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# Canada's Legal Pasts: Looking Forward, Looking Back

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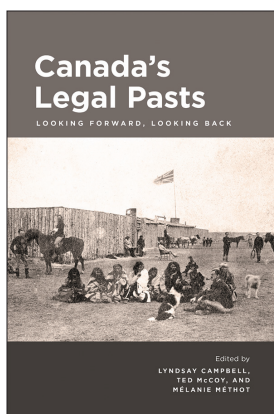
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**CANADA'S LEGAL PASTS:  
Looking Forward, Looking Back**  
Edited by Lyndsay Campbell, Ted McCoy, and  
Mélanie Méthot

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## Trial Pamphlets and Newspaper Accounts

*Lyndsay Campbell*

Writing history involves a lot of detective work. Among my favorite sources of information about trials are accounts written by the parties and their supporters before, during, or, most often, after their trials. Publishing these accounts was common in the nineteenth-century Anglo-Atlantic world, at least where newspaper presses were numerous and energetic. Often you learn a lot about not only the trial but also the various participants' lives before the trial took place, especially if what they had been up to was somehow relevant to what happened during the trial. In libel law—a central area of research for me—competing versions of the past are often part of the dispute. For example, a man brought a criminal libel action against a newspaper in Boston in 1833 over allegations he had wrongfully escaped his creditors. In a sixty-four-page pamphlet meant to set the record straight, he described being an unpopular opponent of freemasonry in upstate New York before moving to Boston, still pursued by freemasons. The freemasons were dedicated to making his life miserable for revealing their conspiracy to murder a certain William Morgan in 1826, possibly by pushing him over Niagara Falls when he threatened to disclose masonic secrets.<sup>1</sup> The persecuted antimason, Samuel Greene, was now promoting the Antimasonic party, the first “third party” in American political life.

You can often discover the existence of a pamphlet simply by doing an internet search for the names of the participants in the case.

Occasionally, finding one pamphlet may lead you to one or more other pamphlets, all written to correct the “errors” in earlier accounts. When Joseph T. Buckingham suggested that an itinerant Methodist preacher named John N. Maffitt was not really devoted to his religious beliefs, but actually just liked the access it provided to the private quarters of young women, a pamphlet war accompanied Maffitt’s unsuccessful libel prosecution.<sup>2</sup> Arguments about freedom of the press and the importance of character are intertwined with details about what it was like, in early nineteenth-century America, to be a poor but aspiring printer, or a young Irishman with religious inspiration but little education.

The American Antiquarian Society, in Worcester, Massachusetts holds a treasure-trove of pamphlets. Even if you will not be travelling to Worcester, you can use their search engine to discover the existence of pamphlets, which can often be found elsewhere. Some of their collection is digitized as well. The Internet Archive, [archive.org](http://archive.org), is another excellent source of pamphlets—and actually of pretty much any text now out of copyright. Hathi Trust’s website also has an immense amount of material, as does Google Books. If you are fortunate enough to have access to the database *The Making of Modern Law: Trials, 1600–1926* or the Gale Primary Sources database, definitely use them. It is also worth checking the catalogs of local archives and libraries in the places where the events that interest you took place, as well as the catalogs of the Toronto Public Library and the Fisher Rare Books library at the University of Toronto to find out what kinds of texts exist. Even if you cannot immediately get access to the text, the first step is finding out that it exists and getting the author’s name and the title. If you have a pamphlet, note the publisher: if it is the name of a newspaper or of someone who also published a newspaper, it is a good bet that the newspaper reported on the trial as well. Quite likely a rival newspaper also covered it.

Accounts of trials that appeared in newspapers are generally harder to find than pamphlets. You usually have to know when the trial took place and then find local newspapers and search them. A wonderful database called Worldcat attempts to archive all the surviving holdings of every text ever published, meaning that it can tell you, for example, that a certain library has all the issues of a given magazine from November 1955 to June 1957, followed perhaps by a gap, and then all the holdings from March

1960 to October 1963. It can also give you the names of all the newspapers and other periodicals published in a certain city from year X to year Y, as long as copies of at least some of the issues survive. Once you learn the names of the papers, you can figure out where to look for them.

Although digital databases of newspapers exist (such as the *Globe and Mail* Online, Nineteenth Century US Newspapers, Paper of Record, and the Early Alberta Newspapers Collection), they are not all reliably searchable because optical character recognition does not always work well on old documents that have been microfilmed. As well, many if not most newspapers still await digitization, so you may have to look for them on microforms (microfilm or microfiche). University libraries often have microform collections, and you can also order microforms—and books and periodicals—through a service called interlibrary loan. You can do this through public libraries as well. Your library borrows what you need from another library and then lends it to you. Once you receive the film or fiche that covers the date range you need, you have to look through it, page by page, to find coverage of the trial that interests you. It is often a good idea to read a few months before and after the trial as well, to unearth any pre-existing controversies and to discover how the opinions and arguments diverged once it was over. William J. Snelling, for instance, was successfully prosecuted in Boston for a libel against a police magistrate called Benjamin Whitman. Snelling alleged that Whitman did his job badly and was drunk on the bench. However, even though Whitman and the Commonwealth won the libel prosecution, Whitman resigned his position shortly afterward, a development that hints that his reputation was not thoroughly redeemed through his victory in court.<sup>3</sup>

What do you do with a pamphlet once you have it in your hands or on your screen? First, you have to imagine that you have wandered into a room full of people you have never met before having a heated conversation about a matter you only dimly recall. It is important to begin with the assumption that you really know very little. Even if you think you know how it ended, you may still be wrong. There may have been a second act to the play. Be humble but highly attentive. Pamphlets and newspaper articles can be extremely useful about structural matters that were understood by everyone at the time but that we may now wonder about. For example, pamphlets from Massachusetts libel cases in the 1820s and

1830s will reveal how a trial actually operated: who spoke first, who testified, and so forth. They make it clear that many people accused of libel had legal counsel (evidently lawyers were not forbidden), but many other people conducted their own cases. This was because they could not testify under oath. The complainant in a criminal case could give sworn testimony, but a defendant who retained a lawyer to conduct the proceedings could only sit anxiously and listen. In a civil case neither party could testify. The results of these strategic decisions become clear from pamphlets and news articles. The political fortunes of Nova Scotia's Joseph Howe, for example, rose when he successfully defended himself on libel charges in 1835. According to him, the jury that freed him thereby brought freedom of the press to Nova Scotia; being a central figure in the history of freedom of the press in your own jurisdiction is not a bad claim for an aspiring politician, and it served Howe well.<sup>4</sup>

Pamphlets and newspaper descriptions of trials also reveal women, racialized minorities, servants, and other non-famous people living their lives, criticizing their neighbours, and making their arguments, both in and out of court. For example, Boston police magistrate Benjamin Whitman's ex-daughter-in-law testified that Whitman was frequently drunk and abusive to herself and her children (his grandchildren). Whitman supported the children, but, she said, "[t]hey are not well treated; they often go lousy, and with their knees out."<sup>5</sup> From this you get a glimpse of parenting norms and the sorts of criticisms made about them in the time period, not to mention a hint about the prevalence of lice. It is not enough for formal conclusions, but it is a snippet of evidence, to be combined with other snippets.

You may also, of course, interpret a pamphlet or an article in order to find out what happened. Occasionally a pamphlet provides vital information about how some long-gone institution functioned. The Halifax Court of Commissioners, for example, heard a huge volume of small debt cases in the 1820s and 1830s, but almost no records survive. Joseph Howe's criticisms of the court—delivered as part of his explanation for printing what he had about Halifax's governing magistrates—amount to one of the few accounts of what that court did. Of course, often you are able to correlate and cross-match references to details—what people said and when, and what they meant—to other records that have survived, such as reported versions of legal cases and notes judges left in the files. Like lawyers, judges,

and all the other participants, pamphleteers and journalists are almost always biased but in interesting ways. They may skip over substantial parts of one party's case and give loving regard to the other's, especially if it is their own. One of the great challenges and joys of history is learning to sift the facts from the slant.

Pamphlets can teach us not only about people and institutions, but also about what ideas and arguments people thought would be persuasive or unpersuasive. In 1829, when a Boston man named Origen Bachelier tried to have witnesses from a Christian sect called the Universalists barred from testifying on the grounds that they did not believe God would judge them in the afterlife (even if they lied on the witness stand), the judge was clearly uncomfortable about the effect that excluding relevant testimony would have on the trial, and he refused to prevent the witnesses from testifying.<sup>6</sup> A few years later, however, the same judge barred a witness who was a "Free Inquirer," who, if he believed in anything, believed that God was only embodied in the material universe.<sup>7</sup> We have to be careful about leaping too quickly to the conclusion that the judge was prejudiced against one group but not the other. We make sense of these events through practices of interpretation that involve, first, understanding what the Universalists, the Free Inquirers, and the other courtroom actors believed and how their various views collided. We also need to understand the religious politics of the period: who was influential in society, whose influence was growing, and what threats to the public good were perceived in these different religious causes. We would want to bear in mind as well that Massachusetts prided itself on its freedom of religion. We would look outside the courtroom to see what else these different groups were doing. The Universalists, as it happens, were lobbying hard to end state financial support for religion, and they and others succeeded in having the state constitution changed, effective in 1834. Some won and some lost with this change. The Free Inquirers were mounting an even larger challenge to society: they criticized capitalism, women's oppression in marriage, what they saw as the absurdities of Christianity, and slavery. They advocated birth control and a form of marriage that could be ended at will by either partner. Their opponents saw the edifice of civilized, God-fearing society collapsing all around. Understanding these movements requires us to realize that our interpretive horizons (in Hans-Georg Gadamer's terms)

are bounded, and to work to extend them so that they merge, as far as possible, with those whose mental frameworks we are trying to understand. Working with pamphlets—and other primary sources—calls for a suspension of judgment, a respect for those who came before us, and a willingness to set today’s frameworks and assumptions aside in order to appreciate yesterday’s. The rewards are rich.

## NOTES

- 1 Samuel D. Greene, *Appeal of Samuel D. Greene, in Vindication of Himself against the False Swearing of Johnson Goodwill, a Morgan Conspirator, in the Case of Commonwealth v Moore & Sevey, Editors of the Masonic Mirror, for a Libel on Said Greene* (Boston, 1834), online: Making of Modern Law: Trials database.
- 2 See *A Correct Statement and Review of the Trial of Joseph T. Buckingham, for an Alleged [sic] Libel on the Rev. John N. Maffitt, Before the Hon. Josiah Quincy, Judge of the Municipal Court, Dec. 16, 1822* (Boston: William S. Spear, 1822), online: hathitrust.org; *Report of the Trial of Mr. John N. Maffitt, before a Council of Ministers, of the Methodist Episcopal Church. Convened in Boston, December 26, 1822* (Boston: True & Greene, 1823), online: hathitrust.org; *A Vindication of Publick Justice and of Private Character, Against the Attacks of a “Council of Ministers” of the “Methodist Episcopal Church”* (Providence, RI: John Miller, 1823), online: Gale Primary Sources (Sabin Americana, 1500–1926); *An Exposure of the Misrepresentations Contained in a Professed Report of the Trial of Mr. John N. Maffitt, before a Council of Ministers of the Methodist Episcopal Church, Convened in Boston, December 26, 1822* (Boston, 1832); *Maffitt’s [sic] Trial; or, Buckingham Acquitted, on a Charge of Slander against the Character of John N. Maffitt, Preacher in the Methodist Episcopal Society* (New York: C.N. Baldwin, 1831).
- 3 “Judge Whitman,” *Boston Masonic Mirror*, 11 January 1834.
- 4 See Joseph Howe, *Trial for Libel, on the Magistrates of Halifax, the King v Joseph Howe, Before the Chief Justice and a Special Jury, Supreme Court—Hilary Term* (Halifax, NS: 1835), online: hathitrust.org.
- 5 *Trial of William J. Snelling for a Libel on the Honorable Benjamin Whitman, Senior Judge of the Police Court. Commonwealth vs. Snelling. Supreme Judicial Court of Massachusetts, December 27<sup>th</sup>, 1833. Before the Hon. Samuel Putnam, Justice* (Boston, 1834), online: Gale Primary Sources (Sabin Americana, 1500–1926).
- 6 See John W. Whitman, *Trial of the Commonwealth, versus Origen Bachelier, for a Libel on the Character of George B. Beals, Deceased, at the Municipal Court, Boston, March Term, A. D. 1829. Before Hon. P. O. Thacher, Judge* (Boston: John H. Belcher, 1829), online: <http://lawcollections.library.cornell.edu/trial/catalog/sat:0105>; Origen Bachelier, *Review of the Trial of Origen Bachelier, Editor of the Anti-Universalist, for an Alleged Libel; And of the Report of that Trial* (Boston Whitcomb & Page, 1829), online: Making of Modern Law: Trials, 1600–1926 (Gale).
- 7 E.H.W., Untitled letter to the editor, *Boston Investigator*, 2 October 1835.