

## Reforming the Coroner Death Investigation Manuals in Ontario 1863 - 1894

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Résumé de l'article

À partir de l'analyse des manuels utilisés par les coroners en Ontario et dans l'Ouest du Canada au XIXe siècle, nous nous attacherons à dégager l'image idéale du coroner qui y est présentée. Les trois premières éditions de *A Practical Treatise on the Office and Duties of Coroners*, ne se bornent en effet pas à établir les règles à suivre dans l'exercice de cette charge, ou à donner des conseils pratiques. Dans ce traité, l'auteur, William Fuller Alves Boys, et son « nègre », le juriste réputé, Robert Gowan, voulurent aussi offrir un modèle, tracer ce qu'ils espéraient être le portrait idéal de celui qui remplit la charge de coroner. Nous étudions aussi dans cet article les changements d'une édition à l'autre, changements qui reflètent aussi bien la progression de la carrière de Boys que l'évolution des politiques gouvernementales. À travers les différentes éditions du manuel, on voit apparaître un nouveau groupe d'experts et de professionnels qui vont être étroitement impliqués dans l'administration de la justice et le processus gouvernemental en Ontario.

# Reforming the Coroner

## DEATH INVESTIGATION MANUALS IN ONTARIO 1863 - 1894

by Myles Leslie

### Introduction

This paper analyses coroner's manuals in the nineteenth-century provinces of Canada West and Ontario. What follows is not a study of the individual men who investigated suspicious deaths and then held inquests over the bodies, but rather an examination of the coroner as an imagined and ideal type. I take the first three editions of *A Practical Treatise on the office and duties of Coroners* as mediums of not just formal rules and practical advice on doing the job, but the hopes and aspirations of their acknowledged author and his ghostwriter. William Fuller Alves Boys published the first edition of what would come to be called *Boys on Coroners* in 1864 while still a law clerk at Osgoode Hall. Behind Boys, backing the volume financially and offering detailed editorial input, was the respected jurist James Robert Gowan. Gowan was, in 1864, already a major figure in law reform, and closely involved in the re-in-

vention of government in Ontario.<sup>1</sup> The following pages trace trends and changes in the 1864, 1878, and 1893<sup>2</sup> editions of the manual as both Boys' career and the government develop. Boys' story, reflected in the evolving manuals, is that of an emerging class of experts and professionals involved in the administration of government and justice in Ontario.

According to statute, nineteenth-century coroners in Ontario were responsible for the investigation of suspicious deaths, with public inquests over the body of the deceased forming an integral part of those investigations.<sup>3</sup> A coroner held the authority to bind suspects over for criminal trial, and his jury were

entitled to append riders to their verdicts as a means of reflecting extralegal, communal judgement regarding the conduct of individuals or corporate entities. Though not part of the formal verdicts, these riders could express praise or blame, make recommendations for reform, and even comment on the

<sup>1</sup> See Paul Romney, *Mr. Attorney: The attorney general for Ontario in court, cabinet, and legislature 1791-1899* (Toronto: Osgoode Society, 1986) on the increasing role of the central government in county affairs.

<sup>2</sup> The fourth edition—W. Boys, *A Practical Treatise on the Office and Duties of Coroners in Ontario*. (Fourth Ed. Toronto: Carswell, 1905)—was the last produced during Boys' lifetime.

<sup>3</sup> Victoria22, 125.

## Abstract

*This article traces the evolution of coroners' manuals as published in nineteenth-century Canada West and Ontario. Rather than study the individual men who investigated suspicious deaths and then held inquests, it examines the coroner as an imagined and ideal type. The first three editions of A Practical Treatise on the office and duties of Coroners, embody not just formal rules and practical advice on doing the job, but the hopes and aspirations of their acknowledged author, William Fuller Alves Boys, and his ghostwriter the respected jurist James Robert Gowan. The article examines trends and changes in the three editions of the manual as both Boys' career and the government in Ontario develop. Boys' story, reflected in the evolving manuals, is that of an emerging class of experts and professionals involved in the administration of government and justice in Ontario*

**Résumé:** *À partir de l'analyse des manuels utilisés par les coroners en Ontario et dans l'Ouest du Canada au XIXe siècle, nous nous attacherons à dégager l'image idéale du coroner qui y est présentée. Les trois premières éditions de A Practical Treatise on the Office and Duties of Coroners, ne se bornent en effet pas à établir les règles à suivre dans l'exercice de cette charge, ou à donner des conseils pratiques. Dans ce traité, l'auteur, William Fuller Alves Boys, et son « nègre », le juriste réputé, Robert Gowan, voulurent aussi offrir un modèle, tracer ce qu'ils espéraient être le portrait idéal de celui qui remplit la charge de coroner. Nous étudions aussi dans cet article les changements d'une édition à l'autre, changements qui reflètent aussi bien la progression de la carrière de Boys que l'évolution des politiques gouvernementales. À travers les différentes éditions du manuel, on voit apparaître un nouveau groupe d'experts et de professionnels qui vont être étroitement impliqués dans l'administration de la justice et le processus gouvernemental en Ontario.*

proper scope and operations of the inquest itself.<sup>4</sup>

This meant the coroner's investigation and inquest supported the expression of both the central state's understanding of criminality, and localized quasi-criminal notions of right and wrong. Changes in the Ontario coroner's manual over time suggest that the balance between these two visions was shifting. Boys' ideas and

ideals of a strong centralized government tend to take precedence over localized authority. Over the three editions of the manual considered here coroners and their expenses come to be more closely scrutinized and controlled by the province's central administration, and the inquest is re-imagined as more a pre-filter for the provincial criminal justice system than an escape valve for village gossip. Although bodies were inspected and inquests carried out in local taverns, hotel parlours and civic buildings, the primary mission of the coroner and his jury became one of assisting a strong central criminal justice system. Over time the manuals increasingly emphasize Toronto's authority, showing less interest in the inquest as a local effort to sort out the natural from the unnatural in the deaths of newborns, lovers, employees and other unfortu-

nates in the immediate community.

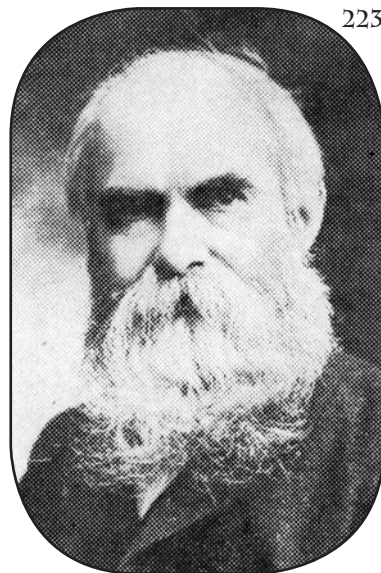
From its first edition *Boys* was an amalgam of legal precedent and practical material recycled from British and American sources and adapted to the demands of coroner work in a colony without a large landed gentry able to fill such roles 'naturally'. The manuals present a specific vision of the world. They locate expertise generally and coroners specifi-

<sup>4</sup> I. Burney, *Bodies of Evidence: Medicine and the politics of the English inquest 1830-1926* (Baltimore: Johns Hopkins, 2000), 5.

cally in Ontario's legal and governmental framework. Their worldview is predictably Tory, but it is a version of conservatism adapted especially to the Canadian context and the realities of coroner work in a highly dispersed, sparsely populated jurisdiction. It is Toryism that at once appeals to static notions of social hierarchy, and the dynamic aspirations of the well-educated sons of merchants. As the manuals progress through their revisions, Boys encourages these middle-class readers to imagine themselves as an elite, and as instruments of an expanding central government. In this sense Boys' coroner is consistent with Oliver's argument that statist Tory ideals drove the development of Canada West and Ontario's legal institutions.<sup>5</sup> The manuals' uniquely Canadian feat is their ability simultaneously to express notions of modernization, and maintenance of the *status quo*.

Boys and his ghostwriter Gowan develop their image of the coroner by combining a progressive approach to science and government, with a static hierarchical view of the social order. Theirs is an attempt to reconcile notions of merit and birthright; to fuse the realities of government as delivered by middle class professionals with notions of a divinely-initiated social order. The manuals play on notions of education, working to define acceptable minimum standards of technical and cultural competence that are necessary but not sufficient for becoming a coroner. Beyond these merit-based

*William F.A. Boys, Junior Judge, 1883-1908. From Hunter (1909)*



accomplishments, social connections and adherence not just to the letter of the law, but the dictates of the central bureaucracy in Toronto, and a refined cultural sensibility are the determining factors in who receives a coroner's commission. My argument proceeds as an examination of these elements of progressivism and conservatism, of merit and ascribed status, of education and social connections.

### Patron and Clerk

The frontispieces of the manuals list Boys first as a clerk at Osgoode Hall, then, in the second edition, as a practicing barrister, and finally as a lower court judge in the backwater of Simcoe county when the third edition went to press in 1893. Tracing Boys' trajectory from law school in Toronto to a position on the bench in Gowan's judicial district draws attention to the ways his career was affected by both formal education and attachment to the central government's power structure. Reading law at the only

<sup>5</sup> See P. Oliver, "Order is Heaven's First Law": The Tory origins of Upper Canada's penitentiary," in P. Oliver ed., *Terror to Evil-Doers: Prisons and punishments in nineteenth century Ontario* (Toronto: University of Toronto, 1998), 100.

Upper Canadian school set him apart as professionally qualified, but it was his “long, uninterrupted and valued friendship” with Gowan—from whom Boys acknowledges receiving “many kindnesses...among which was the original suggestion...of preparing a work on the office of coroners”<sup>6</sup>—that got him the job. Gowan’s most recent biographer suggests Boys was one of a number of promising young lawyers the canny judge *cum* lobbyist employed as “literary front men.”<sup>7</sup>

In these arrangements, the junior member of the bar would receive an author’s credit for work that Gowan shaped from its conception through to the reading and revision of every page of proof manuscript. Ghost-writing in this way put the Tory senator’s<sup>8</sup> views on subjects of law reform he felt important

before the public in a way that allowed him to promote them with apparently disinterested zeal. In the process he also established a series of debts among young men on the rise, which could be called in on suitable occasions in the future.<sup>9</sup>

Gowan’s judicial charge in Barrie, then,

was hardly a backwater. From the bench in Simcoe County, well north of the provincial capital, came a steady flow of reformist tracts. In addition to re-imagining the coronership, Gowan sought to assist and improve other criminal justice agents such as justices of the peace,<sup>10</sup> and constables.<sup>11</sup>

In taking on the coroner’s manual Boys brought youth and education to Gowan’s project, becoming a conduit and vessel for his patron’s approach to law and government. That project was one of professionalization and centralization. Gowan had used the *Upper Canada Law Journal*, which he founded in 1855, to campaign for permanent salaried public prosecutors. Working through his personal relationship with John A. Macdonald he drafted the 1857 Upper Canada County Attorney’s Act,<sup>12</sup> which brought trained lawyers, paid by and acting on behalf of the central government, into county courtrooms and county administrations across the province. In wiping away the practice of private prosecution, the Act was part of a larger move to pro-

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<sup>6</sup> See the dedications in W. Boys, *A Practical Treatise on the Office and Duties of Coroners in Ontario* (1st ed. Toronto: Hart & Rawlinson, 1864) and W. Boys, *A Practical Treatise on the Office and Duties of Coroners in Ontario* (3rd ed. Toronto: Carswell, 1893). The 1878 edition W. Boys, *A Practical Treatise on the Office and Duties of Coroners in Ontario* (2nd ed. Toronto: Hart and Rawlinson, 1878) is dedicated to the coroners of Ontario, whose kind reception of the first edition “rendered the publication of a second edition necessary.” The fourth edition (Boys, *A Practical Treatise*, 1905) is dedicated to Gowan’s brother-in-law, and senior Simcoe County judge, John Anderson Ardagh.

<sup>7</sup> D. Brown, *Gowan, Sir James Robert*, Dictionary of Canadian Biography vol. 13.

<sup>8</sup> At age 67, after forty years on the bench, Gowan retired. Publicly declaring his allegiance to the Conservative Party, he was appointed to the senate two years later in January 1885. (Brown, *Gowan*).

<sup>9</sup> Brown, *Gowan*.

<sup>10</sup> R. Harrison, *Common Law Procedure Act* (Toronto: Copp, Clark, Stevens and Haynes, 1858)

<sup>11</sup> J. Patton and J. Gowan, *The Canadian Constables’ Assistant: Being the substance of a charge to the Grand Jury of the county of Simcoe, at the April sessions, 1852* (Barrie: J.W. Young, 1852).

<sup>12</sup> Brown, *Gowan*.



James Robert Gowan, from *Dent* (1881) courtesy of LSUC Archives.

fessionalize the administration of justice in Canada.<sup>13</sup> In selecting the coronership as a site for reform and greater central control we see Gowan exhibiting his characteristic interest in progressive, formal, technical fixes to the administration of law.<sup>14</sup> The office of the coroner was to be reformed as a professional instrument of modern government, rather than as a minor parochial office as it is briefly mentioned in Keele's guide for provincial magistrates.<sup>15</sup>

Boys may well have hoped that in producing the first edition of the coroner's manual he would become more than a champion of his patron's views on professional expertise and the importance of central government. Trawling through the pages of Sir John Jervis' manual for the English coronership<sup>16</sup> in search of material relevant to the Canadian setting, Boys would have been struck by the similarities between himself and the



English author. After graduating from the Westminster School and attending Trinity College Cambridge, Jervis had become a lawyer and written his coroner's manual while acting as a law reporter.<sup>17</sup> Like Jervis, Boys had the best education available in his setting, and was a

<sup>13</sup> Romney, *Mister Attorney*, 290-1.

<sup>14</sup> In addition to his work on reforming and standardizing the work of JPs and constables, Gowan was at the centre of attempts, as early as 1869, to draft a criminal code out of the Dominion's myriad statutory offences. His preparatory work and continued enthusiasm would eventually lead to the 1892 federal Criminal Code. (Brown, *Gowan*).

<sup>15</sup> W. Keele, *The Provincial Justice*. (2nd ed. 1843). See (I. Burney, *Bodies*) on the conflict between 'progressive' advocates of a centrally controlled coronership, and those 'anti-modernists' who deployed the rhetoric of local autonomy to keep the nineteenth-century English coroner from becoming an agent of London.

<sup>16</sup> *Jervis on Coroners*, now in its twelfth edition—P. Matthews, *Jervis on the office and duties of coroners with forms and precedents* (London: Sweet and Maxwell, 2002)—was first published in 1829. In his preface to the 1864 edition of his own work, Boys notes "free use has been made of the standard English works of Umfrville, Impey, [and] Jervis," (1863, vi). The majority of the citations drawn from external sources throughout the first two editions of *Boys on Coroners* are from Jervis.

<sup>17</sup> P. Matthews, <<http://www/kcl.ac.uk/depsta/law/research/coroners/johnjervis.html>> (King's College London Coroner's Law Resource, 2003).

young clerk when tapped to produce the manual. Although in thirty years he attained only a junior judgeship under his patron in Simcoe County, Boys' sense of expectation must have been piqued given Jervis' meteoric rise to a knighthood and the position of Attorney General of England in the years following the release of his coroner's manual. Unlike Jervis, however, Boys' publication did not survive the Second World War. The fifth, and last edition of *Boys on Coroners* was printed in 1940.<sup>18</sup> Dashed hopes or not, Boys is most interesting as a foot soldier in an army of professional reformers at the level of provincial governance. He is a member of an emerging class of professionals, experts, and local worthies who worked within the narratives of protestant rule to expand and legitimize their own status and the reach of central government.

### Progress and Stasis

The manuals' abridged histories of the coronership as a common law institution highlight the tensions be-

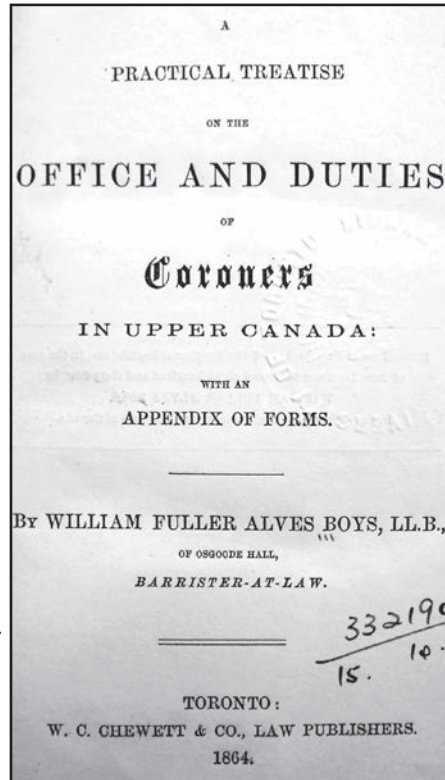
tween notions of merit and birthright. The accounts are at once nostalgic for a golden age of English social order, and eager to confer respectability on the con-

temporary Canadian provincials holding the office. All three editions note in their opening pages that:

Formerly the office of coroner was of such high repute that no one under the degree of knighthood could aspire to its attainment, and in the reign of Edward the Third a coroner was actually removed from the office because he was a *merchant!* It has, however, now fallen from such pristine dignity and though still of great respectability, no qualifications are required beyond being a male of the full age of 21 years, of sound mind, and a subject of her Majesty, and possessing the amount of education and mental

ability necessary for the proper discharge of the duties.<sup>19</sup>

The sons of the merchant class for whom the books were written are presented with twin narratives of modern progress and enduring social order. Through their education and mental capacity they inherit their position at the top of a diminished, but still vital hierarchy. In stitching these ideas together, Boys proves himself



<sup>18</sup> W. Boys, C. Magone and E. Frankish, *A Practical Treatise on the Office and Duties of Coroners in the Provinces of Canada and the North-West Territories and Newfoundland* (Toronto: Carswell, 1940).

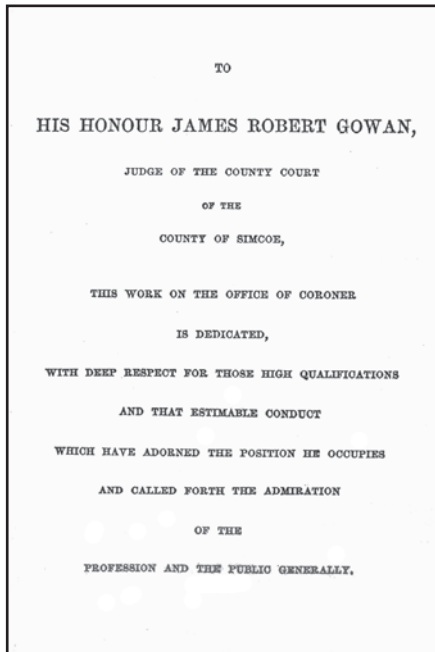
<sup>19</sup> Boys, 1864, 2; 1878, 2; 1893: 2-3 (emphasis in originals).

adept at the mental gymnastics required to reconcile an emergent meritocracy with Tory notions of birthright.

The passages repeat the accustomed myths of equality that underpin the ‘glory’ of the English legal system, especially as deployed in colonial contexts.<sup>20</sup> There is a pride taken in expressing the minimum (and minimal) requirements that reserve the coroner’s office for male citizens having attained the age of majority and in possession of a sound mental capacity. These requirements follow those of most public service positions in the era, and certainly those of the near-sacred jury system. Anyone could do this work. And luckily for the merchants’ sons, education will stand them in good stead should they want the position.

Education, however, would need to be enriched with a measure of social capital to attain a coronership. The 1864 edition simply notes that coroners are ap-

pointed “by the Governor by commission under the great seal of the Provinces.” For the second and third editions, Boys supplements this mechanical account of the province’s power structure with the



observation that “the appointments are generally made upon the recommendation of a member of Parliament, or other person possessing influence with the Executive.”<sup>21</sup> As such, social proximity to the ruling elite combines with education in determining who attains the office, just as it did in Boys’ own career. It is a complex enough mix of the factors that Boys admits “the appoint-

ments are governed in part by the requirements of the locality, and possibly in part by the energy shewn by those seeking the office.”<sup>22</sup> Given his move to underscore the involvement of social influence in the later editions, it would seem this discretionary mix is not something Boys feels should be rooted out of the process.

<sup>20</sup> For further discussions of the law as a tool of colonization see R. Shamir and D. Hacker, “Colonialism’s civilizing mission: the case of the Indian Hemp Drug Commission,” *Law and Social Inquiry* 26:2 (2001), 435; D. Hay, “The Meanings of the Criminal Law in Quebec, 1764-1774,” L. Knafla ed., *Crime and Criminal Justice in Europe and Canada* (Waterloo: Wilfred Laurier University, 1981), 77-100; H. Foster, “‘The Queen’s Law is Better than Yours’: International homicide in early British Columbia,” in J. Phillips, T. Loo and S. Lewthwaite, eds., *Crime and Criminal Justice: Essays in the History of Canadian Law*. (vol. 5. Toronto: Osgoode Society, 1994), 41-100.

<sup>21</sup> Boys, 1864, 3; 1878, 3; 1893, 6.

<sup>22</sup> Boys, 1878, 19.



Merit, in the form of education, has its place, but must be leavened with the appropriate social achievements.

The following section looks more closely at this notion of merit as the basis of gaining a coroner's commission. Having shown that the manuals treat 'education' as a necessary but not sufficient condition for advancement, let us examine how Boys deploys the term within narratives of both progress and stasis. Simply put, he approaches learning as a source of both technical knowledge, and cultural refinement. Over the three editions of the manuals he provides increasing amounts of expert technical and scientific information to his death investigator audience. His aim here is to transmit the latest advances in medico-legal expert knowledge to a generalist readership. However, operating alongside these efforts to communicate information are more subtle attempts to present a well-read, humanitarian sensibility as normative for coroners. On the one hand, when Boys treats education as information-transfer he engages a modernist narrative of scientific advance. On the other, his treatment of education as a mark of cultural accomplishment reveals a tale of stable consensus on what attitudes and behaviours constitute true refinement and thus social standing.

## Education as Information

Over the thirty years between the first and third editions Boys adds a number of chapters and expands sections within existing chapters. The fourth chapter of the 1864 edition features an extensive examination of several classes of poison, with specific notes describing the effects of the chemical in question and often ascribing a probability to its use in a suicide. The details are clearly drawn from clinical accounts of poisonings, and as such draw the coroner's attention, rather unhelpfully, towards symptoms such as: "pulse quick and small; skin cold or clammy; great thirst and obstinate constipation."<sup>23</sup> While these insights might aid in adducing testimony from caregivers who witnessed the deceased's final hours, they seem near useless in proceedings held *super visum corporis*.<sup>24</sup> Nonetheless Boys offers the latest medical science<sup>25</sup> to his readers as a possible frame through which to read the meaning of a particular death as natural or unnatural.

The 1878 edition, which remains unchanged in many other ways from the original publication, adds an entirely new chapter discussing antidotes to the poisons catalogued in the previous pages. Again it is not immediately clear how a coroner would use the information that the "most efficacious antidote" to oxalic

<sup>23</sup> Boys, 1864: 78.

<sup>24</sup> 'while viewing the body'

<sup>25</sup> While there was great hope within the emerging forensic pathology community at the time Boys published his third edition that it was rising to become a high-status scientific endeavour, Julie Johnson-McGrath ["Speaking for the Dead: Forensic pathologists and criminal justice in the United States," *Science, Technology and Human Values*, 20:4 (1995), 438-59] notes the sub-discipline failed to thrive. She argues pathology's lack of clinical focus, its failure to deal with the living, and thus to be part of the immediate project of prolonging life, adversely affected the profession's standing and fortunes.

acid poisoning “would probably be chalk *partly* dissolved in vinegar.”<sup>26</sup> It is possible that the list of antidotes could be used to determine whether those who interacted with the deceased were duly diligent in trying to address her poisoning. However, it seems more likely that these details were inserted as part of arming coroners in their own interactions with medical witnesses. An account of current medical thinking on poisons and their cures would allow coroners to question a doctor on the stand, or indeed to direct the scalpel at an autopsy performed by “the best qualified” practitioner “the neighbourhood affords.”<sup>27</sup> In an era of generalists<sup>28</sup> the chances a local doctor knew anything about forensic medicine were limited, and thus the manual’s expertise, as passed along by the coroner during the *post mortem* examination, might well prove helpful.

Although the medical witness “will

generally prove the most important witness at the inquest,”<sup>29</sup> the manuals are far from prepared to allow these men<sup>30</sup> free-reign in their examinations of the corpse and testimony. Across the editions Boys maintains “the jury should view and examine the body, the Coroner drawing their attention to, and making observations upon, such appearances as call for notice.”<sup>31</sup> While a medical witness “will be more qualified to draw conclusions”<sup>32</sup> from these observations than the jury, it is important to note the coroner’s centrality to the process. Acting as an intermediary and filter on the medical witness’ expert gaze, the coroner is to direct the jury’s eyes with a running commentary on the condition of the body. This commentary bridges the three-way gap between expert medical understandings, the quasi-legal environment of the inquest, and the jurors’ lay knowledges.

The coroner’s role is more than that

<sup>26</sup> Boys, 1878, 77, emphasis in original

<sup>27</sup> *Upper Canada Law Journal*, vol. 1, 85 cited in Boys (1864, 154; 1878, 134).

<sup>28</sup> The first edition defines medical practitioners as persons licensed “to practice as physicians or surgeons, or as both, either in Upper or Lower Canada; physicians and surgeons on actual service in Her Majesty’s Naval or Military service whether holding a license or not; and homeopaths, licensed to practice as such” (1864, 152). Subsequent editions reflect the professionalization of the medical community as they eliminate military and homeopathic practitioners, and direct the reader to the Ontario Medical Act for precise definitions (1878, 132).

<sup>29</sup> *Ibid.*

<sup>30</sup> Although the overwhelming majority of physicians in Ontario during the nineteenth century were men, Dr. Emily Stowe’s 1880 encounter with a Toronto coroner’s court [see C. Backhouse, *Petticoats and Prejudice: Women and Law in 19<sup>th</sup> Century Ontario*, (Toronto: Osgoode Society, 1991)] and a subsequent criminal trial show it was not only men who gave testimony at inquest.

<sup>31</sup> Boys 1864, 137; 1878, 121; 1893, 229-30. It is noteworthy that the third edition inserts a paragraph undermining the strength of this ancient connection between inquest juror and corpse. Boys notes “it is not necessary that the jury should view the complete body, nor that the body should be entirely stripped for the view; but they should have the opportunity of seeing the whole body if they so desire,” (1893, 230). Whether this speaks to a growing squeamishness on the part of jurors, or sense of decorum on the part of coroners is difficult to determine.

<sup>32</sup> Boys 1864, 143; 1878, 125-6; 1893, 238.

of a mere intermediary, however, spilling over into controlling the actions of medically qualified witnesses. Boys notes that the doctor:

must observe [the body] in such a manner as his own judgement and foresight may prompt him. He should not, however, confine himself to mere inspection of what actually presents itself to his eyes...thoughtless omissions may both endanger his own reputation and the lives of his fellow creatures.<sup>33</sup>

Medical observation and testimony, even when delivered by the best doctor the neighbourhood has to offer, is to be channelled by the coroner. The expertise of the manual guides the coroner, and the coroner in turn guides the gaze of his most credible witness.

This trend continues in the third edition where, as an example, Boys triples the size of the section dealing with 'Marks on the Body' by drawing on the most recent medico-legal textbooks.<sup>34</sup> He advises his readers that:

The features should be carefully scrutinized, since the cause of death has much to do with the features after death...It is said the features indicate repose after death by sword wounds, and pain after death by the bullet.<sup>35</sup>

As before, the coroner's gaze is being updated to reflect Boys' understanding of the latest in medico-legal research. In expanding these specialist chapters in the manuals, Boys is treating education as

training, a transmission of information from him to the coroners in the field. It is the kind of education they need to adequately direct the gaze of the jury and the testimony of medical witnesses.<sup>36</sup> While generally the decision to increase the technical material included in the manuals reflects this informational approach to education, the specific example of sword and gun wounds presents some challenges to this frame. There is more here than the presentation of mere information.

On first inspection Boys' inclusion of this material seems completely misguided. Presumably coroners overseeing an autopsy would be able to see full well whether the body had sustained sword or firearm injuries without reference to the composition of the facial muscles. In either case the determination of a natural or unnatural death, the coroner's primary mandate, would be obvious. Barring the fantastic circumstances of a swashbuckling sword and gunfight with several participants—presumably a rare occurrence in 1890s Ontario—there would seem to be limited practical application for the ability to separate non-lethal sword blows from lethal bullet wounds, or vice versa. Despite these reasonable objections to the passage's inclusion, it stands in the manual. Boys was in this case, I suggest, less concerned with transmitting information for use in the

<sup>33</sup> Boys 1864, 144; 1878, 126; 1893, 240-1.

<sup>34</sup> Boys' preface (1893, v) acknowledges that the medico-legal portions of his text "have been largely taken *verbatim et literatim* from" C. Tidy, *Legal Medicine*. Vol. 1. (New York: Wood, 1882).

<sup>35</sup> Boys, 1893, 239.

<sup>36</sup> In the 1882 reference *Re Hull* (9Law Reports Queen's Bench Division 689-701) the court notes the doctor engaged by the coroner "refused to give a certificate of cause of death," indicating that coroners could be challenged in their efforts to guide the hands, eyes, and signatures of medical witnesses.

inquest process than he was with appealing to his readers' sense of membership in a Tory elite. This is not information dissemination so much as cultural diffusion.

The passage has a patina of science to it, a nod to the merit based system. Beneath this it refers obliquely to the aristocratic practice of duelling, and romantically implies that being sliced open by a sword is somehow more satisfying to the victim than being shot. In calling up a past social order, the passage is not unlike the introduction's reference to Edward III and the merchant coroner who was stripped of his office. It is deliberately nostalgic, invoking an era of chivalry and the social order that went with it. In choosing the passage for publication, then, Boys is working at defining education both as information, and as a badge of cultural achievement.

### Education as Refinement

Advanced literacy is clearly an important first step toward proving oneself sufficiently educated to be a coroner.<sup>37</sup> Taking the next step requires the mobilization of education not as information but as cultural capital. This step bridges progressive

narratives of knowledge and merit with static notions of birthright and stable social order. Here education is a way of knowing how to be in the world rather than a set of facts about the world. It is a sense of refinement and a general demeanour that in and of itself indicates membership in a governing class. Where the manuals supply coroners with technical information about the way bodies react to oxalic acid, or being attacked by a sword, they also operate in more symbolic terms in their promotion of chivalric attitudes,<sup>38</sup> or a sense of *noblesse oblige*. These traits, alluded to in the manuals as refined or educated behaviour, are signals of belonging to the anglophile, protestant elect and not facts to be brought to bear in determining the nature of a death. They form a way of comporting oneself in the world that is a necessary if not sufficient condition of membership in the ruling elite. In Boys' scheme, thinking, talking, and acting in accordance with these ideals is normative for coroners.

All three editions discuss the ideal "personal character and ability" of coroners, noting "where these are deficient, scenes often occur at inquests which throw disgrace upon the coroner."<sup>39</sup> In

<sup>37</sup> As the manuals evolve, so too does Boys' minimum standard of literacy for inquest jury members. Although acknowledging in the first and second editions "strictly speaking, jurors upon inquests are not challengeable," Boys goes on to suggest, "each juror should be able to write his own name." (1864, 130; 1878, 112). For the third edition he deletes the reference to jurors being unchallengeable, and expands the literacy requirement stating, "each juror should be able to write his own name sufficiently well to enable him to sign the inquisition, and anyone summoned as a juror who cannot do so should be rejected if it is possible to do without him" (1893, 210).

<sup>38</sup> See C. Strange, "Wounded Womanhood and Dead Men: Chivalry and the trials of Clara Ford and Cassie Davies," in F. Iacovetta and M. Valverde eds., *Gender Conflicts: New essays in women's history* (Toronto: University of Toronto, 1992), 149-80 for an extended analysis of chivalric scripts and gender roles in late nineteenth and turn-of-the-century Ontario criminal justice settings.

<sup>39</sup> Boys, 1864, 3; 1878, 3; 1893, 3.

the first edition Boys adds the admonishment: "Would that Canadian coroners were free from reproach in this respect, and that it could be said all Canadian inquests were held with even decent propriety." Several pages further on Boys returns to these notions of decency and humane care for those caught up in the inquest, noting:

An inquest must always be a painful proceeding to those who generally have charge of the body, more particularly when accompanied by a *post mortem* examination; and coroners who wantonly give additional pain to that which a sudden death has already caused cannot be too strongly condemned.<sup>40</sup>

These direct admonishments to decency and chivalric humanitarianism are supplemented with an appeal to cultural education. The 1893 edition includes a stanza of Tennyson as part of a discussion of *rigor mortis*.<sup>41</sup> Where the passage is ostensibly included to inform coroners of the traditional undertaking technique of binding up a corpse's chin to prevent

*Sir James R. Gowan, County Judge, 1843-1883. From Hunter (1909)*



the jaw from fixing in the open position, it is also present as a cultural marker. The author of the *The Lady of Shalott* is hardly necessary in a technical description, but his romantic presence is both an appeal to a refined literary taste, and a hint at the chivalric code that underlies proper coronial conduct.

Usually a stickler for adherence to the letter of the law,<sup>42</sup> Boys, or perhaps the law-reforming Gowan, makes an uncharacteristic suggestion in a discussion of suicide. Noting that Anglican Church law proscribes burial services and interment of "those who have laid violent hands upon themselves," the manual continues:

It seems that the body ought to be buried with a stake driven through it, in some public street or highway, in accordance with the ancient custom in England before [an act of parliament in 1824]...by which statute coroners were forbidden to issue warrants directing the interment of suicides in any public highway; and directing a private interment

<sup>40</sup> Boys, 1864, 9; 1878, 7; 1893, 13.

<sup>41</sup> Boys, 1893, 237.

<sup>42</sup> As an example, Boys' discussion of the necessity of the jury members viewing the body at one time runs as follows: "In England...the coroner and jury need not all view the body at the same time, but in Canada we must still go by the old law." (1893, 231).



without any stake being driven through the body....<sup>43</sup> This statute is not in force in Ontario, and we must consequently be governed by the more barbarous law previously existing, unless coroners are willing to depart from their strict duty, and issue process for the remains to be buried according to the less severe provisions of the English enactments—a departure from duty which would have the sanction of humanity to support it. The Ontario law in this respect calls for amendment.<sup>44</sup>

The passage is remarkable in that it is only steps away from actively encouraging coroners to ignore the law. Here a cultivated, humanitarian sensibility and not the law itself, is invoked as a bulwark against barbarism. The well-educated coroner, that is to say the properly cultured reader of romantic poetry and chivalric respecter of decorum, is clearly expected to side with modern humanity and not ancient custom. Boys seems aware that this may be a dangerous precedent to set as he takes pains to build his progressive argument on a traditionalist, Anglophile foundation. The *English* statute law is cited as being more thoroughly modern, allowing Boys the space to invoke notions of progress and stable hierarchy simultaneously. The closing, activist call for law-reform would seem to bear Gowan's stamp. Boys' patron was certainly interested in the formal rationalization of the criminal law, but as we see, he was not beyond suggesting individual criminal

justice agents deploy a Tory worldview to supplement and supplant the law in particular instances. The following section tracks this preference for rationalization and centralization in law and governance as it affects Gowan's and Boys' image of the coroner.

## Central Control

We now turn to what it was that ideally educated, age-of-majority, citizen males were to do once their social connections had secured them a commission as coroner. The apparently straightforward business of convening inquests over dead bodies was, and to this day remains, complicated by factors relating to the control of government expenditures. Boys' concern, echoed by the framers of the Coroner's Act,<sup>45</sup> lies not with the placatory value of the inquest, but in ensuring control over coroners. Indeed, in a passage acknowledging the coroner's judge-like powers to exclude members of the public from an inquest, Boys admonishes his reader that the "coroner had far better err on the side of publicity, than in conducting his proceedings too secretly."<sup>46</sup> To derive maximum value from the inquest the public must see the law at work, and those who "for the mere sake of shewing a little authority" would sequester the proceedings are working counter to the spirit of the office.

<sup>43</sup> The third edition adds a sentence at this point citing yet another English statute, passed in 1882, ordering that the remains of suicides "be buried as if the verdict of *felo de se* had not been found." (Boys, 1893, 69).

<sup>44</sup> Boys, 1864, 45 substitutes 'Canada' for 'Ontario'; 1878, 35-6; 1893: 69.

<sup>45</sup> Victoria22, 125.

<sup>46</sup> Boys, 1864, 129; 1878, 112; 1893, 208.

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While an inquest is seen as a valuable official response to a suspicious death, the problem remains that coroners, medical witnesses, and constables must all be paid for. Striking a balance between the public utility and expense of investigations, *post mortem* examinations, jury summonses,

*From the 1864 edition of Boys' Practical Treatise.*

and full public inquests, is central to the manuals. They outline a number of evolving strategies for controlling coronial expenses and activity. Boys moves to limit the number and scope of inquests using legal and bureaucratic arguments that shift control from local and discretionary forms to centralized and formally regulated ones. Investigating these moves to control coronial discretion and expenses reveals a story of legislative and organizational change.

The office of coroner was originally constituted in the tenth century to act as a check on what the Crown perceived as rampant graft among sheriffs.<sup>47</sup> London, impoverished by the crusades, needed all the tax money it could find, and created the coroner as a local overseer of collections. As with most fixes to governance systems there were unintended consequences and the problem seems to have been displaced as much as it was solved. Seven hundred years later and an ocean away the issue was no longer one of skimmed tax revenue, but one of overcharging for bogus or frivolous inquests. The challenge, at least as it was conceived of in the English context, had become one of preventing the coronership from becoming a sinecure.<sup>48</sup>

Canadian coroners inherited the

<sup>47</sup> R. Hunnisett, *The Medieval Coroner* (Cambridge: Cambridge University, 1961).

<sup>48</sup> See J. Johnson, "Coroners, Corruption and the Politics of Death: Forensic pathology in the United States," in M. Clark and C. Crawford eds., *Legal Medicine in History* (Cambridge: Cambridge University,

control mechanisms, and perhaps some of the bad blood, of their English counterparts. Through the late eighteenth and early nineteenth centuries coroners' fees were scrutinized and approved by local Magistrates. This practice was modelled on the parochial English system where it tended to pit conservative landholding justices of the peace against more reform-minded merchant class coroners.<sup>49</sup> In his 1864 edition, Boys notes that a justice of the peace cannot also be a coroner, the problem being that "otherwise he would have a right to audit his own accounts."<sup>50</sup> Given that legislation in 1859 had removed oversight of coroners' fees from local magistrates and delivered it to the court of the Queen's Bench in Toronto<sup>51</sup> there seems little reason for Boys to include this observation, and indeed it is deleted from subsequent editions. Perhaps the inclusion is a mental slip on Boys' or Gowan's part, or perhaps they both felt there was a point to be made about the evils of cozy local arrangements regarding fees.

Evidence supporting the latter read-

ing comes several pages later in all three editions when Boys notes "the Coroners who hold unnecessary inquests, and the Magistrates who sanction their conduct by passing the accounts for them are greatly to blame."<sup>52</sup> Given that local magistrates have not officially had control of coronial accounts since 1859<sup>53</sup> it is plausible to assume the inclusion of this language in 1893 is intended to make a rhetorical point about the positions of both the coroner and magistrate in the governance structure, and the allegiance both officers owe Toronto. The two institutions are being removed from their parochial context and re-imagined as instruments of a centrally organized governing project. In the 1893 edition Boys cites the provincial statutes as "forbidding coroners to act as justices of the peace during the time they use or execute their office"<sup>54</sup> but goes on to acknowledge a precedent from case law<sup>55</sup> in which the court found that the coroner was, by virtue of his office, "a magistrate who may give a certificate of loss under an insurance policy."<sup>56</sup> Here we see the

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1994) on the uses and abuses of coroner appointments as patronage posts in nineteenth-century U.S. urban politics.

<sup>49</sup> See J. Sim and T. Ward, "The Magistrate of the Poor? Coroners and deaths in custody in nineteenth-century England," in M. Clark and C. Crawford eds., *Legal Medicine in History* (Cambridge: Cambridge University, 1994) and M. Emmerichs, "Getting Away with Murder? Homicide and the coroners in nineteenth-century London," *Social Science History* 25:1 (2001), on the relationship between magistrates and coroners

<sup>50</sup> Boys, 1864, 3.

<sup>51</sup> Victoria 22 ch 2, p. 332, also Victoria 22 ch 119, p. 1-2.

<sup>52</sup> Boys, 1864, 8; 1878, 6; 1893, 12.

<sup>53</sup> It seems most likely that coronial fees would have been dealt with during the administrative business of assize court sessions, and that local JPs were no longer involved at all.

<sup>54</sup> Boys, 1893, 10.

<sup>55</sup> *Kerr v. The British American Assurance Company*.

<sup>56</sup> Boys, 1893, 11.

historic, localized antipathy between the two institutions giving way to contemporary demands for the efficient processing of insurance claims. Through the exercise of legal analogy magistrates and coroners have become interchangeable parts in Toronto's centralized criminal justice bureaucracy.

To underscore the point, the opening pages of the same 1893 edition draw attention to the special status of stipendiary magistrates who *may* act as coroners for their districts.<sup>57</sup> Here, in the remote northern districts where justices of the peace are direct full-time employees of the state, the implication is that a combination of necessity, professionalism, and central control render it possible for one man to act as both magistrate and coroner. The tiny populations and rough living of the vast northern territories made multiple agents of the criminal justice system prohibitively expensive and inefficient. The solution to a lack of educationally qualified resident candidates "possessing influence with the Executive" was to provide legally trained stipendiary magistrates from Toronto. These representatives of the central government, rising as they did above the local fray, could be trusted to act as coroners, to call inquests as required not simply to line their own pockets as a lay magistrate surviving on legal piecemeal might.

This re-imagining of the coroner as an instrument of the central government,

rather than a local source of authoritative certainty about suspicious death, culminates in Boys' 1893 observation that "in cases where the Coroner has authority to act, the proceedings are in substance the same as before a grand jury."<sup>58</sup> Where the first and second editions include remarks on the judicial nature of inquests preventing them from being held on Sundays<sup>59</sup> there are no specific analogies drawn between the coroner's court and other procedural environments. As the century comes to a close we see the inquest re-deployed in Boys' mind as a rapid response grand jury. It has become, like the grand jury, a filter for cases entering the larger criminal justice system. As such, coronial activity must be brought in line with the evidentiary norms of the central system if it is to consistently, cost effectively, and efficiently identify those deaths worthy of further state scrutiny.

The 1864 edition describes a high degree of coronial autonomy, deferring to local power structures and understandings as it interprets the legislated criteria for identifying a suspicious death. While coroners should swear out their informations—the legal documents used to report a given death is believed to be suspicious—these are not entirely necessary, especially when another local authority figure has determined the death is worthy of attention. Determining what constitutes death by violence, or in an unfair, culpable, or negligent context<sup>60</sup>

<sup>57</sup> Boys, 1893, 3-4.

<sup>58</sup> *Ibid.* 207.

<sup>59</sup> Boys, 1864, 127; 1878, 110.

<sup>60</sup> Boys, 1864, 11; 1878, 7; 1893, 18.

must generally depend upon the circumstances of each case. By analogy to other legal proceedings, and perhaps, in strictness, the information should be an oath, but this might very properly be dispensed with when Coroners are called upon to act by Peace Officers or persons in authority, or by gaolers...Still no definite rule can or ought to be laid down for the guidance of Coroners in this respect, beyond that supplied by their own judgements, influenced by proper feeling and a knowledge of their duties.<sup>61</sup>

Fourteen years later, the second edition is considerably less flexible, dispensing with any reference to interactions with the local constable, sheriff, gaoler, or magistrate, and deleting the closing affirmation of coronial discretion. Instead, Boys discusses the new requirement that sworn informations must be submitted to Toronto.<sup>62</sup> In a significantly abridged section, he notes: "By analogy to other legal proceedings, the information should be on oath; and the Government now refuse to pay accounts for inquests unless they are accompanied by an information on oath."<sup>63</sup> The 1893 edition further expands on the theme of central oversight, adding a paragraph that clarifies the exact procedural responsibilities that are now linked to payment for services.

In Ontario no fees can be claimed unless, prior to issuing the warrant for summoning the jury, the Coroner makes a declaration in writing under oath from information re-

ceived by him, he is of the opinion that there is reason for believing that the deceased did not come to his death from natural causes or from mere accident or mischance,<sup>64</sup>

Although the legislated requirements for central oversight of coronial expenses were already in place in 1859, the manuals demonstrate an increasing focus on Toronto's power to control spending and to demand inquests be integrated into a larger justice system. Re-imagined as grand juries, providing rapid responses to high-stakes cases of suspicious and violent death, inquests and their convening coroners are framed as parts of a centralized government rather than local authorities acting with state sanction. Where in 1864 no definite rule could, or ought to have been placed on local coronial discretion, by the close of the century Boys' presents the coroner's decisions as thoroughly bound up in central concerns about cost control and the consistent and efficient triaging of cases entering the justice system. This is a significant shift from the days where an inquest expressed both the Crown's interest and the local community's outrage. The balance has shifted in favour of the central state's interests, with the suppression of gossip and alleviation of village fears becoming ancillary benefits rather than equal goals when convening an inquest.

<sup>61</sup> Boys, 1864, 11.

<sup>62</sup> The statements need not have gone all the way to the capitol. The 1859 County Attorneys Act declares these professional lawyers to be Toronto's local representatives who are to "receive and examine all informations, examinations, depositions, recognizes, inquisitions and papers connected with criminal charges which the Magistrates and Coroners of the county are hereby required to transmit to them." (Victoria 22 ch. 106, p. 1).

<sup>63</sup> Boys, 1878, 8-9.

<sup>64</sup> Boys, 1893, 12.



## Conclusion

The manuals are remarkable in their ability to tell the twin tales of advancing technical knowledge and static social order. In doing so they present a specific vision of the coroner and his place in the governance of Ontario. He must be well educated, both up to date on the latest advances in science, and well read enough to appreciate references to poetry and chivalric behaviour. Although he knows his places in the world, and is a student of the rule of law and propriety, his cultural accomplishments allow him to interpret the law as required. A sense of refinement shared with his Tory brethren and underpinned by love of the mother-country let him know when to hold an inquest, when to exclude the public from his court, and what to do with the remains of a suicide. He may be only a merchant, but this is the reality of administration in a highly dispersed colony and then province of the new Dominion. There are few aristocrats to be recruited, and in their stead an education coupled with respect for the principles of blue blood—its cultural attainments and the social order it implies—will suffice. Indeed, deference to authority as vested in the provincial government is a certain sign of success.

As the manuals evolve, along with Boys' career and the province's governance structures, the coroner shifts from being part of a parochial criminal justice system to a centralized one. The coroner's lot moves from one of discretion and sniping with the local lay Magistrate over fees, to tighter controls from Toronto in the form of the county attorney. The coroner is no longer a member of a local authority structure, able to take the word of his fellow Peace Officers in calling an inquest, but is instead a representative of Toronto who must swear out oaths to justify the expense. As the office is professionalized, formal education coming to act in concert with social connections to secure a commission, the central government's grip on the coroner became surer. Through legal analogy and advances in case law the Ontario inquest, once a local exercise in placation, is re-imagined as a rapid response grand jury for sudden death cases. Although this role as a filter on the front end of the criminal justice system is not a new one, the axis of control, and the interests of that axis are changing. Further research is required into how this rationalization of the office affected the conduct of inquests and which deaths were sorted out as important enough to meet central rather than local notions of suspicion.