Negotiating Responsibility: Law, Murder and States of Mind, Kimberley White, UBC Press, Vancouver, 2008, (ISBN978-0-7748-1277-1)

This book is an interesting example of sociolegal history which examines death penalty cases in Canada during the period 1920-1950 with a particular emphasis on those cases in which there was a discussion of mental states. The central concern of the book is epistemological; a focus on 'the way in which knowledge about criminal responsibility was socially and institutionally produced during the early twentieth century' (p ix). This knowledge is considered in the context of prevailing views about race, gender and nationality.

The author states that she began with the intention of focusing on the role of the psychiatric expert witnesses in death penalty cases; but, during the course of the research, it became clear that the role was less significant than might have been thought to be the case. Thus, White adopted a broader focus: the social and institutional production of knowledge. It is this focus that underpins the text.

The data for White's research is archived death penalty case files. The files contain documents produced in connection with legal proceedings but they also contain a range of material that was not seen by the court. This includes material such as newspaper clippings, letters from the public, and internal memoranda generated in connection with the case. Whilst White notes that her readings of the cases are 'interpretive and tentative, rather than formalistic and resolute' (p27), she argues that through an analysis of the files, it is possible to understand how knowledge was created in a social and institutional context.

The book's title refers to 'negotiations', and one of the aims of the book is to show how negotiations about responsibility were not confined to the trial but extended beyond a finding of guilt and imposition of a death sentence. White shows that an important part of the negotiation process took place in the run up to decisions about clemency. Thus the negotiable nature of responsibility ascriptions could be seen beyond the court proceedings from the contribution from the Minister for Justice.

It is interesting to note that decisions on whether the death penalty was to be commuted to life imprisonment were taken by the Minister for Justice on behalf of the Governor General and that a range of information that was not before the court became relevant to such decisions. White points out that the Chief Remissions Officer (CRO) was charged with making a recommendation regarding clemency and that he regarded his role as not just summarising the files and making a recommendation to the Minister for Justice, but undertaking some further investigation himself. Thus, the CRO obtained further psychiatric reports, collected information regarding the accused's character and attempted to assess community sentiment.

This would appear to be at least part of the reason why the files White analysed contained the broad range of official and unofficial material referred to above. Her discussion of the files involves fairly detailed examinations of cases in which she looks at a variety of different documented comments, which have varying degrees of formality, authored by police, expert witnesses, judges, the Chief Remissions Officer and members of the public.

White's discussion of the death penalty case files in *Negotiating Responsibility* is organised thematically. The themes of the text include the idea of expertise, common sense, the politics of identity, notions of character and the domestic life of married couples. For

example, in relation to common sense, White argues that experts' qualifications were less important in gaining acceptance in court than whether the substance of what they said accorded with 'common sense'. Thus, she points out that courts accepted both general practitioners and coroners as experts on the psychiatric state of offenders. Unfortunately, in this part of the text, little work is done in defining 'common sense'. At the outset of her discussion, White states 'I will not attempt to give a grand theory of what common sense *is*: rather I am interested in how common sense was understood and articulated' (p11), and then later uses Tony Ward's definition that it is 'knowledge that fact finders apply in deciding whether a narrative is plausible or not' (p38). However, as one proceeds through the book it becomes clear that White is arguing that a significant component of 'common sense' at the time involved a series of negative stereotypes about women, racial and national groups. Thus, it was regarded as 'common sense' that Indian defendants had inferior mental capacity (p84). White's argument is that expert evidence was deemed acceptable to the extent that it confirmed such stereotypes.

White also seeks to demonstrate that the issue of mental state and its connection with responsibility had a much wider reach than just instances in which a formal defence of insanity was raised. She provides convincing support for this argument. White also argues that capital cases were places of 'negotiation'. Thus, experts, lay witnesses, judges and the public were all involved in negotiating responsibility. White makes a good case that various people were involved in discussions regarding responsibility but arguably more work needed to be done to demonstrate that the use of the term 'negotiation' was appropriate. If a member of the public writes a letter to a government official asking for clemency in a particular case, it is not obvious that this should be viewed as a negotiation rather than a plea. If White is right in characterising the discourse as negotiations, the book would seem to be successful in giving an account of the negotiations. If, however the reader hopes for an understanding of how the negotiations have influenced the *outcome* of the cases, he or she may find the text wanting as it is hard to infer from White's data what the jury or Minister for Justice regarded as important in making their decisions.

One point of concern to this reader relates to White's methodology and, in particular, her sample of cases. Each of the cases that White discusses involve defendants who have been sentenced to death (although some were not ultimately executed), and it seems at least possible that in these cases, desperate appeals to 'common sense' without further support were more common or in some way different from those cases that did not lead to a death sentence. However White emphasises the particularity of the case files that she studies and does not make large claims about their generalisability.

Negotiating Responsibility is clear, well-organised and accessible to a non-Canadian reader (although more explanation of sentencing procedure would have been welcome). White's book is an informative example of legal history and is successful in analysing one of the ways in which knowledge was created in the context of Canada's legal and political institutions during the first half of the 20th century.

Allan McCay

PhD candidate, Sydney University Law School, Lecturer, University of Sydney Foundation Program