 12. Quoted in Danyusk, "A Bachelor's Paradise," 168.

17 "Do You Want Your Daughter to Marry a Farmer?" *Grain Grower's Guide*, 8 March 1922, 15. The contest is discussed in Danyusk, "A Bachelor's Paradise," 173, and Mary Kinnear has studied the survey in some depth in "Do You Want Your Daughter to Marry a Farmer? Women's Work on the Farm, 1922," in *Canadian Papers in Rural History*, ed. Donald H. Akenson, Vol. 6, (Gananoque, Ontario: Langdale Press, 1988).

erant, and often “foreign” – as, at best, poor country cousins or, at worst, as outsiders to the community.<sup>18</sup>

Because the hired hand had become a stranger to prairie society by virtue of his landless and immigrant status, Anglo-Canadian and Protestant advocates of social purity and reform tended to depict him as a threat to the morality of prairie women.<sup>19</sup> The Salvation Army’s mission to rural youth, for instance, cautioned parents of the dangers of hired men. Parents were warned that hired hands were men of “low ideals and evil practices” who might encourage their sons into the temptations of bestiality.<sup>20</sup> By typecasting the itinerant labourer as an indiscriminate sexual predator, social reformers and government officials located the cause of sexual violence and gender conflict as existing outside of the rural community. Government officials and social reformers, therefore, felt compelled to encourage farmers, their wives, and their daughters to maintain a strict social distance from their hired men who, in the homestead period, had often shared the family’s living space. By the 1920s, most farmers thought very little of housing their employees in barns, tool sheds, and bunkhouses.<sup>21</sup>

The publication of *Practical Pointers for Farm Hands*, therefore, was part of a fundamental shift in attitude towards class, ethnic, and gender relations in the West: men who had once been perceived as the future patriarchs of prairie families were now viewed as potential threats to the sexual, moral, and economic integrity of the family farm. This perception was enhanced in the decade that followed the war. Landless immigrants began to congregate in the “ethnic slums” of prairie cities where they increasingly came under the censorious eyes of social reformers. The relationship between capital and labour erupted into violent confrontations like the Winnipeg General Strike, while the suffrage movement caused many to question the status and role of women in the immediate post-war years. Sex crime prosecutions reflected this new intellectual

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18 David C. Jones, “‘There is Some Power About the Land’ – The Western Agrarian Press and Country Life Ideology,” *Journal of Canadian Studies* 17 (Fall 1982) and Danysk, “Bachelor’s Paradise,” 171-172.

19 For an overview of the social purity movement in Canada see Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925* (Toronto: McClelland and Stewart, 1993) and “‘When the Mother of the Race is Free’: Race, Reproduction, and Sexuality in First-Wave Feminism,” in *Gender Conflicts: New Essays in Women’s History*, eds. Franca Iacovetta and Mariana Valverde (Toronto: University of Toronto Press, 1993), 3-26. See also John P. S. McLaren, “Chasing the Social Evil: Moral Fervour and the Evolution of Canada’s Prostitution Laws, 1867-1917,” *Canadian Journal of Law and Society* 1 (1986): 142-144 and Carolyn Strange, *Toronto’s Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995).

20 Winfield S. Hall, “Sex Instruction for the Country Boy,” *Rural Manhood* 1/4 (April 1910); D. Vandercock, “Rural Delinquency,” *Rural Manhood*, 4/5 (May 1913): 151. The term “bestiality” was used interchangeably with “sodomy” at the time.

21 This trend is discussed in Danysk, “A Bachelor’s Paradise,” 166-173.

milieu: approximately two-thirds of the "hired hand" cases (and all of the seduction cases) came before the criminal courts in the brief period between the outbreak of the First World War and the Depression.<sup>22</sup>

This prosecution pattern suggests that farm women and their families believed that there was less shame attached to (and perhaps felt justified in) laying a charge of sexual assault against men who possessed generally bad reputations in the community. The typical accused in "hired hand" cases was the antithesis of all those characteristics and values held dear by the government and legal establishment by the First World War. He was between the ages of twenty-eight and thirty-two, he had recently emigrated from an eastern European country, and he likely adhered to the Roman Catholic or Greek Orthodox faith. Agricultural labourers were as likely to be married as single, but their wives generally had been left behind in the Old World or they lived in small towns or cities where they could engage in waged labour. If the farm hand had been fortunate, he would have had some formal education at the elementary school level. Many agricultural labourers were, however, illiterate.<sup>23</sup>

Conviction rates and sentencing patterns reveal that the predominantly Anglo-Canadian judges and juries of the West were predisposed to believe farm women's stories of sexual violence at the hands of farm labourers.<sup>24</sup> Although the western Canadian courts maintained an overall conviction rate of fifty-four percent in sex crime cases involving farm women (indicating that many sexual offences went unpunished), agricultural labourers were convicted sixty-four percent of the time.<sup>25</sup> Not only were a significant majority of agricultural labourers convicted, but western Canadian judges also demonstrated a willingness to punish sexual offenders harshly. Sentences ranged anywhere from the six months with hard labour served by Ralph Sheel (who was found guilty of attempting to have unlawful carnal knowledge of his employer's daughter near Milestone, Saskatchewan), to the ten years and a whipping served by Archibald Daignault for rape in 1931.<sup>26</sup> This pattern was also true of crimes of seduction

22 Only twenty farm hands were accused in the thirty-year period prior to 1916, while a mere six faced juries during the Depression.

23 This composite portrait is pieced together from case files, depositions, Canadian statistics records, and newspaper articles. Many courts recorded the age, marital status, religion, ethnicity, and education of the accused in a criminal register. Statistics Canada forms remain in many case files.

24 For an overview of the Alberta judiciary, for example, see Louis A. Knafla and Richard Klumpenhower, *Lords of the Western Bench: A Biographical History of the Supreme and District Courts of Alberta, 1876-1990* (Calgary: Legal Archives Society of Alberta, 1997).

25 The western Canadian criminal courts maintained slightly higher than usual conviction rates. In their study of sexual violence in Ontario, for instance, Dubinsky and Givertz found that forty-nine percent of 725 men were acquitted between 1880 and 1929. See "'It Was Only a Matter of Passion': Masculinity and Sexual Danger," 66.

26 SCS, Regina judicial district, *R. v. Sheel* (1914), Saskatchewan Archives Board (SAB), and MCKB, Eastern judicial district, *R. v. Daignault* (1931), Provincial Archives of Manitoba (PAM).



in the West. Agricultural labourers were involved in twenty-one of the region's seduction and abduction trials – three-quarters were found “guilty” by the courts and sentenced to an average of three to six months in prison with hard labour.<sup>27</sup>

The western Canadian prosecution and conviction of farm hands suggests that certain men were as likely as women to fare poorly in the criminal court – particularly when questions of reputation and moral character played a significant role at the trial level. Theoretically, the criminal law was designed to protect women from sexual violence. The 1892 *Criminal Code of Canada* defined rape as “the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which is extorted by threats or fear of bodily harm.”<sup>28</sup> In practice, however, the presumption of innocence of the accused placed the onus upon the woman to disprove her consent. Typically, if the victim could not prove that she had resisted the assault – either by providing direct physical evidence of a violent struggle or corroboration – judges and juries assumed her consent.<sup>29</sup> Historians of rape in Canada have concluded that the law of evidence encouraged the criminal courts to put the victim's character on trial, rather than the deeds or character of the accused.<sup>30</sup>

In the case of agricultural labourers, however, the character and reputation of the accused could indeed shape his treatment by the court – particularly if the victim's moral rectitude or social standing could be contrasted favourably to the hired hand's failure to meet Anglo-Canadian, middle-class, and Protestant ideals of masculinity. On 23 October 1907, for instance, an assize jury at Morden, Manitoba, condemned Lawrence Gowland, an English farm labourer, to death for the rape and murder of Miss Georgina Brown.<sup>31</sup> Although Gowland's guilt was never in question – he in fact confessed to the crime – the manner in which the legal authorities treated and reacted to his case indicates some of the conflicts and tensions that existed between the western Canadian judicial and political elite, farm families, and agricultural labourers. During the

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27 The annual conviction rate for seduction between 1900 and 1910 was 9.1 percent, but increased to 34.14 in the period between 1911 and 1917. See McLaren, “Chasing the Social Evil: Moral Fervour and the Evolution of Canada's Prostitution Laws, 1867-1917,” 150.

28 *Criminal Code of Canada* (1892), 55-56 Vict., ch. 29, sec. 266.

29 Seymour F. Harris, *Principles of Criminal Law*, 6<sup>th</sup> ed. (London: Stevens and Haynes, 1892), 181 and William Oldnell Russel, “Rape” in *Russel on Crimes: A Treatise on Crimes and Misdemeanours*, 6<sup>th</sup> ed. (London: Stevens and Sons, 1896).

30 Backhouse, *Petticoats and Prejudice*, 87. See also Chapman, “Sex Crimes in Western Canada,” 77; Dubinsky, “Sex and Shame,” 175-179. Catherine A. MacKinnon, “Feminist Approaches to Sexual Assault in Canada and the United States: A Brief Retrospective,” in *Challenging Times: The Women's Movement in Canada and the United States*, eds. Constance Backhouse and David H. Flaherty (Montreal and Kingston: McGill-Queen's Press, 1992), 191-192.

31 Department of Justice, Capital Case Files, *R. v. Gowland* (1907), National Archives of Canada (NAC), RG 13, Vol. 1452, file 389A.

trial, the victim's brother suggested that Gowland was incapable of controlling his sexual urges to the point where he habitually spied on Georgina through a hole in his bedroom wall. Gowland, however, provided an alternative explanation for the events that led up to the rape and murder by intimating that an acrimonious relationship had developed between the victim and himself. Gowland confessed to a Provincial Police officer that Georgina had angered him by calling him "a dirty English brat when I was at dinner because I brought in dirt on my boots."<sup>32</sup> Newspaper accounts of the case likewise emphasised the social and economic disparities between the accused and the victim by highlighting Gowland's status as an exiled member of the urban British working class.<sup>33</sup>

Although there is no doubt that Gowland committed the crime of which he was convicted, evidence suggests that his ethnicity, class, and occupation precluded him from receiving fair treatment by the justice system or the court. Gowland's trial lasted a mere forty-five minutes during a period when serious criminal offence prosecutions lasted a minimum of two days. In addition, when the accused indicated he could not afford defence counsel, the attorney general of Manitoba made it clear that the state was unwilling to provide the fifty dollars necessary to hire a lawyer. Left without representation, Gowland disastrously pleaded guilty to the charge of murder during his arraignment then was forced to withdraw the plea as required by the Canadian Criminal Code. Although the presiding judge, Frank H. Phippen, charged the jury to forget the plea, the damage was done. During the course of the trial, Gowland chose not to cross-examine witnesses for the prosecution and, when given an opportunity to address the jury, declined. Judge Phippen later informed the Secretary of State that he could not recall a case in his experience where the accused went undefended by counsel; however, he maintained that, under the circumstances, Gowland had received a fair trial.<sup>34</sup>

Judge Phippen likewise expressed the belief that there was no need to recommend mercy to the Governor-General. Despite the fact that neither the crown nor the accused had called expert witnesses during the trial, Phippen informed the minister of justice that Gowland was "one of those unfortunates with little moral responsibility, whose passions and temper when roused are beyond their control, but who are nevertheless fully responsible for their acts."<sup>35</sup> Gowland's spiritual advisor, C. W. Finch, disagreed. A letter to the Minister of Justice on Gowland's behalf revealed that the accused had come to Canada from England in 1905 and, from his arrival until his death, remained a

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32 Ibid.

33 "Gowland Murder Trial on To-Day," *Manitoba Free Press*, 23 October 1907.

34 F. H. Phippen to Secretary of State, Canada, 5 November 1907, in *R. v. Gowland* case file (1907).

35 Ibid., The Report and Notes of the Honourable Mr. Phippen to the Governor General of Canada, 26 November 1907.

“faithful farm servant.” Finch argued that the actions of the accused stemmed from his upbringing and lack of parental supervision once he arrived in Canada. The Reverend S. Wiley echoed Finch’s sentiments: “From what I have seen of him I am sure he is not a murderer in the ordinary sense of the word. He seems dull and ill educated...but not a person who would premeditate and plan the deed he has committed. He is not in my opinion of the criminal class or type at all.” Wiley summed up his argument by commenting that, “I think he did it in a fit of mad frenzy, brought on by the frustration of over-mastering desire.”<sup>36</sup> Gowland met his death alone on the scaffold on 13 December 1907. For many western Canadians, it would have been an apt punishment for one who had sexually violated and murdered a member of the Anglo-Canadian establishment.

A cluster of related sex crime trials that that occurred in Bruce, Alberta, reveal that the character of the accused could become a central consideration at trial – even when the victims, by virtue of their ethnicity and class, suffered from a poor general reputation in the community. In January and February 1911, four farm hands were accused of having unlawful carnal knowledge of Matilda Susan, Maggie Elvina, and Nellie May Mangelman: three girls under the age of consent.<sup>37</sup> Three of the accusations resulted in “not guilty” verdicts or dismissals on grounds that the prosecution lacked sufficient evidence or, more typically, because the victims were proved to be sexually deviant.<sup>38</sup>

In the first case, thirteen-year-old Matilda Susan Mangelman, a domestic servant, alleged that Phillip Connelly had had unlawful carnal knowledge of her when their employer went for hay in the summer of 1910. The substance of Mangelman’s deposition, however, transgressed the prevailing ideal of female chastity and virtue. Contrary to the court’s expectations, Mangelman did not deny knowledge of what had physically occurred during the assault, but candidly and graphically explained the mechanics of the sexual encounter to the court. She then admitted that Connelly had given her five dollars that she had handed to her mother without complaint. J. A. Fleming, Connelly and Mangelman’s employer, deposed on behalf of the accused that the “girl has a

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36 Ibid., C. W. Finch to A. B. Aylesworth, Minister of Justice, 30 October 1907; “Appeal from Reverend Arthur S. Wiley,” Morden Rector.

37 SCA, Edmonton judicial district, *R. v. Connelly* (1991); *R. v. Wysk* (1911); *R. v. Kowalika* (1911); *R. v. Paul* (1911) and retrial (1913), Provincial Archives of Alberta (PAA), Acc. 83.1. In these cases, the accused was prosecuted under the categories of “unlawful carnal knowledge of a girl under fourteen,” and “unlawful carnal knowledge of a girl between the ages of fourteen and sixteen.” See W. J. Tremear, *The Criminal Code and the Law of Criminal Evidence in Canada* (Toronto: Canada Law Book Company, 1908), 301. The age of consent crept upward during the period. In 1920, for instance, amendments to the Criminal Code raised the age of consent to eighteen and added a whipping to the punishment: “Drastic Changes Have Been Made to the Criminal Code,” *Edmonton Journal*, 30 September 1920.

38 *Edmonton Bulletin*, 19 May 1911.

poor reputation for telling the truth."<sup>39</sup> During her cross-examination, Matilda managed to damage her case further by agreeing that she had also had sexual intercourse with Carl Paul, William Wysk, and John Kowalika while they were employed as threshers on her mother's farm. She completed her deposition by stating: "I did not think that this was very serious...I give all my money to my mother."<sup>40</sup> Connelly was found not guilty. The Supreme Court of Alberta later tried Wysk and Kowalika for the rape of Matilda's thirteen-year-old sister, Maggie Elvina. In Kowalika's case, the jury found the accused "not guilty" when the defence established that the victim was sexually promiscuous and suffered from the effects of venereal disease.<sup>41</sup>

Although the Mangelman family's sexual morality appeared to run against the grain of late-nineteenth and early-twentieth-century Victorian sensibilities, the Supreme Court of Alberta did finally decide in its favour when, in a complete reversal of the Connelly verdict, it convicted Carl Paul for the rape of Matilda Susan Mangelman.<sup>42</sup> Matilda Mangelman testified that the accused had sexually assaulted her in the summer of 1909 when the couple was alone butchering meat. When her sister Nellie May tried to help her, Matilda claimed that Nellie May had likewise been brutally raped by Paul. Paul was convicted on the strength of the sister's corroborative testimony. On 18 May 1911, however, Paul successfully appealed the conviction (and his twelve-year sentence) on the grounds that Justice William Charles Simmons had allowed the prosecution to unlawfully elicit, from Nellie May, evidence as to similar and subsequent acts. The Supreme Court of Alberta retried the case on 26 May 1913, but the jury again found Paul "guilty" and the judge increased his sentence to fifteen years in the penitentiary.<sup>43</sup>

Carl Paul's sentence was one of the harshest ever meted out to a sexual offender in western Canada prior to the Second World War.<sup>44</sup> Paul's status as an agricultural labourer with a poor reputation in Bruce, Alberta, outweighed Matilda Susan Mangelman's "morally bereft" upbringing. At the time of Paul's conviction, he was serving a two-year term for cattle theft.<sup>45</sup> Upon sentencing, the *Edmonton Journal* sensationally reported that Paul had been found guilty

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39 Preliminary hearing, Connelly (1911).

40 Ibid.

41 Kowalika (1911).

42 Paul (1911).

43 The 18 May 1911 decision of the Supreme Court of Alberta *en banc* is contained within Paul's case file.

44 Criminal Code of Canada, s. 266. In the five judicial districts studied, only one other accused received a similarly harsh sentence. On February 1917, the Winnipeg Court of King's Bench sentenced Marvin Suggitt to fifteen years for the rape of Florence Lillian Stuart. MCKB, Eastern judicial district, *R. v. Suggitt* (1917), PAM, GR 180, microfilm.

45 "Paul Convicted," *Edmonton Journal*, 19 May 1911.

under the most “revolting circumstances,” and that the accused – who had a “very black record” – had also been arrested several years ago as a suspect in the murder of the Mangelman girls’ father. The journalist contended that Paul had, upon his release, lived with Mrs. Mangelman until she committed suicide at the time of the trials.<sup>46</sup> Paul’s trial (and the tragic events that lead up to it) sensationally embodied everything that the press, public, and policy-makers alike had come to expect of agricultural labourers by the second decade of the twentieth-century.

Agricultural labourers could also find themselves jailed even when the prosecution met few of the evidentiary requirements of rape law. In 1915, for example, Hafia Ukryniuk accused a twenty-five-year-old Austrian farm labourer, Steve Hryciuk, of raping her while her husband was away from their Manitoba farm. Ukryniuk testified that the accused had forced her to consent to sexual relations by pulling a revolver and threatening to kill her. Although Ukryniuk had made an immediate complaint to her husband upon his return, the prosecution could produce no physical evidence of the assault and the victim’s testimony remained uncorroborated by an eyewitness account. In his own defence, Hryciuk testified that Ukryniuk herself had initiated the sexual episode: “She was lying on the bed and pulled up her dress and said come on – after, she said ‘let’s have a little more.’”<sup>47</sup> The jury, however, doubted the veracity of the accused, and the judge sentenced him to five years in prison.

Western Canadian judges and juries were even less likely to accept the “she asked for it” argument if the accused failed to measure up to the prevailing masculine ideal.<sup>48</sup> In 1923, for instance, a fifteen-year-old domestic servant from Saskatchewan successfully proved a charge of rape against Patrick George Coghlan. At the preliminary hearing held at the Saskatchewan Provincial Police Court in July, Rosie Lanz deposed that the accused had come to the Riggat farm (where she worked near Kronau) on the pretence that he needed a glass of water. When the accused began to act suspiciously, Lanz claimed that she ran outside, but Coghlan dragged her back into the house where he sexually assaulted her. Although there were no witnesses to the event, the victim made an immediate complaint to the accused man’s foreman, and she produced ripped and stained clothing at the preliminary hearing. The defence tried to establish that the half hour between the alleged rape and the complaint constituted enough time for Lanz to “make up” a story. Given the gendered biases of

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46 “Two Prisoners Sentenced in the Supreme Court Today,” *Edmonton Journal*, 23 May 1911.

47 MCKB, Eastern judicial district, *R. v. Hryciuk* (1915), PAM, GR 180, microfilm.

48 See Richard A. Willie, “‘A Proper Ideal During Action’: Fraternity, Leadership, and Lifestyle in Winnipeg Lawyers’ Professional Culture, 1878-1900,” *Journal of Canadian Studies* 27 (Spring 1992): 58-72; Dubinsky and Givertz, “It Was Only a Matter of Passion”; and Angus McLaren, *The Trials of Masculinity: Policing Sexual Boundaries, 1870-1930* (Chicago: University of Chicago Press, 1997).

the criminal courts, Coghlan might have swayed the jury to his side but, in his statement to the police, he admitted that he had been suffering the effects of alcohol when Lanz had “lured” him into the farmhouse to listen to music. He also alleged that Lanz had lied about her age and, “by her actions,” had suggested that she wanted sex.<sup>49</sup> Coghlan’s tendency to use uncouth language in the courtroom – in addition to his unabashed use of alcohol in a period of prohibition – contrasted unfavourably with medical evidence that suggested that Lanz had managed to maintain her virginity during the assault.<sup>50</sup> Although legal definitions of rape required penetration only to the “slightest degree,” most prosecutors would have charged Coghlan with attempted rape or indecent assault in order to increase their chances of obtaining a conviction. The Saskatchewan Court of King’s Bench, however, convicted Coghlan of rape and sentenced him to ten years in Prince Albert Penitentiary with hard labour.<sup>51</sup>

In 1918, John Bowie, an agricultural labourer who worked in the Wetaskiwin judicial district of Alberta, likewise managed to offend the collective sensibilities of the criminal court. Bowie was convicted for unlawful carnal knowledge of Mary Moran, a girl between the ages of fourteen and sixteen. The victim testified that she had allowed the accused to take her out on a date but when it came time for him to drive her home, he instead drove into the country, pushed her into the back seat of the car, and sexually assaulted her. Like Coghlan, Bowie tried to garner the sympathy of the all-male jury by arguing that Moran had “asked for it” but, since she had been a virgin, he claimed he would willingly marry her. Bowie damaged his case further by detailing his conquest to at least three men whose depositions revealed him to the court as a braggart and coward. While one witness claimed Bowie had told him that he was “going to have a lot of screwing before he went overseas,” another deposed that Bowie had once said he would rather go to jail than to war. Bowie’s willingness to marry Mary Moran was ignored by her family and the court when Judge William Carlos Ives granted him his wish and sentenced the twenty-one-year-old from Hardisty, Alberta, to a maximum sentence of two years in prison.<sup>52</sup>

The agricultural labourer’s failure to measure up to the masculine ideal – morally, social, and economically – likewise played a significant role in the prosecution of cases of seduction and abduction that came before the criminal courts. Laying charges of seduction or abduction proved to be, for many rural parents, a cheap and effective way to impede an interloping hired hand’s ability to advance economically and socially by marrying their daughter. It also served as means for land-holding immigrants who lived in marginalised ethnic

49 SCKB, Regina, *R. v. Coghlan* (1923), SAB, R-1287.

50 *Ibid.*, deposition of O. E. Rothwell, M. D.

51 *Ibid.*

52 SCA, Wetaskiwin judicial district, *R. v. Bowie* (1918), PAA, Acc. 81.198.

communities to solidify their position in the socio-economic hierarchy that was developing in the West. The crime of "seduction" had become an offence in Canada in 1886 upon the urging of social reformers like Liberal member of parliament John Charlton, who sought to eradicate prostitution and the sexual exploitation of single working-class and immigrant women. The seduction legislation blurred the line between consensual sex and rape, and by implication, denied young single women control over their own sexuality.<sup>53</sup> The law was also used as a means for society and parents to restrict sexual relations and childbirth to marriage. Unlike the legal definition of rape and unlawful carnal knowledge, the crime of seduction specifically required the victim to be "of previous chaste character" and, if she was over the age of sixteen, the seduction must have taken place under promise of marriage.<sup>54</sup>

Seduction cases mounted against farm labourers reveal not only the gender and class conflicts that underlay prairie society, but also generational conflicts between parents and farm girls. The romantic involvements that quite naturally emerged between hired hands and farm girls also served as a platform for farm families to encourage further the development of class and gender hierarchies in the West. At the same time, the frequency with which these cases came before the courts stands as evidence of working-class resistance to class privilege and prejudice. In 1927, for instance, Andrew Daradics, a Ukrainian farmer of the Arbury district in Saskatchewan, accused his hired hand, Louis Fabian, of seducing his seventeen-year-old daughter. Daradics testified that his daughter had slept with the accused from May 1926 until March 1927 when the couple ran away together. Daradic's daughter, Annie, challenged her father's authority by alleging that he had mistreated her by promising her in marriage to a neighbour if she proved to be a "breeder." She also claimed that Fabian had quit his job with her family because her father had failed to pay him his wages. Annie ran away with the accused because she was carrying his child and did not want to marry her father's choice. Although the daughter's consent was not relevant, Annie did damage her case when she admitted that she "came to court to compel Louis to pay something for the child." The prosecution withdrew the charge on 5 April 1927.<sup>55</sup>

Although the Fabian case never went to trial, it illustrates a number of the key characteristics of seduction (and abduction) prosecutions in the Canadian West. In all but a few of the cases, the victim or accused had recently immi-

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53 Canada, "An act to punish seduction and like offences, and to make further provision for the protection of women and Girls," (1886), 49 Vict., c. 52. See Backhouse, *Petticoats and Prejudice*, 69-77 and Karen Dubinsky, "'Maidenly Girls and Designing Women'? The Crime of Seduction in Turn-of-the-Century Ontario," in *Gender Conflicts*, 28-40 for an in-depth study of the various ways that Canadian academics have interpreted the seduction laws.

54 Canadian Criminal Code, sec. 181-184.

55 Regina judicial district, *R. v. Fabian* (1927), SAB, R-1287, SCKB.

grated from an eastern European country and often from Ukraine in particular.<sup>56</sup> The ethnic and class biases of the western Canadian criminal justice system only partially explain the over-representation of Ukrainian farm labourers within these cases. Their over-representation also reflected the gender, generational, and class divisions within the ethnic community.<sup>57</sup> Contact with Canadian society caused many Ukrainian women to challenge outspokenly the traditionally subordinate role that women shared in the family and community, and many did so by seeking monetary compensation in the region's criminal courts for improper sexual advances. In her analysis of seduction cases that occurred in the Vegreville bloc settlement east of Edmonton, for instance, historian Frances Swyripa discovered that Ukrainian girls did not simply acquiesce in family and community expectations, but developed strategies to negotiate their own destinies. Some girls used the criminal courts to force their sexual attacker or fiancé to marry them or pay child support, while others refused to marry their seducers. Although the Canadian Criminal Code defined seduction as a criminal offence to be prosecuted by the Crown, Swyripa argues that Ukrainians treated it privately like a civil offence, with restitution to be made directly to the victim.<sup>58</sup> Canadian judges and juries, however, tended to view their efforts as an attempt to evade punishment.<sup>59</sup>

Many of these cases also involved land-holding Ukrainian farmers who had moved to Canada to improve their own and their children's lives and, consequently, were largely motivated by economic and class considerations. Perhaps influenced by the promise of social and economic advancement, many Ukrainian parents did not want their daughters to become involved with or to marry the hired man – even when he was part of their own ethnic community. Although the Canadian courts were prone to discriminate against eastern Europeans accused of violent crimes, they supported these parents' initiatives – even in cases where the daughter proved to be sexually promiscuous. In a 1916 case, Martin Hoffman, a Ukrainian farmer in the Regina district, complained that George Lorreg, his hired hand of nearly six months, had abducted his

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56 MCKB, Eastern judicial district, *R. v. Molynek* (1917), *R. v. Rudnicki* (1919), PAM, GR 180; SCA, Westaskiwin judicial district, *R. v. Schwanke* (1919), *R. v. Musha* (1925), PAM, Acc. 81.198; SCKB, *R. v. Lystle* (1925), *R. v. Leitner* (1928-29), *R. v. Lorreg* (1916), *R. v. Reeb* (1926) SAB, R-1287; Box-10-13, MCKB, Dauphin judicial district, *R. v. Couch* (1926) PAM, RG 540.

57 For a general discussion of the over-representation of Ukrainian-Canadians in western Canadian criminal prosecutions see Gregory Robinson, "Rougher than any other Nationality?: Ukrainian Canadians and Crime in Alberta, 1915-1929," in *Age of Contention: Readings in Canadian Social History, 1900-1945*, ed. Jeffrey Keshen (Toronto: Harcourt Brace Canada, 1997), 214-230.

58 Frances Swyripa, "Negotiating Sex and Gender in the Ukrainian Bloc Settlement," *Prairie Forum* 20 (Fall 1995): 156, 163.

59 *Ibid.*, 159-164, and Dubinsky, "'Designing Women,'" 48.



underage daughter. The Canadian Criminal Code's definition of "abduction" required that the prosecution prove that the accused had taken the daughter "out of the possession and against the will" of her parents. The daughter's consent was immaterial to the case – as was the accused's knowledge of her age. If convicted, the accused was liable to five years in prison.<sup>60</sup>

At Lorreg's preliminary hearing, the victim's mother, Carrie Hoffman, stated that prior to the abduction (which took place on 17 July 1916), she had caught the accused in her daughter's bed on three separate occasions. She also told the court that her daughter had had sexual relations with the family's previous hired hand three years earlier. In cross-examination, Hoffman admitted that her husband had physically punished their daughter for her indiscretions and that he had written her out of the family Bible because she was a "hoor." Hoffman argued that, although it was true that her husband owed George Lorreg \$148, the hired hand had done irredeemable damage to her family's fortunes because "she [her daughter] could have taken any good farmer's son, and he made shame for all the family."<sup>61</sup> Ludwiga Hoffman did not deny her mother's accusations, but rather expressed the belief that the accused had intended to marry her. Ludwiga also damaged her parent's case by admitting that she had threatened to kill herself if Lorreg did not take her with him. The police, in fact, arrested the couple in Southey, Saskatchewan, while they were trying to obtain a marriage licence. Judge Henry William Newlands and the prosecution avoided the difficulties associated with trying to prove that Hoffman was of previous chaste character by convicting Lorreg of "unlawful carnal knowledge" and sentencing him to three months in prison with hard labour.<sup>62</sup>

As the Lorreg trial demonstrates, farm girls were often caught in the middle of court conflicts that tended to revolve around property considerations rather than their own interests. In 1919, Haski Pulaski, a farmer from the rural municipality of Rosser, Manitoba, learned of his daughter's improper relations with the hired hand only when she became pregnant. He immediately laid an information against Mike Rudnicki for seduction. In his statement to the police, Rudnicki alleged that, "the girl was after me all the time and I could not help it. I wanted to get married but the old man would not let me... I had connection with her twice and the old man refused to allow me to marry her because of that."<sup>63</sup> The defence also argued that Pulaski had withheld his daughter's hand in marriage unless Rudnicki agreed to enter into a period of indentured service for two years. Pulaski responded to the accusation by claiming that he was jus-

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60 Canadian Criminal Code, (1906), chap. 146, sec. 315.

61 SCS, Regina judicial district, *R. v. Lorreg* (1916).

62 *Ibid.*

63 MCKB, Eastern judicial district, *R. v. Rudnicki* (1919).

tified in forbidding the marriage because the accused would bring no property to the marriage, but hoped to gain some in return. The defence continued to attack the father's character and credibility by suggesting that Pulaski had threatened to press charges unless the accused paid him \$100. When the defence asked Pulaski why – despite everything that had occurred – he was now willing to let his daughter marry the accused, he replied that it was the best way to avoid ridicule within the community. Although the defence made a strong argument that monetary motivations and external factors compelled the Pulaski family to lay charges, the family's situation resonated with a Winnipeg judge and jury, which convicted and sentenced Rudnicki to four months with hard labour.<sup>64</sup>

Given that agricultural labours suffered overwhelming negative social, economic, and sexual reputations, when (and under what circumstances) were their explanations of sexual violence and conflict believed? A number of agricultural labourers were able to harness successfully the country life ideology in their favour by casting doubt upon their victim's sexual integrity and social status in the community.<sup>65</sup> This defence carried particular weight if the victim was an immigrant farm wife rather than an under-aged daughter. In early August 1917, for instance, Annie Nagey, a Hungarian wife and mother who farmed in the Regina district, complained to the local justice of the peace that her family's former hired hand, Josef Kozma, had raped her on the grounds of the family farm. Kozma allegedly locked her children in the house before he violently and sexually assaulted her in the barn. The trial took place before the Saskatchewan Court of King's Bench at Regina on 18 September 1917 where a jury acquitted the accused.<sup>66</sup> The *Regina Leader*, which rarely reported the outcomes of sex crime trials,<sup>67</sup> described the case as follows: “It was the old story of the woman's word against the man's. The charge was brought by Mrs. Annie Nagey of Quinton, wife of the employer of the accused. An outraged husband with a gun and a murderous looking butcher knife in the hands of the accused figured in the story. All the parties to the case were Hungarians and the evidence had to be taken through an interpreter.”<sup>68</sup>

The article's author seemed to suggest that Kozma had been acquitted despite his status as a hired hand. The reporter also managed to cast doubt on Annie Nagey's honesty and character without actually describing the particulars of the case. The victim's sex, marital status, and ethnicity alone sufficed to explain the jury's verdict. Neither the Kozma decision, nor the journalist's slant

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64 Ibid.

65 Dubinsky and Givertz, “It Was Only a Matter of Passion,” 66.

66 SCKB, Regina judicial district, *R. v. Kozma* (1917) SAB, R-1287.

67 Between 1887 and 1932 the *Leader's* editors chose to cover only thirty-four of the 117 sex crime cases that came before the Regina court.

68 “Joe Kozma Acquitted on a Serious Charge,” *Leader*, 19 September 1917.

on it, was unique. Social reformers and popular writers like James S. Woodsworth and the Reverend Charles William Gordon (who penned his novels under the name Ralph Connor) actively promoted the idea that eastern Europeans were sexually promiscuous and prone to violence. In his novel *The Foreigner: A Tale of Saskatchewan* (1909), for instance, Gordon depicted the ethnic neighbourhoods in Winnipeg's North End as cesspools of drunkenness, orgy, and vice where, for instance, respectable Christian weddings culminated in "a sordid drunken dance and song in sanguinary fighting."<sup>69</sup> Gordon published *The Foreigner* the same year that the Young People's Forward Movement of the Methodist Church released Woodsworth's *Strangers within Our Gates*. Although Woodsworth intended to inform Anglo-Canadians of the horrendous social conditions in Winnipeg's immigrant communities and to encourage their participation in social reform endeavours, he contributed to ethnic and class divisions by perpetuating the belief that immigrants, particularly from southern and eastern Europe, were prone to violence and crime. He commented that Ukrainians had appeared so often in Winnipeg's criminal courts that the designation "Galician" had become an ethnic slur rather than a reference to the Ukrainian province: "The Galician figures, disproportionately to his numbers, in the police court and the penitentiary. Centuries of poverty and oppression have, to some extent, animalised him. Drunk, he is quarrelsome and dangerous."<sup>70</sup> Woodsworth noted further that the word "Pole" had become synonymous with "police courts."<sup>71</sup>

Annie Nagey was an Hungarian immigrant whose unfamiliarity with the language and laws of the court must have been a liability in wartime Canada. Nagey's ethnicity, combined with evidence of violent conflict between her husband and their hired man, did not work in her favour. Nagey lived on a farm where, aside from her children, social interaction was restricted to her husband, the hired hand, and the occasional visit from a neighbour. At the preliminary hearing in Punnichy, Saskatchewan, for instance, Nagey deposed before justice of the peace H. Butcher that she had struggled with Joe Kozma and screamed for help, but her children had been locked in the house. She then tried to enhance her credibility by arguing that, due to illness, she had been unable to fight off her attacker. Nagey unwittingly undermined her testimony further by admitting that she had not been wearing underpants prior to the assault. Defence counsel combined this last piece of evidence with the absence of the

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69 Ralph Connor, *The Foreigner: A Tale of Saskatchewan* (Toronto: Westminster Company Limited, 1909), 87

70 James S. Woodsworth, *Strangers within Our Gates* (Toronto: University of Toronto Press, 1972 [first published in 1909]), 112.

71 *Ibid.*, 110.

victim's husband to suggest that Nagey had been sexually available.<sup>72</sup> In his own defence, Joseph Kozma argued that he had conducted an illicit affair with Nagey whenever her husband travelled from the farm on business. He also suggested that Nagey's failure to report the rape until one month after it occurred was evidence that she, or her husband, had laid the charge out of either spite or discovery.<sup>73</sup> Kozma's defence played upon deep-seated fears that farm labourers constituted a threat to the sanctity of the family farm. During the preliminary hearing it became apparent to the court that Kozma habitually slept and ate in the farmhouse and was frequently left alone with his employer's young wife. Because Nagey was a married woman and mother, the onus fell upon her to uphold standards of sexual morality in the absence of her husband. The case may have also served as a forum for a largely Anglo-Canadian justice system to impose its vision of middle-class morality upon a marginalised ethnic community.

Similar considerations of race, class, and gender played a role in the Sachatski case, which highlights the extent to which gender and ethnic biases still held sway in western Canadian criminal courts. The case was unusual in that the justices of the peace allowed the defence to malign the moral integrity of extremely young female children.<sup>74</sup> On 25 October 1911, Fedor Sachatski was accused of having unlawful carnal knowledge of eight-year-old Marie Schmigorski near Wostok, Alberta. Tina Gonko, age nine, corroborated Schmigorski's testimony but also revealed that Mrs. Schmigorski had encouraged her daughter to sleep with the accused: "Mrs. Schmigorski told her daughter Marie to go to bed with uncle and he would give her some money and she cried and would not go and her mother whipped her and she went to bed with him and through the night I heard her crying."<sup>75</sup> In response to Gonko's testimony, the prosecution immediately withdrew the charge against Sachatski.

A similar case involved Edward Gebhardt, a German farm labourer from the Regina judicial district, who was acquitted of raping four girls under the age of fourteen. The rapes were said to have occurred over a four-year period between 1918 and 1922. The victims, two sets of sisters, provided independent and corroborative evidence that Gebhardt had habitually raped them when their

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72 *R. v. Kozma* (1917), preliminary hearing, 7 August 1917. Ripped, torn, and semen-stained drawers were commonly entered as evidence throughout the period and the prosecution's ability to produce them could often make or break a case.

73 Deposition of Charles Dunnell, Constable, Saskatchewan Provincial Police in *ibid.*

74 Terry Chapman addresses the issue of child testimony in sex crime cases in "Inquiring Minds Want to Know": The Handling of Children in Sex Assault Cases in the Canadian West, 1890-1920," in *Dimensions of Childhood: Essays on the History of Children and Youth in Canada*, eds. Russell Smandych, Gordon Dodds, and Alvin Esau (Winnipeg: University of Manitoba, 1991), 183-204.

75 SCA, Edmonton judicial district, *R. v. Sachatski* (1911), preliminary hearing, 25 October 1911 PAA, Acc. 83.1.

parents went to town.<sup>76</sup> Lengthy cross-examinations by J. E. Doer, however, resulted in one of the victims admitting that her eighteen-year-old brother had been a participant in some of the incidents. Although the admission should have added weight to the girls' accusations, the defence used it as evidence that the victim lacked moral rectitude. The period of time that had elapsed between the first incident and the complaint likewise enhanced the court's belief that the girls had engaged in consensual sexual relations with the accused.<sup>77</sup> The Sachatski and Gebhardt cases suggest that agricultural labourers could still overcome their poor reputations by constructing themselves as victims of immoral women. Their arguments carried more weight if the victim herself was from a marginalised ethnic community.

Popular representations of the West often exploit the image of the prairie farmhouse, nestled in the woods or seemingly floating on the plains, as a symbol of a past lifestyle that was characterised by simplicity, innocence, and solid family values. However, the narratives, stories, and accusations that survive in the criminal record reveal that the farmhouse and farmyard could serve as a setting for acts of sexual violence, seduction, and strife. Throughout the settlement period, the war years, and the 1920s, many farm women, or their families, risked considerable social censure in order to seek retribution in the courts for sexual violence committed against them by men in their employ. The criminal courts acted as a forum in which the dominant elite, and farm families themselves, could create and perpetuate class divisions in prairie society by limiting social and physical interaction between the region's wage-earning working class and farm women. Although we can never know the full truth behind the allegations, we do know that Anglo-Canadian legal officials and all-male juries also used women's complaints of sexual violence as an opportunity to punish women who did not – by virtue of their ethnicity, class, or sexual morality – conform to the dominant middle-class and feminine ideal. Sexual violence and its prosecution, consequently, played an intimate role in the construction of the western Canadian social structure and political economy.

The Canadian criminal justice system has recently been described as “a site of struggle among those who seek to impose particular visions of morality, those who reject them, and those who propose alternatives.”<sup>78</sup> Although western Canadian policy-makers like Nicholas Flood Davin had advertised the

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76 SAB, SCKB, Regina judicial district, *R. v. Gebhardt* (1922-1923). The judge or justice would decide whether children of tender years understood the importance of telling the truth and the religious nature of an oath. Their evidence was often received, but it was not sworn. The evidence, however, had to be corroborated by some other material evidence. “An Act respecting Witnesses and Evidence.” *Revised Statutes of Canada* (1906), 56 Vict., c. 31, sec. 16.

77 *Ibid.*, Saskatchewan Provincial Police Court, before J. C. Marlin, 24 July 1923.

78 Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867-1939* (Toronto: University of Toronto Press, 1997), 4.

region as a paradise where immigrants could be delivered from Old World barriers to social and economic success, in reality they sought a society built upon the foundations of Anglo-Saxon and Protestant values and the small-scale family farm. To them, the hard-working and self-sacrificing pioneer woman – usually depicted at work in her garden or alone on the desolate prairie, often with a child at her side – was an integral component of the future success of that society. By contrast, the bachelor homesteader and agricultural labourer (often of recent immigrant status) had, by the First World War, become superfluous to utopian visions of the West. The stories of conflict that emerge from the “hired hand” cases reveal a society in the process of developing new masculine and feminine ideals that were grounded in the social, economic, and political foundations of a capitalistic society. As a consequence, during a period when juries only occasionally punished sexual violence against women, the “hired hand” was more likely to be convicted than acquitted for sexual transgressions. He escaped punishment only when his female victim had herself turned her back on the values of a region that suffragist and legal authority Emily Murphy had once described as “a paradise of blossoms – a very garden of the Lord.”<sup>79</sup>

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79 Emily Murphy, *Janey Canuck in the West*, reprint, (Toronto: University of Toronto Press, 1975), 138.