

**DEAD WOMAN WALKING: EXECUTED  
WOMEN IN ENGLAND & WALES 1900-1955**

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## Abstract

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During the last two decades the subject of women who kill has been met with increasing interest from feminist theorists and activists. More recently this interest has been fuelled by high-profile cases in which battered women who have killed their abusers have been released from prison following a reduction of their sentences from murder to manslaughter. As a result of feminist challenges to these women's life-sentences such cases are gradually having an impact on the criminal justice system in general and law in particular. Such cases, however - as well as cases involving other types of murder by women - have a longer history than those which have been addressed and analysed by second wave feminists. Thus, in the first 55 years of this century 15 women met their deaths on the scaffold without the opportunity of telling their story through modern feminist discourses.

This thesis offers a systematic and critical analysis of the lives, trials and punishment of the women who have been executed in England and Wales during the 20th century. It has two main aims. First, by utilising a feminist theoretical framework it demonstrates how discourses around women's conduct and behaviour, specifically in the areas of motherhood, domesticity, respectability and sexuality, influenced the outcome of court proceedings.

Second, it provides an alternative 'truth' about executed women and their crimes. This alternative 'truth' can now be articulated because of the development of feminist theory and methodology and their accompanying discourses which challenge what has so far been regarded uncritically as the dominant truth, for example in sensationalised newspaper reports and 'true' crime magazines. In providing a gendered analysis of capital punishment this thesis therefore both 'unsilences' the stories of executed women, and challenges the normally 'seamless' truth about what is 'known' about violent women, and thus draws attention to the underlying contradictions which usually remain hidden beneath the surface of the apparent homogeneity of ungendered analyses.

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*In memory of:*

*Louise Masset*

*Ada Williams*

*Amelia Sach*

*Annie Walters*

*Emily Swann*

*Leslie James*

*Edith Thompson*

*Louie Calvert*

*Ethel Major*

*Dorothea Waddingham*

*Charlotte Bryant*

*Margaret Allen*

*Louisa Merrifield*

*Styllou Christofi*

*Ruth Ellis*

*I was transfixed with horror, and over me there swept the sudden conviction that hanging was a mistake - worse, a crime. It was my awakening to one of the most terrible facts of life - that justice and judgment lie often a world apart. (Emmeline Pankhurst, My Own Story 1914).*

*Stupid men - you who believe in laws which punish murder by murder and who express vengeance in calumny and defamation! (George Sand, Intimate Journal 1837).*

The above quotations are cited in Partnow, E. (compiler & editor) (1978) *The Quotable Woman* Anchor Books, New York p.101; p.11.

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## Chapter One

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### Introduction.

Between 1900 and 1950 130 women were sentenced to death for murder in England and Wales.<sup>1</sup> Only 12 of these women were executed. This means that 91% of women murderers had their sentence commuted. Of these 130 women, 102 had killed a child, nearly always their own, most of whom were under one year old.<sup>2</sup> Two of the 130 condemned women were certified insane and one had her conviction quashed by the Court of Criminal Appeal. The fact that only 9% of the total number of women sentenced to death were eventually executed clearly illustrates that women stood a very high chance of having their sentence commuted - usually to life imprisonment. If we examine the corresponding figures for men, we find that during the same period, 1,080 men were sentenced to death, 45 of whom were certified insane, "22 had their convictions quashed on appeal, and 2 died while under sentence of death."<sup>3</sup> In the remaining 1,011 cases 390 or 39% had their sentence commuted,<sup>4</sup> leaving a total of 621 men who were executed.<sup>5</sup> Thus, at first glance it would appear that state servants working within the criminal justice system were far more reluctant to hang women than men. But a closer examination of this apparent discrepancy reveals it to be a misconception which has come about as a direct result of the above statistics regarding infanticide. That is to say - unlike men - the vast majority of women murderers have killed their own child/children.<sup>6</sup> Once this is taken into account

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<sup>1</sup>*Royal Commission on Capital Punishment 1949-1953 Report* (1953), Her Majesty's Stationery Office, London p.326.

<sup>2</sup>No woman has been executed for the murder of her own child under the age of one since 1849. Following the enactment of the Infanticide Act of 1922 such cases did not usually result in a murder charge being brought forward; instead the charge was likely to be infanticide. Even in cases where a mother murdered her own children older than one it was often assumed that she was psychologically unbalanced (*Royal Commission on Capital Punishment 1949-53 Report* 1953:11; Huggett, R. & Berry, P. (1956) *Daughters of Cain* Allen & Unwin, London p.241), and there has been no case of a mother being executed for the murder of her own child, regardless of age, since 1899.

<sup>3</sup>*Royal Commission on Capital Punishment 1949-1953 Report* 1953:326.

<sup>4</sup>*Royal Commission on Capital Punishment 1949-1953 Report* 1953:326.

<sup>5</sup>*Royal Commission on Capital Punishment 1949-1953 Report* 1953:301.

<sup>6</sup>For example, in the years between 1900-1949 a total of 19 men were convicted of murdering children under 1 year, while 58 women were convicted of the same offence. These figures however, are more than reversed when considering the

we find that women who had murdered an adult had less hope of a reprieve than men.<sup>7</sup> Thus, the large proportion of women murderers as killers of their own children<sup>8</sup> has created a false impression of how female murderers fared once they were inside the criminal justice system.

Moreover, even if we accept that there was a "'natural reluctance' to carry out the death sentence on a woman" as the *Royal Commission on Capital Punishment 1949-1953 Report* argued,<sup>9</sup> that still leaves us with a total of 15 women who were executed during the 20th century in England and Wales. What was it then about these 15 women that caused the criminal justice system to overcome this 'natural reluctance'? Why were they not regarded as deserving of a reprieve from death? What were the discourses that a member of the public gallery activated, when, after the Ruth Ellis trial in 1955, he commented that she was "a typical West End tart"?<sup>10</sup> Or in 1953 when the trial judge in the Louisa Merrifield case in his summing up speech called her "a vulgar, stupid woman with a dirty mind"?<sup>11</sup> Similarly, at the trial of Edith Thompson in 1922, the judge saw fit to interrupt the closing speech for the defence with these words to the jury:

.... you should not forget that you are in a Court of justice trying a vulgar and common crime. You are not listening to a play from the stalls of a theatre.<sup>12</sup>

Questions and issues such as these have provided the motivation for the initiation of this research project; they form the backbone of this work and will be dealt with throughout the thesis.

The centrality of women's conduct and sexuality within our culture, and how women who step outside patriarchal definitions of acceptable female behaviour

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murder of older children in connection with sexual assault, where during the same period 31 men and no women were convicted (*Royal Commission on Capital Punishment 1949-1953 Report* 1953:304).

<sup>7</sup>Huggett & Berry 1956:240.

<sup>8</sup>Of the 130 women who were sentenced to death during the first half of this century, 100 had been found guilty of murdering their children. This figure does not include the 512 women who were convicted of infanticide between 1923 and 1948 (1922 being the year when The Infanticide Act was introduced) *Royal Commission on Capital Punishment 1949-1953 Report* 1953:58.

<sup>9</sup>*Royal Commission on Capital Punishment 1949-1953 Report* 1953:12.

<sup>10</sup>Marks, L. & Van Den Bergh, T. (1990) *Ruth Ellis: A Case of Diminished Responsibility?* Penguin, Harmondsworth p.148.

<sup>11</sup>HO 29/229 XC2573, Court of Criminal Appeal Judgement p.17, Public Record Office, Kew, Richmond, Surrey TW9 4DU.

<sup>12</sup>Young, F. (ed) (1923) *The Trial of Frederick Bywaters and Edith Thompson* William Hodge & Co Ltd, Edinburgh and London p.119.

have come to be regarded as 'dangerous' women - that is - a danger to the hegemony of patriarchal society - has been well documented by several writers.<sup>13</sup> Women's behaviour, both in the private and public sphere, has been and still is regulated, disciplined and controlled by a pervasive system of male definitions of what constitutes a 'normal' woman. The constraints which women experience as a consequence of these definitions take both a material and ideological form and restrict their lives in a variety of ways. Thus, women's material reality is affected by child care and family responsibilities; limited financial resources; the threat and fear of male violence as well as actual violence of men against women. At an ideological level, discourses around sexuality, respectability, domesticity and pathology are crucial to the regulation and self-policing of women's behaviour.<sup>14</sup>

While the lives of all women are affected by these discourses, they are made particularly visible when criminal women face the courts. For example, research carried out by Pat Carlen has shown that "single women, divorced women and women with children in Care ... [are] more likely to receive custodial sentences than women who, at the time of their court appearances, are living at home with their husbands and children."<sup>15</sup> Similarly, barrister Helena Kennedy has observed that a woman appearing in court in "bovver boots and a spiky hair-do" is likely to be judged more severely than a woman "in a broderie anglaise blouse and M&S skirt." In other words it is very important for a female defendant to "'soften' herself to conform with the judge's stereotype of appropriate womanhood by presenting an image of docility."<sup>16</sup> The mere fact that a woman has broken the law ensures that she will be regarded as someone who has failed to fulfil gender role expectations, and if this is overlaid by a refusal to demonstrate her commitment to conventional female roles in her personal life, especially in the areas around sexuality, respectability, domesticity and motherhood, she can expect to find herself at the receiving end of the full force of what Carlen has termed 'judicial misogyny'.<sup>17</sup> In this thesis I argue that every one of the women in my 15 case-studies fell well short of gender role expectations and, through a

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<sup>13</sup>See for example Heidensohn, F. (1986) *Women & Crime* MacMillan Basingstoke; Carlen, P. (ed) (1985) *Criminal Women* Polity Cambridge; Jones, A. (1991) *Women Who Kill* Gollancz London.

<sup>14</sup>See for example Hutter, B. & Williams G. (1981) *Controlling Women* Croom Helm London.

<sup>15</sup>Carlen, P. (ed) (1985) *Criminal Women* Polity, Cambridge p.11.

<sup>16</sup>Helena Kennedy quoted in *The Guardian* 12th March 1991.

<sup>17</sup>Carlen 1985:10.

series of complex and sometimes contradictory processes, fell victim to cultural misogyny in general and judicial misogyny in particular.

How certain perceptions of female murderers are produced and how these perceptions come to be regarded and accepted as *true* at the expense of other versions of 'the truth' about these women and the crimes they have committed, is a crucial issue if we are to understand why 15 women were legitimately killed by the British state in the name of the British people. In her book *Offending Women* Anne Worrall addresses two central questions: "under what conditions do certain people claim to possess knowledge about female law-breakers?" and "What is the process whereby such claims are translated into practices which have particular consequences for female law-breakers?"<sup>18</sup> Following Worrall, I intend to apply these questions to my case-studies. My aim is to create a bridge of understanding between the reality experienced by these 15 women at one end, and, at the other, a different version of that reality which was created as a result of the wealth of professional discourses surrounding them as their cases were processed through the criminal justice system. In the words of Worrall "members of muted groups, if they wish to communicate, must do so in terms of the dominant modes of expression."<sup>19</sup> If they cannot accomplish this, defendants become disqualified as speakers - their accounts become muted.<sup>20</sup> It is my intention to expose, explore and analyse the differences between how these women viewed themselves and the circumstances which led up to their crimes, as opposed to how, after their accounts had been mediated and 'translated' into the legal and medical discourses of the court-room, they were viewed by state-servants, the media and the public.

No-one can ever claim to 'know' the reality of these women's lives or exactly how they felt - before, during and after the crimes of which they were accused and at their subsequent trials. As Maureen Cain states:

... anyone producing knowledge occupies a relational and historical site in the social world which is likely to shape and set limits to the knowledge formulations produced.<sup>21</sup>

Yet, by employing a feminist standpoint epistemology, a position which according to Stanley and Wise, argues for a feminist research which is both located in and

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<sup>18</sup>Worrall, A. (1990) *Offending Women* Routledge, London p.5.

<sup>19</sup>Worrall 1990:11.

<sup>20</sup>Worrall 1990:21.

<sup>21</sup>Cain, M. (1993) 'Foucault, feminism and feeling: What Foucault can and cannot contribute to feminist epistemology' in Ramazanoglu, C. (ed) (1993) *Up Against Foucault* Routledge, London p.88.

proceeding from "the grounded analysis of women's material realities"<sup>22</sup>, I would argue it is possible to present alternative accounts to those put forward by judicial or medical personnel - accounts which I consider to be much closer to these women's experiences than those which were to become official versions of 'the truth'. My examination of these 14 cases (one was a case involving two women, hence 15 women, 14 cases), indicates that medical and legal discourses emphasised the 'wickedness' of the women's actions while minimising and marginalising their personal circumstances. The starting point of my account therefore will be to locate these women within the structural categories of social class, gender and sexuality and the material and ideological impact of these structures on their everyday lived experiences - their life histories. Moreover, these life histories can only begin to be understood after social processes such as poverty, education, domestic violence, motherhood, domesticity and respectability become part of the analysis. These are issues which, in varying degrees, had great bearing upon the lives of the 15 women in this study, and which all played a part in providing the context within which their crimes were committed and can best be understood. At the same time I shall show how difficult it was for the women to argue their cases on this terrain. This is because the wealth of feminist discourses around the different aspects of women's oppression within patriarchal society developed over the last 25 years were not yet available in the first half of this century and could therefore not be articulated. In stating this I do not wish to undermine or ignore the important achievements of the first wave of feminism. First wave feminist campaigners were successful in achieving the implementation of several pieces of important legislation culminating in equal voting rights for women in 1928.<sup>23</sup> The work of first wave feminists was both crucial and essential

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<sup>22</sup>Stanley, L. & Wise, S. (1990) 'Method, methodology and epistemology in feminist research processes' in Stanley, L. (ed) (1990) *Feminist Praxis* Routledge, London p.25.

<sup>23</sup>Frances Power Cobbe for example, in *Wife Torture in England* published in 1878, identified issues within domestic violence which are still relevant today such as "under-reporting, non-intervention, drink, blaming the victim, provocation and nagging" (Dobash R.E. & Dobash R. (1979) *Violence Against Wives* Open Books, Shepton Mallet p.73). *Wife Torture in England* is reproduced in Radford, J. & Russell, D.E.H. (eds) (1992) *Femicide* OU Press, Buckingham pp. 46-52). She also understood that men's assumption that they owned their wives was used to legitimise their ill treatment of them. In doing so Cobbe conceptualised domestic violence as a social rather than an individual problem, and her campaign for women's right to leave violent husbands played an important part in the implementation of the *Matrimonial Causes Act* in 1878. This act meant that a woman could be legally maintained and separated from a husband who had been convicted of assaulting her. Similarly, Caroline Norton campaigned for over a decade for what in 1857 became *The Reform of the Marriage and Divorce Laws* and which, after several reforms, became *The Married Woman's Property Act* in 1882. Another example is that of Josephine Butler whose tireless campaign

in establishing legal rights for women and in working towards the goal of legal equality between the sexes. Yet women of later generations were soon to realise that legal equality does not ensure substantive equality, nor does it bring an end to the predominance of patriarchal ideologies and discourses. First wave feminists can thus be seen to have laid the foundations on which second wave feminists can - and indeed already have built. This involves identifying all the discourses which play a part in the oppression of women, a process which is by no means complete.<sup>24</sup> But as we identify the many relationships which have bound us down we can apply our new-found knowledge retrospectively - to women of the past. This is what I intend to develop in my analysis of executed women. These women had similar experiences to contemporary women in terms of domestic violence, social powerlessness, poverty and economic marginalisation, but they either failed in their struggle to express their experiences because they had no language in which to do so; or, if they did succeed in expressing their reality, they were not 'heard' because they did not communicate within the boundaries of "the dominant modes of expression."<sup>25</sup> None-the-less, all the above-mentioned structural categories - as well as the feelings and experiences which accompany them - existed before they were identified in feminist discourse and one of the great achievements of feminist theorists is that they have invented "a place in which they can legitimately claim to have discovered relationships which no one 'knew' about, to have identified relations which pre-existed their identification."<sup>26</sup>

Thus, following Cain, I shall address the issue of how experience can become discourse - that is how some relationships bind women down and "are not yet available to politics because they are not yet available to anyone's knowledge" - hence they have not yet become discourses through which women can speak.<sup>27</sup>

I shall be arguing that these 15 women's lives and personal accounts have been muted and their personal knowledges repressed or disqualified. The feminist task of building and creating "discourses and practices which are not yet there"<sup>28</sup> came too late to save the lives of these women, but there is still time to employ such discourses for the purpose of unlocking and releasing the biographies and

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eventually resulted in the repeal of the Contagious Diseases Acts in 1883 (Forster, M. (1984) *Significant Sisters* Penguin, Harmondsworth p.48; p.171).

<sup>24</sup>Cain 1993:84.

<sup>25</sup>Worrall 1990:11.

<sup>26</sup>Cain 1993:83.

<sup>27</sup>Cain 1993:84.

<sup>28</sup>Cain 1993:89.



knowledges which each woman held, and that is the task I have set myself in this thesis.

### Agency, Rationality and Violence.

Unpacking and analysing the various legal and medical discourses as well as the sexist and misogynist ideologies which surround criminal women is essential if we are to restore a sense of rationality to the actions of female murderers. Throughout history women who kill have been portrayed as 'mad' - they did not know what they were doing - or 'bad', their evilness making them an aberration and setting them apart from 'true' feminine behaviour.<sup>29</sup> By denying the rationality behind women's murderous acts, traditional ideas around women's nature - their "supposed passivity, submissiveness, asexuality and gentleness"<sup>30</sup> are allowed to remain unchallenged - such women are not 'real' women after all. This denial of rationality thus involves the "perpetrator's abnormal character" becoming the focus of attention while the social and personal circumstances which led up to the crime are largely ignored.<sup>31</sup> Feminism itself has shown a marked reluctance to deal with female violence, perhaps concerned that the subject will harm the feminist cause. Yet to deny that women are capable of experiencing the full range of human emotion and experience is to argue on the same terrain as men who have perpetuated sexist myths regarding women's 'nature' throughout history.<sup>32</sup> When feminists have addressed the issue of violent women the perpetrators are often portrayed as victimised individuals who are reacting to a particular set of circumstances, or, as individuals who are engaged in the act of challenging dominant ideologies around female behaviour.<sup>33</sup> Both these portrayals are valid and relevant and I draw from these traditions in my own case-study analysis. Yet it is difficult to deny that there is 'something else', another ingredient within women's violent acts which we find difficult to articulate because of the limited language available in which to express ourselves in this area. For example, in her discussion of the Myra Hindley case, Helen Birch writes:

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<sup>29</sup>See for example Morris, A. & Wilczynski, A. (1993) 'Rocking the cradle: Mothers who kill their children' in Birch, H. (ed) (1993) *Moving Targets* Virago, London p.199.

<sup>30</sup>Morris & Wilczynski 1993:199.

<sup>31</sup>Campbell, B. (1991) 'Foreword' in Jones, A. (1991) *Women Who Kill* Gollancz, London p.xi.

<sup>32</sup>See for example Kirsta, A. (1994) *Deadlier than the Male* HarperCollins, London pp.5-8.

<sup>33</sup>Morris & Wilczynski 1993:199-200.

The mythology of Myra Hindley reveals, above all, that we do not have a language to represent female killing, and that a case like this disrupts the very terms which hold gender in place.<sup>34</sup>

The Hindley case is an extreme example of how difficult it is to discuss female killers without placing them in the 'mad or bad' category. Yet such labelling provides no insight into or understanding of the violent behaviour of women who kill. What is lacking here is an understanding that *all* human beings - including 'ordinary' women - have the capacity to suspend 'moral vigilance'<sup>35</sup> to put our own interests first and to harm others in pursuit of our goal. Therefore, when women act aggressively, whether such acts arise from feelings of revenge, a need for control or sheer powerlessness, it cannot automatically be assumed that they are either 'mad' or 'bad'. For example, in the following quote, relating to an incident where Myra Hindley was assaulted and beaten by another female inmate, rationalising a case of serious female violence does not present a problem:

'... two prisoner [sic] officers gave me a copy of the *News of the World* in which there was an article about the whole of the case. That did it. What I read, all about the tortures and the tapes, made me shake with horror and fury so much they had to take me for a walk to calm me down. ... A few days later, when she passed me during recess, I snapped and just went for her. I battered her and battered her, I punched and kicked and head-butted her, I cracked her head off the railings and wall. I broke her fingers stamping on her hands trying to make her let go of the floors so she'd fall off down to the bottom and be killed. I wanted to kill her. I saw bone show through her face when I bashed her. When I'd finished with her, her teeth were all loosened at the front, her nose crossed to the left side of her face, two black eyes, split lip, ear, knees. She had to eat through a straw for the next six weeks and needed cosmetic surgery.' Expecting severe punishment, Josie was treated like a hero by the staff. The incident, she then realized, had been set up ..... 'I heard one officer say to another: "I've been waiting twelve years for someone to do that."<sup>36</sup>

The perpetrator of this appalling level of violence is not considered mentally abnormal because she is responding to stimuli which it is considered *normal* for women to be angry about. That is to say, her behaviour is classed as operating within the ideological norms of female behaviour - someone who loves children, will do anything to defend them and seeks revenge upon those who harm them. Hindley's violence, on the other hand, cannot be rationalised because it disrupts and "unhinges our assumptions about women."<sup>37</sup> In short, women's violence can

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<sup>34</sup>Birch, H. (1993) 'If looks could kill: Myra Hindley and the iconography of evil' in Birch 1993:61.

<sup>35</sup>Kirsta 1994:169.

<sup>36</sup>Kirsta 1994:109.

<sup>37</sup>Birch 1993:61.

only be rationalised and understood when it can be analysed within the framework of existing sexist assumptions regarding appropriate female behaviour. My case-studies however, include several cases where women's violence falls outside this criterion, hence I have set myself the task of avoiding the 'mad or bad categories', thereby restoring agency and rationality to their actions and in doing so, adding to the language which represents women who kill.

To assist me in achieving the above aims this thesis will be organised in the following order: In Chapter Two I address epistemological and methodological issues within feminist research. This chapter challenges the positivist tradition of claiming to produce value-free and neutral research and argues that such research is based on sexist and andro-centric premises. Instead a feminist epistemology is needed that takes into account the long history of women's exclusion from the production of knowledge, and works towards developing new discourses and a new language through which women's experience of everyday existence can be adequately expressed.

Chapter Three consists of a social history of capital punishment, with a focus on women who were executed prior to the 20th century. The purpose of this chapter is twofold: first, to situate my case-studies in a wider historical and theoretical context which will indicate that throughout history, themes around sexuality and conduct have been applied to criminal women, and have mobilised discourses which ultimately contributed towards the final outcome of their trials and punishments. Second, I intend to illustrate that historically, as presently, the reasons why women kill cannot usually be traced to pathological causes - that is - the majority of these women are neither mad nor bad. Instead, "the story of women who kill is the story of women. Women who kill suffer from the same problems as the rest of us, only worse."<sup>38</sup> This chapter therefore sets the tone for one of the major themes which is addressed throughout the thesis: that the starting point for our understanding of female murderers must be the social and political context rather than one which problematises individual psychology.

The purpose of Chapter Four is to explain how the social history outlined in the previous chapter has been theorised over the last two centuries. Here the Enlightenment with its accompanying classical perspective forms the starting point. I then examine how the Marxist, Foucauldian and cultural perspectives have analysed punishment in general and capital punishment in particular.

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<sup>38</sup>Jones 1991:xvii.

Chapter Five provides a specific feminist critique of the theories of punishment outlined in Chapter Four. I then discuss how feminists have theorised the punishment of women. A feminist theoretical perspective shifts the focus away from pathological explanations of women's actions to an examination of the wider mechanisms of social regulation, discipline and control which affect all women within patriarchal society. Here my aim is to illustrate how women are judged differentially according to their reputation, respectability, conduct and sexuality, and how this has particular implications for criminal women on trial in a court of law. Feminist theorists have made huge inroads into the task of developing gendered analyses of women's criminality and their treatment within the criminal justice system. It is also due to the diligent work of feminist writers that we today are able to study detailed accounts of women who were criminalised and of crimes committed against them several centuries ago such as the witch trials and burnings. Yet within this area some territories have remained relatively uncharted by feminists - one of them is that of women who have been executed during this century. It is my aim to fill this gap, hence Chapter Five is also where I outline a feminist theoretical framework which I argue can be applied to the women in my case studies.

Chapters Six, Seven and Eight consist of my 15 case studies. Here the individual women are situated within their particular historical moment, their lives are examined within the context of their sex, gender and class, their personal and social circumstances are explored. As each case is reviewed it will be analysed according to the principles of the feminist theoretical framework outlined in the previous chapter. For the purpose of clarity my case studies will be organised in the following manner: Chapter Six consists of an analysis of women who were executed as a result of killing children. In Chapter Seven I examine the cases of executed women whose crime had been the murder of another woman. Finally, in Chapter Eight I analyse the cases of women who were hanged as a consequence of having been found guilty of murdering their partners/husbands. Organising my case studies in this way allows me to both take account of the differences between individual cases within the same category as well as pointing to similarities between cases from the different categories.

Chapter Nine forms the conclusion to this thesis, providing a summary of the central arguments raised in my case studies. In this chapter I also bring these arguments up to date by analysing contemporary cases of women who kill as well as the legal changes which have taken place since the execution in 1955 of Ruth Ellis, the last woman to be hanged.

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## Chapter Two

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### Epistemology, Methodology and Feminist Research: A Critical Overview.

As feminists, we must ... look critically at our own assumptions, formed in part through flawed or clouded prisms of reality, as a necessary step in the process of naming our lives as we experience them. We can resist the prejudices upon which social divisions are sustained, and we can resist the institutions and social structures of oppressive ideologies. We cannot, however, presume now or into the future to have arrived at a definitive set of knowledges or understandings. In the social sciences, new knowledges have never entirely displaced old ideas, and the authority to identify "empirical truths" and to interpret observable, testable "facts" is dependent on existing power relations within given social contexts. But as new materials are produced, ideas can be reconstructed in new configurations of "truth" which allow for previously silenced groups to name themselves and to describe their own experiences.<sup>1</sup>

#### The Exclusion of Women in the Production of Knowledge and Language.

Second wave feminists have since the early 1970s raised a series of significant political and academic questions around the production of knowledge and language within Western culture. Dorothy Smith's essay 'A Peculiar Eclipsing: Women's Exclusion from Man's Culture' first published in 1978 (although conceived of in the early 1970s<sup>2</sup>), was extremely important in outlining the manner in which women have been excluded "from the making of ideology, of knowledge, and of culture [which] means that our experience, our interests, our ways of knowing the world have not been represented in the organization of our ruling nor in the systematically developed knowledge that has entered into it."<sup>3</sup> Smith further argues that men's standpoint has been represented as universal - it is men who, historically have occupied positions of power "almost exclusively", resulting in women's forms of thought being put together from a place which they "do not occupy":

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<sup>1</sup>Faith, K. (1993) *Unruly Women* Press Gang Publishers, Vancouver p.9.

<sup>2</sup>Smith, D.E. (1987) *The Everyday World As Problematic* Open University Press, Milton Keynes, pp.17-43.

<sup>3</sup>Smith 1987:18.

The means women have had available to them to think, image, and make actionable their experience have been made for us and not by us.<sup>4</sup>

Consequently there is a gap between the way women experience reality and the means we have in which to express and react to that reality. Only the concerns and interests of one sex (and one class) is represented within the production of knowledge and culture, yet they are treated as 'the norm', universal and generally applicable. But the effect of women's absence and silence is that men's standpoint "is in fact partial, limited, located in a particular position, and permeated by special interests and concerns."<sup>5</sup>

Taken together, these factors have important consequences for the distribution of authority - men have authority "not because they have as individuals special competencies or expertise, but because as men they appear as representative of the power and authority of the institutionalized structures that govern the society."<sup>6</sup> Women, on the other hand, have been trained to hold opinions which conform to approved male standards, and which are therefore by definition quite separate from their personal lived experiences. In this way "the voice of our own experience" is made defective and is thus deprived of authority:

We have learned to set aside as irrelevant, to deny, or to obliterate our own subjectivity and experience. We have learned to live inside a discourse that is not ours and that expresses and describes a landscape in which we are alienated and that preserves that alienation as integral to its practice.<sup>7</sup>

In 1980 Dale Spender echoed Smith when she wrote that "women have been excluded from the production of language, thought and reality."<sup>8</sup> Not only is men's standpoint presented as universal, it is also 'objective'. Because men have the power to define what counts as objective knowledge, "what makes sense in society, what is to be valued, indeed, even what is to be considered real, and what is not"<sup>9</sup>, they also have the power to define women as being 'in the wrong' when they do not share men's view of the world.<sup>10</sup> Women's feelings of being in the wrong arise as a consequence of having to interpret our experiences through a male point of reference. This is one of the problems for women which a society

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<sup>4</sup>Smith 1987:19.

<sup>5</sup>Smith 1987:20.

<sup>6</sup>Smith 1987:30.

<sup>7</sup>Smith 1987:36.

<sup>8</sup>Spender, D. (1980) *Man Made Language* Routledge & Kegan Paul, London p.143.

<sup>9</sup>Spender, D. (1983) *Women of Ideas* Ark, London p.5.

<sup>10</sup>Spender 1983:7.

built on patriarchal discourses sustains and reproduces. As men do not experience being in the wrong as a permanent condition of their existence, they cannot and will not acknowledge that this condition exists. In this way women's experiences remain either invisible - or, when acknowledged - always 'wrong'.

Spender further contributed to our understanding of women's realities in her book *Man Made Language* where she exposed the inherent manifestations of sexist bias within language. She argued that the English language is in fact male property<sup>11</sup>, but because it is regarded as the norm, women's form of speech is measured and judged against it - it is therefore they who become classified as 'outsiders' or 'deviants' when they step outside male definitions of 'normal' speech. In short, just as Smith argues that women have learned to live within a discourse that is not ours, so Spender argues that we are "obliged to use a language which is not of ... [our] own making."<sup>12</sup>

Thus, by the early 1980s feminist theorists in Britain and USA<sup>13</sup> were well aware of the importance of the 'politics of naming' - that is the feminist task of articulating the meanings of feelings and experiences which as yet have no name and therefore, technically, do not exist. But women know they have experiences which cannot be identified within the masculine - hence it is necessary for them to create and encode "their own meanings which can co-exist with male meanings so that the language contains sufficient resources for all those who are required to use it to shape their worlds."<sup>14</sup>

In *Man Made Language* Spender also addresses issues directly related to the research process. In particular, she draws attention to "the false nature of impartiality or objectivity" within scientific research.<sup>15</sup> Having shown that language is not neutral but reflects the interests of its creators, she illustrates how what passes for objectivity is in fact men's own subjectivity.<sup>16</sup> Thus, that which carries the status of incontestable, scientific 'truth' within research is in reality a social product containing social beliefs about women which are not made

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<sup>11</sup>Spender, 1980:11.

<sup>12</sup>Spender 1980:12.

<sup>13</sup>See for example Daly, M. (1979) *Gyn/Ecology* The Women's Press, London; Rich, A. (1976) *Of Woman Born* Virago, London; Rowbotham S. (1973) *Woman's Consciousness, Man's World* Pelican Books, Harmondsworth; Oakley A. (1974) *Housewife* Pelican Books, Harmondsworth; Oakley A. (1981) *Subject Women* Fontana Press, London.

<sup>14</sup>Spender 1980:183.

<sup>15</sup>Spender 1980:139.

<sup>16</sup>Spender 1980:143.

explicit - instead they are taken for granted and considered the norm within a male supremacist society.<sup>17</sup> Unsurprisingly, this so-called objective research has traditionally supported the maintenance of a patriarchal social order rather than challenged it.

Several feminist authors had by the 1980s begun to address sexist methodology within social science research, but Stanley and Wise are particularly well known for their exposure of the social sciences as "sexist, biased and rotten with patriarchal values."<sup>18</sup> In *Breaking Out* (1983) they take issue with positivists who claim to produce 'objective' research. Stanley and Wise agree with Spender that so-called 'objectivity' is constructed in much the same way as any other social reality - for example 'the subjective' can be transformed into 'the objective' merely by the use of particular forms of speech such as "'it is thought' for 'I think'."<sup>19</sup> An absolute state of objectivity does not exist outside the imagination of the orthodox positivist - instead 'objectivity' has its roots in human experience and action in the same way 'subjectivity' has. Thus, Stanley and Wise echo Spender and Rich when they write that objectivity is a sexist notion - "the term that men have given to their own subjectivity":

Masculine ideologies are the creation of masculine subjectivity; they are neither objective, nor value-free.<sup>20</sup>

At another level, Stanley and Wise argued that feminist researchers should question this *desire* for objectivity which has its roots in natural science with its emphasis on "laws and calculable results"; we should not therefore automatically assume this is an appropriate tool for the examination and analysis of social reality.<sup>21</sup> Nor can we assume that "'adding women in'" - that is carrying out research about women using established theories and research methods within social science, is adequate since this will merely result in "knowledge about females being 'tagged on to' existing sexist knowledge."<sup>22</sup> Instead it is necessary to step outside "*all* established ways of thinking."<sup>23</sup> This involves recognising and acknowledging that it is *inevitable* a researcher's experiences and consciousness will be part of the research process just like they are when we

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<sup>17</sup>Spender 1980:12.

<sup>18</sup>Stanley, L. & Wise, S. (1983) *Breaking Out* Routledge & Keagan Paul, London p.12.

<sup>19</sup>Stanley & Wise 1983:30.

<sup>20</sup>Stanley & Wise 1983:49.

<sup>21</sup>Stanley & Wise 1983:30.

<sup>22</sup>Stanley & Wise 1983:29.

<sup>23</sup>Stanley & Wise 1983:30. Emphasis in the original.



carry out any other social activity. A researcher is an ordinary human being who cannot switch off her/his experiences and emotions at will in the pursuit of 'objectivity', and Stanley and Wise argue that it is wrong to attempt to disguise such feelings by pretending they do not exist. Instead a feminist social science should argue for making such experiences and emotions explicit within the research since they will be an integral part of it:

The kind of person that we are, and how we experience the research, all have a crucial impact on what we see, what we do, and how we interpret and construct what is going on. For feminists, these experiences must not be separated-off from our discussions of research outcomes.<sup>24</sup>

All research has to pass through the medium of the researcher's consciousness - including actions such as feeding data through a computer and interpreting that data and it can be argued that making this explicit produces research which is *more* accurate than so-called 'objective' research. This is because the researcher who aims for objectivity will come across as a disembodied "invisible, anonymous voice of authority"<sup>25</sup>, and the reader is not given the opportunity to place his/her findings within the context of the researcher's culture and beliefs. Stanley and Wise - and later in the 1980s - Harding<sup>26</sup>, maintained that making cultural beliefs, behaviours, specific desires and interests explicit, will produce better and indeed more 'objective' research since "introducing this 'subjective' element into the analysis in fact increases the objectivity of the research and decreases the 'objectivism' which hides this kind of evidence from the public."<sup>27</sup> It means:

saying why and how particular research came to be carried out, why and how the researcher came to know what she knows about the research. And it also means leaving behind ... descriptions of people, events and behaviours which are presented as non-problematic and indisputably 'true'.<sup>28</sup>

In turn, this feminist approach to social science research has implications for issues around power and *Breaking Out* identified this strategy of 'laying open'<sup>29</sup> the researcher as an important method for reducing the power inequality between the researched and the researcher. It avoids portraying the researcher

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<sup>24</sup>Stanley & Wise 1983:50.

<sup>25</sup>Harding, S. (1987) 'Introduction: Is there a feminist method?' in Harding S. (ed) (1987) *Feminism & Methodology* Open University Press, Milton Keynes p.9.

<sup>26</sup>Harding 1987:9.

<sup>27</sup>Harding 1987:9.

<sup>28</sup>Stanley & Wise 1983:50..

<sup>29</sup>Stanley & Wise 1983:170.

"as detached, omnipotent: an expert on a different critical plane from those ... [being studied]."<sup>30</sup> It also avoids treating the researched as mere objects, because feminist research methods make explicit not only the researcher's own vulnerability, but also the fact that she does not hold some special knowledge over those she is researching. Instead she is well aware - and she makes the researched aware - that she cannot ever *know* how they experience their reality - she can only *construct* a view of what another person's experience must be like.<sup>31</sup>

Finally, *Breaking Out* addressed the issue of difference amongst women. Stanley and Wise were highly critical of a single unitary concept of 'Woman' and felt this silenced women "who were not white, middle class, heterosexual, first world, able bodied, young ..."<sup>32</sup> They also objected to the way individuals coming from any one of these categories often find themselves regarded as less competent researchers because of their 'subjective involvement'. Stanley and Wise argued that exactly the opposite is true - that is that such individuals are in a unique position "to represent directly the experiences and understandings of oppressed people of various kinds."<sup>33</sup>

In sum, *Breaking Out* constituted a major challenge to established social science research methods as well as a coherent and substantial proposal for establishing a new epistemological and ontological approach suitable for - and appropriate to - feminist social science research. In doing so it did not support or promote the view that there should be a particular set of feminist research methods applicable only to subject areas falling within 'women's studies'.<sup>34</sup> Rather, it aimed to create a new and alternative epistemology designed to inspire a rethinking of what constitutes knowledge, how that knowledge is produced, for what purpose and to what use we put it. Thus, when Stanley and Wise published a second edition of *Breaking Out* ten years later, they wrote this about the first edition:

*Breaking Out* was a book about *feminist epistemology* - a feminist theory of 'knowledge' - which discussed epistemological topics and questions around the example of one important academic feminist activity that produces knowledge-claims: research.<sup>35</sup>

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<sup>30</sup>Stanley, L. & Wise, S. (1993) *Breaking Out Again* Routledge, London p.7.

<sup>31</sup>Stanley & Wise 1983:170.

<sup>32</sup>Stanley & Wise 1993:3.

<sup>33</sup>Stanley & Wise 1983:171.

<sup>34</sup>Stanley & Wise 1983:31.

<sup>35</sup>Stanley & Wise 1993:5. Emphasis in the original.

The criteria for a feminist epistemology and ontology had thus been developed to a considerable degree by the early 1980s. In the following section I discuss subsequent developments within this area.

### Feminism, Methodology and Epistemology since 1983.

Following the early works discussed in the previous section which identified androcentrism and sexism within social science and which laid the foundations for the creation of a feminist social science, several important works have been developed which are designed to justify the use of feminist methods and methodologies and which in turn are tied to epistemological and ontological issues. In order to establish exactly what is *not* feminist methods, methodology and epistemology Cain, referring to the work of Hartsock, has set up a 'straw-man' of the traditional male researcher:

The straw man is concerned with establishing absolute truth claims; he achieves this by the monotomic application of a single allowed mode of reasoning; he aims to abstract knowledge formulations which objectify those investigated and which are indifferent to their own understandings of their experiences. He is concerned with separating rather than unifying and prefers dualistic, zero-sum forms of the separations he achieves; he is unemotional and detached, which leaves him in full control of those investigated; this hierarchic relationship is also maintained within the research teams he establishes.<sup>36</sup>

As well as setting himself up as a 'scientific expert' he strives to achieve and maintain the most highly prized goals and values within the knowledge-seeking scientific community: value-neutrality, objectivity, dispassion and disinterest. These aims are justified on the grounds that research must be separated and protected from political interest, of society at large and the social values of the researchers.<sup>37</sup>

But the goals and values of this stereotypical scientific researcher stand in sharp contrast to the values, goals and aims of the feminist researcher. Feminism is an overtly political movement which exists to generate social change. Thus, feminist researchers make a special point of proclaiming our political and social interests - hence, at first glance "'feminist knowledge', 'feminist science', 'feminist

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<sup>36</sup>Cain, M. (1990) 'Realist philosophy and standpoint epistemologies or feminist criminology as a successor science' in Gelsthorpe, L. & Morris, A. (eds) (1990) *Feminist Perspectives in Criminology* Open University Press Milton Keynes p.125.

<sup>37</sup>Harding, S. (1987) 'Conclusion: Epistemological Questions' in Harding S. (ed) (1987) *Feminism & Methodology* Open University Press, Milton Keynes p.182.

sociology" would appear to be a contradiction in terms from a conventional scientific perspective.<sup>38</sup> Yet this highly politicised form of inquiry claims to produce research which is more accurate and more objective. It is to the issue of how this claim can be justified that I now turn.

### Feminist Empiricism.

The first major justificatory response to the 'straw man social scientist' which I analyse is that of feminist empiricism. Feminist empiricists have pointed out that traditional empiricists have not produced value-free, objective or accurate knowledge at all; instead the fact that they are mainly white, middle class, Western men is reflected in their choice and treatment of research topics which can be seen to be androcentric and sexist respectively. Thus, sexism in the form of prejudice and social bias appear at every stage of the research - in identifying and defining the research problem, in the research design itself, in the collection and interpretation of data - and in the final research findings. Women's issues have been excluded from research because the straw man's science is a science produced from the perspective of men only whose objectivity is in reality sexism. Thus, traditional empiricists have not obeyed their own rules - they have not been objective *enough*, true objectivity can only be arrived at by eliminating such bias and prejudice and hence by paying equal attention to issues and interests of men *and* women. Feminist empiricists therefore argue that traditional empiricists have failed to live up to their own claims - thus, it is the practice which has been defective, not the method.

Harding has identified three main areas in which feminist empiricism has successfully challenged traditional empiricism. First, it has challenged "the assumption that the social identity of the observer is irrelevant to the 'goodness' of the results of research, asserting that the androcentrism of science is both highly visible and damaging, and that its most fecund origin is in the selection of scientific problems."<sup>39</sup> Second, it has questioned the methodological and sociological norms within science - since they themselves have not been capable of detecting androcentricism and sexism they too must be biased. Third, feminist empiricists recognise the political nature of feminism, and they support the movement's use of politics in its struggle for social change. Hence feminist empiricists disassociate themselves from the ideology that research must always

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<sup>38</sup>Harding 1987:182.

<sup>39</sup>Harding, S. (1986) *The Science Question in Feminism* Open University Press, Milton Keynes p.162.

be kept separate from political interests; instead they recognise that in some cases politics "can increase the objectivity of science."<sup>40</sup> Therefore feminist empiricists should be credited with putting a whole range of issues onto the research agenda which had not hitherto been studied, for example domestic violence, the treatment of women within the criminal justice system and women's imprisonment.<sup>41</sup> Moreover, their recognition of the power-relationship between researched-researcher has led to a move towards different kinds of methods including that of ethnographic research. But, as Smart points out, this move is not specific to feminist research.<sup>42</sup>

A host of important criticisms have been levelled at feminist empiricism starting with the fact that it does not problematize the way men are studied. Since the problems with empiricism are merely those of androcentricism and sexism, the underlying assumption would seem to be that empiricist studies carried out on men are always objective and 'true'. Yet critical criminology has taught us that this is not necessarily so. For example, research findings which indicate that unemployed men commit more crime than middle class men cannot be taken at face value. Such findings would merely indicate that working class crimes are more visible than middle class crimes. Thus, if fraud was as easily detectable as car theft we might well see a very different picture emerging.<sup>43</sup>

Secondly, MacKinnon has argued that by pitching research at the level of equality the underlying assumption will always be that men are the norm:

Gender neutrality is the male standard. The special protection rule is the female standard. Masculinity or maleness is the referent for both.<sup>44</sup>

Smart agrees and adds that "studies of the criminal justice system always compare the treatment of women with men and men remain the standard against which all are judged."<sup>45</sup> This form of 'equality' argument can have unintended consequences since its logical conclusion appears to be that where men's treatment amount to an affront on human rights, as is the case in some of

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<sup>40</sup>Harding 1986:162.

<sup>41</sup>Smart, C. (1990) 'Feminist approaches to criminology or postmodern woman meets atavistic man' in Gelsthorpe & Morris (eds) 1990:77-78.

<sup>42</sup>Smart 1990:77-78.

<sup>43</sup>See for example Box, S. (1983) *Power, Crime and Mystification* Tavistock, London.

<sup>44</sup>MacKinnon, C.A. (1989) *Towards a Feminist Theory of the State* Harvard University Press, Cambridge Massachusetts p.221.

<sup>45</sup>Smart 1990:79.

Britain's antiquated prisons<sup>46</sup>, women too must suffer equally appalling conditions for long periods of time. Cain argues that this happens because studies with equality as its focus "do not enable us to pose the question whether or not even absolutely equal sentences [and conditions] might be unjust."<sup>47</sup> In other words, focusing on issues around equality is very limiting because it does not allow us to ask how the 'male yardstick' against which we are measured, came about in the first place - hence "the fundamental problem remains untouched."<sup>48</sup> We need to remind ourselves that equality does not necessarily equal justice. Instead imposing male standards upon women may result in what Lahey has termed 'equality with a vengeance'.<sup>49</sup> Closely related to the above criticism is Cain's point that using men as the yardstick against which women are measured means that feminist empiricism itself is androcentric in its premise.<sup>50</sup> Smart shares this view:

Basically the equality paradigm always reaffirms the centrality of men. Men continue to constitute the norm, the unproblematic, the natural social actor.<sup>51</sup>

This has the effect of representing men as ideal-types to which women must aspire. The desirability of this ideal-type is not questioned and women are not accepted on their own terms as women, only as someone who must be brought up to 'male standards' as is the case, for example, within employment law where women struggle "to make the grade."<sup>52</sup>

Lastly, feminist empiricism ignores the part which the law plays in maintaining gender relations. The law is not a neutral instrument which everyone has equal access to within a liberal regime:

Law does not stand outside gender relations and adjudicate upon them. Law is part of these relations and is always already gendered in its principles and practices.<sup>53</sup>

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<sup>46</sup>See for example Fitzgerald, M. & Sim, J. (1982) *British Prisons* Blackwell, Oxford.

<sup>47</sup>Cain, M. (1990a) 'Towards Transgression: New Directions in Feminist Criminology' in *International Journal of the Sociology of Law* 1990, 18, pp.2-3.

<sup>48</sup>Cain 1990a:3.

<sup>49</sup>Quoted in Smart 1990:79.

<sup>50</sup>Cain 1990a:2.

<sup>51</sup>Smart 1990:79.

<sup>52</sup>Smart 1990:80.

<sup>53</sup>Smart 1990:80.

Despite these criticisms, it is important to recognise that feminist empiricism has achieved some measure of success as a justificatory strategy. As noted above, it has succeeded in placing a host of new research topics of interest to women on the agenda. It continues to challenge androcentric, sexist and biased research agendas and as such it maintains the tension which it has created within social science. More specifically, this tension serves "to problematize empiricist epistemological assumptions" within science.<sup>54</sup> As such it can lay claim to producing better quality research than that produced by traditional empiricism.

Yet, despite these achievements, feminist empiricism remains the least threatening justificatory strategy because it does not express a desire to change the norms and principles of empiricism itself, it merely states that these principles have not been adhered to *enough* - hence they must be applied more rigorously than ever before. For Harding the result is that feminist empiricism "appears to leave intact much of science's self-understanding of the principles of adequate scientific research."<sup>55</sup> This however, can also be seen to be an advantage:

Feminist empiricism is useful precisely because it stresses the continuities between traditional justifications of scientific research and feminist ones, as these would be understood by social scientists.<sup>56</sup>

At the same time, this is the cause of tension between it and a second justificatory strategy, that of standpointism, which does not accept the epistemological basis and principles of empiricism, but instead has its own and very different starting point.

### The Feminist Standpoint.

The feminist standpoint is a position which can only be achieved through experience - it therefore differs from a perspective in the conventional sense. It is through the feminist experience of struggle against male oppression that new knowledge is created:

To achieve a feminist standpoint one must engage in the intellectual and political struggle necessary to see nature and social life from the point of view of that disdained activity which produces women's social experiences

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<sup>54</sup>Harding 1987:184.

<sup>55</sup>Harding 1987:183.

<sup>56</sup>Harding 1987:186.

instead of from the partial and perverse perspective available from the 'ruling gender' experience of men.<sup>57</sup>

The traditional female activity of housework will serve as an example. Although this activity is gradually receiving recognition as 'real work' by men, standpoint feminists argue that it cannot be analysed according to male definitions of work. This is because the male experience of work differs sharply from the female experience:

'Women's work' relieves men of the need to take care of their bodies and of the local places where men exist - their environments. It frees men to immerse themselves in the world of the abstract concepts.<sup>58</sup>

Hence women's work "articulates and shapes men's concepts of the world." The better women are at performing their work the less visible it becomes until men can "see as real only what corresponds to their abstracted mental world." It is in this context that "women's actual experiences of our own activities are incomprehensible and inexpressible within the distorted abstractions of men's conceptual schemes."<sup>59</sup> Thus, to avoid partial and distorted understandings of women's experience of housework it "should be understood through concepts that arise from women's experience of it, not through concepts selected to account for men's experience of *their* work."<sup>60</sup>

In sum, both where housework is concerned and also more generally, it is women's experiences of oppression which, coupled with feminist theory, create and provide the potential "for more complete and less distorted knowledge claims than do men's."<sup>61</sup> But one cannot merely claim to speak from a feminist standpoint - it requires an intellectual and political commitment to do so as Harding's definition above indicates. Thus, in sharp contrast to empiricism it makes explicit that all knowledge is site specific. A site is shaped by the various relationships in which we are involved and it is at the "intersection of these relationships in us" that we find "the site from which we produce knowledge."<sup>62</sup> The values and politics held by someone speaking from a particular site is openly proclaimed and acknowledged - there is no attempt or desire to strive for so-called

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<sup>57</sup>Harding 1987:185.

<sup>58</sup>Harding, S. (1989) 'Feminist Justificatory Strategies' in Garry, A. & Pearsall, M. (eds) (1989) *Women, Knowledge, and Reality* Routledge, London p.194.

<sup>59</sup>Harding 1989:195.

<sup>60</sup>Harding 1989:195.

<sup>61</sup>Harding 1987:185.

<sup>62</sup>Cain 1990:132.



objective and neutral knowledge - instead knowledge arises from the deliberate and direct engagement with feminist politics and values.<sup>63</sup> These features ensure that the feminist standpoint is particularly well suited to giving voice to the oppressed - it is a method of creating knowledge from 'below', and thus establishing an alternative truth to that expounded by those in authority. Smart has provided an example of this in her reference to the work of Rape Crisis Centres which she argues, "has been vital in proffering an alternative 'truth' about rape and women's experience of the criminal justice system."<sup>64</sup>

Another important feature of standpoint feminism is that it is well equipped for giving voice to hitherto unnamed experiences, experiences which are already in existence but cannot easily be identified since no discourses have yet been created around them. Standpoint feminist researchers can help to identify and name such experiences by ensuring they share the same site as the researched:

to produce knowledge for a group of people it is necessary to share their site - to convert your own site into a chosen *standpoint* for the production of knowledge.<sup>65</sup>

As Cain points out, a white researcher cannot become a black teenager, but she can ensure she is involved in "a group or agency which more authentically speaks with their voice."<sup>66</sup> This is why the feminist standpoint is a position which has to be worked on and reassessed continuously. Being a woman and/or a feminist does not automatically ensure one can claim to speak *for* women. Instead the researcher has to be committed to a specific standpoint "to choose to speak as feminists," to "make an effortful choice to align themselves with other women" which may well mean they need to change their relationships.<sup>67</sup> This includes being what Cain has termed 'personally reflexive' which involves presenting "a description of our changing relationships with the researched population based on a feminist common (or co woman) sense." Moreover, standpoint feminists must also engage in 'theoretical reflexivity' as part of the process of identifying a standpoint and producing feminist knowledge:

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<sup>63</sup>Smart 1990:80.

<sup>64</sup>Smart 1990:80.

<sup>65</sup>Cain, M. (1993) 'Foucault, feminism and feeling: what Foucault can and cannot contribute to feminist epistemology' in Ramazanoglu, C. (ed) (1993) *Up Against Foucault* Routledge, London p.88.

<sup>66</sup>Cain 1993:88.

<sup>67</sup>Cain 1990:132.

Theoretical reflexivity means thinking about oneself in terms of a theory and understanding theoretically the site one finds oneself in. For us this means understanding theoretically how being a professional criminologist articulates both with personal and particular relationships, as well as with relationships of more general scope such as class, race, age and gender.<sup>68</sup>

Even after taking all of the above into account standpoint feminists still acknowledge that the knowledge produced will be influenced by the "relational and historical site in the social world" which the researcher occupies - hence research will always be a socially constructed product. This is unavoidable and applies to all forms of research whether based in natural or social science. As argued by Stanley and Wise, "the presence of the researcher as an ordinary human being with the usual complement of human attributes, cannot be avoided." It is therefore better to devise a research method which utilises this presence, than to pretend it does not exist.<sup>69</sup> Standpoint feminism is particularly well suited to make the researcher's consciousness explicit; moreover, it is precisely this feature which ensures the production of more accurate and hence better quality knowledge, since it has eliminated the male distortion of the female experience of everyday reality.

#### Critiques of the Feminist Standpoint.

A number of critiques have been directed at the feminist standpoint. First, standpointism has been accused of essentialism. For example Hartsock argues that women are better placed to "overcome the dualism between truth and falsity, subject and object, controller and controlled" precisely because of their subordinate position, and because, unlike men, they have access to two worlds - that of the oppressed and the oppressor. This can be interpreted as meaning that only women can have access to the feminist standpoint. Cain's response to the charge of essentialism is that being a woman does not *automatically* mean being a feminist, nor is it one of the qualifications for a feminist standpoint. Instead, because knowledge is site specific, anyone, man or woman, wishing to generate specific knowledge, can commit themselves to move to the appropriate site. It is not a biological given which is required, but an agreement - a commitment to speak as a feminist:

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<sup>68</sup>Cain 1990:133.

<sup>69</sup>Stanley & Wise 1983:150.

A standpoint is constituted by politics, theory, theoretical reflexivity and choice (of site), not biology.<sup>70</sup>

Hence, far from being essentialist, standpoint feminism is actually unique in explaining "how a man can work from a feminist standpoint." For example, so-called 'house-husbands', if going through similar experiences as those of women engaged in domestic labour, and if prepared to commit themselves politically, can qualify to speak from a feminist standpoint. Hartsock's version of standpoint feminism also seems to imply that as women's oppression leads to their 'dual vision' which in turn leads to the production of better quality knowledge, when that oppression ceases, women will produce knowledge of inferior quality. But Cain maintains that this can only happen if women refuse any participation in child-rearing and the production of use values and aim to become more like 'untransformed men'. If, on the other hand, men and women share child-rearing and the production of use values "women's research will stay the same and that of men will improve."<sup>71</sup>

Second, and related to the issue of essentialism, an exclusive focus on the world of women can be interpreted as a reinforcement of the male view that all women are the same. The standpoint defence to this charge is that exactly the opposite is true since this stance is better suited than any other to recognise that identities are not fixed and the process of moving from site to site allows for the acknowledgement of fractured identities as well as identifying what unites the occupants of a particular site. For example, black women do not all share identical problems. Their blackness will ensure they have different realities to white women - but that blackness will not automatically unite all black women any more than all white women are united by their colour. Instead issues of femaleness, class and colour all play a part in shaping women's reality, sometimes causing the reality of white and black women to have more in common than those of women of the same colour.<sup>72</sup> This is why theory is so important in identifying standpoints:

It [theory] enables us to abstract from the myriad differences between us without denying them, and to reunite around important samenesses. In

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<sup>70</sup>Cain 1990:133-4.

<sup>71</sup>Cain 1990:127.

<sup>72</sup>Agozino, O. (1994) 'Committed Objectivity: Research on Black Women by a Black Man' p.3. Unpublished Paper. See also Hartsock, N. (1987) 'Foucault on Power: A Theory for Women?' in Nicholson, L.J. (ed) (1990) *Feminism/Postmodernism* Routledge, London, where she argues that "factors such as racial or cultural differences" which divide women may also unite women with men. (p.158).

that complex process our theory changes, we redefine it and it gets better. It is only when we try to think more theoretically that we can work out where the fractures that matter are and why and when they matter. It is hard work. But the alternative is to base our alliances on essentialist (common-sense, ideological) identifications of sameness and difference or on a political whimsy.<sup>73</sup>

Thirdly, Smart has pointed out that standpoint feminism fails to address the issue of masculinity.<sup>74</sup> This criticism is to some extent a fair one although it should be noted that as early as 1983 Stanley and Wise stipulated the necessity of studying men in their early formulations of a feminist standpoint. To that we can add that the initial development of a feminist standpoint where previously none existed, may well be a necessary and crucial foundation for women as they embark on the process of understanding the world from their standpoint for the very first time.<sup>75</sup> A logical next step may be to include the study of masculinity whilst at the same time maintaining the cornerstones of standpoint feminism. This is quite possible to do because standpoint feminism is not an immutable or completed epistemology, instead it is *transitional*.<sup>76</sup> This transitional feature of both standpoint feminism and feminist empiricism should be regarded very positively since this is what maintains tension within these epistemologies, thus forcing them periodically to take stock of change which they are a part. While this means that feminist epistemologies have to fight for hegemony within the scientific world, it also ensures that paternalistic and androcentric epistemologies no longer hold unquestioned authority within science - they too have to justify themselves as a consequence of the development of feminist epistemologies.

### Post-Modern Feminism.

A third and final feminist epistemological approach is that of post-modern feminism. Post-modern feminism has developed as a critical response to grand and totalising theories and narratives which, in the early days of second wave feminism, attempted to explain *all* women's oppression by referring to a core essence of womanhood shared by all and therefore uniting us.<sup>77</sup> Post-modern feminism points to the real differences which exist between women according to a host of factors including those of class, race, sexual orientation, geographical location, religion, age and able-bodiedness. It therefore focuses on fractured

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<sup>73</sup>Cain 1990:134.

<sup>74</sup>Smart 1990:81.

<sup>75</sup>Harding 1987:189.

<sup>76</sup>Harding 1987:186.

<sup>77</sup>Smart 1990:82.

subjectivities and hence throws into dispute the very basis of feminist empiricism and standpoint feminism - the belief that there can be one feminist epistemological strategy which "through reason, observation, and progressive politics" will reveal a more authentic 'self' - and - through "feminist struggles can tell 'one true story' about 'the world'."<sup>78</sup> Thus, unlike the other two feminist epistemologies, post-modern feminism does not concern itself with establishing a feminist truth but deconstructs 'truths' and analyses "the power effects which claims to truth entail."<sup>79</sup> If we use the study of rape as an example, we find that while many feminist studies on this subject concentrate on analysing it in terms of power, domination, control and misogyny<sup>80</sup>, the post-modern feminist will focus on a deconstruction of the body - that is:

... how the vagina comes to be coded - and experienced - as a place of emptiness and vulnerability, the penis as a weapon, and intercourse as violation ...<sup>81</sup>

Thus, post-modern feminism is not concerned with creating more objective and accurate knowledge - and does not believe there can ever be just one feminist science or one epistemology; instead it focuses on knowledge itself as power "and that power is ubiquitous."<sup>82</sup> However, despite providing a strong challenge to what has become established European modernist thinking following the Enlightenment, post-modernism has so far failed to propose an alternative strategy for social change and offers little or no guidance for marginalised and oppressed groups who wish to understand their oppression in order to implement changes for the purpose of creating a more just society.<sup>83</sup>

### Conclusion.

When discussing methods and methodologies the issue of epistemologies is an absolutely crucial one since this is what informs any given research project. Epistemology is particularly fundamental to feminism, for as Stanley and Wise argue, "it is around the constitution of feminist epistemology that feminism can

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<sup>78</sup>Harding 1987:188.

<sup>79</sup>Smart 1990:82.

<sup>80</sup>See for example Brownmiller, S. (1975) *Against Our Will* Bantam Books, New York; Dworkin, A. (1988) *Intercourse* Arrow Books, London; Scully, D. (1991) *Understanding Sexual Violence* HarperCollins, London.

<sup>81</sup>Woodhull (1988) quoted in Smart 1990:83. Woodhull's work is further discussed in Chapter Five.

<sup>82</sup>Smart 1990:82.

<sup>83</sup>Hartsock 1987:159-160.

most directly and far-reachingly challenge non-feminist frameworks and ways of working."<sup>84</sup> Stanley and Wise identify a number of key areas in which "precepts drawn from feminist epistemology" should be integrated. These include:

in the researcher/researched relationship; in emotion as an aspect of the research process which, like any other aspect, can be analytically interrogated; in critically unpacking conceptualizations of 'objectivity' and 'subjectivity' as binaries or dichotomies; in the 'intellectual autobiography' of researchers, that is, in the processes by which 'understanding' and 'conclusions' are reached; in the existence and management of the different 'realities' or versions held by researchers and researched; and in issues surrounding authority and power in research, but also and perhaps more crucially in written representations of research.<sup>85</sup>

In this chapter I have outlined three feminist epistemologies which set out to do this in a variety of ways. Feminist empiricism defended the use of politically guided research by pointing to the way in which movements for social liberation "make it possible for people to see the world in an enlarged perspective because they remove the covers and blinders that obscure knowledge and observation."<sup>86</sup> For the women's movement this has meant a large increase in the numbers of feminist scientists who will counteract existing social biases and androcentricism. This is how feminist empiricism can justify its claim to producing research which is less biased and more objective and accurate. Yet there is tension within the feminist empiricist perspective because it attempts to fit feminist research into existing scientific methods and norms even though the social biases to which they refer would not have been detected without feminist research.<sup>87</sup> Indeed, it can be argued it is these methods which are responsible for sexism and social biases within academic work in the first place. Thus, although feminist empiricism has challenged a host of issues within traditional empiricism such as: the researcher's ability to be socially anonymous; that research findings are unaffected by the origin of the research topic; that objectivity is maximised within a method that claims to be value-free, feminist empiricism itself is not able to resolve these challenges because of its commitment to existing empiricist methods.<sup>88</sup> Instead it creates "a misfit, an incoherence, between the substantive

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<sup>84</sup>Stanley & Wise 1993:189.

<sup>85</sup>Stanley & Wise 1993:189.

<sup>86</sup>Millman, M. & Kanter, R. (1975) "'Introduction to Another Voice": Feminist Perspectives on Social Life and Social Science' in Harding 1987:30.

<sup>87</sup>Harding 1989:193.

<sup>88</sup>Harding 1989:193.

scientific claims of feminist-guided research and its own strategies to justify these claims."<sup>89</sup>

Standpoint feminists recognise these tensions and have therefore argued that women's experiences cannot be analysed through "the distorted abstractions of men's conceptual schemes."<sup>90</sup> Instead a feminist standpoint, as revised by Cain, and because it sees new knowledge being created out of struggle, has much to offer. In particular, standpoint feminists can "evade dominant knowledges" and "generate new knowledges from repressed common senses." They can also share decisions about the researched *with* the researched and in this way become accountable to them. They can furthermore share the newly generated knowledge with those who share the same site. This creates the possibility of making alliances which in turn may lead to important social and legal changes.<sup>91</sup>

At the same time post-modern feminists have taught theorists to be wary of the under-lying assumption of early standpoint feminism (and feminist empiricism) "that a single and unseamed social as well as physical reality exists 'out there', and that particular kinds of persons (trained, experts, scientists) have a greater degree of access to knowledge of this."<sup>92</sup> There is no doubt that post-modern feminism has made an important contribution to feminist epistemology by its insistence on turning questions around as in the example of rape above, and thus raising important issues of how power relationships operate - not just who holds that power. Post-modern feminism has also been an important tool for identifying a 'politics of difference' as opposed to merely stressing what women have in common. Yet, post-modern feminism presents severe dangers for feminist politics because in its quest to identify "endless difference" it becomes increasingly unlikely that it would allow *any* "determinate generalisations."<sup>93</sup> The absence of such generalisations would result in the destruction of the category of gender, the consequences being a descent into relativism as well as "an ontology of abstract individualism and an abandonment of theory."<sup>94</sup> Given these "potentially anti-political and anti-feminist implications of postmodernism ... we should insist that the theoretical and political dilemmas of difference are

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<sup>89</sup>Harding 1989:193-4.

<sup>90</sup>Harding 1989:195.

<sup>91</sup>Cain 1990:134-5.

<sup>92</sup>Stanley & Wise 1993:189.

<sup>93</sup>Nicholson, L.J. (1990) 'Introduction' in Nicholson 1990:8.

<sup>94</sup>Nicholson 1990:8; 9.

well worth pondering."<sup>95</sup> That is to say, we should question the usefulness and value of the quest for 'endless difference' if this quest cannot be used to facilitate social change, a goal which is at the heart of feminism. Bearing these points in mind, Cain's revised version of standpoint feminism provides a stronger foundation on which to build a feminist epistemology because she is able to both acknowledge the existence of difference amongst women as well as utilising such difference for political purposes:

What is important is to reflect upon a uniquely fractured site, reclaim it as a standpoint for knowledge production and political work and use this theoretical reflection to understand the relationships with other sites and standpoints.<sup>96</sup>

Harding too defends standpoint feminism by pointing out that it is too early for women to give up what they have never had - that is "the desire to know and understand the world from the standpoint of their experience *for the first time*." Should feminists also "be willing to give up the political benefits which accrue from believing that we are producing a new, less biased, more accurate, social science?"<sup>97</sup> This is echoed by Hartsock who writes:

Why is it that just at the moment when so many of us who have been silenced begin to demand to right to name ourselves, to act as subjects rather than objects of history that just then the concept of subjecthood becomes problematic? Just when we are forming our own theories about the world, uncertainty emerges about whether the world can be theorised. Just when we are talking about the changes we want, ideas of progress and the possibility of systematically and rationally organising human society become dubious and suspect. Why is it only now that critiques are made of the will to power inherent in the effort to create theory?<sup>98</sup>

It is appropriate here to remember that post-modern feminists themselves are members of a privileged group with greater access to knowledge, who have benefited from the very knowledge which has been produced through struggle:

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<sup>95</sup>Stefano, C.D. (1990) 'Dilemmas of Difference: Feminism, Modernity, and Postmodernism' in Nicholson 1990:77; 78.

<sup>96</sup>Cain 1990:135.

<sup>97</sup>Harding 1987:189; 188. Emphasis in the original. See also Crowley, H. & Himmelweit, S. (eds) (1992) *Knowing Women* Polity and Open University Press Cambridge and Milton Keynes, who write that while post-modernists believe "all attempts to impose a conceptual structure on the world" are exercises in power and should therefore be given up, standpoint feminists respond that "this is to abdicate all responsibility for talking about the world as it now is; having developed the ability to criticize the male-centredness of mainstream theory, it is then nonsense *not* to claim that our own theories are superior. To do so is a political as well as a theoretical responsibility." (p.336 emphasis in the original).

<sup>98</sup>Hartsock 1987:163-4.



perhaps only those who have had access to the benefits of the Enlightenment can "give up" those benefits.<sup>99</sup>

Ultimately, there can never be one correct epistemology from which we must not deviate. Reality, as experienced by individual social agents, is full of contradictions and all feminist researchers will at some time use ideas and concepts from all three of the epistemologies outlined here.<sup>100</sup> Indeed it is unlikely that it would be desirable for one epistemology to achieve hegemony over all others, after all, feminists have fought for many decades against male hegemony within research and this has taught us to wonder just how many different kinds of knowledges are suppressed when only one theory of knowledge is considered legitimate. Moreover, while not necessarily agreeing with other feminist positions we can show respect for the diversity which a variety of perspectives invariably bring. After all, it is as a result of the contributions from all three perspectives that traditional social science finds itself in a position where *it* too must justify its research findings. No longer do we accept terms such as objectivity, value-freedom, neutrality within social or natural science uncritically. Instead the politics of standpoint feminism, with its emphasis on reflexive methodology, points the way forward for future research and the development of a more precise analysis of social reality.

In Chapters Six, Seven and Eight I intend to demonstrate that the feminist standpoint epistemological framework is also suitable for excavating the biographies of women of the past for the purpose of creating an alternative truth about their lives, their crimes and their deaths. Before doing so, however, I analyse in the following three chapters the broader historical and theoretical frameworks which have been utilised to explain punishment in general and women's punishment in particular.

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<sup>99</sup>Harding 1987:189.

<sup>100</sup>See Harding's discussion of ambivalence and tension between modernists and post-modernists. She argues that "principled ambivalence ... [which is] self-conscious and theoretically articulated" is desirable because it reflects "different, sometimes conflicting, legitimate political and theoretical needs of women today." (Harding, S. (1990) 'Feminism, Science, and the Anti-Enlightenment Critiques' in Nicholson 1990:86). See also Harding, S. (1992) 'The Instability of the Analytical Categories of Feminist Theory' in Crowley, H. & Himmelweit, S. (eds) (1992) *Knowing Women* Polity and Open University Press Cambridge and Milton Keynes, where she writes of the feminist standpoint and post-modern feminism: "There are good reasons to think of both as imperfect and converging tendencies toward a post-modernist reality, but there are also good reasons to nourish the tendencies in each which conflict." (p.345).

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## Chapter Three

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### From Antiquity to Modernity: A Social History of Capital Punishment and Gender.

The earliest records of capital punishment taking place in England stem from 450 BC when the custom was to throw the condemned into a quagmire.<sup>1</sup> Other early recorded executions include one from the year 695 AD which was for theft. Potter writes that the purpose of this execution was to serve as an example, "to discourage the others."<sup>2</sup> From Anglo-Saxon times onwards the most common method of execution was by hanging. The King reserved the right to choose specific forms of death and in addition to the gallows, beheading, burning, drowning, stoning and casting from rocks were also implemented. The Middle Ages saw a steady increase in the numbers of executions taking place each year, with torture accompanying the punishment in the vast majority of cases. Capital offences included "murder, manslaughter, arson, highway robbery, burglary and larceny," and in 1382 "the death penalty was extended to heretics under the writ *de heretico comburendo*..."<sup>3</sup> The cheapness of human life is illustrated by a case during the reign of Edward I, when the mayor and the porter of Exeter were executed for failing to shut the city gate in time to prevent the escape of a murderer.<sup>4</sup> The sheer numbers put to death should also be noted. For example, during the 38 year reign of Henry VIII it has been estimated that 72,000 people were executed.<sup>5</sup> Byrne has calculated that this is equivalent to 20,000 people being executed per year in 20th century Britain, taking into account its larger population.<sup>6</sup>

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<sup>1</sup>Laurence, J. (1932) *A History of Capital Punishment* Kennikat Press, N.Y./London p.2.

<sup>2</sup>Potter, H. (1993) *Hanging in Judgment* SCM Press, London, p.3.

<sup>3</sup>Laurence 1932:5.

<sup>4</sup>Laurence 1932:6.

<sup>5</sup>Holinshed, quoting Romilly, House of Commons Debate, 9th February 1810 in Calvert, E.R. (1927) *Capital Punishment in the Twentieth Century* C.P. Putnam's Sons, London, p.4. This estimate was originally made by David Hume in his *History of England* and is quoted in *Select Committee on Capital Punishment Report 1931* His Majesty's Stationery Office, London p.vii.

<sup>6</sup>Byrne, R. (1992) *Prisons and Punishments of London* Grafton London, p.185; Potter 1993:3. Sharpe argues that a figure of 70,000 must be "a gross exaggeration, but it might well represent some folk-memory of what had been a real increase in judicial severity against convicted felons." (Sharpe, J.A. (1990) *Judicial*

While men were hanged, drawn and quartered for high treason, women were burned for the same crime. Some writers have argued this was done to protect the woman's modesty: "For as decency due to the sex forbids the exposing and publicly mangling their bodies, their sentence is to be drawn to the gallows, and there to be burnt alive."<sup>7</sup> Others however, have disagreed with modesty being an issue in these cases and have instead argued that:

Such judicial ferocity was directed wholly against women offenders. Many complex sociological motives were involved in this inhuman bias, which, no doubt, was influenced as well by the conception of woman as a vessel of sin.<sup>8</sup>

O'Donnell's scepticism over the issue of decency may be well founded if the case of Mary Blandy, who was hanged for the murder of her father in 1752, is representative of women's treatment after their execution. As she climbed the ladder of the scaffold Mary said: "Gentlemen, don't hang me high for the sake of decency."<sup>9</sup> Her plea was to no avail:

In about half an hour the body was cut down, and carried thro' the croud [sic] upon the shoulders of a man with her legs exposed very indecently, for two or three hundred yards, to a neighbouring house, where it was put into a coffin ...<sup>10</sup>

Class as well as gender ensured differentiation in punishment. Beheading, for example, was considered "an honourable mode of death", hence was reserved for higher classes in the 13th century and onwards, where the axe was "for gentlemen and the rope for the common herd."<sup>11</sup> While the vast majority of those burned at the stake were women, ideological and religious offences were punishable by burning for both sexes. For those who could afford it a fee could be paid to the hangman for strangling the prisoner before the flames could reach him/her. Faith reports however, that this form of 'leniency' "happened only rarely in practice."<sup>12</sup> Beattie agrees that while there was a widely held belief that

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*Punishment in England* Faber & Faber, London p.29. Conversely, Gatrell estimates that in the century 1530-1630, 75,000 people were executed - the highest number ever (Gatrell 1994:7).

<sup>7</sup>Laurence 1932:9.

<sup>8</sup>O'Donnell, B. (1956) *Should Women Hang?* W.H. Allen, London, p.23.

<sup>9</sup>Gonda, C. (1992) "'Exactly Them Words': Histories of a Murderous Daughter' in Gonda, C. (ed) (1992) *Tea & Leg-Irons*, Open Letters London, p.79; MacNalty, A.S. (1929) *A Book of Crimes* Elkin Mathews & Marrot Ltd London p.197.

<sup>10</sup>Gonda 1992:80.

<sup>11</sup>Laurence 1932:6.

<sup>12</sup>Faith, K. (1993) *Unruly Women: The Politics of Confinement & Resistance*, Press Gang Publishers, Vancouver, p.32.

both men and women were strangled before dismembering and burning took place, "these were limited benefits, and not all such merciful deliverances were in any case successfully managed."<sup>13</sup>

From 1350 when the statute *Pro Clero* was implemented, until the 16th century, men who succeeded in pleading 'benefit of clergy' could avoid death altogether. This statute greatly benefited the educated class since a defendant's ability to read was 'proof' that he was a clerk of holy orders. The proof involved reading a verse from the Bible<sup>14</sup>, and if the evidence was accepted, a 'clerk' could expect to have the death penalty replaced by a one year prison sentence, "in the custody of the local bishop rather than in a common gaol."<sup>15</sup> The benefit of the clergy plea was not made available to women until 1623, and then only in a very limited form. Another 70 years were to pass before women could plead on equal footing with men.<sup>16</sup> By this time (1692) the plea had been withdrawn in cases of serious offences, hence excluded most capital cases anyway. Therefore the 'benefit of clergy' plea played a minimum role in saving women from the gallows.<sup>17</sup>

Both men and women suffered extraordinary cruel deaths, often for acts which are no longer criminalised. Margaret Clitheroe, for example, was charged with harbouring priests in 1586, which was then a capital offence. She "preferred to remain 'mute'" [refused to plead], accordingly, her punishment was to lie down on the cell floor with her arms and legs tied to posts and a heavy door laid over her:

After this they laid weight upon her which when she first felt she said, 'Jesu! Jesu! Jesu! have mercy upon me!' which were the last words she was heard to speak. She was dying in one quarter of an hour. A sharp stone, as much as a man's fist, was put under her back: upon her was laid to the quantity of seven or eight hundred weight at the least, which, breaking her ribs, caused them to burst forth of the skin.<sup>18</sup>

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<sup>13</sup>Beattie, J.M. (1986) *Crime and the Courts in England 1660-1800*, Clarendon Press, Oxford p.451.

<sup>14</sup>The first verse of Psalm 51, which consequently came to be known as the 'neck' verse! (Potter 1993:3).

<sup>15</sup>Byrne, 1992:187.

<sup>16</sup>Beattie 1986:142.

<sup>17</sup>Beattie 1986:451.

<sup>18</sup>Ancient document quoted in O'Donnell 1956:17-18. Some prisoners refused to plead because by doing so they prevented the confiscation of their estates. Pressing prisoners slowly to death was often employed as a means of forcing them to plead (Calvert, E.R. (1927) *Capital Punishment in the Twentieth Century* G.P. Putnam's Sons, London, pp.4-5).

Even when the punishment was death by hanging the sheer incompetence of those carrying out the sentence could give rise to scenes of extraordinary cruelty at the gallows. Ann Green from Oxford, was sentenced to death for infanticide in 1650, but miraculously survived her treatment on the scaffold:

She was turned off the ladder hanging by the neck for the space of almost half an houre, some of her friends meantime thumping on her breasts, others hanging with all their weight upon her legs, sometimes lifting her up and then pulling her doune again with a sudden jerk, thereby the sooner to dispatch her out of her pain: insomuch that the Under Sheriff fearing lest thereby they should break the rope forbad them to do so any longer.

When Ann's friends assumed her to be dead they placed her in a coffin and made their way to the funeral destination at which point Ann once again began to show signs of life:

A lusty fellow that stood by (thinking to do an act of charitie in ridding her of the reliques of a painful life) stamped several times on her breast and stomach with all the force he could.<sup>19</sup>

Women were being burned at the stake as late as 1783,<sup>20</sup> and the equivalent punishment for men - being hanged, drawn and quartered - was legal until 1814 when it was reduced to hanging with decapitation after death. This punishment remained legal until 1870, although decapitation did not take place after 1820.<sup>21</sup>

The fact that literate defendants stood a good chance of avoiding the noose by pleading 'benefit of clergy' contributed towards ensuring that impoverished and powerless people formed the vast majority of those executed. The real possibility of an untimely death for criminals within this social stratum must therefore have loomed large in their minds. Yet there is no evidence to suggest that there was disagreement within society about capital punishment itself. <sup>22</sup> Beattie argues it was justified on both utilitarian and religious grounds. In the first instance society had a right as well as a duty to rid itself of dangerous individuals and

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<sup>19</sup>'News From The Dead, or a true and exact narration of the miraculous deliverance of Ann Green, who, being executed at Oxford, December 14 1650, afterwards revived, and by the care of certain Physitians [sic] there, is now perfectly recovered' (1651) quoted in O'Donnell 1956:13-4. Thankfully, Ann was allowed her freedom after her ordeal.

<sup>20</sup>Laurence 1932:9.

<sup>21</sup>Byrne 1992:185.

<sup>22</sup>See for example Sharpe 1990:18 where he writes that issues around crime and punishment did not become a matter for public debate until the middle of the 18th century.

capital punishment was an expedient way of achieving this goal. Secondly, religious authority occupied a central part of pre-industrial culture, with biblical commands being utilised to authorise "capital punishment for offences against the law of nature that were universally condemned, such as murder."<sup>23</sup> This authority was epitomised in the pivotal role which the ordinary, and later, the prison chaplain played in the proceedings leading up to the execution. Put at its simplest the ordinary could, and often did, withhold sacrament if a prisoner refused to confess.<sup>24</sup> The confession was important for two reasons. Potter writes that "the 'main business of the Ordinary [was] to break the spirits of capital convicts, so that they [might] make no physical resistance to the hangman.'"<sup>25</sup> More importantly, however, the state was well aware of the role a confession played in lending legitimacy to an execution and the chaplain's role in securing a confession was a crucial part in the public proceedings leading up to the hanging:

'the processional to the gallows and the execution itself were supposed to be a carefully stage-managed theatre of guilt in which the offender and the parson acted out a drama of exhortation, confession and repentance before an awed and approving crowd.' The scaffold was both an altar and a stage.<sup>26</sup>

In this way public executions served a double purpose: individuals who were considered to be particularly wicked or dangerous were disposed of; at the same time they also "demonstrated to the broad ranks of the laboring poor the ultimate consequences of disobedience and immoral habits and law breaking."<sup>27</sup> Moreover, it is worth noting that while chaplains were supposedly servants of God whose job it was to attend to the spiritual needs of prisoners, men of the cloth who colluded in and encouraged what often appeared to be stage-managed 'confessions' and exhortations, also served a second master, the state.<sup>28</sup> Thus Potter writes that in the "varied means of caring for the condemned the interests of state and church coincided exactly."<sup>29</sup> At the same time Sharpe has made the important point that public executions were not "an unchanging, static phenomenon" throughout the different centuries in which they were enforced. Thus, he found no evidence that felons were expected to make dramatic 'last dying

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<sup>23</sup>Beattie, 1986:453.

<sup>24</sup>Linebaugh, P. (1977) 'The Ordinary of Newgate and His Account' in Cockburn, J.S. (ed) (1977) *Crime in England 1550-1800* Methuen, London p.260.

<sup>25</sup>Potter 1993:18.

<sup>26</sup>Ignatieff 1978:21 quoted in Potter 1993:20.

<sup>27</sup>Beattie 1986:455.

<sup>28</sup>Potter 1993:21-22.

<sup>29</sup>Potter 1993:29.

speeches' prior to the 16th century.<sup>30</sup> But from the Tudor period and throughout the 17th century the 'last dying speech' became an important feature and ritual at public executions. The condemned were expected to make public their state of penitence and contrition, declaring the fairness of the legal system and their willingness to die, freely acknowledging that they deserved their punishment.<sup>31</sup> The vast majority of prisoners appear to have fully cooperated in this ceremony which in some cases would begin long before the actual execution. Elizabeth Caldwell, for example, "awaiting execution in Chester gaol, saw up to three hundred visitors a day":

"and such as she thought were viciously given, she gave them good admonitions, wishing that her fall might be an example unto them".<sup>32</sup>

Such speeches would have been of great benefit to the State, legitimising both capital punishment as well as the nature of 17th century secular and religious authority. That the state was anxious that even the most lowly and poor criminals demonstrate their support for and obedience to the established authority, indicates to Sharpe an acute concern about order. A state without a police force and therefore with very limited powers of physical coercion would have to rely heavily on ideological control:

Civil order depended, to a much greater extent than in the bureaucratized societies of a later age, on the effective internalization of obedience, the external sanctions being so often unreliable.<sup>33</sup>

This was particularly true of the 17th century, an era where the concept of 'absolute obedience to the King' was being questioned and the authority of the Church over the common people was weakening. It is within this context that Sharpe regards the public execution as the state's principal method of exercising power. Thus:

public executions were not merely displays of brutality, but rather attempts by the authorities to exert ideological control, to reassert certain values of obedience and conformity. <sup>34</sup>

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<sup>30</sup>Sharpe, J.A. (1985) "'Last Dying Speeches': Religion, Ideology and Public Execution in Seventeenth-Century England', in *Past and Present* 107, 1985, p.165.

<sup>31</sup>Sharpe 1985:152.

<sup>32</sup>Quoted in Sharpe 1985:152.

<sup>33</sup>Mervyn James (1978) quoted in Sharpe 1985:158-9.

<sup>34</sup>Sharpe 1985:158.

State and Church authorities could not count on cooperation from every condemned prisoner, and Hannah Blay, a prostitute who was hanged in 1668 is a good example of someone who refused to conform:

When urged to repent by the clergymen who visited her in prison, "she would laugh at them, and reply in some such language as she had learned in the devil's school, with which she was well stored". Her defiance continued to the gallows, where, we are told, "she ended her wicked life by a shameful death, without the least signs of repentance for her abominable whoredomes and wickedness."<sup>35</sup>

In the main however, the condemned accepted the set norms and values of their culture and era which involved not only notions of 'dying good' and dying bravely, but also the acceptance of a "doctrine of absolute obedience." This acceptance crossed class boundaries, for in pre-industrial England it was not uncommon for members of the ruling elite to be executed, usually as a result of treason charges.<sup>36</sup> As England entered the 18th century with its accompanying 'Bloody Code' the anxiety over sinfulness, disobedience and disorder had been replaced by an overwhelming concern for the defence of property, and while the clergyman was still an important figure at the foot of the scaffold, the public execution itself "was becoming more of an embodiment of the secular power."<sup>37</sup>

#### Gender Specific Crimes in Pre-Industrial England and Wales.

Certain crimes in English pre-industrial society were gender specific and applied to women only. Scolding, for instance, although not a capital offence, provides an important example, because it illustrates how the behaviour of both sexes was circumscribed.<sup>38</sup> Scolding was treated as a criminal offence, tried in a court of law until the mid-18th century and involved a "woman who criticized her husband, who bossed him, who insulted him, or who in any way showed her rejection of his authority."<sup>39</sup> Her punishment would take the form of public humiliation such as being locked into the pillory, being lashed, chained and/or whipped in public, wearing the 'scold's bridle', "a metal apparatus which fit (sic) over the head and into the mouth, with sharp points that cut into the woman's tongue if she attempted to speak."<sup>40</sup> At the same time, the husband had failed to

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<sup>35</sup>Quoted in Sharpe 1985:155.

<sup>36</sup>Sharpe 1985:163.

<sup>37</sup>Sharpe 1985:165.

<sup>38</sup>Faith, 1993:30.

<sup>39</sup>Faith 1993:29.

<sup>40</sup>Faith 1993:29-30.



fulfil his gender role - being unsuccessful in enforcing his authority over her - ensuring that she be a submissive and dutiful wife, obeying him at all times. Hence, he too could expect to suffer public humiliation and ridicule such as mocking and taunting. In the words of Faith:

Just as women were being trained to be passive so were men being trained to be authoritarian.

In 1650 adultery became a capital offence for women only.<sup>41</sup> Men were not punished for adultery, instead the emphasis was upon humiliating and ridiculing those whose wives had strayed:

The cuckolded husband was publicly shamed by the placement of a ram's horns over his door, symbolizing his failure to hold on to his wife.<sup>42</sup>

If a woman killed her husband she was guilty of *petit treason* for she had committed the treasonous act of killing her lord and master:

To premeditate the murder of one's husband was an aggravated form of homicide, an affront to hierarchical male authority as the foundation of the state and social order. The guilty woman was a traitor to gendered power relations and thus a threat to the male-dominant status quo.<sup>43</sup>

One of the most horrific and gruesome executions to take place as a result of a woman being found guilty of petty treason was that of Catherine Hayes in 1726. The crowd was so outraged by the depravity of the crime that loud protests and jeers were directed at the hangman Richard Arnet when he attempted to strangle her before the flames could reach her. It is unclear whether Arnet became frightened of the crowd or whether he simply bungled the strangling, but his failure resulted in Catherine being burned to death while still conscious.<sup>44</sup>

The burning of women at the stake was outlawed in 1790, while the *petit treason* charge against women killing their husbands was repealed in 1828.<sup>45</sup>

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<sup>41</sup>According to Faith (1993:30) the year was 1650; O'Donnell however, states the year was 1630 (1956:11).

<sup>42</sup>Faith 1993:30.

<sup>43</sup>Faith 1993:32.

<sup>44</sup>McLynn, F. (1989) *Crime & Punishment in 18th Century England*, Oxford University Press, Oxford p.122; Bailey, B. (1989) *Hangmen of England* W.H. Allen, London p.20.

<sup>45</sup>Faith, 1993:33.

Convictions of infanticide were relatively rare events prior to the 16th century, according to Hoffer and Hull, although this indicates only that prosecutions, not infanticide itself, were rare, hence it suggests that social attitudes to this crime were more relaxed than was the case at the beginning of the 17th century.<sup>46</sup> This period saw the authorities grow "increasingly fearful of the sexual immorality and criminal tendencies of the increasingly numerous wandering poor."<sup>47</sup> It is in this context that new legislation was passed in 1624, aimed solely at unmarried mothers which made concealment of birth a capital offence. Moreover, the prosecution no longer had to prove that a mother had killed her baby, instead the burden of proof that a child, the birth of whom she had concealed, was stillborn, fell upon the mother.<sup>48</sup> This legislation was not motivated by a desire to preserve the lives of new-born infants but was aimed "against lewd whores, who having committed one sin, to avoid their shame, and the charge of a bastard ... privately destroy the infant."<sup>49</sup> In reality however, this legislation served to control and regulate the sexuality of a most vulnerable group of women, for as both Malcolmson and Beattie point out, the vast majority of women to whom this law applied, were not 'lewd whores' but domestic servants.<sup>50</sup> Women servants could be pressurised to have sex by fellow servants and by masters who were in a position of power should they refuse to comply. Yet they would not be allowed to keep their position if pregnant. Infanticide was therefore usually a desperate act, carried out by 'respectable' women, who committed the act in an attempt to maintain their good character. After all, if a woman was already considered to be a 'lewd whore', having an illegitimate child could hardly damage her image further, as was recognised at the time:

Common whores, whom all the world knows to be such, hardly ever destroy their children ... because they have lost their modesty to a greater degree, and the fear of shame makes hardly an impression on them.<sup>51</sup>

The fact that married women were excluded from this law confirms that it was not concerned with the protection of infant life, but instead "sought to discourage

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<sup>46</sup>Hoffer, P. & Hull N.E.H. (1984) *Murdering Mothers: Infanticide in England and New England 1558-1803*, New York University Press, New York pp.5-6.

<sup>47</sup>Hoffer & Hull 1984:12.

<sup>48</sup>Beattie 186:113; Smart, C. (1992) 'Introduction' in Smart, C. (ed) (1992) *Regulating Womanhood*, Routledge, London p.16.

<sup>49</sup>17th century commentator quoted in Beattie 1986:113-4.

<sup>50</sup>Malcolmson, R.W. (1977) 'Infanticide in the Eighteenth Century' in Cockburn, J.S. (ed) (1977) *Crime in England 1550-1800*, Methuen & Co Ltd, London p.192; Beattie 1986:114.

<sup>51</sup>Mandeville, quoted in Beattie 1986:114.

fornication by making it more difficult for unmarried women to escape the results of their immorality."<sup>52</sup> At another level, research carried out by Beattie and Hoffer and Hull suggests that there was a reluctance to acknowledge that married women could be guilty of infanticide, consequently Hoffer and Hull only found one instance of a married woman convicted for this crime, and this was a case where the evidence was undeniable - a year old infant had been poisoned.<sup>53</sup> In other cases where the evidence was indisputable the mother would usually be acquitted on the grounds of insanity.<sup>54</sup> The idea of a married woman wishing to rid herself of a legitimate child would have been very threatening and quite unacceptable to the patriarchal legal establishment, it was therefore quietly denied or ignored.

In sum, concealment of birth, like adultery and petit treason, was a gender specific capital offence; moreover, it was a crime which in almost all cases affected powerless impoverished women who had no hope whatsoever of supporting themselves or their infants, instead an illegitimate child meant stigmatisation for life, with little or no chance of future employment or marriage.<sup>55</sup> While there were plenty of 'guide' books available instructing the female servant in how to avoid intimate contact with male servants and masters, there was no attempt by the legal establishment to hold the fathers of the dead infants responsible for 'immoral behaviour'. As the century drew to a close, the sheer injustice of the 1624 Concealment Act meant that an increasing number of juries refused to convict women accused of this crime, and gradually it became necessary for the prosecution to prove a woman had intended to kill her child.<sup>56</sup> The law was finally repealed in 1803.<sup>57</sup>

### The Witch Hunts.

Although not a gender-specific crime it has been estimated that of the 9 million who were executed during the 15th, 16th and early 17th century as a result of having been found guilty of witchcraft, 85-90% were women.<sup>58</sup> Once more we

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<sup>52</sup>Beattie 1986:113; Smart 1992:17.

<sup>53</sup>Hoffer & Hull 1984:107.

<sup>54</sup>Hoffer & Hull 1984:ch.4.; Beattie 1986:121.

<sup>55</sup>Malcolmson 1977:192-3.

<sup>56</sup>Beattie 1986:120.

<sup>57</sup>Malcolmson 1977:197.

<sup>58</sup>Hester, M. (1992) *Lewd Women & Wicked Witches*, Routledge, London, p.161.

Hester's research of the Assize Court records for Essex revealed that in this county "at least 90% of those formally accused of using witchcraft were women" (p.161).

find that certain groups of women were targeted for this kind of persecution - in this case poor, illiterate peasant women, a considerable number of whom were over 40 years of age.<sup>59</sup> Moreover, Hester found that over 50% of women found guilty of witchcraft were either widowed or single.<sup>60</sup> Thus, many of the accused women enjoyed a relative economic independence, either because they had inherited their husband's craft, trade, property or land,<sup>61</sup> or because they possessed healing skills and knowledge of herbs and poisons at a time when there was no organised medical profession.<sup>62</sup> Such skills and knowledge earned them considerable respect and standing within their community, and taken together with their status as single women, they enjoyed a degree of independence in many areas of their lives - physically, intellectually, spiritually, as well as at an economic and moral level. Daly argues, that it was as a result of this independence - and hence this *alternative* lifestyle - that these women came to be regarded as dangerous.<sup>63</sup> They presented "an option of 'eccentricity'"<sup>64</sup> - their *conduct* was both "anomalous and non-conformist"<sup>65</sup> - hence, they posed an active and profound threat to male monopoly in every sphere of daily life.<sup>66</sup>

The specific form which the witch hunts took illustrates that it was the issue of women's sexuality which dominated the thoughts of both church and legal elites. The Catholic Church's view of women formed the dominant ideology of gender relations in the period leading up to the witch hunts. This ideology was based largely on "the combined misogyny and ascetism [sic] of Paul" who preached that "' it is good for a man not to touch a woman'"<sup>67</sup>, and who would almost certainly have agreed with the fellow Catholic who maintained that "It is better to burie a

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See also Goode, E. & Ben-Yehuda, N. (1994) *Moral Panics* Blackwell, Oxford, p.157; Morgan, R. (1989) *The Demon Lover*, Methuen, London, p.78; Dworkin, A. (1982) *Our Blood*, The Women's Press, London, p.17 for estimates of the numbers of women killed as a result of the witchcraze.

<sup>59</sup>Hester 1992:161.

<sup>60</sup>Hester 1992:161.

<sup>61</sup>Hester 1992:161.

<sup>62</sup>Miles, R. (1989) *Women's History of the World* Paladin, London, p.136; English, D. & Ehrenreich, B. (1979) *For Her Own Good* Pluto, London, Ch.2.

<sup>63</sup>Support for this thesis is offered in the theological text *Malleus Maleficarum* (*The Hammer of Witches*) (1486) written by two monks Sprenger & Kramer where, in their chapter 'Concerning Witches', they state that "no-one does more harm to the catholic faith than midwives", and, "midwives ... surpass all others in wickedness." (Naish, C. (1991) *Death Comes to the Maiden* Routledge p.29 & p.26).

<sup>64</sup>Daly M. (1979) *Gyn/Ecology* The Women's Press London p.186.

<sup>65</sup>Miles 1989:137.

<sup>66</sup>Daly 1979:184.

<sup>67</sup>Hamilton, R. (1978) *The Liberation of Women* George Allen & Unwin, London p.51.

wife, than to marrie one."<sup>68</sup> Men who engaged in sexual relationships with women became soiled and polluted themselves, the only way to maintain their virtuousness and purity was to live a life of celibacy, an ideology which is still applicable to priests today.<sup>69</sup> This ideology affirmed women's inferiority to men as well as their sinfulness which was closely linked to a female sexuality so powerful it could lead men into damnation.<sup>70</sup> The fear and hatred of women and their sexuality can be understood as the result of guilt feelings experienced by men when confronted with their own desires: "guilt feelings about desire are conveniently projected as female lust and seductiveness."<sup>71</sup> The Dominican, John Bromyard, writing in the 14th century, appeared to experience such guilt feelings when he wrote of women's bodies that:

each is a spark breathing out hellfire, which this wretched incendiary of the Devil breathes so effectually ... that in a single day by her dancing or her perambulation through the town, she inflames with the fire of lust - it may be - twenty of those who behold her, damning the souls whom God has created and redeemed at such a cost for their salvation. For this very purpose the Devil thus adorns these females, sending them forth through the town as his apostles, replete with every iniquity, malice, fornication.<sup>72</sup>

Similarly, the Catholic theology text *Malleus Maleficarum* written by two Dominican Inquisitors, Henry Kramer and James Sprenger in 1486 provides a powerful insight into the Church's view of women. The text was very influential at the time of the witch-craze, reinforcing existing misogynist ideologies and beliefs<sup>73</sup> and providing numerous examples of the male terror of female sexuality. The two monks explain that witchcraft is a woman's crime because she is "more vulnerable to Satan's enticements", a woman is "more carnal than a man, as is clear from her many carnal abominations", and "all witchcraft comes from carnal lust, which is in women insatiable."<sup>74</sup> As Naish points out, such statements tells us much more about the psychology of the authors than of women's role in witchcraft. Indeed, the highly "exotic sexual confessions characteristic of witches tried by the Inquisition occur *only* in those trials." It therefore seems

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<sup>68</sup>Hamilton 1978:65.

<sup>69</sup>Hamilton 1978:51.

<sup>70</sup>Hester 1992:145.

<sup>71</sup>Katharine Rogers 1966:8 quoted in Hamilton 1978:64.

<sup>72</sup>Quoted in Hamilton 1978:51.

<sup>73</sup>Given that printing was in its infancy in 1486, it must have been quite an achievement for *Malleus Malificarum* to have reached its 32nd edition by 1660 with translations in both German and French (Anderson, B.S. & Zinsser, J.P. (1988) *A History of Their Own* Vol I, Harper & Row, New York, p.166). The book is still in print and was published by Bracken Books (London) in 1996.

<sup>74</sup>Dworkin, A. (1982) *Our Blood* The Women's Press, London. p.17.

reasonable to assume that they are the "creations of the scholastic Inquisition" - not the vocabulary of poor, illiterate peasant women.<sup>75</sup> At the same time, this sexual construction of womanhood served to justify and legitimate men's control over women - "women were in a general sense seen as naturally deviant in relation to men and the male-dominated society, and were perceived to be especially prone to the ultimate deviance of siding with the Devil."<sup>76</sup> They were 'sexually unruly' hence they *needed* to be kept under control.<sup>77</sup> This relationship between gender, sexuality and punishment will be analysed more fully in Chapter Five.

The witch-craze took place at a specific historical moment - initially involving few victims - reaching a climax in the 16th century when some villages lost the majority of their female population<sup>78</sup> - then declining by the 17th century. Theories revolving around misogyny alone therefore cannot explain this phenomenon adequately. We need to ask why the attitudes to women, who in the past had commanded respect within their communities for their wisdom and knowledge - whom even those in authority occasionally consulted, as was the case in 1580, when "churchwardens of Thatcham Berkshire hired the local cunning woman [wise woman] to help them find the thief who had stolen the communion cloth,"<sup>79</sup> - why was it that attitudes to these women changed so drastically throughout many European countries, where they now became persecuted? Answers to this question have been deeply divided right into the 20th century, as I shall now indicate.

Women accused of witchcraft suffered the most excruciating torture at the hands of secular and religious authorities in order to secure a confession. A common form of torture involved the strapado: "hands tied behind the back, the rope thrown over a beam and pulled so that the accused hung just off the floor, the arms in the air, at the least the shoulders dislocated." This treatment could be repeated over a number of days if a confession was not forthcoming. Other torture instruments included the use of a metal spiked chair which could be heated from underneath.<sup>80</sup> Women under torture would usually be asked questions which required a simple 'yes' or 'no' answer - questions drawn from the

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<sup>75</sup>Naish C. (1991) *Death comes to the Maiden* Routledge p.29.

<sup>76</sup>Hester 1992:144.

<sup>77</sup>Hester 1992:148.

<sup>78</sup>See for example Goode, E. & Ben-Yehuda N. (1994) *Moral Panics* Blackwell, Oxford, p.154; Morgan, R. (1989) *The Demon Lover* Methuen, London, p.96.

<sup>79</sup>Anderson & Zinsser 1988:162.

<sup>80</sup>Anderson & Zinsser 1988:170.

pornographic fantasies of the inquisitors revealing "the hysterical and fantastic world of the witch hunters."<sup>81</sup> Under such circumstances it is hardly surprising that witch hunters succeeded in extracting a 'confession'. Even if a woman could stand the pain and refused to speak as in the case of Suzanne Gaudry it made no difference - "the fact that she did not cry proved her an agent of Satan."<sup>82</sup>

Yet the victims of such appalling treatment have, right into the 20th century, been blamed for their own misfortune and described by some members of the psychiatric profession as mentally ill. Gregory Zilboorg, for example, wrote in 1935 that:

... the *Malleus Maleficarum* might with a little editing serve as an excellent modern textbook of descriptive clinical psychiatry of the fifteenth century, if the word *witch* were substituted by the word *patient* and the devil eliminated.<sup>83</sup>

Alexander and Selesnick, writing in 1966, also regarded the behaviour of women accused of witchcraft as rooted in psycho-pathology:

A witch relieved her guilt by confessing her sexual fantasies in open court; at the same time she achieved some erotic gratification by dwelling on all the details before her male accusers. These severely emotionally disturbed women [sic] were particularly susceptible to the suggestion that they harbored demons and devils and would confess to cohabiting with the evil spirits, much as disturbed individuals today, influenced by newspaper headlines, fantasy [sic] themselves as sought-after murderers.<sup>84</sup>

As Szasz argues, this statement is quite immoral because it equates a situation "where accused persons are tortured until they confess to crimes for which the penalty is burning at the stake, to one where unmolested citizens claim to have committed crimes of which they are easily proved innocent."<sup>85</sup> Moreover, even though the inquisitors controlled the language in which the women's conduct was described, such psycho-pathological explanations of the witchhunts accepts

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<sup>81</sup>Anderson & Zinsser 1988:170. Anderson & Zinsser cite several examples of such questions, most of which reveal a deep anxiety about women's sexuality as well as a concern about their own ability to perform the sexual act, for example, 'What is the source of his [the devil's] semen?' 'Is there a time he favors the act?' 'Was the sex act more or less pleasurable with him?' (1988:170).

<sup>82</sup>Anderson & Zinsser 1988:171.

<sup>83</sup>Zilboorg, G. (1935) quoted in Szasz, T.S. (1971) *The Manufacture of Madness* RKP London, p.68. This quotation is taken from Zilboorg's *The Medical Man and the Witch During the Renaissance*.

<sup>84</sup>Alexander and Selesnick (1966) quoted in Szasz, T. 1971:78.

<sup>85</sup>Szasz 1971:79.

unquestionably the tormentors' version of events as 'the truth'<sup>86</sup> - no-one speaks for the dead women in this analysis; instead their actions are denied rationality and their behaviour becomes pathologised, while the mental health of the persecutors remains unquestioned.<sup>87</sup> Quite apart from these criticisms, explanations focusing on individual psycho-pathology cannot explain why the attitude towards women who used to command respect within their communities, now became hostile in the extreme.

Rather than accepting the individual pathology of victims as explanations of the witchhunts we need to examine the structural forces which influenced the socio-political culture during this period. At a time when medical treatment was unknown - when "people could only crowd to the church doors for aspersion with holy water" - the wise woman's ability to heal provided a direct challenge to the authority of the Church. As far as it was concerned, "man was created by God, and belonged, body and soul, to his Creator." Hence "the cure of bodies and souls ..., was the sole province of God."<sup>88</sup> Therefore any healing powers which did not rely on prayers could only be attributed to the work of the Devil, and anyone practising such powers must by definition be a heretic. There was plenty of supporting 'evidence' of the wise woman's subversive ways. First, the witches' healing abilities were rooted in observation and experiment - an early form of science - in stark contrast to the Church's reliance on prayers, holy waters and God's Will. Second, the witch was "a servant of the suffering individual," healing and aiding the poor, weak and powerless, while the Church sought support amongst feudal lords, princes and counts.<sup>89</sup> Third, the witch was female, a woman who appeared to have powers not available to the male clerics. In this way the witch appeared to "undermine the established hierarchies of dominance - of priest over penitent, lord over peasant, man over woman."<sup>90</sup> For a time then, these women appeared to represent all that was wrong with the world, for the 16th century was a period of great uncertainty:

Learned men sensed impending chaos. All of the traditional means of establishing order seemed discredited and useless. Religious reformers and proselytizers questioned the Catholic faith and its rituals. Protestant sects condemned everything from the authority of the Pope to everyday

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<sup>86</sup>Naish 1991:35.

<sup>87</sup>Szasz wryly observes that while these theories are "worthless for our understanding of the witch-hunts," they are "valuable for our understanding of psychiatry ..." (1971:81).

<sup>88</sup>Szasz 1971:86-7.

<sup>89</sup>Szasz 1971:83.

<sup>90</sup>Szasz 1971:86.



practices like the saying of the rosary. Printing presses carried the doubts and attacks all over Europe. Religious and civil wars in Germany, France, and Scotland with one prince replaced by another, one faith by another, called all princes and all beliefs into question. Locally controlled markets and trade gradually had given way to great trading centers and monopolies protected by the regulations of dynastic rulers, leaving town elders - the guildsmen and the wealthy entrepreneurial families - without the familiar economic system that had guaranteed them their livelihood and hegemony.<sup>91</sup>

Goode and Ben-Yehuda also place the witch-hunts within the context of a period traumatised by upheaval:

[It] was a time of great enterprise, bold thought, innovation, as well as one of deep confusion and anomie, a feeling that society had lost its norms and boundaries and that the uncontrollable forces of change were destroying all order and moral tradition. <sup>92</sup>

It is within this wider structural economic, social, political and cultural framework that the witchhunts can best be understood. The protracted move from a medieval to a modern society created an atmosphere of uncertainty, questioning and doubts about issues hitherto taken for granted about the world, which, in turn, led to an environment of "social intolerance and a search for scapegoats."<sup>93</sup> The witchhunts, "embellished with all of the oldest misogynist mythology," can be seen as an expression of this social intolerance.<sup>94</sup> The witches, with their unconventional lifestyle, appeared to be successful in their efforts at self-determination and this, together with their support of the powerless, appeared to narrow the gap between ruler and ruled.<sup>95</sup> The witches themselves thus became part of the perceived disorder and uncertainty of the era. "By persecuting witches, this society, led by the church, attempted to redefine its moral boundaries."<sup>96</sup> Church and secular elites worked to restore "order through definition and conformity." Hence, both Church and State claimed to offer an end to uncertainty and misfortune forever through the elimination of witches:

If peasant women and men, townswomen and men, would identify the cunning folk, officials of Church and state with all the paraphernalia of legal procedures and scientific rules of evidence would try and execute them. Thus rich and poor, powerful and powerless, Protestant and Catholic

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<sup>91</sup>Anderson & Zinsser 1988:162.

<sup>92</sup>Goode & Ben-Yehuda 1994:168.

<sup>93</sup>Szasz 1971:112; Goode & Ben-Yehuda 1994:168.

<sup>94</sup>Anderson & Zinsser 1988:164.

<sup>95</sup>Szasz p.89.

<sup>96</sup>Goode & Ben-Yehuda 1994:169.

tacitly and actively participated in the persecution and murder of thousands of illiterate peasant women.<sup>97</sup>

Because witches were mainly older, illiterate peasant women, they proved to be a particularly easy target for the inquisitors since they had "no organized or identifiable successors;" there was "no group to protect their good name."<sup>98</sup> Meanwhile, the witch-trials themselves provide further evidence of the extraordinary contradictions inherent in an era which was both rational and irrational, where law and science were in their infancy, divine intervention was questioned, yet a new order and structure was not in place - "the law was not yet just" and "science not yet scientific."<sup>99</sup> Once a new order and structure were in place - that is to say - once Protestantism had succeeded in redefining patriarchy by replacing the image of the evil woman with that of the proper wife in religious literature, it was no longer necessary to ensure women's conformity by brute force such as torture and burning at the stake.<sup>100</sup> The Protestant Reformation transformed patriarchal discourses by rejecting notions of women's inherent evilness and emphasising the concept of spiritual equality between the sexes. It rejected celibacy as a superior way of life and instead advocated "a single standard of sexual behaviour" for both sexes.<sup>101</sup> Women should be regarded as helpmates and companions to their husbands: "husbands and wives should be as two sweet friends, bred under one constellation ..."<sup>102</sup> This improvement in the image of women came about as a result of Protestantism's new conception of the family. The new doctrine rejected the need for mediation of the Bible through a priest or the Virgin Mary. Instead individual true believers were to have direct access to God regardless of their status, providing they were living in a godly fashion. Each family was to become a 'little church and a little state'<sup>103</sup> - keeping itself in a state of purity. It was within this context that a redefinition of marriage, sexuality and adultery became necessary. This redefinition appeared to elevate the status of women, however, in reality women remained subordinate to men who were now "the spiritual leaders of their families."<sup>104</sup> 'Spiritual equality' was not to be extended into the material reality of women's lives, instead Luther, Calvin and Knox all insisted that women should "be obedient to their husbands,

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<sup>97</sup>Anderson & Zinsser 1988:164.

<sup>98</sup>Szasz 1971:106.

<sup>99</sup>Anderson & Zinsser 1988:169.

<sup>100</sup>Hamilton 1978:73.

<sup>101</sup>Hamilton 1978:67.

<sup>102</sup>Hamilton 1978:65.

<sup>103</sup>Quoted in Hamilton 1978:55.

<sup>104</sup>Hamilton 1978:68.

keep silent in public, and busy themselves with their households."<sup>105</sup> Moreover, the demand by these Protestant leaders that convents should be abolished, closed the one option which had hitherto been open to women who did not relish the prospect of marriage and countless pregnancies which invariably followed in an age with little or no reliable contraception. Therefore the Reformation brought with it a more restricted and closely defined role for women than in previous eras - a role almost entirely confined to the private sphere - that of domesticity and motherhood.<sup>106</sup> By replacing the twin evils of women and sex with a doctrine of the good wife and mother, the Reformation had successfully redefined patriarchy. From then onwards, 'the cult of domesticity'<sup>107</sup> rather than women as 'apostles of the devil'<sup>108</sup> would play the dominant role in regulating women's behaviour.

The witchcraft persecutions have been covered in some detail here since no thesis on executed women can be complete without proper consideration of what Szasz has likened to the persecution of the Jews by Nazis in the 20th century<sup>109</sup>, and Anderson and Zinsser have called "the most hideous example of misogyny in European history."<sup>110</sup> At a time of political, economic and religious upheaval men of the Church focused on the 'cunning women' - who came to symbolise - and were made scapegoats - for all that was wrong with the world. Once the painful transition from mediaeval to modern world had been made, "the learned and powerful looked to new kinds of order, to new explanations for their universe, now transformed into a rational, scientific place, a place without need of religion or magic."<sup>111</sup>

### The Bloody Code.

The witchcraze reached its peak in the 16th century, although it was not until 1736 that the Statutes against witchcraft were repealed, and as late as 1716 children were still being executed as was the case with Elizabeth Hicks, aged 11, who was hanged with her mother Mary "for having, on their own confession, sold their souls to the devil and obliged their neighbours to perform this painful

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<sup>105</sup>French, M. (1986) *Beyond Power: On Women, Men & Morals*, Abacus, London, p.171.

<sup>106</sup>French 1986:171; Hamilton 1976:68.

<sup>107</sup>O'Donovan, K. (1985) *Sexual Divisions in Law*, Weidenfeld & Nicolson, London, pp.53-57.

<sup>108</sup>Hamilton 1978:64.

<sup>109</sup>Szasz 1971:95.

<sup>110</sup>Anderson & Zinsser 1988:172.

<sup>111</sup>Anderson & Zinsser 1988:172.

miracle."<sup>112</sup> The tail end of the witchcraze therefore overlapped with the era in which the English system of law was known as the 'Bloody Code', that is the years between 1688 and 1815. Thus, quite apart from the witchcraft Statute introduced in 1542, there was a general intensification in the power of law to punish with an increasing number of statutes carrying the death penalty during the 16th century.<sup>113</sup> This increase followed a period during which actual numbers of official executions appear to have been relatively low,<sup>114</sup> and as argued above, were part of wider political, social and economic changes within the nation as a whole. In the words of McLynn:

... the Bloody Code was an organic process of adaptation by a society concerned to protect new forms of property and to restrict the benefits of a huge increase in wealth. ... In functional terms the Bloody Code was the response of a society where capital enterprise was releasing new forms of wealth which could not be adequately protected without a regular police force.<sup>115</sup>

Similarly, Hay notes that some "... observers were aware that the larger changes of trade, commerce and manufacturing might have something to do with the increasing weight of the statute book."<sup>116</sup> During this period capital statutes rose from approximately 50 to 200, of which the vast majority was concerned with offences against property. No longer was the interest of Divine Will or the state paramount. "Property had swallowed them all" - hence Locke could state that "Government has no other end but the preservation of property."<sup>117</sup> The full theoretical implications of this shift will be discussed at length in Chapter Four.

By the mid-18th century capital offences included such crimes as stealing a horse or a sheep; "to pickpocket more than a shilling; to steal more than forty shillings in a dwelling place or five shillings in a shop; to purloin linen from a bleaching ground or woollen cloth from a tenter ground; to cut down trees in a garden or orchard; to break the border of a fishpond so as to allow the fish to escape;"<sup>118</sup> robbing a rabbit warren, associating for a month with gypsies and "assuming the

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<sup>112</sup>Hibbert, 1968:31.

<sup>113</sup>Sharpe 1990:27.

<sup>114</sup>Sharpe, 1990:28. For example, in the 20 year period between 1377 and 1397 only 13 were hanged in Warwickshire (p.29).

<sup>115</sup>McLynn 1991:ix-x; ix.

<sup>116</sup>Hay 1977:20.

<sup>117</sup>Hay 1977:18.

<sup>118</sup>McLynn 1991:x.

title of a Greenwich Pensioner."<sup>119</sup> This multitude of capital statutes did not however, result in an increase in executions, for the point of the Bloody Code was not that every individual committing such offences would automatically be executed, but that this punishment should be applied *selectively*.<sup>120</sup> If every petty criminal was executed the law would not be able to maintain credibility. Capital punishment was therefore designed to be exemplary rather than efficient in nature. In a society with no professional police force even the most minor crimes carried the death penalty because of what was believed to be its *deterrent* value. Paley expressed this principle in the following terms:

The proper end of human punishment is not the satisfaction of justice, but the prevention of crimes.<sup>121</sup>

Mary Jones was to feel the full brunt of this philosophy. Having no means of supporting herself and her two children after her husband was press-ganged into the navy, she stole some "coarse linen from a shop counter" in a desperate effort to feed her starving children. For this crime she was executed in 1771. As she was taken to Tyburn in an unsprung cart "the youngest baby suckled at her breast but she never saw her other child who had been handed over to the Poor Law authorities. In the closing minutes of her life Mary fondled the child she loved so dearly and prayed ..." Afterwards, one witness commented: "Mary Jones met her death with amazing fortitude."<sup>122</sup> Mary was 19 years old.<sup>123</sup> She had had the misfortune to commit her crime at a time when shoplifting was perceived as a major problem in the Ludgate area, therefore she must be made an example of - sending the message to any would-be shoplifter that this crime would not be tolerated. The haphazard nature of this system of punishment is well illustrated by two cases which took place around the time of Mary's execution. Judge Hardinge tried two young women for the crime of housebreaking. One was reprieved, while the other was hanged. Mary Robert "was to die 'to enforce a law, which aimed not at [*her*] death, but at the *death* of her *crime*.'"<sup>124</sup> This system of punishment was therefore based on the principles of deterrence and retribution rather than justice and reform. As Potter observes: "Punishment was to serve a

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<sup>119</sup>Calvert, E.R. (1927) *Capital Punishment in the Twentieth Century* C.P. Putnam's Sons, London p.4.

<sup>120</sup>Sharpe 1990:38; McLynn 1991:xiii.

<sup>121</sup>William Paley quoted in Potter 1993:13.

<sup>122</sup>O'Donnell 1956:27; Bailey 1989:35.

<sup>123</sup>Potter 1993:10.

<sup>124</sup>George Hardinge (1818) quoted in Potter 1993:10. Emphasis in the original.

utilitarian purpose; it was no longer linked to justice."<sup>125</sup> Indeed it was recognised at the time by individuals such as Archdeacon William Paley<sup>126</sup> that there would inevitably be instances where the innocent would be executed. They however, could die happy, knowing they had died for England:

He who falls by mistaken sentence may be considered as falling for his country, whilst he suffers under the operation of those rules, by the general effect and tendency of which the welfare of the community is maintained and upheld.<sup>127</sup>

Gatrell provides an example of someone who suffered this fate in his case-study of Sarah Lloyd who was executed in Bury St Edmunds. Sarah, an illiterate servant-girl, who had not even "been taught the Lord's Prayer" - had fallen victim to seduction by a man of "low repute" - Joseph Clarke.<sup>128</sup> Making false promises of marriage, it was Clarke who induced Sarah to steal from her mistress before setting fire to the house. Yet Sarah was sentenced to death while Clarke escaped punishment. Contemporaries such as the Revd Drummond, who petitioned for a reprieve for Sarah, recognised that she was a "poor, unfortunate deluded girl" who "was Clarke's helpless instrument."<sup>129</sup> But the judge ruled "that for example's sake" her life should not be spared. Sarah had betrayed the all important relationship of trust between servant and mistress - a crime which could not go unpunished. Her crime reminded masters and mistresses of the importance "of watching the conduct" and "improving the morals" of their domestics. The importance of "sobriety, chastity, fidelity, honesty, obedience" particularly in female servants, could not be over-emphasised.<sup>130</sup> Sarah had lost these virtues, hence both the trial judge and the Home Secretary agreed that she must also lose her life as an example to other servants:

There is a superior mercy due to all inhabitants of houses, and masters of families, with which the pardon or even respite of this unfortunate woman's sentence seems to me incompatible. Such is my abhorrence and idea of her crime as it affects the publick, that if Clarke or any other accomplice had been convicted I [should still be] of opinion that for example's sake her life ought not to have been spared.<sup>131</sup>

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<sup>125</sup>Potter 1993:13

<sup>126</sup>Author of *Principles of Moral and Political Philosophy* (1819).

<sup>127</sup>Paley quoted in Potter 1993:14.

<sup>128</sup>Gatrell, V.A.C. (1994) *The Hanging Tree* Oxford University Press, Oxford, p.341.

<sup>129</sup>Gatrell 1994:343.

<sup>130</sup>Gatrell 1994:342.

<sup>131</sup>Sir Nash Grose, Judge in the Sarah Lloyd case, quoted in Gatrell 1994:342.

'The great object of punishment is example' ..., and this case 'must be one of those which calls the loudest for being marked and branded with the most rigorous hand of the law as a warning and terror to misdeeds of a similar tendency.'<sup>132</sup>

It was in accordance with this philosophy and despite honourable efforts by individuals of high social standing such as Capel Lofft and the Revd Drummond to save Sarah's life, that all pleas for mercy fell on deaf ears and she was executed on 23rd April 1800, in front of a large crowd many of whom wept at the injustice of the young woman's misfortune.<sup>133</sup>

The executions of Mary Jones, Mary Robert and Sarah Lloyd provide a fair representation of the *kind* of person who was most likely to be executed, for when Paley and his contemporaries talked of punishment, they were referring almost exclusively to punishment of the poor. In the past when treason had been the main concern of the ruling elite, even kings and queens were occasionally executed. In the 18th century, however, when concern over the protection of property replaced the fear of treason, capital punishment was reserved almost exclusively for the poor<sup>134</sup> - "the very lowest and worst of the people ... the scum both of the city and the country", according to Elizabeth Fry.<sup>135</sup> Women living alone in cities were particularly likely to suffer severe poverty and hardship, since much of their work was casual, menial and seasonal with wages a mere fraction of men's. Consequently they often found themselves in an even more precarious position than men, and many offences against property were committed out of sheer economic necessity.<sup>136</sup> Despite these factors women committed far less crime than men. For example, in the county of Surrey between 1660-1800 a total of 3,938 men were found guilty of property offences, while the figure for women were 1,228. During the same period 233 murders were committed by men, while only 19 women were found guilty of this crime.<sup>137</sup> 1,130 men were convicted of capital offences, 481 of whom were executed, the corresponding figures for women were 149 and 37. Women therefore stood a higher chance of being reprieved (75.2%) than men (57.4%).<sup>138</sup> It should be borne in mind, however, that this figure included women who were reprieved due

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<sup>132</sup>The Duke of Portland, Home Secretary, quoted in Gatrell 1994:347.

<sup>133</sup>Gatrell 1994:348.

<sup>134</sup>Potter 1993:14; McLynn 1991:ix-xvi.

<sup>135</sup>Quoted in Gatrell 1994:8.

<sup>136</sup>Beattie 1986:242-243.

<sup>137</sup>Beattie 1986:437.

<sup>138</sup>Beattie 1986:437-8.

to being pregnant as well as those who had killed their own children. Moreover, a higher proportion of women than men, were discharged by juries, and they had charges against them reduced to non-capital offences more frequently.<sup>139</sup> Issues around the differential treatment of men and women within the criminal justice system will be analysed in depth in Chapter Five. For current purposes however, these figures suggest that women did not pose the same kind of threat to the social order as did men; that indeed it might have been counter-productive if all impoverished female petty criminals were harshly dealt with since this might invoke pity and empathy for defendants and thus question the legitimacy of the criminal justice system. In short, it was not necessary, or even desirable, for large numbers of women to receive public punishment. "The broader purposes of the law and of the administration of justice could be served by the very occasional example of a woman harshly dealt with."<sup>140</sup> The state had good reason to be concerned with the legitimacy of punishment, for, as noted above, the execution of women such as Sarah Lloyd did not pass without serious opposition, from both the population at large as well as individual members of the ruling elite. Similarly, when Mary Jones was sentenced to death, public sentiment was aroused and a petition for her reprieve was organised which emphasised that until the time of her offence Mary "had led a decent and respectable life and that she should be allowed to return and care for her young children."<sup>141</sup> As in the case of Sarah Lloyd, individual members of the ruling elite were prepared to state in public their outrage at the brutality of the law, and six years after Mary's execution her case had not been forgotten by Sir William Meredith who made this statement in Parliament:

I do not believe that a fouler murder was committed against the law than the murder of this woman by the law.<sup>142</sup>

It was also common for jury members to resist the harshness of the law by deliberately downgrading the crime of the accused. For example, as noted above, it was a capital offence to steal goods valued at five shillings or more from a shop, subsequently juries deliberately under-valued stolen goods in cases where it was felt the accused did not deserve to hang.<sup>143</sup> Yet, in keeping with the importance placed upon the protection of "the new system of paper credit and exchange",

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<sup>139</sup>Beattie 1986:438.

<sup>140</sup>Beattie 1986:439; see also McLynn 1991:128-9.

<sup>141</sup>O'Donnell 1956:26-7.

<sup>142</sup>Sir William Meredith MP for Wigan 1754-61 and Liverpool 1761-80, quoted in Potter 1993:31; see also O'Donnell 1956:27; McLynn 1991:125.

<sup>143</sup>See for example McLynn 1991:125.



forgery, counterfeiting and coining were crimes for which a felon would almost certainly hang - male or female.<sup>144</sup> Coining was treated as high treason and women found guilty of this offence were burned at the stake. There are many documented cases of women who suffered this fate, for example Isabella Condon in 1779, Phoebe Harris in 1786 and Christiane Murphy in 1789;<sup>145</sup> but one of the better known cases is that of Barbara Spencer who was burned at the stake in 1721, aged 17.<sup>146</sup> Even more extreme was the case of a 14 year old girl who was found guilty of having aided her master in coining "by hiding whitewashed farthings in her stays ..." and sentenced to burn at the stake. Once again Meredith registered his protest in Parliament:

Good God, sir, we are taught to execrate the fires of Smithfield, and are we lighting them now to burn a poor harmless child for hiding a whitewashed farthing?<sup>147</sup>

While some women murderers were shown mercy and escaped the gallows, those found guilty of murder by poisoning were never reprieved. Poisoning by a woman was regarded as a particularly loathsome and odious crime for several reasons. First, it was quite impossible to regard this act as a *crime passionnel* - a poisoner was not a hysterical woman overcome by the intensity of her emotions - instead, by definition, poisoning could only be a premeditated crime. Second, the woman poisoner had transgressed "the fundamental laws of nature" - that is - poisoning was perceived as "a distortion of a traditional female role: the preparation of food."<sup>148</sup> Moreover, poisoning was difficult to detect. Taken together, these aspects of poisoning "tapped a profound male fear of female deviousness; it was the ultimate horror even to conceive of the possibility that the polite yet secretive female might harbour dark homicidal urges under the mask of gentility."<sup>149</sup> The discourses surrounding women poisoners will be explored in greater detail in Chapters Seven and Eight, where cases from this century will be analysed.

In sum, the Bloody Code represents an era in which the beliefs of the Divine Will of God and the Divine Right of Kings and Queens had lost much of their authority. A new ideology was therefore needed which would serve to compel the deference

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<sup>144</sup>McLynn 1991:xiii.

<sup>145</sup>O'Donnell 1956:23; McLynn 1991:123.

<sup>146</sup>O'Donnell 1956:20.

<sup>147</sup>Sir William Meredith MP, quoted in McLynn 1991:123. In this case "a reprieve was granted at the very last moment."

<sup>148</sup>McLynn 1991:119.

<sup>149</sup>McLynn 1991:119.

of the common people. The ideology of justice attempted to fill that gap. The law appeared both terrifying and mysterious. On the one hand it had the power to execute anybody found guilty of the most petty criminal action - *if it so chose* - on the other hand, pardons increased at almost the same rate as capital statutes, and the actual numbers executed each year remained fairly stable because only a certain number of public punishments were necessary to teach "lessons in justice and power":

The law made enough examples to inculcate fear, but not so many as to harden or repel a populace that had to assent, in some measure at least, to the rule of property.<sup>150</sup>

From the perspective of the powerless the capriciousness and unpredictability of executions and pardons ensured the maintenance of the "mystery and majesty of the law."<sup>151</sup> From the perspective of the powerful, the delivery of justice was perfectly predictable: it was the labouring poor as a class category who were the target for punishment. As we have seen above, although statistically, a larger proportion of women than men were discharged by the grand jury and those who were convicted stood a better chance of a reprieve, many felt the full brunt of the Bloody Code and paid for their crimes with their lives. Moreover, women who "broke the unspoken rules of gender and sex roles and acted 'mannishly', aggressively, or without due deference" stood almost no chance of being pardoned.<sup>152</sup> The complex relationship between such discourses, gender and punishment is a central theme in this thesis and will be analysed in greater depth in Chapter Five.

### Reforming the Penal Code.

The number of people who were executed under the Bloody Code should not be under-estimated, in London for example, 348 persons were hanged between 1783 and 1787, "97 in 1785 alone."<sup>153</sup> Yet these statistics must be regarded in the context of those of clemency. For example, between 1791 and 1795, "5,592 persons were discharged before trial, while 2,962 were acquitted after trial."<sup>154</sup> These figures illustrate the deep reluctance of both juries and judges to convict and

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<sup>150</sup>Hay 1977:57.

<sup>151</sup>Hay 1977:59.

<sup>152</sup>McLynn 1991:129.

<sup>153</sup>Ignatieff, M. (1978) *A Just Measure of Pain* Macmillan, London p.87.

<sup>154</sup>McLynn 1991:xii. Moreover, Gatrell has estimated that between 1770 and 1830, 35,000 were sentenced to death, 7,000 of whom were executed (Gatrell 1994:7).

condemn the vast majority of criminals to the gallows even though they had the power to do so. The contradictions of this policy of terror therefore became increasingly obvious - in pragmatic terms it simply did not work. Instead the extreme harshness of the law was often responsible for the perjury of verdicts as well as the prevention of a conviction altogether to the point where "old thieves often expressed a desire to be tried capitally because there was a greater chance of escaping all punishment."<sup>155</sup> McLynn writes that English political culture had relied "on habit, custom, tradition, hunch, and intimation rather than reason" which, in turn, had led to a legal system more concerned "with credibility and authority than punishment of each and every infraction."<sup>156</sup> However, by the last quarter of the 18th century, Enlightenment ideas were influencing the minds of philosophers and legal reformers such as Bentham and Romilly and the notion of rationality was introduced into penal debates. These reformers were well aware of what Ignatieff has termed an "acute crisis in the administration of criminal justice", which had come about as a result of the disintegration of the old social order. The political challenges brought about by rapid and far-reaching industrial and economic changes meant that old mechanisms of social control could no longer function. Hence the reformers sought to create a more *rational* and *exact* legal system designed to regain a legitimacy amongst the rapidly increasing industrial working class, which they felt had been either lost or "jeopardized by the excessive severities and gratuitous abuses of the Bloody Code:"<sup>157</sup>

... "the capricious severity" of needlessly frequent executions and bloody public scourgings stigmatized offenders and "confirmed them in villainy instead of leading to a happy alteration in their conduct." "Excessive correction ... counteracts the very intention of the law by drawing from the multitude a greater degree of compassion for the sufferer than of indignation for the offence."<sup>158</sup>

Reform therefore became the means whereby the public, especially the poor, would learn to respect the law. They must be made to understand that punishment was 'for their own good' - not merely a tool employed by the ruling elite to safeguard its own interests.<sup>159</sup> Punishment, according to Bentham, was no longer to be "'an act of wrath or vengeance,' but an act of calculation, disciplined by

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<sup>155</sup>Tuttle, E.O. (1961) *The Crusade Against Capital Punishment* Stevens & Sons, London p.11; p.6; p.9.

<sup>156</sup>McLynn 1991:xiv.

<sup>157</sup>Ignatieff 1978:79.

<sup>158</sup>Ignatieff 1978:73.

<sup>159</sup>Ignatieff 1978:75; McLynn 1991:xv.

considerations of the social good and the offenders' needs."<sup>160</sup> Rather than simply eliminating criminals, their behaviour could be corrected; by acknowledging their guilt they could become reformed characters. To achieve this goal, it was necessary to make punishment rational, impersonal and humane.

Those in favour of reforming the penal code initially found themselves to be in a small minority whose ideas were met with strong opposition. William Eden's *Principles of Penal Law* (1771) for example, did not go as far as to suggest the abolition of capital punishment, merely a "thorough revision of capital statutes" yet, was responded to by pamphlets such as *Hanging Not Punishment Enough*, which, as the title suggests, proposed increased levels of torture prior to execution.<sup>161</sup> None-the-less, despite sharp opposition from influential individuals such as the Rev Martin Madan and Archdeacon William Paley, who ensured their views were heard through their publications,<sup>162</sup> Romilly, the Solicitor-General, began a parliamentary campaign in 1810 to reform the penal code by introducing three bills to limit capital punishment. Romilly was in favour of retaining the death penalty for murder and was merely attempting to limit the use of this penalty in cases of theft. Hence his bills involved the abolition of capital punishment for "shop-lifters who stole things worth five shillings or more, and on thieves who stole things worth two pounds or more from private houses or from ships on navigable rivers."<sup>163</sup> Only one of these was adopted by Parliament; the Lords promptly rejected it. This pattern was to repeat itself for several years - Romilly would introduce bills to abolish capital punishment for theft and property offences, Parliament would pass them, the Lords would reject them. Romilly died in 1818, thus did not live to see his reforms become law, although he was successful in establishing a law which made it illegal for "the heart and bowels of a man convicted of high treason ... [to] be torn out of his body while he was yet alive."<sup>164</sup> Although Romilly's bills did not become law until 20 years after his death, the spirit of reform had taken firm root and he lived to see the formation of *The Society for the Diffusion of Knowledge upon the Punishment of Death and the Improvement of Prison Discipline* in 1808 - the first abolitionist organisation in England.<sup>165</sup> The Quakers were the driving

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<sup>160</sup>Ignatieff 1978:75.

<sup>161</sup>Hibbert, 1968:57-8.

<sup>162</sup>Madan, M. (1785); *Thoughts on Executive Justice*; Paley, W. (1819)*The Principles of Moral and Political Philosophy*.

<sup>163</sup>Hibbert 1968:61.

<sup>164</sup>Romilly *Memoirs* vol III quoted in Potter 1993:37.

<sup>165</sup>Tuttle 1961:4; Potter 1993:33.

force behind this movement, and it was they who organised petitions against capital punishment to be presented to Parliament. The pressure for reform had become a force which could no longer be ignored, and in 1819 a Commons' Select Committee on Criminal Law was set up which recommended "the abrogation of the death penalty ... in many crimes" especially "of all statutes authorising capital punishment which had fallen into disuse."<sup>166</sup> It also recommended "the substitution of transportation or imprisonment for the death penalty in most cases."<sup>167</sup> Thus, between 1823 and 1827, Robert Peel "reduced over three hundred confused statutes into four intelligible Acts", including ensuring that courts had the option of abstaining from issuing the death sentence for all crimes except murder.<sup>168</sup> This did not mean that the barbarity of the Bloody Code had come to an end, courts could still issue death sentences for crimes involving theft when it was considered appropriate. In 1831, for example, a 9 year old boy was executed in Chelmsford for arson.<sup>169</sup> In the main, however, the tide of reform was still ongoing. Gibbeting was abolished in 1834; the pillory in 1837. In 1831, only 52 of the 1,601 sentenced to death, were executed, and by 1838, only 14 statutes carried the death penalty, largely as a result of the recommendations of a Royal Commission on Criminal Law, set up in 1833, which wanted to see "'certainty of punishment' substituted for 'severity of punishment.'"<sup>170</sup> Thus, while over a dozen non-murder offences remained capital offences, after 1838 this punishment was applied to murderers only during peace time.<sup>171</sup> The first Parliamentary motion to abolish capital punishment was introduced in 1840 by William Ewart and received over 90 votes. Ewart went on to form the *Society for the Abolition of Capital Punishment* whose members campaigned throughout the country for total abolition. By 1861 only four capital statutes remained: those of "murder, treason, piracy with violence, and arson in government dockyards and arsenals."<sup>172</sup>

#### Capital Punishment: The Move from the Public to the Private.

The significance of the public execution will be theorised in detail in Chapter Four. It is poignant however, to note here, that this practice was not outlawed

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<sup>166</sup>Tuttle 1961:6.

<sup>167</sup>Hibbert 1968:66.

<sup>168</sup>Hibbert 1968:66.

<sup>169</sup>Christoph, J. B. (1962) *Capital Punishment and British Politics* Allen & Unwin, London p.15.

<sup>170</sup>Tuttle 1961:11.

<sup>171</sup>Tuttle 1961:13; Potter 1993:42; Hibbert 1968:68

<sup>172</sup>Christoph 1962:17; Potter 1993:43.

until 1868.<sup>173</sup> As described above, almost the entire defence of capital punishment rested on its supposed deterrent and preventive value. For many decades Samuel Johnson's view that "executions are intended to draw spectators. If they do not draw spectators; they don't answer their purpose"<sup>174</sup>, had been widely accepted. However, the Victorian era, with its concern over decorum and morality, gave rise to an increasing anxiety around the public nature of hangings.<sup>175</sup> Literary figures of the era such as Thackeray and Dickens had attended public executions, and helped to place the issue on the political agenda, by publishing the grave disquiet they had felt at such events.<sup>176</sup> Rather than viewing public hangings as "moral, judicial, and religious dramas," it was now suggested that such spectacles were in bad taste, vulgar in nature and more likely to brutalise and corrupt the minds of the audience, especially "the vicious, the uneducated, and all those most open to evil impressions."<sup>177</sup> During a Parliamentary debate in May 1849, Ewart, who argued in favour of the abolition of the death penalty, voiced his concerns over the spectacle of public executions:

What can be more appalling than the sight of half-a-dozen men dragging a woman of 18 or 20 years of age - a woman untrained, most ignorant, to some extent partly imbecile - dragging her to a public execution, and clergymen coaxing or exhorting her to walk quietly to the scaffold. Now, what could be the effect upon the multitude assembled to witness that execution? I do not believe there is a single Member of this House who can be of opinion that the effect of that execution upon any human being who witnessed it would be otherwise than most unfavourable for the very purpose for which these executions are assumed to take place.<sup>178</sup>

The scenes in Horsemonger Lane on the eve of the double execution of Mr and Mrs Manning in November 1849 did nothing to alleviate the fears and concerns of the polite classes:

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<sup>173</sup>The last woman to be executed in public in England was Frances Kidder, hanged in Maidstone 2nd April 1868, for the murder of her husband's illegitimate daughter, Louisa. (Wilson, P. (1971) *Murderess* Michael Joseph Ltd, London p.154).

<sup>174</sup>Samuel Johnson quoted in Potter 1993:64.

<sup>175</sup>For an in-depth discussion of the Victorian 'polite classes' see Gatrell 1994:225-228.

<sup>176</sup>For example, Thackeray wrote 'Going to See a Man Hanged' for *Fraser's Magazine* in 1840; Dickens had many letters published in newspapers on this issue from 1841 onwards, the most famous being one published in *The Times* 13 November 1849. A large portion of this letter was reproduced in *The Times* 1st February 1949.

<sup>177</sup>Parliamentary Debates, 23 June 1840, quoted in Potter 1993:68.

<sup>178</sup>Parliamentary Debates, House of Commons vol civ, 1 May 1849, col 1076.

the dregs and offscourings of the population of London, the different elements that composed the disorderly rabble crew being mingled together in wild and unsightly disorder, the 'navvy' and Irish labourer smoking clay pipes and muzzy with beer, pickpockets plying their light-fingered art, little ragged boys climbing up posts, and standing on some dangerous elevation, or tumbling down again, and disappearing among the sea of heads.<sup>179</sup>

For, while the Victorian middle class became preoccupied with refinement and respectability, increasingly it was the labouring poor and "the most abandoned, debauched, and dissolute characters"<sup>180</sup> who made up the crowd which could number as many as 40,000.<sup>181</sup> Thus, while "men of right-thinking minds and virtuous habits" could watch executions without danger of giving in to moral debasement, it was quite a different matter for the lower classes, who appeared to treat such occasions as 'open-air' entertainment, engaging in dancing and singing, drinking and screaming, uttering blasphemies and obscene jokes.<sup>182</sup> A most vivid description of this kind of behaviour is provided by Dickens who attended the execution of Mr and Mrs Manning:

When the day dawned, thieves, low prostitutes, ruffians and vagabonds of every kind, flocked on to the ground, with every variety of offensive and foul behaviour. Fightings, faintings, whistlings, imitations of Punch, brutal jokes, tumultuous demonstrations of indecent delight when swooning women were dragged out of the crowd by the police, with their dresses disordered, gave a new zest to the general entertainment.<sup>183</sup>

The issue of public order was therefore becoming an increasing concern, especially in the light of disasters such as the one in 1807, when at the execution of Holloway and Haggerty at Newgate, almost one hundred people were trampled to death.<sup>184</sup> Apart from these concerns over morality and disorder, there was evidence that public hanging did not achieve its aim, since the very people who needed to be deterred - that is, habitual criminals - were the most regular attenders. Thus, Cope, a prison governor, claimed that during his 15 years of

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<sup>179</sup>*The Times* quoted in Borowitz, A. (1989) *The Bermondsey Horror* Robson, London, p.249.

<sup>180</sup>Potter 1993:68.

<sup>181</sup>Hibbert 1968:70.

<sup>182</sup>Sir Fitzroy Kelly MP quoted in Potter 1993:68. While members of the 'respectable' classes did not usually mingle with the 'roughs' at the foot of the gallows, they were still present and just as eager to witness hangings. They however, could afford to hire rooms, rooftops or even just a window over-looking the gallows, so they could watch in comfort - using opera-glasses to see better, and consuming champagne and cigars (Borowitz 1989:265; Gatrell 1994:67-8).

<sup>183</sup>Dickens, Letter to *The Times* 13th November 1849, quoted in Borowitz 1989:261.

<sup>184</sup>Hibbert 1968:70.

service at Newgate, he had never hanged someone who had not witnessed an execution, and of the 40 men Dr Lyford saw hanged at Winchester Gaol, 38 had attended an execution. Meanwhile, at Bristol Prison, the chaplain John Roberts pointed out that of the 167 death sentence prisoners he had attended, only three had never been to a public hanging.<sup>185</sup> In the face of such statistics, it looked increasingly as if the very class of people - the labouring poor - who were meant to be deterred by public executions, were instead corrupted by them. Moreover, there was deep concern over the vast numbers of women in the audience who would 'shriek' with excitement or hiss and boo if they felt particular animosity towards the prisoner as was the case in 1829, when Esther Hibner was executed for starving to death a workhouse child:

she was 'assailed with a loud volley of yells from the people, particularly from the females, of which the crowd was in a great measure composed.'<sup>186</sup>

Similarly, when Greenacre was hanged in 1837 for the particularly vicious murder of Jane Jones, the women in the audience "were, if possible, more ruthless than the men."<sup>187</sup>

There were other aspects associated with public hanging which the new refined and respectable Victorian middle class found disturbing. One was the detection of an undeniable element of sexual titillation present in the spectacle of women being executed. The articulation of such erotic fascination is easily discernible in the writing of Thomas Hardy who witnessed several executions, one of which was that of Elizabeth Martha Brown in 1856. "He never forgot the rustle of the thin black gown the woman was wearing as she was led forth by the warders."<sup>188</sup> "He was so close that he could actually see her features through the rain-damp cloth over her face."<sup>189</sup> When Hardy was well into his eighties he wrote of Martha Brown "what a fine figure she showed against the sky as she hung in the misty rain, and how the tight black silk gown set off her shape as she wheeled half-round and back."<sup>190</sup> Although Hardy was born more than a century after the execution of Mary Channing in 1705, he made detailed notes on the horrifying

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<sup>185</sup>Potter 1993:69.

<sup>186</sup>Gatrell 1994:68.

<sup>187</sup>Weekly Chronicle, 7 May 1837, quoted in Gatrell 1994:69.

<sup>188</sup>Quoted in Gittings, R. (1975) *Young Thomas Hardy* Heinemann's Educational Books, London p.34. Gittings wrote "The rustle of a woman's dress had enormous sexual meaning for Hardy" after this event.

<sup>189</sup>Gittings 1975:33.

<sup>190</sup>Quoted in Gittings 1975:33.



circumstances of her dying moments, where, after being strangled, "the burning of her body revived her; she 'writhed and shrieked', and one of the constables, seeking to stop her cries, 'thrust a swab into her mouth, ... & and the milk from her bosoms (she had recently given birth to a child) squirted out in their faces and made 'em jump back.'"<sup>191</sup> Similarly, "the disgusting eagerness of the people to witness the execution of Manning and his wife"<sup>192</sup> in 1849, would, at least in part, have arisen from the pleasure of watching a beautiful woman sent to her death:

... the woman's [body], a fine shape, so elaborately corseted and artfully dressed, that it was quite unchanged in its trim appearance as it slowly swung from side to side.<sup>193</sup>

Such voyeurism was even more pronounced in the letters of John Forster, Dickens' companion at the execution:

She was *beautifully dressed*, every part of her noble figure finely and fully expressed by close fitting black satin, spotless white collar round her neck loose enough to allow the rope without its removal, and gloves on her manicured hands. ... she called the surgeon, who had led her (blindfold) up the scaffold, and said these words, the last she spoke on this earth. "I am poorly, at present; I trust to you that it shall not be made known." It was true - and she had obtained a clean napkin not ten minutes before she ascended the drop. A sensitive cleanliness of body seems to have been her passion - and the doctor who examined the bodies after death, and who said he had never seen so beautiful a figure, compared her feet to those of a marble statue.<sup>194</sup>

It is observations such as these which remind us that it was not just the 'roughs' who were corrupted by public executions - Sir Fitzroy Kelly was quite wrong when he maintained that men from the polite classes could watch executions without becoming morally debased.

By 1856 individuals such as Samuel Wilberforce, the Bishop of Oxford, was concerned that such gratuitous spectacles had given rise to 'squeamishness' amongst Home Secretaries, who appeared to be increasingly reluctant to send women to the gallows, "however heinous their crimes."<sup>195</sup> This concern was echoed in the House of Lords in June of that year when Lord St Leonards asked

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<sup>191</sup>Quoted in Orel, H. (1987) *The Unknown Thomas Hardy* Harvester Press, p.129.

<sup>192</sup>Quoted in Potter 1993:76.

<sup>193</sup>Charles Dickens, quoted in Gatrell 1994:605.

<sup>194</sup>Letter from John Forster to Sir Edward Bulwer Lytton, quoted in Borowitz, A. (1989) *The Bermondsey Horror* Robson, London p.264. Emphasis in the original.

<sup>195</sup>Gatrell 1994:596.

whether the Government intended to abolish the death penalty for women. His question was prompted by two recent cases where women had been pardoned despite the fact that they had "been convicted for most atrocious murders of their own illegitimate offspring."<sup>196</sup> Lord St Leonards therefore wished to know if the commuting of the death sentence in these two cases were solely due to "any supposed feeling as to the indecency of executing women in public." If this was the case, then he was of the opinion that "it would be better to execute women in private than to let it be understood that they were not to be executed at all."<sup>197</sup> After all, if the execution of women ceased, it was inconceivable that men should continue to be hanged. Rather than risking the abolitionists gaining ground in abolishing the death penalty all together, Wilberforce set up a Select Committee to examine the issue of public executions. The Committee recommended their abolition and the introduction of private executions accompanied by:

black flags, bells tolling, church services ... with prayers for the criminal and improving sermons. The day should be a day of humiliation not merriment. 'A certain mystery and uncertainty about the actual extinction of life creates greater solemnity upon the mind than public witnessing of the act.'<sup>198</sup>

Yet neither the Conservatives nor the radical abolitionists supported these recommendations: The Conservatives because of the belief that private executions would eradicate its deterrent effect and hence hasten total abolition. The abolitionists, on the other hand, believed that if the terror of executions was removed from the public view, the demand for total abolition would be diminished. Individuals such as Thomas Beggs also believed - prophetically - as I shall illustrate in Chapters Six, Seven and Eight, that private executions would not prevent salacious and titillating details of the event "'with all their ghastly accompaniments'" from finding their way into the broadsheets.<sup>199</sup>

Yet the Select Committee Report marked the beginning of a change in attitude to the death penalty. The reformist notion that punishment should be motivated by justice and decorum rather than vengeance had taken a firm hold within the educated and polite classes some of whom believed that private executions might act as a more powerful deterrent than public ones:

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<sup>196</sup>Parliamentary Debates, House of Commons, 3rd Series, vol 142, 6 May to 27 June 1856 col.1056.

<sup>197</sup>Parliamentary Debates, House of Commons, 3rd Series, vol 142, 6 May to 27 June 1856 col 1057.

<sup>198</sup>Quoted in Potter 1993:84.

<sup>199</sup>Quoted in Potter 1993:86.

'the very imagination of death inflicted upon the criminal in the privacy of a prison, in absolute isolation from all his fellows, - the awe and mystery which would be associated with that terrible and silent scene' would more powerfully effect the populace than 'the heterogeneous reminiscences of a public execution'.<sup>200</sup>

A motion, proposing the abolition of public execution in 1864 was defeated, but on 8th July of that year a Royal Commission was given the task of investigating issues around capital punishment. Two years later it had recommended the abolition of public executions, and after another two years of debating the issue in the House of Commons the Capital Punishment Amendment Act was finally passed in 1868 which abolished public executions.<sup>201</sup> As the abolitionists had feared, this move almost put an end to their movement and the *Society for the Abolition of Capital Punishment* was dissolved. The newly formed *Howard Society*, although supporting the abolition of capital punishment, worked from a much broader agenda, its main interest being "in the sphere of prison reform."<sup>202</sup>

Executions had finally been moved from public view to the private sphere behind the prison walls, and with this move, the nature of punishment had changed fundamentally:

It was the beginning of a dramatic change in the procedure of hanging. From being a painful, agonizing, demeaning, and slow death, in the full gaze of a deriding public, it was to become a highly formalized, technically exact, and wonderfully speedy extinction, attended only by a handful of witnesses.<sup>203</sup>

This move from public to private execution in the latter half of the 19th century marked an important point in the social history of capital punishment. In particular, it signified the introduction of the modern and more 'discreet' style of execution endured by the 15 women who were executed in the 20th century, and whose cases are critically examined in Chapters Six, Seven and Eight. Before that however, I analyse the different sociological theories which have been developed to explain the utilisation of capital punishment over the last 200 years.

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<sup>200</sup>Quoted in Potter 1993:87.

<sup>201</sup>Tuttle 1961:16-20; Potter 1993:94.

<sup>202</sup>Ryan, M. (1978) *The acceptable pressure group* Saxon House, Farnborough p.28.

<sup>203</sup>Potter 1993:86-7.

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## Chapter Four

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### Theorising Punishment: Sociological Perspectives.

As stated in the introduction to the thesis, the purpose of this chapter is to explain and illustrate the way in which the social history outlined in Chapter Three has been theorised. For this purpose I shall consider and analyse four main perspectives on punishment in general and capital punishment in particular. They are those of classicism and Marxism as well as Foucauldian and cultural perspectives. The chapter will therefore also serve as a review of established literature within the area of punishment.

#### The Enlightenment; Punishment, Progress and Modernity.

The Enlightenment forms an important starting-point for the examination of modern theories of punishment. This movement, which has its roots in Scotland and France, is usually considered to have begun during the first quarter and ended during the last quarter of the 18th century. It represents a period where a new set of alternative and secular ideas were being formulated about the social world which resulted in the emergence of a 'science of society'. It was an era which gave birth to a mode of thought which Hamilton has termed 'critical rationalism'.<sup>1</sup>

The key features of Enlightenment philosophy were, first, the notion of applying *reason* and *rationality* to issues falling within social, political and economic spheres, coupled with a strong belief that this would always result in an improvement of the human condition. Second, the notion of *progress* which was perceived in positive and optimistic terms. This notion of progress was a crucial element in Enlightenment thinking and was usually taken to mean "that the natural and social condition of human beings could be improved by the application of science and reason" which, in turn, "would result in an ever-increasing level of happiness and well-being."<sup>2</sup> As Pannick notes, it was the

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<sup>1</sup>Hamilton, P. (1992) 'The Enlightenment and the Birth of Social Science' in Hall, S. & Gieben, B. (eds) (1992) *Formations of Modernity*, Polity, Cambridge p.20.

<sup>2</sup>Hamilton 1992:21.

optimistic belief of the Enlighteners "that all problems could be resolved, and all questions correctly answered, if only we could discover and apply the relevant formula."<sup>3</sup> A strong faith in the ability of science to create a better world for the whole society was therefore a third key characteristic of the movement's philosophy:

....scientific knowledge, based upon the experimental method as developed in the scientific revolution of the seventeenth century, was the key to expanding *all* human knowledge. <sup>4</sup>

A fourth feature was that of *individualism* - "the concept that the individual is the starting point for all knowledge and action, and that individual reason cannot be subjected to a higher authority."<sup>5</sup> This brought Enlightenment thinkers into conflict with traditional religious authority whom they regarded as superstitious and irrational with a vested interest in maintaining the old feudal ways. The Church was therefore seen as an obstacle to progress and it was within this context that the concepts of secularism, tolerance and freedom were embraced within the movement's critical rationalism.<sup>6</sup>

Thus, for the first time in history an era had emerged in which a group of thinkers was both large enough and strong enough to challenge the established religious order. As such it is often thought of as a break away from the "prejudice, ignorance, superstition and intolerance"<sup>7</sup> of previous epochs, and the beginning of a new dawn for humankind - 'the light of reason'.<sup>8</sup> Hamilton has defined the period in the following terms:

In its simplest sense the Enlightenment was the creation of a new framework of ideas about man, society and nature, which challenged existing conceptions rooted in a traditional world-view, dominated by Christianity.<sup>9</sup>

While the Enlightenment engendered issues around secularism, democracy and equality, it is important not to over-state the radicalism within this group of critical rationalists. The movement was made up almost exclusively of men who

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<sup>3</sup>Pannick, D. (1982) *Judicial Review of the Death Penalty* Duckworth, London p.1.

<sup>4</sup>Hamilton 1992:21. Emphasis in the original.

<sup>5</sup>Hamilton 1992:22.

<sup>6</sup>Hobsbawm, E.J. (1977) *The Age of Revolution 1789-1848* Abacus, London, p.34-35; Hamilton 1992:22.

<sup>7</sup>Hamilton 1992:21.

<sup>8</sup>Hamilton 1992:26.

<sup>9</sup>Hamilton 1992:23.

came from wealthy and privileged backgrounds: noble men and members of the gentry and professional classes.<sup>10</sup> While they appeared highly critical of existing religious authority, they seemed less eager to challenge the established social order,<sup>11</sup> and still less inclined to question the condition of women.<sup>12</sup> Thus Hamilton writes that "for the lower orders of European eighteenth-century society, the Enlightenment had apparently little to offer,"<sup>13</sup> while Anderson and Zinsser describe Enlightenment thinkers' attitude to women in the following terms:

Just as there was no Renaissance or Scientific Revolution for women, in the sense that the goals and ideals of those movements were perceived as applicable only to men, so there was no Enlightenment for women ... Instead, often at great cost to their own logic and rationality, they [Enlightenment thinkers] continued to reaffirm the most ancient inherited traditions about women: that they were inferior to men in the crucial faculties of reason and ethics and so should be subordinated to men. In philosophy and in art, men of the Enlightenment upheld the traditional ideas of women: silent, obedient, subservient, modest and chaste.<sup>14</sup>

Never-the-less, the *philosophes'* preoccupation and concern with developing a 'science of man' to aid them in understanding 'human nature' played a crucial role in establishing "the founding concepts of social science"<sup>15</sup> as well as classical criminology.

#### Classical Criminology: Beccaria and Bentham.

Classical theories of crime and punishment was developed as a response to the arbitrary, capricious and barbarous systems of justice and codes of punishment described in Chapter Three, which were the norm prior to the Enlightenment.<sup>16</sup> It is within classicism that we find the roots of the notion 'due process of the law',

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<sup>10</sup>Hamilton 1992:32.

<sup>11</sup>Fitzpatrick reminds us that the 18th century was also the 'golden age of slaving', and notions of freedom and equality did not extend to black people. The contradiction between slavery and Enlightenment philosophy was "mythically resolved by the invention of racism." (Fitzpatrick, P. (1992) *The Mythology of Modern Law* Routledge, London p.65).

<sup>12</sup>Hamilton 1992:31.

<sup>13</sup>Hamilton 1992:33.

<sup>14</sup>Anderson, B.S. & Zinsser J.P. (1988) *A History of Their Own*, vol.2, Harper & Row, New York p.113.

<sup>15</sup>Hamilton 1992:37.

<sup>16</sup>Young, J. (1981) 'Thinking seriously about crime: some models of criminology' in Fitzgerald, M., McLennan, G. & Pawson, J. (compilers) (1986) *Crime & Society*, RKP, London p.253.

a concept which "preserved the rights of an ascendent class against the arbitrary exercise of justice and coercion by the state."<sup>17</sup>

Classical criminology started from the assumption that all humans are "free-willed, rational and hedonistic"<sup>18</sup> but in order to enjoy liberty relatively safely it benefits everybody to enter into a social contract which, unavoidably, involves "our sacrificing a portion of our personal liberty". Agreeing to impose a small measure of self-policing of our actions is not done out of compassion for our fellow human beings. Rather, according to Beccaria: "If it were possible, every one of us would prefer that the compacts binding others do not bind us."<sup>19</sup> Hence, our motivation is pure self-interest:

Weary of living in a continual state of war, and of enjoying liberty rendered useless by uncertainty of preserving it, [we] sacrifice a part so that [we] might enjoy the rest of it in peace and safety.<sup>20</sup>

Beccaria wrote *Dei Delitti e delle Pene* in 1764 and it is appropriate here to acknowledge the original contract theorists such as Hobbes and Locke. Hobbes published *Leviathan* in 1651,<sup>21</sup> and it is here that he presents his pessimistic view of human beings in their 'natural state' as mere self-interested, selfish and pleasure-seeking creatures, who, without the fear of some greater authority would find themselves in a constant struggle to survive and in a state of "warre of every one against every one."<sup>22</sup> In order to avoid this, laws were required. These laws Hobbes summed up in one sentence: "Do not that to another which thou wouldest not have done to thyself."<sup>23</sup> It was within this context that he proposed the establishment of a state via a social contract built on an agreement between all individuals to desist from fighting amongst themselves, and instead accept the presence of a small, strong state whose role should be to regulate social order and prevent chaos:

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<sup>17</sup>Young 1981:259.

<sup>18</sup>Roshier, B. (1989) *Controlling Crime*, OU Press, Milton Keynes p.3.

<sup>19</sup>Beccaria quoted in Roshier 1989:5-6.

<sup>20</sup>Beccaria quoted in Roshier 1989:6.

<sup>21</sup>Hobbes, T. *Leviathan, or The Matter, Forme and Power of a Commonwealth Ecclesiastical and Civil*, (also published in 1962 by Fontana, London).

<sup>22</sup>Hobbes, quoted in Held, D. (1984) 'Introduction: Central Perspectives on the Modern State' in Held, D. et al (eds) (1984) *States & Societies*, Martin Robertson, Oxford p. 6.

<sup>23</sup>Hobbes quoted in Held 1984:6.

Beyond the sovereign state's sphere of influence there will always be the chaos of constant warfare; but within the territory controlled by the state, with 'fear of some coercive power', social order can be sustained. <sup>24</sup>

The influence of Hobbes on the work of Beccaria is therefore easily identifiable - Beccaria too refers to individuals who are "living in a continual state of war" as well as the need for laws to prevent "each individual from plunging society into its former chaos."<sup>25</sup> But it is Beccaria's elaboration of the role of punishment which is of special interest here. In his version of the social contract the characteristics of cruelty, arbitrariness and inefficiency within the existing system of justice and code of punishment were to be replaced by those of "humanity, consistency and rationality."<sup>26</sup> The role of punishment should be to *deter* crime - this is why consistency was so important for Beccaria - and, in turn, it can be seen to be linked to his contentious demand that "all personal characteristics of offenders, including their subjective intent, should be excluded from consideration; the sole measure of the punishment should be the objective harm done."<sup>27</sup> The issue of proportionality was thus a crucial one, since, like Hobbes, Beccaria took the pessimistic view of human nature that given the chance, individuals will inevitably be drawn to commit more, rather than less serious crimes; hence punishment must be in proportion to the crime:

If an equal punishment be ordained for two crimes that do not equally injure society, men will not be any more deterred from committing the greater crime ..... <sup>28</sup>

Yet, punishment must never exceed the minimum of that which is necessary to deter, since we are all potential offenders who have the ability to identify with them; we are not therefore likely to enter into a social contract which legitimises excessive harshness.<sup>29</sup> This basic concern for the individual rights of offenders illustrates the humane aspect of Beccaria's philosophy. His humanitarianism can also be seen in his sharp opposition to torture and capital punishment. Beccaria argued that "the punishment of death is not authorised by any right" and that it was neither necessary nor useful to destroy a criminal's life within a well

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<sup>24</sup>Hobbes quoted in Held 1984:7.

<sup>25</sup>Beccaria quoted in Taylor, I., Walton, P. and Young, J. (1979) *The New Criminology*, Routledge, London pp.1-2,

<sup>26</sup>Roshier 1989:5.

<sup>27</sup>Roshier 1989:7.

<sup>28</sup>Roshier 1989:7.

<sup>29</sup>Roshier 1989:9.



governed state.<sup>30</sup> Given his preoccupation with ensuring that punishment is proportional to the crime this opposition would appear to contradict his argument as far as murder is concerned. But Beccaria's response was that no rational person would enter into a social contract which would "leave to other men the choice of killing him."<sup>31</sup> Thus, Roshier argues that this indicates Beccaria's opposition to capital punishment was based in utilitarianism rather than humanitarianism.<sup>32</sup> Beccaria appears to confirm this when he states that the act of punishment "is intended more for ... [the spectators] than for the criminal."<sup>33</sup> Hence, lifelong deprivation of liberty is a *better* deterrent than capital punishment:

The death of a criminal is a terrible but momentary spectacle, and therefore a less efficacious method of deterring others, than the continued example of a man deprived of his liberty, condemned, as a beast of burden, to repair, by his labour, the injury he has done to society. *If I commit such a crime, says the spectator to himself, I shall be reduced to that miserable condition for the rest of my life.* A much more powerful preventative than the fear of death, which men always behold in distant obscurity.<sup>34</sup>

His utilitarianism is once more made explicit in his section on crime prevention which is "much preferable to punishment - it increases aggregate utility, the happiness of the greatest number..."<sup>35</sup> To achieve a high level of crime prevention the employment of education is necessary as this will spread enlightenment:

Knowledge breeds evil in reverse ratio to its diffusion since 'no enlightened person can fail to approve the clear and useful public compacts of mutual security' which constitute the social contract.<sup>36</sup>

Beccaria is widely regarded as the 'father' of classical criminology and his *Dei Delitti e delle Pene* has had a deep impact upon criminal justice systems in Europe. Yet, ultimately it proved impossible to implement the system of punishment which he had envisaged. Taylor, Walton and Young argue that this is because classical theory operates within assumptions which are highly questionable. These are, first, an assumption that a consensus exists between *all*

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<sup>30</sup>Beccaria, C. (1899) 'Crimes and Punishments' reproduced in Heath, J. (1963) *Eighteenth Century Penal Theory* p.133.

<sup>31</sup>Beccaria quoted in Roshier 1989:6.

<sup>32</sup>Roshier 1989:9.

<sup>33</sup>Beccaria quoted in Heath 1963:134.

<sup>34</sup>Beccaria quoted in Heath 1963:134 Emphasis in the original.

<sup>35</sup>Roshier 1989:7.

<sup>36</sup>Beccaria quoted in Roshier 1989:8.

men - powerful and dispossessed alike - "on the morality and permanence of the present distribution of property."<sup>37</sup> Clearly such a consensus is of benefit only to those who already own property, possess wealth and hold political power. Classical theory thus imposes a 'false' equality upon all individuals - treating everybody as if they are equal when the reality is very different. This false equality is also inherent in the second assumption which is that all crimes "occurring in a society where a social contract has allegedly been struck .. [is] essentially pathological or irrational, the behaviour of men unable - by virtue of personal inadequacies - to enter into contracts."<sup>38</sup> Here poverty is reduced to 'personal inadequacy' and since the vast majority of crime identified by the Enlighteners, unsurprisingly, took place amongst the poor, irrationality appeared to be much more prevalent amongst the 'dangerous classes'.<sup>39</sup> Thus, by ignoring the issue of the unequal distribution of power, wealth and property, any notion of motivation for committing a crime is removed, and from the point of view of the powerful the criminal act is deemed 'irrational'. We can observe this process of denying the rationality and motivation of criminal acts in Beccaria's statement above where he emphasises the importance of education because it leads to enlightenment - and no enlightened person can fail to understand the benefits of the social contract. Beccaria simply ignored the unequal distribution of property as a motive for crime and denied the rationality behind such acts; instead he thought of it as irrational and ignorant - something that could be prevented by education and enlightenment. However, it is not education but equality which is needed for this system of punishment to work. Beccaria's notion of a punishment proportional to the crime "could only operate in a society where property was distributed equally" since the dispossessed thief is not in a position to "be deprived of part of his own" property as his punishment.<sup>40</sup>

Lastly, Beccaria's system of punishment proved unworkable because it was not concerned with fairness but concentrated exclusively on punishment as an *effective deterrent*.<sup>41</sup> Thus, disregarding the personal circumstances and characteristics of individual offenders was quite unacceptable in practice. Once more we see classical theorists' tendency to enforce equality upon individuals who differ widely according to class, gender, age, mental ability and intent. The

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<sup>37</sup>Taylor, Walton & Young 1979:3.

<sup>38</sup>Taylor, Walton & Young 1979:3.

<sup>39</sup>Taylor, Walton & Young 1979:5.

<sup>40</sup>Taylor, Walton & Young 1979:6; 5.

<sup>41</sup>Roshier 1989:11.

unacceptability of this resulted in a modified version of Beccaria's system of punishment - neo-classicism which Roshier has defined as:

a retention of the assumption of free will, but with an allowance that it is sometimes freer than at other times and that the proportionality of punishments should be adjusted to these varying degrees of freedom.<sup>42</sup>

### From Beccaria to Bentham.

In Britain the ideas of Beccaria were taken up by Jeremy Bentham. As we saw in Chapter Three, the reformers recognised the need to establish a firm basis for a new social order and to this end they attempted to create a clear dividing line between their philosophy and that of the *ancien regime* by portraying the old monarchs as assuming "the divine power of taking away human life", shedding the blood of their subjects "with as little emotion as men shed the blood of sheep or cattle."<sup>43</sup> The reformers on the other hand, although not considering the introduction of genuine participatory democracy, recognised the importance of taking the opinion of ordinary people into account:

The propertyless might not be able to vote ... but they needed to be convinced that their governors were seeking the public good and not simply lining their own pockets.<sup>44</sup>

Excessive punishment, as was also noted in the previous chapter, could result in a loss of moral legitimacy and cause the people to sympathise with the lawbreaker. The reformers therefore sought an end to retributive punishment - it was no longer to be "an act of wrath or vengeance."<sup>45</sup> In its place and in accordance with Enlightenment philosophy, Bentham concentrated on the development of a 'science of punishment' and a 'science of pain'. This involved removing the personal element from punishment which would make it more humane and apportion to each crime an exact measure of pain the way "the market allocated prices to commodities."<sup>46</sup> The previous 'unregulated discretion' which rulers had exercised must be brought to an end and offenders must be made to understand that their punishment was fair and in their own best interest - the purpose being to reform their character. This reformation of character would come about partly as a result of being imprisoned within Bentham's Panopticon style prison which

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<sup>42</sup>Roshier 1989:10.

<sup>43</sup>Ignatieff, M. (1978) *A Just Measure of Pain* Macmillan, London, p.74.

<sup>44</sup>Ignatieff 1978:74.

<sup>45</sup>Bentham quoted in Ignatieff 1978:75. See also Chapter 3, p.27.

<sup>46</sup>Ignatieff 1978:76.

was to be run according to the principles of constant surveillance, regulation and social discipline. Foucault has stated that the introduction of this style of imprisonment represented a change in punishment whereby it moved from working on the body to focusing on the mind.<sup>47</sup> But, while it has been argued that the reformers aimed to arouse guilt by appealing to the conscience of the offenders<sup>48</sup>, it is important to remember that Bentham was not against corporal punishment. He merely objected to the fact that the strength and severity of punishment such as whipping depended upon the whim of the operator of the whip. Hence he proposed that 'whipping machines' should be developed which would lash the offender "with the same unvarying force to the number of strokes chosen by the operator". In this way the gravity of the offence would determine the punishment - not the emotions of the operator, and the punishment would be more exact, rational and fair.<sup>49</sup>

As illustrated in the previous chapter, public executions were legal until 1868 and at no time did Bentham propose that this practice ought to be stopped; instead he firmly believed that the deterrent value in capital punishment lay in its very visible and public nature. Indeed he proposed a few awe-inspiring additions of his own to be added to existing rituals. The scene of the execution should be furnished:

with a black scaffold, the officers of justice dressed in crepe, the executioner masked 'to augment the terror of his appearance', the judges in attendance and 'serious and religious music preparing the hearts of the spectators for the important lesson they were about to receive'.<sup>50</sup>

However, by 1821, the year in which Robert Peel became Home Secretary, Bentham had revised his position and he "now demanded the abolition of the death penalty even for murder."<sup>51</sup> Consequently he did not think that the various reforms which Peel implemented between 1823 and 1827, and which ensured the end of capital punishment for a variety of offences, went far enough towards abolition.<sup>52</sup> Like Beccaria, Bentham had become a confirmed abolitionist.

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<sup>47</sup>Foucault, M. (1975) *Discipline and Punish* Peregrine, Harmondsworth. See also Poster, M. (1990) *Foucault, Marxism & History* Polity Press, Cambridge p.81.

<sup>48</sup>Ignatieff 1978:72.

<sup>49</sup>Ignatieff 1978:75.

<sup>50</sup>Hibbert, C. (1968) *The Roots of Evil: A Social History of Crime and Punishment* Minerva Press, USA p.70.

<sup>51</sup>Hibbert 1968:66.

<sup>52</sup>Hibbert 1968:66-67.

As detailed in Chapter Three, while there were minor disagreements between progressive thinkers about the exact nature and extent of the reforms within the criminal justice system, sweeping changes were never the less implemented which insured that by 1861 only four capital statutes remained as opposed to 60 years earlier when capital offences had numbered approximately 230. The influence of the Enlightenment is clearly discernible in this achievement since "it created the elements from which intellectuals could begin to construct an image of society which reflected human interests."<sup>53</sup> It also attempted to understand and challenge social arrangements directly rather than accepting intimidating religious interpretations of such arrangements. Moreover, while, Enlightenment philosophy failed to provide "a coherent theory or model of the society from which it issued, it produced enough elements of a *critique* of that society to help it along the way to an eventual demise."<sup>54</sup> The collapse of the old arbitrary criminal justice system and method of punishment into a new rational system, which Pannick claims the Enlighteners would still recognise today,<sup>55</sup> formed a major component of this overall demise. Consequently, it ensured that Enlightenment philosophy had a major impact upon the issue of capital punishment.

#### Durkheim's Theory of Punishment.

It was undoubtedly the spirit of the Enlightenment - with its faith in science as the main perpetrator of progress, and as the embodiment of reason, a tool which could 'prove' a 'truth' that went "beyond philosophical, theological and ideological dispute"<sup>56</sup> - which was instrumental to the birth of social science. Thus, in 1813 Saint-Simon could conceive of a new science of society in which the population would be led by prominent scientists, rather than the Church, with temporal power being held by property owners.<sup>57</sup> But it is Comte who is credited with being the first person to use the term sociology. Writing in the first half of the 19th century, Comte conceptualised the development of society in both evolutionary and biological terms - society was like a biological organism with its development following a similar pattern to that of an animal.<sup>58</sup> The work of Saint-Simon and Comte can be summed up as having formed the first important

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<sup>53</sup>Hamilton 1992:55.

<sup>54</sup>Hamilton 1992:55. Emphasis in the original.

<sup>55</sup>Pannick 1982:1.

<sup>56</sup>Hamilton 1992:42.

<sup>57</sup>Hamilton 1992:52.

<sup>58</sup>Hamilton 1992:53.

stepping stones between the ideas of reason and progress within the Enlightenment era and those of modern sociology where society is conceptualised "as an entity open to human agency, whose workings are in principle open to our scrutiny."<sup>59</sup> Both Saint-Simon and Comte were concerned with the role of religion and thought it functioned as social cement - binding society together. Comte's work in particular can be seen to have greatly influenced Emile Durkheim who was writing at the end of the 19th and the beginning of the 20th century.<sup>60</sup> Durkheim's work, although differing in important ways from that of Beccaria and Bentham, shares a commitment to the Enlightenment principle of scientific rationalism which ensures that it falls within the liberal tradition.<sup>61</sup> In *The Two Laws of Penal Evolution* (1899) Durkheim develops an evolutionary account of the history of methods of punishment where he claims that 'primitive' societies display a higher level of intensity in their methods of punishment. More advanced societies, on the other hand, are "considerably more lenient in their penal methods."<sup>62</sup> Durkheim supports his first 'law of penal evolution' by citing examples of primitive societies where "criminals were stoned to death, they were shot full of arrows, they were hanged, they were crucified, their ribs and entrails were burned with torches, they were drawn and quartered, they were hurled from cliffs ... or they were crushed beneath the feet of animals, etc."<sup>63</sup> In advanced societies, however, corporal punishment is no longer necessary, because "our modern sensibility has provided us with 'more delicate nervous systems which respond even to weak irritants.'"<sup>64</sup>

Thus, rather than employing methods of punishments such as execution, torture or mutilation, advanced societies' preferred mode of punishment is that of imprisonment - a more lenient form of punishment which matches the evolution of more sensitive social moralities. This tendency towards "deprivations of liberty, and of liberty alone" in advanced societies forms Durkheim's second 'law of penal evolution.'<sup>65</sup> Here there is no disagreement between Durkheim and Enlightenment thinkers such as Bentham - they both assume that as the human

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<sup>59</sup>Hamilton 1992:55.

<sup>60</sup>Hamilton 1992:54.

<sup>61</sup>Gane, M. (1992) 'Introduction: Emile Durkheim, Marcel Mauss and the sociological project' in Gane, M. (ed) (1992) *The Radical Sociology of Durkheim and Mauss*, Routledge, London, p.4.

<sup>62</sup>Garland, D. (1993) *Punishment and Modern Society*, University of Chicago Press, Chicago, p.36.

<sup>63</sup>Durkheim, E. (1899) 'Two laws of penal evolution' reproduced in Gane 1992:26.

<sup>64</sup>Durkheim quoted in Garland 1993:45.

<sup>65</sup>Durkheim in Gane 1992:32.

race evolves and progresses into modern times it becomes less barbaric and more humane and civilised in outlook as well as in practice. Yet Durkheim differed sharply from Beccaria, Bentham and other earlier reformers in his attitude towards the role of punishment. While they placed great emphasis on punishment as a deterrent, Durkheim believed that as a method of crime control it was greatly over-estimated. Instead he conceptualised punishment as being first and foremost "a matter of morality and social solidarity"<sup>66</sup> - its main function being to express and reinforce the social morality of the 'conscience collective'. Accordingly, it is acts that offend and "violate the sacred norms of the conscience collective" which must be punished.<sup>67</sup> The primary role of punishment is thus twofold: to prevent the collapse of moral authority and, at the same time, to reassert the moral order. Durkheim employs a circular argument to illustrate the functionality of punishment: a strong bond of moral solidarity within society is needed before punitive action can come about. In turn, once punitive action is taken, the conscience collective will experience a "reaffirmation and strengthening of these same social bonds."<sup>68</sup> For Durkheim, therefore, the 17th century rituals around public executions described in Chapter Three, would have provided the opportunities for such reaffirmation and strengthening of social bonds.

By employing concepts such as 'social morality' and 'conscience collective' Durkheim had broken with the 'analytical individualism'<sup>69</sup> so characteristic of Enlightenment thinkers. Unlike Beccaria and Bentham, who focused on the individual as the object of punishment, Durkheim succeeded in providing a social explanation of the dynamics of punishment within a particular society. Furthermore, in contrast to the 18th century reformers who always regarded punishment as a negative response to criminal behaviour, Durkheim recognised it "as both *positive* and *productive*":

... he credits punishment with a constitutive status where crime is concerned (as the carrier of the collective sentiments it defines that which is criminal), and with positive social effects (the symbolic display of collective sentiments, the reinforcement of solidarity, the expressive release of collective emotion).<sup>70</sup>

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<sup>66</sup>Garland 1993:28.

<sup>67</sup>Garland 1993:29.

<sup>68</sup>Garland 1993:28.

<sup>69</sup>Taylor, Walton & Young 1979:67.

<sup>70</sup>Garland, D. (1983) 'Durkheim's Theory of Punishment: A Critique' in Garland, D. & Young P. (eds) (1983) *The Power to Punish* Heinemann, London, p.59.

Durkheim can be seen to share Beccaria's view that punishment must never take excessive forms such as maximising pain and suffering, but unlike Beccaria's utilitarian reasoning of this stance, Durkheim finds excessive punishment immoral in its own right. Instead "... the best punishment is that which puts the blame ... in the most expressive but least costly form possible."<sup>71</sup>

Durkheim places the state in the role of guardian of the common conscience:

It becomes the 'symbol and living expression' of society's collective beliefs - 'the collective type incarnate' so that offences against its powers are viewed as offences against the *conscience collective* itself.<sup>72</sup>

Although Durkheim distinguishes between 'mechanical solidarity' within 'primitive' societies and 'organic solidarity' in 'advanced' societies, his account of punishment is essentially ahistorical. This is because he believed that while the methods of punishment change over time as he documented in *Two Laws of Penal Evolution*, the actual social process of punishment remains unchanging in character.<sup>73</sup>

In sum, Durkheim's theoretical explanations of punishments are firmly placed within a moral framework. By examining punishment we can learn much about a particular society's values and moral life. The role which punishment has is one which expresses, reasserts and enforces social morality - at the same time "it has a crucial role in preventing the collapse of moral authority."<sup>74</sup> Moreover, Durkheim's account is one of evolutionary functionalism which emphasises "the development of a modern, secular morality" that automatically brings "about a general diminution in the severity of penal measures" in which punishment is functional to the maintenance of the moral order.<sup>75</sup>

It was the Enlightenment thinkers of the 18th century who first conceptualised their criminal justice system as barbaric, a system "which should have been intolerable to any society which claimed to be civilized."<sup>76</sup> The notion that as society progresses forward in time it becomes increasingly humanitarian and civilised has remained extremely powerful ever since it was first voiced by the

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<sup>71</sup>Durkheim quoted in Garland 1993:46.

<sup>72</sup>Garland 1993:30. Emphasis in the original.

<sup>73</sup>Garland 1993:36.

<sup>74</sup>Garland 1993:42.

<sup>75</sup>Garland 1993:38

<sup>76</sup>Garland 1993:215.



reformers 200 years ago and is a central aspect of Durkheim's thesis. This evolutionary and linear view of history as a series of reforms which automatically equals progress, has remained influential right into the 20th century. For example, Radzinowicz introduces his *History of English Criminal Law and its Administration from 1750* by stating that: "Lord Macaulay's generalisation that the history of England is the history of progress is as true of the criminal law of this country as of the other social institutions of which it is a part."<sup>77</sup> With specific regard to capital punishment, Tuttle, in her *Crusade Against Capital Punishment in Great Britain* describes this 'crusade' as an evolutionary process - at first a move from barbarism towards humanitarianism - and later an "evolution ... from a humanitarian movement to a scientific campaign..."<sup>78</sup> This 'Whig view of history' presents "modern punishment as an outcome of unblemished progress - as a victory of humane values expressing the cultural supremacy of the present."<sup>79</sup> It is a view which does not allow for any notion of conflict - reforms always equal progress and improvement, they are never considered as having been urged on the state, or "adopted by it as a means of improved social control;" moreover, this approach is 'history from above' - there is no attempt to analyse "how these moves by the state were seen and felt from below, by the people most affected by them."<sup>80</sup> This chapter therefore turns next to a consideration and analysis of an approach to punishment in general and capital punishment in particular, which uses conflict as its starting-point - that of Marxism.

### Marxism, Power and Punishment.

Unlike the reformers Marx did not place his faith in a linear march of progress which would result in a better world for everyone living within it.<sup>81</sup> Instead his starting-point was the conflicting interests of competing social classes within a

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<sup>77</sup>Radzinowicz quoted in Philips, D. (1983) 'A Just Measure of Crime, Authority, Hunters and Blue Locusts': The 'Revisionist' Social History of Crime and the Law in Britain, 1780-1850' in Cohen, S. & Scull, A. (eds) (1983) *Social Control and the State* Martin Robertson, Oxford, p.52.

<sup>78</sup>Tuttle, E.P. (1961) *The Crusade Against Capital Punishment in Great Britain* Stevens, Quadrangle, p.140.

<sup>79</sup>Garland 1993:196.

<sup>80</sup>Philips 1983:52.

<sup>81</sup>No reader can be in any doubt about Marx's opinion of Bentham after reading the following quote: "... the arch-Philistine, Jeremy Bentham, that insipid, pedantic, leather-tongued oracle of the ordinary bourgeois intelligence of the 19th century..... Had I the courage of my friend Heinrich Heine, I should call Mr. Jeremy a genius in the way of bourgeois stupidity." (Marx, K. (1977) *Capital Vol I* Lawrence & Wishart, London, pp.570-1.

capitalist economy. In Marx and Engels' early theoretical formulations, the state is regarded as an instrument of class rule - it is "used as an instrument for the exploitation of wage-labour by capital and/or the maintenance of class domination in the political sphere."<sup>82</sup> Within a given society the mode of production forms the base "upon which the 'superstructure' of political and ideological relations is built." That is to say, a relationship exists between the economy and "the institutions of law, politics, morality, philosophy, religion," and while this is a complex and sometimes contradictory two-way relationship, "'the economic' is determinative 'in the last instance.'"<sup>83</sup> Within a capitalist mode of production an antagonistic relationship exists between "the subordinate class which labours, and the dominant class which appropriates the fruits of that labour."<sup>84</sup> Unlike Durkheim's *conscience collective* which was built upon a high level of consensus, Marx conceptualised society as being divided and fractured along class lines with contradictory interests giving rise to social conflict and class struggle. This class struggle is the driving force of history and ultimately plays the decisive role "in bringing about social change and giving specific shape to concrete institutions."<sup>85</sup>

Although neither Marx nor Engels developed a comprehensive theory of punishment<sup>86</sup> others, following the broader social theory of Marx, have filled this gap, with Bonger being credited with developing the first consistent Marxist analysis of crime and punishment.<sup>87</sup> While Bonger's *Criminality and Economic Conditions* has been described as carrying "the mantle of the Marxist orthodoxy"<sup>88</sup> it is Rusche and Kirchheimer's *Punishment and Social Structure*, first published in 1939, which is widely regarded as the 'founding' Marxist analysis of punishment. This work provides a Marxist analysis of the history of the political economy of punishment since the Middle Ages, emphasising the "specific development of the productive forces [which] permits the introduction or rejection of corresponding penalties ..."<sup>89</sup> In other words, unlike Durkheim, Rusche and Kirchheimer regard historic specificity, coupled with the mode of

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<sup>82</sup>Jessop, B. (1982) *The Capitalist State* Martin Robertson, Oxford p.13.

<sup>83</sup>Garland 1993:85.

<sup>84</sup>Garland 1993:86.

<sup>85</sup>Garland 1993:86.

<sup>86</sup>Hall, S. & Scraton, P. (1981) 'Law, class and control' in Fitzgerald, M. et al (compilers) (1986) *Crime & Society* RKP & OU Press, London p.462; Garland 1993:84.

<sup>87</sup>Hall & Scraton 1981:462.

<sup>88</sup>Taylor, Walton & Young quoted in Howe, A. (1994) *Punish and Critique* Routledge, London, p.6.

<sup>89</sup>Rusche & Kirchheimer quoted in Garland 1993:91; my emphasis.

production, as being extremely relevant to an understanding of punishment, since "important peculiarities in the contemporary criminal law cannot be explained without a historical framework ..."90 Above all, it is economic and fiscal forces which determine the "specific penal methods in specific historical periods."91 Like Durkheim, however, they recognised that punishment is not simply the inevitable result of criminal behaviour, but instead carries a much wider social significance, hence constitutes a social phenomenon in its own right. But whereas Durkheim viewed that social significance as being one of strengthening consensus by affirming the conscience collective, Rusche and Kirchheimer regarded it in conflictual terms - as part of "a wider strategy of controlling the poor, in which factories, workhouses, the poor law, and ... the labour-market, all play corresponding parts"92:

[While] criminality certainly occurs throughout all social classes ... it becomes clear that the criminal law and the daily work of the criminal courts are directed almost exclusively against those people whose class background, poverty, neglected education, or demoralization drove them to crime.93

As such punishment should be regarded as an important aspect of the class struggle rather than individual social responses to those engaging in criminal behaviour. Thus, in sharp contrast to liberal historians such as Radzinowicz, who, as stated above, regarded the history of the criminal law as the history of progress, Rusche wrote that "'the history of the penal system is ... the history of the relations [between] the rich and the poor'."94

A fundamental aspect of Marxist theory is the operation of ideology. Ideology has the power to distort and misconstrue reality in ways that make it difficult to see exactly whose interests are being served.95 In the case of punishment, Rusche and Kirchheimer argue ideology operates to give "the illusion that specific penal practice is bound up with a specific penal theory."96 The reality however, is that

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90Rusche, G. (1933) 'Labour Market and Penal Sanction: Thoughts on the Sociology of Criminal Justice' in Platt, T. & Takagi, P. (eds) (1980) *Punishment and Penal Discipline* Crime and Social Justice Associates, California, p.13. The editor notes that this article was written in 1933, but first appeared in print in 1939 (p.10).

91Rusche, G. and Kirchheimer, O. (1939) *Punishment and Social Structure* Columbia University Press, New York p.5.

92Garland 1993:91.

93Rusche 1933:11.

94Rusche (1939) quoted in Garland 1993:92.

95See for example Centre for Contemporary Cultural Studies, (1983)*On Ideology*, Hutchinson, London.

96Rusche & Kirchheimer, quoted in Garland 1993:93.

these practices are invariably and "integrally linked to the economic interests of the dominant class." Moreover, while punishment appears to be both necessary and of benefit to everyone within society, the truth is it benefits some more than others, its real function is in fact "to support the interests of one class against another."<sup>97</sup>

Another important aspect of Rusche and Kirchheimer's theory was the principle of 'less eligibility', a principle which they used to illustrate that it was not the criminal behaviour of individuals which determined penal policy but the labour market. In contrast to Durkheim, they argued that those most vulnerable to labour-market fluctuations - the poor and dispossessed - would have no motivation to show moral commitment to the dominant moral order, indeed, due to hardship and sheer economic necessity, this class would have every motivation to commit crime. To deter crime it was therefore necessary to ensure that prison conditions must be lower than the standard of living and conditions of life of the poorest labourers:

The upper margin for the maintenance of the prisoners was thus determined by the necessity of keeping the prisoners' living standard below the living standard of the lowest classes of the free population.<sup>98</sup>

Thus, it is the living conditions of the poor rather than criminal behaviour, which play the dominant part in shaping the nature of punishment. It therefore follows that the reform of punishment is not the "inevitable aspect of social progress", as Durkheim maintained, but instead "occurs only where economic exigencies are relaxed, or when 'humanitarian principles coincide ... with the economic necessities of the time'."<sup>99</sup>

When this theoretical framework is applied to the issue of capital punishment a very different picture emerges to that presented by Durkheim. For Rusche and Kirchheimer capital punishment, like any other punishment, is closely linked to the fluctuations in the labour-market - we can expect to find a high level of executions at times of unemployment, while a labour-shortage should result in a low rate of executions. This thesis is applied to their historical account of punishment which begins during the early Middle Ages where the rate of capital punishment was much lower than it was to become during the 15th century

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<sup>97</sup>Garland 1993:92.

<sup>98</sup>Rusche & Kirchheimer 1939:108. See also Garland 1993:93-4.

<sup>99</sup>Garland 1993:94-5.

which saw both an increase in the population as well as "the rise of a capitalistic pasturage system with its resulting pauperization of large sections of the countryside."<sup>100</sup> This dislocated, dispossessed and masterless population caused a severe threat to public order which was responded to by an increasingly harsh penal code which included frequent use of the death penalty:

... the system acted as a kind of artificial earthquake or famine in destroying those whom the upper classes considered unfit for society.<sup>101</sup>

Rusche and Kirchheimer explain the witch-craze as an example of one such 'earthquake' when they argue that "in an atmosphere of oppression, irritation, envy, anger, hatred, and desperation", caused by economic hardship and a desperately low living standard, the persecution of witches was utilised by the authorities as a "means of diverting responsibility from themselves" for these conditions.<sup>102</sup> In other words, at a time of a population explosion and hence an oversupply of labour, human life is devalued to the point where execution is almost used as a form of population control:

As the price paid for labor decreased, the value set on human life became smaller and smaller. The hard struggle for existence moulded the penal system in such a way as to make it one of the means of preventing too great an increase of population.<sup>103</sup>

During the 16th century, however, "wars, plagues, and famines" as well as a vast increase in consumer demand, led to a change in penal practice resulting in "the gradual abandonment" of capital punishment and the introduction of alternative punishments such as "galley slavery, transportation, and various forms of 'penal servitude at hard labour'."<sup>104</sup> However, during the 18th century, a second population explosion took place resulting once again in the migration of thousands of agricultural workers into the cities in search of work. It was therefore no accident that this abundance of labour coincided with the enforcement of the Bloody Code. Yet Rusche and Kirchheimer recognised and acknowledged that the Bloody Code did not eliminate unemployment and pauperism and, as we saw in Chapter Three, the spirit of reform gained strength by the 19th century, as did the reluctance to carry out executions for less serious offences. Rusche and Kirchheimer argue that these developments were

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<sup>100</sup>Rusche & Kirchheimer quoted in Garland 1993:97.

<sup>101</sup>Rusche & Kirchheimer 1939:20.

<sup>102</sup>Rusche & Kirchheimer 1939:20-21.

<sup>103</sup>Rusche & Kirchheimer 1939:20

<sup>104</sup>Garland 1993:98.

responded to by many members of the ruling class who argued for a return to the bloody methods of punishment which had been in force prior to the reforms. "However, a century of Enlightenment criticism of corporal punishments, together with the joint demands of conscience and political prudence," prevented the authorities from returning to older methods of punishment. Instead a system of "punishment which would strike fear into the hearts of the starving" was implemented - that of solitary confinement.<sup>105</sup>

The "general tendency toward leniency" within the penal system in the early 20th century is a reflection of the "relative prosperity" in the wider society, hence may be withdrawn in moments of crisis.<sup>106</sup> Fascist regimes during the 1930s provide examples of this, where economic crisis and high unemployment resulted in the reintroduction of capital punishment.<sup>107</sup> This also illustrates the relative independence of crime rates and penal policy, that is to say, punishment does not prevent crime and will therefore do nothing to reduce the crime rate. Instead it is necessary to "address the class system and economic conditions which underpin this [penal policy] and every other sphere of social life."<sup>108</sup>

While Rusche and Kirchheimer's thesis seriously overestimated the role that economic forces play in determining the shape of penal policy and capital punishment, and, equally seriously, underplayed the role of other factors such as the social, political and religious concerns of those involved in reforming the penal system, they never-the-less succeeded "in identifying the broad structural constraints which economic relations represent in respect of penal policy"<sup>109</sup>, a starting-point which revisionist historians of penal practices and punishment have used to build upon in their development of their own neo-Marxist theories.

### The British Historical Materialist Tradition.

The work of E.P. Thompson provides an example of someone working within the broad parameters of a Marxist framework while at the same time taking stringent steps to ensure that the forces of popular culture are given the relative autonomy they deserve, and not simply reduced to the demands of a capitalist economy. In *The Making of the English Working Class* Thompson points out that the period of

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<sup>105</sup>Rusche & Kirchheimer quoted in Garland 1993:103.

<sup>106</sup>Rusche & Kirchheimer quoted in Garland 1993:105.

<sup>107</sup>Rusche & Kirchheimer 1939:182-3.

<sup>108</sup>Garland 1993:105.

<sup>109</sup>Garland 1993:110.

the Bloody Code was also the period of the Wilkes agitations, the Gordon Riots, the mobbing of the King in the streets of London as well as numerous food riots.<sup>110</sup> Thompson takes issue with terms such as 'the mob' and 'riots' and draws attention to the highly organised and disciplined manner in which these activities took place, arguing that "such 'riots' were popularly regarded as acts of justice, and their leaders held as heroes."<sup>111</sup> They were engaged in a battle to maintain "an older moral economy, which taught the immorality of any unfair method of forcing up the price of provisions by profiteering upon the necessities of the people"<sup>112</sup>:

... [the] distinction between the legal code and the unwritten popular code is a commonplace at any time. But rarely have the two codes been more sharply distinguished from each other than in the second half of the eighteenth century. One may even see these years as ones in which the class war is fought out in terms of Tyburn, the hulks and the Bridewells on the one hand; and crime, riot, and mob action on the other.<sup>113</sup>

Thompson finds further evidence of a class war in the way that "not only petty theft, but primitive forms of industrial rebellion - destroying a silk loom, throwing down fences when commons were enclosed, and firing corn ricks" - carried the death penalty.<sup>114</sup> Rather than dismissing such action as 'mobs rioting', it is therefore more accurate to understand it as revolutionaries engaged in direct popular action, a concept which was recognised by the ruling class at the time according to Lady Shelley:

the awakening of the labouring classes, after the first shocks of the French Revolution, made the upper classes tremble ...<sup>115</sup>

Thompson's *The Making of the English Working Class* as well as his later work *Whigs and Hunters*, a detailed study of the Black Act,<sup>116</sup> therefore exemplify studies which, while retaining a commitment to the Marxist tradition by "seeing the law and its enforcement as intimately bound up with class struggle", avoids the economic reductionism and determinism of Rusche and Kirchheimer's analysis. It does this by reiterating "emphasis on the active role that people play,

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<sup>110</sup>Thompson, E.P. (1980) *The Making of the English Working Class* Penguin, Middlesex, pp.67-69. (First published in 1963).

<sup>111</sup>Thompson 1980:70.

<sup>112</sup>Thompson 1980:68

<sup>113</sup>Thompson 1980:64.

<sup>114</sup>Thompson 1980:65.

<sup>115</sup>Lady Shelley quoted in Thompson 1980:60.

<sup>116</sup>Thompson, E.P. (1975) *Whigs and Hunters* Allen Lane, London.

individually and collectively, in the transformation of their social worlds."<sup>117</sup> Unlike the 'Whig history' described earlier, it is history written from 'below' which understands that the relative autonomy of popular culture should be taken seriously and as such gives specific attention to issues of legitimacy, "coercion and domination, ultimately conceding the crucial and at least partially autonomous impact of ideological structures on the patterning of social control."<sup>118</sup>

The work of Douglas Hay falls within the same historical materialist tradition as Thompson's and his essay 'Property, authority and the criminal law' is of particular interest to this thesis since it is concerned specifically with the issue of capital punishment. Like Thompson, Hay analyses the role of law and punishment during the 18th century when the Bloody Code was at its height. He pays detailed attention to the Marxist concept of ideology and puts forward the hypothesis that "the ideology of the law was crucial in sustaining the hegemony of the English ruling class." Hence, it was "the criminal law, more than any other social institution, [which] made it possible to govern eighteenth-century England without a police force and without a large army."<sup>119</sup>

Hay identifies three themes which played key roles in sustaining the ideology of the law - majesty, justice and mercy. The 'majesty of law' refers to the awesome spectacle taking place twice a year when the assizes were staged, "the most visible and elaborate manifestation of state power to be seen in the countryside ..." with judges dressed in "scarlet robes lined with ermine and full-bottomed wigs."<sup>120</sup> The majesty of the law also refers to the almost religious authority of the judge's speech "for execution was a fate decreed not by men, but by God and Justice."<sup>121</sup> A criminal court trial provided an excellent opportunity for addressing 'the multitude':

'a wise and conscientious judge' ... will never neglect so favourable an occasion of inculcating the enormity of vice, and the fatal consequences to which it leads.<sup>122</sup>

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<sup>117</sup>Cohen, S. & Scull, A. (1983) 'Introduction: Social Control in History and Sociology' in Cohen, S. & Scull, A. (eds) (1983) *Social Control and the State* Martin Robertson, Oxford, p.4.

<sup>118</sup>Cohen & Scull 1983:4.

<sup>119</sup>Hay, D. (1977) 'Property, authority and the criminal law' in Hay et al (1977) *Albion's Fatal Tree* Peregrine Books, Harmondsworth p.56.

<sup>120</sup>Hay 1977:27.

<sup>121</sup>Hay 1977:29.

<sup>122</sup>Thomas Gisborne, quoted in Hay 1977:28-9.



Through formalities, rituals and spectacles the judge's words held ultimate authority - his power derived from divine authority, indeed Hay suggests that the judicial speeches "had become more important than those of the Church by the eighteenth century."<sup>123</sup>

The second concept identified by Hay - that of justice - refers to the notion of 'equality before the law' regardless of social standing. Despite huge inequalities between the labouring poor and the ruling class this concept never-the-less carried substantial validity which - Hay argues - was achieved by 'sacrificing' the occasional gentleman such as Lord Ferrers in 1760 and Dr Dodd in 1777, both of whom were executed. While such hangings were extremely rare compared to the executions of poor people, they took place in a blaze of publicity, the events eventually being passed into folklore as "evidence that the law treated rich and poor alike."<sup>124</sup> While in reality the "criminal law was nine-tenths concerned with upholding a radical division of property"<sup>125</sup> it had to give the appearance of treating everyone equally, and thus take seriously the complaints of the labouring poor. Hay therefore argues that many of the petty and insignificant offences which carried the death penalty - for example stealing goods from a house worth 40 shillings or more as described in Chapter Three - had been implemented for just this purpose. In other words, just as the property of the ruling class deserved protection, so "the property of the industrious cottager should be protected."<sup>126</sup> It can therefore be argued that implementing the death penalty for stealing goods worth a mere 40 shilling *increased* the legitimacy of the criminal justice system as such laws provided the Judge with an opportunity to stress his "deep concern for the little personal property that the ordinary Englishman did have."<sup>127</sup> Clearly then, 18th century justice was not a nonsense, the law did offer a measure of protection for the poor. Yet they could only afford to bring a prosecution with the financial backing of their employers which, paradoxically, would often be granted since this type of financial aid was motivated by "self-interest and paternalism" rather than any desire to see justice done, for "ideologies do not rest on realities, ... but on appearances ..."<sup>128</sup> In short, such apparent generosity ultimately served the interest of the ruling elite by cementing already existing relationships of deference and dependence.

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<sup>123</sup>Hay 1977:29.

<sup>124</sup>Hay 1977:33-4.

<sup>125</sup>Hay 1977:35.

<sup>126</sup>Lord Eldon quoted in Hay 1977:36.

<sup>127</sup>Hay 1977:36.

<sup>128</sup>Hay 1977:37, 36.

Hay's third theme is that of mercy. As described in Chapter Three, at least half of those sentenced to death during this period were granted a reprieve, and according to Hay, this was a deliberate policy. The entire system of criminal justice was overshadowed by the gallows which were always in full public view - a reminder to the common people of their position in relation to the law. The gallows represented the ultimate weapon of judicial terror - the absolute power of the law, yet, precisely because so many individuals were reprieved, the gallows also symbolised the benevolence and the mercy of the law. In short, the criminal justice system during the Bloody Code period was a system of "Terror and Mercy."<sup>129</sup> Hay provides an example of this delicate blend of 'terror and mercy' by referring to the Gordon rioters, illustrating that contemporaries such as Edmund Burke were well aware that the public "rather approve than blame the principles of the rioters.." It was therefore necessary to handle the situation with "*firmness and delicacy.*" Hence Burke recommended that despite the gravity of the offences, no more than six executions "with maximum publicity" should take place, "a calculated blend of terror and mercy under the strict rule of law."<sup>130</sup> Such apparent leniency was a necessary concession to the lower classes, designed to ensure the continued legitimacy of the rule of law, because popular ideas of justice could not be ignored:

Punishment at times had to be waived or mitigated to meet popular ideas of justice, and to prevent popular outrage from going too far and thereby realizing its own strength.<sup>131</sup>

By appearing merciful, issuing pardons, providing character references and staying loyal to servants who had succumbed to criminal behaviour, the ruling class, via the law, was able to cement existing social bonds still closer together:

Powerful men bound less powerful ones to them through paternalism, controlling income, even the 'life-chances' of the dependent ... tenant or labourer. Such ties, repeated endlessly, formed a 'mesh of vertical loyalties'.<sup>132</sup>

In short, by forsaking total control, and instead displaying acts of mercy and pardons, it was possible to disguise much of the class interest inherent in the system of law and justice. Moreover, the ideological gains were great: the belief

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<sup>129</sup>Hay 1977:63.

<sup>130</sup>Hay 1977:50.

<sup>131</sup>Hay 1977:51.

<sup>132</sup>Hay 1977:62.

in justice was preserved, greater legitimacy was achieved, and personal ties of gratitude, deference and obligations were knitted together which ultimately helped to maintain social order. For as Hay points out:

An ideology endures not by being wholly enforced and rigidly defined. Its effectiveness lies first in its very elasticity, the fact that men are not required to make it a credo, that it seems to them the product of their own minds and their own experience. And the law did not enforce uniform obedience, did not seek total control; indeed, it sacrificed punishment when necessary to preserve the belief in justice. The courts dealt in terror, pain and death, but also in moral ideals, control of arbitrary power, mercy for the weak.<sup>133</sup>

Hay's analysis like Thompson's, therefore illustrates, that despite great inequality between the powerful and the powerless, popular ideas of justice never-the-less did impose real constraints and limits upon the numbers of executions which could be carried out before the common people would protest and legitimacy lost. This analysis is also able to explain why the battle to reform the criminal justice system was a very protracted one: "The conservative gentlemen of England" did not want a rational system which severed these close ties of deference, obligation and gratitude experienced by servants and peasants towards their masters, as well as the paternalistic attitudes of the masters toward their servants:

A complete rationalization of the criminal law would remove those very elements of discretion, such as the pardon, which contributed so much to the maintenance of order and deference.<sup>134</sup>

The landed gentry, although constituting only 3% of the population, had up to the 18th century been in the powerful position of defining what the purpose of the law should be, namely "an instrument of authority and a breeder of values." But as we saw in Chapter Three, the divine rights of this class and of religious authorities were challenged during this period, not just by Enlightenment thinkers, but also by a new "body of 'middling' men, almost half the nation ... [who] created more than half of England's wealth."<sup>135</sup> It was this class who fought for reforms since their property was much more vulnerable, and they had far less of it than the tiny ruling class. They therefore fought to change the role of the law from being "an instrument of authority" - to one which would protect that property. <sup>136</sup>

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<sup>133</sup>Hay 1977:55.

<sup>134</sup>Hay 1977:57-8.

<sup>135</sup>Hay 1977:58;60.

<sup>136</sup>Hay 1977:60.

Hay's analysis of capital punishment in the 18th century, with its emphasis on legitimacy, the role of popular ideas of justice, and the changing class structure in England, is thus more complex and sophisticated than that of Rusche and Kirchheimer, who, as we saw above, came close to regarding capital punishment as a mere ruling class tool for controlling and regulating the labour market.

Although an American, Peter Linebaugh has both studied and carried out research in England. He has also worked closely with Thompson and Hay, his contribution to punishment theory can therefore be said to fall within the category of British historical materialism. We are reminded of Rusche and Kirchheimer's original thesis when Linebaugh, with reference to lynchings in the American South, quotes Raper:

as a rule whenever the per acre value of cotton is above its trend the number of lynchings is below its trend. In other words, periods of relative prosperity bring reduction in lynching and periods of depression cause an increase.<sup>137</sup>

This is also the case when Linebaugh refers to those hanged in England during the 18th century:

This early history teaches that capital punishment helped to organize the relation between production and reproduction. On the one hand, some exemplary deaths were needed to guarantee continuity within the labour process as well as the relative stability of the labour pool; on the other hand, indiscriminate slaughter could not go so far as to endanger the supply of labour.<sup>138</sup>

Yet despite these similarities, Linebaugh's work has more in common with the analyses by Thompson and Hay, for he is well aware of the central role that the exploited and powerless play in shaping the penal culture of a given nation, and hence the importance of 'history from below' and has himself, made outstanding contributions to this tradition. For example, his essay 'The Tyburn Riot Against the Surgeons' details the struggle engaged in by the condemned as well as their families or friends, to ensure that after execution had taken place their bodies would receive "a decent Christian burial" rather than be handed over to the

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<sup>137</sup>Arthur, F. Raper quoted in Linebaugh, P. (1995) 'Gruesome Gertie at the Buckle of the Bible Belt' in *New Left Review* Jan/Feb 1995, No 209, p.28.

<sup>138</sup>Linebaugh 1995:26.

Surgeon and his knife for dissection.<sup>139</sup> Through a detailed study of plebeian culture Linebaugh illustrates how "beliefs about justice, the law and the value of life" meant that dissection became an added humiliation, shame and disgrace for the condemned to endure and as such it was loathed as a punishment.<sup>140</sup>

However, "to the surgeons, their spokesmen, and the lords and squires sitting in Parliament, not only was humiliation at the death of one of the 'Scum of the People' a passing matter, but such further 'Marks of Infamy' as public dissection became a part of the policy of class discipline."<sup>141</sup>

In 'The Ordinary of Newgate and his Account' Linebaugh builds up a picture of both the crimes and the life-histories of the condemned based upon 237 such accounts whose full title was 'The Ordinary of Newgate, His Account of the Behaviour, Confession, and Dying Words of the Malefactors who were Executed at Tyburn'.<sup>142</sup> While Linebaugh is well aware of the power-relationship between the Ordinary and the condemned, and hence the possibility that prisoners were sometimes "harried and worried" or manipulated into offering their 'last words' for publication,<sup>143</sup> he maintains that much of the information contained within these accounts "can be verified from external sources and that therefore, if carefully used, the *Accounts* can provide an important source of knowledge on many aspects of eighteenth-century English history."<sup>144</sup> Moreover, unlike members of the ruling class, the Ordinary was at least "of the prison" and also "very much part of that crowd at Tyburn, ... closer to the ragged ballad-monger than his stiff collar suggested."<sup>145</sup> These two essays therefore provide important examples of history being recovered from 'below' to be placed in its rightful context, enabling us to observe the role played by the struggles of the powerless in shaping social reality. This theme is taken up again by Linebaugh in *The London Hanged* where he defines his central thesis thus:

... first, that the forms of exploitation pertaining to capitalist relations caused or modified the forms of criminal activity, and, second, that the converse was true, namely, that the forms of crime caused major changes in capitalism. In short, people became so poor that they stole to live, and their misappropriating led to manifold innovations in civil society. From

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<sup>139</sup>Linebaugh, P. (1977) 'The Tyburn Riot Against the Surgeons' in Hay et al (1977) *Albion's Fatal Tree* Peregrine Books, p. 115.

<sup>140</sup>Linebaugh 1977:109.

<sup>141</sup>Linebaugh 1977:117.

<sup>142</sup>Linebaugh (1977a) 'The Ordinary of Newgate and His Account' in Cockburn, J.S. (ed) (1977) *Crime in England 1550-1800* Methuen & Co, London, p.247.

<sup>143</sup>Linebaugh 1977a:269.

<sup>144</sup>Linebaugh 1977a:247.

<sup>145</sup>Linebaugh 1977a:269. Emphasis in the original.

this it follows that we can no longer regard the casualties at Tyburn as the lamentable victims of historical development, to be cast, forgotten, on the dustheap of time. The criminalized population of London was a force, in itself, of historic changes.<sup>146</sup>

It is within this context that Linebaugh regards the Tyburn executions as "the central event in the urban contention between the classes," a feature which was quite intentional. As such, accounts of hangings as mere spectacle or 'carnival' - where "from the audience's perspective, executions were a species of festive comedy or light entertainment"<sup>147</sup>, "more risible than solemn as they lurched chaotically between death and laughter", and which therefore "perpetrated the shabbiest of rituals with the minimum of authorial control"<sup>148</sup> - are highly inadequate. Such interpretations fail to take into account the most important lesson to be learned from executions: "'Respect Private Property.'" For, as indicated in Chapter Three, the vast majority of those condemned to die had committed crimes against property, and as such the hangings represented "the conflict of the Powerful and the Propertied against the Weak and the Poor ..."<sup>149</sup> Essentially, therefore, the theoretical framework of *The London Hanged* focuses on the contradictions between the 'history of taking' and the 'history of making'. Here Linebaugh is referring to decisions as to what and how much workers could *take* in exchange for the work they carried out, and "whether such taking was 'allowed', or 'customary' or otherwise." This exchange, as history shows,<sup>150</sup> was hotly disputed and resulted in conflict between the labouring poor and the ruling class. Hence official accounts of history as recorded in criminal court archives, provide us with "a history of misappropriated things" from which "we may derive a *history of taking*." But if we are to understand how things were produced as well as the "expenditure of labouring creativity" we need to examine the biographies of those who were hanged - "from these we may obtain a *history of*

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<sup>146</sup>Linebaugh (1993) *The London Hanged* Penguin, London, p.xxi.

<sup>147</sup>Laqueur, T.W. (1989) 'Crowds, carnival and the state in English executions, 1604-1868' in Beier A.L. et al (eds) (1989) *The First Modern Society* Cambridge University Press, Cambridge, p.323. Laqueur writes that "in general, executions were immensely difficult to read" (p.319); consequently "it is impossible to read such complex scenes as coherent state theatre" (p.322). He never the less reserves the right to provide *his* own reading of such scenes, stating that: "The crowd at British executions was specifically a carnival crowd" (p.339). Quoting Nietzsche, Laqueur continues: "'without cruelty there is no festival ... and in punishment there is so much that is *festive*!' There is the exquisite pleasure of venting power on the powerless ... In watching punishment the lowly could participate, if only for the moment, in the 'right of the masters'." (p.340)

<sup>148</sup>Laqueur 1989:309.

<sup>149</sup>Linebaugh 1993:xx.

<sup>150</sup>For example in the form of the Black Act, The Game Laws and the food riots (Hay, D. et al (1977) *Albion's Fatal Tree* Peregrine Books).

*making.*" It is when these two histories converge that we are faced with "the idea of contradiction in the social relations of production."<sup>151</sup>

Thus, while Linebaugh essentially deals with the same issues as Rusche and Kirchheimer, the labour process, the political economy and the consequences of these forces for punishment, his analysis is well removed from the economic determinism and reductionism of Rusche and Kirchheimer. That is, while it was capitalism itself which resulted in "the expropriation of the poor from the means of producing", and while the powerful were able to define what were often no more than "the appropriation by the poor of the means of living" as criminal activities (which often cost them their lives), his account is also one which regards the labouring poor as a social force who resisted and struggled against such definitions.<sup>152</sup> Such struggles would result in the rulers changing their course of action - to invent new initiatives which in turn would be responded to by the powerless. This "pattern of struggle, initiative and response"<sup>153</sup> therefore provides a much more dialectic view of the relationship between the rulers and the ruled, a view which can accommodate the impact which the hanged had, and still have, upon our understanding of the culture of punishment in England today.

#### Michel Foucault: From Public Punishment of the Body to Private Disciplining of the Mind.

Although a French philosopher, writing primarily about the penal system in France in the period between 1750-1820 in his book *Discipline and Punish*, Foucault's work has received close attention and high recognition in this country. Foucault makes references to the English experience throughout the narrative, and as we shall see, his theoretical perspective has been applied to all European countries which have been through the Enlightenment experience. In *Discipline and Punish* Foucault set himself the task of explaining the change in punishment from a public spectacle of torture and execution in the 18th century to the private and hidden nature of imprisonment in the 19th century, and which remains with us today. He agreed entirely with Rusche and Kirchheimer that "we must ... rid ourselves of the illusion that penalty is above all (if not exclusively) a means of reducing crime and that, in this role, according to the social forms, the political systems or beliefs, it may be severe or lenient, tend towards expiation of obtaining

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<sup>151</sup>Linebaugh 1993:xxv. Emphasis in the original.

<sup>152</sup>Linebaugh 1993:xxi.

<sup>153</sup>Linebaugh 1993:xxi-xxii.

redress, towards the pursuit of individuals or the attribution of collective responsibility." Rather, it is necessary to study "the concrete systems of punishment' ... as social phenomena that cannot be accounted for by the juridical structure alone ..."154 Moreover, like Durkheim, Foucault insisted that punishment should not be regarded merely as a negative response to criminal acts, it should also be "linked to a whole series of positive and useful effects."155 However, he parts company with Rusche and Kirchheimer as well as Durkheim, when he considers punishment to be "a form of power in itself - 'a political technology' - ... one instrument among others in a wider field of power relations - a political tactic'."156 The reforms of the 19th century, which, as we saw in Chapter Three, resulted in an extensive redefinition of penal policy, were therefore not the result of the evolution of a highly developed humanitarian impulse or a newly found sensibility as Durkheim would have it, but were simply the implementation of "another policy with regard to illegalities"157 - a different way of employing power relations to ensure the production of a desired form of behaviour. In other words, the disappearance of torture and spectacle of the scaffold and the emergence of the prison as the preferred type of punishment is not necessarily tied to a move from inhumanity to humanity, since for Foucault, 'humanity' is merely the respectable name given to the 'economic rationality' behind the "necessary regulation of the effects of power."158

In *Discipline and Punish* Foucault sets out to apply this thesis - to uncover the rationale behind punishment during the *ancien regime*, then contrasting it with the 19th century penal system; during this process he pays careful attention to the operation of power relations. Foucault challenges the idea that torture as punishment indicates nothing more than the barbarity and brutality of an 18th century primitive culture, and argues instead that torture is a highly controlled technique involving the close regulation of pain, leading to the formation of a "legal code of pain":

... punishment does not fall upon the body indiscriminately or equally; it is calculated according to detailed rules; the number of lashes of the whip, the positioning of the branding iron, the duration of the death agony on the stake or the wheel ... the type of mutilation to be used ...159

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154Foucault, M. (1979) *Discipline and Punish* Peregrine Books, Middlesex, p.24.

155Foucault 1979:24.

156Garland 1993:162.

157Foucault 1979:82.

158Foucault 1979:92.

159Foucault 1979:34.



All these finer details of torture are decided by a court of law, they are not the expression of uncontrolled and spontaneous rage or cruelty. The rationale behind such elaborate spectacles of torture and public execution is to be understood in terms of a juridico-political ritual because it is a response to a hostile act against the sovereign himself, and, ultimately all crimes are an attack upon the sovereign power if not "the very principle and physical person of the prince."<sup>160</sup> The sovereign power must therefore re-establish itself through a spectacular display of strength and power, and torture provides the method by which this affirmation of power takes place:

... the sovereign beating down upon the body of his adversary and mastering it: ... the prince - or at least those to whom he had delegated his force - ... seizes upon the body of the condemned man and displays it marked, beaten, broken.<sup>161</sup>

Punishment therefore, even in minor cases, was always a ceremony involving the deliberate manifestation and display of power.<sup>162</sup> It was not designed to re-establish justice but to reactivate power. And torture, even when performed in the most ruthless and merciless manner imaginable, was not rooted in barbarism, "a lingering hang-over from an earlier age. [Instead] its ruthlessness, its spectacle, its physical violence, its unbalanced play of forces, its meticulous ceremonial, its entire apparatus were inscribed in the political functioning of the penal system."<sup>163</sup> Thus, Damien's body, tortured and ripped to pieces as described by Foucault, represents the infinite power of the sovereign as well as the ultimate limit to punishment.

The end of the spectacle and hence the public nature of torture and execution came about when man's 'humanity' was discovered - that is - the part of the criminal's mind which was to become the target for penal intervention or 'reform'. The reason for this change of penal policy was not newly discovered Enlightenment sensibilities but a major change in criminal behaviour - a shift away "from the criminality of blood to a criminality of fraud" which in turn, came about as a result of new forms of production, a rise in living standards, and the subsequent demand for and circulation of, an ever increasing quantity of

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<sup>160</sup>Foucault 1979:54; see also Cousins, M. & Hussain, A. (1985) *Michel Foucault* Macmillan, London, p.171.

<sup>161</sup>Foucault 1979:49.

<sup>162</sup>Foucault 1979:47.

<sup>163</sup>Foucault 1979:49.

goods, now available to commit crimes against.<sup>164</sup> Illegalities concerned with *rights* which had traditionally been tolerated, and which had been necessary to the survival of the very poor now shifted to illegalities of *goods* which could not be tolerated and had to be punished.<sup>165</sup> In short, "the economy of illegalities was restructured with the development of capitalist society" hence, the economy of the power to punish also had to change in order to accommodate this restructuring.<sup>166</sup> The old economy of punishment based on the jumbled principles of a multitude of different authorities, relying on spectacle and excess, and applied haphazardly had to be replaced by a new power to punish which would be "more regular, more effective, more constant and more detailed in its effects;"<sup>167</sup> the point being "not to punish less, but to punish better ... to insert the power to punish more deeply into the social body."<sup>168</sup> This would be achieved through a complex system of discipline, regulation and control of the population:

[by] an adaptation and a refinement of the machinery that assumes responsibility for and places under surveillance their everyday behaviour, their identity, their activity, their apparently unimportant gestures; another policy for that multiplicity of bodies and forces that constitutes a population. What was emerging no doubt was not so much a new respect for the humanity of the condemned ... as a tendency towards a more finely tuned justice, towards a closer penal mapping of the social body.<sup>169</sup>

This new penal policy was designed to both reach and 'correct' the soul as opposed to destroying the body through sheer brute force, reflecting the change in the objective of punishment which was now to transform and hence 'normalise' the behaviour of the criminal rather than simply seeking revenge:

The idea now is to regulate thoroughly and at all times rather than to repress in fits and starts, and by this means to improve troublesome individuals rather than to destroy them.<sup>170</sup>

The new penal policy therefore signals an important shift in focus from the crime to the criminal and his/her character, background and history which Foucault argues, ultimately resulted in the emergence of professionals such as psychiatrists and social workers. This "'new micro-physics' of power" is crucial to

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<sup>164</sup>Foucault 1979:77; Cousins & Hussain 1985:179.

<sup>165</sup>Foucault 1979:85; Cousins & Hussain 1985:179.

<sup>166</sup>Foucault 1979:87.

<sup>167</sup>Foucault 1979:80.

<sup>168</sup>Foucault 1979:82.

<sup>169</sup>Foucault 1979:77-8.

<sup>170</sup>Garland ` 1993:136.

the production of 'docile bodies' and is maintained by paying attention to the smallest detail - "discipline is a political anatomy of detail" - a method which had already been tried and tested in other areas of social life such as that of organised religion and the military.<sup>171</sup> Always bearing in mind that the main object of punishment is now to produce a desired standard of behaviour, to achieve conformity by corrective rather than punitive measures, Foucault identifies the various strands - all part of the disciplinary anatomy - which are designed to 'normalise' deviant and /or criminal behaviour. These include the 'power-knowledge' relationship which permits professionals to engage in the *classification* of prisoners, and *surveillance*, a term referring to the way in which guards within disciplinary institutions are given maximum opportunity to scrutinise the conduct and behaviour of inmates - to exercise 'the disciplinary gaze.'<sup>172</sup> Taken together, this indicates a shift in the way power has come to operate, it is now exercised through an extensive network of discipline, surveillance and control rather than brute force, the object being to produce a 'self-controlled' body, someone who has internalised commands - "who habitually does what is required without need of further external force."<sup>173</sup> The perfect architectural design in which to exercise this form of power is Bentham's Panopticon style prison where surveillance and inspection is a permanent feature, the consequences of which are that the Panopticon becomes a 'laboratory of power'<sup>174</sup> which aims to:

induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its action; that the perfection of power should tend to render its actual exercise unnecessary; that this architectural apparatus should be a machine for creating and sustaining a power relation independent of the person who exercises it; in short, that the inmates should be caught up in a power situation of which they are themselves the bearers.<sup>175</sup>

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<sup>171</sup>Foucault 1979:138, 139.

<sup>172</sup>Foucault 1979:173-5.

<sup>173</sup>Garland 1993:137.

<sup>174</sup>Foucault 1979:204. Foucault describes the design of the Panopticon thus: "at the periphery, an annular building, at the centre, a tower; this tower is pierced with wide windows that open onto the inner side of the ring; the peripheric building is divided into cells, each of which extends the whole width of the building; they have two windows, one on the inside, corresponding to the windows of the tower; the other, on the outside, allows the light to cross the cell from one end to the other. All that is needed then, is to place a supervisor in a central tower and to shut up in each cell a madman, a patient, a condemned man, a worker or a schoolboy." (p.200).

<sup>175</sup>Foucault 1979:201.

These new power relations have thus dispensed with the need for the prince:

"Panopticism is the general principle of a new 'political anatomy' whose object and end are not the relations of sovereignty but the relations of discipline."<sup>176</sup>

The Panopticon design thus represents a move away from the 'house of security' - with its fortress-like qualities of pad-locks and chains, to the 'house of certainty' - where observation allows a deep penetration into the behaviour of the inmate who can never know when he/she is being observed, hence must display conformity at all times.<sup>177</sup> Again, the outcome is that the prisoner is disciplining him/herself, power no longer needs to be exercised from outside. It is the perfect 'economy' of power. It is within this context that Foucault maintains a critical view of the Enlightenment which - alongside the discovery of liberties was also responsible for the emergence of the 'disciplinary society.' There was a price to pay for the implementation of formal equality and an emerging democracy:

The general juridical form that guaranteed a system of rights that were egalitarian in principle was supported by these tiny, everyday, physical mechanisms, by all those systems of micro-power that are essentially non-egalitarian and asymmetrical that we call the disciplines.<sup>178</sup>

It was therefore not the discovery of humane concerns by Enlighteners that propelled this shift in penal policy during the late 18th century. Rather it was the self-interest of the emerging bourgeoisie "which led to a recognition of political exigency and the need for appropriate change."<sup>179</sup> This century invented *its* penal policy of discipline and surveillance in much the same way previous eras had formulated *their* penal policies. The shift in punishment from the body to the mind and from public spectacle to the enclosed privacy of the prison does not necessarily represent a more humane or civilised method. Rather it is a new strategy, a new technique for exercising power<sup>180</sup> - the modernisation of punishment - matching other structures of modernity emerging during this period.

The conception of punishment as a form of power in its own right as detailed by Foucault in *Discipline and Punish* gave rise to an entirely new perspective within

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<sup>176</sup>Foucault 1979:208.

<sup>177</sup>Foucault 1979:202.

<sup>178</sup>Foucault 1979:222.

<sup>179</sup>Garland 1993:141.

<sup>180</sup>Cousins & Hussain 1985:174.

the sociology of punishment. While Durkheimian and Marxist perspectives provide so-called 'grand' theories of punishment and primarily address questions of *why* punishment takes place, Foucault is concerned with the micro-physical operations of power relationships and hence focuses on the *how* questions; that is, how the power to punish operates and is exercised within the microcosm of the prison. As such, Foucault places immense emphasis upon the rationality of the power to punish which is always to control and normalise, and thus produce conformity. This emphasis on rationalisation however, also has the effect of producing "an instrumental and functionalist conception of punishment in which penal practice is shaped exclusively by the requirements of social control and whose design is always calculated to maximize control effects."<sup>181</sup> Moreover, unlike theorists such as Thompson, Hay and Linebaugh, Foucault pays little or no attention to the culture and resistance of those over whom power is exercised. Hence Foucault's world is one where power-relationships operate ceaselessly, normalising, regulating and controlling without any signs of *unintended* consequences. Furthermore, as described above, those writing from a neo-Marxist perspective identified a conflict of interest within the ruling groups between the landed gentry and the emerging bourgeois and pointed to the implications such conflict had for penal policy. Foucault however, fails to identify any such conflict, instead his conception of power appears "strangely apolitical ... as a kind of empty structure, stripped of any agents, interests, or grounding, reduced to a bare technological scaffolding."<sup>182</sup> Consequently, *Discipline and Punish* has been described as "Whig history in reverse, tracing the Rise of Unfreedom and the inexorable regress of liberty."<sup>183</sup>

Yet, despite these criticisms, it is precisely this emphasis on the technology of power which is also the strength of *Discipline and Punish*. Unlike any other theory, it examines in detail the way power operates through discourses - "and is literally 'materialized' - at the crucial level of techniques, apparatuses, and institutions."<sup>184</sup> Foucault's reliance on the genealogical method<sup>185</sup> when

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<sup>181</sup>Garland 1993:163.

<sup>182</sup>Garland 1993:170-1.

<sup>183</sup>Clifford Geertz quoted in Garland 1993:161.

<sup>184</sup>Garland 1993:152.

<sup>185</sup>Smart defines genealogy as "concerned with the singularity of events, rather than with the insertion of events into linear processes or explanatory systems. It represents an orientation to history which is relatively silent on great movements, for it concerns itself instead with phenomena which are frequently considered to lack a history (for example, reason, punishment, sexuality). ... It rejects the traditional historical preoccupation with 'the pursuit of the origin' in preference for a conception which recognises that historical beginnings reveal

examining the minutiae of the inner workings of institutions of punishment has enabled him to illustrate that such places, hitherto regarded as 'apolitical' - a mere by-product of wider political forces - are in fact deeply implicated in exercising and operating power.<sup>186</sup>

In sum, the 19th century reforms were built around the principle of punishing *better* rather than punishing *less*. It was this principle which lay at the heart of the change from public torture and mutilation of the body, to the reformation of the mind within the privacy of the prison. This involved a change in the way power was exercised from sheer brute force to a regime of regulation, control and surveillance. This new regime in turn was responsible for the individualisation of offenders, shifting the focus from the crime to the criminal, and in doing so, creating not only the concept of the 'criminal' but also the various human sciences such as psychology, psychiatry and criminology, whose involvement in the study of the 'criminal mind' is taken for granted today.<sup>187</sup> Therefore, while the sheer physical brutality of legal punishment outlined in Chapter Three is now outlawed, Foucault's analysis indicates that we have also lost something else in the process of reform - the freedom from categorisation and scrutinisation:

Within classical penal theory ... there is no special conception of the individual, only a general anthropology of 'free will', of the potential, the possibility or the freedom of all to commit crime ... There is, in other words, no criminology as such for there is no conception of the criminal.<sup>188</sup>

In other words, the discovery and construction of *homo criminalis* signalled the emergence of new sets of distinctions and categorisations between criminals and non-criminals. It also had important implications for the criminal justice system where the conception of *homo criminalis* now signified "the emergence of the discourse of criminology and the permeation of the judicial process by the [early science] disciplines."<sup>189</sup> Foucault has thus taken Durkheim's concept of punishment as productive much further, to the point where he sees the penal

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complexities, contingencies and differences." (Smart 1983:64). Ramazanoglu defines the genealogical method as one "designed to explore not who had power, but rather the patterns of the exercise of power through the interplay of discourses." This method led Foucault to "the position that it was the exercise of power that created knowledge, while knowledge itself produces the effects of power." (Ramazanoglu, C. (1993) *Up Against Foucault* pp.18-19).

<sup>186</sup>Garland 1993:153.

<sup>187</sup>Smart, B. (1983) 'On Discipline and Social Regulation: a Review of Foucault's Genealogical Analysis' in Garland, D. & Young, P. (eds) (1983) *The Power to Punish* Heinemann, London, p.71.

<sup>188</sup>Smart 1983:71, referring to the arguments of Pasquino (1980).

<sup>189</sup>Smart 1983:72.

reforms of the previous century being crucial not just to the production of the criminal subject, but also to the rise of the disciplines and their scientific knowledge of the offender.

As I noted above, as well as acknowledging Durkheim's work, Foucault also pays tribute to Rusche and Kirchheimer, and his *Discipline and Punish* makes scattered references to Marxism throughout, for example when he states that "the law itself or the way of applying it serves the interests of a class"<sup>190</sup> or when he argues that "delinquency, solidified by a penal system centred upon the prison, ... represents a diversion of illegality for the illicit circuits of profit and power of the dominant class."<sup>191</sup> None-the-less, Foucault's work differs from Marxism in two distinct ways. First, disciplinary power did not come about as a result of the capitalist mode of production and its needs. Instead it was initially developed within religious establishments such as monasteries, later to be adopted by the capitalist masters and the factory system. Second, the primary function of this disciplinary power is not to satisfy the needs of capitalism but to create obedient bodies.<sup>192</sup> Hence, Foucault argues that the significance placed upon capital by historical materialists (as discussed above), has led to the neglect of an analysis "of the formation of the social and the 'socialisation' of politics."<sup>193</sup> Foucault's genealogical analysis thus makes an important and unique contribution to sociological theories of punishment: the inclusion of the study of issues such as "the formation of the social, the emergence of technologies of power exercised over individuals and populations, and the related contribution of the human sciences to the documentation, classification and normalisation of human behaviour ..."<sup>194</sup> Foucault's theory of punishment therefore does not contain the global, over-arching aspect associated with classicism and Marxism. Instead it aims to illustrate "that specific forms of rationality and technologies of power have contributed to the production of particular historical events." As such "it seeks to disrupt rather than to replace one 'regime of truth' with another."<sup>195</sup> This disruption of hitherto 'taken for granted' knowledge has added an entirely new dimension to our understanding and explanation of punishment in general and capital punishment in particular.

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<sup>190</sup>Foucault 1979:272.

<sup>191</sup>Foucault 1979:280.

<sup>192</sup>Clegg, S.R. (1990) *Frameworks of Power* Sage, London, p.176.

<sup>193</sup>Smart 1983:81.

<sup>194</sup>Smart 1983:82.

<sup>195</sup>Smart 1983:82.

## The Cultural Perspective.

Of the four theoretical perspectives discussed in this chapter, the cultural perspective has been less thoroughly developed in Britain than the other three. Its roots spring from the work of the German writer Norbert Elias<sup>196</sup> whose thesis is built around the concept of the 'civilizing process' which refers to the way cultural developments have resulted in "the privatization of disturbing events." Elias argues that many aspects of social life which used to take place within the public sphere - for example those of "sex, violence, bodily functions, illness, suffering, and death - [have] gradually become a source of embarrassment and distaste"; consequently these events have increasingly been removed to the private sphere "such as the domesticated nuclear family, private lavatories and bedrooms, prison cells, and hospital wards."<sup>197</sup> This argument should not be confused with Durkheim's evolutionary view of history where society becomes increasingly civilized and humanitarian with the progress of time, as discussed earlier in this chapter. Elias is not presenting the Whig view of history in which today's cultural refinements are the result of unblemished progress from barbarism to humanitarianism.<sup>198</sup> He is simply observing and analysing "how certain social and psychic changes have transformed the configurations and character of cultural life."<sup>199</sup> This new configuration is one in which notions of appropriate public behaviour and action have shifted, indeed the conceptions of the private and the public have changed considerably as part of the process of wider cultural developments. Elias is therefore not engaged in presenting value judgements as to whether these cultural developments are desirable or undesirable - whether they are 'better' or 'worse' - instead he is identifying what he considers a definite cultural change within Western societies. For example, on the issue of carving up a whole animal at the dinner table, this used to be an accepted part of social life within the upper class. Gradually, however, this spectacle was perceived to be distasteful. Yet, the process of carving itself has not altered, "since the animal must, of course, be cut when being eaten. But the

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<sup>196</sup>Especially *The History of Manners* (1939) and *State Formation and Civilization* (1939); (see Garland 1993:295).

<sup>197</sup>Garland 1993:222.

<sup>198</sup>For example, in his article 'Violence and Civilization: The State Monopoly of Physical Violence and its Infringement' Elias analyses the conditions which led to the rise of Fascism in Germany in the early 20th century (Elias, N. (1988) in Keane, J. (ed) (1988) *Civil Society and the State*, Verso, London, pp.177-198).

<sup>199</sup>Garland 1993:223.



distasteful is removed behind the scenes of social life."<sup>200</sup> As such, his argument, as Garland notes, has more in common with that of Foucault's discussed in the previous section, since he too refused to consider the move from public torture and execution to private imprisonment to be a "'more lenient' or 'morally superior'" form of punishment.<sup>201</sup>

The best known example of Elias's theoretical concepts being applied to the issue of capital punishment is Spierenburg's *The Spectacle of Suffering*, a book which traces the history of executions from 1650 to the 19th century, and which, building upon Elias's thesis, develops a perspective that Spierenburg has termed "the evolution of repression." While the bulk of Spierenburg's research focuses on Amsterdam, he applies his theory to Western Europe in general and makes references to the British experience throughout the book.

For Spierenburg, Rusche and Kirchheimer's historical account of the changing modes of punishment is both "very general and crude", hence "cannot explain why non-productive punishment sometimes consisted of physical treatment and at other times of solitary confinement."<sup>202</sup> While Foucault's study of punishment does emphasise the changing modes of repression, it lacks a developmental perspective. Spierenburg criticises Foucault for conveying a "picture of a sudden transition from one penal system to another, hence his study fails to explain the processes involved in a changing system of repression or indeed its relationship to and interdependency upon other social developments."<sup>203</sup> Moreover, while Spierenburg agrees with Foucault that the disappearance of public torture and execution cannot be explained by a supposedly more humanitarian Enlightenment philosophy, he disagrees with the contrasting model Foucault presents in its place, where utilitarianism and control are the motivating factors as opposed to humanitarian concerns. For Spierenburg, punishment has *always* involved a strong aspect of control, regardless of the dominant mode of punishment at any one time. It is merely the manner in which control is obtained that varies. Therefore he is concerned with the different ways employed "to achieve this control change" since it is these changes that "reflect an underlying shift in mentalities."<sup>204</sup> Consequently, he regards explanations of

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<sup>200</sup>Elias, quoted in Garland 1993:224. See also Kuzmics, H. (1988) 'The Civilizing Process' in Keane, J. (ed) (1988) *Civil Society and the State*, Verso, London, p.154.

<sup>201</sup>Garland 1993:223.

<sup>202</sup>Spierenburg, P. (1984) *The Spectacle of Suffering* Cambridge University Press, Cambridge, p.ix.

<sup>203</sup>Spierenburg 1984:viii.

<sup>204</sup>Spierenburg 1984:184.

changing modes of punishment based upon Elias's theory as more adequate because it focuses on the "inter-relationship between the development of mentalities and changes in human organization", thereby "taking changing sensibilities into account."<sup>205</sup> Linking 'conscience formation' with the development of modern states, Spierenburg proceeds to outline the central thesis of his book:

first, an original positive attitude towards the sufferings of convicts slowly gave way to a rising sensitivity, until a critical threshold of sensibility was reached in the nineteenth century. Consequently, executions played a crucial role in the most conspicuous part of the penal system, but finally disappeared from public life. Second, these developments are closely related to the rise of a network of states and the changes they underwent. Notably, the disappearance of public executions is related to the transition from the early modern state, whether absolutist or patrician, to the nation-state.<sup>206</sup>

Through a detailed historical account Spierenburg links the emergence and stabilisation of a criminal justice system to urbanisation and the first visible signs of identifiable state formations which in turn was accompanied by changing relationships of freedom and dependence. The period from the 12th to the early 16th century is identified as one where private vengeance was gradually transferred to the state.<sup>207</sup> This in itself did not result in a reduction in the level of violent punishment - private vendettas had always been violent and the state merely continued this pattern with the attitude to and acceptance of violence remaining unchanged. Thus, by the 1650s a fairly stable system of repression was in place in Western Europe. However, following this period, the emergence of the modern state gave rise to "domesticated elites and changed mentalities" which, in turn, were to "lead to a transformation of repression"<sup>208</sup> with important consequences for public executions.

While Spierenburg frequently employs terms such as 'evolution' he avoids the Durkheimian perspective by pointing to historical occurrences such as the growing reliance on torture during the 13th century,<sup>209</sup> and a marked increase in the severity of punishment in the 100 years between 1650 and 1750. This period of harshness is explained by the 'aristocratization process' - the development of the urban patriciate who now sought "greater hegemony over the

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<sup>205</sup>Spierenburg 1984:ix.

<sup>206</sup>Spierenburg 1984:x.

<sup>207</sup>Spierenburg 1984:10.

<sup>208</sup>Spierenburg 1984:12.

<sup>209</sup>Spierenburg 1984:9.

other social strata" while simultaneously transforming itself "from a class of burghers into a semi-aristocracy with regard to mentality and modes of behaviour."<sup>210</sup> At the same time this class wished to distance itself from the lower social strata and model itself upon elites in other nations, and thus follow the "general European trend towards refinement in manners."<sup>211</sup> Hence this period of increased repression is a mere fluctuation in the overall trend of "the gradual decline of the public character of repression and of the element of deliberate infliction of physical suffering."<sup>212</sup> Thus, the various types of physical punishment described in Chapter Three, such as pressing to death, burning at the stake and disembowelling, can be contrasted with instructions issued to magistrates in Brussels in 1776, to the effect that before the procedure of torture could begin the victim must be secretly strangled:

Humanitarianism requires that we refrain from excessively prolonging the pain of those condemned to death.<sup>213</sup>

For Spierenburg, this is evidence that "the mentality of a new age had broken through."<sup>214</sup> Another major piece of evidence of changing sensibilities is the move from permanent to portable scaffolds. The increasing sensitivity towards public punishment meant that the sight of scaffolds, wheels and gibbets were becoming a source of embarrassment, consequently a protracted move to dismantle these implements of torture and death took place throughout the 18th century. Taken together with the accelerating process of identification with the victims "as fellow human beings", the outcome was that by 1800 "certain groups among the elites considered all forms of public, physical punishment as 'uncivilised'".<sup>215</sup> This process accelerated rapidly to the point where by the middle of the 18th century those who were involved in and supported torture found it necessary to distance themselves from this practice by reiterating that they too found it unpleasant and repugnant.<sup>216</sup> The process towards the privatization of repression had thus become well established among Western European elites, one of whom expressed its unease about public punishment in these terms:

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<sup>210</sup>Spierenburg 1984:179-80.

<sup>211</sup>Spierenburg 1984:180.

<sup>212</sup>Spierenburg 1984:182.

<sup>213</sup>Maria Theresa quoted in Spierenburg 1984:73.

<sup>214</sup>Spierenburg 1984:73.

<sup>215</sup>Spierenburg 1984:185.

<sup>216</sup>Spierenburg 1984:189.

... the 'most civilized and enlightened part of the nation' feels 'a certain shrinking' from and a 'repugnance' of all corporal penalties. Executions were only attended by the 'lower, less civilized and less enlightened popular classes'.<sup>217</sup>

Yet physical punishments were to persist for several more decades since the majority of elite members found themselves torn between the 'barbarism' of such acts and their belief that it was too soon to abolish humiliating punishment "because of the low standard of civilization and moral development of the lower classes."<sup>218</sup> This then gives a clear indication of the function of public execution - initially to emphasise the power of an early modern state perceiving the vulnerability of its own stability; later, as it was transformed into the modern nation-state - as an illustration that the state held a monopoly upon violence and was prepared to enforce it if that monopoly was threatened. Thus, while Hay explained the execution of six Gordon rioters (see above), in terms of 'firmness and delicacy', Spierenburg would regard this as a clear example of a state - aware that it was not yet taken for granted - punishing those who did not appear to accept its monopoly on violence.<sup>219</sup>

Hence, it is the transformation of the state with its accompanying change in sensibilities which lies at the heart of the disappearance of public executions and the emergence of the privatization of repression. The relationship between state formation processes and conscience formation became apparent as the "mutual dependence between social groups increased." Whereas, originally the 'psychic control' of elites had been limited to those of their own class, this began to alter as this class found self-expression in "a refinement of manners and restraints in social intercourse." Increasingly, despite the set-back between 1650-1750 discussed above, "these delicate persons disliked the sight of physical suffering." The transformation of sensibilities had begun. As the *ancien regime* collapsed throughout Europe and the nation-state became established, this transformation was completed. The privatization of repression was made possible because of two main factors. First, the nation-state enjoyed a significantly higher level of stability than the early modern state due to "closer integration of geographic areas and wider participation of social groups." Second, the liberal regime of the nation state brought with it growing levels of bureaucratisation which in turn helped to make the regime increasingly impersonal in character. Under these

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<sup>217</sup>The Society for the Moral Improvement of Prisoners' (1827) in a petition to the King, quoted in Spierenburg 1984:195.

<sup>218</sup>Spierenburg 1984:196.

<sup>219</sup>Spierenburg 1984:201.

circumstances public execution ceased to be necessary. A stronger state coupled with the introduction of a police force, ensured the end to the harshness of the penal code of the *ancien regime*. "The authorities could afford to show a milder and more liberal face."<sup>220</sup>

The cultural perspective emphasises the need to take meaning, beliefs, values and sentiments seriously. This is of particular importance where punishment is concerned, for as we have seen, there is a tendency within both the Marxist and Foucauldian perspective to emphasise the functional aspect of the penal system and to regard the concerns, beliefs and values of social actors as being of secondary importance. Authors employing the cultural perspective are attempting to rectify this imbalance. As Masur has eloquently argued:

Ideas cannot be separated artificially from the so-called reality of society. Beliefs are themselves tangible and meaningful; thoughts are actions. Rituals, as cultural performances and dramatic representations, constitute a text that provides another window onto ideological assumptions, social relations, and collective fictions. Ideas and rituals, however, are neither conceived nor employed in a vacuum. They simultaneously create and exist in contexts, and these contexts are crucial to describing how cultural assumptions and practices change as and when they do. Cultural history must remain sensitive to ideas and contexts, belief systems and social behaviors, and the interrelationships between them.<sup>221</sup>

It is therefore important to recognise culture as a genuine social force which must not be eclipsed by theories of control and domination. Moreover, the cultural perspective reminds us that it is not acceptable to apply our way of thinking to a different era. The application of punishment in previous centuries as outlined in Chapter Three appear through modern eyes as extraordinarily cruel, inhuman and unfair, yet would not necessarily have been perceived in this manner at the time, since the notion of justice was conceptualised very differently then. Thus, for example, the way in which the outcome of a trial could depend upon the personal connections of the defendant as described by Hay, seem quite unacceptable today in a culture which values the Enlightenment ideals of rationality and therefore emphasises "uniformity, proportionality, equality in law, and the strict application of rules" within legal procedures.<sup>222</sup> Similarly, the notion of an accused being found 'half guilty' as described by Spierenburg, would today be unacceptable. But in a culture where the maintenance of social order stood at the very centre of the criminal justice agenda, someone coming under

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<sup>220</sup>Spierenburg 1984:205.

<sup>221</sup>Masur, L.P. (1989) *Rites of Execution* Oxford University Press, Oxford, p.7.

<sup>222</sup>Garland 1993:206.

heavy suspicion presented a serious threat to the community, consequently it was considered both proper and "lawful to subject them to torture."<sup>223</sup> Such measures therefore reflected a culture in which there was a much higher degree of acceptance of legal violence than is the case today.<sup>224</sup>

Yet, as always, it is a matter of the balance between political and cultural forces, and the emphasis we place upon each in their contribution towards the transformation of the penal system. As we saw earlier, even economic determinists like Rusche and Kirchheimer recognised that culture cannot be ignored when they argued that "a century of Enlightenment criticism of corporal punishments, together with the joint demands of conscience and political prudence"<sup>225</sup>, ensured the unacceptability of a re-introduction of the bloody methods of punishment in use prior to the reforms. A tension will always exist between these two forces, and while Rusche and Kirchheimer's consideration of cultural influences was highly inadequate, a cultural history must be wary of the danger of over-emphasising "'configurations of social interaction' and the force of cultural conventions,"<sup>226</sup> whilst simultaneously underplaying the economic, ideological and disciplinary aspects as described by Rusche and Kirchheimer, Hay and Foucault respectively, which are also always present in the act of punishment.

This chapter has encompassed a long journey, both chronologically and theoretically, its general aim having been to provide an overview of the literature within the area of punishment. More specifically, it has outlined four different sociological perspectives, each emphasising a different aspect of the many complexities involved in the process of punishment. As we have seen, these four perspectives have already been employed in explaining the social history of capital punishment outlined in Chapter Three. Yet, while each of these perspectives are regarded as cornerstones of penal theory, and as such, form the essential tools with which to make theoretical sense of penal codes and laws, they are all lacking in one crucial aspect. While several of the works referred to in this chapter have occasionally included case-studies of the punishment of

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<sup>223</sup>Spiereburg 1984:202.

<sup>224</sup>Beattie, J. M.(1986) *Crime and the Courts in England 1660-1800*, Clarendon Press, Oxford, pp.132-139. This is not to deny the *hidden* or illegal violence taking place within contemporary culture - termed "the permanent threat of barbarism in modern society" by Kuzmics (1988:157). For an elaboration of how Elias deals with this issue, see Kuzmics 1988:149-176.

<sup>225</sup>See p.18 of this chapter.

<sup>226</sup>Garland 1993:229.

individual women, none of the authors have attempted to incorporate a full-scale gendered analysis into their theoretical framework. As noted by Gelsthorpe and Morris, the history of criminology has been one which excluded women:

Feminist ... writers ... have exposed criminology as the criminology of men. Theories of criminality have been developed from male subjects and validated on male subjects.<sup>227</sup>

Exactly the same argument can be made about theories of punishment. The underlying assumption has been that these theories would be equally applicable to women. But the wealth of feminist research and subsequent publications produced during the last 25 years of second wave feminism has illustrated the falseness of this assumption. During this period feminist theorists have identified not just the manner in which criminal women are treated differentially from male criminals, but also how women who deviate from traditional gender role expectations can expect to be punished more severely than women who conform to images of the stereo-typical 'good' wife and mother.<sup>228</sup> Unlike the four perspectives of punishment discussed above, the feminist perspective demands an acceptance of and a commitment to "the view that women experience subordination on the basis of their sex and working towards the elimination of that subordination."<sup>229</sup> In the next chapter I turn to an elaboration of this perspective.

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<sup>227</sup>Gelsthorpe, L. & Morris, A. (1990) 'Introduction: Transforming and transgressing criminology' in Gelsthorpe, L. & Morris, A. (eds) (1990) *Feminist Perspectives in Criminology* OU Press, Milton Keynes, p.3.

<sup>228</sup>See for example Heidensohn F. (1986) *Women & Crime* Macmillan, London; Carlen, P. (1983) *Women's Imprisonment* Routledge & Kegan Paul, London; Jones, A. (1991) *Women Who Kill* Gollancz, London.

<sup>229</sup>Gelsthorpe & Morris 1990:2.

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## Chapter Five

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### Beyond Traditional and Revisionist Theory: Feminist Theory and the Power to Punish.

Where is the account of the disciplinary practices that engender the "docile bodies" of women, bodies more docile than the bodies of men?<sup>1</sup>

Developing feminist perspectives in criminology is a *project under construction* ... The task is one of re-vision - of taking into account women's and men's experiences, transforming existing knowledge foundations, transgressing traditional knowledge formations, taking tentative steps towards theory-building and creating new methodologies.<sup>2</sup>

My aim in this chapter is to provide a theoretical framework within which the 15 case-studies of executed women can be analysed. In order to demonstrate that the fate of these women can best be understood by employing a specific feminist perspective I shall begin by providing a concise feminist critique of the four major theoretical perspectives on punishment discussed in the previous chapter. I proceed by outlining a detailed feminist analysis of the social control of women in general and deviant and criminal women in particular. Feminist theorists have over the past 25 years produced research which illustrates the way women experience social control in a host of different areas of their lives. It is not possible to include all of these areas in this thesis. Those which are included for analysis in this chapter have therefore been selected as a result of their relevance to the lives and deaths of 20th century executed women as I shall demonstrate during the following three chapters.

#### Theory, Punishment and the Omission of Gender.

... the Enlightenment vision explicitly denied that women possessed the reason and powers of dispassionate, objective observation required by scientific thinking. Women could be objects of (masculine) reasons and observation but never the subjects, never the reflecting and

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<sup>1</sup>Bartky, S. L. (1988) 'Foucault, Femininity, and the Modernization of Patriarchal Power' in Diamond, I. & Quinby, L. (eds) (1988) *Feminism & Foucault*, Northeastern University Press, Boston, pp.63-4.

<sup>2</sup>Gelsthorpe, L. & Morris, A. (1990) 'Introduction: transforming and transgressing criminology' in Gelsthorpe, L. & Morris, A. (eds) (1990) *Feminist Perspectives in Criminology* Open University Press, Milton Keynes p.4. Emphasis in the original.



universalizing human minds. Only men were in fact envisioned as ideal knowers, for only men (of the appropriate class, race and culture) possessed the innate capacities for socially transcendent observation and reason. The ends and purposes of such a science turned out to be far from emancipatory for anyone.<sup>3</sup>

Chapter Four began by pointing to the impact Enlightenment philosophy had upon all aspects of Western culture including that of punishment. This movement was to define the parameters for the modern Western conception of human reason over the next two centuries. Yet, along with many other perspectives within cultural criticism, feminist critiques have exposed "this concept of reason as a mere 'thing of this world' embodying the norms, values and priorities of particular historio-cultural practices."<sup>4</sup> For example, despite the availability of Mary Astells' 'Some Reflections Upon Marriage' at the end of the 17th century, where she asked: "If all Men are born Free, how is it that all Women are born slaves?"<sup>5</sup>, and Mary Wollstonecraft's *A Vindication of the Rights of Women* published in the late 18th century, which demanded that women's power to reason should be recognised as being equal to men's<sup>6</sup>, the Enlighteners continued to regard "women as weak, troublesome, shrewish, false, vindictive, ill-suited for friendship, coquettish, vain, deceitful and in general lesser humans."<sup>7</sup> Precisely because the very foundations of Enlightenment philosophy contained the concepts of reason, rationality, progress and science it was extremely difficult for women to challenge such negative portrayals of womanhood. The Enlighteners were able to support their beliefs by referring to a 'rational, scientific truth', which carried great moral force due to its "image of uncompromising disinterestedness and objectivity ... serv[ing] no special interests, no class or privileged group."<sup>8</sup> But as discussed in Chapter Two, this supposed 'objectivity' is in fact men's subjectivity, it is therefore neither objective nor value-free. In

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<sup>3</sup>Harding, S. (1992) 'The Instability of the Analytical Categories of Feminist Theory' in Crowley, H. & Himmelweit, S. (eds) (1992) *Feminism and Knowledge* Polity Press in association with The Open University, Cambridge p.345.

<sup>4</sup>Johnson, P. (1993) 'Feminism and the Enlightenment' in *Radical Philosophy* 63, Spring 1993, p.3.

<sup>5</sup>Quoted in Pateman, C. (1988) 'The Fraternal Social Contract' in Keane, J. (ed) (1988) *Civil Society and the State* Verso, London, p.108.

<sup>6</sup>Wollstonecraft argued: "Who made man the exclusive judge if women partake with him the gift of reason? ... Why is it that the term *women's reason* is virtually a derogatory one? Because men ... have power and 'women are excluded without having a voice.' Reason has been 'perplexed and involved in error' because it is confined to male experience and 'built on partial experience' and on 'narrow views.'" Paraphrased in Spender, D. (1983) *Women of Ideas* Ark, London, pp.139-40. Emphasis in the original.

<sup>7</sup>Johnson 1993:7.

<sup>8</sup>Ehrenreich, B. & English, D. (1979) *For Her Own Good*, Pluto, London, p.77.

other words, "rationality has been conceived as transcendence of the feminine"<sup>9</sup> - indeed, according to Hartsock - "the creation of a devalued 'Other' was the necessary precondition for the creation of the transcendental rational subject ... in Enlightenment philosophy."<sup>10</sup> Furthermore, as detailed in Chapter Three, although women's role within the family changed dramatically during the 17th century, they remained subordinate to male authority. For while the Enlighteners were highly critical of the pre-reformation "divinely ordered patriarchal family", they were also instrumental in replacing this social structure with one equally repressive as far as women were concerned, legitimating an "ideology of the family as a pre-political web of natural relationships."<sup>11</sup> Indeed, the entire foundation and principles of the social contract itself, also discussed in Chapter Three, have been examined with feminist scrutiny by theorists such as Pateman, who subsequently found the contract to be "a fraternal pact that constitutes civil society as a patriarchal or masculine order."<sup>12</sup> The political nature of the contract is hidden as a result of the successful separation of paternal power from political power by the contract theorists, who could then claim sexual rights "as *natural*."<sup>13</sup> But in reality "the civil body politic created through the fraternal social contract is fashioned after only one of the two bodies of humankind."<sup>14</sup>

I also examined Durkheim's theory of punishment in the previous chapter, and although he favoured social rather than biological explanations when referring to the organisation of the family and hence rejected the idea that patriarchy was natural, his "sociological imagination deserted him when it came to dealing with the prejudices of his time regarding the capacities and roles of the sexes."<sup>15</sup> Although this created a contradiction within his own theory, he never-the-less argued that "it was women's nature that accounted for the problematic difference between the sexes."<sup>16</sup> He maintained that women are governed by their biology and nature, they are a product of nature, unlike men who are "almost entirely the

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<sup>9</sup>Genevieve Lloyd quoted in Stefano C.D. (1988) 'Dilemmas of Difference: Feminism, Modernity, and Postmodernism' in Nicholson, L.J. (ed) (1990) *Feminism/Postmodernism*, Routledge, London, p.70.

<sup>10</sup>Hartsock, N. (1987) 'Foucault on Power: A Theory for Women?' in Nicholson 1990:160.

<sup>11</sup>Jane Rendall quoted in Johnson 1993:10.

<sup>12</sup>Pateman, C. (1988) 'The Fraternal Social Contract' in Keane, J. (ed) (1988) *Civil Society and the State* Verso, London, p.101.

<sup>13</sup>Pateman 1988:108. Emphasis in the original.

<sup>14</sup>Pateman 1988:102.

<sup>15</sup>Sydie, R.A. (1987) *Natural Women Cultured Men* OU Press, Milton Keynes p.21; 41.

<sup>16</sup>Sydie 1987:33.

product of society."<sup>17</sup> Women's mental capacity is consequently less developed than men's and their subordinate position" is a necessary condition of family unity."<sup>18</sup> Yet, despite having identified such major differences between men and women, Durkheim did not consider it necessary to explore what implications, if any, these differences might have upon his theory of punishment. As with those who had gone before him, Durkheim, when not engaged in allocating a subordinate role for women, simply ignored them.

The second theoretical perspective discussed in Chapter Four - that of Marxism - suffers a similar structural inadequacy as a result of its omission of gender:

In neither socialist practice nor Marxist theory were any women ever conceptualized as fundamentally defined by their relation to the means of production, regardless of their work force participation. They were never thought of as full-fledged members of the proletariat who could reason and thus know how the world is constructed. Women's distinctive reproductive labour, emotional labour, 'mediating' labour thus disappeared within the conceptual framework of Marxist theory, leaving women invisible as a class or social group of agents of knowledge.<sup>19</sup>

Debates between Marxism and feminism have been well documented elsewhere<sup>20</sup>, and it is not the point of this chapter to explore them in detail. However, it is important to note that although Engels identified "women's oppression as a problem of history rather than of biology"<sup>21</sup> over a century ago, for orthodox Marxists, the issue of social class still takes prominence over gender in the struggle for social change towards an egalitarian society. They insist that "women should be understood as part of the working class" and therefore "the working class's struggle against capitalism should take precedence over any conflict between men and women."<sup>22</sup> In short, there is no recognition by orthodox Marxists that women's subordination will result in them having different and separate interests to those of men. In terms of structures of punishment this 'gender-blindness' can be observed in Rusche and

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<sup>17</sup>Durkheim quoted in Sydie 1987:32.

<sup>18</sup>Durkheim quoted in Sydie 1987:45.

<sup>19</sup>Harding 1992:346.

<sup>20</sup>See for example Sargent, L. (ed) (1981) *The Unhappy Marriage of Marxism and Feminism*, Pluto, London; Barrett, M. (1985) Introduction to Engels F. (1985) *The Origin of the Family, Private Property and the State*, Penguin, London; Tong, R. (1989) *Feminist Thought*, Routledge, London.

<sup>21</sup>Delmar, R. (1976) 'Looking Again at Engels's 'Origin of the Family, Private Property and the State' ' in Mitchell, J. & Oakley, A. (eds) (1976) *The Rights and Wrongs of Women* Penguin, London, p.287.

<sup>22</sup>Hartmann, H. "The Unhappy Marriage of Marxism and Feminism' in Sargent 1981:31.

Kirchheimer's *Punishment and Social Structure*, when they note that during the late Middle Ages, "superstition was rife and the persecution of witches reached epidemic proportions" even though "the witches' crime might be nothing more than the attribution of certain powers which their personal appearance, eccentric habits, or vain boasting seemed to warrant ..." <sup>23</sup> The authors do not question or even comment upon the fact that - as observed in Chapter Three - approximately 90% of those persecuted were women. While none of the historical materialists included in Chapter Four neglect the issue of gender to this extreme - nor do they subsume women under the supposedly generic term 'man', claiming that this term can incorporate equally the experiences of both sexes - they none-the-less fail to provide an analysis which recognises the centrality of gender and the power relationships that flow from gender hierarchies. Although specific examples of women's punishment are included in their work, and in some cases chapters concerned solely with the punishment of women have been provided <sup>24</sup>, this 'adding' of women to already established revisionist theoretical frameworks has done little to challenge the fundamentally androcentric nature of existing knowledge. Therefore, in order to understand the process of punishment as experienced *differentially* by women and men, a feminist perspective which puts gender-sensitivity at the forefront of analysis is needed. <sup>25</sup> This involves "the deconstruction of the categories of masculinity and femininity," <sup>26</sup> together with a recognition that issues around gender are always essential to a valid theoretical framework - criteria which none of the four perspectives analysed in Chapter Four have so far successfully fulfilled.

With specific regard to the Foucauldian perspective, although the publication of *Discipline and Punish* added a new and original dimension to theories of punishment which has subsequently and deservedly become highly influential, Foucault never-the-less is quite indifferent to issues around gender. As observed by McNay, "sexual difference simply does not play a role in the Foucauldian universe..." <sup>27</sup> For feminists the supposedly gender-neutral, de-sexualised 'human' subject featured in Foucault's work, ensures the continuation of the long history of both gender-blindness and sexism within social and political theory. <sup>28</sup>

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<sup>23</sup>Rusche & Kirchheimer 1939:20.

<sup>24</sup>See for example McLynn, F. (1991) *Crime & Punishment*, Oxford University Press, Oxford; Gatrell, V.A.C. (1994) *The Hanging Tree*, Oxford University Press, Oxford.

<sup>25</sup>Howe, A. (1994) *Punish and Critique*, Routledge, London, p. 140.

<sup>26</sup>Bartky 1988:79.

<sup>27</sup>McNay, L. (1992) *Foucault and Feminism*, Polity, Cambridge, p.11.

<sup>28</sup>McNay 1992:11-12.

However, the disciplinary techniques which are utilised to produce 'docile bodies' as described in *Discipline and Punish*, are not always and necessarily the same for men and women. Women's bodies are regulated, controlled and disciplined according to specific discourses embedded in the construction of femininity such as those of physical appearance (eg body-hair and weight), sexual conduct, respectability and domesticity. This "disciplinary regime of femininity"<sup>29</sup> ensures that Foucault's 'disciplinary society' is experienced quite differently from women's viewpoint, and to deny or "overlook the forms of subjection that engender the feminine body is to perpetuate the silence and powerlessness of those upon whom these disciplines have been imposed."<sup>30</sup> Thus, because *Discipline and Punish* ignores the different constructions of masculinity and femininity, it also unavoidably ignores the "substantial differences in the social perceptions of male and female criminality."<sup>31</sup> English and Ehrenreich have documented how, during the 19th century, the newly formed medical profession increasingly came to view the female reproductive system as pathological, and hence regarded female biology as inferior to men's.<sup>32</sup> Consequently the female psyche was perceived to be more unruly, unstable and impulsive than the male psyche, views which in turn have had a major impact upon the perception of female criminals.<sup>33</sup> For example, in 1911 Adam wrote of the criminal woman that:

If there is some malignant trait which male "habituals" have acquired at their birth, and which renders them so difficult of reclamation, then this must be truer of female "habituals," who are far more persistent and less curable than males. ... [W]hen a woman abandons herself to anything in particular she not only does it in earnest but she invariably very extensively overdoes it. And it applies to well-nigh everything she puts her hand to ... if she takes to drink she nearly always becomes an incurable dipsomaniac; if she takes to crime, in enormity she far outstrips the worst male criminal known to the records ... Speaking generally, women have less will-power than men, and therefore less self-control ... But we must add another reason for female irresponsibility, and this is a lack of moral responsibility. In wrongdoing she knows neither limit nor degree. Her moral vision becomes obscured, and she rushes madly and blindly on. The reason for this is, she is not by nature trained or ordained to observe limits of that kind.<sup>34</sup>

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<sup>29</sup>Bartky quoted in McNay 1992:33.

<sup>30</sup>Bartky 1988:64.

<sup>31</sup>McNay 1992:34 referring to Patricia O'Brien's critique of Foucault.

<sup>32</sup>Ehrenreich, B. & English, D. (1979) *For Her Own Good* Pluto, London.

<sup>33</sup>McNay 1992:34-5 referring to the work of Patricia O'Brien.

<sup>34</sup>Adam, H. L. (1911) *Woman and Crime* T. Werner Laurie, London, pp.7; 15; 16; 17.

Adam was not alone in his vision of female criminals<sup>35</sup> and it is the deep-rooted ideologies, beliefs and discourses revealed in this description which reminds us that a theoretical perspective on punishment can never be complete without a gendered analysis at its very core.

The above criticisms of the Foucauldian perspective are equally applicable to the cultural perspective, and, very importantly, all four perspectives analysed in the previous chapter share a major inadequacy in that they only concern themselves with punishment in the public sphere, whilst ignoring the serious impact that informal punishment within the private sphere has on women. It is particularly noteworthy that both Foucault and Spierenburg, who, as illustrated in the previous chapter, paid specific attention to the controlling aspect of punishment, none-the-less managed to ignore the way in which men's punishment of women is employed as a mechanism of control. While culturalists discuss the impact of the 'civilising process' upon manners, and while *public* tolerance to issues such as wife-beating may have decreased by the end of the 18th century<sup>36</sup>, as with the removal of meat-carving from the public arena (see previous chapter) which did not cause any change to the actual *process* of carving, so the dwindling level of acceptance of wife-beating did not result in the *elimination* of that act. Thus, as discussed in Chapter Four, while Spierenburg makes actual references to the way in which activities such as sex, violence and bodily functions were removed from the public to the private sphere, his analysis does not at any point attempt to address the possible gender implications. The cultural perspective therefore does nothing to explain the 'continuity' of male 'manners' and behaviour such as their violence against and punishment of women in the private sphere. Yet such informal punishment of women has consequences for all women in general and criminal women in particular - and as such - provide another example of the differences between men's and women's experiences of punishment. Furthermore, while those working within both Marxist and Foucauldian perspectives have been concerned with uncovering ideologies and discourses which can be used to illustrate the difference between 'what-is and what-appears'<sup>37</sup>, they have neglected to apply this analysis to gender. While Marxist theorists have illustrated how ideologies around the law serve to give the

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<sup>35</sup>See for example Sim, J. (1990) *Medical Power in Prisons* OU Press, Milton Keynes, pp.129-153.

<sup>36</sup>Clark, A. (1992) 'Humanity or justice? Wife beating and the law in the eighteenth and nineteenth centuries' in Smart, C. (ed) (1992) *Regulating Womanhood*, Routledge, London, pp.187-206.

<sup>37</sup>Bartky 1988:76.

*appearance* of equal treatment for everybody, but in reality serve the interests of the powerful, and thus help to control the poor, and Foucauldian theorists have described how the supposed benefits of the Enlightenment such as more humanitarianism and less violence and cruelty, have in reality resulted in more discipline and tighter control of the 'human subject', none have attempted to explain how the numerous ideologies and discourses surrounding women's sexuality, in reality serve patriarchal interests. In the words of McNay:

... it is necessary to explore how meanings, particularly representations of gender, are mobilized within the operations of power to produce asymmetrical relations amongst subjects.<sup>38</sup>

The next part of this chapter will deal with such an exploration. For the purposes of clarity the organisation of this literature has a chronological component with early feminist studies in social control preceding the more recently developed Foucauldian feminist perspective.

#### Women and Social Control: Early Theoretical Explanations.

The social control of women assumes many forms, it may be internal or external, implicit or explicit, private or public, ideological or repressive.<sup>39</sup>

Although men provide more menace to the basis of a society, it is women who are instructed in how to behave ... Only women are instructed every week, in case they should possibly ever forget, in how to *be* women ...<sup>40</sup>

While this thesis concerns itself with a specific group of women in the following three chapters, we cannot begin to understand the circumstances surrounding their crimes, trials and executions without first examining the control-mechanisms and discourses which surround and regulate the conduct and behaviour of *all* women. As Anne Worrall has argued:

... the conditions and processes that over-determine the fate of ... [a] group of deviant women are intrinsically no different from those within which 'conventional' women are also controlled.<sup>41</sup>

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<sup>38</sup>McNay 1992:35.

<sup>39</sup>Smart, C. & Smart, B. (1978) 'Women and social control: An introduction' in Smart, C & Smart, B. (eds) (1978) *Women, Sexuality and Social Control*, Routledge, Kegan Paul, London, p.2.

<sup>40</sup>Heidensohn, F. (1986) *Women & Crime* MacMillan, London, p.106. Emphasis in the original.

<sup>41</sup>Worrall, A. (1990) *Offending Women* Routledge, London, p.4.

Similarly, Carol Smart has argued that:

"the strategy of inflicting harsh punishment on the few ... [can be] translated into modes of discipline and surveillance of the many."<sup>42</sup>

These two statements are examples of the powerful challenge that feminists have been posing since the 1970s, to the androcentric theories described in the previous chapter. During the 1970s and early 80s this challenge focused to a large extent upon exposing the various ways in which all women experience the 'social control' of a patriarchal society, which in turn has specific implications for deviant and criminal women. In the following part of this chapter I shall focus on these social control theories before moving on to an examination of the impact that Foucauldian theory has had on feminism during the 1990s. Before embarking upon this task, it is important to clarify that the concept 'social control' does not refer to a crude or conspiratorial model of oppression in which women are helpless victims of patriarchy. Feminists recognise that "in a class-divided society *both* women and men are subject to material, repressive and ideological forms of social control..."<sup>43</sup> Women, however, are affected differentially and specifically, within the private sphere where they are economically, legally and ideologically subordinate to men. Additionally, Smart and Smart have identified four main areas within which women alone experience social control. These are the reproductive cycle; a double standard of morality; a subordinate social and legal status (*vis-a-vis* men) in the family, as well as "the separation of 'home' and 'work' and the ideology of woman's place."<sup>44</sup> Therefore, the meaning of the concept 'social control' in this thesis is that identified by Green, Hebron and Woodward when they state that "social control is defined as an ongoing process, one element in the struggle to maintain male hegemony which sets the limits of appropriate feminine behaviour."<sup>45</sup>

### Social Control and the Private Sphere.

The behaviour of all women, both in the public and private sphere, is regulated, disciplined and controlled by a pervasive system of male definitions of what

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<sup>42</sup>Smart, C. (1992) 'The Woman of Legal Discourse' in *Social & Legal Studies* Vol 1, No 1, March 1992, Sage, London, p.38.

<sup>43</sup>Smart & Smart 1978:3. My emphasis.

<sup>44</sup>Smart & Smart 1978:3.

<sup>45</sup>Green, E., Hebron, S. & Woodward, D. (1987) 'Women, Leisure and Social Control' in Hanmer, J. & Maynard, M. (eds) (1987) *Women, Violence and Social Control*, MacMillan, London, p.79.



constitutes a so-called 'normal' woman. The constraints and restrictions which women experience as a consequence of these definitions take both a material and ideological form. As a result of women's subordinate position within patriarchal society, their material reality is restricted in a variety of ways, most notably by child-care and family responsibilities; limited financial resources; the threat and fear of male violence as well as actual violence of men against women. In Chapter Three I examined the way in which Protestantism successfully redefined notions of womanhood and family life. The Reformation transformed patriarchy by confining women to a more restricted and closely defined role within the private sphere - 'the cult of domesticity.' This split between the public and the private, and hence of 'work' and home, which took place in tandem with - and became a crucial aspect of - the development of the capitalist mode of production and the rise of industrialism, had a major impact upon the status of women - giving rise to the notion of a 'woman's place' being in the home, while simultaneously downgrading unpaid domestic work and thus increasing their financial dependence on men.<sup>46</sup> The unwaged and invisible nature of domestic work, coupled with the physical and emotional isolation experienced by women working within the private sphere, create conditions which are conducive to feelings of powerlessness, lack of confidence and self-esteem, thus keeping women locked into a systemic social control apparatus which, according to Dahl and Snare, closely resembles a prison:

... it can be argued that women are segregated and locked in their 'cells', the nuclear family, where they are hindered from having their own personal life due to lack of mobility, cash and free time. In particular a housewife with small children can not regulate her own time. With the important qualification in mind that in society at large loss of autonomy and choice are class-bound factors, one can propose that through material and ideological bonds, women are kept 'out of circulation', if we mean by that a life in the public sector where men (of the ruling class) are now in control.<sup>47</sup>

Running parallel with this material oppression of women we find a highly developed ideological social control apparatus designed to regulate the behaviour of women within the private sphere. Ideologies around marriage, motherhood, domesticity and respectability play key roles in ensuring women's compliance with expected domestic and moral standards. The 'normal' woman is someone with a 'maternal instinct' who 'naturally' wants to have children and care for them herself, and who happily sacrifices her own interests in favour of those of her

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<sup>46</sup>Smart & Smart 1978:6.

<sup>47</sup>Dahl, T. & Snare, A. (1978) 'The coercion of privacy: A feminist perspective' in Smart, C. & Smart, B. 1978:22.

family<sup>48</sup>, "whereas 'bad' mothers are 'selfish' in their quest for a career."<sup>49</sup> In Oakley's words:

Putting the baby first is perhaps the primary definition of normal motherhood in modern industrialised society ... normal mothers are essentially altruistic, the servers of others' needs rather than their own ... mothers who consider their own needs are bad mothers.<sup>50</sup>

Smart has termed this highly traditional attitude to child-care 'the ideology of motherhood'.<sup>51</sup> It has real consequences for women in terms of limiting or controlling their chances of leading an independent life, and together with notions of the maternal instinct, can be extended to include "sick or helpless adults."<sup>52</sup> Thus, a 'good' woman considers it her *duty* to care for elderly relatives, rather than placing them in institutions.<sup>53</sup> Philipson has documented the way in which women experience social control through caring for ageing and/or sick relatives. Daughters are three times more likely to be called upon to care for ageing relatives than are sons.<sup>54</sup> Even when married sons have relatives living with them the majority of care work will be carried out by daughters-in-law. Under these circumstances the day-to-day experiences of middle-aged women carers will strongly mirror their earlier lives when they cared for young children including the restrictions this entailed. One woman carer reported that she was unable to take a holiday, another that "she had not been away from her mother for a single night in the last 17 years."<sup>55</sup> That women of all ages should be expected to make such sacrifices, is explained and justified by ideologies around womanhood based upon assumptions that caring for others and 'putting herself last' are 'natural' and normal aspects of femininity. In reality however, these are moral assumptions and expectations imposed upon women which, together with their over-representation within the voluntary sector, prevent them from leading an independent life with an income of their own. It is difficult to question or challenge these assumptions since gender role definitions are

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<sup>48</sup>Green, Hebron & Woodward in Hanmer & Maynard 1987:84, referring to the work of Anne Oakley.

<sup>49</sup>Williams & Hutter 1981:23.

<sup>50</sup>Oakley, A. (1981) 'Normal Motherhood: An Exercise in Self-Control?' in Williams & Hutter 1981:84; 83-84.

<sup>51</sup>Smart, C. (1984) *The Ties That Bind* RKP, London, p.124.

<sup>52</sup>Smart (1978) *Women, Crime and Criminology* RKP, London, p.39.

<sup>53</sup>Williams & Hutter 1981: 23; see also Philipson, C. (1981) 'Women in Later Life: Patterns of Control and Subordination' in Williams & Hutter 1981:185-201.

<sup>54</sup>Philipson, C. (1981) 'Women in Later Life: Patterns of Control and Subordination' in Williams & Hutter 1981:189.

<sup>55</sup>Philipson 181:190.

backed up "by the full weight of patriarchal ideology"<sup>56</sup> which acts as a powerful mechanism for invoking guilt in women who perceive themselves to have slackened in their responsibilities.

Women's lack of financial and social independence ensures that the relationship between husband and wife is deferential and hierarchical in nature, and, because "it appears both natural and immutable"; has achieved the status of a 'moral order'.<sup>57</sup> It is when this 'moral order' breaks down, that is to say, when women refuse to accept their gender roles, and ideologies alone are no longer enough to keep women 'in their place', that they can expect a more overt control mechanism to come into play within the private sphere - that of physical violence or 'wife-battering'. Such violence against women who have failed to recognise male authority is legitimated by husbands who perceive themselves to have not only the right but the *obligation* to discipline an 'uppity' wife, thereby "putting her in her place."<sup>58</sup> Thus, while women's fear of violent attack in the public sphere is constantly fuelled by sensational media reporting - they are in fact much more likely to experience violence within the domestic setting:

... for a woman to be brutally or systematically assaulted she must usually enter our most sacred institution, the family. It is within marriage that a woman is most likely to be slapped and shoved about, severely assaulted, killed, or raped.<sup>59</sup>

Dobash and Dobash support this statement with statistical evidence from their 1979 study which revealed that 77% of the women interviewed had not experienced violence before marriage, yet within the first three years of marriage 84% had been hit.<sup>60</sup> Later studies such as those carried out by Hanmer and Maynard<sup>61</sup> and Edwards<sup>62</sup> confirm that wife-battering is by no means an extreme form of social control, but is instead both prevalent and widespread - making it a normal part of many women's everyday lives.<sup>63</sup> In short, "many

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<sup>56</sup>Green, Hebron & Woodward in Hanmer & Maynard 1987:85.

<sup>57</sup>Bell & Newby quoted in Heidensohn 1986:179; see also Dobash, R.E. & Dobash R. (1979) *Violence Against Wives*, Open Books, p.93.

<sup>58</sup>Dobash & Dobash 1979:93.

<sup>59</sup>Dobash & Dobash 1979:75.

<sup>60</sup>Dobash & Dobash 1979:94.

<sup>61</sup>Hanmer, J. & Maynard, M. (eds) (1987) *Women, Violence and Social Control* MacMillan, London.

<sup>62</sup>Edwards, S. (1989) *Policing 'Domestic' Violence* Sage, London.

<sup>63</sup>Research carried out by Channel Four's 'Battered Britain' team between June and September 1995 indicated that over half of the women murdered each year in Britain are killed by their male partners. Furthermore, police statistics reveal

women are clearly disciplined and dominated in the home by domestic violence in ways which enormously constrain and confine what they can do."<sup>64</sup>

### Social Control and the Public Sphere.

Catherine Macaulay Graham wrote in 1720 that while men "continue ... to use their natural freedom with impunity' .... women, having been considered as the mere property of the men ... ha[ve] no right to dispose of their own persons."<sup>65</sup> Graham had thus identified early strands of what was to become 'the cult of domesticity' by the late 18th century, which involved the construction of distinctive and separate gender identities for men and women. Men's 'natural' environment became the public sphere where they were free to move around as and when they pleased, participating in public activities.<sup>66</sup> Women, on the other hand, became strongly associated with the private sphere "as domestic beings, 'naturally' suited to duties in the home and with children." A woman's respectability depended upon her moral and sexual purity which in turn "guaranteed the home as a ... source of social stability."<sup>67</sup> Respectability involved displaying the traits of dependency, delicacy and fragility - to indicate a desire for independence was considered 'unnatural'. It was men's duty to venerate and protect respectable women and to treat them "with decorum, respect and propriety."<sup>68</sup>

While today's women *theoretically* have equal access to the public sphere, and *officially* should not need to be chaperoned in order to be considered 'respectable', it is none-the-less the case that both access to, and movement within, the public still represents a problem for many women. Green et al write that "access to any social life outside the home is ... a 'charged' area" to the degree that many women forego an independent social life, simply to avoid conflict.<sup>69</sup> This is because many men still see themselves as keepers of their partner's

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that they receive over a million calls annually from women assaulted by husbands or boyfriends. (*To Death Us Depart* Channel 4, see Guardian 13th September 1995).

<sup>64</sup>Heidensohn 1986:176.

<sup>65</sup>Catherine Macaulay Graham, from Letters on Education, 1790 in Jones, V. (ed) (1990) *Women in the Eighteenth Century* Routledge, London.

<sup>66</sup>Nead, L. (1990) *Myths of Sexuality* p.32, Blackwell, Oxford.

<sup>67</sup>Nead 1990:33-34.

<sup>68</sup>Nead 1990:29. 'Respectable' women usually meant middle-class women. Working-class women by contrast, were taken to be robust, self-sufficient and suited for physical labour, hence in no need of male protection. (Nead pp.29-31).

<sup>69</sup>Green, E., Hebron, S. & Woodward, D. (1987) 'Women, Leisure and Social Control' in Hanmer & Maynard 1987:87.

sexuality, placing great emphasis upon the woman's status as 'respectable' and using this as a justification for enforcing restrictions on her movements.

For single women access to the public sphere is restricted by the powerful notion of "keeping your reputation."<sup>70</sup> Young girls and older women alike have to tread the thin line between being sexually desirable without appearing provocative or too sexually experienced since they will then qualify for insulting and derogatory terms such as 'slut', 'tart', 'scrubber' and 'slag' - terms for which there are no male equivalent.<sup>71</sup> The fear of losing one's reputation thus works as a powerful mechanism for controlling women's behaviour in public places. Furthermore, women can be made to police themselves since they know that "to deviate from women's allotted space is to run the risk of attack by men."<sup>72</sup> Such attacks may take the verbal form described above, or they may involve various degrees of antagonism, objectification and harassment in public places generally, and in public houses and clubs in particular, where women without male escorts are assumed to be 'available' and hence legitimate targets for sexual advances.<sup>73</sup> Most serious of all, such attacks may take the form of physical violence, rape and/or murder, attacks for which the woman concerned may be held partly or wholly responsible, depending on a number of factors such as where and what time it took place, how she was dressed, how she behaved, what she said or did not say. In short, a woman's conduct plays an important role in determining the extent of her culpability in the crime committed against her. Being scantily clad, being out alone late at night or hitchhiking alone all qualify as precipitating factors towards the crime as can be seen from headlines such as "Raped hiker impudent." This headline referred to a case where a judge ruled the attacker's "responsibility was 'diminished' by the fact that the girl had, in effect, solicited him by getting into his car."<sup>74</sup> Such victim-blaming sends a clear message to women: "Women in general are not free to come and go as they please. If they attempt to do this they can be labelled as irresponsible and 'asking for trouble'."<sup>75</sup> Smart and Smart

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<sup>70</sup>Heidensohn 1986:183.

<sup>71</sup>Mills, J. (1991) *Womanwords* Virago, London p.xx. Mills writes that "the sheer number of slang terms which define woman as sexually promiscuous ... (comparatively few for men) meant that I had to draw an arbitrary line less *Womanwords* turned into a dictionary of slang." See also Greer, G. (1973) *The Female Eunuch* Paladin, St Albans pp.263-272.

<sup>72</sup>Heidensohn 1986:183.

<sup>73</sup>Green, Hebron & Woodward 1987:86.

<sup>74</sup>*The Guardian* 15th April 1976, quoted in Smart, C. & Smart, B. 'Accounting for rape' in Smart, C. & Smart, B. (eds) (1978) *Women, Sexuality and Social Control* p.101.

<sup>75</sup>Green, Hebron & Woodward 1987:91.

have emphasised the role that the media play in placing responsibility for women's safety upon their conduct rather than on the men carrying out the attacks:

The accumulative effect of press reports of rape is to remind women of their vulnerability, to create an atmosphere of fear and to suggest, as a solution, that women should withdraw to the traditional shelter of the domestic sphere and the protection of *their* men.<sup>76</sup>

Police officers whose responsibility it is to detect and arrest violent criminals also regard the restriction and control of women's movement within the public sphere as the solution to women's safety problems, as can be seen, for example, in the advice issued during the 'Yorkshire Ripper' hunt. In doing so, official spokespersons reaffirm that only those who conduct themselves 'improperly' risk being attacked.<sup>77</sup> More recently, following the murder of back-packer Johanne Masheder, *The Daily Mail* asked: "Why do young girls risk their lives on the back-pack trail?" (Masheder was not a 'girl' but a 23-year old qualified solicitor). *The Guardian* added that her death "highlights the vulnerability of women abroad."<sup>78</sup> Yet, as discussed in the previous section, it is within the private sphere that women are most likely to suffer a violent attack. None-the-less, the fear and the real possibility of being attacked in a public place, coupled with media amplification of this issue and the negation of private violence, together act as 'controlling agents' on all women's behaviour. Moreover, it may well be due to women's own self-policing and regulation of their behaviour and movements that statistics remain relatively low.<sup>79</sup>

Even when women make every effort to conduct themselves in what is considered an appropriate manner and do nothing which could be construed as 'drawing attention to themselves', they may still become the victims of sexual harassment.

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<sup>76</sup>Smart & Smart 1978:102. Emphasis in the original.

<sup>77</sup>See for example Bland, L. (1984) 'The Case of the Yorkshire Ripper: Mad, Bad, Beast or Male?' in Scraton, P. & Gordon, P. (eds) (1984) *Causes for Concern* pp.185-209.

<sup>78</sup>Natasha Walter in *The Guardian* 18th January 1996. Walter added that of the 43 Britons murdered abroad in 1995, only eight were women. Yet no-one asked "why young boys risk their lives on the tourist trail or told us that .. [their] death[s] highlighted the vulnerability of men abroad."

<sup>79</sup>Heidensohn 1986:182. See also Stanko, E. (1990) 'When precaution is normal: a feminist critique of crime prevention' in Gelsthorpe, L. & Morris, A. (eds) (1990) *Feminist Perspectives in Criminology* Open University Press, Milton Keynes, where she states that "most women don't simply walk down the street at night ... [but instead] negotiate and manage situations to avoid those which they feel are potentially dangerous" (p.176).

Sexual harassment is experienced by women across all social classes and regardless of work status.<sup>80</sup> Whether experienced at the work place or while walking in a public place, sexual harassment constitutes "another dimension of male dominance, a further assault on ... [women's] freedom" which in turn reinforces male control and male authority in the public arena.<sup>81</sup> Such male control and dominance can be asserted over women regardless of their conformity to, or deviancy from, traditional feminine behaviour since the issue here is not necessarily one of conduct but of femaleness itself, which signals membership of a subordinate group. In the following section I focus specifically upon the types of punishment that female deviants can expect to receive.

### Punishing Female Deviancy.

Taken together, the extensive network of both informal and institutional social control of women described above - regardless of age, class or race - plays a major role in defining and limiting women's conduct and behaviour. Yet, despite such pressure to conform women resist both ideological and material control mechanisms continuously. That resistance takes many forms ranging from instigating divorce, becoming single parents, leaving their children, refusing to 'moderate' their appearance and/or behaviour when in public places without male escorts, drunkenness, prostitution and various forms of criminal behaviour. The engagement in such activities does not necessarily imply a conscious and deliberate political challenge to dominant ideologies.<sup>82</sup> The ideological

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<sup>80</sup>See for example Doyal, L. (1990) 'Wages Work and Women's Well Being' in *Women's Studies International Forum* vol 13, No 6 (1990) which indicates that 54% of British female managers reported sexual harassment at work in a 1982 survey. Sexual harassment of women at their place of work could potentially be even more widespread if women were to cease their 'self-policing.' That is to say, the self-policing by women in public places described above, is also engaged in at their work-place. Stanko writes that experiences of sexual harassment "trigger avoidance and precautionary strategies similar to that women use on the street. Women monitor their colleagues' behaviour for danger and threats and may limit their movements to certain parts of the workspace where they feel safer." (Stanko, E. (1990) *Everyday Violence* Pandora, London p.97. See also Pringle, R. (1988) *Secretaries Talk* Verso, London pp.78-83 where Pringle describes how men retain power at their work-place, even when working for a female boss.

<sup>81</sup>Heidensohn 1986:190.

<sup>82</sup>For example many prostitutes would argue sheer economic necessity drove them to into prostitution(see for example Roberts, N. (1992) *Whores in History* Grafton, London, pp.341-2). Conversely, women like Dolores French who resigned from her full-time job to pursue her "chosen career" and who has never regretted "becoming that glamorous, self-confident, financially independent woman who entertained men for money", reminds us of the incomplete nature of dominant ideologies and the struggle which takes place around them. French writes about her decision to become a prostitute: "I was about to turn a corner. I

dominance of the 'normative' standard around female conduct may be different from what is common practice; however, it has the effect of creating "the impression that the conventional sex role is the majority case, and that departures from it are socially marginal." Casting those who engage in behaviour which stands outside the 'normative standard' as individual deviants helps to eliminate "the element of power from gender relations. It also eliminates the elements of resistance to power and social pressure, the fact of social struggle - open or covert - going on around definitions of sexuality and gender."<sup>83</sup> Such behaviour is none-the-less greeted with anxiety in a male dominated society where female deviancy appears to pose a threat and a challenge to patriarchal hegemony. Deviant women become 'dangerous' women - "a source of disorder in patriarchal society" - and therefore cause for serious concern.<sup>84</sup> The double standard of morality means that women's deviance is never considered to be 'just horseplay' and behaviour which is considered acceptable - or even normal - in men such as drunkenness and promiscuity is re-classified and becomes deviant when found in women.<sup>85</sup> Thus, Otto, in her study 'Women, Alcohol and Social Control' found that while heavy drinking in men was considered "in some way natural' or even glamorous, drunken women were met with no such tolerance, but were instead considered to be overly promiscuous and 'disgusting'.<sup>86</sup> A woman's role as wife and mother is not compatible with the loss of self-control associated with drunkenness:

Because the role of women has been equated with the stabilising functions of wife and mother, the drunken woman has seemed to be a special threat: no one likes to believe that the hand that rocks the cradle might be a shaky one.<sup>87</sup>

Accordingly, when women alcoholics move in the public sphere they "are much more likely to be apprehended, arrested and convicted" than male alcoholics and are thus regulated more severely and formally than their male counterparts who

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was going to charge for sex, and I was already thinking about how I would spend the money. After tomorrow, I thought, no one will ever be able to use the word *whore* against me. After tomorrow, it will no longer be the worst curse someone could throw at me, it will simply be a statement of fact. (French, D. (1991) *Working* Victor Gollancz, London, p.19).

<sup>83</sup>Connell, R.W. (1987) *Gender & Power* Polity, Cambridge, p. 52.

<sup>84</sup>Larner quoted in Heidensohn 1986:92.

<sup>85</sup>Smart & Smart 1978:4-5.

<sup>86</sup>Otto, S. (1981) 'Women, Alcohol and Social Control' in Hutter & Williams 1981:154, 155, 156.

<sup>87</sup>Curlee quoted in Otto 1981:155.



may simply be portrayed as a bit of a rogue or a 'noble-savage'.<sup>88</sup> A woman alcoholic, on the other hand, is regarded as someone who has lost "respectability in all areas, especially the sexual ones", and who is "devoid of gender and personality characteristics" - a non-entity.<sup>89</sup>

Such double standards of morality also become apparent when women reject the moral regulation of their sexuality and fail to 'keep their reputation' in terms of their sexual conduct. Promiscuity in women is greeted with great anxiety since it indicates a rejection of and "rebellion against their *natural* feminine roles which stresses passivity and conformity."<sup>90</sup> While promiscuity in young men is not only tolerated but positively encouraged<sup>91</sup>, it is condemned and punished, both informally and formally in young women. As discussed above, informal punishment of sexual deviancy involves being labelled with insulting and derogatory terms and being treated disrespectfully. At a more formal level, Wilson, in her study of teenage girls, found that courts and social welfare agencies treated female delinquents differentially if they had been sexually active, and in doing so, it appears that "one of the latent functions of the juvenile court .. [is] the reinforcement of the conventional female sex role." The study revealed that:

it was often doubtful whether supervision orders made upon some girls, were imposed on them as a result of the offence which had been committed as is the case with boys, or whether the orders were made because of deviations from the expected form of feminine behaviour.<sup>92</sup>

Given these attitudes it comes as no surprise that prostitute women are the target of the most persistent and harsh punishment at both informal and formal levels. The excessive stigmatisation associated with prostitutes reflects the moral double standards applied to women in general while the sexual conduct of men remains relatively unscrutinised. Prostitutes are perceived as threatening and dangerous because their presence signals a challenge to ideologies around family life, motherhood, domesticity and respectability. In selling sex for money prostitutes appear to have rejected all notions of respectability, morality and other 'natural' female inclinations. Instead "their whole identity bec[o]me[s] 'whore'" - they are

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<sup>88</sup>Otto 1981:164,163.

<sup>89</sup>Otto 1981:156,162.

<sup>90</sup>Smith, L.S. (1978) 'Sexist assumptions and female delinquency' in Smart & Smart 1978:75. Emphasis in the original.

<sup>91</sup>'Women and social control: An introduction' Smart, C. & Smart, B. (1978) in Smart & Smart 1978:4.

<sup>92</sup>Wilson, D. (1978) 'Sexual codes and conduct' in Smart & Smart 1978:72.

nothing but "disgusting moral nonentities"<sup>93</sup> whose mere presence signals their ability to "deprave and corrupt"<sup>94</sup>, and who, as a result of their sexual conduct, have forfeited the right to be treated with respect and dignity. They can therefore expect to receive harsh treatment and rough justice when confronted with the legal and criminal justice system.<sup>95</sup> Feminist research has consistently revealed evidence of informal punishment in the form of police harassment of prostitutes "as a matter of course" which, in some cases, "amounts to positive brutality."<sup>96</sup> Such research has also identified "'respectability' as a significant factor influencing the sentencing decision of the court." Thus, at a formal level, 'disreputable' women may be awarded a harsher sentence for a first time offence than a 'respectable' woman with a criminal record.<sup>97</sup> The informal disciplining of prostitutes may take a 'negative' form - that is - ignoring their pleas for help. For example, when 'disreputable' women complain to police about rape or assault they are unlikely to be believed, nor is their complaint likely to be investigated.<sup>98</sup> Prostitutes are considered to 'provoke their own demise' because of their lack of sexual conformity and are therefore less deserving of sympathy, even when it is recognised that a crime has been committed against them. This was made clear during the so-called 'Yorkshire Ripper' hunt when Assistant Police Chief constable Jim Hobson issued this statement:

He has made it clear that he hates prostitutes. Many people do. We, as a police force, will continue to arrest prostitutes. But the Ripper is now killing innocent girls. *This indicates your mental state and you are in urgent need of medical attention.* <sup>99</sup>

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<sup>93</sup>Wilson, E. (1983) *What Is To Be Done About Violence Against Women?* p.112, 110.

<sup>94</sup>Smart, C. (1981) 'Law and the Control of Women's Sexuality' in Hutter & Williams 1981:50.

<sup>95</sup>Edwards, for example, writes that "the regulation and control of prostitution has been a major policing preoccupation" with prosecution figures for prostitution reaching an all time high of 10,674 in 1982. "No similar war was waged against procurers, pimps and pones, or against male violence to women." However, she also notes that there are signs of a change in attitude as police have become "more aware of the violence frequently inflicted on prostitute women." (Edwards, S. (1989) *Policing 'Domestic' Violence* Sage, London p.34; p.35). Similarly Lord Chief Justice Bingham's decision to increase the sentence of man who had raped prostitute women from four to six years in the Court of Appeal in January 1997 can be seen to reflect this change in attitude. (*The Guardian* 22nd January 1997).

<sup>96</sup>Naffine, N. (1990) *Law & The Sexes* Allen & Unwin, London p.144.

<sup>97</sup>Naffine 1990:144.

<sup>98</sup>Edwards, S. (1987) "'Provoking Her Own Demise": From Common Assault to Homocide' in Hanmer & Maynard 1987:153. See also Morris, A. (1987) *Women, Crime and Criminal Justice* Blackwell, Oxford, p.81.

<sup>99</sup>Quoted in Caputi, J. (1987) *The Age of Sex Crime* The Women's Press, London pp.93-4. My emphasis.

As pointed out by Caputi, this statement indicates that Sutcliffe's violent crimes "only become socially problematic when he turns to 'innocent girls'."<sup>100</sup> In short victims who have deviated from their appropriate gender role cannot expect to be treated equally to 'respectable' or 'innocent' victims.<sup>101</sup>

### Punishing Criminal Women.

While female drunkenness, promiscuity and prostitution are not criminal offences they never-the-less all fit under the heading 'deviant female conduct', and the manner in which women who engage in such activities are treated has important implications for the ultimate deviant woman - the female criminal. Feminist theorists have analysed the treatment of criminal women by the criminal justice system in considerable detail over the last two decades. In particular, they have responded to debates around 'chivalry' versus unduly harsh punishment. The issue here is whether women are the beneficiaries of chivalrous attitudes when facing the bench or whether on the contrary, they receive more severe punishment than men who have committed similar offences.<sup>102</sup> While bearing in mind that consistency in sentencing does not prevail for either men or women,<sup>103</sup> different studies have none-the-less indicated that what is at issue is the *type* of woman being judged since "different types of women receive different treatment."<sup>104</sup> Thus, it soon becomes apparent that the ideologies around motherhood, domesticity, respectability and conduct discussed above in relation to *all* women, play a powerful role in the way criminal women are treated. For example, Nagel found that:

Females whose offence pattern is more consistent with sex role expectations seem to experience less harsh outcomes than females whose offence pattern is less traditional.<sup>105</sup>

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<sup>100</sup>Caputi 1987:94. See also Morris, A. 1987:81.

<sup>101</sup>Edwards 1987:153.

<sup>102</sup>The 'chivalry' thesis put forward by writers such as Pollak, maintains that, as a result of paternalistic and chivalrous attitudes (male) police officers are reluctant to arrest women, and "judges, prosecutors, and juries do not like to assist in convicting them." (Leonard, E.B. (1982) *Women Crime & Society* Longman, London, p.4. See also Pollak, O. (1950) *The Criminality of Women* University of Pennsylvania Press, Philadelphia). This view stands in contrast to those who maintain that women are treated more harshly than men when facing the bench (See for example Casburn quoted in Heidensohn 1986:43).

<sup>103</sup>Heidensohn 1990:43.

<sup>104</sup>Naffine 1990:138.

<sup>105</sup>Nagel quoted in Heidensohn 1986:44.

What counts is whether the defendant is a 'good' woman - someone who is "loyal and loving, compliant and altruistic", who abandons her own interests in favour of those of her family, and who "is a faithful wife and mother whose sphere is the home, not the competitive arena of the marketplace." These findings are borne out by Carlen's study of women's imprisonment where she found that:

*when the sheriffs ... are faced with a sentencing dilemma in a case where the offender is female, they mainly decide their sentence on the basis of their assessment of the woman as mother.*<sup>106</sup>

Thus, one of the sheriffs Carlen interviewed stated that "if she's a good mother, we don't want to take her away. If she's not a good mother, it doesn't really matter." A magistrate taking part in the study offered further insight into sentencing policy:

If upon inquiry you discover that a woman has no children then it clears the way to send her to prison. If she has children but they are in care then I take the view that she is footloose and fancy-free and I treat her as a single woman.<sup>107</sup>

This statement bears out Naffine's view that "those who are deemed to be too free in their behaviour, who are therefore unfeminine may be treated more punitively than men."<sup>108</sup> It also confirms that 'the ideology of motherhood' discussed above, continues to play a crucial role in the way women are regarded after they have entered the criminal justice system.

Kruttschnitt's 1982 study confirmed that the Victorian ideologies around dependency discussed above, are still in existence and continue to be taken into account when women defendants are sentenced:

For most offence categories, the economic dependency of the defendant emerged as the primary factor determining the severity of the sentence. From the comments of probation officers, it transpired that dependent women were regarded as safer bets because their family was thought to exert a degree of control over their behaviour and guide them into better ways.<sup>109</sup>

These findings are confirmed by Farrington and Morris's Cambridge study:

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<sup>106</sup>Carlen, P. (1983) *Women's Imprisonment* RKP, London, p.63. Emphasis in the original.

<sup>107</sup>Carlen 1983:67.

<sup>108</sup>Naffine 1990:137, 138.

<sup>109</sup>Naffine discussing Kruttschnitt in Naffine 1990:139.

Divorced and separated women received relatively severe sentences, as did women coming from a deviant family background. These may be the kind of women whom magistrates, especially female magistrates, disapprove of: they are women who do not conform to notions of 'respectable' women.<sup>110</sup>

The issue of respectability is a constant theme in different studies and is repeatedly identified as an influencing factor in sentencing policies:

The more 'respectable' a woman was, the more lenient her sentence. ... Regardless of the offence, the lower a woman's respectability the greater the likelihood that she would receive a severe sentence and that women with previous convictions who were respectable were given more lenient sentences than women viewed as disreputable who had no criminal record.<sup>111</sup>

Finally, Worrall, in her a study of a magistrates' court, found that while the offence was the most important consideration when sentencing men, for women personal conduct was significantly more important:

Provided the woman act her part (modest, humble, remorseful) and references can be made to her previous good character or competence in the home, she is not seen as 'criminal.' ... But once a woman has a criminal record or does not conform to these expectations, she is not viewed as a woman at all; she can no longer claim to be 'out of place'.<sup>112</sup>

In short, women criminals who not only have committed an illegal act but who also have failed to measure up to 'appropriate' standards where motherhood, domesticity, respectability and conduct are concerned, are 'doubly bad' women. In failing to conduct themselves with decorum they "have abandoned their femininity and hence their right to be given the law's protection or favour. Where a good woman may attract the sympathies of the court, a positively censorious approach may be taken to women who are thought to be bad."<sup>113</sup> Overall, then, feminist social control theorists are united in maintaining that female defendants are not simply judged according to their crimes but also according to their conduct and behaviour as *women* - that is in the areas of motherhood, domesticity respectability and sexuality:

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<sup>110</sup>Morris, 1987:89-90.

<sup>111</sup>Morris 1987:90 referring to the work of Kruttschnitt (1982) 'Respectable women and the law' in *The Sociological Quarterly* 23, 2, p.221.

<sup>112</sup> Morris 1987:91 referring to the work of Worrall, A. (1981) 'Out of Place: Female Offenders in Court' in *Probation Journal* 28, 1981, p.90.

<sup>113</sup>Naffine 1990:142. See also Worrall 1981:92 where she writes: "The machinery for processing female offenders is built on the myth that 'real' women cannot commit 'real' crime."

The majority of women who go to prison are sentenced not according to the seriousness of their crimes but primarily according to the courts' assessment of them as wives, mothers and daughters.<sup>114</sup>

Indeed a woman's conduct at times comes under *closer* scrutiny than her criminality; a factor which consequently plays an important part in determining the severity of her sentence.<sup>115</sup> Those who analyse the social control of women would therefore not be surprised to find that women who have received the harshest punishment of all during this century - that of death by execution - had stepped far beyond the boundary of acceptable female conduct and behaviour. In the three chapters which follow I shall be testing this hypothesis.

### Foucault and Feminism: A Politics of Difference.

Before embarking upon an analysis of my case-studies it is crucial to consider the developments within feminist theoretical thinking during the 1990s. This decade has seen a challenge to the social control theories discussed in the previous section from theorists employing a Foucauldian post-structuralist perspective. These theorists have responded to criticisms that concepts such as 'patriarchy' and 'social control of women' are monolithic and construct universal explanations of women's oppression, and are therefore incapable of explaining the differential nature of women's experience of subordination:

An insistence on women as passive victims of male oppression oversimplifies the complexities of women's subordination by placing too great a stress both on the universal nature of oppression and the common undifferentiated enemy of patriarchy.<sup>116</sup>

Adapting Foucault's gender-neutral conception of power to one which places gender at the centre of analysis, feminists have thus argued that power is not simply 'held' by a particular group (men) for the purpose of oppressing another group (women). For Foucault "power emanates from not one source but everywhere", and analyses of power relations reveal "that their actual effects are often very different from their intended effects."<sup>117</sup> Furthermore, "power is not an attribute of individuals, is not something which is possessed", the exercise of

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<sup>114</sup>Carlen, P. (1988) *Women, Crime and Poverty* Open University Press, Milton Keynes, p.10.

<sup>115</sup>See for example Naffine 1990:144; Morris 1987:91; Heidensohn 1986:43-4.

<sup>116</sup>McNay 1992:64.

<sup>117</sup>Cousins, M. & Hussain, A. (1985) *Michel Foucault* MacMillan, Basingstoke, p.230.

power is therefore not just associated with "a narrow class of outcomes such as winning and losing in situations of conflict."<sup>118</sup> Consequently, Foucauldian conceptions of power do not accept "an all-encompassing division between the 'rulers' and the 'ruled'"<sup>119</sup> which is implicit in the social control theories described above. Instead Foucauldian feminists recognise the existence of power differences between women themselves according to factors such as race, class, hetero-sexuality, age and ethnicity. Gender is therefore "not the only determining influence on women's lives." If anything, McNay argues, it is only a minority of white, privileged, Western women for whom "sexism is the main form of oppression." Other women will experience different forms of oppression according to their specific histories which may be rooted in experiences related "to slavery, forced labour, enforced migration, plantation, colonialism, imperialism, etc."<sup>120</sup> Foucauldian feminism therefore rejects the notion of a pre-given subject and hence, by implication, cannot accept a unitary category of 'Woman'. Instead it concerns itself with analysing how subjects come into being via discourses - the 'discursive construction of the subject'. The categories discussed above such as prostitutes, bad mothers or women alcoholics therefore do not "exist in an a priori state, waiting for institutions to act upon them ... [but] are being continually constituted and ... also constitute themselves through language/discourse."<sup>121</sup> In short, a Foucauldian feminism recognises that multiple factors and discourses all play their part in constructing and determining the particular course of an individual's life. These multiple determinants will sometimes interact, sometimes conflict with each other, always, inevitably produce *differential* results and effects which, in turn, are compounded by the use individuals make of them:

... against this background of multiple determinants, individuals act upon themselves and order their own lives in numerous and variable ways.<sup>122</sup>

Moreover, this theoretical framework poses an important challenge to the Enlightenment notion of an absolute 'truth'. For example, while legal and medical

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<sup>118</sup>Cousins & Hussain 1985:230-1.

<sup>119</sup>Cousins & Hussain 1985:235.

<sup>120</sup>McNay 1992:64. Moreover, Colin Sumner points out that "the dominant gender norm within disciplinary power practices is that of the hegemonic masculinity, which censures *both* the feminine and alternative masculinities." In other words, just as we can no longer accept a universal category of 'woman' so we cannot accept the category of 'man' as a universal oppressor either. (Sumner, C. (1990) 'Foucault, gender and the censure of deviance' in Gelsthorpe & Morris 1990:38. My emphasis.

<sup>121</sup>Smart, C. (1995) *Law, Crime and Sexuality* Sage, London, p.8.

<sup>122</sup>McNay 1992:65.

personnel can draw on powerful discourses due to their position within "the hierarchy of knowledges and ... [their] power to subjugate other discourses"<sup>123</sup>, subordinate and marginalised groups can de-stabilise such official truths by constructing 'alternative truths'. While these alternative truths articulated from below do not have a greater claim to 'reality', they do "have a resistant or progressive function in so far as they hinder the 'domination of truth' by those who govern."<sup>124</sup> Occasionally the space which is created as a result of this challenge to official truth is stable long enough to allow a redefinition of official truth, as can be seen for example, when rape within marriage became recognised as a criminal offence. Thus, just as Foucault did not recognise a pre-given subject, he did not concern himself with a pre-given truth, but concentrated instead on its construction and deconstruction.

During the last decade feminist theorists have become increasingly involved in articulating and applying a Foucauldian perspective to feminist politics. In particular a large body of academic literature has been developed around women's 'docile bodies'. In the previous chapter I discussed Foucault's thesis that punishment has, since the 18th century, changed from a reliance on brute force to a network of discipline, surveillance and regulation designed to produce a 'self-controlled' body - someone who has internalised commands - "who habitually does what is required without need of further external force."<sup>125</sup> For Foucault these disciplinary techniques do not stop with penal institutions but are applied through institutions such as schools, hospitals, the church and army, in order to produce 'docile' bodies within a disciplinary society. It is within this context that Bartky asked the question noted at the beginning of this chapter: "Where is the account of the disciplinary practices that engender the 'docile bodies' of women?"<sup>126</sup> She explains how, through a series of disciplinary practices directed at women's appearance, behaviour and gestures, a female body is produced which is inscribed with an inferior status.<sup>127</sup> The disciplines imposed upon the female body include: dieting - 'the tyranny of slenderness'; specific forms of exercise designed not to strengthen the body but to re-sculpture it to conform to the current desired model; make-up; skin-care; hair-care and removal of body-hair which, taken together, constitute a 'feminine body discipline', designed to

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<sup>123</sup>Smart 1995:8.

<sup>124</sup>McNay 1992:137.

<sup>125</sup>Garland 1993:137. See Chapter Four p.32.

<sup>126</sup>Bartky 1988:63-4. See p.1 Chapter Five.

<sup>127</sup>Bartky 1988:71.



produce a fragile, immature, infantilised body.<sup>128</sup> Moreover, the typical body-language of a woman is one of "relative tension and constriction" signalling her "subordinate status in a hierarchy of gender." Thus, where social control theorists describe sexual harassment as a power held by men and exercised over women, Bartky writes that:

Higher status individuals may touch their subordinates more than they themselves get touched. ... What is announced in the comportment of superiors is confidence and ease, especially ease of access to the Other.<sup>129</sup>

Similarly, where social control theorists point to the double standard of morality, a Foucauldian analysis states that women's faces and bodies "are trained to the expression of deference":

Woman's space is not a field in which her bodily intentionality can be freely realized but an enclosure in which she feels herself positioned and by which she is confined. The 'loose woman' violates these norms: her looseness is manifest not only in her morals, but in her manner of speech and quite literally in the free and easy way she moves ... The 'nice' girl learns to avoid the bold and unfettered staring of the 'loose' woman who looks at whatever and whomever she pleases.<sup>130</sup>

Women are not *forced* to diet or remove body-hair, these disciplinary practices are self-imposed, which for Bartky illustrates that discipline is not necessarily institutionally *bound* but may also be institutionally *unbound*. The disciplinary power which "inscribes femininity in the female body" is not held by men or within formal institutions, it "is everywhere and nowhere, the disciplinarian is everyone, and yet no one in particular."<sup>131</sup> It therefore has the quality of anonymity, which has the effect of disguising the extent to which the interests of domination are served by disciplinary practices. It also has the effect of making such practices appear voluntary or natural. Yet the heterosexual woman knows that failure to impose these practices may result in the loss of male patronage, they must therefore be understood "as aspects of a far larger discipline, an oppressive and inegalitarian system of sexual subordination":

This system aims at turning women into the docile and compliant companions of men just as surely as the army aims to turn its raw recruits into soldiers.<sup>132</sup>

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<sup>128</sup>Bartky 1988:73.

<sup>129</sup>Bartky 1988:74.

<sup>130</sup>Bartky 1988:66; 67.

<sup>131</sup>Bartky 1988:74.

<sup>132</sup>Bartky 1988:75.

A woman internalises disciplinary practices by incorporating them into the very structure of her sense of 'self' which means they become part of her self-identity. She therefore has a stake in the perpetuation of disciplinary skills, since to do otherwise "threatens her with de-sexualization, if not outright annihilation."<sup>133</sup>

Bartky's feminist analysis of women's oppression allows us to explain through a Foucauldian perspective, the way this oppression has changed historically. In chapter Four I noted Foucault's insistence that following the Enlightenment, punishment has moved from the body to the mind. In Chapter Three I pointed to the various forms of physical punishments inflicted upon women who had broken the codes around female conduct and behaviour in earlier centuries. These punishments included the use of implements such as the ducking-stool, the pillory, and the 'scold's bridle' - all designed to inflict pain upon the body. The power to punish lay with husbands, fathers and men of the church and was thus easily identifiable:

In the days when civil and ecclesiastical authority were still conjoined, individuals formally invested with power were charged with the correction of recalcitrant women whom the family had somehow failed to constrain.<sup>134</sup>

By contrast, while contemporary Western women enjoy far more freedom, both economically and sexually, than in any other previous era, and while they need not fear violent sanctions such as the pillory or ducking-stool if disobedient, the invasion of disciplinary power into the female body is none-the-less "well-nigh total":

The female body enters "a machinery of power that explores it, breaks it down and rearranges it." The disciplinary techniques through which the "docile bodies" of women are constructed aim at a regulation that is perpetual and exhaustive - a regulation of the body's size and contours, its appetite, posture, gestures and general comportment in space, and the appearance of each of its visible parts.<sup>135</sup>

As women gain increasing political, sexual and economical "self-determination, they fall ever more completely under the dominating gaze of patriarchy."<sup>136</sup> Hence, there is no longer a need for the ducking-stool or a chaperone to control

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<sup>133</sup>Bartky 1988:78.

<sup>134</sup>Bartky 1988:80.

<sup>135</sup>Bartky 1988:80.

<sup>136</sup>Bartky 1988:82-3

and regulate the female body, for women themselves have now learned to practice these disciplinary measures against their own bodies. This self-surveillance constitutes not only a "form of obedience to patriarchy"<sup>137</sup> but also the 'modernization of patriarchal power.'

From a Foucauldian perspective women cannot effect change simply by refusing to inflict disciplinary practices upon their bodies. While this form of resistance to patriarchy may result in the erosion of existent forms of domination, "new forms arise, spread and become consolidated" as Bartky's historical analysis of patriarchy illustrates.<sup>138</sup> Instead it is necessary to deconstruct the actual category of femininity (and by implication that of masculinity) to allow the construction of a new, radical "and as yet unimagined"<sup>139</sup> meaning of what it is to be female.

Other Foucauldian feminists have applied similar analyses to specific aspects of feminist politics. I have already drawn attention to Woodhull's post-structuralist analysis of rape in Chapter Two where I quoted her position that "if we are to seriously to come to terms with rape, we must explain how the vagina comes to be coded ... as a place of emptiness and vulnerability, the penis as a weapon, and intercourse as violation."<sup>140</sup> For Woodhull, the view that rape "is nothing more or less than a conscious process of intimidation by which *all men* keep *all women* in a state of fear" as articulated by Brownmiller<sup>141</sup>, merely reinforces male power and female powerlessness. Therefore she does not consider the feminist demand that rape be defined "as a crime of power, not of sex" to be an adequate solution:

Instead of sidestepping the problem of sex's relation to power by divorcing one from the other in our minds, we need to analyse the social mechanisms, including language and conceptual structures, that bind the two together in our culture.<sup>142</sup>

Hence, it is necessary to deconstruct "the cultural codes that inform human sexuality in order to understand the role they play in engendering and consolidating the power relations of a given society." Once again, this implies the necessity for a deconstruction of the categories of femininity and masculinity.

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<sup>137</sup>Bartky 1988:81.

<sup>138</sup>Bartky 1988:81.

<sup>139</sup>Bartky 1988:79.

<sup>140</sup>Woodhull 1988:171.

<sup>141</sup>Brownmiller, S. (1976) *Against Our Will* Bantam Books, New York p.15.

<sup>142</sup>Woodhull, W. (1988) 'Sexuality, Power and the Question of Rape' in Diamond & Quinby 1988:171.

Social control theories and deconstructionist theories should not necessarily be regarded as being in direct opposition to each other. While Foucault's micro perspective of the operation of power has proved extremely useful in illustrating how power relationships are maintained and resisted through discursive practices, several feminist theorists have attempted to sustain a relationship between deconstruction theory and the macro perspectives of social control which address questions of *why* and *in whose interests* power operates. This relationship is evident in Bartky's essay, where, as we have seen, her elaborate exploration of discursive practices on the female body is followed by a recognition that ultimately such practices constitute an obedience to "the *patriarchal* construction of the female body."<sup>143</sup> Similarly, while Woodhull maintains that a full understanding of rape must involve the deconstruction of cultural codes around sexuality and their connection to power, she is aware that:

In the course of a typical rape trial it becomes clear that women are regarded as criminals and are punished accordingly - albeit not by legal means - merely for presuming to circulate in public without men's protection, or for daring to articulate what it means to them to be in control of their bodies ... by deciding where, when, with whom and under what circumstances they will participate in a sexual act.<sup>144</sup>

In her book *Losing Out* Sue Lees has applied a Foucauldian analysis to important issues between female sexuality and the construction of language. At the same time she has not discarded some over-arching concepts articulated by social control theorists. She echoes the authors discussed in the first half of this chapter when she writes:

It is regarded as natural for girls ... to enjoy domesticity and to want to get married and have children, but unnatural to want a career that would conflict with marriage. ... Most of all a girl is expected to put others before herself and to be caring and unselfish.<sup>145</sup>

Moreover, unlike men, women never acquire a *non-gendered* identity, but are always defined according to their marital status - as wives, mothers or spinsters - or sexual status - as virgins or whores.<sup>146</sup> We lack a language which describes the sexually active woman in *positive* terms. Instead, as discussed above, an entire vocabulary is available for describing such women in derogatory and

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<sup>143</sup>Bartky 1988:77. My emphasis.

<sup>144</sup>Woodhull 1988:172.

<sup>145</sup>Lees, S. (1986) *Losing Out* Hutchinson, London, p.17.

<sup>146</sup>Lees 1986:156.

negative terms such as 'slag', 'scrubber' and 'tart'. Male promiscuity, on the other hand, is inevitably a source of pride - something to be admired. However, rather than analysing this double standard of morality in terms of patriarchal ideology which implies the masking of what 'really' takes place within relationships between men and women, Lees employs discourse analysis. This is because calling someone a 'slag', or regarding victims of rape as being culpable in the crimes committed against them is "the practice of the language of sexual power, not a reflection of some other process hidden from view."<sup>147</sup> This practice cannot simply be explained as instances of men exercising power over women. Females themselves carry this power with them "which penetrates their lives and recreation."<sup>148</sup> Once again we note that rather than conceptualising power as being *held* by men within a patriarchal society, deconstruction theory relies on discourses to explain how power circulates within a given society:

The language of slag is not exercised by boys over girls, rather both sexes inhabit a world structured by the language quite irrespective of who speaks to or about whom.<sup>149</sup>

This does not mean that women are not oppressed and subordinate to men. But, rather than making sense of that oppression by referring to women's position as mothers, carers or prostitutes, Lees has explained female subordination through discourses of sexuality that can be regarded "as a field of force in which boys and girls are equally trapped..."<sup>150</sup> The implications for the issue of punishment are not however, equally distributed between the two sexes, for ultimately it is only females who are punished through the language of sexual reputation. As will become apparent in the following three chapters, the language of sexual reputation played an important role in the distribution of punishment for many of the women who faced the death penalty in the first half of this century.

A subject which is related to language - that of authority (or lack thereof) and women's speech - also has great relevance to this thesis as I shall illustrate in the following three chapters. In Chapter Two I pointed to Dorothy Smith's work on the difficulties women have, both in asserting authority for themselves and for other women. Smith, however, does not question the concept of authority itself,

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<sup>147</sup>Lees 1986:159-60.

<sup>148</sup>Lees 1986:82.

<sup>149</sup>Lees 1986:160. For Foucault, "one doesn't have here a power which is wholly in the hands of one person who can exercise it alone and totally over others. It's a machine in which everyone is caught, those who exercise power just as much as those over whom it is exercised." (Ramazanoglu & Holland 1993:247).

<sup>150</sup>Lees 1986:166-7.

merely women's deprivation of it, whereas Kathleen Jones deconstructs it in her essay 'On Authority' and finds that:

the segregation of women and the feminine from authority is internally connected to the concept of authority itself.<sup>151</sup>

Thus, it is the dominant discourses associated with authority which ensures women's exclusion from it by silencing "those forms of expression linked metaphorically and symbolically to 'female' speech, especially those around "emotive connectedness or compassion" which stand in sharp contrast to the "disciplinary, commanding gaze" of authority.<sup>152</sup> It is precisely by rejecting discourses of compassion and emphasising those of the disciplinary, commanding gaze that authority achieves its power, and in the process, renders discourses of compassion non-authoritative. Instead they become nothing but "marginal pleadings for mercy - gestures of the subordinate."<sup>153</sup> Deconstructing authority thus exposes "the ways that a particular conceptual framework restricts our knowledge of it."<sup>154</sup> At the same time, our willingness to grant authority to male characteristics of speech such as self-assuredness and self-assertiveness de-values and derogates speech patterns associated with women such as those of hesitancy and uncertainty. In so doing, authority is deprived of humanity and ambiguity.<sup>155</sup> However, this lack of authority in women's speech serves as a reminder of "what has been hidden by the ordered discourse of authority."<sup>156</sup> Furthermore, deconstructing authority in this manner is not incompatible with an understanding that the rules which govern authority ultimately serve as "a system of rules for social control within the context of social hierarchies."<sup>157</sup> Jones's essay thus provides another example of a gender-specific Foucauldian analysis which has contributed to feminist politics by casting issues of women's oppression in a new light.

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<sup>151</sup>Jones, K.B. (1987) 'On Authority: Or, Why Women Are Not Entitled to Speak' in Diamond & Quinby 1988:120.

<sup>152</sup>Jones 1988:120.

<sup>153</sup>Jones 1988:121.

<sup>154</sup>Jones 1988:121.

<sup>155</sup>Jones 1988:122

<sup>156</sup>Jones 1988:131.

<sup>157</sup>Jones 1988:121.

## Conclusion.

As discussed in Chapter Four, modernist humanistic thinking is deeply rooted in Enlightenment features of reason, rationality, progress, science and individualism, features which have created a conception of individuals as rational human beings who are to a large extent agents of their own destiny, and who formulate their own meanings and values within society. Above all else Enlightenment philosophy has taught us to assume "that the speaker or writer is unified and coherent, the origin of what is spoken and written."<sup>158</sup> Foucault challenged this insistence on an "autonomous, self-determining subject" and instead maintained "that 'subjects' are created in and through discourses and discursive practices."<sup>159</sup> Consequently his goal was not to discover who *holds* power but to excavate "the patterns of the exercise of power."<sup>160</sup> Foucauldian theory therefore appears attractive to those who are concerned about the plurality of factors which underpin women's oppression. The pluralism of discourse theory means that women no longer need to be regarded as a fixed and unitary category, instead it is able to problematise issues around difference between women. Indeed, as I intend to illustrate in the following chapters, it would be foolish to ignore or deny the real differences and specific circumstances surrounding each of the executed women in my study. Yet this de-stabilising of woman as a category has created its own theoretical problems for it is equally undeniable that women as a *category* share certain experiences as an oppressed group, both in a domestic setting and the formal setting of the court-room. And while second wave pre-Foucault feminism has itself been accused of taking its cue from Enlightenment philosophy, its emphasis upon identifying the oppressor in order to resist it, and thereby empowering women, has had identifiable, materialist results, for example in the form of rape-crisis centres and refuges for battered women.<sup>161</sup> In Foucault's universe, however, the emphasis upon 'what is said' rather than 'who speaks' means that he repeatedly ignores the asymmetry of what is said by men as opposed to what is said by women. It is not enough to claim that 'where there is power there is resistance' and that women can challenge dominant discourses of motherhood by refusing to have children or by "doing an

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<sup>158</sup>Ransom, J. (1993) 'Feminism, difference and discourse: The limits of discursive analysis for feminism' in Ramazanoglu, C. (ed) (1993) *Up Against Foucault* Routledge, London, p.123.

<sup>159</sup>McNeil, M. (1993) 'Dancing with Foucault' in Ramazanoglu 1993:154, 155.

<sup>160</sup>McNeil 1993:149.

<sup>161</sup>See for example Dobash, R.E. & Dobash, R.P. (1992) *Women, Violence & Social Change* Routledge, London.

evening course in roofing."<sup>162</sup> Men and women do not exist in a moral vacuum<sup>163</sup> or a neutral universe in which they have equal access to the creation of dominant discourses. As discussed in Chapter Two, what women share is a need to understand how particular (male) versions of reality become privileged over other (female) versions. Feminist theory is imbued, not with 'neutrality' but with alternative visions and versions of reason where women enjoy moral, sexual and social justice. We therefore need not only a recognition of the plurality of discourses and variety of struggles but also the articulation of "their different levels and moments. We need ... a theory that can grasp that the gender of the social agent determines an asymmetry in relationship to the categories in which 'sex' is presented to us."<sup>164</sup> Foucault's restoration of "a genuine notion of difference, variation, diversity, nonreductionism" is an important one, but it is not adequate by itself.<sup>165</sup> What also needs to be included is a *hierarchy* of power forms if we are to provide adequate explanations of social transformation.<sup>166</sup> Foucault's discourse theory pays almost no attention to the mode of production which gives rise to a much more contradictory social reality than his theory allows for. Instead he emphasises the way "everybody has everybody else locked into power in some ways, as well as being the object of power"<sup>167</sup> in what at times appear to be almost equal proportions. This is why discourse theory is unable to explain the difference between an affluent woman who has easy access to cheap tea and an impoverished woman who has to work long hours for a minimum wage to produce it. This example illustrates that although we must not underestimate the importance of differences between women, it is equally crucial "to retain the capacity to identify the structural contradictions of our differences."<sup>168</sup> Stuart Hall has suggested how these two strands of power can be incorporated into analysis rather than separated out. While he agrees with Foucault that power does not simply radiate from one source alone, but is multidimensional, he also maintains that "there are centres that operate directly on the formation and constitution of discourse."<sup>169</sup> Hall identifies two of these centres, the media and

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<sup>162</sup>Ransom 1993:134.

<sup>163</sup>See for example Ramazanoglu and Holland's discussion in 'Women's sexuality and men's appropriation of desire' in Ramazanoglu 1993:258.

<sup>164</sup>Ransom 1993:140.

<sup>165</sup>Hall, S. (1988) 'The Toad in the Garden: Thatcherism among the Theorists' in Nelson, C. & Grassberg, L. (eds) (1988) *Marxism and the Interpretation of Culture* MacMillan p.70.

<sup>166</sup>de Sousa Santos, B. (1985) 'On Modes of Production of Law and Social Power' in *International Journal of the Sociology of Law* 1985, 13, p.325.

<sup>167</sup>Hall 1988:71.

<sup>168</sup>Ransom 1993:144.

<sup>169</sup>Hall 1988:71. Emphasis in the original.



political parties. For the purposes of this thesis I shall add a different type of centre - that of gender. This notion of power allows for an analysis which on the one hand, recognises differences between women such as that of the tea-grower and tea-buyer, and on the other hand, recognises that the tea-grower and tea-buyer have some experiences in common as a result of their gender, for example those of domestic violence or sexual harassment.<sup>170</sup> In this way we incorporate aspects of Foucault's concept of power into our analysis, while refusing his absolute dispersion of it by recognising that while power circulates between centres rather than emanating from one centre, that circulation takes place "between constituted points of condensation."<sup>171</sup> In turn, this has tangible and observable consequences for women as a social group and the issue of punishment. For example while Lees is right to point out that men and women share a world which is structured by sexually abusive language against women and derogatory terms for female sexuality, as noted earlier, it is only one sex - women - whose sexuality is policed in this way, and who are punished through this discourse, for any perceived transgression of that sexuality.<sup>172</sup> Indeed Lees herself points out how labels such as 'slag' function to control girls' sexuality by steering them "towards a married existence as the only legitimate form of sexuality."<sup>173</sup> Females who make no effort to curtail or legitimate their sexuality in this manner must bear the punitive consequences at both an informal and formal level. We have thus come full circle since the early social control theories - via Foucauldian feminist theory - to a point where we can articulate and justify the need to place - not only a woman's criminal act but also her sexuality and the moral censures surrounding it which play a pivotal role in constituting the gendered subjectivity of the female - at the very centre of theories of punishment.<sup>174</sup> A failure to do so means "ignoring this fundamental and near universal discourse" of sexuality through "which girls are constituted and in large part constitute themselves."<sup>175</sup> This type of theoretical framework is able to expose and challenge taken for granted assumptions and 'knowledge' about women, which in turn opens up the possibility of women conceptualising

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<sup>170</sup>For example, Sue Lees argues that derogatory terms such as 'slag' operate "as a form of generalised social control, along the lines of gender rather than class." In other words, while social class will create differences amongst women, at times discourses around gender will over-ride those around class. (Lees, S. (1989) 'Learning to Love' in Cain, M. (ed) (1989) *Growing Up Good* Sage, London, p.21.

<sup>171</sup>Hall 1988:71.

<sup>172</sup>See for example Maureen Cain's discussion of Lees' work in Cain, M. (1989) 'Feminists transgress criminology' in Cain 1989:7.

<sup>173</sup>Lees 1986:165.

<sup>174</sup>Howe, A. (1994) *Punish and Critique* Routledge, London, p.140.

<sup>175</sup>Cain 1989:4.

themselves in alternative ways. In doing so, it is inevitable that barriers between criminal and non-criminal women will be broken down, since, as I have shown in this chapter, these moral censures as well as the disqualification of women to speak with authority and state their own case, straddle both categories. Criminal and non-criminal women are further linked by their shared experience of informal punishment. Yet criminal women are also separated from the majority of women for whom non-penal and non-legal constraints are so powerful as to render formal punishment unnecessary. Thus, in studying executed women it is my aim, not only to restore these women to their rightful place in history but also to create new spaces in which we can begin to conceptualise both their biographies and their criminal actions in ways which challenge taken for granted knowledge about the 'good' as well as the 'bad' woman. In the following three chapters I set out to achieve this by situating my 15 case-studies of executed women in a revised 'social control' theoretical framework - a framework which is sensitive to Foucault's contribution to feminist theory, but which aims to avoid the pitfalls associated with discourse theory: the lack of emphasis upon personal empowerment; the negation of "the importance of personal and group definition and affirmation" and hence collective action as a strategy for social and political change; the general lack of theorisation of agency and the scant attention paid to the subject's own "understanding of her conditions of oppression."<sup>176</sup> It is also a framework which, rather than dismissing the currently unfashionable body of feminist literature known as 'social control' theory, sets out to refine it, by being mindful of its initial tendency to globalise and generalise highly complex issues of women's oppression, a tendency which at times has marginalised or even ignored the uniqueness of and differences between individual women. It is my contention that unlike Foucauldian theory, this revised theoretical framework is able to illustrate how many aspects of men's sexual and social freedom is directly linked to women's 'unfreedom' in those same areas. Above all else, applying this theoretical framework to events surrounding the violent but legal deaths of 15 20th century women will bring Foucault's false dichotomy of power versus violence to an end.<sup>177</sup>

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<sup>176</sup>Deveaux, M. (1994) 'Feminism and Empowerment: A Critical Reading of Foucault' in *Feminist Studies* Vol 20, No 2 Summer 1994, p.240, 241.

<sup>177</sup>See Deveaux's discussion on this dichotomy as well as her points relating to men's freedom versus women's unfreedom in Deveaux 1994:236.

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## Chapter Six

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### Women as Child-Killers: Four Case-Studies.

As outlined in the Introduction, the 15 case-studies of executed women are divided into three categories for organisational purposes: those who have killed (1) children, (2) other women and (3) male partners. In the previous chapter I emphasised the importance of recognising differences between women, it is therefore not my intention here to present the five women who were executed for killing children as a unitary category who necessarily have more in common with each other than with women executed for the other types of killing analysed in the following two chapters. It will become apparent as the case-studies unfold, that there are instances where a child-killer will have more in common with a woman who has killed her partner than with another child-killer. However, the fact that each case is recognised as consisting of a unique set of circumstances and is examined accordingly, does not of course, rule out the existence of certain similarities which I shall draw attention to throughout my analysis. For example, four out of the five child-killers executed this century had in common their means of livelihood - they were all so-called 'baby-farmers'. In the following section I turn my attention to a close examination of their cases, but first it should be noted that the difference in the sizes of the case-studies reflect the unequal size of the individual files examined. Unsurprisingly, controversial cases tended to generate more documentation unlike those where the evidence was considered to be beyond dispute. Conversely, prisoners who had nobody to protest on their behalf, and/or whose execution did not attract a public outcry, have left little trace of their existence behind, a point which emphasises their muted state.

#### The Baby-Farmers: Women Who Killed Other Women's Children.

One of the amazing things about certain forms of female crime is the complete absence in the criminals of the maternal instinct. ... It is altogether a baffling mystery. It applies particularly to the class of criminals known as 'baby-farmers.'<sup>1</sup>

It is no coincidence that all the 'baby-farming' cases occurred well within the first decade of the 20th century. Baby-farming as a profession was both despised

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<sup>1</sup>Adam, H.L. (1911) *Women and Crime* T. Werner Laurie, London p.176.

and stigmatised, since its existence emphasised the contradictions between the dominant image of idealised motherhood, and the reality of motherhood for those women whose circumstances did not fit this image. Hence, baby-farming could only exist within a culture that stigmatised illegitimate children, and which almost totally excluded the single mother from the necessary means to support herself and her child. Indeed most single mothers were likely to find themselves denied access to a social life as well as a working life. Under these circumstances it is therefore not surprising that there was always a demand for baby-farmers who were prepared to adopt unwanted babies for a price on the understanding that they would 're-sell' the baby to suitable adoptive parents. Baby-farmers were usually uneducated and very poor themselves, hence unlikely to have access to suitable adoptive parents. Some of them would therefore simply accept the baby and the agreed fee, usually between £7 to £30, kill the baby and keep the money. The prevalence of baby-farming and the cheapness of a child's life can be gathered from a newspaper report published in 1899:

A very large trade is done in adopting children, and so quickly do they pass from hand to hand that it becomes almost an impossible task to trace a child to its original adopter or to discover the identity of the parents. Week by week the bodies of children, from the recently born babe to a child even five and six years of age, are found in various parts of London generally in a nude state, wrapped in brown paper or some old piece of linen that offers not the slightest clue, whilst the verdict of "Murder against some persons unknown" has ceased to extort even a paragraph in the highly sensational evening newspapers which make a startling contents bill out of nothing.<sup>2</sup>

Among the most notorious baby-farmers was Amelia Dyer whom O'Donnell describes as a "diminutive slayer ... almost a dwarf, only four feet in height, and the more repellent because she pretended to be a woman of deep religious convictions to whom murder was abhorrent."<sup>3</sup> Adam considered Dyer to be "one of the greatest hypocrites that ever lived. ... one of the most colossal petticoated atrocities that ever blackened the fair name of womanhood."<sup>4</sup> Mrs Dyer refused to reveal how many babies she had thrown into the river Thames saying : "You'll know all mine by the tape round their necks." She was found guilty of one murder in March 1896 and executed on the 10th June of that year.<sup>5</sup> In the

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<sup>2</sup>*The Weekly Dispatch* 1st October 1899 p.11. Adverts in newspapers for child-adoption could be found next next to adverts such as "cast-off clothing bought for cash" and "Cob or Horse wanted hire" (*The Herald* 8th August 1899), which, arguably, suggest an extra-ordinary casual attitude towards young children.

<sup>3</sup>O'Donnell, B. (1956) *Should Women Hang?* W.H. Allen, London, p.142.

<sup>4</sup>Adam 1911:189. See also Ward, A. (1996) *Psychiatry and Criminal Responsibility in England 1843-1939* Unpublished Ph.D. thesis, De Montford University 1996.

<sup>5</sup>Wilson, P. (1971) *Murderess* Michael Joseph, London p.240, 241; see also Segrave, K. (1992) *Women Serial and Mass Murderers* McFarland & Co, London pp.98-101.

following section I examine the case of the first baby-farmer to be executed in the 20th century.

### The Case of Ada Chard Williams.

Ada Chard Williams and her husband William stood trial for murder at the Old Bailey on 16th February 1900. While William was discharged after the joint two-day trial, Ada was found guilty of the murder of a 19 month old girl - Selina Jones and sentenced to death. The murder was considered "a cruel one, committed from the basest motive - for money."<sup>6</sup> The autopsy suggested the baby had been grasped by her legs while her head was banged against a wall.<sup>7</sup> The subsequent head injury would have rendered her unconscious, and while in this condition "a white linen bag with tape strings had been pulled over its head and it had been strangled by means of those tape strings."<sup>8</sup> The body was then 'trussed': "heels drawn on each side of the head close by the ears - left arm thrust between left leg and body, right squeezed between body and leg and secured by the cord."<sup>9</sup> Finally, the body was wrapped to form a parcel and string was tied round it ending with three specific and unusual types of knots: Fishermen's bend, half hitch and reef knots which were to play an important part of the case for the prosecution. Moreover, the specificity of these knots ensured that the couple were quickly suspected of having murdered several other children since at least two other bodies had been found in the river Thames which had been 'parcelled' with string and identical knots. It was never proved in court that the couple was responsible for other deaths, but the *Weekly Dispatch* reported that during the six months they had lived in Barnes "no less than six children can be traced to her [Ada], and curiously enough, six children were subsequently tied up in a similar manner to the child Jones."<sup>10</sup> The couple used several false names and moved often, for example in the two years prior to their arrest they had occupied at least nine different homes.<sup>11</sup> Each move coincided with another baby being discovered in the Thames, and the police eventually traced more than 25 children to the Williams's.<sup>12</sup> Yet, had it not been for the action of Ada Williams herself, it is unlikely their crimes would ever have been discovered. In early December 1899

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<sup>6</sup>HO144/280 XC17335 Public Record Office, Kew, Richmond, Surrey TW9 4DU.

<sup>7</sup>O'Donnell 1956:144. See also HO 144/280/A61654.

<sup>8</sup>*The Times* 16th February 1900.

<sup>9</sup>HO144/280/A61654.

<sup>10</sup>*The Weekly Dispatch* 4th March 1900.

<sup>11</sup>HO144/280XC17335.

<sup>12</sup>*The Weekly Dispatch* 4th March 1900.

Ada wrote a letter to Scotland Yard, apparently in response to a newspaper article she had read which linked her to the death of Selina Jones. At first glance the letter appears to have been written for the purpose of defending herself:

The accusation [of murder] is positively false. ... I have, it is true, been carrying on a sort of baby farm, that is to say, I have adopted babies + then advertised + got them re-adopted for about half the amount I had previously received. I have had five in this way, two died while in my care but I can prove that every attention + kindness was shown them, no money was grudged over their illness, I can prove this by the people with whom we lodged + also from the doctors who attended them.<sup>13</sup>

Ada further stated that Selina had been re-adopted in this manner to a "Mrs Smith" whose address she could not remember. The two children referred to had indeed been issued with death certificates from doctors despite the fact that in at least one of the cases the doctor found the child suffering from neglect two days prior to its death and "considered the case unsatisfactory but certified it as a death from bronchitis."<sup>14</sup> It was this letter which made it possible for Scotland Yard to trace the Williams's, and in a later section I return to it for further analysis.

#### Ada Williams and the Construction of 'Truth'.

Ada had been an 18 year old country girl from Sussex when she married William in 1893. William was double her age and had been a scholar at Cambridge, hence he was perceived as being "socially and intellectually considerably above his wife,"<sup>15</sup> and "a vastly different person from his wife."<sup>16</sup> Despite this supposed superiority, contemporary commentators such as Adam, who was an observer at the trial, did not hesitate to offer the opinion that it was "quite clear that he was completely under the control of his wife":

This became apparent as they sat in the dock. Mrs Williams, although looking so modest and demure, was in fact a woman of invincible will-power and irresistible resolution. She was also extremely callous and cruel. This was indicated by her thin and firmly-compressed lips. She sat facing the jury, whom it was obvious she had set herself the task of favourably impressing. She had designedly assumed an air of demureness and inoffensiveness for that purpose. She has so placed her chair in the dock as to bring her face to face with the jurymen, because in the ordinary course of things a prisoner faces the bench, the dock being at right-angles to the jury-box. Mrs Williams was one of those women who exercise great

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<sup>13</sup>Quoted from original letter dated 5th December 1899, in CRIM 1/59/4 XC7025, Public Record Office, Chancery Lane, London WC2A 1LR. Emphasis in the original.

<sup>14</sup>HO144/280XC17335.

<sup>15</sup>Adam 1911:199.

<sup>16</sup>O'Donnell 1956:145.

influence over men, and who are thoroughly alive to the extent of their power. As she had ruled her husband through the medium of this same influence, so she set herself to win over the jury by similar means.<sup>17</sup>

Adam's judgement of Ada's character did not represent the extreme end of a continuum but was by all accounts a fair assessment of contemporary public opinion. O'Donnell for example, placed her in the same category as Amelia Dyer: "She was a hatchet-faced woman of vile temper" with "a mind as evil as ever woman possessed."<sup>18</sup> The mobilisation of this antagonistic and hostile response to Ada's personality therefore must be closely examined. In the introduction to this thesis I discussed how women's violence is denied rationality by classifying the perpetrators as mad or bad. In particular I pointed to the way in which rationality is denied by focusing upon the perpetrator's abnormal character rather than upon social and personal circumstances which led up to the crime. The case of Ada Williams provides a prime example of these processes at work. Even a perfunctory deconstruction of the above quotation indicates that Ada was categorised as a 'bad' rather than 'mad' woman. The description of Ada's power over men is reminiscent of the attitudes towards women expressed in the 15th century theology text *Malleus Maleficarum* discussed in Chapter Three. The overall image presented is of a manipulative, cunning and deceitful woman whose power over men makes her highly dangerous. The discourses mobilised to create this image of an 'evil' woman centred on Ada's conduct and behaviour as both a wife and mother as I shall now illustrate.

First, Ada's position within her marriage is that usually reserved for the male - she is the dominant partner while his attitude towards her is one "of dog-like devotion."<sup>19</sup> As a result of Ada possessing a stronger character and personality than her husband she is regarded as an unruly and 'uppity' woman, someone who does not 'know her place' and who does not show appropriate deference to her husband. For example, during the trial William sat facing Ada, continually directing glances in her direction as well as speaking to her on several occasions, but Ada allegedly ignored him.<sup>20</sup> Furthermore, as I shall illustrate later, Ada, on at least one occasion, had been overheard to threaten William with physical violence. She was therefore not a submissive or deferential wife who obeyed her husband or recognised his authority over her. Instead her demeanour within the

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<sup>17</sup>Adam 1911:199-200.

<sup>18</sup>O'Donnell 1956:144.

<sup>19</sup>Adam 1911:201.

<sup>20</sup>Adam 1911:201.

court-room disturbed and disrupted the ideal image of passive and self-effacing femininity, and as such her presence came to represent a threat to patriarchal hegemony.

Second, discourses around motherhood - both at a structural and individual level - played an important role in this case. Rose has commented that while infanticide reached its peak in the 1860s and had long been in decline by 1900, the fact that four baby-farmers were executed between 1900 and 1907 "probably indicates a greater police vigilance and a lower public tolerance of infant disposal."<sup>21</sup> While this view may form one aspect of the explanation of these four women's execution it is necessary to examine broader social, cultural, political and economic issues in order to make sense of the prejudice and hostility towards baby-farmers at this historical moment. In particular, we need to be aware of the state's role in the construction of the discourse 'dangerous womanhood'. In chapter Three I discussed how draconian legislation passed in 1623 against those suspected of infanticide or concealment was aimed solely at unmarried mothers, and had little to do with the preservation of the lives of infants. Instead such drastic measures were motivated by a desire to control and regulate the sexuality of a vulnerable group of women by making it more difficult for them to escape the consequences of immoral conduct.<sup>22</sup> Although resistance to this legislation from juries was so great that it eventually had to be modified, women's 'unruly bodies' never the less continued to cause anxiety. Consequently:

This specific focus on illegitimate children and hence unmarried mothers remained a feature of legislation dealing with concealment of birth until 1828 and with infanticide until 1861.<sup>23</sup>

Concern over infanticide intensified between 1860-65 when it increasingly came to be associated with moral decline and 'un-British' conduct and as such presented "a threat to the social order and civilised values."<sup>24</sup> It is within this context that a moral panic had developed by 1870 about some of the practices associated with baby-farming. Baby-farmers were nearly always working-class women, so impoverished that even when they did not kill their charges intentionally, many

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<sup>21</sup>Rose, L. (1986) *The Massacre of the Innocents: Infanticide 1800-1939* RKP, London.

<sup>22</sup>It will be remembered from Chapter Three that a large proportion of illegitimate children were not the product of "immoral conduct" by women, but of female servants being raped or seduced by their masters.

<sup>23</sup>Smart, C. (1992) 'Disruptive bodies and unruly sex' in Smart, C. (ed) (1992) *Regulating Womanhood* Routledge, London, p.16.

<sup>24</sup>Smart 1992:16-17.



died anyway from neglect and malnutrition as baby-farmers did not possess the means or skills necessary to care adequately for the infants. By 1871 A House of Lords Select Committee was established to consider issues and problems associated with baby-farming. Unsurprisingly, the Committee found that women resorted to baby-farmers for the same reasons they resorted to infanticide or abortion: shame of their unmarried status, poverty so severe that keeping the baby was not an option, and lack of support, financial or otherwise, from the father.<sup>25</sup> These findings resulted in the creation of the Protection of Infant Life Act in 1872, which stipulated minimum standards of care of infants and demanded the licensing of baby-farmers. Yet, as pointed out by Smart, the Committee remained "entirely silent on the central problem facing working-class women of how to earn a living and look after children."<sup>26</sup> The licensing and regulation of baby-farmers therefore did nothing to enhance the chances of infant survival, but did much to ensure an increase in prosecutions of poor working-class women whose financial position remained unchanged. In effect legal discourse had defined 'dangerous motherhood' in class terms, containing this form of 'unruly womanhood' within the working-class "or the immoral classes."<sup>27</sup> Together, these discourses around baby-farming made up the framework through which Ada's case was heard.

With specific reference to Ada's case, the quality of mothering which she provided fell well short of acceptable standards. As discussed in Chapter Five, the ideology of motherhood can be extended to female carers as both roles have similar moral assumptions and expectations attached to them. Women's caring role is regarded as innate and 'natural'. A 'normal' woman and a good carer/mother happily makes personal sacrifices and puts the interests of her family/charge before her own. In Ada's case the distinction between mother and carer was particularly blurred as baby-farmers were expected to replace the biological mother and thus fulfil both roles. Yet doctors had found her previous charges to be suffering from malnutrition and neglect. Furthermore, Mrs Loughborough, a witness appearing for the prosecution and a neighbour of the Williams's while a young girl, Lily, had been in their charge, testified that:

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<sup>25</sup>Smart 1992:22. See also Clark, A. (1987) *Women's Silence Men's Violence* Pandora, London p.74 where she writes: "The bastardy clauses of the New Poor Law exonerated fathers of illegitimate children from any responsibility for their maintenance, placing the moral blame and financial burden on the shoulders of impoverished and unmarried mothers."

<sup>26</sup>Smart 1992:23.

<sup>27</sup>Smart 1992:24.

She [Ada] put it in the corner & gave it a smack, when I went there to tea. ... She told me afterwards that she had beating [sic] the child with a stick. Mr objected & she said you mind your own game or I'll serve you the same. ... She told me Lily had dirted [sic] on the floor & she had beat [sic] her with stick for doing so & left her laying [sic] in it. ... I said "Poor little thing." She said "Serve it right." A day or two after I went again. I saw her back had "wails" weals on it about as thick as my finger. She showed me the marks & said Look what I've done. I said what wd [sic] the mother say. She said I don't care what the mother says.<sup>28</sup>

When Lily no longer appeared to be part of the Williams household, Mrs Loughborough asked Ada what had happened to the child:

her mother came & took her home ... A damned good job it has gone. Now I feel in heaven.

Mrs Loughborough's description of Ada's child-rearing methods is not an attractive one. Ada is portrayed as a cruel, callous and heartless mother, bad tempered and lacking in compassion. Because the skills associated with mothering are considered to be innate in women, and not skills that have to be learnt as in other areas of the world of work, Ada's shortcomings are taken to be 'unnatural' - implemented by her as a deliberate policy. In that sense a particular type of rationality which focuses on the wickedness of an individual, is imposed upon her criminal behaviour. But explaining her behaviour by categorising her as 'bad' ignores Ada's emotional depletion, impoverishment, lack of choice and control over her life and lack of experience in child-rearing practices, experiences and characteristics which could all be traced to Ada's social circumstances rather than to her individual psyche.

Ada's image as a callous and evil mother/woman was reinforced by other aspects of her behaviour as an individual. For example, the way she happily swapped Lily's clothes for "an art flower pot" with a neighbour, came to signify a whimsical selfishness, as well as a cold and unsentimental attitude towards the absent child. This unsentimentality and lack of commitment to the mothering role was further reinforced by a Home Office memorandum which, referring to various adverts Ada had placed in newspapers in an attempt to 'sub-farm' children in her care, stated that:

It might be that if prisoner could get rid of the child on advantageous i.e. cheap terms + no enquiry she would prefer that to cruelty or violence - but

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<sup>28</sup>Mrs Loughborough's statement from deposition file HO 144/280/A61654.

failing that - she would not hesitate at more criminal courses - or they may have been a mere blind.<sup>29</sup>

Here Ada is being constructed at best, as a woman who half-heartedly attempts to find homes for the children, but if these attempts are not met with immediate success, the child is simply murdered. At worst, it is suggested that despite the grinding poverty of the Williams's, adverts were paid for as 'a mere blind' to cover up for what in this scenario could only be gratuitous violence and murder of children.

In sum, Ada's conduct as a wife was considered to be that of a domineering, hysterical and bad-tempered 'battle-axe', while William was regarded as a besotted but ineffectual 'hen-pecked' husband.<sup>30</sup> Ada appeared to have no commitment to the mother/carer role but was judged to be cruel, selfish, callous and whimsical in her dealings with children while William "did his best to care for the foster children ... He saw that they were fed and washed and no father could have been kinder."<sup>31</sup> Once this interpretive schema of Ada as a 'bad' woman had been established, her conduct and behaviour was read accordingly regardless of the plausibility of this interpretation. In the following section I suggest a different interpretation of the same evidence that contemporary commentators utilised to present an image of Ada as a 'bad' woman. In doing so, it is my aim to construct an alternative 'truth' about Ada and her criminal activities, one which can be told and understood outside the 'mad/bad' framework discussed above.

### An Alternative Truth about Ada Williams.

The role that male partners played as accomplices to the crimes of executed women is a theme which will recur in several of the case-studies, and the case of the Williams's provides one example of this. As noted above, at 36 William had been double Ada's age when the couple married and as a former Cambridge scholar, he enjoyed a considerably higher social status than Ada, an uneducated country girl. While the image of William as downtrodden, in awe of his wife and tenderly protecting and caring for his foster children, was accepted by the Court, Home Office communications indicate that power relationships within the

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<sup>29</sup>HO144/280/A61654.

<sup>30</sup>Indeed William himself appeared to share this representation of their relationship because he wrote in a petition to the Home Secretary that given his age and knowledge of the world he "ought to have exercised a more wholesome influence over her moral nature." (HO 144/280/A61654).

<sup>31</sup>O'Donnell 1956:145.

marriage did not operate in such simplistic terms. William was described as having "led a wild and roving life ever since he left Cambridge. Indeed his relatives had to advertise for him when his step-father died leaving him £100."<sup>32</sup> William invested this money in a news-agent shop but was not a successful business-person and was soon penniless again. He was unable to work as a scholar as a result of deafness, it was therefore almost entirely Ada's responsibility to earn enough money for them both:

for the first few years of her married life the prisoner submitted to every hardship, worked at laborious toil, and kept herself honestly and respectably - ... there seemed no prospect of a change for the better in her lot - ... it was only during the last 2 years of her life she ever entered into the "kind of baby-farming" to which she so pathetically admitted in her letter to Scotland Yard.<sup>33</sup>

The letter is the same as referred to earlier and it contains several features which challenge the image of Ada as a domineering woman and William as a downtrodden husband, doing his wife's bidding. First, the letter was perfectly constructed, obviously written (or dictated) by an articulate and well educated person. Even Home Office personnel acknowledged this was not the letter of a 'farmer's daughter': "It is hardly a letter which the woman could have written alone."<sup>34</sup>

Second, the letter was designed to exonerate William from any involvement in Ada's baby-farming activities:

In conclusion I must tell you that my husband is not to blame in any way whatever, he has always looked upon the whole matter from the first with the greatest abhorrence but only gave way to me because he was, through illness, not of employment, he never, however, once touched any of the money I made by these means.<sup>35</sup>

Third, the letter was the only piece of evidence linking the Williams's to the murder and it was acknowledged that without it they may never have been identified.<sup>36</sup> It is therefore extremely difficult to discern Ada's motive for sending it, although in view of the above quoted passage, it is rather easier to understand William's motive. Taken together, the above factors - William's age, education and experience of the world compared to Ada's, along with the letter

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<sup>32</sup>HO 144/280/61654. Home Office Document initialled K.G.D. 23rd February 1900.

<sup>33</sup>"A Statement of the Defence which was not submitted to the Court, at the time of her Trial" HO 144/280/A61654. Emphasis in the original.

<sup>34</sup>HO144/280/A61654.

<sup>35</sup>CRIM 1/59/4. Original letter from Ada Williams to Scotland Yard.

<sup>36</sup>Wilson 1971:253.

which bore all the signs of him having dictated it to her - could equally well lead to the exact opposite conclusion to the one actually drawn: namely that it was *William* who manipulated Ada and that she was in awe of him as a result of his higher status to the extent where he, arguably, demanded or forced Ada to write a letter to Scotland Yard, exonerating him from all blame. The exact nature of Ada and William's relationship can only remain speculative, but it is difficult to ignore the possibility that he was aware of the likely outcome for Ada if she, and she alone, became associated with the dead infant found in the river.<sup>37</sup>

Even the prosecution could not ignore the conflicting nature of the evidence and conceded that William must have been involved in the murderous activities for which Ada alone was soon to be executed. The judge's notes also expressed concern over William's involvement.<sup>38</sup> Sir Kenelm Digby, the Permanent Under-Secretary of State, suggested that the following points should be considered before determining the safety of Ada's conviction<sup>39</sup>:

It is difficult to believe that this was done by the prisoner unaided and alone. Taken in connection with their previous history it appears to me that there is a very grave case of suspicion ..., that the husband as well as the wife was concerned in this wicked work. Then there is the evidence connecting him with the murder. He makes the arrangement to receive the letters [responses to Ada's baby-farming advert] ... and calls for them. He is present when the arrangements for the rooms ... is made [where Selina Jones's mother handed her baby over to Ada]. He is 'about daily' at ... [the Williams home]. The letter of Dec. 5 is probably his composition. ... On the whole, except the instance of his interference when the woman was beating the child, there seems very little to distinguish between the two cases. The jury might in my opinion have nearly as much justification for drawing an unfavourable view in his case as in his wife's.<sup>40</sup>

Another Home Office memo echoes Sir Kenelm's views:

The letter read as if it were the composition of her husband an educated man rather than hers. There is not a little evidence to show by whose hand the child meet its death whether by the man or woman.<sup>41</sup>

A third memo went further:

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<sup>37</sup>It is unlikely that William was ignorant of legal matters as "he was a near relation of the late Judge Williams (Adam 1911:199) and "was at Cambridge with Mr Avory who refused brief in consequence" (HO 144/280/A61654).

<sup>38</sup>Judge's Notes p.10, referred to in Sir Kenelm Digby's minutes dated 23rd February 1900 in HO 144/280/A61654.

<sup>39</sup>The Criminal Appeal Act did not come into effect until 1907.

<sup>40</sup>HO144/280/A61654.

<sup>41</sup>HO 144/280/A61654. Emphasis in the original.

I am in doubt ... whether the hands were those of the husband or of the wife, and I confess it seems to me the more closely I examine the exhibits now before me as I write, that the work is more probably that of the man than of the woman.<sup>42</sup>

Such was the concern over the safety of Ada's conviction and William's discharge that the Home Secretary was advised to change her sentence to penal servitude for life, especially as "the letters of the husband to his wife in prison look as if it is possible that he may yet make some further disclosure."<sup>43</sup>

Legal experts and state servants were thus well aware that the evidence (or rather lack thereof) opened up the possibility of a challenge to the dominant 'truth' about Ada as the tyrannical wife and callous and cruel mother, and William, the meek, powerless, ineffectual husband who showed his wife 'dog-like' devotion, and who remained a caring and devoted father protecting his children from her cruelty. Ultimately, however, they did not pursue this challenge because, like others who observed and commented upon the case, they too were caught up in discourses and ideologies concerning the 'good' wife and mother and appropriate female conduct and behaviour. The lack of these qualities within Ada's repertoire ensured that she became a prime candidate for the experience of judicial misogyny as discussed in the Introduction. There were no eye-witnesses and no forensic evidence which could prove that Ada was the killer rather than William. Instead judgements were made through an interpretive schema based on what was already 'known' about her:

From what H.O. has heard from outside sources (Governor of Prison &c.) it would appear that the woman is hot-tempered, violent and hysterical; the man meek and small, and so *the probabilities* are in favour of the murder having been committed by the woman, while the tying up knots &c. were probably done by the man.<sup>44</sup>

Probabilities are of course not evidence, and Home Office personnel recognised the potential problems associated with treating them as such:

Can it be fairly said that it is more than a probability that this is the true explanation; and would it be safe to hang the woman when we are *absolutely in the dark* as to whether it was her hand that actually committed murder, and when possibly at the last minute the husband might

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<sup>42</sup>HO144/280/A61654.

<sup>43</sup>HO144/280/A61654.

<sup>44</sup>HO 144/280/A61654. Home Office Document, 2nd March 1900. My emphasis.

come forward and say "I did it", and it would be impossible to prove that he was not speaking the truth.<sup>45</sup>

By the 6th March 1900, the day Ada was hanged, nothing had occurred to resolve the concern and disquiet surrounding the case. Yet the execution was not cancelled because those in a position to decide her fate ultimately chose to ignore the challenge to the dominant version of truth while at the same time emphasising the importance of the state - through the criminal justice system - *being seen* to punish a thoroughly 'bad' woman:

I regret very much that I am unable to take this view [of altering Ada's sentence to penal servitude]. I think the woman was clearly proved to have been guilty of the murder and though it is quite possible and even probable that the husband was jointly and equally guilty, the verdict of the jury with which the Judge concurred was to the effect that he was not. Nothing since the trial has weakened the verdict. To respite a woman proved guilty of such an atrocious crime, even on the above grounds, would seem to me to be likely to give a false impression + to weaken the deterrent effect of the sentence.<sup>46</sup>

The above quotation provides a clear illustration of the contradictions within the final judgement of Ada. On the one hand it is openly admitted that William was probably "equally guilty", on the other, legitimacy for carrying out the death sentence on Ada only is sought by referring to the verdict of the jury. There is no doubt about the all male jury's conviction that William had played a part in Selina's murder. As I shall illustrate in the following section, they did in fact decide that William was "guilty of being an accessory after the fact" although ultimately he was discharged and left court a free man.<sup>47</sup>

Thus, only Ada was sentenced to death despite the evidence being stacked equally against both defendants even by the prosecution's reasoning. In order to explain this judgement I shall draw on feminist critiques of the law. While law is imbued with contradictions and cannot simply be reduced to "a vehicle for men's oppression of women ... [or] an embodiment of the values of ... male culture", it never the less treats women defendants differentially by defining, supporting, preserving and upholding a traditional view of women's role:

It does this by slotting people into household units, constituted through marriage, with a breadwinning husband-father at the head, and a subordinate woman performing the unpaid offices of wife and mother,

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<sup>45</sup>HO 144/280/A61654. Home Office Document, 2nd March 1900. My emphasis.

<sup>46</sup>HO 144/280/A61654. Comments of Home Secretary.

<sup>47</sup>*The Times* 19th February 1900.

sustaining the traditional 'family values'. Indeed the woman's place is vital to the peace, good order and stability of the patriarchal order: 'She can prevent delinquency by staying at home to look after the children, she can reduce unemployment by staying at home and freeing jobs for the men, she can recreate a stable family unit by becoming totally dependent on her husband so that she cannot leave him. *She is the answer*'.<sup>48</sup>

Women who do not fulfil this role become problematised - they are seen as unruly and in need of restraint and control. For Smart the problematised and unruly female body is caught in a double bind. In the first instance women's bodies "are constituted as the archetypal site of irrationality." Within legal discourse the female body has failed to adhere to the principles of reason and rationality which have become subordinate to irrationality and emotionality. However, the second instance illustrates that women cannot escape the sexism of legal discourse by becoming rational since the 'rational' woman appears to be lacking appropriate feminine attributes. For Smart, the dominant notion is "that economic rationality is the highest form of rationality."<sup>49</sup> Hence women applying an economic rationality to actions they should provide for free - for example in cases of surrogate motherhood or prostitution - become 'monstrous' and 'heinous'.<sup>50</sup> To this we can add the practice of baby-farming, which as described earlier, was considered an unsavoury practice and hence heavily stigmatised. I also drew attention to the view of Home Office personnel that the murder was "a cruel one, committed from the basest motive - for money." While this view is not necessarily incorrect the underlying assumption behind the statement is that the murder was motivated by financial greed rather than economic need. In that sense Ada as an individual within legal discourse became the problematised body and the unruly woman, while at the same time little or no attention was paid to her personal and social circumstances. I have also illustrated that Ada fell well short of fulfilling the role of the dependent wife and subordinate woman - maintaining family values, creating peace, stability and harmony within the home. The fact that she had no choice but to become the breadwinner as a result of William's disability, is not discussed or even mentioned by those with the power to decide her fate. Only the Defence Statement referred to above and her mother drew attention to Ada's financial desperation:

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<sup>48</sup>Naffine, N. (1990) *Law & the Sexes* Allen & Unwin London p.13; p.16 referring to Smart, C. (1984) *The Ties That Bind* 1984:136. Emphasis in the original.

<sup>49</sup>Smart, C. (1995) *Law, Crime and Sexuality* Sage, London p.227.

<sup>50</sup>Smart 1995:227.



Her poverty has been very great since her marriage + she has worked very hard - especially since the death of her Father a small tenant farmer as since my widowhood I could not afford to help her.<sup>51</sup>

Thus, the discourses mobilised around Ada as a deviant wife and mother, and hence as an unruly body, culminated in judicial misogyny which impacted upon everyone within the court room, including the all male jury. It was a mobilisation and culmination that allowed a disregard for the wider set of circumstances which contributed not only to Ada becoming a criminal, but also to ensuring her a place within the interpretive schema of a woman in need of restraint and control. Ultimately these discourses filled the gap left by the lack of evidence and allowed the jury to conclude *without* that evidence, "that the woman actually committed the murder and the man disposed or helped to dispose of the body."<sup>52</sup> That such a verdict could be reached, despite the fact, as I illustrated above, even the prosecution recognised that the evidence could not differentiate or distinguish between Ada's and William's involvement in the murder, is a testimony both to the importance of ideologies around women's conduct and behaviour generally, and the power of discourses around the 'unruly woman' within the court-room in particular.

The purpose of constructing an 'alternative truth' about Ada Chard Williams as a human being as well as her crime, has not been to suggest that she was innocent of the crime for which she was hanged. Rather, it has been an attempt to understand her actions as stemming from other than human greed and cruelty which so far has been the only language in which her story has been told. Similarly, the attempt to reach an understanding of her violent conduct which is closer to the experience of her reality is not meant to be an excuse or apology for her behaviour, but is based on a desire to grant women's violence a rationality which is not necessarily linked to the mad/bad categories discussed above.

Moreover, my intention has been to illustrate how Ada was treated *differentially*, not as a result of different evidence but as a result of different gender expectations. That is to say, this differentiation was not based upon forensic evidence or eye-witnesses speaking in the court-room, but in how she was perceived as a woman generally, and, more particularly, as a wife and mother.

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<sup>51</sup>Adelaide Street's plea for mercy towards her daughter Ada, to the Home Secretary, dated 3rd March 1900; HO 144/280/A61654.

<sup>52</sup>Home Office communication dated 23rd February 1900, HO 144/280/A61654.

Until the very end Ada was perceived as a duplicitous, hysterical female who was beyond control:

Throughout the trial she had managed to keep up an appearance of demure innocence, but as soon as she realised what her fate was to be she dropped the mask and revealed herself. She stormed and raged and fought with the wardresses in the dock and, in profane language, boasted that two other children had died while in her charge.<sup>53</sup>

Adam's personal observation of Ada supported this description of her alleged hypocritical behaviour:

the true character of Mrs Williams asserted itself after she was convicted and when she knew that dissimulation would no longer avail her. When she was brought back to the dock to hear the verdict she was looking extremely pallid and was much agitated. The verdict having been given, she was asked whether she had anything to say. She was so agitated, however that she was unable to speak. The sentence was then pronounced. She was again asked whether she wished to say anything and having by a supreme effort obtained partial control over herself, she said in a studied voice of bravado, "Thank you, my lord." ... As she was descending the steps she suddenly struck out at the attendants, at the same time shrieking out, "let me alone, or it'll be the worse for you!" It was the savage side of her nature asserting itself.<sup>54</sup>

In contrast, *The Times* presented a rather different version of Ada's last moments in court:

The female prisoner, who had preserved perfect composure, said "Thank you, my Lord." Being asked whether she had anything to say in stay of execution, she replied, "I have nothing to say."<sup>55</sup>

Further support for an alternative truth about Ada's personal conduct came from the Governor of Newgate prison, Edward Milman:

The execution of the prisoner took place at 9am - and went off satisfactorily. Death was instantaneous. She was remarkably brave to the last - but made no confession - probably with the idea that she might implicate her husband.<sup>56</sup>

In declining to make a final statement before her execution Ada ensured that her personal account of her involvement in Selina's murder would remain muted for

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<sup>53</sup>O'Donnell 1956:145.

<sup>54</sup>Adam 1911:203-4.

<sup>55</sup>*The Times* 19th February 1900.

<sup>56</sup>HO 144/280 XC 17335 A61654 Notice to Home Office dated 6th March 1900.

ever. Confessions were considered extremely desirable by the Home Office as will become apparent in later case-studies, because they provided a firm basis of legitimacy for a judicial killing. In Ada's case the lack of a confession is explained by referring to the 'fear of implicating her husband', thus ensuring that her last moments on this earth would be recorded as contradictory, since such concern would not automatically be attributed to a woman who in life had stood accused of domineering and manipulating her husband. Moreover, a confession from Ada was equally, if not more so, likely to exonerate her husband than to implicate him. Taken together, these accounts (and lack thereof) illustrate, that while the exact 'truth' about Ada Williams can only ever remain speculative, her character was far more complex than that presented by what were to become dominant accounts of her as an evil and callous 'hatchet-faced hypocrite'.

### The Quality of Ada Williams's Defence.

As illustrated above, all the accounts of the Ada Williams case discussed in this thesis proved to be a rich source of personal criticism against her. During the course of this research I have not been able to identify a single account which levels criticism at William's personal conduct despite the fact that immediately upon being discharged he was rearrested and charged with fraud, an (unrelated) crime for which he subsequently received a prison sentence.<sup>57</sup> Neither have I been able to locate any accounts which questioned or challenged the nature of the Williams's defence. Neither newspaper articles, observers at the trial nor Home Office communications questioned the fact that no witnesses were called for the defence in a murder trial which could potentially have concluded with a double execution.

Accompanying William's petition to the Home Secretary Sir Matthew White Ridley, was a hand-written 20-page document entitled 'A Statement of the Defence which was not submitted to the Court, at the time of her Trial'. This document included the names and addresses of six potential character witnesses who had at different times been Ada's employers - "disinterested people" - whose evidence would have proved that "she has all her brief life earned the esteem and regard of every one who has known her."<sup>58</sup> A seventh employer, the proprietor of a Coffee House,

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<sup>57</sup>HO144/280/A61654.

<sup>58</sup>'A Statement of the Defence which was not submitted to the Court, at the time of her Trial' HO 144/280/A61654 p.2.

"declared he would be always willing to give prisoner a good character."<sup>59</sup> None of them were called to give evidence. Other potential witnesses which the defence failed to call included Mrs Goacher, the prisoner's sister, whose illegitimate daughter, Ada had looked after for several months before returning the child to her mother, and who was still "alive and could have been produced at the trial"<sup>60</sup>; and Dr Richards, Dr Gray and Dr Lauder Hills who had attended the two children who had died in 1897 and 1898. All three had sent letters to Ada's solicitor as had a nurse attending Leslie, the second child to die, and the Williams's landlady. Finally, Mrs Meeklenburgh, who had adopted a child from Ada in January 1899 and with whom she kept in touch "several times after she parted with the child," was not called.<sup>61</sup> The reason that none of these witnesses gave evidence was that the "prisoner was unable to pay the expenses of the witnesses for her Defence."<sup>62</sup>

The document also expressed concern over "the respectability, character, or antecedents of ... Mrs Loughborough", the only witness produced by the prosecution to testify that Ada was guilty of child cruelty. In particular, it was concerned that "where the life of a human being is at stake the single evidence of only one witness should be received with some caution and reserve."<sup>63</sup> Once again the defendants were not able to have this witness investigated on their behalf because they were "too poor"<sup>64</sup>:

It is humbly and urgently pointed out that the Prisoners were very poor and friendless and utterly unable to carry out or cause to be carried out any investigations on their behalf. That on the other hand the Prisoner had opposed to her the whole machinery of Scotland Yard.<sup>65</sup>

Finally, although not a direct criticism of the defence, but rather a comment upon the manner in which the entire case was conducted, it should be noted that William's discharge came about, not as a result of persuasive arguments put forward by Mr Wild or Mr MacMahon-Mahon defending the couple, but as a result of a misunderstanding on the part of the jury. Judge Ridley's summing up and guidance to the jury regarding the possible verdicts which would be acceptable, is no longer in existence, consequently it is not possible to discern how this misunderstanding came about. However, after the jury had found William not

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<sup>59</sup>'A Statement of Defence ...' HO 144/280/A61654 p.2.

<sup>60</sup>'The Humble Petition of William Chard Williams' HO 144/280/A61654.

<sup>61</sup>'The Humble Petition of William Chard Williams' HO 144/280/A61654.

<sup>62</sup>HO144/280/A61654.

<sup>63</sup>'A Statement of Defence ...' HO 144/280/A61654 p.6. Emphasis in the original.

<sup>64</sup>'A Statement of Defence ...' HO 144/280/A61654 p.13.

<sup>65</sup>'A Statement of Defence ...' HO 144/280/A61654 p.15.

guilty of murder, but an accessory after the fact, they were told that the latter verdict was unacceptable. As he had not been charged with this crime William would be entitled to a new trial and in Mr Justice Ridley's opinion not "much good would be gained by [another prosecution] ... in view of what had happened, it was not necessary to ask for a verdict against the male prisoner, ... the male prisoner was not the real offender, and if a verdict were returned against him he could not pass severe punishment.<sup>66</sup>

In the Introduction - following the work of Worrall - I emphasised the importance of bearing two questions in mind when analysing criminal women. They were 'under what conditions do certain people claim to possess knowledge about female criminals' and 'what are the processes which result in such claims being translated into practices which have particular consequences for criminal women'. The case of Ada and William Williams provides an example of a verdict not being dependent upon 'value-free' evidence, or 'objective facts' as discussed in Chapter Two. Instead knowledge about Ada - 'the truth' about Ada - has been created as a result of the mobilisation of *discourses* around female conduct and behaviour. By utilising such discourses - speaking through them - those who concerned themselves with the case were able to construct her in a particular way - as an unsympathetic character - the archetypical 'bad' woman. The fact that Home Office personnel, prosecution and judge were united in their recognition that Ada and William were equally likely to have committed the murder, yet simultaneously accept her execution while William walked out of court a free man, reminds us never to underestimate the power of such discourses.

#### A Double Execution - The Case of Amelia Sach and Annie Walters.

The two women, beyond words as wicked a pair as ever stepped in shoe leather, were what is known as 'Baby Farmers.' This does not mean that either of them were babies and even less that they were farmers. *They were wholesale baby murderers ...* In the dock Amelia Sacks [sic], her face deadly pale ... looked strangely like the prints of Charlotte Corday. She was a handsome woman with well-cut features and a gentleness about her that made the terrible nature of her crimes all the more unbelievable. In direct contrast to this slim and almost elegant creature Emily Waters [sic], at her side, might have been the maiden sister of Quilp ... Small, spare, and motherly-looking in appearance, with her hair parted in the centre and drawn tightly over her ears, her face was lined and creased, and looked like a russet apple of a previous season. She seemed incapable of anything but

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<sup>66</sup>The Times 19th February 1900.

the greatest kindness, and yet the hands clasped in front of her had been laid across the mouth of many a helpless little creature...<sup>67</sup>

Three years after Ada Williams's execution attitudes towards baby-farmers had not changed. For example, when commenting on the case of Amelia Sach and Annie Walters, *The Lancet* did not question the circumstances which left some women no choice but to seek the services of baby-farmers. Instead it reserved its criticisms solely for the baby-farmers who, as I indicated above, were usually as destitute and impoverished as their clients:

The people who relieve ... parents of their offspring act from sordid and not from benevolent motives. The baby-farmer's profits by honestly carrying out the trust undertaken are likely to be but small, and they can be increased only at the expense of the adopted infant, whose death, when a single and final payment has been made, is the most lucrative issue for which the baby-farmer can hope.<sup>68</sup>

The above quotation illustrates how wider social issues around baby-farming could be removed by ignoring the fact that 'parents' were inevitably unmarried mothers without the means to support the child and 'people' were inevitably women with little prospect of supporting themselves by any other means. However, just as William Williams was an exception to this pattern so too was Amelia Sach whose motive for criminal involvement was never revealed. Annie Walters however, followed the usual pattern of an uneducated and destitute woman desperate for some means of survival:

Mrs Sach was an attractive and brainy young woman of twenty-nine, but her partner in crime was of low intelligence, illiterate and a pervert with ruthless instincts.<sup>69</sup>

Amelia ran what appeared to be a respectable nursing home for women about to deliver their babies. She obtained clients by advertising in newspapers and she ensured that a large percentage of that clientele would be mothers of illegitimate babies by including the sentence "Baby can remain."<sup>70</sup> Once a baby was born Amelia would offer to find adoptive parents for it in exchange for a £30 fee. But rather than fulfilling her part of the agreement she would pass the baby on to

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<sup>67</sup>Hicks, S. (1939) *Not Guilty*, M'Lord Cassell and Co Ltd, London pp. 27-28; 29-30. Emphasis in the original.

<sup>68</sup>*The Lancet* 24th January 1903 p.251 (vol I).

<sup>69</sup>O'Donnell 1956:146.

<sup>70</sup>Original advert in *Dalton's Weekly House & Apartment Advertiser* 5th June 1902 in CRIM 1/83/2 Public Record Office, Chancery Lane London WC2A 1LR.

Annie who disposed of it. As had been the case with Ada Williams three years earlier, Annie and Amelia stood trial for one murder only, that of Miss Galley's baby, but were suspected of being responsible for the deaths of many other infants. Indeed another infant had died in Annie's care only days before the death of the Galley baby, but this death had been accepted as accidental by her landlord, Mr Seal, a police officer. However, he became suspicious when she brought a second baby home only days later and his superior arranged for her to be kept under surveillance. She was subsequently arrested with the dead baby still in her arms.

Apart from being considered a 'pervert' and 'of low intelligence' Annie was also described as "a short, plebeian, stubby, plain-faced woman, shabbily attired ... [who] looked as though her occupation in life was 'charing'."<sup>71</sup> The statement which she produced following her arrest may well have been at least partly responsible for these condemnatory and negative opinions:

I ment the Lady she was in a Brougham she said you have come i said yes i am could get in give me the baby i gave it to her she sad on tye the parcell i on tied it then the on dress the baby and gave me the closes and drest it in fine Lace Robes and a boutfull cloke and Lace Vale she said it will be a lovly baby i said it a good little sole it never cry and i said i dont think my lanlady as herd it at hall.<sup>72</sup>

Not even Annie's defence counsel was persuaded by this statement and subsequently made no attempt to trace this adoptive parent, but argued instead that evidence relating to babies other than the one she was accused of murdering should be rendered inadmissible. His argument was rejected.<sup>73</sup> Other commentators cited the fact that she killed babies inside a police officer's home, as well as her claim that one of the missing babies had been adopted by a coastguard in Kensington well away from coastal waters, as evidence that "she was not too bright."<sup>74</sup> Hence it became widely accepted that Amelia was the 'head' while Annie provided the 'hands' within this criminal partnership.<sup>75</sup> Other aspects of Annie's life did nothing to endear her to those who were soon to judge her. Before her arrest she had been a heavy drinker who occasionally lived with men during an era when marriage was considered the only form of respectable

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<sup>71</sup>Adam 1911:194. See also Segrave 1992:254 who describes Annie as "'bedraggled' or 'squat and ugly.'"

<sup>72</sup>CRIM 1/83/2. From original statement by Annie Walters.

<sup>73</sup>HO 144/690/104226 XC2622 Public Record Office Kew, Richmond, Surrey TW9 4DU.

<sup>74</sup>Adam 1911:191-2; O'Donnell 1956:147.

<sup>75</sup>Adam 1911:194.

cohabitation between couples.<sup>76</sup> She was therefore a woman who deviated from conventional domestic and moral standards. This deviance extended to her demeanour inside the court-room where her conduct was considered inappropriate:

Walters ... maintained a stolid, almost indifferent aspect towards the proceedings. ... Once or twice she smiled faintly at something that was said in court.<sup>77</sup>

Here Annie's behaviour is interpreted through the dominant knowledge constructs around feminine conduct and manners and judged accordingly. However, what Adam took to be a deliberate display of insolence towards court proceedings may equally well have sprung from ignorance - that is - a lack of knowledge as to the type of behaviour considered appropriate for the occasion. Annie's background and lack of education ensured that she did not possess the necessary skills to re-encode her conduct and behaviour into a model which would be approved of by judicial personnel and commentators such as Adam. In short, she failed to communicate through dominant modes of expression as discussed in the Introduction.

Considering the various aspects of Annie's life it is not difficult to understand how she found herself involved in a murderous form of baby-farming. She was a semi-literate, naive and lonely 54 year old woman with no skills to sell, no means of support, financial or otherwise, and as part of what Victorians would have termed the 'residuum' class, she had no hope or prospect of changing these circumstances in the future.<sup>78</sup> Letters written from prison to her nieces suggest a personality easily influenced by those who showed her even a fleeting interest, coupled with a desire to please and to be liked.<sup>79</sup> Under those circumstances

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<sup>76</sup>Upon her arrest Walters claimed that she was merely waiting for night to fall so she could "do away" with herself "through a man." (CRIM/1/83/2).

<sup>77</sup>Adam 1911:194.

<sup>78</sup>Annie Walters spent over two months in Holloway prison, including the entire Christmas and New Year period, without any letters or visits (Stated in a letter Annie wrote to a relative dated 26th January 1903 and reproduced in Adam 1911:195-6). There are many examples of Annie's naiveté, for example Amelia paid her only "a few shillings" for her part in the crime while Amelia charged the mothers a fee of £25-30 (Judge's Notes p.51 HO 144/690/104226 XC2622).

<sup>79</sup>For example, her letters acquired an increasingly religious fervour during her 10 week prison incarceration, suggesting the influence of the prison chaplain whom Annie wrote, she longed to see each day (Letters reproduced in Adam 1911:196-7.). Similarly her letters are filled with profuse and turgid terms of endearment which appear out of proportion to her actual relationship with the correspondents who had neither written nor visited her until the week before the execution.



Annie's murderous deed can be understood as the rational action of someone with few choices available in her daily struggle for survival rather than the simplistic and unproblematic evil-doing of a 'pervert with a 'ruthless instinct' "butchering unwanted babies."<sup>80</sup>

Amelia's circumstances were very different. She was a qualified midwife and did not appear to be short of clients. She was also a wife and mother who, according to her husband's petition to the Home Secretary, was loved and valued as a family member.<sup>81</sup> Moreover, police discovered a letter in Amelia's home from someone who wished to adopt a baby from her nursing home which indicates that she could have earned her extra income by legal means.<sup>82</sup> Adam who witnessed the double trial described Amelia thus:

Sach was tall, fashionably dressed, very attractive, and carrying herself with an air of refinement. ... [she] presented the appearance of having just returned from the theatre, with a fashionable cloak thrown over her shoulders.<sup>83</sup>

In short, neither her personal circumstances nor her appearance fitted the image usually associated with baby-farmers: single, poor, friendless, down-trodden lower-class women. Her motive as well as her personality are destined to remain an enigma for ever as Amelia did not give evidence at her trial, nor did she offer any verbal explanation or a single written statement after her arrest.<sup>84</sup> However, a letter written while awaiting trial reveals an excessive concern about her finances. Given the seriousness of her position it is noteworthy that apart from requesting clean underwear, the only other issue discussed is money:

Dear I left you in charge of the House so will you ask Mrs Galley + Mrs Pardoe to pay you at once + bring the money to me Wednesday morning. Mrs Galley £7.70 on Wednesday Nov 26th Mrs Pardoe £7.70 today Nov 24th from then one Guinea per week note dear be sure to do that.<sup>85</sup>

Moreover, Amelia's personal bank book revealed that she had saved £963, a substantial sum of money in 1902.<sup>86</sup> Her husband was employed as a builders'

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<sup>80</sup>O'Donnell 1956:146.

<sup>81</sup>HIO 144/690/104226 XC2622. Jeff Sach's Memorial.

<sup>82</sup>Original letter from Laura Bracey dated 22nd November in CRIM/1/83/2. See also *The Times* 15th January 1903.

<sup>83</sup>Adam 1911:194.

<sup>84</sup>Wilson 1971:258.

<sup>85</sup>CRIM 1/83/2, (Exhibit 15). Letter dated 24th November 1902 from Amelia Sach to Mrs Ball.

<sup>86</sup>CRIM 1/83/2. Post Office Savings Bank book dated 15th March 1902

foreman and they had only one child to support.<sup>87</sup> Taken together, these personal details add ambiguity to Amelia's motivation rather than clarification.

While contemporary commentators all agreed that Amelia was highly intelligent, physically attractive and a member of the 'respectable' class, none drew the conclusion that as a result of these attributes it was more problematic to offer excuses for her murderous conduct than was the case with Annie. Nor was she considered to be a 'ruthless pervert'. Moreover, her demeanour inside the courtroom fell within the expectations of appropriate female conduct and as such was more acceptable to observers than Annie's:

... her face denoted considerable mental suffering. ... The look on the face of Mrs Sach was one of deep dejection mingled with almost uncontrollable agitation.<sup>88</sup>

Thus, in contrast to Annie, Amelia's conduct and physical appearance generated sympathy and pity:

... in spite of the detestable and brutal character of the crimes attributed to Mrs Sach ... I could not help feeling somewhat sorry for her. Odious as the crimes themselves were, they were not so brutal as those committed by Mrs Dyer.<sup>89</sup>

Adam's personal opinion raises an important issue - that as a result of Amelia's physical appearance, demeanour and 'respectability', we can detect the first signs of her portrayal as a 'victim' as well as a perpetrator. Unlike Amelia Dyer or Ada Williams before her, or her co-accused, Amelia Sach had redeeming 'lady-like' qualities which for some were so convincing that they were prepared to challenge the dominant truth of Amelia being the 'brains' and Annie the 'hands' within their criminal partnership. Miss Woodley for example, wrote to the Home Secretary:

I beg to suggest that the unfortunate Mrs Sach under the influence of a strong and evil minded woman many years her senior, imbued and degenerate through long association with evil ways, may have easily succumbed by such force to acquiescence to a deed which possibly was

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<sup>87</sup>HO 144/690/104226. Jeff Sach's Memorial .

<sup>88</sup>Adam 1911:194. It should be noted that as the death sentence was passed the two women's demeanour was reversed with Annie weeping while Amelia "heard the sentence unmoved." (*The Times* 16th January 1903).

<sup>89</sup>Adam 1911:194-5.

revolting to her own nature. Is not this the true situation and would not an act of Grace in her particular case be also an act of true justice?<sup>90</sup>

Like Adam and O'Donnell above, Woodley is revealing a strong class bias, associating ignorance and lack of privilege with wickedness and degeneracy, while simultaneously refusing to accept that such characteristics may also be associated with a 'respectable' woman. Yet the circumstantial evidence against Amelia remained so strong that even her husband, Jeffery, did not plead her innocence in his Memorial to the Home Office which was considered so weak and ineffectual that civil servants commented "that it hardly seems necessary to trouble the Judge with such a poor representation."<sup>91</sup> Ultimately, therefore, her social class, good looks and pleasing demeanour could not override the hostility felt towards baby-farming:

Sach was the moving spirit who proposed the mock adoption to the unfortunate mothers, telegraphed to Walters, reclaimed the baby clothes and absorbed the lion's share of the adoption fee.<sup>92</sup>

Above all other issues, the two women - like Ada Williams before them - had abused and failed in their roles as mothers/carers, an offence which had to be seen to be punished as a deterrent to others:

... their crime is of the most dastardly + sordid nature - murder for money. They made a trade of murder, and their dealings seem as extensive or more so than the celebrated cases of Margaret Walters ... and Amelia Dyer ..., both of whom suffered the extreme penalty of the law.<sup>93</sup>

Once again we are reminded of Smart's observation that women who apply an economic rationality to services they should be providing for free become 'monstrous' and 'heinous' and must be dealt with accordingly. In Amelia's case, the discourses around dangerous womanhood - that is - the mother/carer as the cold-hearted, brutal child-killer, overrode discourses around social class. Indeed, Amelia's class location may have exacerbated her dangerousness since her criminal activities stood in sharp contrast to her otherwise 'respectable' status,

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<sup>90</sup>HO 144/690/104226. Letter to Home Secretary from Ms Woodley dated 26th January 1903.

<sup>91</sup>HO 144/690/104226. Home Office response to Memorial dated 27th January 1903. Circumstantial evidence against Amelia included the discovery of 300 articles of baby clothing which had belonged to various missing and dead babies including the Galley baby.

<sup>92</sup>Home Office minutes by Sir Kenelm Digby dated 26th January 1903, HO 144/690/104226 PRO Kew.

<sup>93</sup>HO 144/690/104226. Home Office Minutes dated 21st January 1903.

thus emphasising an 'unpredictable' and 'unknowable' element within her femininity.<sup>94</sup> In that sense her femininity can be understood as more dangerous and more unruly than Annie's whose crime only confirmed what many Victorians already believed to be the case: that the residuum and the criminal classes were synonymous. These discourses also overrode the state's reluctance to execute women as discussed in the Introduction. If anything, the reverse was the case - that is - precisely because they were women and had sinned against the very essence of womanhood - the 'maternal instinct' and a woman's 'natural' desire to care - baby-farming offences were almost always guaranteed to result in execution. Thus, Justice Darling, after issuing the death sentence, warned Amelia and Annie not to expect mercy just because they were women.<sup>95</sup> He had the full support of the Home Office:

These women had murdered defenceless babies in a wholesale way and from the worst motive. The sentence must be carried out.<sup>96</sup>

Public opinion appeared to be in agreement with this punishment for there was no outcry, protest or petition in support of the two women.

Earlier I pointed to the problematic nature of the evidence against Ada Williams and the Home Office's concern about the safety of her conviction. In Annie and Amelia's case the Home Office also recognised that "the evidence in the case charged was weak and that convictions could only be secured if evidence relating to other missing children whose murder the prisoners had not been charged with, was admitted."<sup>97</sup> Sir Kenelm Digby in particular, stated that without such evidence "it would have been difficult to disprove Walter's assertion that the child's death might have been due to misadventure. As against Sach there would really have been no case at all."<sup>98</sup> Moreover, a positive identification of the Galley baby was not possible as it had been removed immediately upon its birth. However, the marks on its head caused by a forceps delivery, led to the assumption

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<sup>94</sup>As can be seen from Miss Woodley's letter above, some individuals found the possibility of an otherwise refined 'lady' too much to bear and chose to neutralise Amelia's dangerousness by denying her guilt.

<sup>95</sup>*The Times* 16th January 1903. Home Office Minutes written by Sir Kenelm Digby supports Judge Darling's opinion: ... "I do not think that their sex affords reason enough for commutation of the sentence in the case of either of these women." (Dated 26th January 1903 HO/144/690/104226 XC 2622).

<sup>96</sup>HO 144/690/104226. Home Office minutes 27th January 1903.

<sup>97</sup>FO371/29537XC17007.

<sup>98</sup>HO/144/690/104226 XC 2622. Home Office Minutes 26th January 1903.

that it was in fact Miss Galley's baby.<sup>99</sup> Mr Stephenson defending Annie, consequently argued that the case for the prosecution was built on "surmises and conjectures" and by admitting evidence which amounted to nothing more than speculation about other missing babies, the jury would find the defendants guilty as a result of suspicion rather than proof.<sup>100</sup> He therefore argued that such evidence should not be admissible. He was overruled and the jury took only 40 minutes to decide the fate of Annie and Amelia.<sup>101</sup> They subsequently became the first two women to hang at Holloway prison on 3rd February 1903.

The case of Amelia Sach and Annie Walters provides testimony to the ease with which criminal women can become members of a muted group. As I have indicated, a variety of factors contributed towards the silencing of the two women's experiences and their subsequent disappearance from history, including Amelia's self-imposed silence. The limited size of this case-study, despite the fact that it involved two women, is a direct consequence of this silencing since Home Office files concerned with this case are extremely slim. This in turn reflects the almost total lack of controversy around the case which ensured it could be processed with great expediency. Miss Woodley's letter discussed above, was the only communication from a member of the public that attempted to speak on behalf of the two women and thus establish an alternative 'truth' about their crimes, however detrimental that reality was to Annie. Similarly, the only petition submitted in this case came from Jeff Sach, the husband of the accused. No family member and no member of the public spoke in favour of Annie. Except for Miss Woodley and Jeff Sach, the impending deaths of Amelia and Annie appeared to be of no interest and no consequence to anyone.

#### The Case of Rhoda Willis alias Leslie James.

I was attracted and fascinated by her blaze of yellow hair, and as she left her cell and walked in the procession to the scaffold the sunlight caused her hair to gleam like molten gold. I had hanged women before but never one so beautiful...<sup>102</sup>

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<sup>99</sup>HO 144/690/104226. Judge's Notes.

<sup>100</sup>*The Times* 16th January 1903.

<sup>101</sup>*The Times* 16th January 1903.

<sup>102</sup>Harry Pierrepont, the hangman responsible for hanging Leslie James, quoted in Bailey, B. (1989) *Hangmen of England* W.H.Allen, London p.195.

Rhoda Willis, hanged on her 40th birthday - 14th August 1907 - was the only woman to be executed in Wales during the 20th century.<sup>103</sup> Rhoda was from Sunderland but had moved to Cardiff in 1893 with her husband Thomas and daughter Emma. Following the death of Thomas in 1896 Rhoda changed her name to Leslie James, and I shall henceforth call her by her chosen name.

Leslie was officially the house-keeper of David Evans a shoe-maker, unofficially they were cohabiting as a couple. Her attempts to set up as a baby-farmer were never successful. She was known to have taken possession of three babies in exchange for money, the first being the baby of Mrs Stroud, which, on 7th May, was found on the steps of the Salvation Army home in Cardiff. It was taken to the workhouse where it died of diarrhoea a week later.<sup>104</sup> The second baby was the illegitimate child of Stanley Rees, whom Leslie received on 8th May, and re-adopted to her landlady Mrs Wilson. The baby was eventually returned to its biological mother. The third child was the baby of Maud Treasure whom Leslie received on 3rd June in Hengoed and whom she was found guilty of suffocating during the return journey to Cardiff.

#### Leslie James and the construction of 'Truth'.

Like Ada Williams before her, Leslie was condemned for her baby-farming activities:

... It stands, I think, as a bad murder. Whatever considerations might be addressed in extenuation ... of the case, it is in my judgement impossible to disassociate it from the baby farming habit which the prisoner was forming ... It is in this wider aspect that the case will be regarded by the public.<sup>105</sup>

Similarly, in his concluding remarks to the jury, prosecutor Sir Brynmor Jones reinforced existing condemnatory discourses around baby-farming by emphasising its economic rationale:

... prisoner's plan was to make money. She accepted money, spent the money, and then got rid of the various children one after the other, as best she could.<sup>106</sup>

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<sup>103</sup>*The Times* 15th August 1907 states it was Rhoda's 44th birthday, however official documentation available for inspection in the PRO gives her age as 39 at the time of her arrest.

<sup>104</sup>HIO144/861FO371/29537XC17007.

<sup>105</sup>HIO 144/861/155396. Comments by Secretary of State.

<sup>106</sup>*Western Mail* 25th July 1907.

Also like Ada, Leslie was quickly identified as a 'bad' rather than 'mad' woman:

... this was not one of those cases in which a mother, more or less insane, actuated by shame and dishonour, destroyed her own offspring ...<sup>107</sup>

The Secretary of State agreed with this view and added that "the prisoner is evidently a thoroughly bad woman. She has a previous conviction for theft, + this baby was clearly murdered for money."<sup>108</sup> Head Constable McKenzie of Cardiff Police further added that "she was a woman of drunken habits and low moral character."<sup>109</sup> Witnesses gave evidence in support of this assessment of Leslie's character, for example Mrs Wilson, her landlady, testified that "prisoner was helplessly drunk"<sup>110</sup> and had to be helped into bed the night before the discovery of the dead infant, and David Evans, Leslie's co-habitee, stated that she was drunk by lunch-time on 23rd May when he went to meet her.<sup>111</sup> Rose Smith, another lodger of Mrs Smith's also testified that "they were both the worse for liquor" the day after Leslie was accused of having suffocated the baby.<sup>112</sup> Mrs Wilson's evidence allowed the prosecution to allege that Leslie's intention had been to dispose of the dead infant on the day she received it, "but she went out that day and got too drunk to carry out her design."<sup>113</sup> Leslie's sexual reputation was equally tarnished as can be seen from police inquiries about her past which revealed that while still a married woman she began cohabiting with Stewart MacPherson. This relationship produced three illegitimate children. However, in 1901 Leslie left Stewart to live with his brother Gregor MacPherson.<sup>114</sup> In 1903 she was living with Robert Carew, a blacksmith.<sup>115</sup> By 1906 "she had sunk to prostitution"<sup>116</sup> as well as theft for which she was sentenced to one month's imprisonment on 17th July.<sup>117</sup>

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<sup>107</sup>Sir David Brynmor Jones opening the case for the prosecution, reproduced in *South Wales Daily News* 24th July 1907.

<sup>108</sup>HO 144/861/155396. Home Office Minutes dated 1st August 1907.

<sup>109</sup>HO 144/861/155396. Home Office communication dated 31st July 1907.

<sup>110</sup>*Western Mail* 24th July 1907.

<sup>111</sup>ASSI 72/33/1-4 XC 7025.

<sup>112</sup>*South Wales Daily News* 24th July 1907.

<sup>113</sup>*South Wales Daily News* 25th July 1907.

<sup>114</sup>HO 144/861/155396. Communication to the Home Office from Head Constable McKenzie of Cardiff City Police dated 8th August 1907.

<sup>115</sup>HO144/861/155396. Communication to Home Office from Head Constable McKenzie dated 31st July 1907.

<sup>116</sup>Wilson 1971:264.

<sup>117</sup>HO 144/861/155396. Leslie James's previous convictions sheet. She had stolen a medal from the home of a previous employer.

Leslie James was thus a woman who had failed to conform to acceptable standards of female conduct and behaviour in nearly every one of the areas discussed in Chapter Five. As had been the case with Ada Williams seven years earlier, Leslie failed to convince the all male jury that she was capable of satisfactorily fulfilling the mother/carer role. Not only did she rid herself of young babies by whatever means available when the responsibility of caring for them became too much, but there was no sign of the two surviving children Dorothy and Bessie from her relationship with Stewart MacPherson who would have been 7 and 10 years of age.<sup>118</sup> Furthermore, following the death of the Treasure baby she left the corpse in her bed, while she took the Rees baby out. She returned in an advanced drunken stupor, "carrying the baby up-side down."<sup>119</sup> Rather than possessing a maternal instinct, Leslie seemed at best, highly irresponsible in her dealings with children, at worst, cruel, callous, neglectful. She was not a woman who put the needs of babies before her own, she was not naturally altruistic as described in the previous chapter, instead she was 'unnatural' and 'abnormal' in her dealings with the most vulnerable part of the population, young babies. It will also be remembered from the previous chapter, that as a result of the stabilising functions associated with the mother role, drunken mothers are regarded as a special threat. In short, Leslie was the epitome of 'dangerous motherhood'.

Leslie's conduct within the court-room did not help her case. Her composure was commented upon on several occasions, for example on the first day of her trial, she was described as "quite composed" and "carefully scanning the jurors as each was sworn."<sup>120</sup> When the trial resumed on the second day the prisoner showed "the same calm and determined mien as on the previous day. Nothing in the evidence appeared to ruffle her."<sup>121</sup> Even during the summing up the prisoner "listened to the proceedings as calmly as at any previous stage of the trial." Finally, while the judge's voice was "breaking with emotion" as he issued the death sentence, Leslie remained unmoved:

The prisoner maintained an absolutely rigid control of her feelings to the end. She stood up perfectly erect, and looked at the judge immediately on the pronouncement of sentence. There was not the slightest movement or

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<sup>118</sup>A son, Stuart, had died. HO 144/861 FO371/29537 XC 17007. Communication from Head Constable McKenzie.

<sup>119</sup>HO144/861/155396.

<sup>120</sup>*South Wales Daily News* 24th July 1907.

<sup>121</sup>*Western Mail* 25th July 1907.



swaying of the body, and her heavy under-jaw was as rigidly fixed as during the whole course of her case.<sup>122</sup>

*The South West Daily News* had the final word as it stated that after leaving the court-room "she put on a callous smile ..." <sup>123</sup> Taken together, these reports of Leslie's personal conduct and attitude towards her deed did not denote remorse, regret or sorrow. Instead they reinforced her already established image of an 'unnatural' cold-hearted child-killer.

The jury took just 12 minutes to find Leslie guilty of wilful murder. *The Western Mail* reported that "there was practically no public excitement over the death sentence, which appeared to have been generally expected and the scene was remarkably free from any element of sensation."<sup>124</sup> The trial judge Commissioner Shee stated that he concurred with the verdict and warned the prisoner not to expect mercy.<sup>125</sup> It was normal practice to execute prisoners three weeks after sentence had been passed and as far as Commissioner Shee, senior civil servants and the jury were concerned, there were no extenuating circumstances which would justify a commutation to life imprisonment.<sup>126</sup> Shee noted that the witnesses had been "respectable and truthful" persons<sup>127</sup> who presented their "evidence very well indeed" unlike the prisoner, who had "kept up much false pretence" concerning the dead baby.<sup>128</sup> He was referring to the fact that Leslie had not told anyone she was about to collect a new baby, but instead lied about her trip away, stating that she was going to visit the father of the baby Mrs Wilson had adopted. The murder of the Treasure baby was therefore interpreted as being premeditated, her lies indicating she had never had any intention of keeping the child. For Shee therefore, in a case as serious as this, there could be no question of commuting the death sentence, as this "wd (sic) imply that capital punishment should be abolished for women."<sup>129</sup>

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<sup>122</sup>*Western Mail* 25th July 1907.

<sup>123</sup>*South Wales Daily News* 25th July 1907.

<sup>124</sup>*Western Mail* 25th July 1907.

<sup>125</sup>*South Wales Daily News* 25th July 1907.

<sup>126</sup>HO 144/861/155396. Home Secretary's Minutes.

<sup>127</sup>HO 144/861/155396. Home Office Minutes.

<sup>128</sup>HO 144/861/155396. Letter from Commissioner Shee to Mr Gladstone dated 4th July 1907.

<sup>129</sup>HO 144/861/155396. Home Office Minutes dated 9th August 1907.

At the same time, those entrusted to decide Leslie's fate acknowledged that the preservation of infant life was a secondary consideration when deciding her punishment:

... it was the murder of a child which had not reached the stage of conscious existence. *It is a crime more against society than against the murdered individual.*<sup>130</sup>

The Home Secretary fully supported the views of his staff:

I agree that the consequences of the murder of an infant are not so ... painful as they usually are in the murder of an adult.<sup>131</sup>

Despite this lack of deference towards infant life Leslie's life could not be saved because there were "none of the extenuating circumstances attending the common forms of infanticide."<sup>132</sup> The implication here is that it was impossible to pathologise her crime - the available evidence did not warrant a re-classification from the 'bad' to the 'mad' category. Instead she deliberately and wilfully committed 'a crime against society' by betraying 'natural' female instincts that guarantee love and nurture to a helpless infant - "a small life which especially called for protection + care."<sup>133</sup> The economic rationality behind the crime has thus been replaced by a rationality based on unnatural wickedness. As argued by Smart "acts such as infanticide, abortion, contraception and baby farming are rational responses to severe legal and material penalties consequent upon unmarried motherhood at times of virtual persecution."<sup>134</sup> However, as argued above, it was precisely the financial motive behind these killings which was so severely condemned. Baby-farming crimes thus encapsulated the conflict between on the one hand, denying the validity of a financial motive, and on the other, drawing attention to that motive as a justification for issuing severe punishment. The judge, prosecution and defence were all united in considering baby-farming an immoral practice, yet none of them were prepared to confront the financial reality of unmarried mothers or the immorality of chastising and persecuting the very members of the community who were least able to support and defend themselves. It will be remembered from Chapter Three, that the State's failure to distinguish between immorality and economic necessity where

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<sup>130</sup>HO 144/861 FO 371/29537 XC 17007. Home Office Minutes dated 9th August 1907. My emphasis.

<sup>131</sup>HO 144/861 FO 371/29537 XC 17007. Home Secretary Minutes.

<sup>132</sup>HO 144/861/155396. Home Secretary Minutes.

<sup>133</sup>HO 144/861/155396. Letter from Secretary of State dated 9th August 1907.

<sup>134</sup>Smart 1992:24.

unmarried mothers were concerned has a history which spans several centuries. Ultimately then, the practice of baby-farming also encapsulated the conflict between dearly held moral values around women, motherhood and individual families, versus the material reality and cost of motherhood for *single* women living in a culture whose definition of morality excludes a notion of collective or social responsibility for unplanned babies. It was a conflict which was easily won by moral defenders, who, rather than considering and alleviating the material reality of baby-farmers and unmarried mothers, exacerbated that reality by identifying these women as the ultimate propagators of dangerous motherhood. It was within this context that those speaking on behalf of the State judged Leslie's crime:

Having regard to the widespread laxity which exists as regards infant life, the extent to which the abominable system of baby farming prevails, and the difficulty which usually exists in proving an intention to kill, it appears to me of the utmost importance to do nothing to weaken Home Office practice in connection with baby farming practices. I think remission in this case would tend to weaken that practice. Under all the circumstances I must report that I find myself unable to interfere with the course of the law.<sup>135</sup>

Those involved in Leslie James's trial could not have wished for a better conclusion to the case when Leslie reportedly made an unusually detailed and specific confession:

It is satisfying to be able to recall that the convict confessed to her crime and fully admitted the justice of the sentence passed upon her by making the following statement voluntarily to her solicitor for the satisfaction of the authorities namely: that she would like to tell W. Lloyd that the sentence passed upon her was a just one - ... "I killed the child in the train. I meant to do it before I left the station. I would like those who tried me, particularly the judge, to know this. I would not like them to have anything in their minds or to think that they had made a mistake."<sup>136</sup>

#### An Alternative Truth About Leslie James.

Leslie had not always been part of the 'immoral' classes. She was born Rhoda Lascelles, the daughter of a respectable hotelier and attended an exclusive boarding school during her formative years.<sup>137</sup> While details about her early life are limited, police investigations established that at the age of 19, she had married

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<sup>135</sup>HO 144/861/155396. Secretary of State Home Department Memo 9th August 1907.

<sup>136</sup>HO 144/861/155396. Letter from Prison Governor of Cardiff prison to Secretary of State dated 14th August 1907.

<sup>137</sup>Wilson 1972:263.

a marine engineer, Thomas Willis, whose work caused him to spend long periods at sea. The marriage consequently broke up and Thomas died shortly afterwards. While Leslie maintained contact with her daughter Emma from her marriage to Thomas, his relatives "for some reason which is not known ..., took away the two younger children."<sup>138</sup> This marked the end of her 'respectability' as her life followed a path of gradual decline into alcoholism, a series of cohabitations with various men, the birth of illegitimate children, prostitution and crime. Two weeks after Leslie commenced working as David Evans's housekeeper he noticed that after receiving a letter she "burst out crying."<sup>139</sup> The reason given for this was that only three weeks previously she had given birth to a baby which had been adopted by a Mrs Carruthers who now wanted to return it. According to David, Leslie was given permission by him for the baby to live with them. It was not however, returned. She subsequently asked David if they could adopt a baby with a premium:

She said that she would look after it and that she was making her home with me and she could be like a mother to it.<sup>140</sup>

This discussion marked the beginning of Leslie's unsuccessful attempts at baby-farming. Medical reports relating to her mental and physical health are absent from her files, and as there is no reference to her mental or physical well-being in the trial extracts we must consider the possibility that a medical examination was never conducted. However, the turgid terms of endearment and figures of speech employed in her correspondence with the biological parents of her charges-to-be suggest a highly charged emotional state of mind inappropriate for what was ultimately a business deal.<sup>141</sup> Thus, while it is unclear whether she ever underwent a medical examination it is certain that no medical expert gave evidence for the defence.

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<sup>138</sup>HIO 144/861/1155396 Report by Head Constable McKenzie dated 31st July 1907.

<sup>139</sup>ASSI/72/33/1-4 Public Record Office, Chancery Lane, London WC2A 1LA. Statement of David Evans (undated).

<sup>140</sup>ASSI/72/33/1-4 Statement of David Evans (undated).

<sup>141</sup>For example Leslie wrote to Mrs Stroud "your little darling will have everything done for its comfort that loving hearts can do. We are so anxious to have it and are pleased to have it entirely as our own." (ASSI 72/33/1-4 undated). To Mrs English Leslie wrote "you can rest assured that I will be a true friend to you and keep my word." (ASSI 77/33/1-4 dated 2nd June).

Upon her arrest Leslie insisted that she had been part of a conspiracy to murder the baby: "I am not going to stand all the blame, some one else is in it as well as me."<sup>142</sup> While under remand Leslie wrote to David:

I am in terrible trouble through that woman and her mother that came to see me while I was in your employ. I am almost out of my mind. I don't seem to realise my position. Mrs Wilson told an awful lot of untruths in Court but I am going to have a good solicitor."<sup>143</sup>

While awaiting execution Leslie filed a petition to the Home Office in which she wrote: "I was completely in the hands of unscrupulous people however much the circumstances appeared against me."<sup>144</sup> The Home Secretary felt concerned enough about these statements to write to the trial judge:

while Leslie James's character was bad, is it not likely that there was something wrong on the part of Mrs English and that the crime committed under the influence of drink was not designed in cold blood? ... It is a reasonable supposition that when she was given the baby she was plied with liquor, under the influence of which she committed the crime?"<sup>145</sup>

While the judge remained unmoved, Leslie now implicated David:

There are some statements that I omitted in my petition that I have thought of since, my mind being so confused ... The witness David Evans swore that I was the one to propose to advertise for a child, but, he proposed it himself saying he had tried to get a baby to adopt for the sake of the money before I knew him, that man was the instigator of my awful position.<sup>146</sup>

Unsurprisingly, David's version of events was very different:

I told her I would have nothing to do with such a thing ... I would rather work day & night before I would go in for such a thing as it will lead us both into trouble ... [But] at last I was foolish enough to agree to advertise.<sup>147</sup>

The files relating to Leslie's case do not provide adequate evidence as to the exact nature of her relationship with David, but letters still in existence illustrate that

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<sup>142</sup>HO 144/861/155396 'The Case of Mrs Leslie James' 30th July 1907.

<sup>143</sup>ASSI 72/33/1-4. Letter to David Evans dated June 1907.

<sup>144</sup>HO 144/861/155396 Petition dated 30th July 1907.

<sup>145</sup>HO 144/861/155396 Letter from Gladstone to Commissioner Shee 2nd August 1907.

<sup>146</sup>HO 144/861/155396 Second petition to Home Office from Leslie James dated 7th August 1907.

<sup>147</sup>ASSI 72/33/1-4 and HO 144/861/155396, two statements by David Evans.

they were on intimate terms until the trial had taken place. Moreover, David himself provided a tantalising clue that perhaps his statement was less than truthful when he wrote:

Please write a nice long loving letter back and don't show this to anyone, because so false these days [sic], people are so 2 faced now. You can't trust no-one.<sup>148</sup>

As I shall indicate in the following section, and as Leslie herself repeatedly pointed out, apart from David she was without friends and quite alone in the world and was terrified of losing him as a result of her alcoholic binges:

Do write and tell me you forgive me [for being drunk]. I am so miserable so I beg of you to forgive me and I will never leave you again but do all I can for you. Oh my love you don't know the mind I have. I hate myself, but it was not my fault and you know that very well. Do forgive me and don't make me more troubled than I am.<sup>149</sup>

Leslie however, came to feel utterly betrayed by David, both as a result of the way he distanced himself from her while she was on remand awaiting trial, and through his evidence in the Coroner's Court:

What a misconstruction I put on the word friend when I addressed that word to you. My only friend is my own money and I have got that to receive when I am out of this trouble.<sup>150</sup>

By the time Leslie wrote her petition she was well aware of her perilous position and while the Victorian period had ended earlier in the decade, she acted in a manner that citizens of that era had been taught to approve of - recognising the error of her ways and, as a 'fallen' woman, showing repentance and pleading for forgiveness:

... I am a widow + entirely alone in the world, I am truly repentant for breaking the law, + I beg of you Gentlemen to consider my terrible position in which the awful anguish of my mind I can scarcely realise + I fear to contemplate the unknown future therefore Gentlemen I beg to implore you to extend your leniency to me + mercifully spare my life.<sup>151</sup>

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<sup>148</sup>ASSI 72/33/1-4. Letter from David Evans to Leslie James dated 4th June 1907.

<sup>149</sup>ASSI 72/33/1-4. Letter from Leslie James to David Evans received 25th May 1907.

<sup>150</sup>ASSI 72/33/1-4 Letter from Leslie James to David Evans dated 29th June 1907.

<sup>151</sup>HO 144/861/155396 Petition of Leslie James dated 31st July 1907.

In sum, evidence existed at the time of Leslie's trial which indicated that there was more to her life than her status as a 'bad' woman of 'low moral character', and that her crime may not have been the 'open and shut' case it first seemed: a callous, brutal killer acting alone in murdering innocent babies for the sake of an insignificant sum of money. That evidence also problematised the justification of her execution for many contemporary observers, some of whom had been directly involved in her case. This issue therefore forms the final part of my analysis of Leslie's case.

### The Quality of Leslie James's Defence.

In sharp contrast to the three women already discussed in this chapter, Leslie James was perceived by many as a pathetic, unstable, lonely creature whose decline from her former respectable life was an unfortunate result of her dependency on drink, and who therefore deserved pity. Her statement quoted above that she was "truly repentant for breaking the law" was immediately seized upon by the Home Office as an admission of guilt and was repeated whenever the judge or civil servants felt a need to justify their non-interference with the course of the law. Despite this, many of those who had been involved in the case remained deeply sceptical about her guilt and her 'confession' and believed instead that the baby's death had been accidental. Some considered Leslie to be guilty of no more than gross neglect brought about as a result of her drunkenness. Indeed, prior to the trial the Inquest Jury had returned a verdict of manslaughter rather than murder, against her. When the Coroner learned that she had been sentenced to death he felt concerned enough to write to the Home Secretary:

I cannot help feeling very doubtful whether she actually murdered the child. ... It was only a few hours old, and it appears to me quite possible, that it may have been suffocated while in the woman's arms. ... The marks of pressure on the body of so young an infant, may probably have been caused by its being wrapped up rather too tightly. ... I think it right to let you know the impression that the case made upon me, so that ... you may communicate with the Judge on the matter.<sup>152</sup>

Furthermore, a member of the Coroner's Jury felt motivated to write to Leslie's solicitor suggesting that:

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<sup>152</sup>HO 144/861/155396. Letter to Home Secretary from Coroner Bernard Reece 29th July 1907.

in order to keep the neighbours in ignorance the cries of the child were stifled to that extent that it was either wholly or partially suffocated before Mrs James received it, and when she did receive it the child was wrapped up so closely so that its cries should not be heard on leaving the house + neighbourhood. ... If ever a condemned person was entitled to the benefit of the doubt Mrs James is + I sincerely hope that the Home Secretary may see his way to recommend her reprieve.<sup>153</sup>

Apart from the issue of Leslie's guilt many observers were also deeply concerned about the quality of her defence. She had been represented by solicitors "throughout the proceedings before the Magistrates", yet, despite the seriousness of the charge, they "were obliged to abandon her defence" before her case reached the trial stage "due to her lack of funds."<sup>154</sup> Subsequently Leslie's trial was allowed to commence without her being represented either by solicitors or counsel:

It was only DURING THE TRIAL that counsel was instructed for Mrs James, and only as the case proceeded could he learn of the nature of the crime alleged.<sup>155</sup>

The counsel referred to, Ivor Bowen, felt "very anxious about the case"<sup>156</sup> and was so concerned about the fact that Leslie did not have a single person to speak on her behalf that he intervened himself by stating her case to the Home Secretary:

I most respectfully submit ... that the course of public justice would be sufficiently upheld if a reprieve were granted in this extraordinary and difficult case.<sup>157</sup>

Bowen listed several reasons for a reprieve. First, that only one doctor provided medical evidence at the trial, and he had only seen the child two days after its death. Second, that the medical evidence provided by this doctor, was not generally recognised within the medical profession as being conclusive evidence of suffocation. Third, the child's death could equally well have been accidental. Fourth, that the jury was unfairly influenced by allowing evidence to be heard

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<sup>153</sup>HO 144/861/155396. Letter to Leslie's solicitor Harold Lloyd from Joseph Stewart 7th August 1907.

<sup>154</sup>HO 144/861/155396. Letter to Home Secretary from Solicitors Harold Lloyd & Cross 30th July 1907.

<sup>155</sup>HO 144/861/155396. Letter to Home Secretary from solicitor Tudor Rees 13th August 1907. Capital letters in the original.

<sup>156</sup>HO 144/861/155396 Letter to W.P. Byrne from Ivor Bowen 28th July 1907. Mr Byrne may have been a member of the legal profession for Mr Bowen asked him to "look into it - All I should like is that the poor wretch shall not be hanged. I really believe it would be safer not to hang her."

<sup>157</sup>HO 144/861/155396. Letter to Home Secretary from Ivor Bowen 29th July 1907.



which related to Leslie's other baby-farming activities even though there had been no evidence of prior criminal intent. Fifth, that the prosecution never proved that there was any intent on her part to commit murder. Finally, "that the prisoner had no means of securing any medical evidence to set up against the evidence of the prosecution."<sup>158</sup>

Leslie's poverty and her subsequent lack of representation became important focal points for those who made efforts to secure a reprieve. For example MP Llewelyn Williams was involved in a petition for a reprieve and added that "the woman is poor, that she was not represented by a solicitor at the trial, ... that she had no money to organise a petition."<sup>159</sup>

A solicitor unconnected with the case wrote to the Home Office, expressing the view "that the capital sentence is not vouched by public opinion" and added that Leslie did not have a fair trial because "she was not asked whether she would give evidence on her own behalf and did not. ... In cases when convictions have been imposed without informing the prisoner of his right to give evidence under the provision of the Criminal Evidence Act 1899 have been quashed a fortiori a case [sic] of murder."<sup>160</sup>

With only a few days left before the execution the issue of Leslie's punishment became increasingly contentious. At this point the Cardiff City Council became involved, and while there was opposition by some councillors to the Lord Mayor's suggestion that members of the Council should unite in making a representation for a reprieve, the vast majority signed.<sup>161</sup>

Finally, Leslie's solicitor Tudor Rees presented a dramatic and emotional appeal to the Home Secretary arguing that "Wales stands staggered at your decision that Mrs Leslie James ... is to pay the last penalty of the law;" and if it had been known earlier "the petition would have been signed, not by 2,000 but by 20,000":

Wales throbs with a mighty sympathy for this friendless, heart-broken woman; and I am voicing the feelings of all my fellow-countrymen when I

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<sup>158</sup>HO 144/861/155396. Letter to Home Secretary from Ivor Bowen 29th July 1907. Bowen justified his intervention into this case by pointing out that he "was not retained to defend the prisoner."

<sup>159</sup>HO 144/861/155396. Letter to Home Secretary from Llewelyn Williams MP 8th August 1907.

<sup>160</sup>HO 144/861/155396. Letter to Home Secretary from Thomas Philips 12th August 1907.

<sup>161</sup>*Evening Express* 12th August 1907.

beg of you, humbly, ... to reconsider the decision which, if unaltered, will send a (probably innocent) woman to an awful doom.<sup>162</sup>

Rees's six-page letter displayed a passionate support for the plight of Leslie focusing particularly upon the unfairness of her trial. For example, he wrote that while the case for the prosecution "was diligently prepared by a firm of first-class solicitors, and eloquently put to the jury by two eminent counsel (one of whom was a K.C. and one-time judge), ... no solicitor worked up the case of the unfortunate prisoner."<sup>163</sup> Referring to the Judge's instructions to Bowen to represent Leslie after the trial had begun, with no prior knowledge of the case and no time to prepare a defence, Rees argued that:

in such a case as this, whose evidence was purely circumstantial and whose nature was such as to admit of several strong probabilities of innocence, had a solicitor carefully prepared the prisoner's defence, and duly briefed counsel in ample time before the trial, a very different verdict would have followed.<sup>164</sup>

In arguing that the baby had died accidentally Rees emphasised that "THE DOCTOR SAID AT THE TRIAL THAT THE DISCOLOURATION ON THE CHILD'S FACE WAS NOT INCONSISTENT WITH ACCIDENTAL SUFFOCATION."<sup>165</sup> Moreover, given the unfortunate 'intemperate habits' of Leslie, and her intoxicated state upon reaching home, "is it not reasonable to suppose that the woman ... leant clumsily, but accidentally, on her charge, and so suffocated it unintentionally. ... Generally, the evidence is wholly circumstantial, and extremely unsatisfactory."<sup>166</sup>

Thus, unlike the previous three women discussed in this chapter, there was a sizeable opposition to the execution of Leslie James. Despite the *Evening Express's* insistence that "the wretched woman's habits were horrible" and that "accordingly, the entire bulk of medical and medico-legal sentiment throughout the town, and country has been in favour of letting the law take its course"<sup>167</sup>,

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<sup>162</sup>HO 144/861/155396. Letter to Home Secretary from J. Tudor Rees 13th August 1907.

<sup>163</sup>HO 144/861/155396. Letter to Home Secretary from J. Tudor Rees 13th August 1907.

<sup>164</sup>HO 144/861/155396. Letter to Home Secretary from J. Tudor Rees 13th August 1907.

<sup>165</sup>Emphasis in the original.

<sup>166</sup>HO 144/861/155396. Letter to Home Secretary from J. Tudor Rees 13th August 1907.

<sup>167</sup>*Evening Express* 12th August 1907.

there was in fact plenty of evidence which indicated the professional classes' discomfort and opposition to Leslie's execution. In other words, the support for her discussed above, by legal personnel such as Bowen, Rees and Reece, can be seen to provide a challenge to judicial misogyny.

In the previous chapter I argued that women who engage in promiscuity, prostitution and drunkenness and hence have made no effort to 'keep their reputation' are likely to be treated more harshly by the criminal justice system than are 'respectable' women. In other words, women are not judged solely according to their crimes but also according to their conduct and behaviour as women. In this case-study I have argued that Leslie James failed to conform to acceptable standards of female conduct in all three of these areas as well as that of carer/motherhood. Yet the sympathy and support which she received during her last days illustrate the complexities involved in criminal women's differential treatment when they face the bench. It also warns us not to regard women's oppression in universal terms, but to be sensitive to differences between women, even within the 'bad' category. In Foucauldian terms, 'bad' women - prostitutes, bad mothers, female alcoholics - do not represent a unitary category, but are constructed according to discourses - the 'discursive construction of the subject', as I also explained in Chapter Five.

In Leslie's case the mobilisation of the discourses around the 'fallen woman' helps us to understand why, unlike the other three women discussed in this chapter, her case generated considerable sympathy. The term 'fallen woman' activated very different connotations to that of the 'common prostitute'. It was a class-specific term, implying that the woman had been respectable in the past but had 'fallen' out of respectable society, perhaps as a result of a betrayal or a seduction.<sup>168</sup> The 'fallen' woman was thus partly perceived as a victim - someone to be pitied rather than condemned. Unlike the common prostitute she was allowed to retain her femininity by remaining "powerless and dependent."<sup>169</sup> The common prostitute however, was a much more threatening figure:

The combined associations of cash and the public sphere rendered the prostitute powerful and independent - qualities which were the unique privilege of the white, middle-class male.<sup>170</sup>

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<sup>168</sup>Nead, L. (1988) *Myths of Sexuality* Blackwell Oxford p.95.

<sup>169</sup>Nead 1988:96.

<sup>170</sup>Nead 1988:95.

Moreover, whereas the 'fallen woman' was a term almost exclusively applied to middle-class women, the prostitute was inevitably defined as being a member of the residuum which added to her dangerousness and unacceptability. The construction of Leslie James as a subject can thus be seen to be made up of conflicting discourses - on the one hand she appears to fit the stereo-typical image of the 'bad' woman with regard to her criminal record, drunkenness, promiscuity, lack of respectability and inadequate mothering skills. On the other hand, her demeanour in terms of her humble, remorseful and modest plea for her life stood in sharp contrast to her transgressive behaviour. As noted above, in her petition Leslie claimed to be truly sorry for her crime, begged forgiveness and repented for her wrong-doing. This attitude toward her crime ensured that she was not *only* perceived as a criminal but also as a helpless and unfortunate victim which in turn meant that much of her femininity was retained.

Leslie's attitude also stood in stark opposition to that of Ada Williams who was constructed as an 'uppity' women who did not know her place, who displayed strength and independence, and who refused to be deferential to her husband. It too was very different from Annie Walters whose conduct was constructed as evidence of her dumb ignorance and perverted deviance. Lastly, it was different from Amelia Sach who made no attempt to excuse or justify her behaviour but instead maintained an 'unfeminine' stony silence until the end of her life. None of these three women made a confession and none of them could therefore beg for forgiveness. Instead they remained deviant women to the very end of their lives. There appeared to be no contradiction between their criminal activities and their subsequent conduct. Leslie James's conduct however, did give rise to such contradiction. In the previous chapter - following Smart - I argued that categories such as prostitutes, bad mothers and female alcoholics do not "exist in an a priori state, waiting for institutions to act upon them" but are instead agents who play an active role in constituting themselves through language and discourse. Like Foucauldian feminists Smart thus reminds us to take account of the multiple factors that play a role in constructing the individual. At the same time it is important to be aware that available spaces for subject construction are limited by existing discourses. Thus, as Leslie appeared to be quite sane and therefore could not claim to be 'mad', constructing herself as a passive, helpless and dependent victim was arguably her only alternative. In turn, conforming to acceptable standards of female conduct in terms of her modesty, humbleness and deferential demeanour resulted in a brief de-stabilisation of powerful legal and medical discourses. For a moment in history the official 'truth' that Leslie was a thoroughly 'bad' person who did not deserve mercy, was challenged by an

alternative 'truth' about her that maintained that she was a victim as well as a criminal - a 'fallen' woman whose remorsefulness indicated that she was not beyond redemption but instead deserved a measure of sympathy. However, as had been the case during Leslie's trial, her challenge to the official truth did not take place in a battle between equals - ultimately she was no match for those who had traditionally exercised the power to define the truth - hence the space created as a result of her challenge did not remain open long enough for an alternative truth to become established. None-the-less, as seen above from the various responses from those who pleaded Leslie's case, this embryonic 'alternative truth' was successful in hindering a total domination of official 'truth', and while her life was not spared, she was the last woman in England and Wales to be executed for child-murder.

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## Chapter Six - Part II

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### Biological Motherhood on Trial.

#### The Case of Louise Masset.

There is no human creature in this country ... so defenceless as an illegitimate child ... Rarely, except in the first almost irresponsible burst of shame and despair at its birth ... does the great maternal instinct fail. But if that makes default, all is, indeed, lost for the child. For the unnatural mother who beat in her little boy's forehead with a brick, strangled and stripped him, and went her way all unmoved to meet her paramour at Brighton the law will have no mercy. Hanging is almost too good for such a murderous monster as Louise Masset.<sup>1</sup>

What is ... apparent is the extent to which marriage as a formal legal status, locates women inside or outside certain categories of dangerousness. The unmarried mother was the most dangerous of all, not only to her infant but also to the social order.<sup>2</sup>

Was Louise Masset sent to the gallows because her demeanour failed to match the all-male jury's vision of an innocent woman?<sup>3</sup>

While several of the convictions of the 15 women analysed in this thesis can justifiably be considered to be 'unsafe' due to the unsatisfactory nature of the evidence, this does not necessarily mean that the women in question were not guilty of the crimes for which they were executed. However, in two of the 15 cases I shall be arguing not only that the convictions were unsafe but also that the two women concerned could well have been innocent of the crimes for which they paid with their lives. Louise Masset, convicted of the murder of her son and the first woman to be executed in the 20th century, was one of them.

Several aspects of Louise Masset's lifestyle had more in common with that of women today than her late Victorian contemporaries. In 1899 she was a single parent as well as a professional woman who supported herself and her son financially. Half French by birth, Louise gave individual tuition in French and

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<sup>1</sup>*Pall Mall Gazette* 19th December 1899.

<sup>2</sup>Smart, C. (1992) 'Disruptive bodies and unruly sex' in Smart, C. (ed) (1992) *Regulating Womanhood* Routledge London p.24.

<sup>3</sup>Mackay, F. (1993) 'French Leave' in A Granada TV publication introduced by Woodward, E. *In Suspicious Circumstances* Boxtree London p.171.

music to the children of wealthy Victorian Londoners. Louise herself was from a highly respectable and educated middle-class background, arguably the sort of back-ground which found it most difficult to accept or even tolerate illegitimacy. Consequently, although Louise's family was well aware of the existence of Manfred, her 3-year-old son, he was not acknowledged outside the family home. Instead he was a 'nurse-child' - that is - since the age of three weeks he had been cared for by a 'nurse' in her home for a weekly fee. However, this arrangement was quite different from the baby-farming transactions discussed in the first part of this chapter, for Louise never had any intention of parting permanently with Manfred, but was considered a "kind and loving mother" who visited her son every week - bringing him presents and taking him out.<sup>4</sup>

Despite being 36 years old Louise showed no inclination towards marriage, but instead appeared to have enjoyed a pleasant social life which included weekends away with her 19-year-old lover Eudore Lucas, who was French. Thus, unlike the poverty-stricken and powerless biological mothers of the child-victims in the baby-farming cases discussed above, and despite repressive Victorian values, Louise appeared to have the best of all worlds: she had not been forced to give up her illegitimate child but could enjoy motherhood when it suited her; she was free to enjoy the sexual pleasures of a relationship without having to fulfil the obligations attached to marriage; and she enjoyed a fulfilling professional life which gave her financial independence within an already financially secure back-ground. In short, her life-style was highly privileged compared to the drudgery of many of her contemporaries. I return to these issues below where I argue that the fact Louise was considered never to have paid a price for what was regarded as gross immoral conduct, played a considerable role in the final outcome of her trial.

#### Louise Masset's 'Truth' versus the Crown's 'Truth'.

While all the child-murder cases discussed in this chapter have been based upon circumstantial evidence, the case against Louise Masset rested on what may have been no more than a few coincidences, and while she could not prove her innocence, the Crown could not provide evidence which conclusively proved her guilt. Louise is the only woman in this chapter who gave evidence on her own

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<sup>4</sup>CRIM 1/58/5 Public Record Office Chancery Lane, London WC2A 1LR. Deposition of Miss Gentle, Manfred's nurse, dated 25th December 1899. It is clear from her letters to Manfred's father that she had no intention of ever giving her son up for adoption (HO 144/1540/A61535 Letter dated 6th October 1899).

behalf, and ultimately therefore, her conviction would partly have been based upon how believable her story sounded to the all-male jury. However, it was impossible to present her story without also revealing her immoral conduct, as I shall now illustrate.

Louise claimed that she had been concerned about Manfred's education for some time, a claim which her sister with whom she was living, verified. Manfred's nurse Miss Gentle, was working-class and Louise did not approve of speech patterns such as 'aint' and 'look at them pins' which Manfred was now emulating.<sup>5</sup> On her weekly outings with her son to Tottenham Green Louise claimed to have met and befriended two 'perfect' and 'respectable' women who were related and both called Mrs Browning.<sup>6</sup> The Brownings were about to start a boarding school and suggested that Manfred become one of their pupils. After discussions with the Brownings during a three-week period Louise agreed. However, Miss Gentle was a kind and loving nurse who was fond of Manfred and to spare her feelings and any implied criticism, Louise lied to her about her plans stating that Manfred was to go to France to be brought up with a cousin of his father's.<sup>7</sup> She told the same lie to her sister and brother-in-law and explained that she would embark upon a two-day journey to France with Manfred on 27th October. This lie was necessary in order to account for her absence between 27-29th October, because she had in fact arranged to spend that weekend with Eudore in Brighton. Manfred was to be handed over to the Brownings on the 27th at 2pm before Louise boarded the 4 o'clock train to Brighton. Although the Brownings were severely delayed, she claimed that the hand-over had occurred in time for her to catch the 4 o'clock train. Manfred was found murdered two hours later in the women's toilet at Dalston Junction.

Louise returned from Brighton Sunday evening and on Monday 30th she was teaching her pupils as usual. As she entered Dalston Junction that evening she noticed a placard and a newspaper with the head-line: "Dalston Murder. Identification of the Poor Little Victim. Child of a French woman, who took him away from his nurse on the day of the murder."<sup>8</sup> According to Louise's evidence, this was the first she knew of Manfred's murder. She subsequently travelled to

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<sup>5</sup>See for example report in the *Telegraph* 16th December 1899.

<sup>6</sup>*The Telegraph* 16th December 1899; *The Daily News* 19th December 1899.

<sup>7</sup>CRIM 1/58/5. Exhibit A - original letter from Louise to Mrs Norris (Miss Gentle's mother) dated 16th October 1899.

<sup>8</sup>HIO 144/1540/A61535 Public Record Office, Kew, Richmond, Surrey TW9 4DU. Newspaper article from the *Evening News* quoted in Judge Bruce's Summing Up p.40.



Croydon where her second sister lived to seek the advice of her brother-in-law "because he was English."<sup>9</sup> Louise went to the police voluntarily later that night and gave a statement in the presence of her brother-in-law.

The prosecution maintained that Louise had invented the Brownings in much the same way as she, by her own admission, had invented going to France, and that in reality, she had murdered Manfred before catching a later train to Brighton. In support of this claim, the prosecution presented three pieces of circumstantial evidence which, apart from one eye-witness account, was the *only* evidence against her. First, a clinker brick was found by Manfred's body which had been used to stun him before strangulation had taken place. This brick was similar to bricks found in the garden of Louise's home. However, countless gardens contained identical bricks, and the prosecution conceded "that no trace remained in the garden of any brick having been removed therefrom ... nor were there any traces of a single spot of dirt or mould from such a brick in the prisoner's bag or her clothing."<sup>10</sup> Moreover, the *prosecution*, in its opening statement stated that "the brick [found by the body] was somewhat *heavier*" than those in the garden of Louise's home.<sup>11</sup>

Second, Manfred's body was wrapped in a shawl, which the prosecution claimed Louise had purchased some days earlier from Maud Clifford, a draper's assistant, who picked her out from an identity parade. However, on the stand Miss Clifford stated: "I wont [sic] swear positively she is the woman."<sup>12</sup> Moreover, porter Joseph Standing who was called when the body was found gave evidence that: "I should not call it a new shawl at all." The doctor who inspected the body at Dalston agreed: "I do not think it was a new one."<sup>13</sup> Judge Bruce in his summing up added to the ambiguity of this piece of 'evidence':

Miss Maud Clifford says that she sold a shawl - not *the* shawl, because it is a black one, but one like that - on the 24th October. ... To whom was it sold? Miss Clifford says "I am *nearly* certain that prisoner was the woman." ... It is always difficult to judge of the accuracy of the evidence of witnesses simply by the expression she uses. ... Miss Clifford says she is nearly certain. You may judge of the accuracy of her evidence not merely by the expression but more by her conduct. "Would you know the woman?" She is

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<sup>9</sup>HO 144/1540/A61535 From Louise's statement quoted in Judge's Summing Up p.42.

<sup>10</sup>HO 144/1540/A61535 Petition from Louise Masset's family presented to the Home Secretary.

<sup>11</sup>HO 144/1540/A61535. My emphasis.

<sup>12</sup>CRIM 1/58/5. Evidence of Maud Clifford dated 25th December 1899.

<sup>13</sup>CRIM 1/58/5. Evidence of Joseph Standing and Dr James Fennell dated 25th December 1899.

taken on the 4th November ten days after she sold the shawl, and there she is shown fourteen women, and ... she does pick out the person and she says "That is the woman." Of course for all matters of identification it is important that the test should be fairly applied, that there should be no help from the police, but there is this to be said about the various questions put about the help in identification. Mrs Worley was called in. She was unable to identify the prisoner. Although the police were fair in all events in the way in which they conducted the test Mrs Worley was not able to identify the prisoner. Miss Clifford says she did identify the prisoner and she said she is the woman to whom she sold the shawl. *Now if she is the person who sold the shawl it is not conclusive evidence because it is only like the shawl she sold.*<sup>14</sup>

The third, and most damning piece of circumstantial evidence was a parcel containing Manfred's clothing which was found at Brighton station within minutes of Louise meeting her lover there on Saturday afternoon. The clothing had had buttons, cuffs and other identifiable details removed.

A fourth piece of evidence was to become equally contentious. It concerned the testimony of Ellen Rees, a lavatory attendant at London Bridge Station where Louise claimed the hand-over had taken place. Mrs Rees claimed to have spoken to her before 3 o'clock on the 27th, which was not disputed by Louise. However, she also claimed to have spoken to her at 7 o'clock which, if true, meant Louise could have committed the murder and, at the very least, had lied about which train she had caught to Brighton.<sup>15</sup> After the trial Mrs Rees felt less confident about her positive identification and she wrote to Thomas Evans, a member of the jury, stating that "she was not so positive about seeing Prisoner at 7 o'clock as she was earlier in the afternoon. That, although she spoke to her, the witness did not have so full a view of her, but *casually observed to herself* as she passed (while Prisoner was brushing her hair before a glass) that it looked like the person she had seen earlier in the day."<sup>16</sup> Moreover, Mrs Rees was short-sighted and normally wore glasses, but on this particular day had forgotten them. Another attendant at London Bridge Station, Georgina Worley, failed to recognise Louise but identified Manfred from a photo. Mrs Worley testified that she had asked Manfred's mother "if she was going by train, and she answered - No, I am waiting for someone to come to me."<sup>17</sup> In short, Mrs Rees' evidence, like the three pieces of circumstantial evidence, was far from conclusive. The prosecution was not

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<sup>14</sup>HO 144/1540/A61535. Judge Bruce's Summing Up pp.13-14. My emphasis.

<sup>15</sup>*The Telegraph* 18th December 1899. See also Judge's Summing Up pp.22-3 in HO 144/1540/A61535.

<sup>16</sup>HO 144/1540/A61535. Letter from Thos. K. Evans to Home Office dated 6th January 1900. Emphasis in the original.

<sup>17</sup>CRIM 1/58/5 Deposition of Georgina Warley dated 16th November 1899.

deterred by this however, and argued that Louise was "a woman of enormous determination, of alarming strength of will. She was not above resorting to falsehood in order to accomplish her object ... and it was obvious that to an iron-nerve that was necessary to commit this crime must be added the tongue of a serpent."<sup>18</sup> Thus, by the end of her trial, Louise had been firmly positioned within the 'bad' category of female criminals as discussed in the Introduction. In the following sections I analyse the discourses which were mobilised to achieve this categorisation.

### The Trial of Louise Masset.

As has been argued throughout this thesis the formal punishment of women cannot be understood outside a gendered perspective. In the previous sections of this chapter I have argued that what eventually becomes the dominant 'truth' about individual female defendants depends not only upon what is considered irrefutable evidence about their crimes, but also upon what is 'known' about the defendants as women. I have argued in the previous case-studies that such knowledge can, to a certain extent, pass through the criminal justice system unchallenged if the women are members of a muted group. Moreover, it will be apparent that while this mutedness is not dependent upon the defendant's location within the hierarchy of social class, there is never-the-less a strong relationship between membership of the 'lower classes' and membership of muted groups. As has been noted in the Introduction and above, and as will be elaborated upon in Chapter Eight, those who fail to communicate through dominant modes of expression will become disqualified as speakers. Within the context of the educational and cultural gulf between defendants of the 'lower orders' such as Annie Walters and members of the legal establishment who were (and are) almost exclusively drawn from the white, male middle- and upper-middle classes, and who, with their claim to expert knowledge, exercise the power to define dominant modes of expression, it is inevitable that those who lack the skills to express themselves 'appropriately' are also most likely to become disqualified as speakers.<sup>19</sup> Thus, in Chapter Three I argued that throughout history it was the labouring poor who were most likely to experience punishment

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<sup>18</sup>Mr Matthew's' Summing Up for the prosecution in *The Telegraph* 19th December 1899.

<sup>19</sup>See for example Harris' discussion on the class background of legal personnel in Harris, P. (1988) *An Introduction to Law* Weidenfeld & Nicolson, London esp. chapters 12 & 13. See also Chadwick, R. (1992) *Bureaucratic Mercy: The Home Office and the Treatment of Capital Cases in Victorian England* Garland, New York, esp. pp.90-1.

In general and execution in particular. As the case-studies unfold it will become apparent that this was as true of the 20th century as of previous centuries. Yet, as always, there were exceptions. Louise was highly articulate and educated, and came from a background which ensured her social status was equal to the legal personnel within the court-room. As such, she could not be disqualified as a speaker and her account was not muted, either in the court-room or in the media. However, despite these advantages, she could not escape the hangman's noose, for as I shall illustrate, the discourses around her sexual transgressions and immoral behaviour were to take precedence over those around social class. Indeed, as I shall also indicate, her conduct came to be viewed as 'doubly' deviant as a result of her social class.

### Louise Masset: Morality and Sexuality.

Smart has identified the late 19th century as a period of "an intense legal gaze on issues of reproduction, mothering and sexuality" which led to a "struggle over the use of law to regulate the feminine body."<sup>20</sup> The regulation of women's bodies was deemed a necessity if the social order was to remain stable. Thus:

Licit sex ... [was] not merely defined as that between married (heterosexual) couples, but between people within acceptable age brackets, of acceptable 'races' and doing only acceptable things.<sup>21</sup>

According to Smart, the term "acceptable 'races'" not only excluded colonised people who were assumed to be less moral than the British, but also the French and the Belgians who were regarded as being "particularly suspect."<sup>22</sup> With specific reference to women and race we can add Matus's point that:

Constructions of women of other cultures as wickedly and excessively sexualised persisted in Victorian culture, alongside and in apparent contradiction to arguments about the essential passionlessness of all women.<sup>23</sup>

This was the moral climate, in which Louise, who was described as a French woman, entered the witness-box, not only to explain that she had an illegitimate

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<sup>20</sup>Smart, C. (1992) 'Disruptive bodies and unruly sex: the regulation of reproduction and sexuality in the nineteenth century' in Smart, C. (ed) (1992) *Regulating Womanhood* Routledge, London p.13.

<sup>21</sup>Smart 1992:25.

<sup>22</sup>Smart 1992:25.

<sup>23</sup>Matus, J. (1995) *Unstable Bodies: Victorian Representations of Sexuality and Maternity* Manchester University Press, Manchester p.90.

child, but also, that at 36 she had a young *French* lover of 19, and that, in order to fulfil her illicit sexual desires, she had told a web of lies to those who loved her and cared about her. Louise's unacceptable sexual attitudes could not have been more apparent than when she explained that it was *her* and not Eudore who had suggested they go away together:

It was I who thought of it owing to the piece of poetry. It was from the 8th Oct. or thereabouts that I thought of spending a night away with him.<sup>24</sup>

As discussed in Chapter Five, the respectable Victorian woman was someone who displayed the qualities of dependency, fragility and delicacy. Louise's display of independence and boldness would have defined her as 'unnatural' and sexually deviant. Not only was she the instigator of the sexual liaison with Eudore, but she also displayed a rather casual attitude towards this relationship which would not have helped her case:

And as from that date of the receipt of the piece of poetry you had determined to go away with him in your own mind.  
*No, I had not determined upon going away with him in my own mind, I only thought it would be an occasion.*  
It was your determination.  
*Determination? It was my thought. ....*  
When you formed that intention of going away with Eudor[e] Lucas were you or were you not, in love with Eudor[e] Lucas.  
*No, I was not in love.*  
You were going away with him to stay with him, + to stay a night with him.  
*Yes, Sir, that was simply arranged on the Saturday.*  
But you were not in love with him.<sup>25</sup>

Louise thus made no attempt to hide the fact that her relationship with Eudore was based mainly on lust and desire. It was not a statement that either her defence or the prosecution wanted to hear - the defence because it recognised the moral condemnation her attitude would cause within a culture that defined female sexuality in relation to the male and believed it "to be weak, passive and responsive"<sup>26</sup> - the prosecution because it had failed to establish any kind of motive for the crime and therefore set out to prove that Louise had murdered her son, because he had become an obstacle to her relationship with Eudore. The prosecution failed to do so, but in destroying this motive Louise had to expose

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<sup>24</sup>HO 144/1540/A61535. Trial transcript p.132. The piece of poetry referred to was passed to Louise over the garden wall by Eudore.

<sup>25</sup>HO 144/1540/A61535. Trial transcript p.64; p.59.

<sup>26</sup>Nead, L. (1988) *Myths of Sexuality* Basil Blackwell, Oxford, p.6.

herself further as an 'immoral' woman who readily entered into casual sexual relationships:

Do you represent that in a conversation of this kind [about going away together] there was nothing to be remembered.

*I say so certainly.*

A man was pressing you to go away with him for the night.

*He suggested it, he did not press it.*

....

And you say that that conversation between you and him is not one -  
*Of importance, no.*

Simply in passing, an ordinary conversation in passing.

*Yes.*

You accept that.

*Certainly.<sup>27</sup>*

Moreover, this relationship was entered into without thought of or desire for marriage:

... You did not say anything about marriage.

*I never had any idea upon the subject. ....*

You never suggested it to him, or he to you.

*No, it would have been absurd.<sup>28</sup>*

Louise was repeatedly pressed on the subject of marriage and always her response was the same: that she and Eudore had not had "the slightest talk of it in any way."<sup>29</sup> When it was Eudore's turn to give evidence he was questioned no less than five times in the course of nine hand-written pages of testimony about the issue of marriage. On each occasion he confirmed Louise's testimony:

I did not lead her to believe I intended to marry her. .... The subject of marriage was never mentioned between us. ... There was never any question of marriage between us. ... I never understood from anything she said or did that she hoped I would marry her. She made the arrangement to go to Brighton without any suggestion of marriage. ... I slept in the same bed as her - nothing was said about marriage. There was no suggestion of it.<sup>30</sup>

In the previous chapter I introduced the concept of 'the double standard of morality' as one of the areas in which women experience social control and regulation. This concept refers to the way in which male sexual activities are tolerated, ignored, condoned or even admired, while similar sexual activities in

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<sup>27</sup>HIO 144/1540/A61535. Trial transcript p.63.

<sup>28</sup>HIO 144/1540/A61535. Trial transcript p.42; p.41.

<sup>29</sup>HIO 144/1540/A61535. Trial transcript p.41.

<sup>30</sup>CRIM 1/58/5 Evidence of Eudore Lucas p.46; p.48; pp.52-3; pp.54-5; p.51.

females signify "deviant and pathological behaviour" and as such are inevitably problematised and condemned.<sup>31</sup> Late Victorians were well acquainted with this concept and recognised the importance of female sexual passivity and constraint to the stability of the social order:

If the passions in women were ready, strong and spontaneous, in a degree even approaching the form they assume in the coarser sex, there can be little doubt that sexual irregularities would reach a height, of which, at present, we have happily no conception.<sup>32</sup>

This double standard of morality became further exacerbated when applied to the specific group of females to which Louise belonged - those who within Victorian culture fitted the description of 'governess':

The governess, whose task is to supervise the moral growth and education of her charges, must be one whose 'unimpeachable morality' demands that desires and longings of her own be bracketed, sacrificed, thwarted.<sup>33</sup>

That the governess should be expected to comply with such extreme moral demands is indicative of the level of anxiety associated with her perceived unregulated and unstable sexuality as an unmarried, financially independent woman. Yet, Louise, herself a member of the class that exercised the power to define the moral order, refused to contribute towards the stability of that order. Instead her sexual conduct and behaviour destabilised dominant discourses about women's nature - and epitomised unregulated female sexuality. Taken together, these aspects were perceived to pose a threat to the moral order that Victorians had worked so vigorously to define for nearly half a century. Louise's sexual conduct alone was more than adequate in ensuring she was perceived as an unruly woman, and hence a moral threat. However, her threatening propensities were exacerbated and accentuated by her attitude towards the married status, wherein she defied and undermined one of the most sacred ideologies: that marriage was the crux of family life - an essential union for those who sought personal fulfilment and happiness:

On its own neither sex is complete, together they create a perfect and secure social unit.<sup>34</sup>

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<sup>31</sup>Nead 1988:6.

<sup>32</sup>W.R. Greg, quoted in Nead 1988:6.

<sup>33</sup>Matus 1995:89.

<sup>34</sup>Nead 1988:34. See also Vicinus, M. (1985) *Independent Women: Work and Community for Single Women 1850-1920* Virago, London p.16, where she writes

Moreover, it was impossible to pretend that Louise's liaison with Eudore was an isolated incident, Manfred was proof that she had a history of engaging in sexual relationships outside marriage. Such repeated sexual transgressions ensured that she could not be constructed as a victim and /or a 'fallen woman', betrayed by an unscrupulous man in a superior position to her own. Exactly the opposite appeared to be the case: it was Louise who was dangerous to *young* men like Eudore. In Chapter Eight I analyse the case of Edith Thompson who was executed in 1923. She was 28 and her lover was 19. Filson Young who was a close observer of this case argued that this age difference was a crucial factor in presenting Edith as debauched and corrupt, an "experienced woman of the world; ... the blackhearted sorceress, weaving her spells, casting her nets, and bringing ruin on everyone connected with her."<sup>35</sup> This perception of an older woman who takes a young lover, would have been intensified with respect to Louise as her case took place during the late Victorian period. Furthermore, the age-gap between Louise and Eudore alone, would have been enough to render their sexual liaison illicit. But, as I shall illustrate, this was only one of many elements in her moral and sexual conduct which together played a crucial role in constructing her as a debauched, morally corrupt and selfish woman, which in turn ensured that her case can be analysed as a prime example of judicial misogyny.

### Louise Masset and Motherhood.

I have already discussed the moral and practical difficulties associated with illegitimate motherhood which faced working-class women. Despite her class Louise was not permitted to escape such difficulties. If anything they were exacerbated because she was doubly condemned for her transgression - on the one hand she was condemned for not being ashamed *enough* of her status as an unmarried mother, on the other, she was condemned for her failure to ensure her child's safety. Unlike most Victorian single mothers, Louise did not hide her parental status, and both Miss Gentle and Leonie - Louise's sister - agreed that as Manfred grew older, her affection for him increased as did her visits to him. Miss Gentle testified that she "seemed always fond and proud of the boy."<sup>36</sup> This was confirmed by Leonie who stated that "she used to see the child often and was very

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that "girls were repeatedly reminded that to fulfill their 'natural' destiny they must marry."

<sup>35</sup>Young, F. (ed) (1951) *Trial of Frederick Bywaters and Edith Thompson* William Hodge & Company Glasgow p.xiv.

<sup>36</sup>CRIM 1/58/5 Testimony by Eleanor Gentle dated 25th December 1899.



fond of him."<sup>37</sup> Yet it was not usual for a single mother of her status to behave as if her child deserved equal status to legitimate children. Leonie, for example had not seen Manfred for over six months prior to his murder and Louise wrote to Manfred's father:

... you know as well as I that your son will never be received in my family. They have told me often enough. I ask nothing for myself ... but ... I tell you that your son cannot and must not be thoroughly as dirty linen. ... Your heart is your master but remember my own is a mother's heart and it also speaks.<sup>38</sup>

Louise was thus in a perpetual dilemma - on the one hand her family had made it clear that she was expected to hide her status as a single mother, on the other, her feelings for Manfred were not affected by this status - her love for him was as strong as that of a 'respectable' mother, and thus she felt pride rather than shame in acknowledging his existence. Within the Victorian setting described above, such pride was a sign of 'unruly motherhood' - "an affront to the ideal of motherhood ... in the late-nineteenth century."<sup>39</sup> Thus, although Louise was not permitted to express motherhood on equal terms with a married mother, those who sat in judgement upon her still reserved the right to criticise her conduct as a mother as in the method of handing Manfred over to the Brownings. In short, while she was not permitted to take full responsibility for Manfred, the court none the less reserved the right to deem her an irresponsible mother. Hence, it is difficult to avoid the conclusion that *whatever* action Louise took in relation to her son, she would have been condemned, since ultimately it was his *existence* which destabilised the dominant order, rather than the finer details of his upbringing.

In order to demonstrate that Louise was a bad mother the prosecutor focused first, upon the manner in which she had entrusted Manfred to the care of the Brownings, pointing out that she had requested no references from them and had not taken the trouble to pay them a visit.<sup>40</sup> Louise replied that she had met them in person and interviewed them on three occasions which amounted to far more contact than she had had with Miss Gentle prior to her appointment.<sup>41</sup> In the case of the latter she had simply responded to a newspaper advert, and although

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<sup>37</sup>CRIM 1/58/5 Testimony by Leonie Cadisch dated 25th December 1899.

<sup>38</sup>HO 144/1540/A61535 Letter from Louise to Maurice dated 6th October 1899.

<sup>39</sup>Smart 1992:16.

<sup>40</sup>*The Telegraph* 18th December 1899.

<sup>41</sup>HO 144/1540/A61535 Trial transcript p.15.

Miss Gentle had volunteered several references Louise had only taken up one. Moreover, as observed from previous case-studies, children were often handed over to complete strangers on street-corners or railway stations with far less ceremony than in this case, and when they were found abandoned or dead it was often impossible to trace the biological parents, who in many cases did not wish to have their association with their child known. When seen within its historical context Louise was therefore not being unduly flippant when she stated that:

It filled me with no misgiving that I did not know the place where the child had gone. ... I did not go to 45 Kings Rd Chelsea - why should I have gone?<sup>42</sup>

The issue of social class should also be considered in this context. It will be remembered that Louise described the Brownings as 'respectable' and 'perfect' ladies, and it is quite possible that in view of their social status she felt embarrassed to ask for references.<sup>43</sup> In a culture strictly divided by social class this would not have been an issue where Miss Gentle was concerned since she could be clearly identified as working-class and was therefore inferior to Louise.

Second, although Louise had testified that she was unaware of Manfred's murder until she read the newspaper account in the early evening on her way home from her lessons, and although his identity was not published until that evening, the prosecutor questioned her as if she had known earlier and hence maintained that she had not acted as one would expect after learning of her child's murder:

We may take it that at 4 o'clock you had seen a newspaper which contained a description of the child. Did you wait for your pupil and go back with her.

Yes.

And did you go and see Mrs Haas as well as her daughters.

*I think so. I could not remember that special occasion.*

She says she saw you.

*If she says so then I did.*

She says further that when she saw you that evening you were in your usual health and spirits. ... As between 4 o'clock and 6.55 when you left Loudoun Road no effort was made by you to go and trace your child.

*But sir, I only had just a kind of feeling 'that seems to be like the child' - that was all.<sup>44</sup>*

The prosecutor also questioned Eudore about Louise's conduct and behaviour during the weekend they had spent together when Manfred was already dead:

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<sup>42</sup>HIO 144/1540/A61535 Trial transcript p.145.

<sup>43</sup>This issue has also been discussed by Fiona Mackay in Woodward 1993:172.

<sup>44</sup>HIO 144/1540/A61535 Trial transcript pp.8-9. Presumably it would have been equally irresponsible to abandon her pupil and let her go home unaccompanied.

She seemed calm + just the same as usual. During the visit she was in her usual spirits.<sup>45</sup>

The strategy adopted to disqualify Louise as a speaker is easily identified: the prosecutor asked questions which contained a taken-for-granted assumption that Louise was lying. By her own admission she had told lies in the past, the implication was therefore that her current responses were probably equally untrustworthy. It was this line of questioning, coupled with other references to Louise's conduct after hearing of Manfred's murder, that led Judge Bruce to include the following statement in his summing up:

Surely the first impulse would have been at once to inform the police that she had given the child over to Brownings ... and to demand that justice should be done, the person arrested, or inquiries made at once. How does she act? ... She does not go home. ... [but] sees Mr Simes, her brother-in-law. She said: ... "I am being hunted for murder, but I have not done it" ... One would have thought that the first thing she would said to her brother would have been "my poor child has been murdered, I want you to help me to find out the person and to bring to justice the persons who have taken over the child and deceived me. ... Let not one moment be lost, so that these persons may be traced and not escape justice." But her own thought apparently was first for her own safety: "I am being hunted for murder, I have not done it." ... Therefore ... Gentlemen, I invite you to consider her conduct before, at the time, and after the murder was committed.<sup>46</sup>

Third, Louise herself did nothing to alter her image as an uncaring and callous mother as when questioned about her reasons for moving in with her sister:

In going to Bethume Road I think you said yesterday that it had an attraction, that it would be fairly near your work?

Yes.

Not far from your child?

Yes.

And that, I presume, would be an additional advantage in the going to Bethume Road?

*I found it a great advantage in going to my lessons then: so long as the child was not out of London I could always see him.*

Do you say that you did not go there because it would be near your child?

*No: I do not think so. It was for my lessons.*

And the child was secondary?

Yes.

It did not strike you that you would be near your child?

No.

Notwithstanding the increasing affection you had for your child?

*You must understand I am -*

Will you answer. Did it strike you as an additional advantage or not?

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<sup>45</sup>CRIM 1/58/5 Testimony of Eudore Lucas pp.53-4.

<sup>46</sup>HIO 144/1540/A61535 Trial transcript, Judge's Summing Up pp. 41-7.

*Not at the time. I do not think it did.*<sup>47</sup>

Thus, although Louise was not given the opportunity to act like a 'normal' mother as a result of her family's refusal to allow Manfred into their home or acknowledging his existence in public, she was still judged according to the dominant discourses around a conventional *English* mother-child relationship, for her 'foreignness' did not pass unnoticed by the English media, who seized the opportunity to assert racial superiority:

... sympathy ... for this woman ... would be more marked had not the accused herself alienated that womanly feeling which Englishwomen have in their hearts for an unfortunate member of their own sex. ... If Miss Masset had been an Englishwoman she would have "faced the music" and have borne her yoke in silence.<sup>48</sup>

It was the combination of these discourses which ensured that despite the testimonies of those who had seen Louise and Manfred together, she entered history as a wicked, selfish and 'unnatural' mother who furthermore was a member of a 'suspect' race.

#### Louise Masset: Her Presentation of Herself.

The final set of discourses in relation to Louise's trial that I wish to explore are those surrounding the presentation of herself. Louise was among the first women defendants on a capital charge to give evidence on her own behalf following the 1898 Criminal Evidence Act. She was described as being "of attractive appearance" and "an uncommonly good witness"<sup>49</sup>, no doubt as a result of being a confident and articulate speaker. Yet that confidence also operated to further reinforce the discourses of judicial misogyny, for her lack of deference and humbleness ultimately resulted in her being constructed as a provocative and 'uppity' woman who needed to be 'put in her place'. This point was discussed in Chapter Five where I also discussed the difficulties women face in establishing authority in their speech. Louise broke the rules that govern authority by ignoring the 'emotive connectedness and compassion' associated with female speech, and instead adopted a confident and self-assertive manner which is usually associated with male speech, and which signalled her refusal to accept the role of a subordinate in the court-room.

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<sup>47</sup>HIO 144/1540/A61535 Trial transcript pp44-45.

<sup>48</sup>*Weekly Dispatch* 31st December 1899.

<sup>49</sup>*Daily Telegraph* 14th and 18th December 1899.

There are many examples of Louise's confident demeanour throughout the trial transcript as for example, when cross-examined about her deception regarding the fictional trip to France she does not sound regretful or apologetic about her lies:

[you were] still keeping up the deception.

Yes.

There was no word to Mrs Cadisch on Monday 30th October after your return as to two strange women.

*No, of course not because if I deceived her one way I should not have raised her doubts.*

...

Upon that morning you wrote to the Norris's [Miss Gentle's parents] - you sent a testimonial.

*It was because they asked me.*

And you wrote them the details of your voyage to France.

*That was again keeping it up. There was no reason to say any different. It was not Mrs Norris's business was it.<sup>50</sup>*

When the prosecution pressured Louise to establish a date for Eudore's return to France she appeared to become impatient:

*I just now said to you that I knew he was to go back in December.*

...

But he did remain?

*Certainly, he is here.<sup>51</sup>*

When cross-examined as to why she was not worried about the Brownings disappearing with Manfred without saying goodbye she maintained a confident demeanour and was not afraid to 'answer back':

There was nothing to be alarmed at. I thought they had taken him off while he was in good spirits. You would not have been alarmed if you had seen the women before, either.<sup>52</sup>

Persistent questioning on the same issue did not unnerve Louise, as when she was questioned about the time she first told Eudore about Manfred:

*I cannot say.*

He fixes it early in September. Do you accept that date ....?

*I say I cannot say.*

It might have been then.

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<sup>50</sup>HIO 144/1540/A61535 Trial transcript entitled 'Mr Dalton's portion' p.5.

<sup>51</sup>HIO 144/1540/A61535 Trial transcript p.56.

<sup>52</sup>*Daily Telegraph* 18th December 1899 quoting from transcript.

*It might have been, I do not know.*<sup>53</sup>

Even on less controversial issues Louise did not simply accept statements made by her interrogator. When she was shown a newspaper and asked if it was the one in which she had read about Manfred's murder, she replied: "If that is the paper you have just passed me with that description in it it was."<sup>54</sup> Finally, on two occasions during the summing up Louise "corrected and amplified statements made by the Judge."<sup>55</sup>

It was this confident and challenging attitude, and hence her refusal to accept the deferential and timid role associated with appropriate feminine conduct which constructed her as an 'uppity' woman to the point where several newspapers agreed that she would have been better off "if her mouth had been closed."<sup>56</sup> Not only did she speak with confidence, but she also appeared quite unafraid despite the seriousness of her situation and "at no time during the proceedings did she display the least nervous apprehension."<sup>57</sup> On the second day of the trial Louise was still "displaying no signs of emotion until that part of the evidence was reached which had reference to the finding of the child's body ... Any signs, however, of breaking down were quickly dispelled."<sup>58</sup> Louise's calmness and confident demeanour were repeatedly commented upon in the media who further maintained that "many of the spectators were plainly astonished at her general bearing and the nature of her evidence."<sup>59</sup> The discourses required to categorise Louise as a thoroughly 'bad' woman had thus been mobilised in almost every one of the areas outlined in Chapter Five. That is to say, she had destabilised discourses and challenged ideologies around female self-representation in general, as well as in the four specific areas of marriage, domesticity, motherhood and respectability. Rather than living up to the ideal image of womanhood as a dependent, subordinate and respectable woman in possession of a maternal instinct which ensured she would always put herself last, Louise was an independent and promiscuous woman who did not guard herself against a 'bad' reputation. She was also an 'unnatural' and selfish mother devoid of the maternal instinct, who put her own pleasures before those of her child's, as indicated by

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<sup>53</sup>HIO 144/1540/A61535 Trial transcript p.59.

<sup>54</sup>HIO 144/1540/A61535 Trial transcript p.10.

<sup>55</sup>*Daily Telegraph* 19th December 1899.

<sup>56</sup>*Daily News* 19th December 1899; see also *The Standard* 19th December 1899.

<sup>57</sup>*Daily Telegraph* 14th December 1899.

<sup>58</sup>*Daily Telegraph* 15th December 1899.

<sup>59</sup>*Daily Telegraph* 16th December 1899.

the *Pall Mall Gazette* in the opening quote of this case-study. Other newspapers echoed this condemnation:

Surely no more cruel or unnatural crime could have been conceived and perpetrated. The weight of circumstances forcibly compels us to regard her as a most wicked and calculating woman, who, for selfish purposes, coldly planned this murder. ... For a crime so shocking little or nothing can be pleaded in extenuation.<sup>60</sup>

It was the cruel murder of a boy by his own mother, who was perfectly sane, and influenced by motives of the basest self-interest.<sup>61</sup>

It was a very deliberate, callous, and cold-blooded murder.<sup>62</sup>

Moreover, she was a self-confessed liar, a fact which led the Judge of North London Police-court to state:

Miss Masset's word goes for nothing. The jury did not believe her. Nobody believes her.<sup>63</sup>

Court personnel, like the media, were united in their condemnation. After her conviction Judge Bruce made the following comments:

Her story is an absolutely incredible one. ... The evidence leaves, I think, no shadow of a doubt of the prisoner's guilt, and if guilty, the circumstances of the crime show a premeditation and cruelty of purpose far beyond the usual features in the ordinary cases of the murder of illegitimate children; and there is a singular absence of mitigating circumstances such as poverty, necessity for concealment of her shame, or unkindness of relatives. ... Her extraordinary self-possession was shown by her subsequent conduct; she never falters in her plan of meeting Lucas; she goes to Brighton that night, is calm and self-possessed; ... There was no recommendation to mercy and the case is shown by the evidence to be so much worse than the ordinary run of cases ... there is absolutely nothing to be said in (sic) her behalf except that she is a woman.<sup>64</sup>

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<sup>60</sup>*Daily Telegraph* 19th December 1899.

<sup>61</sup>*Daily News* 19th December 1899.

<sup>62</sup>*The Times* 19th December 1899.

<sup>63</sup>Judge Fordham's response to Miss Gentle who claimed that Louise's testimony had defamed her reputation as a child's nurse quoted in *The Daily Chronicle* 4th January 1900.

<sup>64</sup>HO 144/1540/A61535. Judge's Notes dated 28th December 1899. See also Higginbotham's discussion of Victorian trials where she notes that "the more unconventional the woman's behaviour and background, the more likely she was to lose the sympathy of the court, a pattern also apparent in outcomes of trials of women whose infants were not newborns." (Higginbotham, A.R. (1992) "'Sin of the Age': Infanticide and Illegitimacy in Victorian London' in Garrigan, K.O. (ed) (1992)*Victorian Scandals* Ohio University Press, Athens, Ohio p.276.

It was not only court personnel and the media that displayed severe hostility towards Louise. So hostile was the public reaction to this selfish, callous, unnatural mother and immoral, foreign seductress of young men, that even before her conviction there were:

disgraceful scenes enacted by a crowd of about 500 persons, mostly composed of low class women ... who nearly succeeded in overturning the cab, in which your petitioner was conveyed ... and made use of the most filthy and threatening language towards her.<sup>65</sup>

The process of constructing Louise as a thoroughly 'bad' woman had thus been successful to the point where it transgressed both social class and gender, she appeared to possess no saving graces or redeeming features what so ever.

#### Louise Masset and the Issue of Social Class.

The hostility directed at Louise Masset as well as the level of outrage and readiness to condemn her can be understood as being in direct proportion to her perceived transgressions. She was the ultimate example of an 'unruly' woman and dangerous mother - her deviant and unregulated womanhood made her appear despicable to both working and middle classes. Her conduct had exposed the hypocrisy surrounding the self-appointed ruling class who considered itself fit to determine standards of morality and to pontificate about those standards to the lower orders. As a role model in Victorian morality Louise turned out to have clay feet. She had enjoyed the privileges associated with her class, she had been regarded with respect by her employers who had placed her in responsible positions and allowed her access to their daughters. As such she stood, not only as a 'traitor' to her class who had failed to maintain the licit (a)sexual identity needed "to define and uphold middle-class claims to social superiority"<sup>66</sup>; but also as a sharp reminder of the fragility of the social and moral order so prized by that class, for in the end, she had turned out to be a most unsuitable person to be in charge of young female pupils:

the governess was 'expected to preside over the contradictions written into the domestic ideal - in the sense both that she was meant to police the emergence of undue assertiveness or sexuality in the maturing charges and that she was expected not to display willfulness or desires herself'. The question of the governess' sexuality was anxiously focused in one way on her powers of self-control and denial - in so far as she was useful to middle-

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<sup>65</sup>HIO 144/1540/A61535. (Quoted from folder entitled 'Petition').

<sup>66</sup>Matus 1995:115



class households, could she be trusted to regulate and discipline herself appropriately?<sup>67</sup>

The anxiety over the position of the governess was due to a suspicion that "instead of functioning as a 'bulwark against immorality and class erosion', [she] might be the conduit through which sexual laxity could infect the home"<sup>68</sup>, and is an indication of how the middle-class depended on its members sharing "the definition of norms of sexual and moral behaviour" for the creation of class hegemony:

The middle class was composed of a diverse range of occupational groups and levels of income; what was important, therefore, was the creation of a coherent and distinct class identity which would set the middle class apart from the social and economic classes above and below it. In many ways, this class coherence was established through the formation of shared notions of morality and respectability - domestic ideology and the production of clearly demarcated gender roles were central features in this process of class definition.<sup>69</sup>

Yet despite her respectable credentials Louise was no different from members of the 'lower' order. The definition of female sexuality along class lines - achieved by contrasting the 'respectable' female with "the imagined excess passion and sexual deviancy of the women of the undeserving poor"<sup>70</sup> - had been destroyed. Louise's conduct was perceived as threatening and dangerous in the extreme because it forced the dominant class to recognise that the Victorian passion for categorisation and demarcation was unobtainable.<sup>71</sup> Despite a stringent definition of the moral order, as well as the employment of disciplinary and regulatory measures to ensure the protection of that order, women like Louise existed, and there appeared to be no way of knowing how many others like her passed for 'respectable' women while at the same time living a life of lies, lust and debauchery.<sup>72</sup> As succinctly expressed by Matus, "respectable surfaces were shown to be no guarantee against clanking skeletons in a myriad of sordid closets."<sup>73</sup>

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<sup>67</sup>Matus 1995:94, referring to the arguments of Poovey.

<sup>68</sup>Matus 1995:126.

<sup>69</sup>Nead 1990:5.

<sup>70</sup>Nead 1990:7.

<sup>71</sup>See Nead's discussion in Nead 1990:6-7.

<sup>72</sup>For a discussion about the anxiety around the difficulty of distinguishing morally and physically corrupt women from respectable women, see Matus 1995:114.

<sup>73</sup>Matus 1995:127, referring to the contents of Victorian sensation novels.

It is within this context that discourses around Louise's conduct and behaviour over-rode those of her class. In many ways her crime appeared worse as a result of her class, as can be seen by the comments by Judge Bruce above. As pointed out in a previous case-study, the Victorians often regarded the 'lower' classes as being synonymous with the 'criminal' classes. They therefore did not display the same level of surprise and outrage when women like Annie Walters stood trial for child murder, since such behaviour only confirmed their suspicions and fears regarding the 'residuum'. Louise Masset, on the other hand, came from a class that considered itself morally superior and above such conduct. She also appeared to be totally sane which meant there were no extenuating circumstances or excuses for her conduct. Moreover, her confident attitude suggested that she herself saw no wrong in her behaviour, and therefore had no reason to humble herself unlike more traditional 'fallen' women such as Leslie James, who at least recognised the evil of her ways and sought forgiveness.<sup>74</sup> Louise, a self-confessed liar and "temptress of young men", appeared to have "suffered no hardship for her past moral lapses"<sup>75</sup> which, if media opinion reflected those of the public, had led many to the conclusion that the time had come for her 'come-uppance'. Seen from this perspective, her punishment can also be interpreted as sending a warning to other 'respectable' women contemplating a similar life-style.

#### Concluding Remarks.

I introduced Louise Masset's case by raising doubts about her guilt. If Louise was innocent it would cast her presentation of herself in an entirely different light. Although her demeanour would have remained unconventional by Victorian standards, it would explain why she saw no need to appear sorry, humble herself or seek redemption. If innocent, she may have taken it for granted that the court would not convict her. Space does not permit a full investigation into the available evidence regarding Louise's innocence. However, if she was innocent, we do not need to establish an alternative truth since she had provided one herself. We can however, point to the inability of court personnel to consider an alternative truth. For example Judge Bruce appeared to be incapable of stepping outside the dominant discourses of illegitimacy, when, despite all the evidence to the contrary, he insisted that "quite independently of Lucas the prisoner might

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<sup>74</sup>For a discussion of fallen women as the pollutants of men as opposed to being innocent 'victims of male pollution' see Matus 1995:114.

<sup>75</sup>Mackay 1992:168.

well have found the child to be an embarrassment to her."<sup>76</sup> Here, the judge could only interpret Louise's motherhood according to established discourses, he could not conceive of an unmarried mother being proud of her child. Similarly, although Eudore had testified that Louise "was not distressed at all when she told" him about Manfred, that he had been "pleased to know", and that he considered it "very fair of her" - as far as he was concerned Manfred was not an obstacle "in connection with the fact I was making love to her"<sup>77</sup>, Judge Bruce found it impossible to believe that illegitimacy could be treated with such indifference and commented: "It seemed to me that neither Lucas nor the prisoner told the whole truth about this conversation respecting the child ..."<sup>78</sup>

These are just two examples of the Judge's attempt to silence Louise's alternative truth and in its place, impose a 'dominant' truth - a truth which is instantly recognisable to its listeners because it speaks the language of established discourses within a particular historical moment. Thus, for Louise, who had already been constructed as someone who paid "no allegiance to the established codes"<sup>79</sup>, the attempt to create new discourses around unmarried motherhood, was futile. Instead of being listened to, her speech further reinforced her deviance.

Yet, even in the morally oppressive climate of late Victorian society, Louise's conviction and execution did not pass without opposition. Both concerned individuals and newspapers came to her defence. For example, solicitor Gurney-Winter wrote to the Home Office, offering his services for one week free of charge to investigate the case for "the simple desire to see that no miscarriage of Justice takes place in this case." The Home Secretary responded that he was "much obliged but has no need of his services in the matter."<sup>80</sup>

A barrister who did not wish to be identified, claimed that Louise had in effect established her innocence by claiming to be eating in Muttons, a restaurant with only two diners in it at the time she claimed to have been there:

If she had said that she dined at a large restaurant, where fifty or 100 persons sat down to dinner, it would have been different. Her absence

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<sup>76</sup>HIO 144/1540/A61535 Judge's Comments dated 2nd January 1900.

<sup>77</sup>CRIM 1/58/5 Testimony of Eudore Lucas p.46; p.47.

<sup>78</sup>HIO 144/1540/A61535 Judge's Comments dated 2nd January 1900.

<sup>79</sup>Mackay 1992:168.

<sup>80</sup>HIO 144/1540/A61535 Original letter from Mr Gurney-Winter dated 4th January 1900. He was a respected professional whose clients included the Russian ambassador, Sir Edward Thornton GCB. He also wrote extensively to newspapers, championing Louise Masset's case.

could hardly be proved. But she names a hotel where only two persons dined on that day, and one of these answered in many respects to the description of the prisoner.<sup>81</sup>

Another letter writer who did not wish to be identified wrote to *The Chronicle* that the prosecutor's closing statement had been "vindictive, harsh and characterised by the absence of that restraint and judicial fairness which ought to adorn the speeches of all prosecuting counsel."<sup>82</sup>

The Humanitarian League submitted a letter to the Home Secretary stating:

With regard to the sentence of death passed on Louise Masset, and the fact that she was condemned on purely circumstantial evidence, I am instructed by my committee to express our earnest hope that you will give due weight to the element of doubt that exists in her case.<sup>83</sup>

Yet another correspondent recognised the difficulties facing unmarried mothers:

There is seldom a case but carries the obvious conclusion that if the father had done his duty towards his child the pressure of circumstances upon the mother would not have been so overwhelming as to uproot all vestige of natural maternal affection.<sup>84</sup>

Meanwhile 1200 signatures were collected by staff at the French women's newspaper *La Fronde* who eventually submitted the petition to Queen Victoria.<sup>85</sup>

The day after the execution the *Daily News* wrote "if ever a woman deserved to be hanged, it was this one"<sup>86</sup>, but, while sections of the media remained hostile to Louise, other newspapers expressed unease prior to the execution as it became clear the Home Secretary would show no mercy. *The Daily Chronicle* for example, claimed that "the police appear to have allowed their bias against the prisoner to influence their action in conducting the case."<sup>87</sup> As for the Home Secretary:

If Sir Matthew White Ridley still refuses to allow this unfortunate woman even a chance of proving her innocence, he will lay himself open to the

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<sup>81</sup>Letter to *The Chronicle* 6th January 1900.

<sup>82</sup>*The Chronicle* 6th January 1900.

<sup>83</sup>Letter to *The Chronicle* 6th January 1900, dated 4th January 1900 from Joseph Collinson, Secretary, Prison Reform Department, Humanitarian League.

<sup>84</sup>*The Chronicle* 4th January 1900.

<sup>85</sup>HO 144/1540/A61535 original petition. See also *The Chronicle* 29th December 1899 and 4th January 1900.

<sup>86</sup>*Daily News* 10th January 1900.

<sup>87</sup>*The Chronicle* 8th January 1900.

charge of that unworthy form of official cowardice, which shows itself in obstinately refusing to reopen a *chose jugee*.<sup>88</sup>

This diverse range of resistance to dominant discourses around Louise as a 'bad' woman illustrates that judicial misogyny is never complete despite its monolithic appearance at specific historical moments. Yet, there was one last devastating blow to come before Louise's execution. She was one of only four women throughout these case-studies who was able to pay for her defence, and Lord Coleridge, an experienced barrister was hired to represent her during her trial. The fact that her trial lasted five days, almost as long as the trials of the previous four women combined, may well be a reflection of that fact. Yet, ultimately Lord Coleridge turned out to be a liability rather than a defender of her cause. When he learned, that as a result of the submission of petitions on Louise's behalf, her death-sentence was under review he wrote to the Home Secretary:

I see that a movement is on foot for a reprieve in this, case, and as I was Counsel for the accused, I think I ought to communicate the fact that the prisoner had reason to think that she was abandoned by the father of the child, + I believe she did think so. This state of things naturally I suppressed, as to disclose it would have been to supply a motive for the crime, + I argued that no sufficient motive was disclosed by the prosecution. I think that you should know this, before arriving at a final decision in the case.<sup>89</sup>

Home Office staff could not have wished for a more useful piece of information. Operating from preconceived ideas about women's 'nature' they accepted uncritically that for a woman to be abandoned by her child's father could provide the motive for killing that child, despite the fact that it was known to the court that Louise had not seen Manfred's father for 18 months, and that she was embroiled in an affair with Eudore until the day of her arrest. Whether Lord Coleridge, despite having been paid to act in Louise's interests, was incapable of separating himself from this case of severe judicial misogyny and therefore believed that she ought to hang, or whether he acted from good intentions, assuming that the Home Secretary would take a more lenient view of her case because of the disappointment and hardship she had suffered, must remain an open question. Either way, the Home Office response was swift and to the point:

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<sup>88</sup>*The Chronicle* 8th January 1900, italics in the original.

<sup>89</sup>HIO 144/1540/A61535 Letter to Home Secretary from Lord Coleridge dated 1st January 1900.

This letter supplies the missing link of motive. ... I fear that Lord Coleridge's letter while tending to clinch the prisoner's guilt by supplying the motive does not go further in favour of the prisoner ...<sup>90</sup>

A second Home Office memo indicates that Coleridge's letter not only provided a motive for the murder, but also did irreparable harm to the credibility of the petition submitted on Louise's behalf by her solicitor:

Lord Coleridge's letter seems to destroy any possible weight the solicitor's petition might possibly have had beforehand.<sup>91</sup>

If the Home Secretary had any reservations about taking responsibility for Louise's execution, her *defence counsel* had laid them to rest. Executed on 9th January 1900, Louise met her death with dignity and "showed not the slightest symptoms of fear at her approaching fate." She walked to the scaffold unaided and "evinced wonderful firmness and self-control right up to the last."<sup>92</sup> According to Edward Milman, governor of Newgate prison, "the execution of Louise Masset went off satisfactorily." He added that during a conversation with the assistant chaplain the evening before her execution she had said: "'What I am about to suffer is just.' This is to some satisfaction to all concerned."<sup>93</sup> Home Office staff, always acutely aware of the important role a confession played in maintaining legitimacy in capital cases, insisted that this statement was a 'confession' and ordered an addition to its prepared response to one of the petitions submitted on Louise's behalf:

Add that before execution the prisoner admitted her guilt and acknowledged her sentence.<sup>94</sup>

Yet, there is not the slightest evidence that Louise's statement was a confession. An alternative 'truth' about her conversation with the chaplain is equally plausible: that she recognised if she had not rushed off to Brighton in pursuit of her own pleasure, but instead taken the trouble to investigate the Brownings further, perhaps insisting on a visit to their premises before handing Manfred over, he may still have been alive. If Louise was not Manfred's killer, there can

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<sup>90</sup>HIO 144/1540/A61535 Home Office Minutes dated 1st January 1900.

<sup>91</sup>HIO 144/1540/A61535 Letter to Home Secretary, Sir Matthew Ridley, from Home Office personnel dated 1st January 1900.

<sup>92</sup>*The Echo* 9th January 1900.

<sup>93</sup>HIO 144/1540/A61535 Communication from Edward Milman to Home Office.

<sup>94</sup>HIO 144/1540/A61535 Home Office Memorandum dated 12th January 1900, issued by Charles Murdoch, chief of the Criminal Department, referring to the Home Office reply to a petition from Brussels.

be no doubt she would have blamed herself for his death; thus within the context of a mother's guilt about her child's death, her statement that her punishment was 'just' would not appear inappropriate. Ironically, she may well have considered herself to be a 'bad' mother during her last hours, and may further have come to terms with her execution by rationalising it - she 'deserved' to die as a way of atoning for her selfishness which had resulted in the death of her only child.

As argued in the Introduction, it was extremely rare for mothers to be executed for the murder of their children, and Louise was the last woman to be hanged in England and Wales for the murder of her own child. Conversely, it was equally rare for a murdering baby-farmer to have her sentence commuted. Thus, although the case of Louise Masset was as different from the other cases discussed in this chapter as she herself was as a person compared to the baby-farmers Ada Williams, Annie Walters, Amelia Sach and Leslie James, they none-the-less shared one common feature: they all died on the scaffold as a result of representing the ultimate in 'dangerous motherhood.' However, my adoption of the case-study approach in theorising women's experience is not designed for the purpose of formulating a general or global theory, applicable to all women who fulfil certain criteria. Rather it has been adopted for the purposes of illustrating "the power of a general theoretical principle" such as the power of discourses.<sup>95</sup> The point of placing these case-studies under close examination is therefore one of "analysis rather than enumerative induction."<sup>96</sup> In other words, my claim is not that the women in these cases suffered unique injustices or 'rough' justice as a result of displaying the characteristics of 'bad' mothering,<sup>97</sup> nor that all 'bad' mothers found guilty of murder would automatically be executed. Instead it has been to demonstrate how the *particular* discourses around women's conduct and behaviour interact and influence what eventually becomes accepted as the established 'truth' about women defendants. In these particular case-studies it

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<sup>95</sup>Worrall, A. (1990) *Offending Women* Routledge, London, p.12.

<sup>96</sup>Worall 1990:12.

<sup>97</sup>See for example the cases of a) Thomas Fuller Bacon (1857) whose counsel was "assigned at less than an hours notice and no attorney had been retained due to poverty"; b) John Allen (1864) who "had no money nor inclination to defend himself and no solicitor to collect extenuating circumstances"; c) William Distin (1880) where the "striking feature of the case was the entirely friendless condition in which the prisoner was left at the trial ... no solicitor, no friend coming forward to say a word"; d) George Durling (1881) whose counsel Charles Gill stated that "my instructions consisted of a copy of the depositions and what I could learn from the prisoner *while he was in the dock.*" All quoted in Chadwick, R. (1992) *Bureaucratic Mercy: The Home Office and the Treatment of Capital Cases in Victorian England* Garland, New York pp.98-9. Emphasis in the original.

has been the production and reproduction of the ideological construct of motherhood, both in the media and within the court-room, which has come under scrutiny. I have attempted to illustrate, that despite paying with her life, Louise, however small her individual contribution, did act as an agent of social change, by disrupting the otherwise coherent and seamless 'truth' about women's nature in general and their sexuality in particular. Similarly, Ada, Annie, Amelia and Leslie, despite being members of a muted group and thus disqualified as speakers, did possess a 'negative' power - that is - their mere existence stood as a challenge to dominant ideologies and ideal images of motherhood. Each time a baby-farmer or a single mother stood on the scaffold, the underlying contradictions between the idealisation of motherhood on the one hand, and the condemnation of illegitimacy on the other, was exposed. Each of these women stood as a challenge to existent knowledge, each of them represented "heterogeneity and contradiction" and in so doing (even if unintentional), momentarily played their part in keeping "open the space within which knowledge is produced."<sup>98</sup> The fact that these women did not succeed in keeping that space open long enough to save their lives, does not detract from their contribution towards creating new knowledge and thus new 'truths' about violent women. If anything, it can be argued their executions emphasised that contribution, since their deaths will forever serve as a stark reminder of the price they paid for underestimating the lengths the early 20th century ruling bloc would go to in order to defend the sexual and moral codes which operated "to regulate both gender and class identities."<sup>99</sup> For disturbing the seamless 'truth', for drawing our attention to the existence of underlying contradictions which usually remain hidden beneath the surface of apparent homogeneity, and thus for having in their own way challenged the 'silencing' of the powerless, these women have earned the right to a place within history.

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<sup>98</sup>Worrall 1990:10.

<sup>99</sup>Nead 1990:28.



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## Chapter Seven

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### Women Killing Other Women.

When women kill, their victims are most likely to be their own children. This was as true of the first half of this century as it is today. As noted in the Introduction, of the 130 women who were sentenced to death between 1900-49, 102 were found guilty of murdering their own child. The second largest group of female murderers for that period were those who had killed their husbands/lovers. In total 16 women were sentenced for this crime. The killing of a woman by another female was therefore a highly unusual crime. Home Office statistics indicate that only nine women were sentenced to death for killing another female between 1900-49, five in connection with robbery, two as a result of revenge or jealousy and two are listed under 'miscellaneous'.<sup>1</sup>

Such statistics reinforce stereo-typical ideas about women's violence - that it is invariably connected to tense family situations - taking the form of explosive attacks which lack intent. It also reinforces deep-rooted sexist beliefs about women's proneness to hysteria and incapacity for self-control, and as such, appears to be further proof "of female irrationality and emotional instability."<sup>2</sup> The minority of women killers who do not fit this 'highly-strung' image, but instead appear to plan their crime in the rational and calculated manner usually associated with male criminality, and whose motive moreover, is personal gain rather than jealousy or revenge, can expect no mercy, for they have violated the basic traits of women's 'nature' which govern female conduct and behaviour just as the female carers who killed children, discussed in the previous chapter, came to symbolise 'dangerous' motherhood, as a result of having violated the principle of the 'maternal instinct'. As I discussed in Chapter Five, the maternal instinct can be extended to include those who care for the sick or helpless. Therefore,

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<sup>1</sup> *Royal Commission on Capital Punishment 1949-1953 Report* (1953), Her Majesty's Stationery Office, London pp.304-5. The comparative figures for men between 1900-49 were 93 for child-murder, 31 of which were connected to sexual assault, a crime which no woman was found guilty of; 509 for the murder of wife, sweetheart or mistress; of women who were not wife, sweetheart, mistress or mother 44 were murdered in connection with sexual assault, 61 as a result of robbery, 27 in quarrels, 30 as a result of revenge or jealousy and 27 in the 'miscellaneous' category. Men murdering other men totalled 263.

<sup>2</sup> Kirsta, A. (1994) *Deadlier Than the Male* HarperCollins, London, p.140.

when professional women carers killed those they were supposed to protect, they too came to symbolise dangerous womanhood which in turn lessened their chances of a reprieve.

In recent years feminist scholars have begun to create new discourses through which we can analyse such crimes without reference to women's inherent biological instability or psychological inadequacy. For example, Bettina Heidkamp's study of nurses who killed their patients indicated that they were usually 'ordinary' women, "who day in, day out, did their job, had children and went on holidays like everybody else." Therefore it must be recognised that "murder cannot be consigned to the unknown, dark margins of society; that it is not simply 'evil' or 'mad' people who are capable of killing."<sup>3</sup> In the case of nurses the factors which should be taken into account include the superhuman qualities associated with this profession which may result in "intolerable strains" and "a constant feeling of personal failure." Furthermore, the long hours of hard work reap little financial reward and may even result in the death of the patient despite every effort made by the carer. The result may be stress and a "permanent sense of frustration ... [which] contributes to feelings of aggression."<sup>4</sup>

While Heidkamp's study plays an important role in the feminist struggle to de-pathologise women-carers who kill, such killings continue to present a problem for feminist discourse when they are overlaid by a financial motive. Worse still, (and rarer still) how do we go about creating feminist discourses around women who are not carers but who none-the-less kill another woman, for example in the course of a robbery? While feminist activists have had considerable success during recent years in establishing new discourses around women who kill their abusive partners<sup>5</sup>, the premeditative nature of a murder carried out by a woman against another woman for no other motive than to further her own end, financially or emotionally, has proved rather more problematic for feminist discourse. The apparent 'cold-blooded' nature of such crimes allows them to fit

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<sup>3</sup>Heidkamp, B. (1993) 'Angels of death' in Birch, H. (ed) (1993) *Moving Targets* Virago, London, p.220.

<sup>4</sup>Heidkamp 1993:235;234;233.

<sup>5</sup>As can be seen from cases such as those of Emma Humphreys, Kiranjit Ahluwalia and Sara Thornton. A recent discussion of these cases can be found in Ballinger, A. (1996) 'The Guilt of the Innocent and the Innocence of the Guilty' as well as Stanko, E. & Scully, A. (1996) 'Retelling the Tale: The Emma Humphreys Case' both in Myers, A. & Wight, S. (1996) *No Angels Pandora*, London pp.1-28 and 57-71.

into pre-existing discourses of women's inherent duplicity and deceptiveness,<sup>6</sup> which so far have eluded the feminist challenge mounted against other reductionist representations and explanations of female criminality. For example, Bell and Fox, in their study of Susan Christie who murdered Penny McAllister, her lover's wife, have argued that feminist writers addressing this case, have failed to challenge the dominant media portrayal of Christie as an 'evil' woman compared to 'good' battered women who kill.<sup>7</sup> Thus it can be argued that feminist theorists have not so far been successful in establishing discourses which allow an interpretation of women's violence that recognises that it is neither 'worse' nor 'better' than men's violence. While some acts of female violence can be understood as "gendered responses to particular events" it is none-the-less imperative, if women are to achieve equality with men in all areas of life, for feminist theorists to distance themselves from essentialist notions of womanhood which claim "that women are inherently more peaceable than men."<sup>8</sup> Instead it must be recognised that in this area as in all others, women are equally capable. At the same time, because of pre-existing discourses around women's 'irrationality' it is important to be aware of the difficulties involved in distinguishing between women whose mental illness contribute towards their murderous act, and women who kill in a premeditated, rational manner. In the following case-studies it will become apparent that when feminist theorists move away from the long-established 'mad or bad' categories we also leave behind neat explanations about women who kill. In establishing new discourses about violent women the stories about women who kill become "pluralistic, fragmented and contingent rather than linear and causal"<sup>9</sup>, as I shall now illustrate. As in the previous chapter, this chapter is not organised in chronological order, but according to the type of murder committed.

### The Case of Louie Calvert.

Louie Calvert was an ugly wizened woman of thirty-three, only five feet tall and without a tooth in her head. A viciously bad-tempered and

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<sup>6</sup>See for example Hart, L. (1994) *Fatal Women* Routledge, London, p.6.

<sup>7</sup>Bell, C. & Fox, M. (1996) 'Telling Stories of Women Who Kill' in *Social and Legal Studies* Vol 5, No 4, December 1996 p.485. Lorraine Radford has refined this argument further, stating that within the 'battered women who kill' category a further distinction is made between the deserving victim - a good wife, mother and housekeeper who has tried "against all odds, to make a go of the marriage", and the undeserving battered wife - the virago who generally fights back and is "thus not really battered." (Radford, L. (1993) 'Pleading for time' in Birch, H. (ed) (1993) *Moving Targets* Virago, London p.195).

<sup>8</sup>Birch, H. (1993) 'Introduction' in Birch 1993:5; 4.

<sup>9</sup>Bell & Fox 1996:487.

thieving prostitute ... she was also a murderess, and her behaviour after she had been sentenced to death suggests that she was proud of it.<sup>10</sup>

Of the 15 women executed during the 20th century Louie Calvert and Margaret Allen, whose case is analysed in the following section, can justifiably be considered to be the two most 'invisible' women - their 'muted condition' almost complete. The slimness of the case-files of these two women makes it difficult to comprehend that they related to matters of life and death. As the last days of their lives drew to a close their cases attracted barely a comment either in the media or within the Home Office. The trial of Louie Calvert took place during the General Strike in 1926 when no national newspapers were published, a factor which compounded the silence surrounding her case.<sup>11</sup> As stated in the previous chapter, the unevenness of available data will invariably result in unequal sized case-studies.

Louie Calvert has been described as belonging to the "criminal type" by two authors who listed the characteristics of criminal women as being those of "vanity; dishonesty; craftiness; sensuality; a violent temper; contradictory religious tendencies; a capacity to lead a double life; and the tendency to place themselves in tortuous situations."<sup>12</sup> She had always lived within the Leeds area in extreme poverty, eking out a living as a house-keeper and prostitute. In 1925 Louie became Arthur Calvert's housekeeper, a night-watchman almost as poor as herself. She induced Arthur to marry her by falsely stating she was pregnant. Several months later when no baby had arrived Louie initiated an elaborate web of lies. Initially, she wrote a note to herself which she showed to Arthur, claiming it was from her sister in Dewsbury, who had invited her to stay during her confinement. However, after a brief visit to Dewsbury, Louie returned to Leeds the same day and took up lodgings with Lily Waterhouse only two miles away from her home where Arthur was awaiting her return with their baby.

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<sup>10</sup>Wilson, P. (1971) *Murderess Michael Joseph*, London, p.272.

<sup>11</sup>Renee Huggett and Paul Berry who attempted to investigate this case for their book *Daughters of Cain* (1956) 28 years after Louie's execution were faced with similar problems and wrote of the case: "The case of Louie Calvert presented peculiar difficulties, which at first seemed insurmountable. Her trial coincided with the General Strike when no national newspapers were published. Although the murder occurred 28 years ago we were fortunate to find people who took part in the case and who remembered this under-sized but physically strong woman. Without their help it would have been impossible to have obtained so much information about an obscure but unique murder." (p.10).

<sup>12</sup>Huggett & Berry 1956:43.

Lily was a widow who lived in grinding poverty and squalor in a tiny rented terraced house with wooden boxes serving as tables, bare plaster walls and floorboards except for a few newspapers under the mattress.<sup>13</sup> She had been in poor health for some time,<sup>14</sup> and the post mortem revealed that she had suffered from both "scabies and perdiculi at the time of death."<sup>15</sup> Despite her ill health she survived mainly by prostitution.<sup>16</sup>

When her few possessions began to disappear Lily suspected that Louie was responsible and on 31st March she met with Detective-Sergeant John Holland for the purpose of starting proceedings against her. She was murdered that evening. The killing had been a brutal one involving "a prolonged struggle before the knock-out blow" and "a penetrating wound down to the bone" at the back of the head, prior to strangulation. Lily had also been tied up.<sup>17</sup>

Meanwhile, Louie returned home on the evening of 31st March with a baby which she claimed was hers, but which in fact was illegitimate and had been adopted by her in a similar manner to the baby-farming cases described in the previous chapter.<sup>18</sup> The letter that Louie had addressed to herself, was found in Lily's house, and police officers consequently interviewed her. They noticed she was wearing Lily's scarf and boots, and following a search the rest of her missing belongings were found.<sup>19</sup> The boots were the only footwear Lily had owned and apart from a sugar bowl, every piece of crockery belonging to Lily was found in Louie's possession. Unperturbed, Louie maintained that they had all been given to her by Lily rather than stolen.<sup>20</sup>

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<sup>13</sup>ASSI 45/86/2 Public Record Office, Chancery Lane London WC2A 1LR. Exhibit 1 - photographs of interior of Lily Waterhouse's bedroom.

<sup>14</sup>ASSI 45/86/2 Testimony of Emily Clayton p.7.

<sup>15</sup>ASSI 45/86/2 Testimony of Dr Hoyland Smith p.29. The Clerk to the Leeds City Justices, could not resist a joke at Lily's expense when he wrote to the Clerk of Assizes: "I have handed the original Exhibits to the Police for safe custody, and for your personal information I might add that many of them are said to be loaded with 'itch' germs!" (ASSI 45/86/2 letter from F. Richards to C. Milton Barber dated 20th April 1926).

<sup>16</sup>ASSI 45/86/2 Testimony of Emily Clayton p.7. See also Wilson 1971:273; Huggett & Berry 1956:56.

<sup>17</sup>ASSI 45/86/2 Testimony of Dr Hoyland Smith p. 30; p.28; p.29.

<sup>18</sup>See *The Times* 5th April 1926.

<sup>19</sup>ASSI 45/86/2 Testimony of Det. Sgt. Thomas Henry Sabey p.25.

<sup>20</sup>ASSI 45/86/2 Testimony of Det. Sgt. Thomas Henry Sabey p.26 and Det. Sgt. John Holland p.23; p.24.

Upon arrest Louie asked "What is it for? Has she done herself in?" By the time she reached the police station she said: "I wish I had not called there last night."<sup>21</sup> During her interrogation at the police station Louie stated that "... [Lily] was all right when I left her ... - I'll take my dying oath on that."<sup>22</sup> When questioned about the self-addressed letter and the reasons why she had adopted a baby, she simply answered:

Well its mine now, because it was given to me. My husband and all the neighbours thought I was pregnant and I left home three weeks ago telling him I was going to Dewsbury to my sister's to be confined.<sup>23</sup>

When asked if she was aware that an application for a warrant for her arrest for stealing had been requested by Lily, Louie replied:

No - all the goods I have pledged have been pledged with her knowledge. She asked me to pledge them for money to keep going on. We parted on very good terms and she kissed me before I came away.<sup>24</sup>

However, eye-witnesses had seen Louie re-enter Lily's house at 5.40am on the morning after Lily's murder and leave within minutes with a suitcase.<sup>25</sup> When police officers visited Louie's home later that day they found the suitcase with Lily's possessions still inside it, including sheets bearing her initials.<sup>26</sup> Taken together with witnesses' reports of disturbing noises emanating from Lily's bedroom at the estimated time of the murder, the evidence against Louie was compelling, and she was subsequently charged, to which she replied: "It's a lie ... I was in my own home at that time."<sup>27</sup>

Louie maintained her innocence to her friends and family, but is reported to have admitted murdering Lily Waterhouse to two prison officers.<sup>28</sup> Furthermore, she also confessed to a second murder for which she was never charged, that of John Frobisher, who had been found drowned in 1922. Despite a wound to the back of his head an open verdict was returned, and his death was not investigated

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<sup>21</sup>ASSI 45/86/2 Testimony of Det. Sgt. Thomas Henry Sabey p.25.

<sup>22</sup>ASSI 45/86/2 Det. Supt. Charles Walter Pass, referring to Louie's statement p.31.

<sup>23</sup>ASSI 45/86/2 Det. Supt. Charles Walter Pass, referring to Louie's statement p.32.

<sup>24</sup>ASSI 45/86/2 Det. Supt. Charles Walter Pass, referring to Louie's statement p.32.

<sup>25</sup>ASSI 45/86/2 Testimony of Ida Jackson, Sophia Norris, David Darley, Sarah Ann Dutton, Elizabeth Lumb.

<sup>26</sup>ASSI 45/86/2 Testimony of Det Sgt Thomas Henry Sabey.

<sup>27</sup>ASSI 45/86/2 Testimony of Det Insp Joseph Cunton.

<sup>28</sup>*The Manchester Evening News* 24th June 1926 p.6. See also Huggett & Berry 1956:65.

further. Like Lily, John Frobisher was found without footwear. Louie attended the inquest, where she identified him, explaining that she had been his housekeeper. She subsequently remained in Frobisher's house after his death until she was evicted for non-payment of rent.<sup>29</sup>

Until her confession Louie had not been suspected of Frobisher's murder and as the Crown decided not to prosecute her for this murder, her motive for killing him remains unknown. Her motive for killing Lily must also remain within the realms of speculation, but the fact that Lily was due to press charges against her the day following the murder suggests it was a drastic action to silence her. That Louie, in what appeared to be an afterthought, returned to Lily's house the morning after the murder to take possession of whatever items she had not already stolen when Lily was still alive, indicated to some observers that she was an extraordinary callous and cruel individual - someone with a 'criminal mind'.<sup>30</sup> Louie's demeanour immediately after the murder did nothing to challenge this opinion. For example, she showed no signs of stress or nervousness when, upon leaving Lily's house, she made casual conversation with a neighbour:

[Neighbour:] I asked her if she was going. She said "Yes". I said, "Are you going for good?" She said, "Yes - she has asked me to stay, but I am leaving". I asked her where Mrs Waterhouse was. She said, "I have left her in bed crying". ... The prisoner said, "There is one [a tram] just past. I have missed it and I shall have to catch the next". I asked her what she had been doing in the little bedroom [referring to the noises caused by Lily's struggles as she was being murdered]. She said, "We have been pulling down the bed chair ready for Mrs Waterhouse moving on Saturday." She said she was coming back on Saturday to see if she had got all the things out.<sup>31</sup>

Similarly, when Louie again was seen leaving Lily's house early the following morning after having stolen the few remaining possessions she was cool and collected despite having just re-visited the murdered woman:

[Neighbour:] I said, "My word, tha's up early". She said she had been to the Station to fetch her luggage home. She said her sister had given her the things she had in her basket. ... She said her sister had also given her some boots. ... The basket was not covered up. The cups and saucers were inside. ... Prisoner did not appear to be hurrying and was walking quite openly and not as if she desired concealment.<sup>32</sup>

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<sup>29</sup>Huggett & Berry 1956:44-45; 59.

<sup>30</sup>Huggett & Berry 1956:47.

<sup>31</sup>ASSI 45/86/2 Testimony of Emily Clayton p.6.

<sup>32</sup>ASSI 45/86/2 Testimony of Sophia Morris p.19.

Carrying the stolen goods unto the tram Louie again met some of her friends:

The tram-car set off and pulled up again for her [Louie]. She got on - inside the lower deck. She sat down nearly facing me. She said to me, "It's a grand morning, are you working?" I answered "Yes".<sup>33</sup>

These testimonies suggested that Louie was unperturbed by her violent deed and went about her business as normal immediately after the killing, and again immediately after having faced Lily's corpse following her second visit. Louie's 'nerves of steel' attitude and her failure to appear frightened, nervous or hysterical following her deed stood in sharp contrast to expected female behaviour in such circumstances and indicated a hardened, callous woman. It was thus not only Louie's criminal activities but also her personal appearance, conduct and general demeanour which contributed towards her classification as a 'criminal type' who deserved little or no sympathy,<sup>34</sup> and of the 15 executed women analysed in this thesis, she arguably is the one who most accurately fits Lombroso's conception of the 'degenerate woman'. As well as being violent she was also a woman of "promiscuous habits" who intermittently worked as a prostitute and who "for many years had led a wayward life of deception and dishonesty. She had lived by her wits; in a tight corner she lied and schemed her way out."<sup>35</sup> Moreover, she had two illegitimate children, one of whom was in the care of her sister.<sup>36</sup> Hence, she appeared to encompass virtually all the characteristics Lombroso associated with the "the born female criminal ... : "excessively erotic, weak in maternal feeling, inclined to dissipation, astute, and audacious ... an excessive desire for revenge, cunning, cruelty, love of dress, and untruthfulness."<sup>37</sup> Louie had thus transgressed appropriate feminine standards in nearly all the areas discussed in Chapter Five, including that of personal appearance as outlined by Bartky. That is, she had failed to internalise the disciplinary practices in relation to 'feminine' beauty which ensure male patronage as discussed in Chapter Five, and she made no attempt to employ a body language which signalled her membership of a subordinate group. In short, she was a woman who ignored 'the gaze of patriarchy.' The consequent withdrawal of

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<sup>33</sup>ASSI 45/86/2 Testimony of Elizabeth Lumb p.16.

<sup>34</sup>For example, one author who described Louie as a prostitute, added that she was among the "most unattractive members" of her profession, "foul-mouthed and dishonest." She "was a compulsive liar, acting according to the demands of a world she had imagined and incapable of realistic reasoning." (Wilson 1971:276).

<sup>35</sup>Huggett & Berry 1956:59; 57; 59.

<sup>36</sup>Huggett & Berry 1956:46.

<sup>37</sup>Lombroso quoted in Zedner, L. (1991) *Women, Crime and Custody in Victorian England* Clarendon Press p.82.



male patronage - in this case by someone who had never met her - can be observed in the quotation heading this section.

In Lombrosian terms the born female criminal was considered to be much 'worse' than the male criminal because she "was perceived to have all the criminal qualities of the male plus all the worst characteristics of women, namely cunning, spite and deceitfulness."<sup>38</sup> The rarity of violent female offenders led Lombroso and Ferrero to conclude that women's nature is "antithetical to crime"<sup>39</sup> which, as I have argued throughout this thesis, has meant that criminal women are judged by different standards than criminal men, because unlike them, criminal women have transgressed not only the law but also the rules governing appropriate female conduct and behaviour. The double standard applied to female criminals is articulated in cast-iron terms by Lombroso:

As a *double* exception, the criminal woman is consequently a monster.<sup>40</sup>

As a result of over two decades of feminist challenges we now recognise that such beliefs and ideas are rooted in biological determinism and hence of no sociological value. While Lombroso and Ferrero treated sex and gender as if they are synonymous, feminist theorists have pointed out that although sex usually (but not always) is determined by biology, it is culture which shapes gender and gender role expectations. Hence the fact that women commit less violent crime than men is not due to their sex but to their gender. Similarly, violent female offenders are not more 'masculine' than their non-violent sisters as Lombroso and Ferrero argued, since biological characteristics do not 'cause' cultural traits. In other words, criminal women are considered 'monstrous' not as a result "of their innate qualities but because they are socially defined as such."<sup>41</sup>

However, having exposed these fundamental problems with biological determinism, feminist theorists are still left with the task of establishing discourses through which we can understand female violence without falling into another, related trap - that of biological essentialism. Essentialism has traditionally been associated with radical feminism which has been criticised for embracing the view that women are *in essence* emotionally superior to men and therefore 'better' human beings than men. While men encompass evil and

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<sup>38</sup>Smart, C. (1976) *Women, Crime and Criminology* RKP, London p.33.

<sup>39</sup>Smart 1976:33.

<sup>40</sup>Lombroso quoted in Zedner 1991:82. My emphasis.

<sup>41</sup>Smart 1976:35.

corruption, women encompass 'goodness' and would live in a "warm, supporting, nurturing [world] ... full of creativity," if freed from men's oppression.<sup>42</sup> This view perceives all women to be morally pure and always "exploited and oppressed" victims, while men are always the victimisers.<sup>43</sup> It is therefore ultimately a reactionary and conservative outlook which retains "the categories that have historically defined each gender" and merely revalues them "so that the female traits are the positive ones and the male traits the negative ones."<sup>44</sup> Those who support this idealisation of womanhood are therefore as guilty as Lombroso and Ferrero were before them, of perpetuating sexist ideologies which reduce complex social relations and interactions to simplistic and immutable truisms about women's and men's 'nature'. In other words, those who refuse to recognise the existence of a female capacity for violence come dangerously near to conducting their argument on the same terrain as Lombroso and Ferrero: that violence is contrary to women's *nature*, an argument which implies that women are not *capable* of experiencing the full range of human emotions. It is also an argument which perceives sex roles as inevitable, which in turn renders the feminist struggle for social change futile.<sup>45</sup> To avoid these pitfalls feminists must dispense with *all* sexist myths, including the ones we cherish and value, if we are serious about overthrowing "the categories that entrap us in rigid roles."<sup>46</sup> As I shall illustrate, the case of Louie Calvert encompasses many features which illuminate the short-comings associated with both biological determinism and essentialism.

### The Trial and Appeal of Louie Calvert.

Louie Calvert's trial took place on 6-7th May 1926. As already noted, details of the trial are almost non-existent. Transcripts have not survived, and there were no newspaper reports after the General Strike ended. However, unlike the women in the previous chapter, Louie's trial took place after the establishment of the Court of Criminal Appeal, and it has been possible to glean some details of proceedings from reports of her Appeal held on 7th June 1926. The appeal was fought on the grounds that she "was not charged until 24 hours after" her arrest, "and during

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<sup>42</sup>Tong, R. (1992) *Feminist Thought* Routledge, London p.134; 137.

<sup>43</sup>Tong 1992:135.

<sup>44</sup>Tong 1992:135 referring to the arguments of Joan Cocks.

<sup>45</sup>For a discussion of the sex role 'inevitability' thesis see Trebilcock, J. (1982) 'Sex Roles: The Argument From Nature' in Vetterling-Braggin, M. (ed) (1982) *"Femininity," "Masculinity," and "Androgyny"* Littlefield, Adams & Co, Totowa, pp.40-48.

<sup>46</sup>Tong 1992:135.

that time she was subjected to an amount of questioning by the police which exceeded that which was allowable."<sup>47</sup> Loule's counsel, Mr Chappell, maintained that "a detective superintendent had exceeded his duty in cross-examining [her] to an 'unprecedented degree'" and that the evidence obtained under these circumstances should not have been "legally admissible."<sup>48</sup> He further argued that as a weapon was never found another unknown person could equally well have committed the murder:

There were ... no signs of a struggle, and the dust in the room had not been disturbed. The accused woman ... began by lying, but although she might have lied or gone to the house of the dead woman to steal, that was a long, long way from murder, and should have been pointed out to the jury.<sup>49</sup>

The Lord Chief Justice responded that "nothing in the present case suggested that the police had gone beyond their duty." Moreover, the summing up had been both 'clear' and 'fair'. He further commented that "Calvert did not give evidence, *although her defence was that she was not the person who killed Mrs Waterhouse.*"<sup>50</sup> During my analysis of Louise Masset in the previous chapter I referred to newspaper reports which suggested she would have been better off had she not given evidence. That the Lord Chief Justice should choose to make the above comment during his rejection of an Appeal suggests, that in his opinion, guilt is at least partially implied by a failure to give evidence. Comparing cases such as these illustrates the ambivalent impact of the 1898 Criminal Evidence Act. While the defendant's right to give evidence on his/her own behalf should be welcomed and ought to ensure the end of 'muted' accounts, the Act none-the-less created a new set of value-judgements which appeared to place some defendants in a 'no-win' situation. For example, it is likely Loule Calvert was deemed to be an unsuitable witness who would not make a good impression upon the jury due to her social class, lack of education, personality and general demeanour. Yet, the Lord Chief Justice failed to maintain a neutral attitude towards the fact that she waived her right to give evidence on her own behalf. He concluded the hearing by dismissing her appeal without calling upon the Crown to argue and without legal obligation to consider the fact that 25 witnesses had appeared for the prosecution while none had appeared for the defence.<sup>51</sup>

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<sup>47</sup>*The Times* 8th June 1926.

<sup>48</sup>*Manchester Evening News* 7th June 1926 p.5.

<sup>49</sup>Mr Chappell speaking in the Court of Appeal, reported in *Manchester Evening News* 7th June 1926 p.5.

<sup>50</sup>*The Times* 8th June 1996. My emphasis. See also Huggett & Berry 1956:63.

<sup>51</sup>Huggett & Berry 1956:61.

### Louie Calvert's Presentation of Herself.

Louie was suitably attired in deep black for her court-room appearances, yet evidence suggests she was credited with being more familiar with court-room protocol than was the case. For example, in the middle of proceedings at the Magistrate's Court, she suddenly exchanged her hat for a more fashionable and expensive-looking one brought in by her solicitor.<sup>52</sup> While such behaviour was more likely to stem from ignorance than arrogance, it reinforced the view that she was deliberately disrespectful and indifferent to the formalities of the court-room:

When standing her trial for murder her shifting black eyes were a psychological study. She seemed callous and indifferent, and her hard, sharp-featured face was the face of a wicked woman.<sup>53</sup>

Other observers interpreted her behaviour as deliberately manipulative, and likened her demeanour to that of Ada Williams discussed in the previous chapter:

For two days she sat with her hands in her lap, her eyes appealing to each member of the jury in turn as they moved from man to man, up and down the box.<sup>54</sup>

Thus, Louie was credited with understanding "the importance of creating a good impression", and consequently "simulated the attitude of an inoffensive and hapless woman." Outside the court-room, however, she was "vain", "abusive" and "had a most vicious temper."<sup>55</sup>

Louie's final act within the court-room was to tell yet another lie in a last bid to save herself. However, her false claim of being pregnant<sup>56</sup> only served to re-affirm that she was of the 'criminal type' - beyond reforming regardless of her circumstances.

### Louie Calvert: 'Degeneracy' Versus Dignity.

While the majority of commentators could not find a single redeeming feature within Louie's personality, there was none-the-less opposition to her hanging. A

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<sup>52</sup>Huggett & Berry 1956:63.

<sup>53</sup>Eye-witness at trial quoted in Huggett & Berry 1956:63.

<sup>54</sup>Huggett & Berry 1956:62.

<sup>55</sup>Huggett & Berry 1956: 65; 62; 63.

<sup>56</sup>Huggett & Berry 1956:61.

City Councillor who observed the trial declared he was "full of pity for the poor woman, whether she was guilty or not. She was a thin, wan-looking creature only weighing a few stone. I should never legislate on the lines of hanging for women."<sup>57</sup>

Meanwhile, Dr Watts an MP, felt sufficiently concerned about Louie's supposed pregnancy to raise the issue with the Home Secretary through a Parliamentary question. Sir Joynson-Hicks however, reassured the House that Louie was not pregnant.<sup>58</sup>

As the date of Louie's execution drew near, "strenuous efforts were made to obtain a reprieve."<sup>59</sup> These included "an extensively signed petition"<sup>60</sup>, as well as "a motion for an address praying his Majesty to exercise his Royal Prerogative in the case of Louie Calvert", signed by six Labour MPs.<sup>61</sup> It was to no avail and the execution went ahead as planned on the morning of the 24th June. She "met death better than many a man": walking "calmly to the scaffold" and giving "no trouble" to her executioner.<sup>62</sup> Her bravery in facing death was equally apparent during the last few days of her life when she wrote farewell letters and received visits from family for the last time. She wrote to her sister-in-law:

I only want to see my son once more to kiss him good-bye. Then I am satisfied, you have all done your best, but God has not answered our prayers in the way we wanted. Still he knows what is best for me.<sup>63</sup>

Another of her letters read:

I am resigned to my fate. I only want to see my sonny once again, to kiss him good-bye. Tell him to be a good boy and he will see his mother in heaven.<sup>64</sup>

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<sup>57</sup>Mr J. Lambert, Leeds City Councillor, quoted in Huggett & Berry 1956:60.

<sup>58</sup>*Parliamentary Debates, Commons, 1926 Vol 197, June 21 to July 9.* Sir Joynson-Hicks stated that: "Any doubt which may have existed as to the prisoner's condition has since been dispelled, and it is now certain that there was no pregnancy." (col.249).

<sup>59</sup>*Manchester Evening News* 22nd June 1926 p.5.

<sup>60</sup>*Manchester Evening News* 23rd June 1926 p.9. According to Huggett & Berry 1956:64 the Labour MP for Consett, Rev Sir Herbert Dunnico organised a petition which was signed by almost 3000 people.

<sup>61</sup>*The Times* 23rd June 1926.

<sup>62</sup>*Manchester Evening News* 24th June 1926 p.6.

<sup>63</sup>Louie Calvert's letter to Leah McDermott quoted in *Liverpool Post and Mercury* 25th June 1926.

<sup>64</sup>Louie Calvert's letter quoted in *The Daily Mirror* 25th June 1926, p.2.

Louie's request to see 6-year-old Kenneth was granted on her last afternoon before the execution when Arthur, her husband and Leah, her sister-in-law also came to say goodbye:

The interview lasted half an hour and at the end, when the boy pathetically appealed to his mother to come home, he was told that she had to go to London to see the Queen.<sup>65</sup>

Following this last visit Leah said "she could not have believed that any woman could have borne up so well in the circumstances",<sup>66</sup> and Arthur told reporters that "this was the fourth occasion he had visited his wife ... and it was the hardest. He had previously found his wife was cheerful in the circumstances, and she spoke highly of the treatment she was receiving at the hands of the prison officials",<sup>67</sup> who agreed she had been "quiet and well-conducted and gave no trouble of any kind" during her imprisonment. She maintained her dignified conduct to the very end, walking "stoically" and "with deliberation to the scaffold," where the execution was carried out "humanely and expeditiously." <sup>68</sup> However, those who had classified Louie as a 'criminal type' did not interpret her lack of hysterical behaviour as dignified bravery, but instead saw it as a further indication of her lack of femininity:

To most women the sentence of death is a shock which their nervous systems are unable to sustain immediately, and leaves many of them dazed and incapable of coherent speech for many hours afterwards. The effect upon Louie Calvert was the reverse; it merely served to increase her volubility.<sup>69</sup>

Huggett and Berry further considered Louie's attempt to look dignified by dressing in black "grotesque ... as if to publicly proclaim her sorrow and mourning for the death of the woman for whose murder she was being tried," when, in their opinion, she was "the most unmoved person present" within the court-room.<sup>70</sup> Moreover, her bravery in facing death was dismissed as "that cold attitude to death typical of the criminal ... [who] has no sense of guilt":

To her there was something glorious and grandiose in dying this way. Like the Christians sacrificed in the lions' den, and the Indian fakir lying on his

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<sup>65</sup>*Liverpool Post and Mercury* 25th June 1926.

<sup>66</sup>*Liverpool Post and Mercury* 25th June 1926.

<sup>67</sup>*Manchester Evening News* 23rd June 1926 p.5.

<sup>68</sup>*Manchester Evening News* 24th June 1926 p.6.

<sup>69</sup>Huggett & Berry 1956:61.

<sup>70</sup>Huggett & Berry 1956:63.

bed of nails, there was more pleasure than pain in the final atonement. ...  
It is vanity alone which sustains the criminal when all else has failed.<sup>71</sup>

Ultimately, Louie's eventual conformity to established female conduct and obedience to prison rules could not erase the powerful and long-established discourses around the 'born female criminal'.

Meanwhile, outside the prison walls where a crowd of 500 people had gathered, the drama of Louie's execution was manifest in ways reminiscent of the 19th century spectacle of public executions discussed in Chapter Three - confirming what many had predicted then - that private executions would not bring an end to the public's desire for titillating details about such events:

Every few minutes as the crowd became more and more under the influence of a suppressed excitement the massive doors of the gaol swung slowly open to allow of the passing of some vehicle concerned in the ordinary business of the prison. ... About nine o'clock when a strange hush had fallen on a section of the crowd, a bell in the prison began to toll in faint ghostly tones. ... As the minutes sped swiftly on, all eyes were fixed on the massive entrance gates, and presently there was an unseemly rush across the road as a warder emerged and quickly took down the single notice and substituted two others with deft fingers. ... For long afterwards the notices were studied again and again ...<sup>72</sup>

Louie's behaviour and conduct towards the end of her life illustrate the complexity of her personality, and thus serves to further discredit theories based upon biological reductionism and essentialism. Her existence illustrates that a 'thoroughly bad woman' - a liar, a thief even a murderer can also be a loving mother and a brave and dignified human being. Yet, while feminists must always challenge stereo-typical images of female criminality, we cannot condone violent crimes such as those carried out by Louie Calvert. Her capacity for violence reminds us not to idealise womanhood. While her crimes should not be regarded as 'worse' than those of men simply because of her sex, the absence of gender-specific mitigating circumstances which would help us to explain her anti-social behaviour must be equally recognised. For example, there is no evidence which suggests she was ever a battered or even intimidated wife, if anything, at least in her relationship with her husband Arthur, the evidence suggests the reverse.<sup>73</sup>

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<sup>71</sup>Huggett & Berry 1956:65.

<sup>72</sup>*Manchester Evening News* 24th June 1926. p.6.

<sup>73</sup>In the interest of fairness towards Louie Calvert it must be reiterated that any evidence - gender specific or otherwise - is extremely sparse in this case. However, even if further evidence had been available, feminist theorists would still be faced with the task of analysing and assessing the exact role of such

Her poverty and deprivation were great, but this did not set her apart from the vast majority of other women in similar social circumstances who did not become criminals. In other words, the existence of women like Louie Calvert forces us to recognise that women's violence cannot always or necessarily be justified or even explained by their victimisation. It reminds us that otherwise sane and 'normal' women, have the *capacity* for heinous violence, even if - compared to men - such incidents are rare as a result of their gender-specific socialisation. There are no gender-specific 'excuses' available which justifies Louie Calvert's incessant lies, opportunistic thieving and murderous acts. None of these acts can be reduced to her gender. At the same time it is equally important to recognise that their presence within Louie's personality does not indicate she was more 'masculine' than non-criminal women or that she was 'worse' than her male counter-parts as Lombroso would have argued. That these two discourses have been the only ones available so far through which the crimes of Louie Calvert can be understood, demonstrates the limited language in which violent women can currently be discussed. Hence, a new language and new discourses are essential if we are to understand the complexities of female violence.

While feminist activists have enjoyed considerable success in recent years in establishing new discourses around female killers who have themselves been the victims of violence, and who, as a result of such discourses, are now able to experience empowerment through regarding themselves as survivors of that violence, we are still faced with the task of creating a new language through which crimes like Louie's can be understood. Her decision to murder a woman as powerless and impoverished as herself, cannot be reduced to female victimisation and oppression within a male dominated society. To do so would be patronising and simplistic, and, as I argued in the Introduction, comes dangerously close to arguing on the same terrain as men who have perpetrated sexist myths about women's 'nature' while simultaneously refusing to acknowledge that women, like men, possess both rationality and agency. What we are left with, is a recognition that women, like men, have the capacity to experience the full range of human emotions, including those of aggression, and that in certain situations, they are prepared to act upon those emotions. That such situations occur with less frequency than is the case for men, does not require a biological but a sociological explanation. However, the fact that violent female criminals are

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evidence in relation to Louie Calvert as a rational and social agent. A failure to analyse controversial cases such as Louie's (for example, compared to battered women who kill), would result in the language around violent women remaining inadequate.



comparatively rare, has resulted in such women *automatically* being regarded as extreme and abnormal,<sup>74</sup> thus demonstrating that no discourse is yet available through which female criminality can be understood as routinised and non-pathological in nature. Louie Calvert was a habitual criminal - a recidivist - for whom criminal behaviour had become a way of life (and a means of survival) and hence routinised. Identical behaviour - when found in male criminals - is accepted as such, without warranting special attention or pathological explanations.<sup>75</sup>

Creating a language which can conceptualise and accept women's 'routinised' criminal behaviour, must not however, be done at the expense of recently developed feminist discourses in which battered women's violence is recognised as wholly *exceptional*.<sup>76</sup> Such discourses came about through a protracted struggle and in creating a new language which recognises and emphasises female agency and rationality rather than victimisation and oppression, the opportunity exists for a renewed anti-feminist back-lash involving the resurrection of old stereo-types of the wicked, scheming and calculating female as discussed in Chapters Three and Five. Within this climate women stand to lose the hard-won new terrain on which appeals and re-trials have been heard in respect of battered women who kill abusive partners, and who have subsequently been released. In short, a recognition that women's crime may in certain cases be routinised should not cancel out the exceptional and extreme circumstances of some women's crimes. It does not mean that women are 'all the same' or that they are 'really the same as men'.<sup>77</sup> Instead it is a reminder that rash generalisations

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<sup>74</sup>Cameron & Frazer write that "The discourse of our culture ... casts women in only those roles which locate them at extremes: they personify spotless innocence, or else essential wickedness; Snow White or the Wicked Queen." (Cameron, D. & Frazer, E. (1987) *The Lust To Kill* Polity Press, Cambridge, p.147).

<sup>75</sup>This is not to argue that we should merely accept male aggression and criminality as a 'normal' part of masculinity. It has only come to be viewed as such as a result of the frequency with which the two work in tandem. In other words, because violent criminals are overwhelmingly male, masculinity itself has come to be understood as the cause of this behaviour. But as in the case for women, sociological rather than biological explanations are required when analysing male violence. Thus, a deconstruction of masculinity within a broader gendered perspective is necessary if we are to understand why violent crime is predominantly a male phenomenon.

<sup>76</sup>As was the case for example with Kiranjit Ahluwalia who had no history of violence prior to killing her abusive and violent husband, and who has not engaged in violence since his death more than a decade ago. (Ahluwalia, K. & Gupta, R. (1997) *Circle of Light* HarperCollins, London).

<sup>77</sup>For discussions of a politics of difference see Di Stefano, C. (1990) 'Dilemmas of Difference: Feminism, Modernity, and Postmodernism' and Hartsock, N. (1990)

regarding criminal women must be replaced with a richer, wider and more complex vocabulary which can accommodate the diversity of motivating factors coming into play when women kill.

Unlike the circumstances surrounding women who kill abusive partners, our craving for neat resolutions cannot be easily satisfied in cases such as Louie's.<sup>78</sup> Yet, feminism has much to gain from examining these more controversial cases in detail. First, analysing the profusion of motives behind women's violent crime draws attention to its diversity and therefore challenges the limitations of the 'mad/victim or bad' discourse through which almost all women's violence is understood. By challenging this discourse with more controversial female crime, "opportunities for dialogue" emerge which allows for the creation of a new terrain on which these cases can be discussed and understood. On this terrain feminist theorists can build discourses which, as discussed above, emphasise the 'pluralistic, fragmented and contingent' nature of female violence.

We can envisage a second gain for feminism, namely that an expanded understanding of female violence carries with it the opportunity for a fairer treatment of female killers - treating individual defendants according to their specific circumstances as opposed to drawing on the 'mad' discourse as a strategy for obtaining lighter sentences, or being categorised 'bad' - resulting in an unduly harsh sentence.<sup>79</sup> Furthermore, at an epistemological level, undermining the 'mad or bad' discourse would provide a concrete example of one of the central aims of standpoint feminism: to "evade dominant knowledges and generate new knowledges from repressed common senses" as discussed in Chapter Two (p.18).

Lastly, deconstructing less 'justifiable' murders may be of direct benefit to the defendants themselves in terms of personal empowerment. As argued in Chapter

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'Foucault on Power: A Theory for Women?' both in Nicholson, L.J. (ed) (1990) *Feminism/Postmodernism* Routledge, London pp.63-82; pp.157-175.

<sup>78</sup>See Bell & Fox 1996:487 on the subject of resolutions.

<sup>79</sup>Whilst recognising that women (and men) who are certified clinically insane may receive an indeterminate sentence, the 'mad' discourse has a much wider definition that includes terms such as 'diminished responsibility' and - with specific reference to women - 'Battered Woman Syndrome' which may result in a more lenient sentence. This point is further analysed in the conclusion where I discuss the case of Sara Thornton who had a charge of murder reduced to one of manslaughter after being identified as suffering from a 'personality disorder.' See also Ballinger (1996) where I argue that Marie Fahmy qualified for the 'mad' rather than the 'bad' category, simply by displaying 'appropriate' feminine characteristics such as hysteria, incompetence and irrationality, coupled with a general dazed and confused state which indicated she was a woman "ruled by her emotions" (p.7, p..8).

Two newly produced knowledge must be shared with the researched, thus creating the possibility not only for personal empowerment at an individual level, but also for making alliances which may eventually result in social and legal changes. The feminist struggle to achieve such changes becomes more powerful each time the life-stories of women like Louie Calvert are excavated because such excavation increases our overall knowledge about women of the past. As feminism generates new ways of describing violent women, and a new language in which they may be understood, the contribution of Louie Calvert and the other women within this chapter to this process will become increasingly apparent. In this way newly generated feminist knowledge can help bring an end to several decades of invisibility and muteness of powerless and dispossessed women like Louie Calvert.

### The Case of Margaret Allen.

The majority of women's crimes of violence ... almost certainly have their origin in a biological circumstance, possibly aggravated by external factors. Very numerous crimes can be traced to distorted maternal emotion (the murders of many children), the after-effects of the suffering of childbirth (infanticide), menstruation (unpremeditated crime), unsatisfactory sexual relations (the murder of a husband or lover), the menopause (violence by hitherto stable middle-aged women), pregnancy (a few murders of toddlers by over-worked mothers), and Lesbianism (a few murders of women by other women).<sup>80</sup>

It was largely the effects of being a lesbian that led to the circumstances in which 'Bill' Allen murdered Mrs Chadwick and her masculine nature made it possible for her to use violence. If she had been a woman, with a woman's instincts, she would have lashed Mrs Chadwick with her tongue or thrown the nearest piece of crockery, but she would have struck her with nothing more lethal than the back of her hand.<sup>81</sup>

Throughout this thesis I have been arguing against the routinised pathologising of female violence and have suggested instead that those interested in creating a new language through which such violence may be understood should keep issues of rationality and agency at the forefront of analyses. This does not, of course, preclude the possibility that in certain cases the behaviour of violent women may be connected to aspects of their pathology. Yet, as the cases of Margaret Allen and Styllou Christofi (discussed later in this chapter) illustrate, doubts about or concern over the mental health of female murderers did not result in a commutation of the death sentence. The next two case-studies thus

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<sup>80</sup>Wilson 1971:282.

<sup>81</sup>Huggett & Berry 1956:192.

illustrate the ease with which discourses of madness can, under certain circumstances be undermined - leading to an ironic (and tragic) situation where, despite a long history of *over-pathologising* violent women in general, specific women whose mental condition *ought* to cause concern, are in fact declared 'normal' after the most preliminary of examinations and hence judged fit to suffer the ultimate punishment.

Margaret Allen, the 20th of 22 children, had spent all her life in poverty in a small mill town in Lancashire, living with her mother until her death when Margaret was 37. At that time she was a bus-conductress but by June 1946 she resigned her position owing to frequent spells of dizziness and vertigo.<sup>82</sup> Her poverty was now more acute than ever; at the same time both her mental health and her home surroundings were deteriorating. As Margaret felt herself become depressed, lonely and isolated, her tiny rented house became increasingly dirty and neglected to the point where it was infested with lice. She could no longer cook food as she had sold her stove in a futile attempt to overcome her mounting debts.<sup>83</sup> At the time of her trial in December 1948, Margaret owed £15.4.0 rent and over three year's supply of electricity totalling £8.13.10.<sup>84</sup> She also owed £12 to her local grocer and had borrowed several small sums of money from family and neighbours.<sup>85</sup> She had no hope of clearing these debts as her entire weekly income consisted of 11 shillings "from the Public Assistance" and 26 shillings "from the National Health Sick."<sup>86</sup>

Apart from the sheer struggle to survive on a daily basis Margaret also experienced social difficulties as a result of her lesbianism or trans-sexualism. We cannot know for certain whether she was a lesbian or a trans-sexual for she did not have access to the language which expresses sexuality in those terms.<sup>87</sup>

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<sup>82</sup>Huggett & Berry 1956:192-4.

<sup>83</sup>Wilson 1971:295.

<sup>84</sup>ASSI 52/629 Testimonies of John Naylor Murgatroyd - Estate Clerk, and Frederick Hall King - Chief Collector of Rawtenstall Corporation p.22. The Margaret Allen case-file is closed to the public until 2024 but is available for inspection by special arrangement with staff at The Lord Chancellor's Department, Trevelyan House, 30 Great Peter Street, London SW1 2BY, and will henceforth be quoted as ASSI 52/629.

<sup>85</sup>ASSI 52/629 Testimony of Douglas McLeod Walton p.23.

<sup>86</sup>ASSI 52/629 Statement made by Margaret Allen to Police 31st August 1948.

<sup>87</sup>According to Dekker & van de Pol the concept 'transsexuality' was introduced by D. Cauldwell in 1949, the year Margaret was executed, and was not popularised until the 1960s by Harry Benjamin (Dekker, R.M. & van de Pol, L. (1989) *The Tradition of Female Transvestism in Early Modern Europe* MacMillan London p64).

Instead she claimed to have had an operation which "had changed her sex"<sup>88</sup>, wore men's clothes, had her hair cut in male style, preferred to be known as 'Bill', "spoke in a deep voice"<sup>89</sup>, "and pretended to be a man."<sup>90</sup>

We can only guess at the isolation and alienation Margaret experienced as a middle-aged woman, suffering from 'funny moods'<sup>91</sup>, and living in abject poverty in a tiny mill-town as a lesbian/trans-sexual in the 1940s. Annie Cook, her only friend, described her as having "completely let herself go."<sup>92</sup> This then, was the context in which she murdered an elderly widow, Nancy Chadwick. The sheer pointlessness of the murder together with Margaret's behaviour immediately after it, reinforces the suspicion that she may not have been fully responsible for her actions.

Nancy Chadwick's body was found outside Margaret's home early in the morning of 29th August 1948. When she was interviewed by police as a matter of routine, she denied all knowledge of the body and was not under suspicion. When police divers dragged the river Irwell Margaret was amongst the locals watching, and it was she who drew a police officer's attention to a bag floating on the surface which turned out to be Nancy's.<sup>93</sup> The following day Margaret was asked to make a statement at the police station.<sup>94</sup> In it she stated she had promised to obtain extra

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<sup>88</sup>*Liverpool Daily Post* 13th January 1949 p.3. Annie Cook giving evidence at Margaret Allen's trial. It is extremely unlikely Margaret had had an actual sex-change operation. According to Janice Raymond such operations were not available in USA until 1945, and were initially performed exclusively on men. (*The Transsexual Empire* (1980) Women's Press, London. Even if British medical professionals had scientific knowledge and hospital facilities to perform such an operation over 50 years ago, Margaret's poverty would have prevented her from taking advantage of this surgery as the National Health Service was not established until after the Second World War. We can only speculate that Margaret may have had another operation, perhaps a hysterectomy, which helped her to make sense of her sexuality. Alternatively, it is possible that no operation took place, instead it was Margaret's way of explaining her sexuality. Dekker and van de Pol write that until the end of the 18th century "sex was seen as an exclusively heterosexual act ... Women who fell in love with other women therefore often doubted their gender, and ... female cross-dressing offered them the solution of 'changing into a man.'" (Dekker & van de Pol 1989:69-70). Although referring to an earlier era, it is strongly reminiscent of Margaret's understanding of her own sexuality.

<sup>89</sup>*Daily Mirror* 2nd September 1948.

<sup>90</sup>*Manchester Evening News* 8th December 1948 front-page. Annie Cook under cross-examination.

<sup>91</sup>ASSI 52/629 Margaret Allen's statement to police 1st September 1948.

<sup>92</sup>Huggett & Berry 1956:197, who interviewed Annie Cook for their book.

<sup>93</sup>ASSI 52/629 Testimony of Detective Police Constable Joseph Blinston.

<sup>94</sup>ASSI 52/629 Testimony of Chief Detective Inspector Robert Stevens.

sugar for Nancy for some time but had been unsuccessful.<sup>95</sup> On the morning in question she saw Nancy outside her house, who "asked if she could come in for a look, but I said she couldn't because I was in a hurry. ... She has never been right inside my house. That was the last time I saw her."<sup>96</sup> She also gave an account of her movements for the entire day, and claimed she had never had a row with Nancy.

The following day police officers re-visited Margaret and searched her house. When they questioned her about what appeared to be blood-spots, Margaret made no reply. When they found wet rags and asked what they were:

The Accused made no reply and walked away to the sofa, picked up her macintosh and said "Come on, I'll tell you all about it". I again cautioned her and she said "Let's get out of here". We then walked to the front door ... and as the Accused passed the coal cellar she said "That's where I put her". ... When in the Office she said "I will now tell you the truth".<sup>97</sup>

When Margaret was charged with Nancy's murder, she replied "I did",<sup>98</sup> thus becoming one of only two executed women this century to admit their crime before standing trial. After admitting having lied in previous statements she gave the following account of the murder:

... Mrs Chadwick came round the corner. She asked me if this was where I lived and could she come in. I told her I was going out. I was in a funny mood and she just seemed to get on my nerves although she hadn't said anything. I told her to go as I was going out and she could see me some time else but she seemed somehow to insist on coming in. I just happened to look round and saw a hammer in the kitchen. By this time we were talking just inside the kitchen with the front door shut. On the spur of the moment I hit her with the hammer. She gave a shout that seemed to start me off more. I hit her a few times but I don't know how many. I then pulled the body in my coal house. It was there all day. I've told you where I was all day. ... I went to bed about ten to eleven o'clock. I slept but I couldn't tell you how long. When I woke the thought of what was downstairs made me keep awake. I went downstairs. I couldn't tell you the time because the clocks are broke. ... My intention was to try and pull her to the river and dispose of the body but it was too heavy and I just put it on the road. I went back to bed and didn't get up again until the officer came to the door. ... I went back to bed and went to sleep. Just before I put the body out I went round the corner and threw the bag in the river. ... the hammer head I hit her with I threw some distance up the river ... I looked in the bag but there was no money in there. I didn't actually kill her for that. I had one of my

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<sup>95</sup>Rationing was still enforced in 1948.

<sup>96</sup>ASSI 52/629 Exhibit 11. Margaret Allen's first statement to police 31st August 1948.

<sup>97</sup>ASSI 52/629 Testimony of Chief Detective Inspector Robert Stevens pp.14-16.

<sup>98</sup>ASSI 52/629 Charge Form dated 1st September 1948.

funny moods. ... I had no reason at all. It seemed to come over me. After she shouted after the first hit that seemed to set me off.<sup>99</sup>

The murder had been extremely violent with Nancy suffering at least ten separate blows to the head resulting in the entire vault of the skull being fractured.<sup>100</sup> Nancy's purse was never found and the prosecution argued the motive for the murder was robbery. This, as can be seen from Margaret's statement above, was denied by her. Instead she claimed to have had 'no reason at all', the killing having taken place as a result of one of her 'funny moods.' Moreover, when arrested Margaret had only 4s 5d on her, and having confessed to the murder there would seem little point in lying about any robbery which may have transpired.<sup>101</sup>

Her demeanour immediately after committing the murder was described by Annie Cook in the following terms: "She seemed a bit queer to me and kept giggling and staring."<sup>102</sup> Prior to the murder Margaret would often sit "with her head in her hands complaining of severe headaches", and had on one occasion attempted suicide in front of Annie.<sup>103</sup> Such behaviour took place within the context of Margaret having had to give up work as a result of the 'mood-swings' and 'giddiness' noted earlier. Indeed, her illness must have been officially recognised as she was receiving 'National Health Sick'.<sup>104</sup> Yet despite this history of mental anguish no medical report regarding Margaret's physical or mental health is included in her file. However, the senior medical officer at Strangeways prison felt able to offer an opinion. In his evidence at her trial he "said he had had Allen under observation since early in September and had found her quite normal."<sup>105</sup>

It was within this context that Margaret was about to stand the shortest trial of any of the 15 women executed this century. The entire trial lasted only five

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<sup>99</sup>ASSI 52/629 Exhibit 14 Statement made by Margaret Allen 1st September 1948.

<sup>100</sup>ASSI 52/629 Testimony of Dr Gilbert Bailey p.8.

<sup>101</sup>Huggett & Berry 1956:196. Huggett & Berry who conducted interviews with the villagers of Rawtenstall who knew Margaret, suggested a possible motive for the killing: that Nancy who was renowned for being miserly, had lent Margaret money which she may have insisted on having returned. However, as Margaret borrowed money from several other individuals, she must have found herself in such situations regularly. Overall, it does not seem an adequate murder motive.

<sup>102</sup>ASSI 52/629 Testimony of Annie Cook p.17.

<sup>103</sup>Huggett & Berry 1956:197 - interview with Annie Cook.

<sup>104</sup>According to Huggett & Berry 1956:104, Margaret had seen a doctor 5 times within a 12-day period in 1945 for vertigo.

<sup>105</sup>*Manchester Guardian* 9th December 1948 p.6.

hours, which must be recognised as a contributing factor to the slimness of her file and the lack of newspaper reports. *There simply was not very much to report.* Even the trial for her life appeared inadequate and mean, another indication of her poverty and powerlessness as well as how little she was valued as a human being.

Margaret entered the dock dressed in full male attire: a fawn overcoat, dark trousers, a checked shirt and "a brightly striped tie."<sup>106</sup> She therefore made no concessions to conventions of femininity for her court-appearance, as discussed in the Introduction. If anything, Margaret gave every sign of being proud of what she termed her 'manhood' and pleased that "she was often mistaken for a man by strangers."<sup>107</sup> The unconventional image that she subsequently presented may well have been the reason that her Counsel decided she should not give evidence, instead her statement was quoted in its entirety. Her defence counsel entered a plea of insanity and invited the jury "to commiserate with an unstable woman passing through the change of life, an abnormal woman who had declared that an operation had 'made her into a man', an unbalanced woman who had committed a 'purposeless, fatuous and mad murder'."<sup>108</sup> Margaret had not claimed provocation, did not express regret or remorse and could not even provide a motive - three factors which in their own right ought to have raised doubts about her state of mind. This was not the view of Mr Justice Sellars who in his summing up "said the defence had invited the jury to bring in a special verdict, that of guilty, but insane. He did not think there was any evidence such as the law required to bring in such a verdict."<sup>109</sup> The jury of three women and nine men appeared to be in agreement with the judge for they took less than 15 minutes in returning a guilty verdict with no recommendation to mercy.<sup>110</sup> Margaret did not appeal against her sentence.

#### A Woman Called Bill: Punishing the 'Abnormal'.

The post-war climate in Britain was extremely hostile to gay men and lesbian women with prosecutions for homosexuality reaching a peak in 1953.<sup>111</sup> Three years before Margaret's trial one sexologist wrote:

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<sup>106</sup>Huggett & Berry 1956:189.

<sup>107</sup>*Daily Mirror* 2nd September 1948.

<sup>108</sup>Mr W. Gorman, Q.C. quoted in Huggett & Berry 1956:189.

<sup>109</sup>*Manchester Guardian* 9th December 1948 p.6.

<sup>110</sup>Huggett & Berry 1956:189-90.

<sup>111</sup>Jeffreys, S. (1990) *Anticlimax* Women's Press, London. There were 82 prosecutions in 1938 compared to 3,305 in 1953. (p.56).



Homosexuality is to a very large extent an acquired abnormality and propagates itself as a morally contagious disease. ... The growth of a homosexual society in any country is a menace, more or less serious, to the welfare of the state.<sup>112</sup>

Some 'experts' went further in their condemnation of lesbianism by insisting that it was connected to criminal behaviour and mental illness:

... lesbians were likely to commit serious crimes or even be psychopaths. ... when crimes by women were investigated it was often revealed that 'the women were either confirmed lesbians who killed because of jealousy or were latent homosexuals with a strong aggressive masculine drive'. Some lesbians ... 'manifest pronounced sadistic and psychopathic trends'. They were also likely to be kleptomaniacs. The vast majority were 'emotionally unstable and neurotic'.<sup>113</sup>

Being a lesbian does not of course exclude the possibility of suffering from mental illness or neurosis. This is very different however, from the biologically determinist opinion expressed in the above quote which, despite being written over 60 years after Lombroso and Ferrero's *Female Offender* strongly echoes this work. The stigmatising and pathologising of lesbians thus has a long history and has taken many forms, sometimes emphasising physical abnormality, other times psychological abnormality, but always the implication is the same: that a lesbian is a person who is *damaged* in some way - an abnormal person.<sup>114</sup> This abnormality, however, is not of the type likely to activate discourses of the violent woman as 'mad' as is the case, for example, with women committing infanticide as argued in Chapter Three.<sup>115</sup> Instead the tendency has been to uncritically equate lesbianism with masculinity and masculinity with violence, a point which the

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<sup>112</sup>Thomas V. Moore quoted in Jeffreys 1990:51.

<sup>113</sup>Jeffreys 1990:55 referring to Frank Caprio's *Female Homosexuality* (1957).

<sup>114</sup>See for example Kelley, J. (1967) *When the Gates Shut* Longmans, London, esp pp.45-6 where she describes lesbians as "psychologically damaged women" who are "immature and unable to face a normal adult man-woman relationship." This damage may have come about as a result of having been raped or having had an incestuous relationship as a child. See also Jeffreys, S. (1985) *The Spinster and Her Enemies* Pandora, London, p.112 where she discusses Freud's theory that homosexuality comes about as a result of childhood trauma. See also Faith 1993:213.

<sup>115</sup>See Morris, A. & Wilczynski, A. (1993) 'Rocking the cradle' in Birch, H. (ed) (1993) *Moving Targets* Virago, London, where they argue that the Infanticide Act is overused in order to pathologise women killing their children, since "such an act cannot be the act of a *normal* woman. She cannot have been fully responsible for her actions; she must need help or treatment." (p.206). This is supported by studies which indicate that in England and Hong Kong "about half of the mothers convicted of infanticide could not actually have been described as suffering from any mental disorder." (p.207).

above quote exemplifies.<sup>116</sup> A lesbian is therefore caught in a double negative - while her deviant sexuality has resulted in her being pathologised, it is not a 'feminine' pathology such as that of puerperal psychosis for example, associated with infanticide. Instead it is a pathology which reinforces her deviant sexuality and underlines her lack of femininity - her non-womanhood. It is these features which allow the lesbian to be classified as pathological and 'bad' simultaneously. A lesbian is the ultimate 'unruly woman' who stands outside any of the control mechanisms discussed in Chapter Five, which normally operate to ensure appropriate female behaviour. There was nothing about Margaret Allen which signalled her membership of a subordinate group as discussed in Chapter Five. On the contrary, she moved about freely and alone in public places such as pubs, smoking and drinking heavily when she could afford it. She was not part of a family whose members could regulate her movements, she had no children and did not cook, indeed she was so utterly undomesticated that her house was infested with lice. Margaret's existence, far from being dominated by the 'patriarchal gaze', was an example of a total failure to internalise any of the disciplinary practices of femininity that Foucauldian feminists have identified. She had stepped so far beyond the boundaries of acceptable female conduct and behaviour that she had abandoned her femininity altogether. In short, she had taken on the identity of a male. She even killed like a man - battering someone to death with a hammer. But she was *not* a man, she was a woman *acting* like a man which made her "more terrible than any man."<sup>117</sup> Margaret Allen thus epitomised the doubly deviant woman, constructed as a result of the double standards applied to female criminals, as discussed in Chapter Five, because, unlike men for whom the essence of their being - masculinity - is presented as the motive for most of their crimes<sup>118</sup>, Margaret's crime was seen as an extension of her dramatic deviation from appropriate feminine conduct.

A further insight into how lesbians are pathologised and yet remain within the 'bad' rather than the 'mad' category may be gained by examining the state's response to lesbianism. Lynda Hart for example, takes issue with historians who claim that the state has largely ignored or tolerated lesbianism, and instead sees the state's failure to legislate against it in 1921 as a deliberate strategy employed for the specific purpose of preserving the dominant category of 'woman' as white, middle-class, maternal and passive. This theory is supported by the legislators'

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<sup>116</sup>Faith, K. (1993) *Unruly Women* Gang Press, Vancouver, p.98.

<sup>117</sup>Hart 1994:12 quoting Lombroso.

<sup>118</sup>Hart 1994:13 referring to Ngaire Naffine's 'Masculinity Theory'.

concern that the creation of a law banning lesbianism would draw attention to the subject:

You are going to tell the whole world that there is such an offence, to bring it to the notice of women who have never heard of it, never thought of it, never dreamt of it. I think that is a very great mischief.<sup>119</sup>

In short, creating a new law may have the unwanted consequence of also creating a new discourse through which women can experience their sexual identity. The failure to legislate against lesbianism did not, however, result in its disappearance but meant that it entered discourse as a secret "that could be kept from "'women' - white, middle- and upper-class wives and daughters of the legislators," a process which was designed "to maintain and construct a category of 'women' that was purified, un-mixed with racial and class differences." Thus, at the very time these women were threatening the category 'woman' by showing an interest in lesbianism, it became displaced unto "women of color and working-class women."<sup>120</sup> The discursive lesbian was now someone opposite to the *normal* woman - an *inverted* woman - someone who is *like a man*, recognised by her male characteristics, particularly those of sexual assertiveness, aggression and violence. This process therefore has a secondary benefit for the stabilisation of the category 'woman' because it also displaces female aggression onto the sexually deviant woman.

It is within this context Margaret Allen had to be turned into a 'non-woman' and thus excluded from discourses of 'madness' available only to women who obey the codes of behaviour surrounding femininity. In proudly proclaiming her deviant sexuality Margaret disrupted not only "the fiction of the gendered conflation of femininity with passivity",<sup>121</sup> but also the illusion of sexual identity as stable. Such disruption, although regarded as a threat to the social order generally, was of particular significance in post-war Britain, the time of Margaret's trial, when the state was struggling to gain control of the social disruption caused by the war. Amidst fears "of an imminent collapse of the family"<sup>122</sup>, the task before the state was one of major social reconstruction involving the restoring and strengthening of family life. This was embarked upon by focusing on women and

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<sup>119</sup>Lord Desart quoted in Hart 1994:3.

<sup>120</sup>Hart 1994:6; 4.

<sup>121</sup>Hart 1994:17.

<sup>122</sup>Smart, C. (1981) 'Law and the Control of Women's Sexuality: The Case of the 1950s' in Hutter, B. & Williams, G. (eds) (1981) *Controlling Women* Croom Helm, London pp.47.

marriage in the belief that a stable family life prevented delinquency and crime whilst preserving the social order.<sup>123</sup> Apart from considering the moral implications of homosexuality and lesbianism<sup>124</sup>, the state was therefore already preoccupied with other forms of behaviour deemed threatening to family life such as divorce, illegitimacy and prostitution, which resulted in "legislation on sexual behaviour", the aim being to ensure that sexual activity took place within marriage only:

Such legislation was overtly orientated towards maintaining family stability, reproducing, in some instances, patriarchal relations within the family, and containing and controlling social change that was seen as harmful to the family.<sup>125</sup>

This was the context in which "the recognition of lesbianism as a matrimonial offence was suggested"<sup>126</sup>, and although such legislation was never implemented, it never-the-less provides an insight into the social, political and moral climate at the time of Margaret Allen's trial. It also widens our understanding of Margaret's classification as a 'bad' woman despite serious doubt about her mental state being expressed, not only by those who knew her and observed her behaviour, but also by her local MP who made a last-minute plea to the Home Secretary to spare her life on the grounds of her mental condition.<sup>127</sup> The discourses around Margaret's deviant sexuality, however, overrode discourses of madness. Margaret had become a monster, demonised through a combination of discourses so unified that they could withstand any challenge made on her behalf - so dominant that it had become impossible to 'hear' her story through any other discourse. Judicial misogyny had been translated into judicial homophobia and in the process of that translation the meaning of Margaret's experience was lost as her account became muted. Her case illustrates that it is only certain types of 'madness' - those that fit the dominant model of female madness - which permit a woman to be heard

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<sup>123</sup>Wilson, E. (1980) *Only Halfway to Paradise* Tavistock, London, p.88; Smart 1981:47-8.

<sup>124</sup>Wilson writes that although the Wolfenden Report published in 1957, recommended de-criminalisation of the *private* practice of homosexuality, it was never-the-less the case that "in the political climate of the fifties to suggest that homosexuality might be a matter of moral indifference was heretical." She adds "In general sexuality outside marriage belonged to the twilight area of 'unlawful sexual intercourse', and effectively the Wolfenden recommendations in relation to homosexuality meant that homosexual behaviour would also be included within this grey area." (Wilson 1980: 101; 102).

<sup>125</sup>Smart 1981:57.

<sup>126</sup>Wilson 1980:73.

<sup>127</sup>G.H. Walker, Labour MP for Rossendale to Home Secretary Chuter Ede. Reported in *Liverpool Daily Post* 12th January 1949.

through the 'mad' discourse. Indeed her Counsel at the trial appeared to be aware of this for, as noted above, he attempted to link Margaret's 'madness' to a much more acceptable form of pathology - that of the menopause - when he declared that she was 'unstable' as a result of 'passing through the change of life.' The menopause, like menstruation, child-birth and lactation, are ultra-feminine conditions which have all played a role in categorising women "as labile, unstable, at the mercy of a biology which ... leaves us open to all manner of ailments and adversities."<sup>128</sup> They are also conditions which emphasise a woman's femininity, and hence provide 'legitimate' discourses through which a woman's 'madness' may be articulated. Lesbianism and cross-dressing do not. Lesbianism negates femininity and amplifies perversion. No reference to 'feminine conditions' could undercut the perversion associated with Margaret Allen. Hence, Justice Sellars could not accept a verdict of 'guilty but insane', and the Home Secretary could not accept Mr Walker's plea for clemency:

I am sorry to say that after having carefully considered all the circumstances of the case and having caused a special inquiry to be made as to Miss Allen's mental condition, I regret that I have not been able to find any grounds which would justify me in advising the King to interfere with the due course of justice.<sup>129</sup>

Public opinion did not appear to differ from those of establishment figures, for Annie Cook eventually had to abandon the petition she had instigated because she was unable to obtain more than a 100 signatures.<sup>130</sup> The only other person who attempted to influence the Home Secretary's decision to allow the execution to go ahead was the Rev Austin Lee, who made no pretence of speaking for Margaret but objected to the hanging on behalf of the prison staff:

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<sup>128</sup>Ussher, J. (1991) *Women's Madness* Harvester Wheatsheaf, Hemel Hempstead, p.249. See also Ehrenreich, B. & English, D. (1979) *For Her Own Good* Pluto, London, who refer to medical literature which describes the menopause "as a terminal illness - the 'death of the woman in the woman.'" (p.111); Matus, J. (1995) *Unstable Bodies* Manchester University Press, Manchester. Referring to the Victorian era, she reminds us of the long history of the association between women's reproductive organs and mental instability: "The onset of menses and the process of menopause were equally high risk periods in which minds might become unhinged."(pp.198-9)

<sup>129</sup>*Liverpool Daily Post* 12th January 1949. The special inquiry referred to was a statutory inquiry led by Sir Norman East and took place over a two-day period, 27-28th December 1948. (Information obtained by personal communication with the Planning Directorate, Strangeways Prison, Manchester.)

<sup>130</sup>The Rossendale Labour Party continued the petition and eventually obtained 300 signatures in a town of 26,000 inhabitants (*Manchester Guardian* 12th January 1949; Huggett & Berry 1956:208).

In the name of humanity beg you stop the hanging of Margaret Allen ... because of the terrible effect on the prison officers concerned.<sup>131</sup>

Beg you to intervene to prevent men and women prison officers being degraded and to prevent possible suicide or insanity, by having to drag Margaret Allen to the scaffold.<sup>132</sup>

As noted earlier, Margaret had not appealed against her sentence which would have delayed her execution. She did however, make two simple requests. On 4th January 1949 she learned that the Home Secretary would not be recommending a reprieve and as the execution had been set for 12th January, Margaret requested a four-day postponement which would have enabled her to experience Annie's birthday on 16th of January. She also requested a visit from Annie without prison guards being present. Both requests were denied. In the four and a half months since her arrest Annie Cook had been her only visitor, and on the night before her execution Margaret wrote to her:

Just a few lines to thank you and your family for what you have done for me. I cannot put into writing just how I feel, but, once again, thank you for making my last few hours happy by holding on to me, and don't forget what I told you this afternoon to look after yourself ... I cannot say any more, but God bless you all.<sup>133</sup>

The letter also contained Margaret's will which stated: " I, Margaret Allen, wish to leave all my personal property to Annie Cook." This property consisted of a photo of Margaret's mother, a lighter, cuff links, a crucifix and 4s 5 1/2d.<sup>134</sup> Outside Strangeways prison 300 people had been waiting "in the bitter cold since 7am" for her execution, on the morning of the 12th January, but during Annie's last visit Margaret had requested that she should not be amongst them.<sup>135</sup> Instead she had said:

You know the time tomorrow. I don't want you to wait outside the prison. I want you to be at our old meeting place on the main road outside Rawtenstall. As I walk to the scaffold I will think of you - at the end of the road.<sup>136</sup>

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<sup>131</sup>*Liverpool Daily Post* 12th January 1949, telegram to the King.

<sup>132</sup>*Liverpool Daily Post* 12th January 1949, telegram to the Queen. The Rev Austin Lee, who worked at St Stephen's Hounslow London, may of course have formulated his pleas for clemency in this manner because he believed prison staff would be regarded more sympathetically than Margaret Allen.

<sup>133</sup>Margaret Allen's letter to Annie Cook, reproduced in *Manchester Evening News* 13th January 1949.

<sup>134</sup>*Manchester Evening News* 13th January 1949; Huggett & Berry 1956:196.

<sup>135</sup>*Manchester Evening News* 12th January 1949.

<sup>136</sup>Annie Cook being interviewed by the *Daily Mirror* 12th January 1949.

Annie fulfilled her promise and at the time of the execution stood weeping on the agreed location while approximately "40 people watched from the opposite corner."<sup>137</sup> "Other women jeered at Mrs Cook as she sobbed ..." <sup>138</sup>

In 1956 Huggett and Berry, in an attempt to make sense of Margaret's execution, wrote: "It is as if the case belongs to a harsher age and an earlier civilisation." Commenting on the lack of public interest in the case they suggested that "her peculiarly unhappy life was too far removed from general experience to evoke any response from ordinary people."<sup>139</sup> Those of us engaged in developing feminist theory would add that Margaret's execution - taking place only eight months after MPs had voted in favour of suspending the death penalty,<sup>140</sup> and murderers such as Donald Thomas were reprieved<sup>141</sup> - was also part of the struggle to preserve the category 'woman' at a time when the social order was perceived as being under threat. In a final twist of irony, after 13 years of wearing male clothing, Margaret was issued with a statutory striped prison dress in which she met her death. During Annie's last visit she said:

I am going to have chicken for dinner and a few bottles before they put a rope round my neck. I shall be dead on Wednesday. It would help if I could cry but my manhood holds back my tears.<sup>142</sup>

There is no record of Margaret's final moments, but we may assume that she would have approved of going down in history as having 'died like a man.'

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<sup>137</sup>*Liverpool Daily Post* 13th January 1949 p.3.

<sup>138</sup>*Daily Mirror* 13th January 1949 p.5.

<sup>139</sup>Huggett & Berry 1956:208; 205. Huggett & Berry are arguably the only authors until now who have attempted to research her case in depth from a humane and sympathetic perspective.

<sup>140</sup>This motion was tabled in November 1947. The suspension was for a duration of five years. The motion was moved by Labour MP Sidney Silverman on 14th April 1948. It was passed by 245 to 222 votes. For details of the parliamentary debate on capital punishment see *Parliamentary Debates House of Commons* Vol 449 6th-23rd April 1948 cols 979-1094. Consequently all prisoners awaiting execution had their sentences commuted "by means of conditional pardons during the period which would elapse before the Bill became law." (Gatley, C.N. (1972) *The Incredible Mrs van der Elst* Leslie Frewin Publishers, London, pp.201-2). However, in June the House of Lords, reversed the House of Commons' decision by voting 181 to 28 against the Bill and executions were resumed.

<sup>141</sup>Jackson, S. (1978) *The Old Bailey* W.H. Allen, London pp.195-6. See also Huggett & Berry 1956:209 who wrote that Donald "fired three shots at Police Constable Edgar, and showing no mercy, fired again as the dying policeman lay at his feet."

<sup>142</sup>Huggett & Berry 1956:208.

## The Case of Styllou Christofi.

This was a stupid murder by a stupid woman of the illiterate peasant type.<sup>143</sup>

Here was no murder for money, or intrigue, or petty gain. Here was a full-blooded slaughter for mother-love, vengeance, hatred. It was as simple and primitive as Oedipus, and as cruel.<sup>144</sup>

Throughout this thesis I have argued that the discourse of motherhood is of paramount importance when women stand trial. As has already been discussed in the Introduction and Chapter Five, a 'bad' mother is likely to be judged for the absence of 'the maternal instinct' with its accompanying mothering skills as well as for her crime. Yet a mother who loves with too much intensity - who is too possessive of her children - is no longer a good mother, for instead of being self-sacrificing she has become both greedy and needy - a threatening figure who is out of control. The case of Styllou Christofi is an example of the 'good' mother who was out of control - someone who was incapable of setting boundaries in this role, taking it to the extreme of murdering her daughter-in-law in order to 'protect' her son and grandchildren. Styllou crossed the boundaries of 'good' mothering by abusing her power and control over her children, thus failing to accept her adult son's right to an individual and independent life.<sup>145</sup> Instead of fitting into the role of an altruistic mother and loving grandmother, she had become a controlling and manipulating woman, thus fitting into another stereo-type, that of the 'dragon-like' mother-in law.

Styllou Christofi was a Greek-Cypriot who had arrived in England in 1953 to visit her son Stavros and his family. At the time of the murder she had stayed with him, his German-born wife, Hella and their three children for a year, supposedly to look for work to earn money to enable her to buy a plot of land in Cyprus. During that year tension had arisen on several occasions between Hella and Stavros, a modern London couple who both worked outside the home, and Styllou, an illiterate 'peasant' woman who had been married at 14, and whose "basic mental capacity ...[was] not high."<sup>146</sup> This tension had resulted in Styllou having

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<sup>143</sup>Mr Christmas Humphreys QC prosecuting. Quoted in *Manchester Evening News* 25th October 1954.

<sup>144</sup>Huggett & Berry 1956:228.

<sup>145</sup>See discussion of the 'perverse' mother in Welldon, E.V. (1992) *Mother, Madonna, Whore* Guildford Press, New York.

<sup>146</sup>CRIM 1/2492. Medical Report of Styllou Christofi by PMO Thomas Christie, dated 5th October 1954. She had never received schooling and could not write even her



had to move out on three occasions, although she had been living with the family continuously during the four months prior to the murder.<sup>147</sup>

Styllou was incapable of applying the self-control necessary to prevent herself from interfering in her adult children's lives:

[She] related that her other son (in Cyprus) had married a wanton woman, not fit to look after the children of the marriage, and that all offers of help from her (Mrs Christofi) were rebuffed, and she had to leave the house, and so her grandchildren had no moral protection.<sup>148</sup>

Now Styllou had repeated this pattern by voicing an identical (and equally unfounded) attitude towards her second daughter-in-law. Consequently the strain was so great that it was agreed Hella should take a holiday with the children, and Styllou was asked to go home to Cyprus by the time they returned. However, two weeks before Hella's planned departure, she was murdered. It was a particularly gruesome murder with Hella first being beaten with a metal ash-plate, then strangled with her eldest son's scarf and finally having paraffin poured over her body and set alight.<sup>149</sup> A neighbour noticed a body "surrounded by a circle of flames" in the Christofis' garden, but he took it "to be a wax model lying in the fire."<sup>150</sup> He also saw Styllou:

She came right into the area, bent over the body and gave me the impression that she was about to stir the fire up. The fire was dying down. Having recognised the accused, I thought all was in order and I returned to my garden and then my house.<sup>151</sup>

Styllou denied all knowledge of the murder. She claimed to have woken up after having been asleep in bed for several hours. Smelling smoke, she went to investigate, whereupon she found Hella's burning body which she threw water over.<sup>152</sup> She then ran into the street, stopped a car and said "Please come, fire burning, children sleeping." When Mr and Mrs Burstoff, the occupants of the

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name. Styllou Christofi's file is closed to the public but permission to inspect it may be obtained by arrangement with the Supreme Court Unit Manager, at the Royal Courts of Justice, London WC2A 2LL.

<sup>147</sup>CRIM 1/2492. Exhibit 18 - statement of Styllou Christofi dated 29th July 1954.

<sup>148</sup>CRIM 1/2492 Medical Report dated 5th October 1954. Styllou Christofi related this in a conversation with Holloway PMO Thomas Christie.

<sup>149</sup>CRIM 1/2492 Testimony of pathologist Francis Edward Camps 26th August 1954.

<sup>150</sup>CRIM 1/2492 Testimony of John Byres Young 26th August 1954. Hella was employed in the garment industry and owned a mannequin dummy.

<sup>151</sup>CRIM 1/2492 Testimony of John Byres Young 26th August 1954.

<sup>152</sup>CRIM 1/2492 Exhibit 18 - Styllou Christofi's statement 29th July 1954.

car, asked if the body was that of Styllou's son she replied: "No, my son marry German girl he like, plenty clothes, plenty shoes, babies going to Germany."<sup>153</sup>

The evidence against Styllou however, was compelling, and her apparent failure to acknowledge or respond to this demonstrated a certain naiveté which prompted Mr Humphreys, the prosecutor to call her:

... a stupid woman ... [who] really believed that after washing the floor she could eliminate bloodstains, and that with a small tin of paraffin she could so burn a body that it could not be recognised.<sup>154</sup>

When Mr Humphreys employed such condemnatory tones he may have had some of the following evidence in mind: the clothes that Hella had been wearing when she was murdered had been washed and were still in the pail when police arrived; the empty Daz packet which would have contained soap for the purpose of washing the clothes, was found inside an ornament in Styllou's room; Hella's wedding ring which she never removed as it was a tight fit, had also been hidden in Styllou's room, "wrapped in cellophane paper."<sup>155</sup> Styllou's shoes were soaked in both paraffin and blood and her bed had not been slept in.<sup>156</sup> Her ring and bracelet "gave a general reaction for blood."<sup>157</sup> Moreover, the scarf with which Hella had been strangled, had been cut into four pieces, three of which were found in the dustbin, causing Mr Humphreys to comment: "So this is a murderess who is remarkably tidy in clearing away the evidence of the murder."<sup>158</sup> Finally, there were no signs of a forced entry into the house. Altogether, the evidence was so strong that Styllou was always the only suspect.

Styllou could speak almost no English and during her initial interview with the police in the early hours of the morning Stavros had to act as translator. She was arrested the following evening when a professional interpreter had been hired. Yet despite the compelling nature of the evidence Styllou maintained her innocence. When she was told an eye-witness had seen her in the garden she

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<sup>153</sup>CRIM 1/2492 Testimony of Fanny & Harry Burstoff 26th August 1954.

<sup>154</sup>Opening speech for prosecution quoted in *Daily Mirror* 26th October 1954 p.3.

<sup>155</sup>CRIM 1/2492 Testimony of Det. Sergeant Albert Evans and Det. Superintendent Leonard Crawford. See also testimony of Stavros Christofis all dated 26th August 1954.

<sup>156</sup>CRIM 1/2492 Testimony of Police-Sergeant Edward Welch 26th August 1954.

<sup>157</sup>CRIM 1/2492 Testimony of Lewis Charles Nickolls, director of Forensic Science Laboratory, Scotland Yard, dated 26th August 1954.

<sup>158</sup>Opening speech for prosecution quoted in *Daily Mirror* 26th October 1954. See also CRIM 1/2492 Testimony of Detective-Constable George Claiden.

made no comment. Instead, after prolonged interrogation she simply replied:  
"From this story I know nothing more."<sup>159</sup>

As had been the case with Louie Calvert and Margaret Allen, Styllou Christofi was of fleeting interest to both the public and the media. Compared to the trial of Ruth Ellis, which took place only six months after Styllou's execution, and which still holds the power to fascinate the public imagination today, Styllou Christofi is an extremely obscure figure. At 53, she was the oldest woman to hang this century. Heavy set and unglamorous in appearance, she seemed to have no redeeming features. Her crime appeared to be motivated by jealousy and a desire to dominate her son's household. Instead of displaying the feminine characteristics of altruism, docility and gentleness as discussed in Chapter Five, she seemed ungrateful, callous and domineering - attacking an attractive, young, defenceless mother in a most gruesome manner, who had shown her nothing but hospitality and provided a home for her. Moreover, she was *foreign* - a 'stupid woman of the peasant type' according to Mr Humphreys. Apart from the implied racism, this comment also suggested atavistic tendencies, which reinforced the image of an unrefined woman lacking in sophistication and feminine attributes, a lack which set her apart from the feminine ideal as discussed in Chapter Five. This lack had special significance during the 1950s, for as I discussed in the previous case-study, this decade was pre-occupied with preserving the category 'woman'. Consequently, 'feminine attributes' - her skills as a home-maker and mother as well as an appropriate and pleasing demeanour - were of special importance during a decade that was dominated by debates about the role of women and the preservation of family life.

In keeping with the dominant portrayal of Styllou as a possessive and controlling peasant matriarch, the prosecution alleged during the four-day trial that Styllou had been jealous of Hella's "youth and pretty clothes", and that she had thought she "was not wanted and ... [was] being sent home to Cyprus." Styllou, who spoke through an interpreter from the witness-stand replied "never" to all questions asked by the prosecution, and denied that she had ever "had any disagreement of a serious kind with her daughter-in-law".<sup>160</sup> However, the jury of ten men and two women, took less than two hours to find her guilty. After having the verdict

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<sup>159</sup>CRIM 1/2492 Testimony of Detective-Inspector Robert Fenwick 26th August 1954.

<sup>160</sup>*Daily Mirror* 28th October 1954; *Manchester Evening News* 27th October 1954.

translated, she was asked if she had anything to say. She responded that she "would like to say something to the court and go into the witness-box."<sup>161</sup> Her request was denied, and she "showed no apparent emotion" as the judge passed the death-sentence.<sup>162</sup>

### Insane But Fit To Plead: A Contradiction in Terms?

Two months prior to Styllou Christofi's trial when her case was heard in Hampstead Magistrate's Court newspapers reported that she was "absolutely bewildered by the proceedings."<sup>163</sup> The Principal Medical Officer at Holloway, Thomas Christie, had had Styllou under observation for over two months and had "seen her frequently" when he wrote his medical report.<sup>164</sup> He and his colleagues had noted that she was "hysterical; very distressed; restless; aggressive; sitting in bed, screaming, with her two stockings twisted in her hands." He recognised the difficulties in assessing her "mental defectiveness" due to the language barrier between them but none-the-less concluded that she was "mentally deranged":

The clinical picture then, is that of a non-systematised delusional mental disorder. This is a recognised disease of the mind. ... [T]he fear that her grandchildren would not be brought up properly induced a defect of reason due to the above disease of the mind, whereby however much she may have been capable of appreciating the nature and quality of the acts she was doing, at the time of the acts the defect of reason was such that she was incapable of knowing that what she was doing was wrong. In my opinion Styllou Pantopiou Christofi is insane, but is medically fit to plead and to stand trial.<sup>165</sup>

Although Dr Christie's report was made available to both prosecution and defence it was not revealed during the trial because Styllou herself refused to plead insanity.<sup>166</sup> As pointed out by *The Lancet* this "raises the question of how far a prisoner as to whose sanity there is some doubt, is the best person to decide his or her defence."<sup>167</sup> Yet, having declared a defendant fit to plead, it would seem contradictory to deny her the right to choose her own defence. Members of the *Royal Commission on Capital Punishment* who reported in 1953, recognised the

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<sup>161</sup>*Daily Mirror* 29th October 1954.

<sup>162</sup>*Daily Telegraph* 29th October 1954.

<sup>163</sup>*The Times* 27th August 1954.

<sup>164</sup>CRIM 1/2492 Medical Report dated 5th October 1954 by PMO Thomas Christie.

<sup>165</sup>CRIM 1/2492 Medical Report dated 5th October 1954 by PMO Thomas Christie.

<sup>166</sup>*Manchester Guardian* 15th December 1954.

<sup>167</sup>*The Lancet* 8th January 1955 (Vol 1) p.96.

problematic nature of this issue, but only one member, Sir David Henderson, argued that "mental deficiency of whatsoever degree should be regarded as an adequate defence in bar of trial or sentence." Other members argued that "every person who is certifiable as a mental defective ... [should not] necessarily be regarded as unfit to stand ... trial."<sup>168</sup> Yet, even by the definition of those who supported this ambiguous statement, Styllou was insane because the definition of her mental illness fell within the M'Naghten Rules.<sup>169</sup> In short, a defendant could be declared insane and medically fit to plead *simultaneously* resulting in an officially insane person having full responsibility for deciding the nature of her defence. The Styllou Christofi case exemplifies someone who paid with her life for the contradictory assessment of 'insane but fit to plead', for it was widely agreed at the time that had she pleaded insanity, she would almost certainly have been found 'guilty but insane', resulting in institutionalisation rather than execution.<sup>170</sup>

As a result of Styllou's refusal to plead insanity her medical report only became public knowledge days before the execution date. Several Labour MPs responded to this newly publicised evidence by uniting in a last minute effort to save her. In particular Sir Leslie Plummer pointed out that "the mere fact ... she did not claim insanity shows ... she is not of sound mind."<sup>171</sup> Consequently the delegation of MPs made several attempts to present Dr Christie's report to the Home Secretary during the last 48 hours of Styllou's life. However, he refused to see them on the grounds that he had already received assessments concerning her mental condition, from three medical practitioners who had been appointed in accordance with the 1884 Criminal Lunatics Act.<sup>172</sup> The MPs considered the Home Secretary's refusal to see them 'unprecedented' to which he responded:

I am sure that while it is of course open to Members of Parliament to submit representations to the Secretary of State, the House will agree that a Home Secretary should not be expected to receive oral representations, even from

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<sup>168</sup>Royal Commission on Capital Punishment 1949-1953 Report (1953) Her Majesty's Stationery Office, London p.119.

<sup>169</sup>The Lancet 8th January 1955 (Vol 1) p.96. See also Royal Commission on Capital Punishment 1949-1953 Report, (1953) Her Majesty's Stationery Office, London p.119.

<sup>170</sup>See for example *Manchester Guardian*; *Manchester Evening News*, both 15th December 1954;

<sup>171</sup>*Daily Mail* 15th December 1954.

<sup>172</sup>The Lancet 8th January 1955 (Vol 1) p.96. This Act stipulated that where there is doubt about a prisoner's sanity, the Home Secretary must appoint two or more legally qualified medical practitioners to examine the prisoner.

Members, and to discuss the case with them, when he is engaged in the discharge of this onerous and anxious duty."<sup>173</sup>

Yet the members of the panel assessing Styllou's mental condition were not bound by the M'Naghten Rules, nor were they necessarily concerned with her condition at the time of the murder, but at the time of the examination.<sup>174</sup> To clarify these points the Home Secretary was asked to publish both the panel's medical evidence and the advice supplied by the trial judge. He refused both requests, stating that it would "be contrary to long-established practice and open to considerable objection."<sup>175</sup>

Labour MPs such as Sydney Silverman and Leslie Plummer expressed their "great distress that a woman who may well have been insane and had in fact been declared insane by the prison doctor, had been executed" and consequently tabled their disquiet in a censure motion only 12 hours after her death.<sup>176</sup> Styllou Christofi's files does not contain evidence of any other individual or group speaking for her, hence these MPs stood alone in their public opposition to her execution. As Edgar Lustgarten was to write many years later:

Nobody raised a fuss when Mrs Christofi was hanged in 1954. But then who was Mrs Christofi? A dark-skinned foreigner.<sup>177</sup>

The scantiness of the file relating to Styllou Christofi means that we do not have enough evidence to form a definite opinion regarding her mental state. It does not, for example, contain the medical evidence of the three experts appointed by the Home Secretary. We do know, however, that immediately after the verdict the public learned that this had been Styllou's second trial for murder. Twenty-nine years earlier, she, her sister-in-law and another woman had been acquitted of murdering her own mother-in-law by forcing a burning piece of wood down her throat.<sup>178</sup> Moreover, her son's impression of his mother when he visited her two weeks prior to the execution, seemed to support Dr Christle's report:

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<sup>173</sup>*Manchester Guardian* 15th December 1954; *The Times* 21st December 1954.

<sup>174</sup>*Manchester Guardian* 15th December 1954; *The Lancet* 8th January 1955 (Vol 1) p.96.

<sup>175</sup>Home Secretary Lloyd George quoted in *The Lancet* 8th January 1955 (Vol 1) p.96.

<sup>176</sup>*The Times* 16th & 17th December 1954; *The Daily Mail* 16th December 1954.

<sup>177</sup>*News of the World* 8th October 1972.

<sup>178</sup>*Daily Telegraph* 29th October 1954; *Daily Mirror* 29th October 1954.

As usual she would not reason at all. She just shouted 'Innocent, innocent.' She turned around to say she had forgiven me for what I have done for her being in prison, and that she had nothing to do with the whole thing. She blamed me because, she said, I was the main witness.<sup>179</sup>

While in prison Styllou dictated several letters to Stavros, reiterating that he was to blame for her predicament rather than herself, suggesting at best, a failure to come to terms with reality and take responsibility for her own actions, at worst, severe paranoia as well as an inability to consider the loss Stavros had suffered, which was about to intensify with the trauma of losing not only his wife but also his mother:

I hope that you are all right as well as your children. I hope that you will always be with God's help. It doesn't alter what is going to happen to me. You have tried too hard to hang me, to put around my neck the noose, so that you may rest. I am not obliging you to come and see me, my son. For my fortune, there are my family in the streets in Cyprus crying for me. If you saw their letters, you would be moved and cry as we do. My brothers say that if the sea were earth they would come on foot to see me. Kiss the children for me.<sup>180</sup>

Styllou's state of mind coupled with the contrast between an illiterate Cypriot woman who had spent all her life in a remote, rural corner of the island, and the andro- and Northern Euro-centric culture of the criminal justice system in central London, have created a vast gap in our comprehension of this case - obscuring Styllou's motives and reasoning. Instead we are left with a set of tantalising questions to which we will never know the answer, because Styllou's account was muted not only in a symbolic sense but also in a very literal sense as a consequence of the language barrier. For example, what did Styllou want to say after the verdict was announced? What were the circumstances of her first trial, and why were she and her co-defendants not found guilty? What were her motives in stripping Hella naked before setting fire to her, and why did she remove and hide her wedding-ring? Did she realise that metal would not burn, or did the removal of the ring symbolise the end of Hella's 'ownership' of Stavros whom Styllou felt she had lost to her? We cannot know the answers to these questions because Styllou had failed to communicate through dominant modes of expression not just at a judicial level but also at a cultural level. Moreover, her failure to display acceptable and appropriate feminine behaviour in the crucial area of motherhood ensured that she was perceived as a dangerous woman. This dangerousness was greatly magnified by her capacity for extreme violence and

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<sup>179</sup>Stavros Christofi quoted in *The Daily Mail* 15th December 1954.

<sup>180</sup>Styllou Christofi's letter reproduced in Wilson 1971:307.

her total failure to display remorse. Her shouting and cursing as well as her attempts to blame her own son for her predicament, ensured that she could not be constructed as a 'pathetic' or 'helpless' victim as discussed in the Introduction. Furthermore, her "mental defectiveness" was not of the type conducive to sympathy which may have resulted in her being declared 'mad' but instead appeared as negative personality characteristics which led to her being described as 'obstinate', 'suspicious' and 'cunning'.<sup>181</sup> Not only did these characteristics stand in sharp contrast to the feminine ideal of the naive, malleable and docile woman, they were also important ingredients in the construction of the 'bad' woman. When this construction became overlaid with her "dark-skinned foreignness" Styllou Christofi found herself located at the receiving end of both judicial and cultural misogyny.

Styllou "walked calm and unassisted to the scaffold at Holloway" thus becoming the first woman in British criminal history whose execution was witnessed by a female prison governor.<sup>182</sup> Meanwhile, those of us attempting to make sense of cases such as Margaret Allen's and Styllou Christofi's, are confronted with the ultimate irony of a criminal justice system which throughout history has attempted to categorise relatively 'normal' women as 'mad' as discussed in the Introduction, while the mental state of those criminal women who may well qualify for this category is ignored, and the women sent to their deaths as a consequence of that system.

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<sup>181</sup>CRIM 1/2492 Medical Report dated 5th October 1954.

<sup>182</sup>*Daily Mirror* 16th December 1954. This governor was Dr Charity Taylor.



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## Chapter Seven - Part II

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### Poison: 'A Woman's Weapon'.

As long as capital punishment remains the law of the country, poisoners ... will never be allowed to escape their just punishment whatever juries may recommend. *There are no extenuating circumstances in murder by poison and none can ever be pleaded.*<sup>1</sup>

In Chapter Three I noted that women poisoners have historically been regarded as particularly loathsome and odious because their crimes could never be construed as being due to a temporary loss of control, but always indicated premeditation, suggesting a cool, rational and calculating approach to killing, which contrasts sharply with expected female conduct and behaviour. Moreover, as a result of women's traditional responsibility for the preparation of food and the belief that they were "fitted by nature to cheer the afflicted, elevate the depressed, minister to the wants of the feeble and diseased"<sup>2</sup>, the woman poisoner was understood as having transgressed this 'law of nature' when she utilised this role for her own end. She thus came to be seen as an ultra dangerous inversion of womanhood - someone who to outward appearances accepted her role as cook and carer, yet secretly used that role to kill her charges:

Of all the kinds of Murders, that by Poison is the most dreadful, as it takes a Man unguarded, and gives him no Opportunity to defend himself; much more so when administered [sic] by ... [someone] whom one could least suspect, and from whom one might naturally look for Assistance and Comfort.<sup>3</sup>

Such anxiety still surrounded the woman poisoner during the first half of the 20th century, because, as will become apparent during the following case-studies, this type of murder method was still used with relative frequency and always received maximum publicity. In the remainder of this chapter I analyse the effect that the discourse of the 'woman poisoner' had on the cases of two women carers who killed their charges by poison. Both women initially stood trial with

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<sup>1</sup>O'Donnell, B. (1956) *Should Women Hang?* W.H. Allen, London, pp.175-6. Emphasis in the original.

<sup>2</sup>Jones, A. (1991) *Women Who Kill* Gollancz, London, p.81.

<sup>3</sup>Quoted from the Mary Blandy trial transcript, reproduced in Gonda, C. (1992) "Exactly Them Words": Histories of a Murderous Daughter' in Gonda, C. (1992) *Tea & Leg-Irons Open Letters*, London, p.72.

their male accomplices who were acquitted due to lack of evidence, a factor which emphasises the significance of the discourses of the 'woman carer' and the 'female poisoner' as I shall now illustrate.

### The Case of Dorothea Waddingham.

Dorothy [sic] was 36, a short, plump, fair woman with protruding teeth. No one could have called her attractive, but she looked capable and very ordinary. Sullivan was a smart dark-haired man of 41 who had won the Military Medal in the Great War.<sup>4</sup>

As was the case with the majority of women who have been executed during the 20th century, the life of Dorothea Waddingham was one of abject poverty. Born into a large family in 1902, she worked as a maid in the Burton-on-Trent Workhouse Infirmary by the time she was in her twenties. Although she possessed no qualifications it was her experience in the Infirmary which prompted her to call herself 'nurse' Waddingham when years later she was to run a nursing home.<sup>5</sup> In 1933 her husband died, leaving her with three children. Even when he had been alive, the family had existed in dire poverty for he had been a "chronic invalid" who was rarely well enough to work.<sup>6</sup> Prior to her widowhood Dorothea had committed several poverty-related offences. For example, she had been imprisoned for stealing a watch from a maid she employed. The exact circumstances of the crime were rather more complex: she had obtained the watch by telling the maid she could "get it regulated free of charge." But in reality Dorothea needed the watch to pawn at a time when she "had no money and scarcely any food in the house."<sup>7</sup>

By 1935 Dorothea was running a nursing home with the father of her two youngest children, Ronald 'Joe' Sullivan, whose official role was that of a domestic help. In January she received two new clients, 87-year old Louisa Baguley and her daughter Ada Baguley aged 50, who was a "helpless cripple" - suffering from progressive disseminated sclerosis.<sup>8</sup> The initial weekly payment for looking after the two women soon proved to be inadequate, and on 7th May Louisa Baguley signed a will which stipulated that her and Ada's estate, valued at £1600, should be

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<sup>4</sup>Wilson 1971:283-4.

<sup>5</sup>ASSI 13/66 XC6872 Public Record Office, Chancery Lane, London WC2A 1LR. Statements by Dorothea Waddingham, 24th September 1935; 16th January 1936; O'Donnell 1956:88-9.

<sup>6</sup>Huggett & Berry 1956:188.

<sup>7</sup>*Manchester Evening News* 16th April 1936. At the time of the crime Dorothea also owed the said maid £9 in back-pay. She received a three-month sentence.

<sup>8</sup>*The Times* 15th February 1936.

divided equally between Dorothea and Joe after the two women's deaths in exchange for their permanent care at the nursing-home. Five days later Louisa was dead, and four months later Ada too died.<sup>9</sup> The Coroner's suspicion was aroused when Joe, who was organising the funeral arrangements, produced a letter which read:

I desire to be cremated at my death for health's sake. It is my wish to remain with nurse and my last wish is that my relatives shall not know of my death.<sup>10</sup>

The letter had originally ended after the word 'nurse', and the following line concerning Ada's 'last wish' had been squeezed in between the last line and Ada's supposed signature, for the letter was clearly in Joe's handwriting. An investigation was soon underway which resulted in both Dorothea and Joe's arrest and trial for murder. At first glance it appeared to be an 'open and shut' case with the prisoners' guilt glaringly obvious. Yet, as the trial progressed and each piece of evidence was tested, Mr Justice Goddard, the trial Judge appeared to express reservations about the strength of the case:

there was a great deal which at first appeared to be likely to be important evidence for the prosecution, but it had disappeared, and there were facts "which shout almost in her favour."<sup>11</sup>

Poisoners are invariably convicted as a result of circumstantial evidence and indeed the point of this analysis is not to establish Dorothea's guilt or innocence but to examine how it came about that the evidence against Joe came to be understood as 'more' circumstantial than that against Dorothea, for, like Ada Williams' husband before him, Joe was to walk out of court a free man, while Dorothea had to face her executioner alone, just like Ada 36 years earlier.

#### Challenging the Dominant Truth: Separating Evidence from Assumption.

Nurse Waddingham[s] ... face was red and her figure swayed slowly as she stepped half a pace forward in the dock. "Guilty," the word echoed... In the court Sullivan stood at attention while it was stated that no evidence would be offered by the Crown ... A second later he walked away to freedom.<sup>12</sup>

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<sup>9</sup>ASSI 13/66 XC6872. Death certificates and accompanying details included in this file.

<sup>10</sup>ASSI 13/66 XC6872. Original letter dated 29th August 1935.

<sup>11</sup>*Daily Mirror* 28th February 1936.

<sup>12</sup>*Daily Mirror* 28th February 1936.

Unlike the case against Joe Sullivan, Dorothea's case was heard mainly through the discourses of 'woman as carer' and 'the woman poisoner'. With respect to the first discourse, I have already discussed how notions of the maternal instinct can be extended to include sick and helpless adults since caring for others and putting herself last is part of women's 'nature' and normal femininity. Such beliefs and expectations help to identify and establish what counts as 'appropriate' female conduct and behaviour and provide the context within which Dorothea was judged. With respect to the second discourse, despite history's exposé of numerous cases of male poisoners, the belief that poison is a woman's weapon persisted, and resulted in women poisoners being considered far more threatening than other murderers including male poisoners, due to the complete lack of male control over a hand which should be serving food, but was serving poison instead:

Murder by poison was particularly feared because there was no way to see it coming or to defend against it. ... "It is usually committed in secret, and so insidiously, that no forecast can prevent it - no manhood resist it."<sup>13</sup>

In other words, unlike male poisoners who at times have been portrayed as 'clever'<sup>14</sup>, women poisoners, because of their role as providers of food, love and comfort within the supposed safety of the domestic sphere, came to be seen as 'sneaky' and 'lethal' - "the witch who lurked in woman's sphere and haunted the minds of men."<sup>15</sup> Thus, unlike Joe Sullivan whose gender excluded him from discourses of 'caring' or 'poisoning', the creation of the dominant 'truth' about Dorothea Waddingham involved a struggle between the discourses of 'woman as carer' and 'woman as poisoner'.

In the previous chapter I questioned the quality of the defence received by some of the women standing trial for their lives. Dorothea, like the majority of women discussed in this thesis, was too poor to pay for her own representation.<sup>16</sup> This however, was not reflected in the quality of her defence, as her very able counsel Mr Eales, skilfully undermined the evidence of several key prosecution witnesses. However, Dorothea did not give a favourable impression either during the initial investigation or in the dock. As a result of her lack of subtlety she appeared cold-

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<sup>13</sup>Jones 1991:110 quoting the prosecutor at the Ann Simpson trial.

<sup>14</sup>This is not to suggest that such men escaped the death penalty as can be seen from Ellis's discussion of the Seddon case in Ellis, J. (1996) *Diary of a Hangman* Forum Press, London p.76.

<sup>15</sup>Jones 1991:81; 82.

<sup>16</sup>*The Times* 6th February 1936.

hearted and insensitive as can be deduced from her statement about the will referred to above which had been made in her and Joe's favour:

They looked like living 20 years and more than that. I had to take the risk. It was pushed on to me - no one else would have them... All the members of the family wanted their money but didn't want them. I found I had them on my hands and could not get rid of them.<sup>17</sup>

These are not the words of a committed and dedicated carer attempting to ease the lives of the feeble and sick, but are blunt and harsh expressions, indicating a cynical and mercenary attitude towards the Baguleys whose deaths cannot come soon enough.

When questioned about the hours leading up to Ada's death, Dorothea replied:

She looked very ill. Her eyes were open and her face was flushed and she was breathing heavily. I spoke to her and got no answer. I put brandy to her lips but she could not take it. I thought she was having a stroke. I did not send for the Doctor. I thought she might rally on for days.<sup>18</sup>

Given Ada's condition according to Dorothea's own evidence, it seems extraordinary if not callous, that a doctor was not sent for urgently. When she recalled the events surrounding Joe's writing of the letter on Ada's behalf concerning her wish to be cremated, Dorothea's choice of words could not have failed to make an impact:

She [Ada] said "It is like signing my death warrant". I replied "In a way it is - don't sign it if you don't want to".<sup>19</sup>

The unfavourable impression that Dorothea's choice of phrases created was not improved by her conduct in Court where on two consecutive days, she interrupted witnesses, shouting from the dock: "Don't be such a liar! Don't be such a liar!"<sup>20</sup>

Her credibility as a witness was further tarnished as a result of having to admit certain untruths and 'mistakes', such as the fact that she and Joe "were known as brother and sister", and the letters after her name on her business card were "a mistake", for as noted above, she had no formal qualifications.<sup>21</sup>

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<sup>17</sup>ASSI 13/66 XC6872 Statement by Dorothea Waddingham, 16th January 1936.

<sup>18</sup>ASSI 13/66 XC6872 Statement by Dorothea Waddingham, 16th January 1936.

<sup>19</sup>ASSI 13/66 XC6872 Statement by Dorothea Waddingham, 16th January 1936.

<sup>20</sup>*The Times* 7th & 8th February 1936.

<sup>21</sup>ASSI 13/66 XC6872 Statement by Dorothea Waddingham, 16th January 1936.

None-the-less, Dorothea persisted with her claim that Dr Manfield who attended all patients at the nursing home, was a liar, when he stated he had never provided her with morphine tablets to give to Ada. She further claimed that he had left no instruction concerning the dosage of Ada's medicine, and that empty medicine bottles found on her premises had been given to her children by Dr Manfield to play with. Within the context of the hierarchy of credibility and the disparity of social status between Dorothea and Dr Manfield accusations of such professional lapses were regarded with suspicion. As expressed by two observers: "Nurse Waddingham was an unconvincing witness, as hard to believe as she was hard to hear."<sup>22</sup> This became especially apparent when Dorothea made contradictory statements regarding the type of medicine she had given Ada. The prosecution attached great importance to the fact that initially she had claimed never to have given Ada morphine, but later she changed this statement and claimed she had given her 10 morphia tablets provided by Dr Manfield. The reason why she had not revealed this in her initial statement, was that Dr Manfield had instructed Dorothea not to say anything about the tablets, and that "if it was necessary he would deal with it."<sup>23</sup> As the verdict was to show, the jury did not believe this version of events.

Dorothea further suggested that a mistake may have been made by the chemist in making up Ada's medicine, especially since only his assistant was available at the time she called for the medication.<sup>24</sup> She also argued that visitors may have brought Ada the lethal medicine, and commented that "this is a put-up job."<sup>25</sup> However, she did not shy away from the pressing issue of the charges against her, and volunteered that "Miss Baguley made a will in favour of me and Mr Sullivan and I wish she hadn't. I think it's the will that is causing all this upset."<sup>26</sup>

Other important factors in the case for the prosecution included the accusation that the defendants had conspired to keep visitors away from Ada,<sup>27</sup> that Dorothea and Joe "had taken control of Ada", and that relatives could write to her but all

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<sup>22</sup>Huggett & Berry 1956:116.

<sup>23</sup>ASSI 13/66 XC6872 Statement by Dorothea Waddingham 16th January 1936.

<sup>24</sup>ASSI 13/66 XC6872 Statement by Detective Inspector Albert Pentland, 6th February 1936.

<sup>25</sup>ASSI 13/66 XC6872 Statement by Detective Inspector Albert Pentland, 6th February 1936.

<sup>26</sup>ASSI 13/66 XC6872 Statement by Dorothea Waddingham 24th September 1935.

<sup>27</sup>ASSI 13/66 XC6872 Testimony of Laurence Baguley p.5 and of Miss Blagg who testified that she was "first refused admission - then Sullivan said: "Oh very well but I shall be in the room." p.7.

letters would be opened, "and if they were not approved of they were not given to Miss Baguley."<sup>28</sup>

Lacking any direct evidence, the prosecution set out to convince the jury that Dorothea had had a store of morphia tablets left over from prescriptions issued to other patients at the nursing home who had died previously, and that she and Joe had used these tablets to poison both Louisa and Ada in order to inherit their estate, although ultimately, the Crown decided to prosecute for the murder of Ada only. Evidence of Joe's involvement in the conspiracy included the following: First, he was solely responsible for contacting and making arrangements with the solicitor who drew up the will.<sup>29</sup> Second, he admitted writing the letter quoted above but claimed it was at Ada's request and that she had said: "I should very much like you to put in if you can get it in that small space 'I do not want any relatives to know of my death.'"<sup>30</sup> Third, he was also responsible for writing a letter to Ada's cousin, which he again claimed had been at her request:

I do not like you saying what you did about Joe as he is kindness itself to me and my mother. He is the only one who has done anything for us, and is kindness itself... You need not worry about me as everything is all right.

Underneath, Joe had added his own postscript in the form of a threat:

I should like to know what you mean about that chap you called Jos Has you call him [sic] if ever you cross my path you will know what that means there is always straight-forwardness carried out here, and mark my word we know what you have been trying to do, but if you are not careful you will regret it, so keep your eyes open in future, and Miss Baguley is quite aware of my writing this.<sup>31</sup>

Fourth, several witnesses testified he often played a dominant part in keeping visitors away from the Baguleys, which was interpreted as stemming from a fear that relatives might interfere with the will.<sup>32</sup> Fifth, Joe collected the rents from the properties belonging to the Baguleys.<sup>33</sup> Sixth, a bank clerk testified that Joe

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<sup>28</sup>ASSI 13/66 XC6872 Testimony of Edith Eyres, deposition file vol 2 p.19; p.20.

<sup>29</sup>ASSI 13/66 XC6872 Testimony of Mr Lane, deposition file vol 1 p.25.

<sup>30</sup>ASSI 13/66 XC6872 Statement of Ronald Joe Sullivan 24th September 1935.

<sup>31</sup>ASSI 13/66 XC6872 Exhibit 4. Original letter to Lawrence Baguley - undated.

<sup>32</sup>ASSI 13/66 XC6872 Testimonies of Mary Bardill deposition file vol 2 p.15; Louisa Taylor vol 2 p.4. and Miss Blagg p.7. See also evidence of Lawrence Baguley, to whom Joe had said: "It is no use coming back, they don't want to see you." (*The Times* 6th February 36).

<sup>33</sup>ASSI 13/66 XC6872 Statement of Dorothea Waddington 16th January 1936.

According to Dorothea, Ada had instructed Joe to collect the money. The testimony

had accompanied Ada to the bank when she withdrew *all* her money.<sup>34</sup> Seventh, Joe was with Ada throughout her last night, and it was he who called the doctor in the morning.<sup>35</sup> He had also been present when Louisa died.<sup>36</sup> Finally, it was Joe who was in charge of the funeral arrangements, who was advised by the undertaker about the necessary legal requirements before a cremation could proceed, and who signed a receipt for the appropriate certificates.<sup>37</sup>

Yet, on the third day of the trial, before he had been called upon to give evidence, the judge ordered the murder charge against him to be dropped because of lack of evidence. The prosecution argued that "certain letters ... showed that Sullivan was a participant in the matter. There is direct participation in the matters ... such as the writing of letters, visits to the bank - direct and personal participation in the matter."<sup>38</sup> The judge however argued that:

The only evidence at present is that Sullivan was in this house, assisting in taking about the patients, raising them in bed, wheeling them about, and doing household work. There is no evidence that he was interested in the house, no evidence as to the relationship of the prisoner, no evidence except what has been given here that he was in the position of servant ... it could not be said that even if every word of the evidence were accepted it raises a case of more than that Sullivan ... may have been connected with the matter and not that he must have been.<sup>39</sup>

Of course there was no evidence that Dorothea had intended to kill either, for she did not deny having given the tablets to Ada, the dispute arose because she claimed to have acted according to the instructions of Dr Manfield, and because it was suspected that Ada had received more than the 10 tablets that Dorothea claimed responsibility for. This point was not lost on the judge for in dismissing the case against Joe he also stated:

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of solicitor's clerk J.K. Lane confirmed Joe's involvement in Ada's financial affairs. (Statement of J.K. Lane 16th September 1935 p.8).

<sup>34</sup>ASSI 13/66 XC6872 Statement of Mr Alcock 16th September 1935 p.18.

<sup>35</sup>ASSI 13/66 XC6872 Statement of Dorothea Waddingham 24th September 1935.

<sup>36</sup>ASSI 13/66 XC6872 Death Certificate dated 13th January 1936.

<sup>37</sup>ASSI 13/66 XC6872 Statement of undertaker George Musson dated 16th September 1935 p.26 and in deposition file vol 2 pp.34-5. See also statement of J.K. Lane who testified that Joe Sullivan signed receipts and collected Ada's bank books and Certificates (16th September 1935 p.8). See also reports in *The Times* 6th & 26th February 1936.

<sup>38</sup>Mr Birkett, prosecuting speaking to the trial judge, Lord Goddard. Trial transcript quoted in *The Times* 27th February 1936.

<sup>39</sup>Lord Goddard to Mr Birkett. Trial transcript quoted in *The Times* 27th February 1936 and *Manchester Evening News* 26th February 1936.



It must be said in relation to the woman and the man that they could not have done anything in regard to the disposition of this property in a more open way if they tried. They send papers to the solicitor, they send to the bank, they tell all the relatives. If it had been a case of the production of a will after death and nobody had heard anything about it ... it would have been a very different matter.<sup>40</sup>

None-the-less Dorothea was now alone in the dock. However, her solicitor had already discredited some of the most damning evidence against her, during the Magistrate's Court hearing, and under Mr Eales' skilful cross-examination of key prosecution witnesses, a very different picture emerged, with some of the insinuations against her being shown to be false while her other unconvincing explanations and claims were proved to be both correct and truthful. First, the witnesses who had claimed that they had not been allowed to visit the Baguleys, admitted they had made no complaint about this since they believed the Baguleys were properly looked after. Furthermore, Dr Manfield gave evidence that Ada had "told him she had fallen out with her relatives", and she herself had asked the doctor "not to let Lawrence Baguley come to Devon Drive again." Accordingly, as professional adviser to the Baguleys, he instructed Nurse Waddingham that "Lawrence Baguley ... must not be allowed to come again."<sup>41</sup> Indeed Lawrence was exposed as having attempted to have Ada declared mentally unfit to make a will in an attempt to prevent the Baguley's estate from leaving the family.<sup>42</sup> Moreover, another relative gave evidence that Ada herself had said to her that she did not wish to see Lawrence again.<sup>43</sup> Other relatives admitted that conflict had arisen between them and Dorothea and Joe because of concern about the Baguley estate leaving the family, not because they were concerned about the Baguleys or the care they received. On the contrary, numerous witnesses testified that the Baguleys received proper care in the hands of Dorothea and Joe.<sup>44</sup> For example, Dr Jacobs, a friend of the Baguleys who had visited them regularly was satisfied that they "were happy and comfortable at Devon Drive."<sup>45</sup> Dr Manfield testified that:

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<sup>40</sup>Lord Goddard to Mr Birkett. Trial transcript quoted in *The Times* 27th February 1936. My emphasis.

<sup>41</sup>ASSI 13/66 XC6872 Evidence of Dr Manfield Deposition file vol 5 p.14.

<sup>42</sup>Trial transcript quoted in *The Times* 25th February 1936.

<sup>43</sup>ASSI 13/66 XC6872 evidence of Mary Eyres, Louisa Baguley's niece. See also evidence of Dr Manfield above.

<sup>44</sup>ASSI 13/66 XC6872 Laurence Baguley himself testified that: "My aunt and cousin appeared to be comfortable and contented." Statement dated 16th September 1935 p.5. See also evidence of Mr Alcock deposition file vol 1 p.17; Miss Blagg p.6 and Edith Eyres vol 2 p.23, who all agreed the Baguleys appeared to be happy and comfortable and were "being perfectly well looked after."

<sup>45</sup>ASSI 13/66 XC6872 Evidence of Dr Jacobs deposition file vol 7 p.12.

he had always found that Waddingham was very anxious to do the best she could for every one of her patients. On one occasion, when she had been confined, she got up from her bed and attended to her patients in less than 24 hours from her confinement. He had never had a single complaint to make about her work as nurse, ... [but] had always been perfectly satisfied with Nurse Waddingham's treatment of his patients.<sup>46</sup>

The insinuations that Dorothea and Joe had something to hide, were mistreating the Baguleys, or were trying to isolate them, were finally disproved with the evidence of Mrs Briggs who had visited Ada on her last afternoon and had spent several hours with her during which Ada seemed happy and content and did not at any point suggest she was unhappy at Devon Drive.<sup>47</sup> Moreover, in his summing up the judge pointed out that Dorothea's nursing home was recommended and "selected by the secretary of the County Nursing Association."<sup>48</sup>

The second important piece of evidence against Dorothea was Dr Manfield's testimony which was in direct conflict with her own. As noted above, Dorothea was suspected of having poisoned Ada with tablets left over from other patients, but she claimed to have received 10 tablets from Dr Manfield to be administered at her discretion, something which he strenuously denied. However, evidence was given both in the Magistrate's Court and at the trial, which cast Dr Manfield's credibility as a witness into doubt. First, he admitted that Dorothea had in fact returned "about a dozen tablets which he had prescribed," and six when another patient died.<sup>49</sup> Second, he admitted that on a previous occasion he had made a mistake regarding the dosage of Ada's medicine:

I suppose doctor, it would be no exaggeration to call that a blunder, would it? - Well, I suppose the best of us make blunders at times, I am not going to commit myself. It was a blunder in the right direction.

Mr Smith repeated his question, and Dr Manfield exclaimed "I am not going to answer that question. Why should I?" ...

In view of the fact that you had given medicine 300% weaker in morphia that day, you left at the same time six morphia tablets?

No, I did not.<sup>50</sup>

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<sup>46</sup>Evidence of Dr Manfield reproduced in *The Times* 26th and 13th February 1936. See also ASSI 13/66 XC6872 where Dr Manfield testified: "I have never known Waddingham attempt to deceive me." (Deposition file vol 5 p.32).

<sup>47</sup>*The Times* 6th February 1936; *Manchester Evening News* 24th February 1936.

<sup>48</sup>Summing up speech reproduced in *The Times* 28th February 1936.

<sup>49</sup>Birkett examining Dr Manfield, reproduced in *The Times* 27th February 1936.

<sup>50</sup>Mr Smith, Dorothea's solicitor examining Dr Manfield, quoted in *The Times* 12th February 1936. Dorothea claimed that the 10 tablets had been given to her on two separate occasions - six on one occasion, four on the other.

When Dr Manfield was asked if he had left dosage instructions on the last bottle of medicine for Ada, he replied "I don't know." However, both the chemist and his assistant remembered "that there were no instructions on the prescription."<sup>51</sup> Third, the doctor's professionalism was challenged by Dr Owen-Taylor who "said that there was gross neglect in regard to one of ... [Ada's] bed sores and disagreed with Dr Manfield that proper treatment was given."<sup>52</sup> At a less serious level, but none-the-less one which indicates the lack of good judgement of Dr Manfield, he admitted that he had indeed given Dorothea's young son empty medicine bottles to play with.<sup>53</sup> In his summing up Mr Justice Goddard appeared to consider the possibility that Dorothea's version of the truth was the accurate one when he suggested that Dr Manfield may have felt "his professional reputation was at stake" if a patient had died from medicine which he had prescribed.<sup>54</sup>

Although Dorothea's defence could not prove her innocence it successfully exposed the incompetence and irregular practices of the professionals whose evidence the prosecution relied on. Thus, prior to the cross-examination of Dr Manfield the work practices of Dr Owen-Taylor and Mr Taylor his assistant, who performed Ada's autopsy, came under close scrutiny, resulting in the revelation that the organs required for examination had not been put into "stoppered jars"; had not been covered at all; and "were all mixed up together." Moreover the container had not been labelled, and no receipt for the organs had been obtained.<sup>55</sup> Mr Taylor further admitted that he had never before carried out an analysis for morphine, while Dr Owen-Taylor stated that:

I cannot say that the organs I examined and in which I found 3.192 grains of morphia are the organs of Miss Baguley.<sup>56</sup>

The work practices of the police surgeon and his staff were thrown into further disrepute when Mr Taylor conceded that during the examination of the organs, "there was no representative of Nurse Waddingham there and no opportunity for anybody on her behalf to check whatever results ... [were] arrived at". As the

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<sup>51</sup>Evidence of Mr Leader and Mr West, reproduced in *The Times* 12th February 1936 and quoted in *The Times* 13th February 1936. Emphasis in the original.

<sup>52</sup>Evidence of Dr Owen-Taylor reproduced in *The Times* 14th February 1936.

<sup>53</sup>Evidence of Dr Manfield quoted in *The Times* 13th February 1936.

<sup>54</sup>Summing up speech reproduced in *The Times* 28th February 1936.

<sup>55</sup>Evidence of Dr Bernard Owen-Taylor quoted in *The Times* 14th February 1936.

<sup>56</sup>Evidence of Mr W.W. Taylor and Dr Bernard Owen-Taylor quoted in *The Times* 12th and 15th February 1936.

organs were destroyed after the examination this could not be rectified at a later date.<sup>57</sup> Finally, when Dorothea's representative asked Dr Roche Lynch, who appeared as an expert witness on behalf of the prosecution, if it was possible his opinion could be wrong, the doctor agreed that such a possibility existed.<sup>58</sup>

It remained for the defence to explain Dorothea's original claim that she had never given morphia to Ada. For this purpose Detective Inspector Pentland was cross-examined:

I think that when Waddingham said "I have never given Miss Baguley any morphia" she may not have meant it literally. I did not take her statement literally nor did I take her statement literally when she said, "I have never had any morphia in the house". When she made those first few remarks she was in a very agitated condition. She collected herself afterwards. It is quite likely that she meant that she never gave or kept any morphia except on instructions of another person - the Doctor.<sup>59</sup>

Detective Inspector Pentland added that Dorothea had been "very upset and very ill" and "was expecting the birth of her child any day" when she made her statement, yet had still been willing to assist him "in every way" and voluntarily made a statement, unlike Joe, who when asked to sign his statement replied "No".<sup>60</sup>

Ultimately then, after the four-day trial in front of an all-male jury a complex and contradictory picture of Dorothea had emerged, which was reflected in the Judge's summing up:

There are some things which you would say are consistent with the most innocent facts that one could imagine. There are facts which, if you believe them, are equally grave the other way.<sup>61</sup>

On the one hand, the Baguleys (or any other resident of Devon Drive) had never made a complaint against Dorothea or the quality of care she provided, despite ample opportunities since, as pointed out by the judge: "a procession of witnesses, relatives and friends ... had called at the home without let or hindrance."<sup>62</sup> Furthermore, she was considered to be an "efficient and loving mother" who

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<sup>57</sup>Trial transcript quoted in *The Times* 26th February 1936.

<sup>58</sup>Testimony of Dr Roche Lynch quoted in *The Times* 14th February 1936.

<sup>59</sup>ASSI 13/66 XC6872 Testimony of Albert Pentland 6th February 1936.

<sup>60</sup>ASSI 13/66 XC6872 Testimony of Albert Pentland 6th February 1936.

<sup>61</sup>Judge Goddard quoted in *Manchester Evening News* 27th February 1936.

<sup>62</sup>Summing up reproduced in *The Times* 28th February 1936.

"worshipped" her children.<sup>63</sup> She therefore appeared to fulfil the ideological expectations of woman as a devoted mother and committed carer.

On the other hand her conduct in court had created an unfavourable impression of a coarse yet hapless woman, her answers barely audible one minute, while the next she was shouting at witnesses and disrupting proceedings.<sup>64</sup> The image Dorothea presented was thus a mixture of negative and positive characteristics associated with femininity: at one level she appeared to conform in every way to the stereotypical image of femininity - someone who was hapless, helpless and naive who also obeyed traditional attitudes to the female role of 'caring'. At another level, she was a deadly poisonous monster, made all the more dangerous because of her appearance as harmless and ordinary.<sup>65</sup> One author described her as an "ordinary, capable-looking woman, with a face like an amiable sheep's",<sup>66</sup> a description which implies her 'deviousness' - the apparent gentle and harmless female who secretly harbours poisonous urges under the guise of her conformity - as discussed in Chapter Three. She represented the kind of woman Adam had in mind when he wrote:

... it is not a welcome experience to have those sentiments rudely violated which we have imbibed at the breast, to be called upon to make it clear that some of those creatures whom we have been taught to contemplate as nearly approaching the angelic are, by their own acts, more nearly allied to things hellish than to beings heavenly.<sup>67</sup>

The gender-specific nature of this quotation reminds us not to underestimate the power surrounding the discourses of women as 'devious' and as 'carers', and illustrates the specific and unique way criminal women come to be understood as a result of gender role expectations. For example in relation to child-care, beliefs about appropriate gender roles have been so enduring, that until the 1970s fathers appeared in research "only in response to worries that their total *absence* from the home was a threat to boys' sex-role identity."<sup>68</sup> Indeed the belief that women's 'caring instinct' is innate rather than socially conditioned still holds

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<sup>63</sup>Huggett & Berry 1956:138.

<sup>64</sup>Huggett & Berry 1956:116, wrote that "many of her replies which could scarcely be heard in complete silence, were drowned by coughing in the public gallery or a movement in the courtroom."

<sup>65</sup>See for example Wilson's description of Dorothea Waddingham in Wilson 1971:284.

<sup>66</sup>Wilson 1971:288.

<sup>67</sup>Adam, H. (1910) *Women and Crime* T. Werner Laurie, London p.3.

<sup>68</sup>Segal, L. (1990) *Slow Motion* Virago, London, p.34. Emphasis in the original.

currency.<sup>69</sup> It is as a result of such beliefs that women like Dorothea come to be regarded as doubly deviant because they have committed a crime not only against their victims but also against their *nature*.

Meanwhile, Joe was described as "five years older than Nurse Waddingham but look[ing] younger, and physically he was still attractive with straight, brushed-back hair and a clean open face."<sup>70</sup> Immediately prior to his dismissal in court he was further described by a police detective as being "a man of first-class character" ... [who had] gained the Military Medal for conspicuous bravery in rescuing a wounded officer."<sup>71</sup> This process of distancing Joe from Dorothea was reinforced by emphasising that he was in the position of a servant, and merely "mended the fires [and] swept the floors..."<sup>72</sup> In reality, however, his role within the nursing home was not notably different from hers.<sup>73</sup> As we have seen from Ada's letter above, she held Joe in high regard, describing him as "kindness itself". Moreover, Ada was a large woman who could not walk and at times could not feed herself as a result of her illness. Subsequently Joe was constantly involved in caring for her as was confirmed by numerous witnesses. For example, a niece, Mary Bardill, testified that when she went to visit Ada, "Nurse Waddingham and Sullivan were with her the whole time", and another niece, Louisa Taylor, gave evidence that "there was no time when I could have spoken to Ada when Sullivan was not there."<sup>74</sup> Such eye-witness accounts, taken together with the other circumstantial evidence against him which I listed above, indicate that, just as he had an 'equal' motive in terms of the will, so it was 'equally' possible that he had administered tablets to Ada.

My aim in listing the main pieces of evidence against Dorothea and Joe has been to illustrate, that, as had been the case with Ada and William Williams 36 years earlier, there was not a single piece of direct evidence which irrefutably proved that one of the accused rather than the other had conceived of or carried out the murder. Instead Dorothea's positioning within the established discourses of

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<sup>69</sup>See for example Badinter, E. (1981) *The Myth of Motherhood* Souvenir Press, London.

<sup>70</sup>Huggett & Berry 1956:110.

<sup>71</sup>Trial evidence of Detective William Richardson reproduced in *The Times* 27th February 1936.

<sup>72</sup>*The Times* 27th February 1936; Huggett & Berry 1956:119.

<sup>73</sup>See for example Mr Lyons' cross-examination of Mr Fernlough quoted in *The Times* 26th February 1936.

<sup>74</sup>ASSI 13/66 XC6872 Evidence of Mary Bardill and Louisa Taylor Deposition file vol 2 p.4. See also evidence of Edith Eyres: "I spoke to Ada [at her mother's funeral] but never except in Sullivan's presence." (vol 2 p.18).

woman as carer and woman as poisoner became crucial in establishing a dominant 'truth' about her. Conversely, the absence of these discourses in relation to men is equally noteworthy, because as I have indicated, Joe's role as carer was essentially the same as Dorothea's, yet this carried no special significance for the judge, who, while accepting Dorothea's access to the patients as circumstantial evidence, refused to apply the same logic to Joe and accept his access as possible evidence of involvement. At a different level, Joe's transgression of the masculine role in terms of working as a 'domestic' and hence Dorothea's subordinate, carried none of the negative connotations associated with female transgression as discussed for example, in the case of Margaret Allen. Unlike women who transgress their gender role, Joe was not judged more harshly as a result of that transgression. On the contrary, his masculinity was emphasised by drawing attention to his army record, his 'conspicuous bravery' and his 'first class character. This stands in sharp contrast to Dorothea's case which suffered further detriment as a result of her being cast in the role usually reserved for men - as the 'boss' of the establishment, thus making it less likely that she was unaware of and uninvolved in the poisoning. Thus, even Joe's transgression worked in his favour by contributing towards what was to become the dominant 'truth' about Dorothea Waddingham.

### An Alternative Truth.

As I have indicated, the dominant truth can be challenged by employing the tools of feminist analysis - in this case - by being alert to the discourses surrounding gender role assumptions. However, we can also re-interpret the available data in order to create an alternative truth, and I shall therefore argue that while Joe had received a medal for bravery, Dorothea too displayed "conspicuous bravery" for it was partly as a result of her evidence that Joe was not convicted. The most suggestive piece of evidence of a conspiracy to murder can be found in Dorothea's last letter to Joe:

... Now don't be afraid. I shall be alright, don't worry. I shall do my best for all. I have such a lot to remember. You not so much dear. *But I will not shout so don't worry about that ...*<sup>75</sup>

The most obvious interpretation of the last sentence must be that she will not talk of his involvement in the crime. It also suggests that Dorothea fitted Bartky's description of a 'docile body' who has internalised disciplinary practices without

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<sup>75</sup>Letter quoted in Huggett & Berry 1956:139. My emphasis.

the need for prompting by external forces, as argued in Chapter Five. In short, it was unnecessary to 'mute' Dorothea's account, for muteness was already self-imposed.<sup>76</sup> This was the last of a series of measures she took to protect Joe at a time when she could have attempted to save herself by implicating him. First, in her statement to the police she specifically stated he "has had nothing to do with the nursing ..."<sup>77</sup> Second, she testified that he "could not have given ... [the medicine]: he was not there."<sup>78</sup> Third, when the chemist's assistant said that "he had a distinct recollection that Sullivan fetched the medicine, ... Nurse Waddingham jumped to her feet in the dock [and shouted] 'It is a lie, I fetched it.'"<sup>79</sup> Thus, even when witnesses were ready to implicate Joe, she chose to protect him, an act which may well have meant the difference between life and death for Joe.

At another level, it is noticeable that all existing accounts of this case place great emphasis upon the disparity of the physical appearances of Dorothea and Joe. As can be seen above, commentators considered Joe a handsome man while Dorothea "was a gaunt, sallow-faced woman who obviously cared little about her appearance."<sup>80</sup> Dorothea's husband had been almost double her age, and it was he who had invited Joe to live with them. When he died Joe simply remained in the house.<sup>81</sup> Did Dorothea herself feel inferior to Joe? Was their love for each other equal, or did Dorothea consider herself lucky to have the attention of this 'good-looking' man with 'a first class character' while she herself was an ex-convict who found it difficult to write even a short letter?<sup>82</sup> Her letters indicate that she was deeply in love with Joe, and she appointed him guardian of all her children, requesting they should take his name and be allowed to live together, as well as receive "private schooling and a comfortable home":

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<sup>76</sup>In a tantalizing statement the day before her execution, Dorothea told her solicitor "that certain facts were not fully investigated at her trial and that she now desires that they shall be made known to the Home Secretary." Quoted in *The Liverpool Daily Post* 15th April 1936. Her solicitor requested a respite to allow time for further investigations. It was refused.

<sup>77</sup>ASSI 13/66 XC6872 Statement by Dorothea Waddingham 16th January 1936.

<sup>78</sup>Proceedings from the hearing at the Magistrate's Court, reported in *The Times* 6th February 1936.

<sup>79</sup>Testimony of Bernard West in Magistrate's Court, reported in *The Times* 8th February 1936.

<sup>80</sup>O'Donnell 1956:88.

<sup>81</sup>Huggett & Berry 1956:117-119.

<sup>82</sup>ASSI 13/66 XC6872. Like most of the women discussed within these case-studies, Dorothea had received little formal education and original letters included in her file indicate difficulty with both spelling and grammar.



Tell them of my death, ... and that I am innocent. Never let them forget it.<sup>83</sup>

Joe, however, disregarded her wishes, even during the short period of time left before her execution. On the day before the execution the *Manchester Evening News* reported that three of the children were staying with Dorothea's parents, one was "in an institution belonging to the Nottingham Public Assistance Committee", and one was with a friend.<sup>84</sup> Although he temporarily had three of the children returned to him,<sup>85</sup> none of them, including the two youngest whom he had fathered, were to remain with him. He did however, receive his half of Ada's estate.<sup>86</sup>

Dorothea's loyalty towards Joe was not lost on the jury who issued "a strong recommendation to mercy."<sup>87</sup> Moreover, the trial judge was reported to have issued the death sentence in "a quiet and broken voice"<sup>88</sup>, reassuring the prisoner that he had "no doubt" this recommendation would receive "the strongest consideration."<sup>89</sup> Members of *The Royal Commission on Capital Punishment* were to interpret this recommendation as being the result of Joe's acquittal.<sup>90</sup> It is certainly possible that had the judge not ordered the jury to acquit Joe, he too would have been found guilty, hence the jury perceived it to be unjust to execute one and not the other. This argument, however, would carry more weight if the outcome of Dorothea and Joe's trial stood in isolation, but as will become apparent in the following case-study, and as the case of Ada and William Williams illustrated, this outcome was not unique. An alternative interpretation of the trial outcome can be reached by considering the struggle between two conflicting discourses which excluded Joe altogether - those of woman as carer and as the evil poisoner. The image that Dorothea presented was not as straight-forward as that of other carers discussed in this thesis. For example, she did not fit the caricature of a 'hopeless alcoholic prostitute' as Leslie James had done. Nor did she fit the image of the 'hypocritical and wicked step-mother' like Ada Williams. Least of all, she could not be likened to the sophisticated, independent, ultra-confident Louise Masset, who selfishly pursued

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<sup>83</sup>Letters quoted in Huggett & Berry 1956:139.

<sup>84</sup>*Manchester Evening News* 14th April 1936.

<sup>85</sup>*Daily Mirror* 17th April 1936.

<sup>86</sup>Bresler, F. (1992) 'Suddenly at a Nursing Home ...' in Goodman, J. (1992) *The Medical Murders* Warner Books, London p.230; Wilson 1971:289.

<sup>87</sup>*Manchester Evening News* 27th February 1936.

<sup>88</sup>*Daily Mirror* 28th February 1936.

<sup>89</sup>*Manchester Evening News* 27th February 1936.

<sup>90</sup>*Royal Commission on Capital Punishment 1949-1953 Report* 1953:320.

sexual pleasure at the expense of her child. Instead, Dorothea's appearance, her demeanour, her love for as well as loyalty and commitment to her family, all indicated a potential to fit into the 'victim' category rather than the 'bad' category as discussed in the Introduction. In other words, whereas the women discussed so far, found themselves firmly located within the 'bad' category with remarkably little conflict or contradiction, Dorothea possessed many characteristics which resulted in a conflict between the discourses of woman as 'bad' and as 'victim'. That conflict became visible not just through the ambivalence expressed by the judge and jury, but also through the public's reaction to her execution which was far more hostile than had been the case with other executed women discussed in this chapter. Thus, over 5000 people, mainly women and children, gathered outside Winson Green prison on the morning of the execution, singing hymns under the leadership of Mrs Van der Elst, one of the most active anti-hanging campaigners of the 20th century.<sup>91</sup> Meanwhile:

A line of sandwichmen appeared bearing placards on which were the words "Stop this terrible crime of hanging a mother of five children."<sup>92</sup>

Mrs Van der Elst had also arranged for six aeroplanes to fly over the prison dropping leaflets, but was informed just hours before the execution that the planes "had been held back." Undeterred, she arrived fully equipped with a radio-car and loudspeakers, and despite the presence of 500 police officers who "had taken strong measures to prevent the development of any serious demonstration," made the following speech:

"Men and women, I appeal to you to prevent the hanging of a mother. This barbaric age would hang the mother of five children."<sup>93</sup>

As police officers pushed her car away with her still at the wheel she was shouting to the crowd "Stop this terrible thing."<sup>94</sup> It was no coincidence that protesters argued their case thorough the discourse of motherhood. When Dorothea first appeared in court:

[she] entered the dock with her three months old baby in her arms. It was ... awake and soon its mother realised that she could not nurse it and properly attend to the grim business of court so she handed it over to a

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<sup>91</sup>*Daily Mirror* 17th April 1936; *Manchester Evening News* 16th April 1936. For a full account of Mrs Van der Elst's life and anti-hanging campaign see Gattey, C.N. (1972) *The Incredible Mrs Van der Elst* Leslie Frewin, London.

<sup>92</sup>*Manchester Evening News* 16th April 1936.

<sup>93</sup>Quoted in *Manchester Evening News* 16th April 1936.

<sup>94</sup>*Manchester Evening News* 16th April 1936.

wardress beside her. The baby began to cry and Nurse Waddingham took it back and, rocking it gently, tried to quieten it. She was unable to do so and the noise so disturbed the court that a nurse was called in and the baby was taken out of hearing.<sup>95</sup>

The powerful image created by this scene is reminiscent of the tragic case of Mary Jones discussed in Chapter Three, who was still breast-feeding her baby as she was placed on the scaffold and, while Dorothea had sinned against woman's 'nature' by poisoning her charges, the court was now reminded that it too was about to sin against 'natural instincts' by permanently separating a mother from her children.

Ultimately, however, her chosen murder method was of the most despicable kind, and although at odds with the rest of Dorothea's image, it was powerful enough to close down the space on which she may have been heard more sympathetically. Against the discourse of 'the evil, woman poisoner', the discourse of 'the good mother and hapless, ordinary, subservient woman' could send no more than a few momentary ruffles.

#### The Case of Louisa Merrifield.

Mrs Merrifield was a grasping woman who seized every opportunity which was to her advantage. She was also rather a stupid woman and mentally dull her deceptions were obvious, and her lies easily detected. She had none of the guile of the educated and sophisticated woman.<sup>96</sup>

Louisa Merrifield made the worst possible impression at her trial, for she loved to shock by the coarseness of her words and manners. She talked incessantly and vulgarly, drank when she could, and tried to impress all whom she met.<sup>97</sup>

She was never an attractive woman - plump, with untidy hair, thick woollen stockings, dowdy clothes and spectacles.<sup>98</sup>

Like Dorothea Waddingham before her, Louisa Merrifield was found guilty of poisoning her charge in order to hasten her inheritance. Also like Dorothea, Louisa was to face the gallows alone although her husband Alfred had been her co-defendant throughout the trial. The by now familiar features of grinding poverty and related criminal activity were also applicable to Louisa who had been

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<sup>95</sup>O'Donnell 1956:88.

<sup>96</sup>Huggett & Berry 1956:215.

<sup>97</sup>Wilson 1971:298.

<sup>98</sup>Description of Louisa Merrifield in *Daily Mirror* 1st August 1953.

imprisoned for 84 days in 1946 for non-payment of a £10 fine.<sup>99</sup> This however, is where the similarities ended for where Dorothea was perceived to possess certain redeeming characteristics, Louisa had none. She was repeatedly described as 'coarse' and 'stupid' - desperate to be the centre of attraction and displaying an obsessive tendency towards self-aggrandisement - making her "one of the most loquacious murderers ever known."<sup>100</sup> Of all the women poisoners discussed in this thesis Louisa came closest to resembling the stereotypical psycho-pathic poisoner described by MacNalty:

The psychology of the poisoner is strange and terrible. It is dictated by egotism pushed to the verge of megalomania; it displays cunning, nerve, resource and refined cruelty.<sup>101</sup>

Even Mrs Van der Elst who submitted a passionate plea to the Home Secretary on behalf of Louisa called her "a fearful bragger."<sup>102</sup>

Louisa was 46 and Alfred was 70 when in March 1953 they were hired by Sarah Ricketts as house-keepers/companions in return for free accommodation. In their two and a half years of married life Louisa and Alfred had lived at more than twenty different addresses as a result of their constant change of employment.<sup>103</sup> The Merrifields therefore had stability within their grasp for the first time when less than a fortnight later Sarah said: "If you do justice to me and look after me I will see that you have got a home for life."<sup>104</sup> Thus, after only 11 days of employment, Louisa made arrangements for a will to be drawn up which would name her as the sole beneficiary, although when it was signed a week later, Sarah included both Louisa and Alfred as beneficiaries.<sup>105</sup> Within two weeks of signing the will Sarah had died of phosphorous poisoning which is associated with Rodine rat-poison.

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<sup>99</sup>HO 291/330 (p.22) Public Record Office, Kew, Richmond, Surrey TW9 4DU. She had committed rationing offences and was released 18th November 1946.

<sup>100</sup>Huggett & Berry 1956:218.

<sup>101</sup>MacNalty, A. (1929) *A Book of Crimes* Elkin Mathews & Marrot Ltd, London pp.169-170.

<sup>102</sup>HO 29/229 XC2573 Public Record Office, Kew, Richmond, Surrey TW9 4DU. Original letter dated 8th September 1953.

<sup>103</sup>ASSI 52/785 Exhibit 13 - Statement of Louisa Merrifield dated 17th April 1953. This file is closed to the public until 2029 but is available for inspection by special arrangement with staff at the Lord Chancellor's Department, Trevelyan House, 30 Great Peter Street, London SW1P 2BY.

<sup>104</sup>ASSI 52/785 - Exhibit 14 - Statement of Alfred Merrifield, 17th April 1953.

<sup>105</sup>ASSI 52/785 - Statement of solicitor William Darbyshire who prepared the will, dated 27th May 1953.

There was no direct evidence linking Louisa to Sarah's death and if she had exercised a minimum amount of discretion and caution it is unlikely there would have been enough circumstantial evidence to convict her. Instead, in an attempt to maintain an air of self-importance, she bragged incessantly, sometimes to complete strangers, about her inheritance. For example, the day after Sarah first promised Louisa her bungalow and over three weeks *before* her death, Louisa told an acquaintance:

... I've had a bit of good luck. Where I have been living the old lady has died and left me the bungalow worth about £3,000.<sup>106</sup>

Mrs Lowe who had employed Louisa for only one week as housekeeper earlier that year, received a letter from her two weeks before Sarah's death, in which she wrote:

I got a nice job nursing an old lady and she left me a lovely littl [sic] Bundlow [sic] and thank God for it, so you see love all come right in the end.<sup>107</sup>

When Louisa met Jessie Brewer, also prior to Sarah's death, she told her:

We are landed. We went to live with an old lady and she died and she's left me a bungalow worth £4,000 ... It was all left to me, until that old bugger got talking to her and then it was left to us jointly ... I made everything all right. It cost me £2.2.0d to get a Doctor to prove she was in her right mind.<sup>108</sup>

During cross-examination Jessie was adamant that Louisa "definitely informed me that the old lady had died. I am positive. All the conversation was in the past tense."<sup>109</sup> It was as a result of reading that Sarah had died three days *after* this conversation that Jessie contacted the police.

The most dramatic insight into Louisa's personality can be gleaned from the testimony of Elizabeth Barraclough who "was a complete stranger" to her. While waiting in a bus queue she told her that "she was very worried because she was looking after an old lady who was very ill," and after returning the previous day

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<sup>106</sup>ASSI 52/785 - Statement of David Spittal Brindley 28th May 1953.

<sup>107</sup>HO 291/230 27359. Original letter included in file. See also ASSI 52/785 Statement of Norah Lowe 28th May 1953.

<sup>108</sup>ASSI 52/785 - Statement of Jessie Brewer 28th May 1953.

<sup>109</sup>ASSI 52/785 - Statement of Jessie Brewer 28th May 1953.

she had found "her husband in bed with the old lady, and was messing about with her and this had got her vexed":

If this goes on again, I'll poison the old bugger and him as well... She's leaving me the bungalow between me and my husband, but he's so greedy he wants it all on his own.<sup>110</sup>

These testimonies alone, suggested that Louisa was a scheming poisoner who had planned Sarah's murder for some time, but when taken together with testimonies of trades-people who had visited the bungalow, an even more sinister picture emerged. For example, George Forjan who made weekly deliveries to Sarah, testified that on the morning before her death, she was unable to pay because she "could not find her money," and said "I don't know what they are doing with my money." She subsequently asked Alfred to go to the bank and also requested that he contact her solicitor because she wanted to change her will. Alfred refused, saying it "was too far for him":

Mrs Ricketts said 'What can I do'. The she started to complain about her food. She said that she hadn't had proper food for the last three days. She said 'They are no good to me. They'll have to go out'. She said that Mrs Merrifield had previously called her a bloody fool.<sup>111</sup>

He added that the money owed to his firm had been outstanding *since* the Merrifields joined the household. "Before they came to live there Mrs Ricketts paid me every week ... and ... did not owe me any money."<sup>112</sup>

His testimony was supported by that of Joseph Malone who delivered groceries:

Mrs Ricketts said to Mrs Merrifield that she didn't think she was getting the right amount of food. Mrs Merrifield said 'You're getting your full entitlement of rations'. Mrs Ricketts used to pay me in cash when I delivered the order. After the Merrifields arrived Mrs Ricketts did not pay me. Nobody paid me ... Mrs Ricketts said that for the last fortnight she had not had any money.<sup>113</sup>

A third set of testimonies which cast suspicion on Louisa were those provided by three medical doctors. First, Dr Wood testified that Louisa had requested he visit

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<sup>110</sup>ASSI 52/785 - Statement of Elizabeth Barraclough 28th May 1953.

<sup>111</sup>ASSI 52/785 - Statement of George Forjan 28th May 1953. That Sarah had had no food recently was confirmed by the testimony by Dr George Bernard Manning (29th May 1953).who carried out the post mortem and stated that "there did not appear to me to be any food in the stomach."

<sup>112</sup>ASSI 52/785 - Statement of George Forjan 28th May 1953.

<sup>113</sup>ASSI 52/785 - Statement of Joseph Walter Malone 28th May 1953.

Sarah the day before she died "in case anything happened to her during the night." When Dr Wood asked if it could wait till the morning Louisa said: "What happens if she died during the night?"<sup>114</sup> When he visited Sarah he could find nothing wrong with her:

I remonstrated with Mrs Merrifield for calling me out, as I thought, under false pretences. She again said she was afraid of something happening during the night... Mrs Merrifield mentioned something about a will. I said I wasn't interested.<sup>115</sup>

Second, Dr Yule was asked by Louisa to visit Sarah five days before her death "for the express purpose to see if she was mentally fit to sign a will":

She said the reason why she wanted me to go was that the old lady might die at any moment with a stroke or a disease and she wanted to keep herself all right with the relatives.<sup>116</sup>

Third, when Dr Page visited Sarah as she lay dying in her bed he found the dining table pushed up against her bed, so close that he could not gain access to the patient, with Alfred, apparently unperturbed, eating his lunch. Louisa said: "She ... has been dying since we came to the place"<sup>117</sup>, a claim which stood in sharp contrast to the evidence of the three doctors and the trades people who had seen Sarah within hours of her death.

Finally Louisa repeated the behaviour of Dorothea Waddingham and Joe Sullivan when she visited a funeral director, requesting a cremation, adding that she did not want Sarah's "two daughters to know she was dead or have anything to do with the funeral."<sup>118</sup>

The Merrifield case, like the majority of poisoning cases, received vast media coverage and virtually all the above evidence had been published both locally and nationally during the hearing at the Magistrate's Court two months before the trial.<sup>119</sup> The details reflected badly on the Merrifields, particularly Louisa who appeared to be the more active of the two. Taken together, the testimonies suggested that a helpless 79-year-old woman had been starved, robbed, perhaps

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<sup>114</sup>ASSI 52/785 - Statement of Dr Albert Victor Wood 16th May 1953.

<sup>115</sup>ASSI 52/785 - Statement of Dr Albert Victor Wood 16th May 1953.

<sup>116</sup>ASSI 52/785 - Statement of Dr Burton Yule 27th May 1953.

<sup>117</sup>ASSI 52/785 - Statement of Dr Ernest Victor Page 27th May 1953.

<sup>118</sup>ASSI 52/785 - Statement of George Henry Johnson 27th May 1953.

<sup>119</sup>See for example *The Manchester Evening News* 27-29th May 1953.

even sexually abused by the couple. Moreover, the murder weapon, phosphorous, had caused a cruel and painful death with symptoms including severe stomach pains and great thirst until the victim finally slipped into a coma.<sup>120</sup> Louisa herself described how Sarah kept moaning until she collapsed on the hall floor, whereupon she lost the power of speech and was only able to put "her tongue out and open... her mouth for a drink."<sup>121</sup> The impact that this harrowing image created - an old woman totally in the power of her unscrupulous tormentors, accepting sips of what was alleged to have been poison - can be measured by the level of hate-mail received by the Home Office, and by the judge's comment that this was a most "wicked and cruel ... murder ... "<sup>122</sup>

Louisa, more than anyone else before or after her, fitted the stereo-typical image of the devious and hypocritical woman-poisoner. She expounded high moral standards and religious pretensions, claiming to have been an Army Salvationist for many years, and dramatically called upon her 'Maker' when asked about the possibility that Sarah had been poisoned:

If my Maker sends for me now my conscience is clear. There has never been anything in the house to hurt her.<sup>123</sup>

At the same time she made fantastic and dramatic claims, as when police officers found a watch and ring inside Sarah's handbag: "Those are mine. The old lady gave them to me on the day she died."<sup>124</sup> She also claimed that as Sarah collapsed in the hallway and was about to lose the ability to speak, "she thanked both my husband and me for what we had done for her. Those were the last words she spoke."<sup>125</sup> Her lies were so frequent and complex that at times she contradicted her own statements as I indicate in the next section. Moreover, the frequency of her suggestion to several individuals, that Sarah might have a stroke 'any time', followed by the same suggestion to both doctors and police officers after her death, was interpreted as an indication that Louisa had been carefully preparing

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<sup>120</sup>HO291/230 27359 Trial transcript. Evidence of Dr G. B. Manning vol 4 pp.3-4.

<sup>121</sup>ASSI 52/785 Exhibit 13 - Statement of Louisa Merrifield 17th April 1953.

<sup>122</sup>HO 29/229 XC2573 Judge Glyn-Jones quoted in Home Office Minute Sheet dated 4th September 1953. This file also contains several letters from members of the public, urging the execution to go ahead. One such (anonymous) letter read: "hang them up with their tongues if this could be then this would not be bad enough."

<sup>123</sup>ASSI 52/785 Statement of Detective Superintendent Colin McDougall 29th May 1953.

<sup>124</sup>ASSI 52/785 Statement of Detective Sergeant Norman Steadman 29th May 1953.

<sup>125</sup>HO291/230 27359 Trial transcript vol 5 p.44.



and plotting the murder in advance.<sup>126</sup> At the same time her attempts to gain the moral high-ground through her indignant claims of innocence and her public display of Christian values meant that even before her trial she was considered an exceptionally deceitful and hypocritical woman. More than anybody else, Louisa fitted Blyth's definition of the woman poisoner:

More devious in their outlook and infinitely more complicated in the working of their conscience than the average male, they could even persuade themselves that they were genuinely acting in a Christian manner when devoting themselves to the care of an invalid whose agonised sufferings were being caused by themselves. Again and again, in poison cases involving women, the prisoner on trial for her life would adopt an air of injured innocence, and even of piety and godliness, calling upon her Maker to witness the purity of her soul. In short, women accused of murder often revealed an astonishing facility for telling lies in Court while preserving an outward appearance of absolute honesty.<sup>127</sup>

As I shall now indicate, this image was reinforced rather than challenged during the double trial. In order to demonstrate how Louisa came to be constructed as a 'wicked' and 'vulgar' woman who deserved to hang, while Alfred was considered to be a 'tragic simpleton' - too stupid to have participated in the murder - and subsequently walked out of court a free man, it will be necessary to analyse the self-presentation of both defendants.

### The Trial of the Merrifields.

It is as well we should face the facts without hypocrisy; you may have formed the opinion of Mrs Merrifield that she was a vulgar and stupid woman with a very dirty mind. I do her no injustice by telling you that. You may similarly have formed the impression of Mr Merrifield that he is at times rather stupid.<sup>128</sup>

The Merrifield trial lasted 11 days, longer than any other trial analysed in this thesis. Louisa spent three days in the witness box, giving evidence for nine and a half hours, with nearly half that time devoted to cross-examination. In a physical sense at least, her account could not be described as muted. Pat Carlen has compared court hearings with "the theatre of the absurd," describing the way in which the "structures of surreality and psychic coercion" within the court-room are none-the-less authenticated because "judicial personnel systematically present their coercive devices as being nothing more than the traditional,

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<sup>126</sup>HO29/229 XC2573 Home Office Minutes dated 4th September 1953.

<sup>127</sup>Blyth, H. (1975) *Madeleine Smith: A famous Victorian murder trial* Duckworth, London pp.15-16.

<sup>128</sup>HO 291/230 27359 Trial transcript, summing up Vol 11 p.12.

conventional and commonsensical ways of organising and synchronising judicial proceedings."<sup>129</sup> Thus, apart from the defendant finding herself in a highly unusual and alienating situation when she enters the dock for the first time, there are a series of practical difficulties which are likely to prevent her from participating fully in proceedings. For example, jargon may be employed which means "procedure isn't made sufficiently plain", and the defendant therefore does not understand what is taking place. Difficulties in hearing are also a common problem, as is "placing and spacing" within the court-room, resulting in a "series of 'pardons' and 'blank stares'" from the defendant.<sup>130</sup> Finally, while the conversational style of the court-room is taken for granted by judicial personnel it will be alien to many defendants who find they "are often in the position of having to synchronise their answers and stances in a way quite divorced from the conventions of everyday life outside the courtroom."<sup>131</sup>

The Merrifield trial demonstrates the relevance of every one of these points, yet even with these uppermost in mind, the trial was haunted by an over-all impression of a tragic-comic caricature, if not parody, of legal proceedings due to the conduct of the defendants. Indeed, the events leading up to the judge calling Louisa 'stupid' and 'vulgar' and defence counsel calling Alfred 'a tragic simpleton' were set in motion immediately upon arrest when Alfred, after being charged with murder, said "Thank you."<sup>132</sup> Similarly, Louisa indicated her lack of knowledge about court etiquette when upon seeing her husband during her second court appearance, she attempted to communicate by waving. Moreover, while her intentions were undoubtedly to display good manners in court, it was never-the-less inappropriate when in response to being told she would be held in remand for another week she replied: "Thank you very much my Lordships."<sup>133</sup> Inappropriate conduct was to become a semi-permanent feature of the Merrifield trial as the defendants appeared to behave more like actors in a farce than murder suspects standing trial. Alfred for example, regularly waved and smiled to observers in the public gallery and on one occasion stopped to say "Good Morning, gentlemen" to press representatives, while on a different occasion Louisa "gave a 'V' sign to members of the public when she entered the dock."<sup>134</sup>

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<sup>129</sup>Carlen, P. (1976) *Magistrates' Justice* Martin Robertson, London p.20.

<sup>130</sup>Carlen 1976:22; 23.

<sup>131</sup>Carlen 1976:24.

<sup>132</sup>HO291/230 27359 Judge's summing-up, trial transcript Vol 11 p.12; *Manchester Evening News* 30th July 1953; ASSI 52/783 - Statement of Detective Inspector John Dunn 29th May 1953.

<sup>133</sup>*Manchester Evening News* 8th May 1953.

<sup>134</sup>*Manchester Evening News* 20th, 27th, 29th May 1953.

Constant interruptions were to become another feature of the trial. They were often caused by Alfred who suffered from deafness and therefore had difficulty in hearing proceedings. However, even when he could hear he could not always understand them, as was the case, for example, when he was told that he "could object to any juror before he took the oath. Mr Merrifield put his hand up and said: '... I can hear you but I cannot follow your words.'"<sup>135</sup> He brought proceedings to a halt on numerous other occasions, as when on the third day of the trial, he burst into tears, exclaiming: "It is not fair. Let me go down while you finish. ... I cannot stick this ... I cannot hear."<sup>136</sup> He also burst into tears twice during his three and a half hours on the stand. When the Attorney-General showed him a packet of rat-poison, Alfred turned his head away saying: "Don't let me look at it. I have heard so much about it ... I can see it in my sleep." When he was asked if he had seen something like it before he "bang[ed] his hand on a table" and "almost shouted":

I have not and do not ask me again. Definitely not. I have not seen it, and that is a fact.<sup>137</sup>

A further insight into the dynamics between Alfred and judicial personnel can be gained from the following extract of the trial transcript:

You have had a new deaf-aid given you during the course of this trial?

*I have had ---?*

A new deaf-aid?

Yes.

...

Is it better?

*This is much better.*

The other one was a Government one, was it not?

*Yes. If I talk a bit louder ---*

Do not bother about that. It is the fault of the hearing. I believe deaf people is given that way - they shout at you.

...

You can look at me when I am asking the questions, and when you are answering them look towards the Jury.

[Mr Justice Glyn-Jones:] You might tell him he is doing extremely nicely.

His Lordship has asked me to tell you that your are doing very well in the way you are giving your evidence because you are keeping your voice up.

*Thank you, sir.*<sup>138</sup>

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<sup>135</sup>HO291/230 27359 Trial transcript vol 1 p.2.

<sup>136</sup>HO291/230 27359 Trial transcript vol 4 p.51. See also report in *Manchester Evening News* 23rd July 1953.

<sup>137</sup>HO291/230 27359 Trial transcript vol 8 p.18. See also report in *Manchester Evening News* 28th July 1953.

<sup>138</sup>HO291/230 27359 Trial Transcript vol 7 pp.42-43.

When his counsel asked him if he had ever done anything to harm Sarah, Alfred "clenched his fists, held them above his head, and said:

*There is a pair of fists there. If they are never open again I did nothing only to succour the old lady, not destroy her.*<sup>139</sup>

When Alfred's testimony was challenged he exclaimed:

*Have you got the Bible there?*

The Attorney-General: I don't think you need that at the moment.

*Yes, I took the oath to tell the truth, and nothing but the truth, and I am telling it.*<sup>140</sup>

When Alfred was asked about eating his lunch next to Sarah's dying body he answered:

*Where else could I sit? There was nowhere else to sit.*

But you need not have been having your lunch at that moment need you?

*Was I not entitled to have my lunch?*

Perfectly. Were you very upset about the old lady dying, of whom you were so fond?

*... If she had been a blood relation I should have been more upset.*

It did not interfere with your appetite?

*Yes definitely it did. You were not there to see the quantity of food I ate.*<sup>141</sup>

Finally, after persistently denying he owned a grey suit, when one such suit was exhibited in court as evidence he immediately said: "Yes, that is mine. Can I put it on?"<sup>142</sup>

The above examples of Alfred's self-presentation indicate how it became possible for his counsel to portray him as "a man wandering", "'guileless' and 'a tragic simpleton' no more capable of concocting or taking part in this fell scheme than a child":

*... the whole picture you have of him is of a man getting on in years, simple, ... and attempting to give you where he could remember it, a true picture of the position so far as he was concerned.*<sup>143</sup>

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<sup>139</sup>HO291/230 27359 Trial transcript vol 8 p.6.

<sup>140</sup>HO291/230 27359 Trial transcript vol 8 p.9.

<sup>141</sup>HO291/230 27359 Trial transcript vol 8 p.16.

<sup>142</sup>HO291/230 27359 Trial transcript vol 8 p.21.

<sup>143</sup>HO291/230 27359 Trial transcript vol 10 p.19 & p.24 where Mr Nahum further argued that Alfred was "incapable of this cunning, desperate and vile murder."

Thus, while Alfred may well have tested the patience of his interrogators, the apparent simplicity of his character gave an overall impression of someone lacking in imagination and hence in possession of a simple honesty, eager to please and happy to cooperate. This stood in sharp contrast to the impression formed about Louisa, who despite being called 'stupid' almost as frequently as Alfred, came to be regarded as "the dominant partner ... on any basis."<sup>144</sup> Like Dorothea before her, as a result of the strong association between women and the private sphere generally, and women as carers in particular, it was taken for granted that it was she who was 'in charge' and 'dominant' in the crime.

Like Alfred, Louisa appeared to have difficulty in understanding and following court-room procedures, and frequently had to have questions repeated and re-phrased. Her response was often inappropriate, as when after being asked about what time she fetched the doctor, she replied: "I cannot properly remember. I have nearly forgotten the woman has died, to tell you the truth"<sup>145</sup> Similarly, her language was inappropriate by court-room standards, as when she volunteered that: "Mr Merrifield did not break his neck to get up [in the mornings]"<sup>146</sup>, and it was to prove almost impossible to obtain concise or direct answers to questions put by either defence or prosecution. Her communication problems within the court-room were therefore not substantially different from Alfred's. But, unlike him she appeared deliberately obtuse, her frequent evasive responses validating her guilt. An example of this can be observed when she was questioned about the inconsistency concerning the time she claimed to have given Sarah drinks and the Attorney-General put the same question to her no less than seven times:

[Attorney-General] ... you go on in the next sentence: "When she had gone easy again I went back to bed although I never slept. I next heard her moaning in the hall at a quarter past three ---".

*Just a moment please.*

[Justice Glyn-Jones] Yes, Mrs Merrifield, what do you want to say?  
*When she got back easy again I went back to bed although I never slept all night - right, carry on, sir.*

[Attorney-General] ... Now Mrs Merrifield, there is no doubt about it, is there? It is quite untrue to say you only gave her anything after you had picked her up in the hall?

*When I picked Mrs Ricketts up ... she could not speak. The last words she said was: "I thank you and your husband for what you have done for me." There was always ... [drinks] prepared on the table before Mrs Ricketts went to bed - and they were always prepared by herself, my jury.*

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<sup>144</sup>HO 29/229 xc2573 Home Office Minutes 14th September 1953.

<sup>145</sup>HO 291/230 27359 Trial transcript vol 5 p.39.

<sup>146</sup>HO 291/230 27359 Trial transcript vol 7 p.7.

It is not true to say you only gave her ... anything after you picked her up in the hall?

*Well, naturally, as woman to woman you would give her a drink if you thought she was ill and was wanting a drink.*

So it is not true to say the first time you gave her anything was after you picked her up in the hall?

*I beg your pardon, sir?*

It is not true to say that you only gave her anything to drink after you picked her up in the hall?

*Well, I may have misunderstood it.*

Will you not agree it is not true?

*It is true that I gave her drinks - naturally.*

And putting it another way, ... it is not true that you never helped her to a drink except when she was in a coma?

*I know I gave her these drinks, definitely I know I gave her these drinks, but the drinks was [sic] prepared on the table before the woman lost her speech and lost her voice. There was only the one room that we all lived in.*

And of course, even more so it is quite untrue to say that: "From beginning to end I never gave her anything to drink"?

*I never gave her Rodine to drink.*

Well, I am not asking that at the moment. Now, I want you to go on with this statement just at the point where I was ...

*Just a moment.*

[Justice Glyn-Jones] ... if I may respectfully suggest it, she reads very much more slowly than you do; if, therefore, you are proposing to read a passage and put it to her I would suggest you read every word slowly ...

If your Lordship pleases.

*Just a moment - I have lost my place.<sup>147</sup>*

It proved equally difficult to obtain an answer regarding a 'mixture' which Sarah, supposedly drank regularly:

... what do you mean by mixture?

*Well, whatever she took it was a mixture. She would mix anything...*

I am sorry, we must get this plain. You have now said that there was brandy and there was rum, and there was an eggcup?

*Yes, sir.*

What was the mixture?

*There was no mixture that I know of on the table only what she prepared herself.*

Yes, but what was that?

*The rum and the brandy.*

Oh, that was the mixture, was it?

*She used the same cup for rum and brandy. She was not funny about that.*

Do you say that is what you meant when you spoke of a mixture?

*I do not remember her mixing anything together...*

Not during that night?

*Well, I cannot count back, but she did all sorts of funny little things.*

Yes, well if you take the rum and the brandy together you gave her well over two tablespoonfuls, did you not?

*I would not say.*

You would not say you did not?

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147HO 291/230 27359 Trial transcript vol 7 pp.3-4.

*I do not know.*<sup>148</sup>

However, this apparent obtuseness paled into insignificance when Louisa committed the ultimate transgression of speaking ill of the dead and slurring the character of the woman she was accused of murdering by calling Sarah "a very immoral woman":

What do you mean by saying that?

*Have I to say it? Is it all right to explain in front of these young men, my Lordship?*

[Mr Justice Glyn-Jones:] Yes, I am afraid we cannot protect them.

*When I bathed Mrs Ricketts she asked me to amuse her in an immoral way. At the same time I realised she was a human being and that she had had no husband for ten years ...*

Yes?

*I asked why was it if she was in need of a man so much - why she did not marry. She said it was through her private income that came from Mr Ricketts.*

Well?

*And he made it if she married her income would have gone away from her. I then explained: 'I have had three husbands and I have never had a wage off none of them but have always been provided for'.<sup>149</sup>*

The Attorney-General discredited this evidence by pointing out that Sarah "was in her 80th year", and had had "all her sexual organs ... removed."<sup>150</sup> He thus demonstrated that it was Louisa, not Sarah, who was vulgar and immoral. Vulgarity, however, is not proof of murder, and while Louisa had left a highly unfavourable impression on the jury as a result of her conduct and self-presentation, the trial transcript none-the-less contains numerous examples of responses which contradict the dominant truth about her - that she was the 'dominant partner' and the 'mastermind' behind a crime which Alfred was too 'stupid' to carry out. For example, when her evidence that Sarah had not had a cooked meal in two years was challenged, she responded: "Well, what could she have? Because she never had bacon, for a start." Similarly, when she was asked about Sarah's alcohol intake, she asked: "What do you mean by 'alcohol'?"<sup>151</sup> Yet, while Alfred's apparent feeble-mindedness was accepted without question, Louisa's equally unorthodox self-presentation in the court-room was interpreted as further evidence of her deviant personality. Her failure to communicate through dominant modes of expression, especially those of 'emotive connectedness' and compassion which are associated with female speech as

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<sup>148</sup>HO 291/230 27359 Trial transcript vol 7 pp.5-6.

<sup>149</sup>HO 291/230 27359 Trial transcript vol 7 p.18.

<sup>150</sup>HO 291/230 27359 Trial transcript vol 7 p.18.

<sup>151</sup>HO 291/230 27359 Trial transcript vol 7 p.9; p.8.

discussed in Chapter Five, did not grant her the authority associated with men's speech, but merely reinforced her deviance. Her inappropriate responses were perceived to be a deliberately obtuse and evasive strategy, which, taken together with her assertiveness in terms of calling doctors and organising the will, meant she was credited with a rationality denied to Alfred. In contrast, Alfred's deafness reinforced the belief that he was feeble-minded, which in turn allowed him to be infantilised, hence casting him in a role usually reserved for women.

Quite apart from Louisa's behaviour within the court-room, aspects of her personal history were revealed to the jury that included several of the characteristics outlined in Chapter Five, which I argued play a crucial role in categorising women as 'bad' rather than 'mad'. For example, the court heard that Louisa drank excessively and would at times become severely inebriated.<sup>152</sup> Moreover, she had been married to three different husbands in the space of ten months, and had not seen two of her four children "for many years" because they had been taken into care.<sup>153</sup> Louisa not only lacked commitment to marriage and motherhood, but also to domesticity generally:

The picture has been made of the two of them constantly changing employment and living in furnished accommodation, having no home of their own ...<sup>154</sup>

Louisa was therefore a prime example of a doubly deviant woman. Not only had she abused the carer role, she had also subverted an array of other traditional female roles in relation to marriage, motherhood and domesticity. As discussed above, the post-war period was an era in which women who fell short of acceptable standards in those areas, were greeted with particular concern and anxiety. Together with her failure to limit her alcohol intake, these transgressions totalled an unregulated and undisciplined 'out of control' female in particular and dangerous womanhood generally. The double standards of morality discussed in Chapter Five, became starkly visible when the judge disregarded Alfred's domestic short-comings. He too had a troubled family history. The father of ten children, he had not lived with his wife and family

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<sup>152</sup>ASSI 52/785 Testimony of Jessie Jensen 29th May 1953; HO 291/230 27359 Trial transcript, Louisa Merrifield under cross-examination p.21.

<sup>153</sup>Louisa had in fact had nine children, four of whom were still living at the time of the trial, with three of them in care as a result of Louisa "neglecting to provide reasonable education" for them. (HO 29/229 XC2573 Blackpool County Borough Police Antecedents 16th June 1953). See also Louisa's medical report issued by Prison Medical Officer Cormack 9th July 1953.

<sup>154</sup>HO 291/230 27359 Trial transcript, summing-up Vol 11, p.12.



since 1928 "as a result of domestic differences." Moreover, in 1949, a year before his marriage to Louisa, he was convicted "of indecently assaulting a girl aged 8 years." Eight months after the marriage, Alfred was at the centre of more conflict when the "home was broken up following upon differences between" Alfred and Louisa's only remaining child.<sup>155</sup> While the judge quite properly did not reveal either Louisa's or Alfred's criminal record, he made a notable distinction between the prisoners, when after pointing to Louisa's troubled past, he chose not to refer to Alfred's domestic history with this comment to the jury: "I do not know that there is any information you have been given about Mr Merrifield's background."<sup>156</sup> He did however, warn the jury that:

You must not convict a woman of murder because her character and personality have made an unfavourable impression on you. The fact she may be a vulgar, stupid woman with a dirty mind is not a good ground for convicting her of murder. You must not let any mere dislike for the personality of either of these people prejudice your fair and honest weight of the evidence.<sup>157</sup>

After summing up for nearly four hours the judge ended on a note which emphasised Louisa's dominant role in the crime:

It is important to draw a distinction between them as best you can in your minds. All the evidence you have heard about the conduct of Mrs Merrifield ... is evidence against her ... It is not evidence against him unless you are satisfied that he did enter into the plot with her... the evidence of dissension between them ... might point against the fact he was acting in concert, but what you have to consider ... is his personality with the evidence he has given, his own conduct at the time and afterwards. You must make up your minds ... about him and ... her separately.<sup>158</sup>

After almost six hours the all-male jury found Louisa guilty of murder but failed to reach a verdict in the case of Alfred.<sup>159</sup> The Attorney-General consequently

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<sup>155</sup>HO 29/229 XC2573 Blackpool County Borough Police Antecedents 16th June 1953. As had been the case with Joe Sullivan, Alfred's military record was assessed as "very good", thus providing us with a glimpse of the gendered nature of 'relevant' information.

<sup>156</sup>HO 291/230 27359 Trial transcript, summing-up Vol 11, p.12.

<sup>157</sup>HO 291/230 27359 Trial transcript, summing-up Vol 11, p.12.

<sup>158</sup>HO 291/230 27359 Trial transcript, summing-up Vol 11, p.44.

<sup>159</sup>HO 291/230 27359 Trial transcript Vol 11, pp45-6. Initially two women had been appointed to the jury, but they were successfully challenged by Mr Nahum QC for the defence. (*Manchester Evening News* 20th July 1953).

entered a *nolle prosequi* and he was released from prison a week after the trial had ended.<sup>160</sup>

### A Fair Hearing?

Space does not permit a detailed analysis of Louisa's appeal which lasted three days<sup>161</sup>, however, points 6 and 7 of the Appeal Notice are relevant to this thesis:

6. Many of the observations of the learned judge both during the hearing of the evidence and in the summing-up must have indicated to the jury that he himself had come to a conclusion with regard to the case that was adverse to the appellant, and that he regarded the defence as devoid of any foundation.

7. The whole conduct of the case must have conveyed to the jury that the learned judge was completely convinced of the appellant's guilt and was disparaging the defence.<sup>162</sup>

The Court of Appeal rejected these contentions, stating "that there is no foundation for the criticism of unfairness or prejudice or one-sidedness on the part of the learned Judge."<sup>163</sup> After hearing her Appeal being dismissed Louisa "raised her clenched fist high above her head. She firmly resisted the efforts of two prison officers to pull down her arm."<sup>164</sup>

Now there was only one avenue open to Louisa before she reached the gallows - that of a personal petition for her life. The futility of this action became apparent when evidence of witnesses who were not called during the trial, was taken into account by Home Office staff who considered whether Louisa should live or die. One witness had testified that Alfred "was afraid of his wife and had found a tin of rat poison in one of her cases." A second witness added that Alfred claimed Louisa "was trying to poison him and that he had found some Rodine in his bedroom ..." A third witness stated that Louisa "had boasted to her about having done two husbands already."<sup>165</sup> This was yet another example of Louisa's fantastic and

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<sup>160</sup>*The Times* 22th September 1953. A *nolle prosequi* means 'unwilling to prosecute'. Alfred Merrifield was eventually told that he would not stand a second trial.

<sup>161</sup>Much of the Appeal was taken up with a contestation of medical evidence in relation to the post-mortem carried out on Sarah Ricketts. See Appendix 1.

<sup>162</sup>HO 291/230 27359 Particulars of Grounds of Appeal Additional to Those Set Out in the Notice. Dated 26th August 1953.

<sup>163</sup>HO 29/229 XC2573 The Court of Criminal Appeal Judgement no 777 p.19, dated 3rd September 1953.

<sup>164</sup>Huggett & Berry 1956:223.

<sup>165</sup>HO 29/229 XC2573 Home Office Minutes 4th September 1953.

dramatic lies for her first husband had undergone a post-mortem which revealed he had died from "sub-acute infective hepatitis", and her second husband had died of a heart attack at the age of 78.<sup>166</sup> Finally, a witness testified that the Merrifield's "frequently quarrelled, and on a number of occasions ... [Louisa had said] that she had tried to dump her husband in Wigan but that he had traced her again. But, she added, 'I'll do him yet. I'll give him a dose of rat poison.'"<sup>167</sup>

This was not a loving, compliant and altruistic wife who was timid, subordinate or deferential to her husband. Thus Louisa possessed none of the characteristics favoured by the court as described in Chapter Five, but displayed those which are associated with activating judicial misogyny and came across as an 'uppity' woman who needed to be 'put in her place' as discussed in Chapters Five and Six. Unlike Dorothea, she did not even display loyalty to her husband and children, nor did her remarks suggest that Alfred would ever be able to exert a degree of control over her unruliness. Unsurprisingly therefore, the Home Secretary's advisor concluded his consideration of a reprieve with these words: "I am afraid that I can find very little to say in Mrs Merrifield's favour."<sup>168</sup> Home Office Minutes do not reveal why the above witnesses were not called to give evidence, although we can speculate that had they been called by the prosecution, their testimonies could also be utilised by the defence to illustrate that Louisa was a proven liar which may have cast doubt on her other claims that were used against her throughout the trial.<sup>169</sup> More, worryingly however, is the revelation that in addressing a question of life and death, Home Office personnel, in their final consideration of her case, took into account evidence that had not been tested in court, but which was highly detrimental to the prisoner. Thus while Louisa had spent three days in the dock talking incessantly, her 'muted' state was total with respect to the most damning evidence against her. As with several other women discussed in this thesis, judicial misogyny did not end with the trial, but remained a feature of Louisa's existence until her life was extinguished two weeks later.

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<sup>166</sup>HO 29/229 XC2573 Blackpool County Borough Police Antecedents. With respect to her second husband, Louisa had claimed "that she had set the bed so that when he got into it it would collapse; it did so and the shock killed [him]". Certain newspapers appeared eager to insinuate that these deaths were suspicious. For example the *Daily Mirror* wrote with respect to Louisa's first husband that "a coroner said it was difficult to determine the cause of death but after a month of laboratory tests, decided his death was due to natural causes." (1st August 1953).

<sup>167</sup>HO 29/229 XC2573 Home Office Minutes 4th September 1953.

<sup>168</sup>HO 29/229 XC2573 Home Office Minutes 4th September 1953, initialed P.E.

<sup>169</sup>Mr Naham, the Merrifields' QC, in his closing speech said that "much of that mass of suspicion - might we not also call it prejudice? - had been engendered against her by her own foolish talk ..." and her statements were "just vapourings of a woman struggling in difficulties..." (HO291/230 Trial transcript vol 9 p.49; 50).

## An Alternative Truth?

Prior to Louisa's execution, one person - Mrs Van der Elst - had constructed an alternative truth about the Merrifields which she presented to the Home Secretary in the form of a letter:

The husband ... posed as a kindly and simple old man, never spoke - and it seemed as if this old man had been made use of by his wife and had been made to do things under her stronger will. This was not true, he was a cunning old man acting a part in court, but if one could judge of the two people, I would consider that the old man was the most guilty ... He never troubles about his wife being condemned to death. He thinks, to look well he will take her a few flowers, but she can see through him and refused to see him.<sup>170</sup>

The opinion that Alfred was involved in the poisoning was shared by many other correspondents<sup>171</sup>, and evidence had been presented during the trial which strongly suggested that it was he who had purchased the rat poison.<sup>172</sup> Louisa herself wrote in her petition for her life that she had:

had a lot off [sic] Domestic trouble with Mr Merrifield and I had a Black eye... My husband had both wardrobes locked, and I had No Privacy what so ever... I had to write [letters] in the toilet bit by bit it was hard on mee [sic], as my husbands [sic] conduct to mee [sic] never been too great. and [sic] he would never let mee [sic] write to anyone not even my oun [sic] children he would rip anything up if he saw mee [sic] writing... since our marrage [sic]

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<sup>170</sup>HO 29/229 XC2573 Original letter to Home Secretary from Mrs Van der Elst 8th September 1953. Louisa had refused to see Alfred on two occasions. Unperturbed, he told newspapers: "I shall continue to do what I can for her, and I shall write her a cheery letter every day." (*Liverpool Daily Post* 10th September 1953). Louisa and Alfred appeared to have resolved their differences before her execution, because on her last day, Alfred visited her twice, and according to him, her last words were: "Good-bye Alfie. Look after yourself. God bless you." (*Liverpool Daily Post* 16th September 1953).

<sup>171</sup>HO 29/229 XC2573 includes a file of letters from the public.

<sup>172</sup>The jury was told to ignore evidence relating to an ID parade in which Alfred took part, because a chemist's assistant who "was satisfied at the identification parade that Merrifield was the man", failed to make a positive ID as she "was very nervous." (ASSI 52/785 Testimony of Mavis Atkinson). However, in his summing up, the judge said: "the man who went into the chemist's shop was elderly; he was wearing a hearing-aid; he had ulcers on his legs; he bore ... a general resemblance to the elderly man they saw on the identity parade... There are many elderly men; there are quite a number of elderly men who wear hearing-aids. Are there so many elderly men wearing hearing-aids with ulcers on their legs, and do you think it an odd coincidence that, in a house in which a woman has died of rat poison, living there is an elderly man wearing a deaf-aid and with ulcers on his legs, who ... bears a resemblance to the man they saw? (HO 291/230 27359 summing up Vol 11 p.38).

I and Mr Merrifield My husband as [sic] had our domestic troubles [sic], and his fast life, and mine have not been off [sic] the Brightest ..."173

However, as has been the case with certain contemporary women, Louisa did not fit the role of a battered wife or a victim.<sup>174</sup> As a result of what was already known about her character, her version of their relationship was unlikely to be believed. Even if she was believed, her lack of tact in other parts of the petition together with her grandiose religious references ensured that whatever sympathy she may have aroused, would be cancelled out. Thus, she continued to discredit Sarah's character and called her "a very stupid old lady ... [who] would not Sleep ... [but was] Knocking around all night." She also suggested that Sarah and Alfred were having an affair:

I realised there was the miss-conduct [sic] between Mrs Ricketts and My husband but I could do Nothing about it he denies it, but Mrs Ricketts apologised [sic] to mee [sic], she New [sic] how conning [sic] he was. and tried to give mee [sic] the understanding he was Not true to mee [sic].<sup>175</sup>

Meanwhile she maintained an air of self-importance and religious fervour which seemed misplaced:

.. if ever a woman lived to do her best it was I Mrs Louisa Merrifield ... I do Pray to God the Father Almighty that he will Give you Grace and Wisdom to understand that I am Not Gilty [sic] off [sic] this old lady [sic] Death... I do trust to God Almighty [sic]. that He Will Give My Dear Majesty The Queen and you Sir, Grace serfikant [sic] to see from eye to eye... as I plead to you for my life to be delivered for on my oath off [sic] God The Father Almighty. I did not give Mrs Ricketts rodio [sic].<sup>176</sup>

While Louisa's accounts were not muted, her lack of self-regulation when speaking and writing ensured that her word carried no legitimacy. After repeatedly breaking the rules that govern dominant modes of speech she was eventually disqualified as a speaker. Thus, her self-presentation in the courtroom, amongst friends, and in her letters, is perhaps the strongest evidence that she was not the 'mastermind' portrayed by the prosecution. Huggett and Berry wrote that "it was beyond the range of her intellect to see that her coarse

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<sup>173</sup>HO 29/229 XC2573 Louisa Merrifield's petition to the Home Secretary. Undated.

<sup>174</sup>See for example Ballinger, A. (1996) 'The Guilt of the Innocent and the Innocence of the Guilty' in Myers, A. & Wight, S. (eds) (1996) *No Angels* Pandora, London p.27.

<sup>175</sup>HO 29/229 XC2573 Louisa Merrifield's petition to Home Secretary. Undated.

<sup>176</sup>HO 29/229 XC2573 Louisa Merrifield's petition to Home Secretary. Undated.

conversation turned people against her."<sup>177</sup> Her lack of self-awareness and etiquette reinforced the deep dislike and contempt directed at female poisoners, which in turn enabled a Home Office official to express this view:

"I cannot think that public opinion would feel that it was wrong that the law should be allowed to take its course in the case of Mrs Merrifield merely because her husband was not convicted ..."<sup>178</sup>

Ultimately we can never know the exact relations between the Merrifields, and indeed, the point of examining the case has not been to establish an 'ultimate' truth. Instead my aim has been to illustrate that while there was no direct evidence against either prisoner, established discourses of women's dominance within the domestic sphere, and of the woman poisoner and carer, implied that a female was more likely to attend a sick-bed than a male, and thus cast Louisa in the dominant role. As had been the case with Dorothea Waddingham, this supposed dominance, together with her betrayal of the female caring role, ensured that her chances of receiving a 'not guilty' verdict were lower than Alfred's. The judge reminded the jury that "murder by poisoning is a secret and treacherous crime" and "of all forms of death by which human nature may be overcome the most distasteful is that of poison."<sup>179</sup> He specifically instructed members to "take into account not only the evidence which each had actually spoken in the witness-box - the words they have said - but the whole appearance and demeanour and behaviour of each as well in the dock, as in the witness-box."<sup>180</sup> The evidence neither proved nor disproved whether Louisa was frightened of Alfred, as she claimed in her petition, or whether she acted under his initiative rather than the other way around. The ambiguity of the evidence was commented upon by Mr Paget an MP nearly two years later, when after quoting a passage from the summing-up, he concluded that capital punishment was based on no more than "a balance of probabilities."<sup>181</sup> Hence, it was not

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<sup>177</sup>Huggett & Berry 1956:217.

<sup>178</sup>HO 29/229 XC2573 Home Office Minutes dated 4th September 1953. According to the *Royal Commission on Capital Punishment 1949-1953* public opinion was one consideration when deciding if a reprieve should be granted: "It has occasionally been felt right to commute the sentence in deference to a widely spread or strong local expression of public opinion, on the ground that it would do more harm than good to carry out the sentence if the result was to arouse sympathy for the offender and hostility to the law." (p.12). Unlike the jury who found Dorothea Waddingham guilty, Louisa Merrifield's jury did not recommend mercy.

<sup>179</sup>HO291/230 27359 Trial transcript, Judge's summing up vol 11 p.2; p.4.

<sup>180</sup>HO291/230 27359 Trial transcript, Judge's summing up vol 11 p.5.

<sup>181</sup>*Parliamentary Debates (House of Commons)* Vol 536, 25th January-11th February 1955 col 2169. The part of the summing up quoted by Mr Paget was: "Counsel for the defence has said to you more than once that the prosecution must

merely the evidence but also existing discourses of the 'female poisoner' and 'carer', which led the jury to conclude that Alfred was "no more than a stupid old man with the insensitiveness of a stupid old man", while defence counsel's reminder that Louisa was "being tried for murder ... not ... for stupidity ...", were ignored.<sup>182</sup> It's plea that Louisa was a woman who "left school at ... 14 and had been working in a humble position ... all her life ... had ranged against her all the forces of the Crown" fell on equally deaf ears,<sup>183</sup> and as the judge passed the death-sentence he told her: "You have been convicted upon plain evidence of as wicked and cruel a murder as I ever heard tell of."<sup>184</sup>

Twenty people had waited outside the court to hear the verdict, but "there was no emotion shown when news of the verdict circulated through the crowd."<sup>185</sup>

Similarly, on the morning of Louisa's execution, "more than 300 people stood in the rain outside Strangeways Gaol" waiting for the announcement of her death, but when it was made, "no heads were bared and no tears were shed."<sup>186</sup> Two weeks earlier, on hearing that Louisa's appeal had failed, Alfred had given an interview to *The Daily Mail*. In it he offered his personal insight into her personality:

I have learned from bitter experience that she is a wicked woman... She has absolutely no moral sense and she has done many things to show that she has no feeling for the old man she married. ... she dragged my good name in the mud. She ill-treated me so badly and so often that my health broke down ... She showed no pity, not even ordinary womanly kindness. ... Not for all the money in the world would I live in the same town, never mind the same house, as Louie again. I would prefer there were thousands of miles between us.<sup>187</sup>

### Conclusion.

I introduced this chapter by noting the rarity of women killing other women. In every one of the five cases analysed in this chapter, the official explanation for

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exclude every chance and every possibility that the inferences they ask you to draw are mistaken. That is not the law. You need only deal with such possibilities of error as you think reasonably likely."

<sup>182</sup>*Manchester Evening News* 29th July 1953. Summing-up and closing speech for defence.

<sup>183</sup>HO291/230 27359 Trial transcript, closing speech for defence vol 9 p.50.

<sup>184</sup>HO291/230 27359 Trial transcript, judge's summing-up Vol 11, p.46.

<sup>185</sup>*Manchester Evening News* 1st August 1953.

<sup>186</sup>*Liverpool Daily Post* 19th September 1953.

<sup>187</sup>*Daily Mail* 4th September 1953. Front-page interview with Alfred Merrifield, head-lined: "My wife? She had no pity." The contents of this interview suggests the reason why Louisa refused Alfred's visits on at least two occasions, and why Mrs Van der Elst was cynical in her attitude towards him (see p.74 f/n348).

the crimes were that of personal gain, although in Styllou Christofi's case, that gain was perceived in emotional rather than financial terms. These killings therefore appear to be more calculated, 'cold-blooded' and premeditated than the killing of children by an unstable mother or the killing of a partner/husband by an abused, long-suffering wife. In that sense, they also pose a problem for feminist theorists, who, in moving beyond such stereo-typically gendered killings, are faced with the difficult task of theorising criminal acts which by their very nature cannot lead to neat resolutions.<sup>188</sup> For example, the gross disparity between Dorothea Waddingham's and Louisa Merrifield's punishment compared to their partners who walked out of court free men, should not be seen as an excuse to detract agency or responsibility away from the two women. In other words, the point of placing their cases within the context of a double trial has not been to excuse the women's part in the crime, nor to portray them as 'helpless victims' being 'led' by their men. Similarly, in the case of Louie Calvert, we cannot justify or empathise with her gruesome act. The cases of Margaret Allen and Styllou Christofi encompassed two women whose deviance appeared so extreme that it could not be typified. Instead they were inappropriately allocated a place within the 'bad' category - thus providing further evidence of the inadequacy of the 'mad/bad' categorising system which frequently deems rational women to be mad whilst failing those whose mental state ought to be further investigated. None-the-less, the contention which I outlined in Chapter Five - that it is a certain *type* of woman who is singled out for the most severe punishment - still holds true. Thus, after examining the five cases in this chapter, we have found women with criminal records; women who were drinkers; who had children in care; who were prostitutes; who were the mothers of illegitimate children and who were not married to the men they lived with. In short, they were women who had failed in various degrees to attain appropriate standards in the crucial areas of motherhood, domesticity and sexual respectability. Moreover, their offence pattern - committing acts of murderous violence - stood in sharp opposition to sex role expectations, which, as discussed in Chapter Five, plays an important part in the construction of the 'doubly' deviant woman.

By challenging existing accounts of Dorothea Waddingham and Louisa Merrifield, and by rendering Louie Calvert, Margaret Allen and Styllou Christofi visible, we can end their muted state. By including their cases in the work towards the creation of a more complex language in which to discuss women's violence, we

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<sup>188</sup> See discussion on this point by Bell & Fox 1996:471-494.



can ensure this language provides even the most powerless of women with a voice. The five women studied in this chapter were never to benefit from the new knowledge generated as a result of 'evading' dominant knowledge in this manner. Due to the historical nature of this thesis the feminist goal of sharing the research with the researched as discussed in Chapter Two, is not an option. However, these women's histories have been crucial to the principle of generating knowledge from 'below'. In the words of Sawicki, "through the retrieval of subjugated knowledge, one establishes a historical knowledge of resistance and struggle."<sup>189</sup> Hence, in excavating their cases, new spaces are created on which to tell their stories - spaces which in turn are available for the foundation of as yet unopened discourses and unspoken language in relation to violent women of the future.

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<sup>189</sup>Sawicki, J. (1991) *Disciplining Foucault* Routledge, London, p.57.

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## Chapter Eight

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### Women Who Kill Their Male-Partners.

Women who kill their husbands/partners have always been punished more harshly than men who kill their spouses. Thus, in Chapter Three I noted that prior to the Enlightenment, women who killed their husbands were guilty of *petit treason* and therefore could be burned at the stake, unlike men who killed their wives, who could only be found guilty of murder for which the penalty was hanging. Moreover, as I also discussed, this differential punishment was based on the notion that a woman who killed her husband had "violated the implicit contract between ruler and ruled."<sup>1</sup> She was therefore also guilty of killing her master which was "an affront to God, the King and the entire patriarchal lineage."<sup>2</sup> Beattie has suggested that women who committed *petit treason* may have been battered and subsequently acted in self-defence.<sup>3</sup> However, it is only during the last two decades - as a result of vigorous campaigning by feminist activists - that legal precedents have been set which recognise this alternative truth about women who kill abusive husbands. In this version of the truth such acts are viewed not "as 'cold-calculated killing[s]' but as ... act[s] of self-defence."<sup>4</sup> The legal response to the feminist demand "that the law tell a different story about the same event and the same participants"<sup>5</sup> is still characterised by struggle between a male-dominated criminal justice system steeped in tradition and sheltering behind reactionary views of the social world, and modern women whose everyday experiences have increasingly led to demands for substantive as well as formal justice and equality. While such demands have given rise to a new discourse around violent men - that they 'precipitate' towards their own death by using violence against their partners<sup>6</sup> - no woman is guaranteed leniency when she faces the court after having killed an abusive partner. Two days after Sara

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<sup>1</sup>McLynn, F. (1991) *Crime & Punishment in Eighteenth Century England* Oxford University Press, Oxford, p.120.

<sup>2</sup>Faith, K. (1993) *Unruly Women* Press Gang, Vancouver, p.32.

<sup>3</sup>Faith 1993:33, referring to Beattie (1986).

<sup>4</sup>Stanko, E. & Scully, A. (1996) 'Retelling the Tale: The Emma Humphreys Case' in Myers, A. & Wight, S. (1996) *No Angels* Pandora, London, p.62.

<sup>5</sup>Stanko & Scully 1996:58.

<sup>6</sup>Browne, A. (1987) *When Battered Women Kill* The Free Press, New York, p.10. Browne defines men who precipitate their own death as those who "were the first to use physical force, strike blows, or threaten with a weapon."

Thornton's appeal failed in 1991, a case similar to hers; except the defendant was a man and the victim a woman, had a very different outcome when Joseph McGrail walked free, having received a two-year suspended sentence after murdering his abusive, alcoholic common-law wife.<sup>7</sup> Yet Thornton too is a free woman today, which demonstrates the power of one particular feminist challenge to the legal system with groups such as *Justice for Women*, as well as Thornton herself, succeeding in unsettling the legitimacy of the law, a process which also exposed the shifting terrain on which legal hegemony is built. The success of this feminist challenge to the law becomes more apparent if we compare the present to the first half of this century when the abuse that women suffered was largely ignored. Even when commented upon it did not count as a mitigating circumstance and failed to impact on the execution process in any way.

### The Case of Emily Swann.

Emily was ... a confirmed tippler and a slut and her only virtue was that she loved children. She took good care of them but it was her husband, an inoffensive individual, who was left at home to mind the brood while Emily made the round of the local inns.<sup>8</sup>

In the previous chapters I have discussed the possibility of spouses being implicated in crimes for which only the woman was executed. This ambiguity did not apply to the 'Wombwell murder' which concluded with a double execution, the second of three to be examined in this thesis. Emily Swann, who was 42 in 1903, the year of her execution, was hanged four days after Christmas with her lover John Gallagher, for the murder of Emily's husband, William. The case of Emily Swann, like those of Louie Calvert and Margaret Allen, has remained almost invisible throughout this century and merited only a few cursory lines in national newspapers at the time. The main reason for this is likely to be that it appeared utterly unproblematic - an 'open and shut' case of a wicked, scheming and immoral wife plotting with her lover, the murder of her 'innocent', hard-done-by and long-suffering husband. This official version of events ensured that the execution of two people was regarded as quite uncontroversial - merely a case of the law taking its rightful course.

The Swann's lived in the tiny mining community of Wombwell when John Gallagher entered their lives, initially as a lodger, later, also as Emily's lover. Neighbours testified that "Gallagher slept with her whilst her husband was at

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<sup>7</sup>The Observer 4th August 1991.

<sup>8</sup>O'Donnell, B. (1956) *Should Women Hang?* W.H. Allen, London, p.50.

work at night"<sup>9</sup>, and unsurprisingly, conflict erupted between the two men when William became aware of the affair. John was asked to seek alternative lodgings, but he merely moved into the house of Mary Ann Ward opposite the Swann's and the affair continued. Emily and John were two of the participants at a drinking party in the home of Mary Ann one Saturday afternoon, when Emily decided to take John's clothes, which had just been released from the pawn-broker, across the road to her own house. She returned almost immediately with a black eye and said: "Look Johnnie what our Bill has done."<sup>10</sup> John replied: "I'll give the b-r something for himself."<sup>11</sup> As they crossed the yard together to see William, Emily was heard to say: "I hope he'll punch him to death."<sup>12</sup> Within 15 minutes John returned alone to the party and said: "I've broken the b-r 4 ribs + I'll break him 4 more."<sup>13</sup> After another drink he left for the Swann's house a second time saying: "I'll murder the b-y swine before morning." A second violent struggle was overheard which included Emily urging: "Give it to him Johnny - give it to the b-r ... Punch the b-r to death."<sup>14</sup>

After the second struggle John and Emily emerged from the house holding hands.<sup>15</sup> However, within minutes, Emily called for help, perhaps realising that William was seriously hurt. John meanwhile went to the local pub, and when told William was dead responded: "'I have not b-y well done it' and at once danced about the floor."<sup>16</sup> To another witness he said: "'I'm not guilty am I?' and started dancing + laughing."<sup>17</sup> He furthermore refused Emily's request to accompany her to the house to face the police and was not captured for two months.<sup>18</sup>

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<sup>9</sup>HO144/736/113887 XC2356 Public Record Office, Kew, Richmond, Surrey TW9 4DU. Testimony of Mary Ann Ward included in Judge's Notes dated 11th December 1903. As the name suggests, 'Judges Notes' are the notes the trial judge makes as witnesses give evidence and the trial unfolds. In cases such as that of Emily Swann, where no trial transcript exists, the 'Judge's Notes' are therefore the only primary source available which describes in detail - and frequently quotes - evidence given at the trial.

<sup>10</sup>HO144/736/113887 XC2356 Statement to the Coroner's Court by Walter Wigglesworth dated 9th June 1903.

<sup>11</sup>HO144/736/113887 XC2356 Testimony of Mary Ann Ward in Judge's Notes

<sup>12</sup>HO144/736/113887 XC2356 Statement by Walter Wigglesworth 9th June 1903, testimonies by Edward Ward; Alfred Harper and Martha Ward in Judge's Notes.

<sup>13</sup>HO144/736/113887 XC2356 Testimony of Rose Ward in Judge's Notes.

<sup>14</sup>HO144/736/113887 XC2356 Testimony of J.W. Dunn in Judge's Notes.

<sup>15</sup>HO144/736/113887 XC2356 Testimony of J.W. Dunn in Judge's Notes.

<sup>16</sup>HO144/736/113887 XC2356 Testimony of Edward Ward in Judge's Notes.

<sup>17</sup>HO144/736/113887 XC2356 Testimony of Walter Wigglesworth in Judge's Notes.

<sup>18</sup>HO144/736/113887 XC2356 Testimony of Thomas Beard and Detective George Hudson in Judge's Notes.

The behaviour of Emily and John before and during the murder allowed for only one interpretation as far as Home Office staff were concerned: it had been a "cruel and deliberate murder" because "the return to the attack shows that they knew what they were about ..."19 Worse still, it was judged to be a premeditated murder as a result of a witness testifying that a week earlier Mrs Swann had said to Gallagher: "Go and punch his b-y ribs off, and I'll stand and see you do it, and thing [sic] you do no wrong."20 Emily herself agreed that she had often heard John tell William "he would make him ready for a coffin"21, and a third witness appeared to support the Crown's contention that William's murder had been premeditated when she testified: "I have many a time heard Gallagher say 'I'll kill the bugger', meaning deceased."22 Thus, while one advisor to the Home Secretary conceded that "they had evidently some days before contemplated violence though not perhaps actual murder", another was adamant that this was "a premeditated + brutal murder. Though they had undoubtedly been drinking they were quite sensible of what they were doing."23 Even Emily's black eye, which was the original reason for John's attack on William, was excused as having come about as a result of provocation:

... it was his [John's] presence there that provoked Swann to strike his wife.24

Events surrounding the murder of William Swann therefore appeared self-explanatory and unproblematic, and the double-trial on which two people's lives depended, lasted less than a day - the jury taking a mere 30 minutes to reach a verdict. At 3.20pm on the opening day of the trial both prisoners had been sentenced to death.25 No evidence had been presented on behalf of the defence.

#### Double Standards of Morality - Double Standards of Justice?

In considering whether a reprieve could be justified in the case of death sentence prisoners, it was common practice for the Home Secretary to request a report from the local constabulary concerning the prisoner's background. In Emily's

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19HO144/736/113887 XC2356 Home Office Minutes 11th December 1903.

20HO144/736/113887 XC2356 Testimony of Lavinia Ward in Judge's Notes.

21HO144/736/113887 XC2356 Statement by Emily Swann 9th June 1903.

22HO144/736/113887 XC2356 Statement of Mary Ann Ward 24th October 1903.

23HO144/736/113887 XC2356 Home Office Minutes 14th & 15th December 1903.

24HO144/736/113887 XC2356 Home Office Minutes 23rd December 1903. See also Home Office Minutes dated 24th December 1903 which read that it was "provocation which led Swann to strike his wife."

25The Yorkshire Post 10th December 1903.

case Superintendent Ouest provided this report, and it is from this document that we learn the violence Emily had suffered at the hands of her husband was not considered a mitigating circumstance. Thus, Superintendent Ouest wrote without a hint of irony:

Swann has undoubtedly thrashed his wife many times but I would not like to say that he has been habitually cruel to her.<sup>26</sup>

Indeed, (and despite the fact that William had a conviction for aggravated assault against Emily), the superintendent suggested John had not been violent *enough* towards her:

... the wonder is that he has not killed her. He has frequently gone home after leaving work and found his wife drunk in the house and nothing prepared for him in the way of food.<sup>27</sup>

Throughout this thesis I have discussed the relationship between women and discourses of domesticity. In particular, I described how, as a consequence of the notion that a 'woman's place' is in the home and 'her duty' is to her family, wives can be disciplined by their husbands if they are perceived to fall short of expected standards. Emily was the mother of 11 children and also worked outside the private sphere as a mill-hand. Yet the superintendent appeared to suggest that William would have been justified in beating - if not killing her - for not having dinner prepared on time.

In this thesis I have also discussed the differential attitude towards female drinkers compared to male drinkers. Thus, in Chapter Five I noted that heavy drinking in men was considered 'natural' while women engaging in identical behaviour were believed to be promiscuous and 'disgusting'. The reaction to the Swanns' consumption of alcohol demonstrates how this theoretical point is translated into reality. While both Emily and William were heavy drinkers, William's drinking was excused by his work:

Glassblowers are a class of men who from the nature of their employment imbibe very freely and the deceased man was no exception to the general description of them. ... He was a good workman, attended regularly at his work.. [and] got on very well with his fellow workmen.<sup>28</sup>

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<sup>26</sup>HO144/736/113887 XC2356 Report to Home Secretary supplied by request on Superintendent Arthur C. Ouest dated 22nd December 1903.

<sup>27</sup>HO144/736/113887 XC2356 Report by Superintendent Ouest 22nd December 1903.

<sup>28</sup>HO144/736/113887 XC2356 Report by Superintendent Ouest 22nd December 1903.

Emily's job as a mother of 11 children and a mill-hand was not considered a valid excuse for drinking. Instead she was termed "a drunken, immoral woman" who "was much more to blame than her husband was" for their unhappy existence.<sup>29</sup>

Emily's lack of commitment to domesticity, her drinking and her illicit affair with John indicated that she was the type of woman who ignored gender role expectations and male authority - the 'type' men feel obliged to 'put in their place' as discussed in Chapter Five. She was also the 'type' of woman likely to be both judged and punished more severely than a 'good' woman who does not challenge ideologies around domesticity and respectability. Indeed, prior to the murder, Emily had already experienced double standards of punishment as I shall now illustrate.

Emily and William Swann both had several previous convictions against them. William's criminal record was considerably longer with 12 convictions compared to Emily's seven. Included in the 12 convictions was one of common assault against another man as well as the aforementioned aggravated assault against Emily. One of Emily's previous convictions also included violence when she had unlawfully wounded another woman. Some of their convictions were identical, for example, they each had three convictions for using 'obscene language'. Similarly, they had both been found guilty of being 'drunk and disorderly'. However, William also had two convictions for being 'drunk and riotous'. The remaining convictions were motivated by financial gain, with William breaking gambling laws, game laws and the Poor Law, while Emily had been convicted of soliciting for prostitution.<sup>30</sup>

Thus, William's criminal record was both more extensive and more serious than Emily's with two convictions of physical violence against Emily's one. Yet, despite his recidivism, William had never received a prison sentence but had instead been ordered to pay fines or costs. Emily, on the other hand, had been sentenced to six months imprisonment for her first and only violent offence until her involvement in William's death. At the time of her sentence, her only previous convictions were those for using 'obscene language'.<sup>31</sup> In Chapter Five, I argued

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<sup>29</sup>HO144/736/113887 XC2356 Report by Superintendent Oust 22nd December 1903. Only six of Emily's children were still living at the time of the trial.

<sup>30</sup>HO144/736/113887 XC2356 Previous Conviction Sheets of Emily and William Swann. John Gallagher also had a criminal record but it will not be discussed in this thesis since, apart from one 'drunk and disorderly' conviction, his other convictions related to his life in the army ie. desertion and disobeying orders.

<sup>31</sup>HO144/736/113887 XC2356 Previous Conviction Sheets.

that female criminals are not only judged according to the crime they have committed, but also according to their conduct as women - especially in the areas of motherhood, domesticity, respectability and sexuality. For example, the more respectable a woman is the more lenient her sentence is likely to be, while those considered "to be too free in their behaviour", in the words of Naffine, may be treated more punitively than men. I also argued that women are further judged according to the 'type' of crime they have committed. For example, shop-lifting or baby-snatching are crimes considered consistent with sex role expectations of women. Violent physical attacks are not. Ultimately, however, I argued, that women who receive prison sentences are not necessarily punished according to the seriousness of their crimes but according to their performance as women. Those who fail to measure up to 'appropriate' feminine standards are thus deemed to be 'doubly bad', for they are guilty not only of the crime of which they have been found guilty, but also of abandoning their femininity. Finally I presented the hypothesis that all executed women of the 20th century in England and Wales, had stepped beyond the boundary of acceptable female conduct and behaviour. Emily Swann was no exception. As can be gathered from the above, while considering her reprieve, the Home Secretary had in front of him official documentation which showed Emily to be a drunken, violent prostitute, a sluttish house-wife, an unfaithful wife who had a lover 12 years her junior, (which, as I indicated in the case of Louise Masset, always reflects badly on the woman), as well as a foul-mouthed criminal. Emily appeared to be a woman who had abandoned every one of the disciplinary practices required in order to win male patronage - a dangerous woman out of control who desperately needed to be 'put in her place'. Hence, Mr Ouest's comment that thrashing her regularly did not constitute cruelty and that it was a "wonder he had not killed *her*," and hence Home Office staff's assertion that William had been 'provoked' into giving his wife a black eye. In short, Emily *deserved* it. With this information in mind Home Office advisers were united in the opinion that there was "no ground for interference."<sup>32</sup> The Home Secretary had only one last concern before allowing the execution to go ahead - that of public opinion:

The only reason that remains for considering the question of remission seems to me to be the risk that public feeling might be shocked by the execution of a woman for the murder of a man who had struck her.<sup>33</sup>

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<sup>32</sup>HO144/736/113887 XC2356 Home Office Minutes 14-15th December 1903. This document contains the comments of three members of Home Office staff who cannot be named as they merely initialed their notes.

<sup>33</sup>HO144/736/113887 XC2356 Home Office Minutes 23rd December 1903. Official recognition of the importance of public opinion can be gathered from the *Royal Commission on Capital Punishment 1949-1953 Report* para 39: "... it has



Yet, even on this point Superintendent Ouest was able to provide reassurance, claiming that "her own relatives have had little or nothing to do with her for several years now on account of her vicious conduct."<sup>34</sup> Moreover:

The feeling in the district is very much against the prisoners particularly against the woman, she is undoubtedly a very bad cruel woman.<sup>35</sup>

As a result of Emily's conduct and behaviour, and despite the fact that William had been convicted of assaulting *her*, it was he rather than Emily who was perceived as the 'victim' within the relationship even prior to his death. She simply did not fulfil the necessary criteria to qualify for the status of victim. Her failure to be a faithful wife whose sphere is in the home, who abandons her own interests in favour of those of her family, and who generally displays the attributes of loyalty, compliance and altruism, ensured that it was William, not Emily, who deserved sympathy. Even when William's violence against her became known, he could still be described as 'inoffensive' (see opening quote), because it was not regarded as an important part of her reality and experience, but as the result of a husband's rightful attempt to discipline his wife's wayward behaviour. Thus, as I shall now demonstrate, even though the evidence needed to provide an alternative account of Emily herself, as well as events leading up to the murder, was in existence at the time, it could not be 'heard' because discourses which speak of husbands' violence against their wives as unacceptable had not yet come into existence.

### An Alternative Truth.

Unsurprisingly, Emily and John blamed each other for William's death. John claimed that Emily had hit William with a poker after which:

she + Swann ... got up + he sat in a chair between the table + the fire place. I said to him I am going away today + he said good bye Jack. I left the house and went to Mrs Wards [sic] again.<sup>36</sup>

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occasionally been felt right to commute the sentence in deference to a widely spread or strong local expression of public opinion, on the ground that it would do more harm than good to carry out the sentence if the result was to arouse sympathy for the offender and hostility to the law."

<sup>34</sup>HO144/736/113887 XC2356 Report by Superintendent Ouest.

<sup>35</sup>HO144/736/113887 XC2356 Report by Superintendent Ouest.

<sup>36</sup>HO144/736/113887 XC2356 Statement by John Gallagher 21st December 1903.

In Emily's version of the truth John struck William:

knocking him down and punched him a good many times ... I tried to pull Gallagher off him and he (Gallagher) struck me knocking me down - Gallagher then struck deceased more than once with a chair and called him a 'Bloody bastard' and went out of the house ...<sup>37</sup>

The exact truth surrounding William's death could never be known by anyone except Emily and John themselves, and both the trial judge and Home Office staff recognised that:

it is of course not proved that she struck her husband with the poker - that is merely a statement of Gallagher's ...<sup>38</sup>

Ultimately, however, it was quite irrelevant whether Emily had participated in the physical attack or not for the judge pointed out that:

If one instigated another to commit murder, and that other committed it, he was guilty of murder, and so was the person who instigated him. If they believed that this woman was standing by encouraging that man to strike him with the poker, or to kick him with his boot, the act was just as much her act as if she had done it herself.<sup>39</sup>

In other words, Emily could be convicted solely on the evidence of her verbal encouragement to John. Yet, within the context of having just received a black eye her comments might well have indicated an angry and emotional outburst rather than a literal incitement to murder. Judge Darling appeared to have considered this point for in his summing up he stated "that threats might be idle non-sense." However, he then presented a tautological argument: "when they found that happen which the threats expressed as likely to happen, that was going a long way to prove that they were not mere idle empty words, but that they were the expression of a hope, or possibly of an intention."<sup>40</sup> In other words, what may have been an idle threat, becomes evidence if and when something happens which matches that threat. At a different level, in a culture and era where the discourse of 'the battered wife' did not exist and where men were perceived as having the right to discipline their wives, Emily could be considered to have provoked William's violence, but that violence could not be considered to

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<sup>37</sup>HO144/736/113887 XC2356 Statement by Emily Swann 9th June 1903.

<sup>38</sup>HO144/736/113887 XC2356 Home Office Minutes 24th December 1903.

<sup>39</sup>Judge Darling's summing up quoted in *The Yorkshire Post* 10th December 1903.

<sup>40</sup>Judge Darling's summing up quoted in *The Yorkshire Post* 10th December 1903.

have provoked Emily's comments.<sup>41</sup> Rather they were seen as yet another example of Emily's rebelliousness - instead of being submissive to her husband she retaliated. However, the Home Secretary had the opportunity to hear a different truth about Emily before ordering the execution, when her children submitted a petition on behalf of their mother:

[she] was always a good mother to us ... notwithstanding the drunken habits of our late Father ... who by his drunken habits destroyed our home life and rendered us unhappy causing our Mother ... to go out to work in order to keep the home together although our Father earned good wages which he spent in drink and debauchery and had it not been for his drunken habits and continued illtreatment of our said mother by our Father ... we do not think that our said mother would now have been in the painful position of a Woman condemned to death.<sup>42</sup>

Unlike those in authority, Emily's children considered not only William's "continued illtreatment" but also his recent assault on their mother to be mitigating factors in subsequent events:

... she being at the time under the influence of drink and also suffering acutely from a Brutal Assault just committed upon her by our Father ... consequently she had not the power to resist to the extent she might or would have done ...<sup>43</sup>

The petition was signed not only by Emily's children but also by her sisters and her 84 year old mother "who hopes that her daughter may be reprieved and that the residue of her [Hannah Hinchliffe - Emily's mother] life may not be embittered by the knowledge that one of her children has died on the scaffold."<sup>44</sup> It was further signed by many members of the local community who added:

Many of us who reside in the Wombwell district and neighbourhood have known the condemned Woman for many years and can and do hereby testify that her general character conduct and disposition has been altogether inconsistent with the unfortunate position in which she is now placed.<sup>45</sup>

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<sup>41</sup>Feminist writers argue this attitude still holds currency today; for example Susan Edwards writes: "Men have the right to react to provocation, while women do not." (Edwards, S. (1989) *Policing 'Domestic' Violence* Sage, London, p.183).

<sup>42</sup>HO144/736/113887 XC2356 Petition on behalf of Emily Swann 22nd December 1903.

<sup>43</sup>HO144/736/113887 XC2356 Petition on behalf of Emily Swann.

<sup>44</sup>HO144/736/113887 XC2356 Accompanying letter with petition from solicitors Last & Betts 22nd December 1903.

<sup>45</sup>HO144/736/113887 XC2356 Petition on behalf of Emily Swann.

These testimonies not only placed William's death within the context of long-term domestic violence unrelated to Emily's affair, but also threw serious doubt upon Superintendent Ouest's claim that Emily's family would have 'nothing to do with her' and that 'local feelings were against her.'<sup>46</sup>

It was not only Emily's family and local community who were prepared to speak on her behalf. The prison chaplain at Armley Gaol where she was awaiting execution, was also moved to intervene on her behalf by writing to the Home Secretary. In Chapter Three I drew attention to the important role played by chaplains historically, in securing a confession from death-sentence prisoners, since this added legitimacy to the execution. Chaplain Mausell took this role as seriously as his predecessors and wrote to the Home Secretary: "I have spent hours myself in trying to get her to make a confession of her guilt." However, unlike the chaplain discussed in the next case-study, Mausell did not shy away from the possibility of an injustice having been done and added in brackets: "supposing she was guilty." He expressed his doubts in the following terms:

she persistently denies having touched him with the poker - and says that she did not wish for his death. She had tried to break off her connection with Gallagher, but he had a great power over her because he was kind, when her husband was cruel. [She claims] she has not received justice, because the witness Dunn swore falsely at the Assizes ... While acknowledging other offences [she] denies that she was an accessory to the murder except in so far as she contributed to it by her adultery ... She has not altered her first statement that she is innocent ... and that it was Gallagher and Gallagher alone who beat his life out of him.<sup>47</sup>

To emphasise his reservations about Emily's guilt he added that "Sister Sarah, one of the Lady-Visitors, ... thinks it is quite possible that Swann took no active part in the murder of her husband."<sup>48</sup> However, it was to no avail, for as I have indicated above, as far as the judge and the Home Secretary were concerned, it was irrelevant whether Emily had participated in the attack on William - either way she remained guilty of murder.

As stated above, we cannot know for certain whether Emily and John conspired to murder in advance. At the very least, four separate factors should be considered

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<sup>46</sup>When Emily's children learned that the Home Secretary refused to grant their mother a reprieve they sent an appeal directly to the King through their solicitor (*The Times* 30th December 1903).

<sup>47</sup>HO144/736/113887 XC2356 Letter to the Home Secretary from Henry Mausell, prison chaplain 22nd December 1903.

<sup>48</sup>HO144/736/113887 XC2356 Letter to the Home Secretary from Henry Mausell.

before presuming a conspiracy had taken place. First, the killing followed a protracted period of violence, sometimes between the Swanns, sometimes between John and William, at other times between all three of them. John's defence counsel phrased it in these terms:

It was the same kind of fight as the prisoner had had again and again with the deceased man. He no more thought of taking Swann's life than he did on several occasions when he had been similarly protecting this woman.<sup>49</sup>

He therefore asked the jury to consider this a case of manslaughter carried out "in a moment of passion" rather than a case of deliberate and calculated murder.<sup>50</sup>

Second, PC Minty found Emily in a state of disbelief when he arrived at the murder scene. She said: "He isn't dead is he - He can't be dead."<sup>51</sup> Another witness testified that Emily "seemed upset" when she realised William was dead. It is also known that at one point she "locked door to keep out Gallagher." These details led her defence counsel to conclude that "she was horrified at what was done."<sup>52</sup>

Third, police records indicated that, at least officially, William's history of violence as well as his 'drunk and riotous' behaviour spanned a period of 16 years whereas Emily had only been found guilty of similar offences during the last two years of her life.<sup>53</sup>

Finally, Emily was a small woman, measuring only 4 feet 10 inches and weighing 122lb, which lends credence to her children's version of events, that it was William who mistreated Emily rather than the other way around as claimed by Mr Oest.<sup>54</sup> Therefore, when taken together, there appeared to be enough evidence available to place the killing within the context of a violent relationship in which Emily was often hurt, hence she was 'provoked' into inciting John to give William "nothing more than a good thumping for what he had done."<sup>55</sup> However, because

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<sup>49</sup>*Yorkshire Telegraph & Star* 9th December 1903, Mr Michel Innes presenting John Gallagher's defence.

<sup>50</sup>*Yorkshire Telegraph & Star* 9th December 1903, Mr Michel Innes presenting John Gallagher's defence.

<sup>51</sup>HO144/736/113887 XC2356 Statement by PC A.J. Minty in Judge's Notes.

<sup>52</sup>HO144/736/113887 XC2356 Judge Darling's own notes in Judge's Notes. See also *The Times* 10th December 1903.

<sup>53</sup>HO144/736/113887 XC2356 Previous Conviction Sheets. Emily had two convictions for 'obscene language' before this two-year period in 1893 and 1898.

<sup>54</sup>Ellis, J. (1996) *Diary of a Hangman* True Crime Library, London, p.161.

<sup>55</sup>*Yorkshire Telegraph & Star* 9th December 1903. Mr Newell presenting Emily's defence.

there were no discourses available in which to discuss 'battered' or 'provoked' women, none of the above evidence was utilised in order to present an alternative truth. Thus, although it was defence counsel's role to present the defendant's version of the truth, it was no more capable of seeing beyond the dominant truth than the prosecution. Indeed, Emily's defence counsel argued on remarkably similar terrain, as I shall now illustrate.

### Trial and Judgement.

After a tenacious struggle by feminist activists spanning nearly three decades, to make 'visible' the issue of woman battering, and despite statistics which indicate that between 60 and 79 per cent of women who kill their husbands or partners have previously been beaten by them, it is still the case today that in so-called 'domestic violence' cases, women are often considered to be "equally to blame" for male violence against them (sometimes even their own murder) while histories of male abuse and female self-defence remain hidden.<sup>56</sup> Thus, in the 1990s, protracted campaigns by groups such as Justice for Women and the Southall Black Sisters, were necessary before women like Emma Humphreys and Kiranjit Ahluwalia were released on appeal. Both women had been physically and psychologically abused by their partners whom they subsequently killed. No such campaign groups existed during the first half of this century. More particularly, we can gain an insight into the attitude towards marriage and women within Emily's culture from her expression that "my master's dead."<sup>57</sup> Despite her rebelliousness she knew only too well the reality of relationships between husbands and wives. I discussed the subordinate position of women within marriage in Chapter Five, and by having an extra-marital relationship Emily had violated the fundamental belief that a wife *belongs* to her husband. William's *right* to punish his wife for her transgression and to fight with John in order to restore and protect his home-life was so fundamental, that the fact he had a long record of violent behaviour unrelated to the affair, could be overlooked. Indeed neither defence counsel put William's violence forward as part of the defence. Instead both counsel *agreed* with the dominant 'truth' that their clients' behaviour had been 'sinful' and 'immoral'. Thus, Emily's *defence* counsel called her conduct "reprehensible, wicked and sinful ... Undoubtedly she used language which she ought not to have used." John's counsel agreed that "there was not the

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<sup>56</sup>Campbell, J.C. (1992) "'If I Can't Have You, No One Can'": Power and Control in Homicide of Female Partners" in Radford, J. & Russell, D. (eds) (1992) *Femicide* Open University Press, Buckingham, p.110. See also Browne 1987:10 for statistics.

<sup>57</sup>HO144/736/113887 Evidence of Edward Ward in Judge's Notes.

slightest doubt that Mrs Swann and Gallagher had ... contracted illicit relations, but ... they were not ... there as a tribunal of morals, neither was it competent for a jury to hang a man because he had committed adultery."<sup>58</sup> However, while Emily appeared to have no saving graces, John's counsel attempted to portray his client as 'gallant' springing to the defence of a woman in distress:

On May 11th a struggle took place between the husband and wife, and Gallagher then intervened, because such a struggle was unfair ... Whatever, might have been the history of this misdirected affection between the two prisoners, the fact remained that when Mrs Swann was hurt she went to Gallagher as her natural avenger and protector.<sup>59</sup>

Furthermore, a subtle shift towards blaming Emily for 'bewitching' John can be detected:

It had been said that Gallagher danced about the floor. Could they conceive any fact which spoke more directly to their mind of the besotted condition of the prisoner.<sup>60</sup>

The only other suggestion put forward by defence counsel was that the verdict should be one of manslaughter rather than murder because the attack had come about in "circumstances of passion, excitement and confusion of mind" caused by alcohol.<sup>61</sup> It was a suggestion doomed to failure as a result of John's second visit to the Swann's house, which led Judge Darling to comment:

Having beaten him, having wounded him, having gone away with time for the *blood to cool* if they had been provoked, they came back and between them they killed him.<sup>62</sup>

After the jury reached a guilty verdict Judge Darling told its members :

There was a piece of evidence which was not given in evidence before the jury, but which he might now refer to. Counsel for the prosecution thought, and he (his Lordship) thought, it might press unfairly upon Emily Swann if it were given in evidence, but this was the fact that Gallagher,

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<sup>58</sup>Closing speech by Mr Newell for Emily Swann and Mr Michel-Innes for John Gallagher, quoted in *Yorkshire Telegraph & Star* 9th December 1903.

<sup>59</sup>Closing speech by Mr Michel-Innes in *Yorkshire Telegraph & Star* 9th December 1903.

<sup>60</sup>Closing speech by Mr Michel-Innes in *Yorkshire Telegraph & Star* 9th December 1903.

<sup>61</sup>Closing speech by Mr Michel-Innes in *Yorkshire Telegraph & Star* 9th December 1903.

<sup>62</sup>Judge Darling's comments on the jury's verdict in *The Yorkshire Post* 10th December 1903. My emphasis. The issue of 'immediate provocation' is still of great relevance today, and will be further discussed in the conclusion to this chapter.

when taken into custody, said that Emily Swann hit the man and beat him with the poker, and that he did not touch him, although he was there. That were not strictly evidence against her, but for all that, from the bruises and wounds, from the position of the poker, he was convinced that that statement which he made was in part true, that she did assault her husband, and did take part in the actual killing of him.<sup>63</sup>

Judge Darling did not indicate what the special feature of the bruises and wounds were which allowed him to conclude they had been inflicted by a woman rather than a man, nor did he explain how the position of the poker made it more likely that it had been used by a woman. However, his comments did indicate his personal belief that even in a situation where two co-defendants were blaming each other in order to save themselves, Emily was less likely to speak the truth. That this should be the case was, at least for one Home Office adviser, due to Emily's "previous character" rather than the position of bruises or pokers.<sup>64</sup> Ironically, the judge's action increased the legitimacy of the court because it "was held to be an example of the even-handedness of the justice system which declined to take unfair advantage of an accused person."<sup>65</sup> In the final section I analyse why - in sharp contrast to the judge - Emily's words held so little credibility.

#### Authority, Knowledge, and Power.

In Chapter Five I discussed the way women's speech is excluded from authority. In particular, I argued that the rules which govern authority serve as "a system of rules for social control within the context of social hierarchies." The silence surrounding the experiences of the women in these case-studies is another symptom of women's lack of authority - the way in which their "accounts and experiences" are disqualified when faced with one of the highest authorities in our culture - law and the legal system.<sup>66</sup> In Chapter Four, I stated that the Enlightenment was characterised by the features of reason, rationality, science and the quest to 'prove' a 'truth' which went "beyond philosophical, theological and ideological dispute." I also pointed out that this movement was made up almost exclusively of men. Smart has explained how - following the Enlightenment - law although not a science, also became associated and identified with masculinity. This is because both law and men are constituted as *rational*, leading to great

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<sup>63</sup>Judge Darling's comments to the jury's verdict in *The Yorkshire Post* 10th December 1903.

<sup>64</sup>HO144/736/113887 XC2356 Home Office Minutes 24th December 1903.

<sup>65</sup>Ellis 1996:161.

<sup>66</sup>Smart, C. (1989) *Feminism and the Power of Law* Routledge, London, p.86.



similarity in the discourses of law and masculinity. That is to say, both men and law are identified and constituted by rationality, reason, "objectivity and abstract and principled activity."<sup>67</sup> Consequently, when feminists challenge existing accounts about women such as Emily Swann, they "are not simply challenging legal discourse, but also naturalistic assumptions about masculinity. The struggle therefore goes far beyond law."<sup>68</sup>

As a result of the close association between masculinity and law, the knowledge produced within legal discourse "is grounded in patriarchy, as well as in class and ethnic divisions."<sup>69</sup> However, it is not perceived as such but is able to gain access to power by laying "claim to a superior and unified field of knowledge which concedes little to other competing discourses..."<sup>70</sup> Thus, as a result of law's claim to objectivity and rationality it is able not only to define itself but also the 'truth' about the everyday lives of those who stand in the dock. Other types of knowledges such as those based in experience, hold less status and may be disqualified altogether. They become "'subjugated knowledges' - forms of experience and knowledge that 'have been disqualified as inadequate ... or insufficiently elaborated: naive knowledges, located low down in the hierarchy beneath the required level of cognition or scientificity.'"<sup>71</sup> Subjugated knowledges include the "low-ranking knowledge of ... the housewife and the mother"<sup>72</sup> - the knowledge of women like Emily Swann. Even if those who possess 'low-ranking' knowledge are not disqualified as speakers, their account will be mediated until it can be heard through legal discourse:

Everyday experiences are of little interest in terms of their meaning for individuals. Rather, these experiences must be translated into another form in order to become 'legal' issues and before they can be processed through the legal system ... the legal process translates everyday experiences into legal relevances, it excludes a great deal that might be relevant to the parties, and it makes its judgement on the scripted or tailored account ... how they are allowed to speak, and how their experience is turned into something that law can digest and process, is a demonstration of the power of law to disqualify alternative accounts.<sup>73</sup>

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<sup>67</sup>Smart 1989:86; 87.

<sup>68</sup>Smart 1989:87.

<sup>69</sup>Smart 1989:88.

<sup>70</sup>Smart 1989:4.

<sup>71</sup>Sawicki 1991:87 quoting Foucault.

<sup>72</sup>Sawicki 1991:57.

<sup>73</sup>Smart 1989:11.

Emily's experience as a battered wife and as a human being was almost totally silenced or 'muted'. In her (and John's) case, every avenue provided for the defendant to speak through was blocked, a factor which exacerbated the already swift trial. First, Emily did not give evidence on her own behalf. Second, no evidence was called on her behalf. Third, there was no appeal.<sup>74</sup> Lastly, Emily, along with many members of her community, was illiterate.<sup>75</sup> Illiteracy within a mainly literate nation, may be understood as another form of 'muteness' since it prevents the non-literate from participating in two major forms of communication. Moreover, in a society divided along rigid class lines, it signals membership of a class at the very bottom of the social hierarchy while members of the legal profession are almost exclusively members of the upper and upper-middle classes. Within the setting of the court-room the gulf between Emily Swann and the legal professionals, including those hired to defend her, appears insurmountable, even for those of us viewing events from the outside almost a century later. To the members of the legal establishment - who take for granted the right to define the 'truth' - Emily's trial must have seemed nothing more than a formality with the outcome a foregone conclusion. For them there was only one truth about Emily Swann, she was a drunken, violent, foul-mouthed, unfaithful wife - a woman who was both out of control and uncontrollable, hence in dire need of discipline. It is within this context that Judge Darling considered himself qualified to comment that he believed John's statement which indicated that she took part in the actual killing. It is also the context within which a Home Office adviser believed Emily to be guilty because of her "previous character" while William's character escaped scrutiny altogether. As Stanko and Scully have argued, in the absence of "*appropriate femininity*, violent women must be *explained by their deviance*."<sup>76</sup>

On the one occasion when Emily's defence counsel attempted to present an alternative truth about her, the judge advised against it:

Mr Newell said the only witness he should call was Mrs Swann's daughter, aged 14 years simply as to her mother's character.

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<sup>74</sup>The Criminal Appeal Act was introduced in 1907, four years after Emily's execution.

<sup>75</sup>Neither Emily nor many of the local residents who signed her petition could write their own name. The solicitor who prepared the petition on behalf of Emily's children wrote to the Home Secretary: "It must be borne in mind that the Petition has been signed by a class of people - a mining population - many of whom have not had the benefits of education and are therefore unable to write." (HO144/736/113887 XC2356 Letter from solicitors Last & Betts to Home Office 22nd December 1903).

<sup>76</sup>Stanko & Scully 1996:63-4. Emphases in the original.

His Lordship: had you better not? *I don't know whether you know as much about her as I do.*

Mr Newell: The little girl says she has been a good mother, and so on.

His Lordship: Yes, but if you call a witness to prove she has a good character it won't stop there; it cannot.<sup>77</sup>

In other words, as far as Judge Darling was concerned, Emily's one positive feature - that of being 'a good mother' - could not alter the dominant truth about her, so severe were her transgressions of the rules that govern appropriate feminine behaviour in all other areas of her life. Not until Emily had died on the scaffold did the public learn that she could also be a considerate and sensitive woman. Thus the *Daily Express* reported that "the woman has been much concerned about her ... children," while the *Manchester Evening News* wrote "she has sent numerous kindly messages to her aged mother ... but made a request that the old lady should not visit her, believing that the shock would prove too great for her."<sup>78</sup> Moreover, the wardresses guarding Emily during her pre-execution confinement in prison reported that she was very "worried about the disgrace she was bringing on her family, [a subject] which she talked about continuously." They had become very attached to her and broke down in tears as they led her to the scaffold.<sup>79</sup>

Despite the silence around the 'Wombwell murder' one aspect, especially in relation to Emily was widely reported. Exact details concerning the spiritual support the prisoners had received from the chaplain and priest were published on the three days leading up to the execution, culminating with reports that "both prisoners have expressed contrition for the crime ..." <sup>80</sup>, and "Mrs Swann is *said* to have confessed verbally to the chaplain to whom she more than once exclaimed that she had 'made herself right with God.'" <sup>81</sup> As I have noted in previous case-studies, such vague references to supposed confessions were common because it was believed to add legitimacy to state executions. However, the detailed

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<sup>77</sup>Trial proceedings quoted in *Yorkshire Telegraph & Star* 9th December 1903. My emphasis.

<sup>78</sup>*Daily Express* 28th December 1903; *Manchester Evening News* 29th December 1903.

<sup>79</sup>Ellis 1996:162; 163.

<sup>80</sup>*Daily Express* 28th December 1903.

<sup>81</sup>*Daily Express* 30th December 1903. My emphasis. See also *Manchester Evening News* 29th December 1903 and *Daily Express* 29th December 1903 which reported that John "attended the Roman Catholic service in the prison yesterday morning, while Mrs Swann was present at the Church of England service. They were in the condemned pews." See also Ellis 1996:161-2 who details the prisoners' attendance "at a special service in the prison chapel on Christmas Day ... Both the condemned displayed religious penitence."

references to Emily's and John's religious activities together with the use of the expression 'contrition' is of particular interest in this case, for as Kathy Laster has argued:

Even without a confession, compliance with Church rituals at least allowed observers to infer that the condemned exhibited, "the appearance of sincere *contrition* for their criminal career and patient resignation to their fate."<sup>82</sup>

The prisoners were reported to have "approached the scaffold bravely"<sup>83</sup> although their last moments on this earth were both macabre and dramatic. Ellis who executed the couple wrote of the event:

We were putting the rope round Gallagher's neck when she suddenly cried out: "Good morning, John!" Gallagher started violently under our hands. He had no idea up to that moment that Emily Swann was standing beside him. He answered, "Good morning, love!" By this time the other rope was round her neck, but again she spoke: "Good-bye. God bless you." This, I had to confess, was an astonishing scene, a dialogue between two people, one of them a woman, standing with pinioned arms and legs, faces blotted out by shapeless white bags, and with ropes fixed round their necks. Then one quick pull of the lever, and their conversation was still for ever.<sup>84</sup>

In line with Home Office instructions, the prison doctor reported that death had been instantaneous and had been "perfectly painless in both cases."<sup>85</sup>

### The Case of Edith Thompson.

The gulf between the legal cataclysm that destroyed her and her own sense of her position is revealed by her reaction to the sentence. As her family entered her Old Bailey cell after the verdict, Edith rushed towards her father, crying: "Take me home, Dad."<sup>86</sup>

... if only she had been upper class - or working class - or better educated - or even French, there would have been simpler solutions to her problems.

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<sup>82</sup>Laster, K. (1994) 'Famous Last Words: Criminals on the Scaffold, Victoria, Australia, 1842-1967' in *International Journal of the Sociology of Law* 1994, 22, 1-18, p.9, quoting from *The Argus*. My emphasis.

<sup>83</sup>*Daily Express* 30th December 1903.

<sup>84</sup>Ellis 1996:163.

<sup>85</sup>Ellis 1996:163. The Home Office instructions to prison personnel concerned with state executions are further discussed in Appendix II.

<sup>86</sup>Weis, R. (1993) 'Not innocent, not guilty' in *The Guardian* 10th November 1993.

If she had been male, of course, her particular problems would not have existed at all.<sup>87</sup>

Edith Thompson and her lover Freddy Bywaters, were executed simultaneously - although in separate prisons - on 9th January 1923, thus constituting the last of three double executions examined in this thesis. In Chapter Six I stated that two of the 15 women executed during the 20th century, may have been innocent of the crime for which they were hanged. The second of these women is Edith Thompson.

The Thompson/Bywaters case is strikingly similar to the Swann/Gallagher case except in one crucial area - that of social class. Edith was a highly competent business woman who enjoyed financial independence as a result of an income higher than her husband's, while Emily was part of the late Victorian 'residuum' - unskilled and illiterate. Further, unlike any of the cases discussed so far, the Thompson/Bywaters case has remained controversial to the present day with opinions sharply divided on the issue of Edith's guilt. Thus, while there was little or no attempt to establish an alternative truth in the 11 cases already discussed, with the consequences that the women in question became increasingly invisible and 'mute' until they almost totally disappeared from history, an alternative truth about Edith Thompson was created almost immediately after her trial which has *gained* credibility with the passing of time.

Whereas in the Swann/Gallagher case the judge had been determined to demonstrate that Emily had physically participated in the killing, even though the only evidence in support of this was the word of her co-accused - himself struggling to avoid the gallows - the prosecution in the Thompson/Bywaters case made no attempt to prove that Edith had participated in the actual killing. Instead she was found guilty of having incited Freddy to kill her husband, Percy. Edith and Freddy had been lovers for 14 months, when one October evening, as Edith and Percy were walking home, Freddy suddenly appeared and stabbed Percy. John Webber, a local resident, testified that he heard Edith cry: "'Oh, don't; Oh, don't', in a most piteous manner", and reiterated in cross-examination that he "had no doubt whatever" that the voice he heard was Edith's.<sup>88</sup> When Edith saw other people in

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<sup>87</sup>Twining, W. (1990) *Rethinking Evidence*, Basil Blackwell, Oxford, p.294.

<sup>88</sup>Young, F. (1923) *Trial of Frederick Bywaters and Edith Thompson* William Hodge & Co, Edinburgh and London, p.19. This book forms part of the *Notable British Trial Series* and is a *verbatim* transcript of the trial. It will therefore be quoted from extensively in this case-study. The deposition file contained in CRIM 1/206/5 XC6872, Public Record Office, Chancery Lane, London WC2A 1LR also includes witnesses' statements, however the *Transcript* will be utilised in preference to the

the street she cried: "Oh, my God, will you help me? My husband is dying."<sup>89</sup> Edith herself immediately ran for medical assistance and Dr Maudsley testified that when he arrived at the murder scene she "was in a confused condition, hysterical and agitated." When told Percy was dead she exclaimed: "Why did you not come sooner and save him?"<sup>90</sup> When a police officer accompanied Edith to her home, she asked - referring to Percy - "will he come back?"<sup>91</sup> Several witnesses testified that Edith did not appear to believe that Percy was dead, for example, she said to her lodger: "They have taken him away from me; if they would let me go to him I could make him better."<sup>92</sup>

Edith had in fact recognised Freddy as Percy's assailant, but in order to shield him as well as to keep their affair secret, lied to the police when she claimed: "I did not see anybody about at the time [of the attack]."<sup>93</sup> She lied again in her written statement when she stated: "I cannot remember whether I saw anyone else there or not."<sup>94</sup> However, at this point Freddy had also been requested to make a statement at the police station, and when Edith was moved into another room, she caught a glimpse of him.<sup>95</sup> Shocked and surprised, she exclaimed: "Oh, God, oh, God, what can I do? Why did he do it? I did not want him to do it. I must tell the truth."<sup>96</sup> Edith then made a third statement stating:

... a man rushed out ... and knocked me away and pushed me away from my husband. I was dazed for a moment. When I recovered I saw my husband scuffling with a man. The man whom I know as Freddy Bywaters was running away.<sup>97</sup>

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deposition file as it is more comprehensive. Henceforth the transcript of the *Trial of Frederick Bywaters and Edith Thompson* will be listed as *Transcript* followed by year and page no.

<sup>89</sup>Solicitor-General Sir Thomas Inskip, referring to the evidence of Dora Finch Pittard and Percy Edward Clevely pp.18-9 in his Opening Statement for the Crown.

<sup>90</sup>Evidence of Dr Noel Maudsley, *Transcript* 1923:20.

<sup>91</sup>Evidence of police sergeant Walter Mew, *Transcript* 1923:21.

<sup>92</sup>Evidence of Fanny Maria Lester, *Transcript* 1923:29; see also evidence of Walter Mew p.21.

<sup>93</sup>Edith Thompson interviewed by detective inspector Richard Sellars 4th October 1922 - evidence for the prosecution in *Transcript* 1923:35.

<sup>94</sup>MEPO 3/1582, Public Record Office, Kew, Richmond, Surrey TW9 4DU, Exhibit 3, statement of Edith Thompson.

<sup>95</sup>This 'chance encounter' has remained a controversial issue as it was believed to have been engineered by police to break the couples' silence. Superintendent Wensley stated in his autobiography that it had been "below the standards appropriate to the justice of which he was the self-dedicated instrument." (Broad, L. (1952) *The Innocence of Edith Thompson* Hutchinson, London, p.79).

<sup>96</sup>Evidence of Detective-Inspector Richard Sellers, *Transcript* 1923:37.

<sup>97</sup>MEPO 3/1582 exhibit 4, statement by Edith Thompson.

Until that moment there had been no evidence against Freddy, and there still was none against Edith. However, police searching Freddy's quarters on the ship where he was employed, found 62 letters from Edith, and their relationship was revealed. Every aspect of Edith's behaviour had indicated she was taken by surprise at Freddy's attack on Percy, hence these letters were to remain the only evidence against her, which ensured the conviction was surrounded by controversy from the very beginning. Freddy also lied in his initial statement, denying knowledge of the murder and claiming Edith was no more than a family friend.<sup>98</sup> However, with the letters in his possession, Detective-Inspector Sellers informed him that he and Edith would be charged "with the wilful murder of Percy Thompson." Freddy responded: "Why her? Mrs Thompson was not aware of my movements."<sup>99</sup> It was time for Freddy to make a second statement:

I waited for Mrs Thompson and her husband... I pushed her to one side... I said to him, "You have got to separate from your wife." He said, "No." ... We struggled. I took my knife from my pocket and we fought and he got the worst of it. Mrs Thompson must have been spellbound for I saw nothing of her during the fight. I ran away... The reason I fought with Thompson was because he never acted like a man to his wife. He always seemed several degrees lower than a snake. I loved her and I could not go on seeing her leading that life. I did not intend to kill him. I only meant to injure him. I gave him an opportunity of standing up to me as a man but he wouldn't..<sup>100</sup>

When both prisoners were charged with murder Freddy said: "It is wrong, it is wrong."<sup>101</sup>

### The Trial of Edith Thompson and Frederick Bywaters

Trial judge Mr Justice Shearman, told the jury in his summing-up that the hearing of the charge "was carried out in an unnatural and unreal atmosphere."<sup>102</sup> A more accurate description is arguably that provided by Edgar Lustgarten who wrote that the trial consisted of "four days of prim sententiousness and virtuous moralising."<sup>103</sup> Similarly, Browne and Tullett wrote that Edith found herself face-to-face with "ridiculous fits of self-righteousness" and a "public, a judge and jury, in its most priggish mood."<sup>104</sup> The sense of drama

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<sup>98</sup>MEPO 3/1582 exhibit 5, statement by Frederick Bywaters.

<sup>99</sup>Evidence of Detective-Inspector Richard Sellers in *Transcript* 1923:38;39.

<sup>100</sup>MEPO 3/1582 exhibit 6, statement by Frederick Bywaters.

<sup>101</sup>Evidence of Detective-Inspector Richard Sellers, *Transcript* 1923:39.

<sup>102</sup>Mr Justice Shearman quoted in a leader article in *The Times* 6th January 1922.

<sup>103</sup>Lustgarten, E. (1960) *The Murder and the Trial* Odhams Press, London, p.28.

<sup>104</sup>Browne, D.G. & Tullett, T. (1987) *Bernard Spilsbury* Grafton Books London p.286. An example of this pompous self-righteousness can be found in the leading

and scandal surrounding the case ensured immediate and constant media attention and from the very beginning, Edith's seniority (she was 28 and Freddy was 20) ensured that she was portrayed as the 'evil seductress':

She ... had egged him on; he, the poor young fellow, was under the influence of this dominating woman, this unfaithful wife, this wanton, this enchantress, this seductive siren.<sup>105</sup>

Thus, although it was Freddy and not Edith who had killed Percy the perception of the case was that she was 'worse' than him - it was *she* who was ultimately responsible for the crime.<sup>106</sup> This perception was formalised on the prisoners' Indictment Sheets where Freddy was indicted on two counts - murder and conspiracy to murder - while Edith had no less than five indictments against her.<sup>107</sup> As I discuss below, forensic evidence was to prove these additional indictments had no substance whatsoever and they were never proceeded with by the Crown.

Unlike the other women discussed in this thesis Edith was defended by a KC with a reputation for being one of the best in the country in 1922 - Sir Henry Curtis-Bennett.<sup>108</sup> His first task was to ask for Edith's letters to be rendered inadmissible as evidence, since without them the Crown had no case. As the letters referred to Edith's supposed attempt to poison Percy and to kill him by adding ground glass to his food, Curtis-Bennett argued they could not be used as evidence of a very different type of murder - the stabbing of Percy by Freddy since there was "no

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article in *The Daily Telegraph* 12th December 1922: "The Judge[']s ... insistence that the jury and he were investigating a 'vulgar crime' according to the principles of human justice and common sense well expresses the spirit in which English people would have all such cases tried."

<sup>105</sup>Broad 1952:87-8. See also O'Donnell 1956:64 where he writes: "Frederick Bywaters was older than his years but was young enough to be overwhelmed by the personal magnetism of a mature woman."

<sup>106</sup>See for example Sir John Anderson's evidence to the *Select Committee on Capital Punishment Report*(1931) His Majesty's Stationery Office, London, para 129 where Sir John stated: "Probably if Mrs Thompson had been respited and Bywaters executed, there would have been great public indignation because she was *obviously the worst of the two.*" My emphasis.

<sup>107</sup>CRIM 1/206/5 XC6872 Original Charge Sheets included in this file.

<sup>108</sup>Sir Edward Marshall-Hall was considered to be *the* best defence KC by many authors (see for example, Earl of Birkenhead, who was Lord Chancellor at the time of the Thompson/Bywaters trial, in *Famous Trials* (no year) Hutchinson, London p.209). However, according to Fenton Bresler, himself a lawyer, Sir Henry "was renowned for "doing a Curtis" - winning hopeless cases by what his biographers call "a certain combination of honest bluff, cheek, opportunism and a genius in turning a phrase." (Bresler, F. (1965)*Reprieve*, George Harrap London pp.169-70).



nexus between them."<sup>109</sup> Only if the Crown decided to try Edith on the fourth and fifth indictments - administering poison and "a destructive thing with intent to murder", were the letters admissible.<sup>110</sup> Judge Shearman did not agree, nor did he grant permission for separate trials.

In order to demonstrate that Edith was hanged "for her immorality" rather than murder,<sup>111</sup> I intend to show that the case against her consisted almost solely of insinuation, suspicion and speculation rather than evidence, a situation that could only be created as a result of her adultery which was utilised by the Crown as 'proof' of her supposed capacity for murder. In other words, motive took the place of evidence. In the next section I examine how this was achieved.

### The Letters.

[Solicitor-General] I suggest that the phrase "if things are the same again" means "if my husband is still alive..."<sup>112</sup>

[Solicitor-General quoting letter] "Don't keep this piece." It is suggested that that was because it might come into her husband's possession. I am bound to say to you that this letter ... is one that deals entirely with this idea now occupying so much of her attention, that her husband must be got rid of. *The passage is full of crime. There is no other interpretation which can fairly be placed upon it...* I suggest that these letters were being destroyed because his, like hers, referred to the subject of poisoning. In the next letter she has given up something "until you come home." I suggest that this was the idea of administering something to her husband.<sup>113</sup>

[Solicitor-General quoting letter] "Don't forget what we talked [sic] in the tearoom, I will still risk and try if you will - we have only three and three-quarter years left darlingest." When you review these letters you are driven to the conclusion that right up to the end she was acquiescing in Bywaters' suggestions. She allowed him to think that she was prepared to co-operate with him in poisoning her husband right to the end... My duty is to suggest that on a fair reading of the letters and a fair construction of the meetings it is only possible to come to a conclusion that the same idea ... resulted in an agreement, the consequence of which was that Mr Thompson was killed.<sup>114</sup>

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<sup>109</sup>Transcript 1923:8.

<sup>110</sup>CRIM 1/206/5 XC6872 Charge Sheets.

<sup>111</sup>Sir Henry Curtis-Bennett quoted in Broad 1952:219; see also Twinning 1990:264.

<sup>112</sup>Solicitor-General's opening speech to jury referring to a phrase from Edith Thompson's letter in Transcript 1923:12.

<sup>113</sup>Solicitor-General's speech to jury in Transcript 1923:129-30. My emphasis.

<sup>114</sup>Solicitor-General's speech to jury in Transcript 1923:131-2.

The prosecution selected only those letters which it regarded as containing incriminating passages<sup>115</sup>, and proceeded to quote these out of context in order to "show that she so worked and preyed on the mind of this young man by her suggestions that although it was his hand that struck the blow, it was her mind that conceived the crime."<sup>116</sup> Moreover, while only one letter referred to poisoning in the five-month period leading up Percy's murder, the Crown presented the letters, not according to dates but according to exhibit numbers, thus presenting a false picture to the jury of "a correspondence that rose to crime in an *accelerando* of incrimination."<sup>117</sup> In reality, however, the majority of references to poison and ground glass occurred in May, five months prior to Percy's death. Numerous repetitions of the same 20 extracts - amounting to approximately 1 per cent of the entire correspondence - helped to establish a second false impression - that the incriminating parts formed the main body of the correspondence.<sup>118</sup> Of the 32 letters selected by the prosecution, only a handful contained unambiguous suggestions that Edith was attempting to kill Percy:

You said it was enough for an elephant... But you don't allow for the taste making only a small quantity to be taken. It sounded like a reproach was it meant to be? Darlint I tried hard - you won't know how hard - because you weren't there to see and I can't tell you all - but I did - I do want you to believe I did for both of us... I was buoyed up with the hope of the "light bulb" and I used a lot - big pieces too - not powdered - and it has no effect - I quite expected to be able to send that cable - but no - nothing has happened from it and now your letter tells me about the bitter taste again... Wouldn't the stuff make small pills coated together with soap and dipped in liquorice powder ... try, while you're away... I feel I shall never get him to take a sufficient quantity of anything bitter.<sup>119</sup>

Quoting from a novel she had just read Edith wrote in another letter:

"It must be remembered that digitalin is a cumulative poison and that the same dose harmless if taken once, yet frequently repeated, becomes deadly". Is it any use?<sup>120</sup>

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<sup>115</sup>Approximately half of those available.

<sup>116</sup>Solicitor-General Inskip's Opening Statement for the Crown in *Transcript* 1923:13.

<sup>117</sup>Broad 1952:195.

<sup>118</sup>Broad 1952:195.

<sup>119</sup>Exhibit 19, *Transcript* 1923:13. Copies of all letters exhibited can be found in MEPO 3/1582 *Edith Thompson & Frederick Bywaters* Public Record Office, Kew, Richmond, Surrey TW9 4DU. All 65 letters found amongst Freddie's possessions are reproduced in Appendices I and II in *Transcript* 1923:161-250. (3 were his own).

<sup>120</sup>Exhibit 22, *Transcript* 1923:14.

Once it had been accepted that these passages referred to actual murder attempts, a host of other highly ambiguous, and often innocuous passages were *interpreted* as further evidence of murderous intent. Phrases like "You'll never leave me behind again, never, unless things are different"; "I ask you again to think out all the plans and methods for me", "yes, darlint be jealous, so much that you will do something desperate" and "If I do not mind the risk why should you?"<sup>121</sup>, were presented as *evidence* of murderous intent. For example the solicitor-general asked with reference to the first passage: "how were things to be different except by the destruction of her husband's life?" while shortly after quoting the last passage he stated that "through the correspondence it becomes clear that it was Mrs Thompson who was urging Bywaters on to commit the crime ..." <sup>122</sup>

Several authors have argued that had Edith not given evidence and hence offered no defence against the charges except a denial, a conviction would have been virtually impossible. However, in direct conflict with the advice of her KC, Edith insisted on giving evidence. The consequences were disastrous with her explanations sounding feeble and unconvincing, reinforced by the fact that she had already been proved a liar as a result of her early police statements. Her capacity for telling lies was further reinforced during the trial when she was forced to admit she had lied consistently in order to shield Freddy. This resulted in irreparable damage to her credibility as a witness and the consequent hopeless attempt to explain herself can be gathered from the following exchange:

In your letter ... (exhibit 20) you say- 'Enclosed are some cuttings that may be interesting ... The Kempton cutting may be interesting if it's to be the same method.'

What were you referring to there?

*Our compact of suicide.*

Look at the letter (exhibit 27) ... 'I had the wrong Porridge to-day, but I don't suppose it will matter ...'

What were you referring to?

*I really cannot explain.*

The suggestion here is that you had from time to time put things into your husband's porridge, glass, for instance?

*I had not done so.*

Can you give us any explanation of what you had in your mind when you said you had the wrong porridge?

*Except we had suggested or talked about that sort of thing and I had previously said, 'Oh yes, I will give him something one of these days.'*

[Mr Justice Shearman] Do you mean that you had talked about poison?

*I did not mean anything in particular.*

[Examination continued] *We had talked about making my husband ill.*

How had you come to talk about making your husband ill?

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<sup>121</sup>Exhibits 50 p.78; 20 p.12; 28 p.16; 26 p.15.

<sup>122</sup>Transcript 1923:15.

We were discussing my unhappiness.<sup>123</sup>

Freddy who remained loyal to Edith and did his best to protect her throughout the trial by claiming that her letters had had no effect on his mind,<sup>124</sup> never-the-less did not help their case when he gave evidence:

[Solicitor-General quotes from Edith's letter] ... he puts great stress on the fact of the tea tasting bitter 'as if something has been put in it' he says. Now I think whatever else I try it in again will taste bitter - he will recognise it and be more suspicious still ...

What do you understand about that passage?

*That she had taken the quinine and it tasted bitter.*

Look at it again -

[Quoting] he puts great stress on the fact of the tea tasting bitter 'as if something had been put in it' he says.

To whom did it taste bitter?

*Mrs Thompson.*

Do you suggest that, Bywaters?

*I do.*

Do you suggest that is how you understood the letter when you received it?

*I do.*

[Quoting] Now I think whatever else I try it in again will still taste bitter - he will recognise it and be more suspicious still.

Do you still adhere to what you say, that she is speaking of her taste?

*Yes.*

What did you understand him to be suspicious of?

*That she was attempting to commit suicide.*

Did you understand her to mean that she would tell him that her tea tasted bitter and she was about to commit suicide?

*Possibly she would.*

Is that your understanding of that passage?

*That is.<sup>125</sup>*

The Solicitor-General proceeded to quote a passage from another letter: "I used the 'light bulb' three times but the third time - he found a piece - so I've given it up - until you come home", which resulted in the following exchange:

What did you understand by that passage?

*She had been lying to me again.*

She had been what?

*Lying to me, lying.*

What did you understand the lie was?

*It was melodrama on her part, trying to persuade me that she had taken broken glass.*

[Quoting] 'I used the 'light bulb' three times but the third time - he found a piece.'

You understand she meant her husband had detected her in an attempt to commit suicide?

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<sup>123</sup>Transcript 1923:75-6.

<sup>124</sup>Transcript 1923:52.

<sup>125</sup>Transcript 1923:63.

Yes.

[Quoting] 'So I have given it up until you come home.' Do you suggest that she was going to wait for your arrival home in order that you might cooperate with her in committing suicide?

*I might give her something more, some quinine.*

That would be a strange idea to you, Bywaters, if that is right?

*Yes, I do not know her idea.*<sup>126</sup>

Freddy was more concerned about Edith's future than his own and gave specific instructions to his counsel that his defence must be constructed in a manner which would not harm her defence. This gallant and loyal conduct earned him considerable public sympathy. However, quite contrary to his intentions, his conduct had the adverse effect of hardening public attitude towards Edith because it seemed to confirm the supposed iron-hold she exercised over him. This hostility towards Edith was reinforced by her own conduct in the witness-box which - in sharp contrast to Freddy's - suggested she was blaming him to save herself:

He [Freddy] suggested giving your husband something to hurt him?

*He had given me something.*

Given you something to give your husband?

*That is so.*

Did the suggestion then come from Bywaters?

*It did.*

...

Did you welcome the suggestion that something should be given to your husband to make him ill?

*I did not.*

Did you object to it?

*I was astonished about it.*

Did you object to it?

*I did, at the time.*

...

You are representing that this young man was seriously suggesting to you that you should poison and kill your husband?

*I did not suggest it.*

I thought that was the suggestion?

*I did not suggest that.*

What was your suggestion?

*He said he would give him something.*

...

You are suggesting now that it was Bywaters who was suggesting that to you?

*Yes.*

And you did not do it?

*No, never.*<sup>127</sup>

The details of the case seemed obvious. Edith was a "corrupt, malignant sorceress" who, having cast her evil spell over an innocent young man, was now prepared to

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<sup>126</sup>Transcript 1923:67.

<sup>127</sup>Transcript 1923:93;94.

sacrifice him, if it meant saving her own life.<sup>128</sup> Attempts by the defence KCs to place Percy's murder within the context of love, passion and jealousy were swiftly dispelled by Judge Shearman, who interrupted the closing speech on behalf of Edith to remind the jury:

... you should not forget that you are in a Court of justice trying a vulgar and common crime. You are not listening to a play from the stalls of a theatre. When you are thinking it over, you should think it over in that way.<sup>129</sup>

One commentator noted that while it is not uncommon for a judge to remind a jury not to make up their minds before hearing the entire case, "it is very uncommon - one would have liked to say, unheard of - for a judge to interject antagonistic comment in the middle of a closing speech by counsel for the prisoner."<sup>130</sup> Judge Shearman, however, had not completed his moralising. In his summing-up he quoted a passage from one of Edith's letters: "He [Percy] has the right by law to all that you have the right to by nature and love", before telling the jury: "I am certain that you, like any other right-minded persons, will be filled with disgust at such a notion. Let us get rid of all that atmosphere, and try this case in an ordinary common sense way."<sup>131</sup> He also repeated the claim he had made when interrupting the closing speech - that "this charge really is ... a common or ordinary charge of a wife and an adulterer murdering the husband." He referred to Edith's letters as 'gush', claiming they were "the outpourings of a silly but ... wicked affection"<sup>132</sup>, and he pompously reprimanded Curtis-Bennett for having used the phrase 'thank God', stating that he did "not like invocations to the Deity."<sup>133</sup> Reinforcing Edith's image as the older 'wicked seductress' he told the jury:

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<sup>128</sup>Introduction to *Transcript* 1923:xv.

<sup>129</sup>*Transcript* 1923:119. Lewis Broad has written: "Edith Thompson was unlucky in her judge. Of all the Bench, Sir Montague Shearman was the judge least likely to take a tolerant view of the character and lapses of the woman in the dock. A man of strict living and high principles, he had no easy tolerance for loose living and loose loving... This Judge was pre-eminently guided by common sense, limited in his comprehension of the fanciful and fantastic. The romantic was at a minimum in his make-up (Broad 1952:148). This view is supported by Du Cann who wrote: "Strongly prejudiced as he was against immorality, he over-emphasised and over-simplified this aspect of this case, instead of warning the jury against letting moral indignation prejudice them." (Du Cann, C.G. L. (1960) *Miscarriages of Justice* Frederick Muller Ltd, London, p.206. Similarly, Bresler called Shearman "principled and prudish ... a relic from the Victorian era." (Bresler 1965:173).

<sup>130</sup>Lustgarten 1960:29.

<sup>131</sup>*Transcript* 1923:135.

<sup>132</sup>*Transcript* 1923:146.

<sup>133</sup>*Transcript* 1923:134.

You have noticed, I dare say, in the course of the case, that where the woman made statements they are mostly something excusing her and implicating the man, but ... when the man is making statements, they are always exculpating the woman.<sup>134</sup>

This point was reinforced at the end of the summing-up when Judge Shearman reminded the jury of Edith's outburst "Why did he do it?" as she caught a glimpse of Freddy when first arrested. As far as the judge was concerned this outburst meant "... she is excusing herself ... again it is noticeable that she is throwing the blame on him."<sup>135</sup> In sum, Judge Shearman failed to notice any ambiguities in the evidence, instead he considered "the facts of this case ... extremely short and simple" the length of the letters being the only reason why the trial had lasted several days.<sup>136</sup> Finally, while Curtis-Bennett reminded the jury that "this is not a Court of morals, because if everybody immoral was brought here I would never be out of it, nor would you"<sup>137</sup>, the judge issued no such warning, instead he allowed "the prejudice arising from her immorality ... to operate against her", thus ensuring the case became one of "the erring wife ... most flagrantly disclosed."<sup>138</sup> One commentator went further and stated that while there was truth in the saying "'She was hanged for immorality'... there was equal truth in saying that the disgust of the trial judge ... for marital infidelity and his unimaginative literal mind hanged this unhappy creature."<sup>139</sup>

The jury, which included one woman, the first ever in a murder trial, took two hours and ten minutes to find both prisoners guilty. There was no recommendation to mercy. Freddy immediately responded: "I say the verdict of the jury is wrong. Edith Thompson is not guilty. I am no murderer, I am not an assassin." Edith was less composed and cried out: "I am not guilty; oh God, I am not guilty!"<sup>140</sup> She had to be carried into the dock to hear the verdict, and was only prevented from total collapse upon hearing the death-sentence being issued, "by the surrounding arms of the wardresses." Several women in the public gallery

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<sup>134</sup>*Transcript* 1923:135.

<sup>135</sup>*Transcript* 1923:154. No-one, not even the police inspector who overheard Edith's outburst agreed with Judge Shearman's interpretation of it, but instead regarded it as an outburst taking place when she was "taken off her guard," and therefore more likely to be truthful. (HO45/2685 PT2 XC2501).

<sup>136</sup>*Transcript* 1923:135.

<sup>137</sup>*Transcript* 1923:115.

<sup>138</sup>*Broad* 1952:210.

<sup>139</sup>*Du Cann C.G.L.* 1960:206.

<sup>140</sup>*Transcript* 1923:156;157.

fainted and Edith's mother collapsed and had to be carried out of the courtroom.<sup>141</sup>

### An Alternative Truth.

Words exist to communicate a meaning. But the meaning inferred by the listener or the reader is not always that intended by the speaker or the writer. There are primary and secondary senses; there are overtones and undertones that are idiosyncratic; there is hyperbole and satire; there is untrammelled fantasy and deliberate make-believe. *It is absurd to suppose that every phrase should be literally construed...* It is only by reference to the character of their author and to the circumstances in which they were employed that one can hope to extract the true significance of words.<sup>142</sup>

Am I right or wrong in saying that this woman is one of the most extraordinary personalities that you or I have ever met? Bywaters truly described her ... as a woman who lived a sort of life I don't suppose any of you live in - an extraordinary life of make-believe, and in an atmosphere which was created by something which had left its impression on her brain. She reads a book and then imagines herself one of the characters of the book. She is always living an extraordinary life of novels ... This is the woman you have to deal with, not some ordinary woman. She is one of those striking personalities met with from time to time who stand out...<sup>143</sup>

Fact and reality were no more than a cue for the exuberant fancy of Edith Thompson's mind. When the true story fell short she improved it in her letters, until it was a story worth an artist's while ... relentless poisoning wives, with all the trappings of the novels she had read and all the delirium of the love she had imagined. *This was the driving force behind the famous letters which the prosecution used to get their writer hanged.*<sup>144</sup>

Edith's correspondence to Freddy has been described as "extraordinarily complex human documents, ... suggesting a bewildering variety of moods ... motives and manoeuvres." It included:

newsy commentaries, newspaper clippings and emotional outpourings, in various tones and voices... Edith's style seems to be almost systematically ambiguous. Some of the letters, including some that are central to our enquiry, exhibit a stream of consciousness quality which adds to the difficulties of interpretation.<sup>145</sup>

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<sup>141</sup>*Daily Mirror* 12th December 1922.

<sup>142</sup>Lustgarten 1960:13-14. My emphasis.

<sup>143</sup>Sir Henry Curtis-Bennett's closing speech in *Transcript* 1923:114.

<sup>144</sup>Lustgarten 1960:18. My emphasis.

<sup>145</sup>Twinning 1990:264-5.



Unlike Professor Twinning, those who sat in judgement on Edith were incapable of noting such ambiguity. Yet, as I shall now illustrate, the evidence presented to prove Edith's guilt was more consistent with her innocence.

Evidence was given during the trial that Edith was in the habit of writing about imaginary incidents - and hence telling untruths - to Freddy. Because of Freddy's job as a ship's writer they had only spent a few weeks together during their 14 month relationship. Hence, during the two to three months between each leave, Edith would immerse herself in a fantasy world of make-believe to relieve the dreary ordinariness of her everyday suburban existence. For example, her father gave evidence that a letter written in June 1922 in which Edith claimed Percy had discussed her affair with him, was untrue. According to her letter, her father Mr Graydon, had said: "it was a disgraceful thing that you should come between husband and wife and I ought to be ashamed." Mr Graydon testified that this was "the purest imagination." She further claimed that her father was going to talk to her about the affair. Again Mr Graydon testified that: "There is no truth whatever in those two paragraphs. As a matter of fact, I had no idea that my daughter and her husband were not on good terms."<sup>146</sup> Similarly, Edith's sister Avis, testified that the entire incident was "pure imagination on my sister's part."<sup>147</sup> With respect to Edith's statement that she had had "the wrong porridge today", Mrs Lester, the Thompson's lodger, testified that it was she who prepared Percy's porridge in the mornings, not Edith, thus, lending credence to the claim that any suggestion that Edith was attempting to poison Percy, was pure fantasy.<sup>148</sup> For those who still doubted that all references to poison and ground glass were pure fiction and imagination, concrete forensic evidence was provided by one of the most famous pathologists of the 20th century - Sir Bernard Spilsbury. Following the discovery of Edith's letters, Percy's body was exhumed for the specific purpose of examining it for evidence of poisoning or scar-tissue caused by ground glass. As a result of the post-mortem Sir Bernard reported:

I found no indications of poisoning and no changes suggestive of previous attempts at poisoning. I detected no glass in the contents of the intestines.<sup>149</sup>

When Sir Bernard appeared as a witness for the prosecution he repeated: "I did not find any signs of poisoning, nor did I find any scars in the intestines. When

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<sup>146</sup>Transcript 1923:26-7.

<sup>147</sup>Transcript 1923:104.

<sup>148</sup>Transcript 1923:29-30.

<sup>149</sup>CRIM 1/206/5 XC6872 Post-mortem report by Sir Bernard Spilsbury.

pressed further, he reiterated that he "had found no indication of the presence of glass either in large pieces or in powdered particles."<sup>150</sup> For the majority of students of the Thompson/Bywaters case, the references to poisoning and ground glass have never been taken seriously. For example, Sir Bernard's biographers asked:

... what was Percy Thompson doing about it? Apparently nothing at all. When he was not picking pieces of glass out of his porridge, or complaining because his tea tasted bitter, he was leading his normal domestic life, eating meals prepared by the wife who was trying to kill him, taking her to the theatre ... The letters, in fact, do not make sense, unless they are accepted as nonsense.<sup>151</sup>

Similarly, the Earl of Birkenhead wrote: "It must be admitted that the attempts she describes seem singularly clumsy, and do not ring true."<sup>152</sup> With reference to the extract quoted from Edith's letter "I had the wrong porridge today ...", (f/n 120) Rene Weis has suggested a second alternative truth by arguing that both Edith and Freddy were speaking the truth in court when Edith claimed that he had 'given her something' and Freddy claimed that he had given her quinine. The quinine, however, was not meant to poison Percy but to cause Edith to have an abortion:

As fate would have it, Percy takes the wrong bowl and eats the porridge, before she can intervene. This morning therefore poor Percy has porridge with abortifacient powder in it.<sup>153</sup>

This would explain why, when cross-examined Edith responded "I really cannot explain." Similarly, when Percy complained of the tea "tasting bitter", it was indeed 'drugged' tea, but intended for Edith:

At the trial the porridge and tea incidents achieved notoriety as corroborative proof of homicidal intent, when even then it was clear that abortion was the real issue at stake. It is an indictment of the skewed moral climate of the time that the woman in the dock did not dare admit in public that she had been trying to abort. The shame of that for herself and her family would have been too unbearable. It almost appeared preferable to be tried as a murderess.<sup>154</sup>

Filson Young who attended the trial, wrote in 1923 that "there is no doubt in my mind" that the references to "'daring' and 'risking', of which so much play was

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<sup>150</sup>*Transcript*1923:43.

<sup>151</sup>Browne & Tullett 1987:293.

<sup>152</sup>Earl of Birkenhead no year:350.

<sup>153</sup>Weis, R. (1990) *Criminal Justice* Penguin, London, p.70.

<sup>154</sup>Weis 1990:70.

made by prosecuting counsel.." were references to "measures to counteract the results of intercourse..."<sup>155</sup> At least six letters make unambiguous references to Edith experiencing a miscarriage/abortion.<sup>156</sup> Once we understand this context, phrases quoted in court to prove murderous intent such as ... "think of all the plans and methods for me"; "if I do not mind the risk why should you?"(f/n118); "Why arnt [sic] you sending me something... "(p.91) as well as her reference to digitalin (f/n117), acquire a very different meaning. It even explains the apparent pointlessness of Freddy's insistence that it was Edith who had taken quinine and found the taste bitter (f/n 122). Indeed, it helps to explain why Edith and Freddy, who were usually articulate individuals, made such poor witnesses - for in truth - they *did* have something to hide, which their contemporaries - Filson Young and Curtis-Bennett - realised must *remain* hidden:

Of course, Sir Henry Curtis Bennett was aware of all these passages and of the value they might have. But there he was in another dilemma, for if he were to introduce them and put the construction adduced as evidence of murderous intention, he would have had to present his client to the jury, not only as an adulteress, but as an abortionist; and he no doubt thought that the prejudice created in their minds by that admission would outweigh any advantage to be gained by such explanation of the poison passages as it might afford.<sup>157</sup>

In other words, Edith's reputation was already shattered by her adultery, to admit to what was a criminal offence in 1922 - procuring an abortion - would further consolidate her image as a dangerous woman. This alternative truth gains yet more credibility when we discover that insinuations and accusations raised by the prosecution could readily be disproved in instances where an alternative truth did not affect Edith's respectability. For example, the prosecution quoted the passage "He's still well ... He's going to gaze all day long at you in your temporary home - after Wednesday", and attempted to convince the jury that 'he' referred to Percy. However, Edith was able to prove that 'he' referred to a brass monkey - a present from Freddy - placed on her desk and 'gazing' at a sketch of the ship where Freddy worked, which Edith was having framed on 'Wednesday' as a present for Freddy.<sup>158</sup> The prosecution's attempt to present such innocuous passages as proof of murder, illustrates how Edith's letters were manipulated against her:

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<sup>155</sup>Filson Young in the Introduction to *Transcript* 1923:xxv.

<sup>156</sup>These letters can be found on pp.204; 220; 221; 222; 224; 226 of *Transcript* 1923. Copies of the letters used as exhibits during the trial are available for inspection in MEPO 3/1582 Public Record Office, Kew, Richmond, Surrey TW9 4DU.

<sup>157</sup>Filson Young in Introduction to *Transcript* 1923:xxv-xxvi.

<sup>158</sup>*Transcript* 1923:101.

With a reckless disregard of the processes of logic, by means of a selection of extracts divorced from their context, the prosecution were permitted to advance as proof of her guilt what were no more than smears and suspicions that imposed upon a jury whose minds were inflamed by prejudice.<sup>159</sup>

Lustgarten agreed:

What did Mrs Thompson mean, "unless things are different"? Obvious, said the Crown; she meant ways and means of murder.

What did Mrs Thompson mean, "plans and methods"? Obvious, said the Crown; she meant ways and means of murder...

What did Mrs Thompson mean, "do something desperate"? Obvious, said the Crown; she meant, brace yourself for murder.<sup>160</sup>

Not only did the evidence suggest an alternative truth in relation to the supposed murder attempts by poison and ground glass, but it also pointed to an alternative truth with regard to relations between Edith and Freddy. As I have indicated above, she was perceived as "a wicked woman who had led astray a youth of good character, much younger and more innocent than herself."<sup>161</sup> Yet Edith's own letters indicate exactly the opposite. She wrote in one letter:

I always think about "the difference". Sometimes when I'm happy for a little while I forget - but I always remember very soon ... Shall I always be able to keep you? Eight years is such a long time - it's not now - it's later when I am Joan and you are not grown old enough to be Darby? ... Don't ever take your love away from me darlint.<sup>162</sup>

This letter indicates that far from Edith being the dominant partner in the relationship, she was constantly aware "that as the years went by the chances that she might lose her influence over Bywaters would increase."<sup>163</sup> Because the letters were not presented in chronological order and because not all the letters were submitted as evidence, the jury remained unaware that Freddy had in fact attempted to end the affair during his last voyage. Edith was very distraught at the prospect of losing Freddy and less than four weeks before the murder she wrote:

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<sup>159</sup>Broad 1952:213.

<sup>160</sup>Lustgarten 1956:21.

<sup>161</sup>Browne & Tullett 1987:291.

<sup>162</sup>Quoted in Lustgarten 1956:19.

<sup>163</sup>HO45/2685 PT2 XC2501. From a 20 page document written by W. Ashley Brown, a friend of Sir Stephen Demetriadi who delivered the document to the Home Office, as Brown was a friend of his and had "placed it before him."

I don't hear from you much, you don't talk to me by letter and help and I don't even know if I am going to see you ... If you say 'No I won't see you' then it shall be so.<sup>164</sup>

Only three weeks before Percy's death she wrote again "I felt that you were not going to come and see me this time and the feeling was awful."<sup>165</sup> While Freddy's love was renewed almost immediately he saw Edith again, her letters are nevertheless evidence that while he was absent she often had to struggle hard to retain his affection. Her letters thus demonstrated that it was Freddy rather than Edith who was the dominant partner in the relationship, and that he was experiencing a 'cooling off' period immediately prior to his home-coming. Freddy's uncertainty about his feelings for Edith makes it extremely unlikely that he was prepared to enter into a murder plot which involved killing her husband.

The numerous inconsistencies surrounding the Thompson/Bywaters case was analysed by W. Ashley Brown who felt so passionately about the misrepresentation of Edith that he literally spelt out an alternative truth which he presented to the Home Office prior to the execution. Bearing in mind that Edith's struggle to keep Freddy's interest in her alive was well documented he wrote:

We have ... a woman ... who is dominated by her affection for a man whom she is desperately anxious to persuade to run away with her without further loss of time. In these circumstances the suggestion of poison and murder makes a sudden and unexplained appearance. ... Did Bywaters require Mrs Thompson to carry to a successful conclusion the attempts he believed her to be making? Mrs Thompson appeared to think so, how otherwise can we explain the following (written in reply to a letter from Bywaters commenting upon the 'quinine' fiasco) -

"You said it was enough for an elephant. Perhaps it was. But you do not allow for the taste, making only a small quantity to be taken . It sounded like a reproach - was it meant to be? Darling I tried hard - you won't know how hard."

We fear that there is no doubt Bywaters believed, as Mrs Thompson intended him to believe, that the attempts were really being made.<sup>166</sup>

In this version of the truth it is not Percy who stands in the way of the two lovers but Freddy who is reluctant to start a new life with Edith. Desperate to demonstrate that she will go to any lengths to keep her lover, Edith *pretends* to be willing to kill her husband. Mr Brown now invites us to "glance at her statements with the presumption that she is, at worst, concerned to deceive Bywaters":

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<sup>164</sup>Copies of the letters are included in MEPO 3/1582. This passage is also quoted in Broad 1952:200.

<sup>165</sup>Quoted in Broad 1952:200.

<sup>166</sup>HO45/2685 PT2 XC2501 W.A. Brown's document - underlining in the original.

Now it becomes clear that if in fact there was no attempt to murder, and that there was no intention to murder, Mrs Thompson will be under the necessity, since there will be no evidence to support her, to indulge in an immense number of statements of goodwill. ... Mrs Thompson's one ambition is to serve a double purpose, to satisfy Bywaters, firstly - that she had made an attempt and secondly - that she had failed through no fault of her own. [Having 'failed' with the ground glass and the quinine] it is necessary, in her opinion, to convince Bywaters that she has not become less determined, so she proceeds ... [to write] about poisons of all sorts. Does he know of this poison? Does he remember the case of the man who used that poison? She suggests how easy it would be in all circumstances except those with which she is called upon to deal. There must have been razors in the house, but she does not propose to conceal murder in the cloak of suicide. On the other hand there is no gas, so she writes at length to the tune of how easy it would be if only the gas were there. She is in fact playing a desperate game. She is trying to convince Bywaters that she is preparing to go to any length in order to persuade Bywaters ... [to] tak[e] her away at once.<sup>167</sup>

If we accept Ashley Brown's alternative truth, Edith's answers in cross-examination acquire a very different meaning. Placed within this context her responses (see quotations 116, 117, 120 and 124 above) indicate, that far from attempting to cast blame on Freddy, she is in fact attempting to *protect* him, just as she had done when first interviewed by police, by being economical with the truth. This version of the truth also explains why Edith repeatedly claimed that she participated in talks of poison to please Freddy:

Mr Bywaters had told me he was bringing me something and I suggested to send it to me, to allow him to think I was eager for him to send me something to do what was suggested. *I wanted him to think I was eager to help him, to bind him closer to me, to retain his affections.*<sup>168</sup>

I wanted him to understand that I was willing to do anything he expected me to do or asked me to do - agree with him. *I wanted him to think I would do anything for him to keep him to me.*<sup>169</sup>

I wanted him to feel that I was willing to help him, to keep him to me.<sup>170</sup>

Similarly, we are now able to understand why Freddy's responses sounded unconvincing (see quotations 122 and 123 above) - it is because they are the result of, not only his attempts to protect Edith, but also himself.

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<sup>167</sup>HO45/2685 PT2 XC2501 W.A. Brown's document - underlining in the original.

<sup>168</sup>Transcript 1923:78. My emphasis.

<sup>169</sup>Transcript 1923:81 My emphasis.

<sup>170</sup>Transcript 1923:81.

As noted earlier, almost all commentators agreed with Edith's KC that if she did not give evidence she could not be convicted.<sup>171</sup> So why did she insist on giving evidence against the advice of both her solicitor and KC? Her action can be interpreted as further evidence of her innocence. Had she been guilty we would expect her priority to have been escaping the gallows, not to prove her innocence. The fact that Edith chose this far more hazardous, indeed deadly, course of action, demonstrates not just her innocence but also her naiveté:

The woman herself was not conscious of her peril. She had been overcome by the sight of her lover's deed of violence, she had been prostrated by the shock, horrified by the exposure to her family of the intimacies of her love life, but now she had recovered her composure and she was fortified by her consciousness of innocence. Having had no foreknowledge of her lover's crime, she had no realisation that other persons might take quite the contrary view about her. Her imagination was powerful but her comprehension limited.<sup>172</sup>

Despite having broken her marital vows, Edith was otherwise an obedient daughter, a conventional wife and a conscientious worker, living a rather conservative suburban existence, which placed great emphasis upon appearances and respectability. Because her self-image matched that life-style, she failed to grasp that the jury might share the trial judge's view of her as an 'adulteress'. Precisely because she was innocent and as a result of having been brought up to be an honest, law-abiding citizen, she was absolutely certain that all she had to do to clear her name was to enter the witness-box and *tell the truth*. It was her background as a respectable and 'up-right' citizen, with no previous experience of law-enforcement agencies, which gave her this blind faith in justice. Far from being a 'scheming, conniving seductress' her behaviour suggests a certain naiveté and lack of awareness of the social climate which surrounded her. As I shall now illustrate, this social climate is crucial to an understanding of how a woman - in the words of Curtis-Bennett - could be executed for immorality rather than murder.

### The 1920s.

The 1920s was the decade of "the smoking, drinking flapper, freed from corsets and sexual repression."<sup>173</sup> The dominant Victorian portrayal of female sexuality as weak and passive as discussed in the Louise Masset case-study, had been

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<sup>171</sup>See for example Twinning 1990:278.

<sup>172</sup>Broad 1952:89.

<sup>173</sup>Jones, A. (1991) *Women Who Kill* Gollancz, London, p.256.

replaced by a new sexual doctrine which recognised women's "erotic rights". Women were now supposed to enjoy sex, indeed, those who failed to do so were encouraged to fake orgasm to ensure their husbands' ego remained intact.<sup>174</sup> Women's fashions began to mirror this supposed sexual liberation, with both short hemlines and hair-styles offering a physical freedom unknown to Victorian women.<sup>175</sup> Edith appeared to fit the image of the 'liberated flapper'. She was elegant and fashionable, smoked cigarettes, had her hair cut in a modern bob, continued to use her maiden name at work after her marriage, and, as a result of her earning-power, owned her home on equal terms with Percy. Yet the apparent freedom now enjoyed by women, was strongly resisted by traditionalists. Between 1905-14 Britain had lived through nearly a decade of organised female protests and violence in the form of the suffragette movement which had not achieved full female suffrage at the time of Edith's trial.<sup>176</sup> This first wave of feminism was in itself enough to cause deep concern about the future role of women. However, following de-mobilisation after the First World War, thousands of women protested in support of a different cause - the right to continue to work in the jobs they had originally been drafted into when vast numbers of the male population joined the armed forces. Women who were reluctant to give up 'men's' jobs soon found themselves at the heart of an ideological battle instigated by traditionalists who argued that:

their first duty was to the soldier - the man who had done his bit for the past 4 years - and who would now be wanting to return to his normal occupation.<sup>177</sup>

At the same time ideologies around motherhood and domesticity were re-mobilised and supported by various scientific experts. The inherent contradictions running through the sexual liberation of the 1920s were personified in one such expert, Havelock Ellis. While his status as a member of the new profession of sexologists ensured he was regarded as a sexual revolutionary, Havelock Ellis's

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<sup>174</sup>Jones 1991:265; 266.

<sup>175</sup>Rowbotham 1977:125.

<sup>176</sup>See for example Hamer, E. (1996) 'Fighting for Freedom: Suffragette Violence Against Their State' in Myers, A. & Wight, S. (eds) (1996) *No Angels* Pandora, London pp.72-84; Morley, A. & Stanley, L. (1988) *The Life and Death of Emily Wilding Davison* The Women's Press, London.

<sup>177</sup>Lilian Barker, supervisor at Woolwich Arsenal, quoted in Braybon, G. & Summerfield, P. (1987) *Out of the Cage: Women's Experiences in Two World Wars* Pandora, London, p.121. Those who resisted the ideological battle were by 1919 faced with the harsh reality of benefits being excluded to women who refused domestic or laundry work. This stood in sharp contrast to unemployed men who "could only be offered jobs in their usual trade." (p.123-4).



views on women's role were indistinguishable from those of the traditionalists. For example, he wrote that "'every healthy woman should have ... the exercise at least once in her life of the supreme function of maternity' ... Unless she became a mother, no woman could have a 'complete human life'."<sup>178</sup> The explosion of women's magazines during the 1920s also came to play a major role in reinforcing and idealising motherhood and domesticity:

[Editors] expatiated in unison on the sacrificial joys of being a wife and mother ... elevated housewifery into a craft, gave it the status of a profession, and sold it to readers on the most attractive of terms, thereby nullifying all that had been achieved by the women's rights movement.<sup>179</sup>

Once more, such ideologies were supported by a reality of decreasing opportunities. For example, three years after Edith's execution London County Council enforced a jobs ban on married women,<sup>180</sup> while at the same time, becoming a divorcee could also result in being sacked as Edith herself recognised. Divorce rates had reached a new height in 1918 and continued to rise. The year of Edith's execution saw the introduction of the Matrimonial Causes Act, which meant that adultery was now grounds for divorce for a wife as well as a husband.<sup>181</sup> Couples who chose to remain childless were increasing and flappers and feminists were quickly identified as being responsible for this supposed threat to family life.<sup>182</sup> The battle of domesticating women's new-found freedom had never seemed more urgent. At specific moments this battle was fought in the law courts. For example, in the year of Edith's trial, Rose Witcop who published Margaret Sanger's *Family Limitation*, a book on birth control, was successfully prosecuted for "producing an obscene work," on the grounds that "'birth control was a danger to the race and against nature's law."<sup>183</sup> At the same time, the punishment for procuring an abortion was penal servitude (potentially for life) with hard labour.<sup>184</sup>

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<sup>178</sup>Havelock Ellis quoted in Jones 1991:259. See also Jeffreys S. (1985) *The Spinster and Her Enemies* Pandora, London, pp.128-38; Ehrenreich, B. & English, D. (1979) *For Her Own Good* Pluto, London, Chapter 5 pp.141-181.

<sup>179</sup>Cynthia White quoted in Oakley, A. (1986) *Subject Women* Fontana London p.21. In 1920 attempts to convince women of the joys of motherhood were sometimes less than subtle: "Do you realise, Mother of Baby - that you can be one of the greatest artists in the world? - Just like every other artist a mother must study her Art - the greatest Art of all - the great Art of creating strong, straight, noble men and women." (Quoted in Oakley 1986:21).

<sup>180</sup>'Past Notes' in *The Guardian* 17th February 1997.

<sup>181</sup>Rowbotham, S. (1977) *Hidden From History* Pluto, London p.123.

<sup>182</sup>Jones 1991:258.

<sup>183</sup>Quoted in Rowbotham 1977:150.

<sup>184</sup>Rowbotham 1977:156.

While women's ongoing fight for birth control and legal abortion gradually made these subjects less taboo during the 1920s<sup>185</sup>, it was never-the-less the case that 'flappers' who continued to conduct themselves according to the principles of emancipated female sexuality were soon labelled 'over-sexed' for they had "crossed the fine line between being 'free' and 'loose'... The bad woman and the 'over-sexed' woman were, as they had always been, one and the same."<sup>186</sup> This new 'liberation' of female sexuality was therefore only legitimate when practised in the marital bed. At other times it was accompanied by the belief "that moral standards were in decline ... [and] sexual morality was 'on the brink of complete disintegration.'"<sup>187</sup> Hence it benefited men as much, if not more so, than women - who soon found that the old standards relating to 'keeping one's reputation' sprang into force, when they attempted to practice the new code of sexual liberation outside marriage.

Edith's trial thus took place during a period of intense struggle over women's role, and a pronounced preoccupation with their sexuality. As traditionalists considered the post-war to be "shallow and decadent"<sup>188</sup>, and fought to restore the pre-war social order, the notion of the childless 'career woman' - which in effect Edith was - had not yet become accepted as can be seen from the Solicitor-General's comments in his opening statement that "perhaps because there were no children, or for other reasons, she was carrying on her employment."<sup>189</sup> It is within this social context that Edith's KC felt unable to suggest that several incriminating passages referred to abortion rather than murder. She already fulfilled the criteria of a 'sexually insatiable', 'immoral' and 'dangerous' women without this knowledge being revealed - her adultery proof that an independent woman who is not under her husband's constant supervision soon becomes dangerously out of control. She appeared to be the kind of woman Bloch had in mind when in 1909 he wrote:

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<sup>185</sup>This fight took many forms, for example Rowbotham has described how a miner's wife, Mrs Lawther, in 1927 "appealed at the Labour Party conference for support from the miners for birth control in return for the women's solidarity with the miners in the lock-out" in Blaydon, Durham. (Rowbotham 1977:150).

<sup>186</sup>Jones 1991:257. Jones's analysis appears uncannily accurate, for Edith has been variously described as 'highly-sexed' (Bresler 1965:165) and 'over-sexed' (O'Donnell 1956:52).

<sup>187</sup>The Bishop of Durham speaking in July 1923, quoted in Rose, A. (1991) *Scandal at the Savoy* Bloomsbury, London, p.9.

<sup>188</sup>Rose 1991:8.

<sup>189</sup>*Transcript* 1923:9.

Women are in fact pure sex from knees to neck. We men have concentrated our apparatus in a single place, we have extracted it, separated it from the rest of the body... They [women] are a sexual surface or target; we have only a sexual arrow... Properly speaking they procreate unceasingly, they stand continually at the witches' cauldron, boiling and brewing; while we lend a hand merely in passing, and do no more than throw one or two fragments into the vessel.<sup>190</sup>

From the point of view of the moralists, at a time when women were forced to either give up paid work entirely or return to the drudgery of domestic service<sup>191</sup>, Edith appeared to have everything - a highly paid job, her own home and a loyal husband. Unlike most of the women executed during the 20th century, she could not claim under-privilege, financially or emotionally. Yet she failed to be content and instead broke social conventions repeatedly in terms of her adultery - a serious enough misdemeanour in its own right - but amplified considerably by the youth of her lover, her preference for paid work rather than motherhood, her ability to earn *more* than either her husband or father and her decision to remain 'Miss Graydon' at work. It was such conduct and behaviour which ensured Edith's letters were heard through the discourses of a 'dangerous' and 'immoral' woman. Moreover, the lack of mitigating circumstances made her conduct appear 'doubly' deviant and helps to explain the widely held self-righteous opinion that she was "the author of her own deserved misfortunes,"<sup>192</sup> someone who needed to be 'put in her place'.

Throughout this thesis I have argued that the Crown will not hesitate to employ what is 'known' about female defendants as *women* for the purpose of establishing a dominant truth which is likely to secure a conviction. Once such 'knowledge' has been heard, 'disreputable' discourses are invariably unleashed which operate to reinforce the Crown's case whilst diminishing the case for the defence. As a result of the dubious and ambiguous nature of the evidence against Edith, she has become the ultimate example of a woman who was judged according to her sexual conduct and behaviour, rather than according to the evidence. This point was recognised as early as 1952 when Lewis Broad asked: "Had Mrs Thompson by her immoralities placed herself so far beyond the pale that proof could be dispensed with?"<sup>193</sup> Yet Edith was not muted but had a comprehensive

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<sup>190</sup>Iwan Bloch quoted in Jeffreys 1985:138-9.

<sup>191</sup>See Braybon & Summerfield 1987:123-6. See also Rose 1991:9 who quotes the *Daily Mail*: "Thousands upon thousands of women are drawing the dole, when they ought to be in domestic service,' ... adding that women capable of such work should have their dole money stopped."

<sup>192</sup>O'Donnell 1956:53.

<sup>193</sup>Broad 1952:216.

understanding of how to communicate through dominant modes of expression. But like Louise Masset 22 years earlier, Edith was a self-confessed liar, and if she could not be disqualified as a speaker, she could be discredited instead. Indeed, she had already done so herself, by mobilising discourses of the 'immoral woman', the disloyal and deceitful wife, the sexually insatiable, predatory adulteress who preyed on 'innocent' younger boys, the scheming woman-poisoner and liar. Once mobilised, these discourses ensured the jury would hear Edith's letters predominantly through them. In particular, the discourses surrounding an older woman with a young lover were so dominant that evidence indicating Freddy must have committed the murder alone, was ignored. For example, Edith's letter written the day before the murder read: "Until we have funds we can do nothing,"<sup>194</sup> a sentence which indicates, that as far as Edith was concerned, they were still planning to run away together. Similarly, in a letter written on the very day of the murder, Edith referred to an agreement she had made with Freddy when they first became lovers, that they would wait five years before running away together: "We only have three and three-quarter years left",<sup>195</sup> again not the sort of statement one would expect from a person planning murder that very night. Even though these passages were included in the closing speech on behalf of Edith, it proved impossible to challenge the discourses surrounding Freddy - namely that he was "manly young fellow" ... "of spotless reputation and good character" who was "corrupted and debauched by the experienced woman of the world".<sup>196</sup> So dominant were the discourses surrounding Edith's immoral conduct that the evidence presented for examination became increasingly irrelevant until finally it was ignored altogether.

A final indication of the exceptional condemnation of Edith's sexual transgressions and subversive domesticity is indicated by the fact that she was the first woman to be executed in Britain since Rhoda Willis, executed in Wales in 1907. Until Edith's death sentence, many contemporaries had considered it unthinkable that a woman "should ever again be sent to the scaffold."<sup>197</sup> However, even the promise of the resurrection of the scaffold, did not bring an end to the condemnation of Edith Thompson. Instead the Lord Chief Justice continued to moralise about her behaviour in the Court of Appeal, the hearing of which was to be as unorthodox and controversial as the trial.

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<sup>194</sup>*Transcript* 1923:121.

<sup>195</sup>*Transcript* 1923:122-3.

<sup>196</sup>*Transcript* 1923:xiv; 109; xiv. See also Twinning 1990:290-3.

<sup>197</sup>Ellis 1996:15; Weis 1990:150.

## The Appeal.

Lord Chief-Justice Hewart, described by one author as "a horror"<sup>198</sup>, presided over the appeal of the Thompson/Bywaters case. He defined the case as one of "lust and adultery", "squalid" and "indecent", possessing "no redeeming feature ... from beginning to the end". It was "a commonplace and unedifying case" involving "deplorable correspondence ... which was full of the most mischievous and perilous stuff":

Mrs Thompson was, with every sort of ingenuity by precept and by example, actual or simulated, endeavouring to incite Bywaters to the commission of the crime.<sup>199</sup>

Space does not permit an examination of all seven points on which the appeal was fought, however, three major issues should be noted. First, "that the learned Judge was wrong in rejecting an application for ... separate trial[s]."<sup>200</sup> By the Lord Chief Justice's own definition separate trials should have been granted:

No doubt in cases where the defence of one accused person is to incriminate another accused person that is a good reason for not trying the two persons together.<sup>201</sup>

This was exactly the case where Edith and Freddy were concerned, since Edith would have both implicated and incriminated Freddy by presenting what is now widely accepted as the correct explanation - that of "an unpremeditated attack inspired by a frenzy of jealousy."<sup>202</sup>

Second, the judge had failed "to direct ... [the jury] that there was no evidence that the Appellant was a party to or had knowledge of the attack upon Percy Thompson ..."<sup>203</sup> Fenton Bresler, himself a lawyer, has argued that Judge Shearman did in fact include this in his instructions, hence it was the jury rather than the judge, who had acted wrongly in convicting Edith. He further argues that Lord Hewart

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<sup>198</sup>Devlin, P. (1981) *The Judge* Oxford University Press, Oxford p.24.

<sup>199</sup>*Criminal Appeal Reports* Vol XVII, July to December 1922-23, p. 66; 74; 72; 73, available for inspection at the Supreme Court Library, Royal Courts of Justice, London. Referring to the appeal Terence Morris wrote of Lord Chief Justice Hewart that he "was arguably one of the rudest incumbents of that office ..." Morris, T. (1991) 'Reviews' in *British Journal of Criminology* vol 31, No 1, Winter 1991 p.88.

<sup>200</sup>HO45/2685 PT2 XC2501, point 5 of Appeal Document.

<sup>201</sup>*Criminal Appeal Report* Vol XVII, July to December 1922-23, dismissal of Frederick Bywater's appeal pp.66-70.

<sup>202</sup>Broad 1952:212.

<sup>203</sup>HO45/2685 PT2 XC2501 Appeal Document point 7h.

realised she had been wrongly convicted, hence to ensure the verdict fitted the evidence, he used the Appeal Court to *redefine* the case:

The real case against Edith Thompson was that "the letters were evidence of a protracted continuous incitement to Bywaters to commit the crime which he did in the end commit... It was not necessary to prove that the knifing occurred by arrangement with her. It was enough that she had continuously incited Bywaters to murder her husband ..."204

Lord Hewart went a step further when, dismissing Edith's appeal, he argued that it was irrelevant whether Edith's letters had been true or false:

So far as the persuasive effect of incitement was in issue, it depended not upon the question whether the statements were true, but upon the question what they were intended and likely to cause the reader to believe.<sup>205</sup>

Thus, not only was Edith convicted on evidence for which she was not standing trial (poisoning), but that evidence did not have to be true. That is to say, Edith was never charged with poisoning or "administering a destructive thing" to Percy.<sup>206</sup> However, there was not a single piece of evidence to support the indictment she was charged with. Therefore, the only possible reason for presenting evidence relating to poisoning and ground glass, would be to cause suspicion by implying that her letters made it more likely that she was involved in Percy's murder. Consequently Curtis-Bennett had spent much of his time during the trial arguing that the letters were fantasy only to be told in the Court of Appeal that it was "of little importance whether Mrs Thompson was truly reporting something which she had done or falsely reporting something which she merely pretended she had done."<sup>207</sup>

Third, Judge Shearman had failed to make any mention of Sir Bernard Spilsbury's evidence which "supported the evidence of the Appellant."<sup>208</sup> This was an important omission, for as noted above, Sir Bernard's evidence provided conclusive proof that Percy had never been the victim of a poison attempt. Therefore the prosecution's case rested on a fabricated theory designed to cast suspicion upon Edith. In other words, because there was no evidence of Edith's involvement in Percy's murder, the Crown utilised 'evidence' of a crime which

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<sup>204</sup>Bresler quoting Lord Chief Justice Hewart 1965:174; 175.

<sup>205</sup>*Criminal Appeal Reports* Vol XV II July to December 1922-23 p.71.

<sup>206</sup>CRIM 1/206/5 XC6872 Charge Sheet, charges 4 and 5.

<sup>207</sup>*Criminal Appeal Reports* Vol XV II July to December 1922-23 p.73.

<sup>208</sup>HO45/2685 PT2 XC2501 Appeal Document point 7d.

*had not been committed* (poisoning) to prove, she was guilty of a crime which *had been committed*:

It cannot be doubted that it was upon this evidence [of the first indictment] that the verdict upon the second indictment was ultimately secured. It was because the Jury believed that Mrs Thompson was prepared to murder her husband when Bywaters was abroad that they accepted her guilt as an accomplice when Bywaters was at home.<sup>209</sup>

To omit Sir Bernard's evidence therefore involved omitting evidence which proved Edith's innocence on two of the five charges, and which proved the Crown's case to be based on smears and insinuations rather than forensic evidence. However, as I indicated above, although the crux of the prosecution's case involved evidence of poisoning, by the time the case reached the Appeal Court, the truth/falsehood of the poison attempts were deemed irrelevant as a result of Lord Hewart's redefinition of the case.

A final point which related to the evidence of Mr Webber, was not included in the Appeal Document, but has been discussed by Rene Weis, and deserves consideration. It will be remembered Webber testified he had heard Edith cry out "Oh, don't, oh, don't", in a most piteous manner." The judge described this to the jury as a "very curious piece of evidence", claiming Webber had been "some way off" when hearing the cries:

I am not saying it is true, it is for you to say whether it is accurate, or whether it is imaginary, or whether he has made a mistake.<sup>210</sup>

These comments suggest that because Mr Webber's testimony did not fit the case presented by the prosecution, an attempt was made by the judge to discredit him as a witness.

The three appeal judges took five minutes in reaching a decision in Freddy's case and eight minutes considering Edith's case.<sup>211</sup> The manner in which the appeal was conducted confirmed not only the "gross moral bias" associated with the case, but also Lord Chief Justice Hewart's reputation for "tak[ing] sides in cases that came before him ... [and] seeing one side of the picture more clearly than the

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<sup>209</sup>HO45/2685 PT2 XC2501 Document by Sir Stephen Demetriadi. Underlining in the original.

<sup>210</sup>Judge Shearman's summing-up quoted in Weis 1988:316.

<sup>211</sup>Weis 1988:260;261.

other."<sup>212</sup> Overall, the appeal lent further credence to the claim that Edith was hanged not for murder but for adultery.<sup>213</sup>

### Edith Thompson: Official versus Unofficial Punishment.

The level of moralising directed against Edith was superseded only by the level of punishment imposed on her. This punishment was initiated when she was a remand prisoner, and therefore, technically, still innocent. Following their arrest, Edith and Freddy immediately began to communicate by letter. As remand prisoners they were entitled to copies of letters addressed to them. However, by mid-November, the governor of Brixton prison revealed this correspondence to the Prison Commissioners, stating "this sort of correspondence has been going on between this prisoner and his fellow prisoner in Holloway. The letters are not clear."<sup>214</sup> The Commissioners instantly issued reprimands to the governors of both prisons:

This letter will not be allowed to go... He should not be told. No letters from this man to the woman Thompson will be posted. *He will not be told of this.* He may continue to write to her, but the letters will be forwarded to this office... What do you mean by "this sort of correspondence."? No letters to or from ... Thompson have been submitted by you to the Commissioners. If letters have passed why were they not submitted ... The letters should not have been allowed to go and you should have asked for instructions before allowing correspondence between two prisoners in the same case, particularly in such a grave case.<sup>215</sup>

The governor of Holloway was issued with almost identical instructions:

Please note that letters written by the woman Thompson to the man Bywaters will not be posted. *She will not, however, be told of this.* If she writes any, they will be sent up to this office, where they will be retained. If she has written to him, or if she has received letters from him why were they not submitted to the Commissioners?<sup>216</sup>

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<sup>212</sup>Pannick, D. (1987) *Judges* Oxford University Press, Oxford p.51. Hewart also used to write "letters while sitting in court, although his biographer reassures us that 'nothing passed over his head'." (Pannick 1987:79).

<sup>213</sup>Weis 1988:316.

<sup>214</sup>PCOM 8/22 XC2663 Public Record Office, Kew, Richmond, Surrey TW9 4DU; dated 21st November 1922.

<sup>215</sup>PCOM 8/22 XC2663 Prison Commissioners' Memo, 21st November 1922. My emphasis.

<sup>216</sup>PCOM 8/436 Public Record Office, Kew, Richmond, Surrey TW9 4DU. Memo dated 18.11.1922. My emphasis.



Following these instructions the couple's letters never again reached their destination. The level of anxiety experienced by the prisoners as a consequence of this silence can be gleaned from a telegram from Freddy to Edith:

Have you received letter? Are you ill. Let me know. Freddy.<sup>217</sup>

The telegram was not posted. We can only speculate as to why Edith and Freddy were never told of their continuing loyalty to each other. Did the authorities hope that if the couple felt increasingly isolated they would reveal much needed evidence of the so-called plot to kill Percy? Or was it a form of informal punishment?<sup>218</sup>

While prison rules forbade condemned prisoners to correspond with each other<sup>219</sup>, Deputy Governor Clayton attempted to have this rule waived when he wrote to the Commissioners after the trial, to request permission for Freddy's letter to be forwarded to Edith "thinking he might divulge some matter of importance."<sup>220</sup> Permission was refused.<sup>221</sup> In Edith's case, other evidence supports the notion that the Prison Commissioners aimed to punish her long before she reached the gallows. For example, when a bouquet of flowers was sent anonymously two days before her appeal, bearing the message "best wishes" from a "friendly girl", Edith was not told. Instead the Commissioners ordered the flowers to be destroyed.<sup>222</sup>

A far more serious example of how Edith suffered while waiting for her execution can be observed from the Commissioners' handling of her request to receive visits from her local priest Canon Palmer. In previous chapters I discussed the crucial role played by prison chaplains in securing confessions from condemned

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<sup>217</sup>PCOM 8/22. Original telegram included in this file. No date.

<sup>218</sup>Some comfort may be gained from the knowledge that Edith Thompson broke the rules of the court by shouting to Freddy "if he had received 2 letters she had sent this week. Bywaters replied he had not." (PCOM 8/22 XC2663 Prison Commissioners Memo dated 24th November 1922). After this realisation the couple passed verbal messages to each other via relatives.

<sup>219</sup>Introduction to *Transcript* 1923:xxix-xxx. However, instructions printed on the reverse of the official prison paper which Freddy wrote to Edith suggest prisoners did have a right to communicate: Prisoners are allowed "to receive and to write a letter at intervals, which depends on the stage they attain by industry and good conduct." (144/2685 Pt 2).

<sup>220</sup>PCOM 8/22 XC2663 Public Record Office, Kew, Richmond, Surrey TW9 4DU. Letter dated 2nd January 1923.

<sup>221</sup>PCOM 8/22 XC2663 Memo dated 3rd January 1923.

<sup>222</sup>PCOM 8/436. Memo dated 19th December 1922.

prisoners. In particular, I argued that a confession added legitimacy to controversial executions. Holloway's chaplain Granville Murray appeared to follow the pattern of his predecessors for Edith soon found his visits "most objectionable, as he was very pressing for a confession and many times she told him she had nothing to confess being quite innocent of the crime ..."223 The chaplain's attitude stood in sharp contrast to that of Canon Palmer, a priest attached to the area where Edith lived:

His visit to her ... was one of the happiest half hours that she had had while there.224

Consequently Edith requested that Canon Palmer rather than Chaplain Murray should become her spiritual advisor, which would have allowed him to administer to her during her last moments before the execution.225 However, the Prison Commissioners ruled that as Edith did not wish to convert to Catholicism, he would not be allowed to visit her again.226

From a humanitarian perspective it seems exceptionally punitive that a woman with only days to live was refused this last request. However, when seen within the context of depriving her of letters and flowers, the denial of her request for Palmer's administrations becomes part of a pattern of depriving her of every source intended to offer her comfort and moral support. In effect it amounted to a series of informal punishments, which, as I argued in Chapter Five, is designed to teach a defiant woman a lesson - to put a wife who has failed to recognise male authority 'in her place'. In the absence of Percy, the state took over his responsibility of disciplining an 'uppity' wife.

Like Louise Masset before her, Edith's 'dangerousness' lay in her ability to deceive even those closest to her. Outwardly, she conformed in every way to conventional feminine standards and expectations. She took great care over her appearance, hence imposed a 'feminine body discipline' as discussed in Chapter Five. She gave

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223HO144/2685 Pt 2 XC2501. Letter from Edith's mother, Mrs Graydon to Home Office 3rd March 1923.

224HO144/2685 Pt 2 XC2501 Letter from Mrs Graydon 3rd March 1923.

225HO 144/2685 Pt 2 XC2501 Letter from Mrs Graydon 3rd March 1923. Moreover, Canon Palmer told Mr Morton, the prison governor, that he was prepared to cancel all his engagements on the Monday before the execution in order to spend time with Edith.

226HO144/2685. This file contains several letters from prominent members of the public, who complained to the Home Secretary about this decision. The letter-writers included the Hon Mrs Philip Nelson Ward; Westminster Catholic Federation Vigilance Committee and Catholic Women's Suffrage Society.

the appearance of being a loyal, loving, compliant and altruistic wife and was regarded as a 'respectable' woman. Yet, like Louise Masset, behind the facade of convention and conformity lurked a woman who lived a life of lies, lust and debauchery, deceptions viewed as doubly deviant as a result of her social class. Thus, it was she, rather than Freddy, who was singled out for derogatory comments by the detective-inspector who had worked on her case:

Mrs Thompson used her utmost endeavours to deceive by deliberately lying to police as to the identity of the assassin.. She is a consummate actress, and it was only after a searching inquiry that her secret lover was disclosed.<sup>227</sup>

Edith represented the stereo-typical wicked and sexually insatiable female, who, in previous centuries was considered to be "the Devil's Gateway."<sup>228</sup> Her perceived powers as a seducer and temptress of young men can be gathered from two members of the professional classes who wrote to the Home Secretary pleading for Freddy's life, and who subscribed to the same double standards as the detective-inspector:

As a youth of 19, of previous excellent character, he was exposed for many months to the malign influence of a clever and unscrupulous woman 8 years older, who ... wrote him numerous letters, inciting him to help her in getting rid of her husband ... An impressionable youth of that age would need to be of unusual strength of character to resist such solicitations. ... Bywaters fell a victim to her machinations...<sup>229</sup>

Similarly, Freddy's solicitor called him a 'boy' and wrote:

He has been at a very impressionable age, ... and ... had it not been for the unfortunate circumstance that he came under the spell of a woman 8 years older than himself he would not be in his present terrible position.<sup>230</sup>

In short, Edith's transgressions resurrected the age-old image of the temptress Eve, literally down to its poisonous detail. They also resurrected the equally old male fear of female sexuality, which, as indicated in Chapter Three, has resulted in women being perceived in highly threatening terms, as possessing "an all-consuming, all-absorbing passion, an animal lust ... never satisfied."<sup>231</sup> The

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<sup>227</sup>MEPO 3/1582 Concluding notes on the case dated 19th December 1922.

<sup>228</sup>Tertullian quoted in Noddings, N. (1989) *Women and Evil* University of California Press, Berkeley p.52.

<sup>229</sup>HO144/2685 Part 2 XC2501 Letter from the Committing Magistrate Eliot Howard, 14th December 1922.

<sup>230</sup>HO144/2685 Part 2 XC2501 Letter from Barrington Matthews, 23rd December 1922.

<sup>231</sup>Jones 1991:274.

extent of the threat that Edith posed can be measured by the level of cruelty directed against her and her family. Thus, on the day before the execution, during her family's last visit, a telegram addressed to her father was delivered to the cell, bearing the message: "Am in direct communication with the Home Office. Cheer up. Good news coming. Bethell, Romford."<sup>232</sup> Edith and her family assumed it was from the local MP of that name, and undoubtedly also assumed a last minute reprieve had been secured. The telegram was a hoax.

The excesses of cruelty and lack of humanity engulfing Edith's last days together with the gradual realisation that she was innocent of the crime for which she was hanged, were later to become the ingredients which ensured future generations' revulsion at her punishment. Thus, while resistance to her execution was far from universal at the time, Edith Thompson was eventually to become the "patron-saint of the abolitionist cause."<sup>233</sup>

#### Resistance and Opposition to the Execution of Edith Thompson.

During the four weeks between the trial and execution public opinion as to whether the death penalty should be carried out appeared to be sharply divided. On the one hand, *The Daily Sketch* carried headlines such as 'Bywaters must not be hanged'. It also launched a petition on Freddy's behalf and claimed to have received 10,000 letters in the first 24 hours alone. This petition was eventually to become the largest ever "in Britain for a convicted prisoner."<sup>234</sup> *The Daily Express* also supported the couple by focusing on their unhappy plight and refraining from moralising.<sup>235</sup> On the other hand, *The Daily Telegraph* threw its support firmly behind the trial judge and wrote that:

his insistence that the jury and he were investigating a 'vulgar crime' according to the principles of human justice and common-sense well expresses the spirit in which English people would have all such cases tried. ... It is idle to attempt by sentimental appeals in the name of love - a word which has no place in this case - to throw some glamour over the man and woman who now lie condemned to death. The jury found, after long

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<sup>232</sup>*Daily Express* 9th January 1923.

<sup>233</sup>Goodman, J. (1993) *The Daily Telegraph Murder File* Mandarin, London, p.144.

<sup>234</sup>Weis 1990:255-6. The first portion alone, delivered to the Home Office on Christmas Eve, contained 832,000 signatures (*The Times* 27th December 1922).

<sup>235</sup>See for example *Daily Express* 6th, 7th and 9th January 1923. At that time its editor was Beverley Baxter, who was opposed to the death penalty, and who, when he later became an MP, was to raise the issue of Edith's execution in an attempt to find out the exact truth. See also Appendix II.

deliberation ..., no cause to ask for mercy upon either. To their silence there is nothing to add.<sup>236</sup>

*The Daily Mail* had no sympathy for the couple either:

... looking back on the crusade of sentimentalism which succeeded the jury's verdict the country may congratulate itself on having a Home Secretary capable of carrying out a very painful duty with due firmness. ... We are satisfied ... that public sympathy is not with the murderers but with the unfortunate and inoffensive husband. ... With the judges' decision ... the vast majority of the public are in full agreement.<sup>237</sup>

This difference of opinion was equally apparent amongst individual members of the public. For example, Sir Evelyn Cecil wrote:

Perverted sympathy for murderers and such mawkish journalism as 'Move to save the Ilford lovers' ... sap the very moral of a nation. I should deplore the future for a country where morbid sentimentality ever got the upper hand.<sup>238</sup>

However, John Ellis, who was to be Edith's executioner, reported that he had received "lots of ... letters", urging him to refuse to carry out the execution:

Bywaters is a victim of sympathy, drawn into the crime through that agent in the first place. Mrs Thompson's fall is through vanity which is no credit, and, next to greed, the worst sin in the world. But as she did not actually do the crime, and being a woman, she should be reprieved.<sup>239</sup>

On the morning of the executions 4,000 people gathered outside Holloway and 5,000 assembled outside Pentonville prison. While women demonstrators carried placards with the wording "Murder cannot be abolished by murder" and "If these two are hanged judge & jury are murderers also",<sup>240</sup> *The Daily Mail* claimed that "in the large crowds assembled few questioned the justice of the sentences..."<sup>241</sup> However, two factors were gradually to change the minds of those who still supported the executions. First, throughout his imprisonment Freddy maintained

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<sup>236</sup>*Daily Telegraph* leading article 12th December 1922.

<sup>237</sup>*Daily Mail* 8th January 1923.

<sup>238</sup>*The Times* Letters Page 9th January 1923.

<sup>239</sup>Letter quoted in Ellis 1996:18. Other letters took a more threatening form: "Dear Sir, - Be a man and don't hang a woman. You know you have to die yourself in a few years. Just think." Another read: "If you go and pull that lever and take a woman's life, Government ain't going to answer for it, God'll send the bill to you." (Ellis 1996:18).

<sup>240</sup>*Daily Mirror* 10th January 1923; Ellis 1996:29.

<sup>241</sup>*Daily Mail* 10th January 1923.

Edith's innocence. In writing a petition for his own life he spent almost two thirds of the limited space available on reiterating and clarifying her innocence. He further asked the Home Secretary:

to accept my word sir, or perhaps you can show me some way in which I can prove to you that I am speaking the truth.<sup>242</sup>

When this plea had no effect, he made a new confession to his mother and persuaded her to send it to the Home Secretary:

I swear she is completely innocent. She never knew that I was going to meet them that night... She didn't commit murder. I did. She never planned it. She never knew about it. She is innocent, innocent, absolutely innocent.<sup>243</sup>

Furthermore, during his final hours, he told the governor: "It was my fault. She is innocent. She never did anything - it was me."<sup>244</sup> Second, Freddy's persistent campaign to clear Edith's name reached newspapers immediately after the execution together with press reports describing Edith's last moments as "Nearly unconscious and unable to walk." Throughout her last night she had been "semi-conscious", asking for Freddy whenever she had a moment of clarity. Eventually she reached a "state of collapse", was "dazed" when the executioner entered her cell, and had to be carried to the scaffold "moaning like an animal", barely conscious. She was unable to hold her head up, which consequently rested on the shoulders of one of the warders. The executioner had to hold her head in position to secure the hood.<sup>245</sup> These reports were soon followed by others, claiming that Edith's 'insides' had fallen out, leading to a suspicion she may have been pregnant.<sup>246</sup>

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<sup>242</sup>HO45/2685 PT 2 XC2501 Original petition dated 5th December 1922, is included in this file.

<sup>243</sup>Quoted in *Daily Express* 8th January 1923.

<sup>244</sup>From Major Blake's memoirs published in *London Evening News* 27th October 1926; this extract also quoted in Broad 1952:206. See also Appendix II.

<sup>245</sup>*Daily Express* and *Daily Mirror* 10th January 1923; *The Times* 11th January 1923. See also evidence of witnesses to the execution in PCOM 9/1983 XC2662, Public Record Office Kew, Richmond, Surrey TW9 4DU, which confirms the truth of these reports.

<sup>246</sup>This suspicion was largely the result of Governor Morton's report that she had gained 15lbs in a matter of weeks. (HO45/2685 PT2 XC2501 Report entitled 'Conduct & general demeanour of Edith Jessie Thompson from Dec 11th to Jan 9th, dated 9th January 1923.) See also PCOM 9/1983 XC2662 which refers to Mr Baxter's mention in the House of Commons "of a sick woman of 28 whose insides fell out before she vanished through the trap".

The distressing circumstances of Edith's execution had caused "women officials ... engaged in watching Mrs Thompson .. [to have] felt the strain acutely, and some of them are prostrated in consequence. Many of them declared that they could never again carry out the duty imposed on them yesterday."<sup>247</sup> Moreover, Governor Morton was reported to have visited the editor of the *Daily Mail* requesting it "start a campaign against hanging ..." He "had been so upset about what happened at the execution that morning that he had come to say he would never again take any part in the hanging of a woman..."<sup>248</sup> At the same time Sir Beverley Baxter reported that "on the evening of the execution two warders who had 'taken part in it' visited his office at the *Daily Express* ... and told him that what had happened was 'too terrible to describe'."<sup>249</sup> While these reports were to remain controversial for decades to come,<sup>250</sup> others remained unchallenged. For example Dr Walker, who also witnessed the execution, stated that Edith "groaned several times just before she went on the drop ... and appeared to hang back with some slight struggling ... and grunted as an animal going to be killed. It could not be described as a human shout or scream." She added that "the executioner was most upset and completely broke down. He came out shouting 'Oh Christ, Oh Christ'."<sup>251</sup>

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<sup>247</sup>*Daily Express* 19th January 1923.

<sup>248</sup>*Sunday Observer* 18th March 1956.

<sup>249</sup>*Sunday Observer* 18th March 1956. See also PCOM 9/1983 XC2662 in which Mr Baxter is quoted from a House of Commons debate: "After her execution two of the warders who had taken part in that execution came to my office, and their faces were not human. I can assure you, Sir, they were like people of another world. Edith Thompson had disintegrated as a human creature on her way to the gallows, and yet somehow they had to get her there ... Those two warders who took part in that execution said to me, 'Use your influence; never again must a woman be hanged.'"

<sup>250</sup>For example, one of the prison warders, M.H. Young, was to deny in 1948 that he had made the said visit. However, he also pointed out that to have done so would make him "guilty of a Breach of the Secret Act." (PCOM 9/1983 XC2662 Letter from M.H. Young dated 15th April 1948 included in this file). See also Appendix II. Moreover Sir Beverley's statement would have carried substantial authority due to his status as a Conservative MP. At the time of the execution he had been the editor of the *Daily Express*. See also Appendix II.

<sup>251</sup>PCOM 9/1983 XC2662. Edith's executioner, John Ellis, later wrote: "She looked as if she were already dead... I put the white cap on her head and face and slipped the noose over all. It was agonising just to see her being held up by the four men, her bound feet on the trap-doors. Her head had fallen forward on her chest, and she was completely oblivious to what was going on." (Ellis 1996:28) After a failed suicide attempt in 1924, Ellis, who resigned from his post as Britain's hangman 10 months after he had executed Edith Thompson, eventually committed suicide in 1932 by slashing his throat with a razor. Several commentators believed there was a connection between the these events. (Ellis 1996:235-8). Commenting on his father's suicide, Mr Ellis's son told *The Daily Express*: "Dad had not had a good night's sleep for many years. We all know what prevented him from sleeping. I do not think it was the memory of the 200 executions he had taken part in, but the

The combination of Freddy's oft repeated claim of Edith's innocence together with the horrific details of her execution ensured that her case was never forgotten.<sup>252</sup> Instead opposition to her execution gathered momentum *after* the event, with one academic still fighting to clear Edith's name as late as 1988.<sup>253</sup> While resistance to Edith Thompson's execution was and is to be commended it is never-the-less important to remember that only 19 years earlier Emily Swann had faced the gallows in almost identical circumstances to Edith's. Edith's execution resulted, rightly, in protracted controversy lasting almost a century, which included major debates on the death penalty and several parliamentary discussions. Emily's execution warranted only ten lines in *The Times*.<sup>254</sup> This discrepancy is reminiscent of the cases of Ada Williams and Louise Masset discussed in Chapter Six. These women's executions took place within eight weeks of each other, but while there was no public outcry, protest or discussion in connection with Ada's death, the publicity surrounding Louise's execution was similar to that of Edith's, both in terms of the moralising surrounding these cases and in terms of the support the two women received.<sup>255</sup> The wide interest in the cases of Louise Masset and Edith Thompson is reflected in Home Office files which are nearly as big as the files of all the remaining 13 women put together. What separates Edith and Louise from Ada and Emily (as well as the remaining 11 women) is social class. This issue was explored in Chapter Six in relation to Louise and her role as governess. Twenty-two years later the issue of social class was still important although in Edith's case it was related to the 'newly sexually liberated' woman rather than to 'the governess'. None-the-less both women represented 'unruly' and unregulated womanhood - possessing an illicit sexual

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recollection of the hanging of two women that drove him to suicide." (Quote included in PCOM 9/1983 XC2662). The two women were Emily Swann and Edith Thompson.

<sup>252</sup>See Appendix II.

<sup>253</sup>See Dr Weis's letter to the then Home Secretary Douglas Hurd reproduced in Weis 1990:313-16.

<sup>254</sup>Between 12th December 1922 and 18th January 1923 extensive debates took place in *The Times*, both on the Thompson/Bywaters case and on the death penalty in general. The same newspaper spent five lines on reporting the Home Secretary's refusal to interfere in the death sentence of Emily Swann and John Gallagher (*The Times* 29th December 1903), and 10 lines on reporting their executions (*The Times* 30th December 1903). Their trial was not reported.

<sup>255</sup>For example in both Louise Masset's and Edith's Thompson case, solicitors not involved in their cases wrote to the Home Office defending the women, and in Louise's case, even offering to work on the case without payment. (HO 144/1540/A61535 communication from Mr Gurney-Winter 4th January 1900). Both women also were part of loving and supportive families who did their utmost to save them from the gallows.



identity - which as I discussed in Chapter Six, was taken far more seriously when affecting previously 'respectable' women. Thus, as had been the case with Louise, discourses surrounding Edith's transgressions over-rode those of social class. While acknowledging that there was a vast difference in the State's handling of Emily's case, an impoverished, unskilled, illiterate woman for whom no-one spoke, and the case of Edith, an articulate, educated, middle-class woman who could afford a defence KC of national reputation, and who was part of a loving family who understood how to utilise the media to initiate support for her case, the outcome for the two women were never-the-less the same. In other words, while it is correct to identify a relationship between the lack of opposition to the executions of women such as Emily Swann, Louie Calvert, Margaret Allen and Styllou Christofi, and their powerlessness, it was never-the-less the case that women such as Edith Thompson and Louise Masset who had access to power via high status KCs, were still executed. This fact confirms the inadequacy of the four theoretical perspectives outlined in Chapter Four, for their executions can only be adequately explained by applying a gendered analysis to their cases. This case-study was introduced by a quotation stating that had Edith been working or upper-class there would have been a simpler solution to her problems, and if she had been male, the problem would not have existed at all. While this comment may be considered flippant by some, it is never-the-less the case, that it was the combination of Edith's (and Louise's) social class and *gender* which gave special significance to their conduct and behaviour. Ultimately their allegiance with the respectable classes could not save them, but was undermined by their sexual conduct. While their social class put more pressure on the state to legitimise their executions, it could not save them from the gallows. In short, the discourses surrounding their gender transgressions overrode the privileges associated with higher social classes, thus demonstrating that judicial misogyny is not confined to the impoverished and powerless, but transgresses class barriers to produce the same result - an executed woman's body.

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## Chapter Eight - Part II

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### The Female Poisoner Re-visited.

#### The Case of Ethel Major.

The poison was responsible for her death just as her non-appearance in the witness box was responsible for her conviction. If she had hit her husband with a poker or pushed him into a river, Mrs Major would probably be alive today, but poison suggests something more than extreme provocation, self-defence or mental anguish.<sup>1</sup>

As each case-study is analysed it becomes increasingly apparent that the male fear of the 'woman poisoner' had some basis in fact, for statistically a third of all women executed during the 20th century had employed this method of murder.<sup>2</sup> Ethel Major was one of them. She was also - along with four of the five women discussed in this chapter - a battered woman.<sup>3</sup> As different aspects of her husband's cruelty emerged during her trial, the discourses of the 'woman poisoner' and 'woman as victim' were competing in the battle to define what type of woman Ethel was. Thus, as was to be the case with Dorothea Waddingham 16 months later, Ethel's case evoked considerable sympathy. Indeed, as I shall illustrate, an alternative truth about her was constantly on the verge of making itself visible during the trial. Ultimately, however, the period between 1920-1970 which includes the cases of three of the four battered women discussed in this chapter, lacked a strong feminist movement such as that which came into existence after 1970, which was responsible for organising protests and campaigns to ensure that cases similar to Ethel Major's were understood within the general context of male violence against women.<sup>4</sup> However, in 1934, the year

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<sup>1</sup>Huggett, R. & Berry, P. (1956) *Daughters of Cain* George Allen & Unwin, London p.108.

<sup>2</sup>If Amelia Sach is included, whom it will be recalled, was executed with Annie Walters who had administered chlorodyne to a baby that subsequently died from asphyxia, the number of poisoners rises to six out of a total of 15.

<sup>3</sup>Only one incidence of violence was recorded against Edith Thompson by her husband, and it is not known if this was an isolated incident. (See for example Weis 1990:55).

<sup>4</sup>Wilson, E. (1983) *What Is To Be Done About Violence Against Women?* Penguin, London p.88.

of Ethel's execution, the discourse of 'domestic' violence was yet to be opened and articulated, either in the law or in the wider culture.

Ethel's marriage to Arthur Major had been unhappy for several years and in 1934 it reached crisis point. Ethel described her domestic circumstances in the following terms:

Over a period of years I have had a very miserable existence with my husband who continually quarrelled with me and threatened to beat me. He was an [sic] habitual drinker and very quarrelsome when in drink. He led me a terrible life and I was terrified to death of him. Of late I was afraid to stay in the house with him as I thought he might kill me. He had threatened to do so several times when in drink. On many occasions my husband has struck me. For a fortnight before my husband died he became very much worse and drank much more heavily.<sup>5</sup>

During the three weeks prior to Arthur's death Ethel engaged in a number of actions which were initiated by her discovery of two letters in the bedroom addressed to Arthur. They were both highly intimate in tone and contained hurtful comments about Ethel:

To my dearest sweetheart.

In answer to your dear letter received this morning, thank you dearest... Baroness looks as if she could kill me today Wed. I am so afraid she should try to get Rita to go to her but I have told her, if Mrs Major ever gives her cake or sweets she is not to go, she is to come running home. She might think she could hurt me through my child if she did I would force my way in & shoot her on sight. I see her watching you in garden & also Auriel, but I dont care a fig for either of them. I shall be out as long as I think fit. I don't care what they say. They can pick at me if they like. Some day I shall be able to show them something & beg me for a [unreadable]. ... Well now I must close love. You will be fed up with me getting so ratty about things but I expect you get worked up some times. Well now sweetheart I will close with fondest love to you my precious one from your ever loving sweetheart. Rose.<sup>6</sup>

Ethel assumed 'Rose' was her neighbour and her first response was to tackle Rose's husband about the letters. He did not believe her but said "I am tired ... of you watching and prying about."<sup>7</sup> She then presented them to her GP saying: "Now you can understand why I have been ill these last few years." Becoming increasingly agitated she added: "'A man like him is not fit to live' ... then words to this effect ... 'I will do him in.'" Dr Armour considered this "an idle threat, by a woman who was in rather a nervous state" adding that "if nothing had happened

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<sup>5</sup>ASSI 13/64 XC3601 CL Statement by Ethel Major 3rd July 1934. This file is available for inspection at the Public Record Office, Chancery Lane, London WC2A 1LR.

<sup>6</sup>ASSI 13/64 XC3601 CL. Original letter, undated, marked EXHIBIT 5.

<sup>7</sup>ASSI 13/64 XC3601 CL. Testimony of Joseph Kettleborough p.50.

afterward I should never have thought it worthwhile to mention it."<sup>8</sup> Dr Armour's medical opinion of Ethel was that she was unstable:

I should say the accused is of a very nervous disposition. She has always been excitable and I didn't take as much notice of that statement from her as I would from a more stable person.<sup>9</sup>

Second, Ethel showed the letters to John Holmes a Sanitary Inspector who repaired a broken window at her home. She complained about Arthur's drinking and about her neighbour Rose and "asked if she could be made tenant of the house in place of her husband. I said 'Not without her husband's consent.'"<sup>10</sup> Ethel subsequently wrote to Mr Holmes, in Arthur's name:

I have decided to leave as it is unpleasant for my wife after seeing you. I thought it best giving in my notice today to you.<sup>11</sup>

When Arthur was notified of the termination of his tenancy, he cancelled this notice. Ethel denied all knowledge of the letter.<sup>12</sup>

Third, Ethel visited her husband's employer asking how much Arthur had earned that week. She added:

People in Kirkby tell me that Major is idle, you ought to be ashamed to employ such a man, you should dismiss him.<sup>13</sup>

At the same time the Chief Constable received a letter, supposedly from two parish constables, but believed to have been written by Ethel, complaining that:

Arthur Major is allways [sic] Drunk [sic] in charge and is not safe to be on the road Will you Please [sic] inform a dissmille [sic] at once for the safty [sic] of others Drink [sic] being consumed on the works at the Graull [sic] Pits ...<sup>14</sup>

Finally, Ethel instructed a solicitor to send a letter to Rose in Arthur's name, giving him the impression that she was acting on his behalf with his consent:

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<sup>8</sup>ASSI 13/64 XC3601 CL. Testimony of Dr George Armour pp.27-32.

<sup>9</sup>ASSI 13/64 XC3601 CL. Testimony of Dr George Armour p.32.

<sup>10</sup>ASSI 13/64 XC3601 CL. Testimony of John Henry Holmes pp.55-6.

<sup>11</sup>ASSI 13/64 XC3601 CL. Original letter included in this file.

<sup>12</sup>ASSI 13/64 XC3601 CL. Testimony of John Chatterton, Clerk to Horncastle Justices p.54.

<sup>13</sup>ASSI 13/64 XC3601 CL. Testimony of Cyril Thornley, p.53.

<sup>14</sup>ASSI 13/64 XC3601 CL. Original letter included in this file undated, EXHIBIT 12. It was received on 15th May 1934.

I request you to stop hiding any more letters for me and I shall not write to you any more and I don't wish to speak to you or have any more trouble with you in the future. Final Notice. Arthur Major.<sup>15</sup>

When Arthur discovered this "he seemed to be in a very excited and troubled condition." Meanwhile Ethel returned to the solicitor to ask if Arthur was going to take out a summons against her and "appeared most anxious to have the matter stopped."<sup>16</sup>

During this period Ethel herself was the recipient of an anonymous letter:

Your are slow now. Dont you know how your husband spends his weekends he has got a nice bit of fluff now. Besides he would be done any day at the shop if it was not for Mrs sticking up for him. You could get rid of him easy if you had him watched from one who knows about him and Mrs B. I hear he has now got a little Major [sic] to look after.<sup>17</sup>

Yet another piece of correspondence was to figure in this case. It was an announcement by Arthur which he had paid to have published in the local newspaper:

I Arthur Major, of Kirkby-on-Bain, hereby give notice that I shall not be responsible to pay my wife's debts and she has no authority to make any statement or to give or sign any notice on my behalf.<sup>18</sup>

Arthur died the day before the announcement was due to be published, and Tom Brown, Ethel's father cancelled its publication.

Prior to Ethel's letter-writing campaign the Majors were well known to the local police. For example PC Mitchell testified that since 1931 "Mrs Major made complaints to me about her husband, quite a number of times. She complained that he was always drunk ... when she complained that she could not live with [him] ... any longer, owing to him drinking very heavily, I advised her to consult a solicitor."<sup>19</sup> PC Mitchell interviewed Ethel only five days prior to Arthur's death. She again complained about his drunkenness:

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<sup>15</sup>ASSI 13/64 XC3601 CL. Original letter included in this file - EXHIBIT 21.

<sup>16</sup>ASSI 13/64 XC3601 CL. Testimony of Walter Holmes p.60; 61. Solicitor quoted in Huggett & Berry 1956:96.

<sup>17</sup>ASSI 13/64 XC3601 CL. Original letter included in this file.

<sup>18</sup>ASSI 13/64 XC3601 CL. Copy of original note included in this file. See also testimonies by Ellen Liney and Thomas Taylor, pp.58-9.

<sup>19</sup>ASSI 13/64 XC3601 CL. Testimony of PC James Mitchell pp.61-2.

She said that she had been ill in bed about a fortnight previous and her husband had been in the habit of taking her a cup of tea upstairs in the mornings, but she did not drink it, as he had put something in it to get rid of her.<sup>20</sup>

When PC Mitchell called again on the day of Arthur's death, Ethel explained that he was ill: "He will not get better and drive the motor lorry again."<sup>21</sup>

There were no suspicious circumstances immediately after Arthur's death, since it was assumed he had suffered an epileptic fit. Thus, when PC Mitchell - accompanied by Inspector Dodson - called on Ethel two days later to view the body it was merely a routine visit. Ethel however, asked: "I am not under suspicion am I? I haven't done anything wrong.' Inspector Dodson replied: 'Not that I know of.'"<sup>22</sup>

Ethel provided further evidence of a marital break-down when she told police officers:

About three weeks ago before he died my husband would not let me prepare or touch his food or do anything for him. He refused to let me buy anything for him and prepared all his food himself.<sup>23</sup>

This statement fitted neatly with Ethel's oft repeated contention, that it must have been the corned beef which only he ate, that had made him ill. She was to repeat this contention even after a death certificate was issued which identified the cause of death as an epileptic fit.

A picture had therefore emerged of Ethel not only as deeply unhappy but also as jealous and vindictive. In other words, negative aspects of Ethel's behaviour were not regarded as a consequence of - but as the reason for - her abuse. Thus she was constructed both outside a general context of male violence against women, and also *against* Arthur in particular, who was not without credibility within the local community. Thus, the pillar of that community Canon Blakiston testified that Arthur "was a decent sort of fellow, and sober as far as I know. I never saw him otherwise."<sup>24</sup> Similarly Mrs Blakiston testified that Arthur had been a parochical

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<sup>20</sup>ASSI 13/64 XC3601 CL. Testimony of PC James Mitchell p.62.

<sup>21</sup>ASSI 13/64 XC3601 CL. Testimony of PC James Mitchell p.63.

<sup>22</sup>ASSI 13/64 XC3601 CL. Testimonies of PC James Mitchell p.63 and Inspector Albert Dodson p.68.

<sup>23</sup>ASSI 13/64 XC3601 CL. Statement by Ethel Major.

<sup>24</sup>Quoted from transcript in *The Times* 31st October 1934.

councillor and "she had never seen him the worse for drink."<sup>25</sup> Both Ethel's doctor and her neighbours had therefore constructed an image of a highly strung, neurotic woman who was equally to blame for marital disharmony. For example, one neighbour had seen her throw two bricks at Arthur during a fight.<sup>26</sup> Similarly, the various professionals - police officers, solicitors, sanitary officers - whose help Ethel tried to enlist in her endeavours to destroy Arthur's reputation - presumably with the aim of justifying his removal from the family home - soon considered her to be a tiresome and troublesome woman best avoided. Moreover, at least one person felt more than simple annoyance at Ethel's attention-seeking behaviour, for it was as a consequence of yet another piece of correspondence that the true cause of Arthur's death was discovered. An anonymous letter sent to the police alerted them to an incident in which Ethel had scraped "something off a plate, and this was eaten by a dog belonging to a neighbour. The following morning the dog died."<sup>27</sup> Following this letter, a post-mortem was carried out which revealed it had died of strychnine poisoning.

Relatives had already gathered for Arthur's funeral in the Major household when police arrived and ordered proceedings to be stopped as a post-mortem was now required. At this point Ethel said to Arthur's brother: "It looks very black against me as if they are suspicioning me."<sup>28</sup> During the following weeks Ethel was interviewed on numerous occasions and made several statements, each time reiterating that Arthur had died as a result of eating corned beef. During an interview which took place six days prior to her arrest she stated: "[I] did not know that my husband died of strychnine poisoning."<sup>29</sup> This statement was to become one of three pieces of key evidence against her, for police officers claimed they had not revealed what type of poison had killed Arthur. During this interview she also became agitated when a CID officer suggested it was her and not Arthur who had sent their son Lawrence to buy corned beef at a local shop:

She became very angry got up from her chair started waving her arms about and shouted "Everyone in this village is a liar, if any woman said I sent my son she is a liar."<sup>30</sup>

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<sup>25</sup>Huggett & Berry 1956:91.

<sup>26</sup>ASSI 13/64 XC3601 CL. Testimony of Joseph Kettleborough p.51.

<sup>27</sup>*The Times* 30th October 1934; 4th July 1934.

<sup>28</sup>ASSI 13/64 XC3601 CL. Testimony of Thomas Major p.39.

<sup>29</sup>ASSI 13/64 XC3601 CL. Statement by Ethel Major 3rd July 1934.

<sup>30</sup>ASSI 13/64 XC3601 CL. Testimony of Chief Inspector Hugh Young p.73.

When Lawrence confirmed his mother had sent him, "accused ... hung her head and remained silent."<sup>31</sup>

The following day the same officer visited the home of her father, but found only Ethel present. The officer was about to leave when unprompted she said: "If my husband has had poison, it's Mrs Kettleborough who has done it, I leave the latch of my door up when I go out, and she could get in the back way."<sup>32</sup>

Five days later and six weeks after the cancellation of Arthur's funeral, Ethel was charged with his murder. She responded:

I didn't do it, I am as innocent as the days are long, if I have given my husband poison, its Mrs Kettleborough a [sic] someone who came into my house, when we were out and put it there [pointing to the ladder]. It's wicked for people to accuse me. I loved my husband, I am his lawful wedded wife.<sup>33</sup>

Yet only six days earlier during the interview discussed above, she had said:

He was a detestable man, and I feel very much better in health since he has gone... I could not sleep with him as he smelt so strongly I could not stand it. I thought by the smell of him he had a venereal disease... I thought my husband had communicated something to me...<sup>34</sup>

The discourses which dominated Ethel's trial were thus mobilised weeks before her arrest: on the one hand she was an unsophisticated and pathetic figure - deeply unhappy, neurotic and lonely - and thus deserving pity. On the other hand, she was a highly suspicious figure - a scheming, jealous and vengeful woman who was almost certainly guilty of poisoning her husband. Thus, rather than being a foregone conclusion, her fate appeared to be in the balance, when the trial opened.

### The Trial of Ethel Major.

While Ethel had entered a plea of not guilty and denied any involvement in her husband's murder, her KC never-the-less presented her defence on the

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<sup>31</sup>ASSI 13/64 XC3601 CL. Testimony of Chief Inspector Hugh Young pp.73-4.

<sup>32</sup>ASSI 13/64 XC3601 CL. Testimony of Chief Inspector Hugh Young p.74.

<sup>33</sup>ASSI 13/64 XC3601 CL. Testimony of Chief Inspector Hugh Young, quoting comments by Ethel Major p.75. CI Young's testimony was corroborated by Detective Inspector James Salisbury who was also present at the various interviews (p.76).

<sup>34</sup>ASSI 13/64 XC3601 CL. Statement by Ethel Major 3rd July 1934.



assumption that if she *had* committed murder, there was plenty of justification. Thus as witnesses gradually revealed the depths of Ethel's suffering at Arthur's hands, it became increasingly clear, that while she may be guilty of murder, that action had been taken within the context of a series of mitigating circumstances. For example, 15 year old Lawrence confirmed the truth of many of the allegations Ethel had made against Arthur:

They quarrelled when my father got drunk, which was practically every night. My father threatened to hit my mother several times... My mother and I went to sleep at my Grandfathers nearly ever since we went to the Council House [two years]... Sometimes we slept in the shed at the back... My father prepared his own food for about ... three weeks before he died. He used to live chiefly on corned beef. He had tea to drink. He made it himself... my mother fed herself and me, my father fed himself. Our food was on a different shelf and at the other end of the pantry from my father's food... The quarrels were worse in the last three weeks before my father was taken ill... When we went round to Grandfathers to sleep we slept in our clothes and I had Grandfather's top coat for covering and my mother had a top coat of her own... My father was a heavy drinker and when he was drunk he was quarrelsome, they were one-sided quarrels. The drinking had been going on a long while but got worse the last month before he died. The drink was having effect on my father, he was not the man he had been.<sup>35</sup>

When Mr Justice Charles interrupted to ask: "Why did you not stay with your father [at night]?" Lawrence replied: "If we had been at home father would have turned us out." Lawrence agreed when defending KC asked him:

Should I be right in saying that your mother all your life has been very kind to you, and your father very wicked?<sup>36</sup>

Ethel's father confirmed that Arthur "often threatened his wife"; moreover, her mother had died while the couple lived with her parents, and while she was lying dead in the house, Arthur came in "very drunk" and made a most "painful scene."<sup>37</sup>

Solicitor's clerk Walter Holmes (see above), also testified that he had heard Arthur "make very violent threats against ... Ethel, ... and gathered that their home life was unhappy."<sup>38</sup> Finally, her daughter, Auriel Brown, testified that Ethel had good reason to be jealous for she (Auriel) had seen Arthur and Rose "making eyes

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<sup>35</sup>ASSI 13/64 XC3601 CL. Testimony of Lawrence Oswald Major pp.1-8.

<sup>36</sup>Quoted from trial in *Manchester Guardian* 30th October 1934.

<sup>37</sup>Quoted from trial in *The Times* 31st October 1934.

<sup>38</sup>Quoted from trial in *Daily Express* 1st November 1934.

at each other. Mrs Kettleborough was always outside the house when Major came home. She put herself in his way."<sup>39</sup>

Yet, although Ethel's KC Lord Birkett was able to destroy one of the three major pieces of evidence against her, by proving her solicitor had discussed with her the fact that strychnine poisoning was the cause of Arthur's death, thus making her comment about this poison to police officers irrelevant, other evidence against her was compelling. I have already noted that a dog had died of strychnine poisoning after being fed by Ethel. However, the most important evidence against her was a key which was found in her home during a search on the day of her arrest. This key had belonged to her father, who assumed it was lost. It fitted a box which contained strychnine, occasionally used by him in the course of carrying out his duties as a game-keeper.

Apart from this circumstantial evidence, several aspects of Ethel's behaviour suggested she was a deceitful liar and a calculated poisoner who had carried out a premeditated killing. First, despite Arthur's severe illness, she failed to seek medical assistance, and it was her father who eventually ensured a doctor was called. Second, when this doctor asked if Arthur had had fits before, she lied and said "Yes, at intervals for a year or two."<sup>40</sup> She did not then suggest that corned beef had poisoned him.

Third, her attempt to discredit Arthur by suggesting that *he* was trying to poison her as discussed above, was disproved by her own statement that she did not sleep at home. Moreover, the idea of Arthur bringing Ethel morning cups of tea seemed highly implausible in view of the hostilities between the couple which Ethel herself had described. Every other aspect of her testimony was designed to portray Arthur as a selfish and inconsiderate husband whose violence terrorised his family. Similarly, her attempt to blame Rose Kettleborough for Arthur's death only served to further discredit her own character.

Fourth, as soon as Arthur had died, Ethel asked Lawrence to burn the paper on which the corned beef had stood on the pantry shelf. Lastly, she asked Lawrence to go to the office of the *Horncastle News* to cancel Arthur's notice regarding his

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<sup>39</sup>Quoted from trial in *The Times* 31st October 1934.

<sup>40</sup>ASSI 13/64 XC3601 CL. Testimony of Dr Frederick Hugh Smith. For example Lawrence Major testified that "I had never seen my father in a fit." (p.6).

refusal to support her financially "because mother said it wouldn't be any use having it in the paper when my father was dead."<sup>41</sup>

These aspects of Ethel's behaviour ensured that the murder could not be construed as a hysterical act carried out by a highly strung woman who was consumed by jealousy. Instead many aspects of her conduct appeared to be calculated acts designed to hide her guilt and hence stood in sharp contrast to her attempts to present herself as a hapless and helpless victim. Moreover, the timing of the murder - one day before Arthur was due to publicly disclaim his financial responsibility for Ethel - suggested not only that she was guilty but also that she had a strong motive. In the opinion of the trial judge, this discrepancy between Ethel's attempt to present herself as a long-suffering victim of male violence, whilst simultaneously plotting and calculating Arthur's murder, was never satisfactorily resolved because of her failure to give evidence:

It is clear that they not only quarrelled with one another, but were capable of violence towards one another. In the statements of Mrs Major there are inconsistencies some of which you may think would have been more satisfactorily explained or elucidated by the evidence of the prisoner herself.<sup>42</sup>

I have already discussed the undesirable side-effects of the 1898 Criminal Evidence Act in previous case-studies, and the case of Ethel Major demonstrates how the prisoner's right to remain silent could be interpreted as evidence of guilt. Thus the trial judge referred to Ethel's non-appearance in the witness box no less than six times in his summing up. While Mr Justice Charles acknowledged Ethel's unhappy existence, and accepted that "one of the most potent causes of an attack by a woman on a man ... is jealousy", he none-the-less required her to explain herself:

There is very little doubt that Mrs Major lived in a state of bitter unhappiness with her husband. The jury might think it was a misfortune that they had not had the evidence she might have given upon her oath before them.<sup>43</sup>

In an era which lacked discourses through which the 'battered woman' could speak, the judge made the uncritical and simplistic assumption that a failure to appear in the witness box was an indication of guilt or 'having something to hide.' However, as I noted in the case-study of Emily Swann, following nearly three

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<sup>41</sup>ASSI 13/64 XC3601 CL. Testimony of Lawrence Major p.7.

<sup>42</sup>Summing up by Mr Justice Charles quoted in *The Times* 2nd November 1934.

<sup>43</sup>Summing up quoted in *The Daily Express* 2nd November 1934.

decades of feminist campaigning in relation to male violence against women, evidence accepted uncritically in earlier decades can now be re-interpreted to "tell a different story about the same events."<sup>44</sup> Thus, when battered women choose not to give evidence today, it is not necessarily interpreted as evidence of guilt but may instead suggest that they are "too traumatized to give evidence" about the brutality they have suffered.<sup>45</sup> That this alternative interpretation now exists provides an example of the feminist success in 'the politics of naming' as discussed in Chapter Two. In 1934 however, the feelings and experiences of battered women had no name, and therefore could not be put forward as part of a defence in a court of law.

As was to be the case with Dorothea Waddingham 16 months later, both judge and jury had a measure of sympathy for Ethel. At the same time they were also caught up in the discourses surrounding the duplicitous and 'lethal' woman poisoner. The jury which included three women, took just over one hour to reach a guilty verdict, but with the foreman stating: "I want to express the view of the jury that a strong recommendation to mercy should be given."<sup>46</sup> In the following section I analyse why the discourses of the ultra-feminine characteristics of being highly strung, hysterical and consumed with jealousy were undermined by the discourses surrounding the female poisoner and the disloyal wife.

### An Alternative Truth.

I have already pointed out that the period between 1920-1970 lacked an active, campaigning feminist movement. I have also discussed how the supposed gains for women's liberation during the 1920s, could equally be mobilised to operate against that liberation as had been the case with Edith Thompson. The precariousness of feminism during these decades was intensified by a shift in gender ideology during the 1930s, a decade in which women were increasingly blamed for 'family problems', culminating in the belief that they 'provoked' abusive men.<sup>47</sup> In the words of Linda Gordon, "marital violence became a sign of wifely dysfunction."<sup>48</sup> Her arguments are supported by White who notes that

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<sup>44</sup>Stanko & Scully 1996:58.

<sup>45</sup>Lees 1997:151.

<sup>46</sup>Quoted in *Manchester Guardian* 2nd November 1934.

<sup>47</sup>Gordon, L. (1989) *Heroes of Their Own Lives* Virago, London pp.282-3. See also Maguire's discussion of the common-sensical notion that women 'ask for it' in Maguire, S. (1988) "'Sorry love" - violence against women in the home and the state response' in *CSP* Issue 23, Autumn 1988, p.35.

<sup>48</sup>Gordon 1989:282.

summonses for domestic assault declined during the 1920s and 30s, and by Wilson who writes that by 1935 the problem had all but 'disappeared' and when it re-emerged following the Second World War, "wife-beating became just part of a general picture of slovenly behaviour, associated with drunkenness, and squalor *of the wife's own making.*" This victim-blaming extended to regarding abused wives as "bad mothers," "slatternly" and "nagging and vituperative wives."<sup>49</sup> Wife-beating became couched in gender-neutral terms such as 'marital' violence, a point which is illustrated by the judge's summing up above, when he stated that the couple "were capable of violence towards *one another.*" This description presents a false sense of equality between the couple and ignores Ethel's economic dependence on Arthur as well as the fact that physically she was of small stature, making it unlikely that a fight between the couple was a fight between equals.<sup>50</sup>

The ambivalent attitude towards wife-beating during the 1930s was re-enforced in Ethel's case by the fact that according to dominant gender ideologies of that decade, she had exposed her husband to an extreme form of provocation. Approximately two years prior to marrying Arthur, she had become the mother of an illegitimate child, Auriel. Auriel was brought up as Ethel's sister, hence had always lived with her grand-parents.<sup>51</sup> Ethel kept her true relationship to Auriel secret from Arthur, but he eventually discovered the deception which was subsequently held responsible for the couple's unhappiness:

It was undoubtedly her decision not to tell her husband of her pre-marital lapse which was responsible for all their troubles.<sup>52</sup>

In the court-room Arthur's violence was thus placed within the context of his disillusionment and resentment towards Ethel as a result of her failure to guard her reputation and maintain her respectability. In other words, it was Ethel rather than Arthur who was held responsible for his violence, for it was her

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<sup>49</sup>White, J. (1986) *The Worst Street in North London*, RKP, London p.141; Wilson 1983:87. My emphasis.

<sup>50</sup>See for example *Daily Mirror* 2nd November 1934. See also photo of Ethel Major in *Daily Express* 19th December 1934. Ethel was described by Huggett & Berry as "a small, long-nosed, tight-lipped little woman of 45, whose eyes peered short-sightedly from behind large, horn-rimmed spectacles." (1956:72). It is difficult to imagine that a woman who was both small and short-sighted posed an equal threat to that of a man. See also Maguire's discussion on how some explanations of wife-battering "neutralises the power dynamics within any family and addresses all parties as equal." (Maguire 1988:37).

<sup>51</sup>ASSI 13/64 XC3601 CL. Testimony of Auriel Brown.

<sup>52</sup>Huggett & Berry 1956:83.

behaviour that had driven him to drink and other women.<sup>53</sup> The case of Ethel Major can thus be seen to demonstrate the contention by Dobash and Dobash that "the primary roots of victimization [are identified] in the background of the victim and not the offender."<sup>54</sup>

Thus, while defence counsel argued that the violence Ethel had experienced at the hands of Arthur constituted mitigating circumstances, the enduring belief that women themselves are responsible for the violence committed against them, meant that the prosecutor was equally able to argue that there were mitigating circumstances attached to Arthur's violence.<sup>55</sup> Not only had Ethel deceived him, and hence secured a husband under false pretences, but it was also "the general impression that Mrs Major was a bad-tempered woman."<sup>56</sup> In Chapter Three I discussed how men, throughout history have had the right to discipline a 'nagging' wife, and as late as 1915, "a London judge reiterated that 'the husband of a nagging wife ... could beat her at home provided the stick he used was no thicker than a man's thumb'."<sup>57</sup> This ruling demonstrates with exceptional clarity the double standards confronting violent women, for although the question 'Why don't battered women just leave?' has been asked repeatedly over the previous two decades, no-one has asked: "If he can't take her nagging any more why doesn't *he* just leave?"<sup>58</sup> While women's passivity within a violent relationship is not only expected but taken for granted, the above ruling provides a clear example of Lees' contention that "the law provides a legitimation for men to behave violently in the face of insubordination or marriage breakdown."<sup>59</sup>

Ethel's deceit with regard to her pre-marital sexual transgression ensured that it was *her* reputation which came under scrutiny during the trial. Thus, even though she had been similarly provoked in terms of the letter indicating Arthur now also had an illegitimate child, the attempt by the defence to damage *his* reputation by pointing to his philandering was doomed to failure - not only because of the double standards attached to female sexual conduct - but also because "it is posited in law that, under provocation, it is *reasonable* for men to

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<sup>53</sup>Huggett & Berry 1956:83.

<sup>54</sup>Dobash, R.E. & Dobash R.P. (1992) *Women, Violence & Social Change* Routledge, London p.225.

<sup>55</sup>See Edwards, S. (1989) *Policing 'Domestic' Violence* Sage, London, pp.165-8 for a discussion of this type of victim-blaming.

<sup>56</sup>Huggett & Berry 1956:90.

<sup>57</sup>Quoted in Wilson 1983:84.

<sup>58</sup>Lees 1997:142. My emphasis.

<sup>59</sup>Lees 1997:142.

behave in a violent or irrational way."<sup>60</sup> Ethel, on the other hand, had defied "the ideological vision of female passivity" by actively defending herself against Arthur's violence, not only by murdering him, but also through the brick-throwing incident described above, and through her letter-writing campaign which she hoped would lead to his arrest. Because this active stance stood in sharp contrast to expectations of female passivity it was regarded negatively - as "evil and vengeful."<sup>61</sup> The case of Ethel Major thus provides another example of the argument outlined in Chapter Five, that women defendants who defy gender role expectations can expect harsh punishment, for they have broken not only the formal criminal law but also the informal 'gender law' which governs female behaviour.

While Ethel's behaviour was regarded as 'spiteful' and 'vengeful' in 1934, discourses are available in the 1990s through which an alternative truth may be told. When Ethel's story is 'heard' through the discourses of the battered woman, her behaviour is recognisable as typical of women who have been exposed to cumulative abuse and provocation. For example, Sara Thornton who stabbed her abusive husband in 1989 had sought help from "numerous agencies" including her "church, her GP, Alcoholics Anonymous, social services and the police."<sup>62</sup> Similarly, Gordon argues that "few battered women ... [keep] their problems to themselves." She further argues that historically, it was common for women to resist male violence by "fighting back, running away, attempting to embarrass the men before others, calling the police."<sup>63</sup> White agrees that women's resistance to male violence, for example by bringing it to the attention of neighbours, was designed to 'shame' the man.<sup>64</sup> As I have illustrated, this was exactly how Ethel reacted to Arthur's violence against her, but in an era where marriage was considered both "a psychological as well as a social necessity for women"<sup>65</sup>, discourses of the 'battered wife' did not exist, and her behaviour could therefore not be described in positive terms as acts of resistance. Instead it was perceived solely in negative terms:

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<sup>60</sup>Lees, S. (1997) *Ruling Passions* Open University Press, Buckingham p.147. My emphasis.

<sup>61</sup>Lees does not discuss the case of Ethel Major but argues that this is applicable to women generally, and that women are still regarded thus today. (Lees 1997:134).

<sup>62</sup>Lees 1997:151.

<sup>63</sup>Gordon 1989:276;256.

<sup>64</sup>White 1989:140.

<sup>65</sup>Oram, A. (1989) "'Embittered, sexless or homosexual': attacks on spinster teachers 1918-39" in Angerman, A. et al (eds) (1989) *Current Issues in Women's History* Routledge, London p.187.

She embarked on a wild round of revenge and malice that included half the population of the village ... Mrs Major had by now almost exhausted her activities. She had brought into her life police, solicitors, doctors, employers ... The impression left on the jury was that Ethel Major had certainly done her best in those last three weeks to ruin her husband. They could not ignore the fact that there was a great deal that was unpleasant about her.<sup>66</sup>

Apart from being considered hysterical, highly strung, vengeful and malicious, Ethel was also considered to be 'stupid' as a result of her badly planned crime and easily detectable plot. Her KC maintained that what observers interpreted as signs of stupidity, were in fact evidence of her innocence. Thus, with reference to the box containing strychnine, he argued that she would "have thrown the key away" rather than allowing police to find it. The judge however, disagreed and - referring to the poisoned dog - told the jury:

Criminals do amazingly stupid things but you may think that this was transcendental stupidity to go out into a place where every one can see you, where a neighbour is looking at you and scrape the meat off the plate and give it to this dog.<sup>67</sup>

Like the majority of women discussed in these case-studies Ethel was nearly destitute and had received only the most rudimentary education. We have already seen that she told lies which were easily detectable, and some evidence suggested she had only limited comprehension of her circumstances. For example, after being told that her appeal had been dismissed, she commented: "I don't mind a few years in prison."<sup>68</sup> Whether Ethel suffered either from mental illness or a mental disability will always remain within the realms of speculation for the medical officer who examined her could spare her only 16 words:

Since reception this woman has been under observation. I consider her sane and fit to plead.<sup>69</sup>

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<sup>66</sup>Huggett & Berry 1956:93; 97. The availability of the 'battered wife' discourse has not ensured that such women avoid hostility from the court, the public and the media, as can be seen from the case of Sara Thornton who, despite having stood trial 56 years after Ethel Major was greeted with similar hostility. Her case will be discussed further in the final chapter.

<sup>67</sup>Judge Charles' summing up quoted in *Daily Express* 2nd November 1934.

<sup>68</sup>Quoted in Huggett & Berry 1956:107.

<sup>69</sup>ASSI 13/64 XC3601 CL. Medical report, in its entirety, by Prison Medical Officer R.J. Barlee, 8th October 1934.



Alternatively, Ethel's daily struggle to survive financially<sup>70</sup>, combined with the stress of living within a long-term violent relationship, may have impaired her judgement.<sup>71</sup> Thus, rather than indicating revenge and malice, the timing of Arthur's murder suggests a last desperate attempt to keep her home together. She had attempted to take over the tenancy of her council house, but was told she needed her husband's consent; she had attempted to have Arthur arrested, in order to free herself from him; she had sought legal and medical advice concerning her marriage - all to no avail. Now Arthur was about to disown her financially and publicly. How was she to survive? In 1934 "women's financial dependence on their husbands" was taken for granted.<sup>72</sup> There were no advice centres for battered women, no refuges, the welfare state had not yet been born and the Poor Law was still in effect.<sup>73</sup> Her son and herself were already reduced to sleeping in an outhouse, with Lawrence sleeping "on a rug on the floor" which Ethel "felt very upset about ... and thought it terrible for my young boy."<sup>74</sup> Ethel's daughter Auriel was only 19, but already the mother of an illegitimate child herself; both lived with Ethel's 75 year old father in a tiny cottage without electricity.<sup>75</sup> These factors also provided the context for the murder, but while there was some acknowledgement of Ethel's suffering and desperate circumstances, her status as a victim was ultimately undermined by the murder method she had employed, which mobilised the powerful discourses of the woman poisoner as described in Chapter Seven. In short, Ethel's murder method did not match her claim to victimhood.

### The Appeal of Ethel Major.

Unlike some of the women analysed in this thesis, Ethel was very ably defended, despite the fact that she could not afford to pay for her defence<sup>76</sup>, and the

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<sup>70</sup>For example, Ethel stated that Mrs Spiking who ran the local dairy gave her a pint of milk "as I could not afford to buy it." (ASSI 13/64 XC3601 CL Statement by Ethel Major 3rd July 1934).

<sup>71</sup>This is not to suggest Ethel suffered from the controversial 'battered wife syndrome' which supposedly includes 'learned helplessness' (see Dobash & Dobash 1992:223-230). Yet few would deny that a person will remain unaffected by living in a highly threatening situation for several years.

<sup>72</sup>Oram 1989:185.

<sup>73</sup>The Poor Law was abolished in 1948 when it was replaced by the National Assistance Act. (Bedarida, F. (1994) *A Social History of England 1851-1990* Routledge, London p.195).

<sup>74</sup>ASSI 13/64 XC3601 CL. Statement by Ethel Major 3rd July 1934.

<sup>75</sup>*Daily Express* 18th December 1934, interview with Ethel's father, Tom Brown.

<sup>76</sup>ASSI 13/64 3601 CL. Letter from Justices of Peace, requesting that defence be granted a certificate as "her means are insufficient to enable her to obtain legal aid in the preparation and conduct of her defence at the trial." 2nd August 1934.

hopelessness of her case is demonstrated by the fact that it was the first Norman Birkett had ever lost.<sup>77</sup> Consequently, her appeal was considered to be a 'fruitless' exercise from the onset.<sup>78</sup> Never-the-less, Birkett "spoke brilliantly" in the Appeal Court, agreeing that the summing up had been fair, except that the judge had failed to suggest the case may have been one of suicide rather than murder.<sup>79</sup> The three judges "got together and whispered" before Lord Hewart, the Lord Chief Justice who had dismissed Edith Thompson's appeal 11 years previously, replied:

The summing up was perfectly fair and sufficient. There are passages in it which perhaps may be said to be almost unduly favourable to Mrs Major. The jury found Mrs Major guilty but for some reason which is not stated in words, they coupled their verdict with a recommendation to mercy. That is a matter with which this Court cannot deal.<sup>80</sup>

There remained only one hope for Ethel - that the Home Secretary would respect the wishes of the jury and grant a reprieve.<sup>81</sup>

#### Ethel Major: Restoration of the Victim Status.

Ethel had already had the 'truth' about her altered once, from the victim to the perpetrator of violence. During her final days that truth was altered again to one where she was perceived as a pathetic creature who deserved pity despite her transgressions. Thus, while "it had hitherto been understood that the general opinion was against a reprieve", strenuous efforts to save her life were made during the last few days prior to the execution.<sup>82</sup> For example, the mayor of Hull, Alderman Stark, wrote to the Home Secretary:

For the sake of humanity I ... implore you to reconsider your decision, especially having regard to the nearness of Christmas and the message of

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<sup>77</sup>*Daily Mirror* 2nd November 1934. Norman Birkett became Liberal MP for East Nottingham in 1923, was knighted in 1941 and became Lord Birkett in 1957. Prior to defending Ethel Major he had turned down the opportunity to become a High Court Judge. His biographer wrote of Birkett's involvement in the Major case: "His task was hopeless from the beginning." (Hyde, M.H. (1964) *Norman Birkett* The Reprint Society, London p.382).

<sup>78</sup>Hyde 1964:383.

<sup>79</sup>*Daily Express* 4th December 1934.

<sup>80</sup>Lord Chief Justice Hewart quoted in *Daily Mirror* 4th December 1934; *Daily Express* 4th December 1934. See also *The Times* 4th December 1934.

<sup>81</sup>Statistics indicate that jury recommendations for mercy did not go unheeded. "Of the 108 women sentenced to death and recommended to mercy between 1900-49, only four were executed, whilst nine of the 22 not recommended to mercy were executed." See Table I in *Royal Commission on Capital Punishment 1949-1953 Report* (1953) Her Majesty's Stationery Office, London p.9.

<sup>82</sup>*Daily Mirror* 18th December 1934.

good will that this season teaches us. The heartfelt pleas contained in this telegram are those of 300,000 inhabitants and particularly those of the women of this great city.<sup>83</sup>

When this plea failed, "messages arrived ... from all over the country begging the Lord Mayor to carry on with his pleading and wishing him success."<sup>84</sup> With only one night left before the execution Alderman Stark wrote to the King and Queen:

The impending execution is causing grave distress to the women in Hull, and it is respectfully pleaded that Her Majesty will use her endeavours for mercy even at this eleventh hour for a woman and a mother.<sup>85</sup>

Mr Stark regretted not having started his efforts earlier, but explained this was due to the widespread belief that the sentence would not be carried out. There was some justification for this belief for only weeks before *The Daily Express* had asked: "What is the point in sentencing Mrs Major to death. For nobody believes that she will be hanged."<sup>86</sup> However, now that the execution was imminent, the reality of it could not be avoided and Stark claimed that:

Women in the city have come to me and said their sleep has been disturbed by thoughts of the poor woman who seems to have been left without anybody to care about her.<sup>87</sup>

Other more prominent people did not appear to lose sleep over Ethel Major. For example, Mr Stark reported that "the Prime Minister ha[d] not had the courage to reply" to his letter pleading for mercy.<sup>88</sup> Local people however, were more sympathetic and organised a petition in Ethel's village for which signatures were reported to have been "given willingly" with "only four or five people" refusing to sign.<sup>89</sup> Among the petitioners was Rose Kettleborough who had been accused of having an affair with Arthur during the trial. She claimed she bore "Mrs Major no malice", and "would be one of the first to sign a petition for reprieve."<sup>90</sup>

Even the Home Secretary was reported to have "explored every avenue to discover adequate reasons for giving effect to the jury's recommendation to mercy" by

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<sup>83</sup>Quoted in *Daily Express* 19th December 1934.

<sup>84</sup>*Hull Daily Mail* 19th December 1934.

<sup>85</sup>Quoted in *Hull Daily Mail* 19th December 1934.

<sup>86</sup>*Daily Express* leading article discussing a previous article, 19th December 1934.

<sup>87</sup>Quoted in *Manchester Guardian* 19th December 1934.

<sup>88</sup>Alderman A. Stark quoted in *Daily Mirror* 20th December 1934.

<sup>89</sup>*Daily Mirror* 18th December 1934.

<sup>90</sup>*Daily Express* 3rd November 1934.

organising a visit by two medical experts who "spent several hours with Mrs Major in an endeavour to find grounds on which they could certify her mental condition as being responsible for her actions."<sup>91</sup> It was to no avail, and Ethel was executed shortly before Christmas on the 19th December. Like Edith Thompson before her, Ethel was reported to have been in a total state of collapse with two wardresses at her bedside and a doctor in constant attendance.<sup>92</sup> Only 200 people waited outside Hull prison at the time of the execution. "They were Hull's poorest - nearly all the men were out-of-work labourers, the women poorly clad, many of them wearing shawls."<sup>93</sup>

In executing Ethel Major the state continued its long tradition of denying clemency to those who had been found guilty of committing what was considered "the most subtle, the most secret and the most pitiless" form of murder.<sup>94</sup> The dominant discourses around female poisoners described here and in the previous chapter, thus suggested that such women were coolly and rationally plotting their deeds in an emotionally detached - even sophisticated - manner. The female poisoners were the ultimate dangerous women - so dangerous that they must be put to death regardless of the circumstances of their deed. Yet these same women were also described as:

Ordinary women, rarely beautiful. Square-faced, thin-mouthed, eyes blinking behind National Health spectacles which I have to take off at the last moment, hair scraped thin by curlers, lumpy ankles above homely shoes, in which they have to slop to the gallows because prison regulations demand that there are no shoelaces.<sup>95</sup>

Pierrepoint, Britain's last executioner, had identified a major contradiction running through the discourses surrounding the female poisoner: on the one hand she was imagined to be an extremely threatening figure - duplicitous, devious and subtle in her conduct. On the other hand - as we have seen from this

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<sup>91</sup>*Manchester Guardian* 20th December 1934. This visit may have indicated that the Home Secretary found the 16 word medical report discussed earlier, a little too concise. At the same time it must be remembered that Ethel stood trial 23 years prior to the introduction of the defence of diminished responsibility. Moreover, 15 year after Ethel's trial Lord Chief Justice Goddard maintained that it was "perfectly proper" to execute prisoners who had been certified insane. (Koestler, A. (1956) *Reflections on Hanging Victor Gollancz*, London p.11).

<sup>92</sup>*Hull Daily Mail* 19th December 1934. This doctor was Dr Barlee, the same doctor who had written the 16 word medical report concerning Ethel Major's physical and mental health.

<sup>93</sup>*Daily Express* 20th December 1934.

<sup>94</sup>*Daily Express* 19th December 1934.

<sup>95</sup>Albert Pierrepoint quoted in *Murder Casebook Vol 7 Part 5* (1991) Marshall Cavendish Ltd, London p.3761.

and previous case-studies - the reality was usually very different, with the women conceiving their crimes in a most rudimentary and simplistic manner, operating from ill-conceived plans which ultimately led to their down-fall. Their conduct could hardly be described as either discreet or subtle, as the discovery of their crime indicates. Therefore, rather than considering female poisoners to be the most dangerous women in the country it would arguably be more accurate to describe them as the most desperate.

I introduced this case-study with the quote that "poison was responsible for her death". While the female poisoner was considered extremely dangerous, and could not by definition have acted 'in a fit of hysteria' or 'on the spur of the moment', poisoning also implied a desire to 'get away' with the crime. Ethel had not confessed to her crime, yet her entire defence was constructed as if she had, by focusing on the mitigating circumstances involved, and especially on her provocation. Had Ethel stabbed Arthur during a fight, and had she subsequently confessed and shown remorse, her status as a victim would have been more credible. Instead that status was subsumed under her status as a woman poisoner, resulting in her various acts prior to the murder being interpreted through the discourses of the woman poisoner. That is to say, her acts of desperation were understood as a naive and ill-conceived murder plan. The unsuccessful nature of this 'planning' was taken to be evidence of her 'stupidity' rather than the uncoordinated and desperate gestures by a traumatised, victimised and powerless individual fighting for survival. Within a patriarchal legal system Ethel's chosen method of murder suggested a high level of rationality which ensured that discourses around the victimised woman were quickly subsumed under those of the 'bad' woman. Her case thus provides a chilling example of the consequences for women of a masculinist definition of the law. In Chapter Two I discussed the way in which the male standpoint has been represented as universal. This is particularly poignant in relation to defence of provocation which until recently has been wholly defined by how the "reasonable man" would act in a given situation. In particular, "the acceptance of 'heat of the moment' retaliation is based on the perceived credibility of the impulsive side of men, who, presented with certain stimuli, can do no other but act."<sup>96</sup> Consequently, 'heat of the moment' violence is usually regarded as justifiable while "planned killing, even after cumulative provocation, is seen as heinous and unjustified and the actor as

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<sup>96</sup>Edwards 1989:183. Edwards argues that the acceptance of the 'heat of the moment' retaliation "is rather like the model of uncontrollable male sexual urges, by which men, once aroused by a female, have no choice but to indulge in immediate phallic sex."

scheming, cunning and wicked."<sup>97</sup> But the fact that female murderers mainly fall within the latter category does not indicate that "they are any less provoked, or less eager to retaliate immediately," but is a reflection of the fact "that it is the only time when self-defensive action is likely to succeed."<sup>98</sup> That this is beginning to be recognised within British courts as I discuss in the final chapter, demonstrates the importance and relevance of the feminist standpoint in creating new knowledge through the experience of male oppression as discussed in Chapter Two.

The case of Ethel Major demonstrates not only misconceptions surrounding the female poisoner, but also misconceptions surrounding the battered wife. Her behaviour exemplifies the length that even those women with extremely limited resources and options available will go to in order to escape a violent spouse. After being engaged in a protracted struggle for survival, Ethel finally found herself trapped in a desperate situation where access to her already meagre financial resources were about to be cut off completely. Ethel was neither subtle nor sophisticated, she could not even tell a plausible lie; rather she responded to a desperate situation by engaging in desperate behaviour in a futile attempt to stem the dam of disaster immediately in front of her. When she eventually paid the price for her desperate act, the economic reality which had led to her execution, and from which she was finally released, still had to be faced by her surviving family. Thus, while Ethel's last letter to her children contained a plea to her daughter: "Make a home for Laurie"<sup>99</sup>, the means necessary to carry out her mother's last wishes were not available and the financial prospects of the family remained grim, as can be seen from the comments by Ethel's father:

God only knows how I feel tonight ... Now I must act as father to three children - Iris [Auriel] ... her child and Oswald [Lawrence]. I do not know which way to turn. I am old, poor, and can only manage to keep myself, but the responsibility is mine.<sup>100</sup>

Quite apart from the financial responsibility which had fallen upon the 75 year old man's shoulders, he also had to deal with the emotional stresses faced by those who lose a much loved family member. Not only did he have to come to terms with losing his only daughter, he also had to console his grand-children. While Auriel

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<sup>97</sup>Edwards 1989:183.

<sup>98</sup>Edwards 1989:184.

<sup>99</sup>Quoted in *Daily Mirror* 20th December 1934.

<sup>100</sup>Tom Brown quoted from an interview with *The Daily Express* 18th December 1934. He referred to his grandchildren by their middle names.

had collapsed upon hearing that her mother's execution would go ahead, Lawrence remained unaware of his mother's fate until the last minute:

What a Christmas for the boy. He loves his mother dearly [and] ... has talked about what he is going to do - how he means to get a job and then make it his life's work to be ready to meet his mother with a home and comfort if ever she came from prison. He is a good lad. Now what has he to hope for? Nothing.<sup>101</sup>

Tom Brown's comments provide a brief glimpse of the manner in which family members, who are innocent bystanders in cases such as Ethel Major's, none-the-less also suffer and are punished by the effects of capital punishment, a subject which I shall be returning to in the last two case-studies. Meanwhile, the case of Ethel Major, which is unlikely ever to receive the exposure, fame or notoriety of cases such as that of Sara Thornton, never-the-less stand as a sharp reminder to those who attempt to employ a strategy of victim-blaming in cases of battered wives, that such women neither 'ask for it', nor do they 'deserve' to be beaten. Instead, even the most powerless and dispossessed women have a long tradition of resisting male violence by whatever means is available to them in their specific circumstances.

#### The Case of Charlotte Bryant.

Charlotte Bryant was an illiterate, slatternly Irishwoman of thirty-three, with black hair and dark eyes... the cottage was filthy and the children neglected ... her hair was lousy and she had only one tooth left.<sup>102</sup>

It is open to extreme doubt whether a woman who has had no education at all, and who must live with a large family on thirty-eight-and-sixpence a week, can be expected to have any ideas about how to improve the conditions of her life. Even the most intelligent of us experience difficulties, and she seems to have had no natural intelligence to guide her.<sup>103</sup>

While Ethel Major had been regarded as a vengeful and malicious poisoner Charlotte Bryant was held in even lower regard. Ethel had at least been honest and forthright about her dislike of her husband and had attempted to have him removed by legal and non-violent means before resorting to murder. Moreover, she had been victimised by him. Fred Bryant, Charlotte's husband, was never given the option of leaving the family-home peacefully, instead Charlotte

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<sup>101</sup>Tom Brown quoted in *The Daily Express* 18th December 1934.

<sup>102</sup>Wilson, P. (1971) *Murderess Michael Joseph*, London, p.289.

<sup>103</sup>Huggett & Berry 1956:158 referring to Charlotte Bryant.

appeared to have considered murder as the first and only method of freeing herself from her marriage. Moreover, there was no evidence of Fred mistreating Charlotte, a factor which eliminated the possibility of mitigating circumstances. Taken together with Charlotte's sexual conduct these factors ensured that she fulfilled the criteria not only of the ultimate dangerous woman poisoner but also of the duplicitous and deceitful wife.

Charlotte and Fred lived in a tiny farm-worker's cottage with their five children. To alleviate their poverty they occasionally took lodgers which added to the already over-crowded conditions of their home.<sup>104</sup> They had been married for 12 years when Fred became severely ill in May, August and December of 1935, showing identical symptoms on each occasion. His last attack was extremely severe and resulted in his death after 12 days of agony. His doctor was suspicious:

I refused to give a Death Certificate, as I was uneasy & I feared that his death might possibly be due to arsenical poisoning.<sup>105</sup>

A post mortem revealed that Fred had indeed died from arsenic poisoning. Pathologist Roche Lynch ruled out suicide:

The agony of an attack of acute arsenical poisoning is so great that except in insane persons, I cannot credit a suicide with the attempting of his life a second time with arsenic.<sup>106</sup>

Within five weeks the subsequent murder investigation had provided both a motive and enough evidence to ensure Charlotte's arrest. The motive was believed to be rooted in 'the eternal triangle' when Leonard Parsons, a hawker, revealed he had "been intimate with her" for approximately two years.<sup>107</sup> Initially he had been a lodger in the Bryant household, but he became Charlotte's lover "soon after we met for the first time."<sup>108</sup> Charlotte joined Leonard on his hawking trips, often staying away from home overnight, and occasionally accompanied by one or two of her children. Leonard further claimed that:

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<sup>104</sup>ASSI 26/48 XC3601 CL. Photographs of the cottage are included in this file, which is available for inspection in the Public Record Office, Chancery Lane, London.

<sup>105</sup>ASSI 26/48 XC3601 CL. Testimony of Dr Thomas McCarthy p.20.

<sup>106</sup>ASSI 26/48 XC3601 CL. Testimony of Dr Roche Lynch pp.12-13.

<sup>107</sup>ASSI 26/48 XC3601 CL. Testimony of Leonard Edward Parsons p.18.

<sup>108</sup>ASSI 26/48 XC3601 CL. Testimony of Leonard Edward Parsons p.18.



Lottie (accused) has told me I am the father of her youngest child. She also said her husband had no relations with her for some time.<sup>109</sup>

Further damning evidence was revealed when the jury heard more of Leonard's recollections:

I remember Fred Bryant being ill last year. I remember Mrs Bryant saying to me she thought before long she would be a widow, and if so would I marry her. She asked me this more than once.<sup>110</sup>

The evidence of a second witness, Lucy Ostler, was equally important in ensuring that Charlotte was sent for trial. Lucy was staying with the Bryants at the time of Fred's illness and shared a bedroom with the couple and their baby. During Fred's final night she witnessed Charlotte "try & coax her husband to have a cup of Oxo." He immediately started to vomit.<sup>111</sup> Lucy confirmed Leonard's claim that he was the father of Charlotte's youngest child and added "she was very fond of Parsons ... [but] hated her own husband."<sup>112</sup> Worse still, Lucy recounted a conversation between Charlotte and herself while she was reading a newspaper:

She asked me what I was reading. I said about a poisoning case. She asked what it was + I said about an Arsenic case. Accused asked me 'what would you give anyone if you wanted to get rid of them.' ... This was a few days after she told me she did not like her husband.<sup>113</sup>

Lucy recalled a second conversation taking place following the confiscation of various bottles by police officers after a search of Charlotte's home:

The accused said: 'What did the sergeant want the bottles for.' I said they were wanted [sic] to see if there was anything in the medicine. She then said she hadn't done anything to the medicine. She said to Ernie [Charlotte's son] that some of the bottles in the back must be cleared away ... Accused then started clearing out the cupboards in the front room ... I saw a ... tin marked 'Weed Killer' ... There was also a smaller tin there ... on the lid of the tin it was marked 'Poison.' ... The accused picked it up + said 'I must get rid of this'... Later ... I found a burnt tin amongst the ashes.<sup>114</sup>

Lucy had been present when Charlotte was refused a death certificate and informed that an inquest would be held. When they were alone she had asked Lucy "what an inquest was":

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<sup>109</sup>ASSI 26/48 XC3601 CL. Testimony of Leonard Parsons p.20.

<sup>110</sup>ASSI 26/48 XC3601 CL. Testimony of Leonard Parsons p.19.

<sup>111</sup>ASSI 26/48 XC3601 CL. Testimony of Lucy Malvina Ostler p.10.

<sup>112</sup>ASSI 26/48 XC3601 CL. Testimony of Lucy Ostler p.15-16.

<sup>113</sup>ASSI 26/48 XC3601 CL. Testimony of Lucy Ostler p.16.

<sup>114</sup>ASSI 26/48 XC3601 CL. Testimony of Lucy Ostler pp.13-15.

I said there must have been something found in the body which didn't ought to be there. She said 'I suppose they will go to all the chemists to find if anything has been bought ... If they can't find anything they won't be able to put a rope round my neck.'<sup>115</sup>

When arrested Charlotte commented:

I have never got any poison from anywhere, that people do know. I don't see how they can say I poisoned my husband.<sup>116</sup>

### The Trial of Charlotte Bryant.

The hopelessness of Charlotte's case can be gathered from the fact that it was the prosecutor, rather than the defence counsel who opened her trial by reminding the jury: "You are not in a court of morals ..."<sup>117</sup> This reminder was undoubtedly necessary for Charlotte's reputation worked against her in every one of the areas identified in Chapter Five as playing an important role in the final outcome of a trial of a female defendant. The details of the Magistrate's Court hearing held three months previously, received wide coverage in the press, and it was therefore public knowledge at the time of the trial that Charlotte had been unfaithful to her husband and had an illegitimate child. Her reputation was to suffer still further during the trial following the evidence of several witnesses which indicated "she was immoral, abusive, and slovenly, a woman capable of violence."<sup>118</sup> Thus, while the prosecutor admitted in his opening statement that "it was only fair to say that he was not in a position to put before the jury any evidence that she ... [had] bought any arsenic", nor could he demonstrate that she had administered poison to Fred, he never-the-less maintained "that there is a woman here with the strongest motives for destroying her husband ..."<sup>119</sup>

While evidence was lacking regarding the crime itself, there was plenty available which indicated Charlotte's callous attitude towards Fred. For example, when his employer paid a visit during Fred's illness, she claimed she had been shopping all day, despite the seriousness of his condition:

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<sup>115</sup>ASSI 26/48 XC3601 CL. Testimony of Lucy Ostler p. 12.

<sup>116</sup>ASSI 26/48 XC3601 CL. Testimony of Superintendent Joseph Cherrett p.28.

<sup>117</sup>Solicitor General Terence O'Connor quoted in *Manchester Evening News* 27th May 1936.

<sup>118</sup>Huggett & Berry 1956:161.

<sup>119</sup>Solicitor General Terence O'Connor's opening speech reported in *The Times* 28th May 1936. See also *Manchester Guardian* 28th May 1936.

I said 'You don't Damn well stop home to look after him.'<sup>120</sup>

Moreover, when Fred started another vomiting attack she made no move to assist or comfort him but merely "stood up with her arms folded."<sup>121</sup> The evidence of a neighbour Frederick Staunton, was even more damning for he testified that far from having been shopping, which at least suggested engagement in domesticity, despite its inappropriate timing, he had seen Parsons "driving off with Mrs Bryant, about 9 o'clock."<sup>122</sup> In other words, Charlotte had spent the entire day with her lover, while Fred was lying sick and suffering.

Further evidence of Charlotte's callous attitude and lack of sympathy for her husband came from another neighbour, Ellen Stone, who testified that as Fred told Charlotte he was dying and lay 'shuddering', 'moaning' and 'crouched up' with pain, she responded: "He is a B -y fool for eating bread and cheese for his supper."<sup>123</sup> As Fred remained conscious but "in great pain" Charlotte's tactlessness and insensitivity seemed limitless :

I have not got Fred insured, but he could have a military funeral.<sup>124</sup>

Charlotte's attitude towards her husband seemed particularly abhorrent in view of Fred's own tolerant personality. He was repeatedly described as "a very quiet man" and not a single piece of evidence, not even from Charlotte herself, suggested otherwise.<sup>125</sup> Even when she accompanied Leonard for several days he did "not seem to mind."<sup>126</sup>

Charlotte herself seemed oblivious to the impression she was creating of a bad wife and rather than defending herself she reiterated that "Mrs Ostler had looked after him, and that she - accused had not been looking after her husband during this last illness."<sup>127</sup> This claim served only to emphasise her lack of commitment to her marital responsibilities. It also reinforced the dominant image of the

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<sup>120</sup>ASSI 26/48 XC3601 CL. Testimony of A.R. Priddle p.6.

<sup>121</sup>ASSI 26/48 XC3601 CL. Testimony of A.R. Priddle p.6.

<sup>122</sup>ASSI 26/48 XC3601 CL. Testimony of Frederick Charles Staunton p.10.

<sup>123</sup>ASSI 26/48 XC3601 CL. Testimony of Ellen Kate Stone p.12.

<sup>124</sup>ASSI 26/48 XC3601 CL. Testimony of Ellen Kate Stone p.15.

<sup>125</sup>ASSI 26/48 XC3601 CL. Testimony of Ellen Kate Stone p.17; A.R. Priddle p.6.

<sup>126</sup>Charlotte Bryant's KC Mr J.D. Casswell quoted in *Manchester Guardian* 30th May 1936.

<sup>127</sup>ASSI 26/48 XC3601 CL. Testimony of Dr John Broderick Tracey p.23.

woman poisoner as scheming and duplicitous, for implicit in her claim was the suggestion that it was Lucy, rather than herself, who had had the opportunity to administer the poison. Her credibility was further damaged as a consequence of her 'indignant' and 'very nervous' reaction to the subject of the inquest.<sup>128</sup>

Apart from being exposed as an uncaring and unfaithful wife, witnesses also testified that "the house was very dirty", and neighbours had to provide an evening-meal for her children as a result of her absence.<sup>129</sup> Altogether, the available evidence indicated that Charlotte had failed in every one of the key areas of womanhood outlined in Chapter Five. That is to say, she had been exposed as a slovenly house-keeper, an adulterous and uncaring wife, and an indifferent mother, to the point where she had left her husband withering in agony and her children to fend for themselves while she went away with her lover. Despite this, she maintained that "she had never been on intimate terms with Parsons":

I did not like the man, and I do not like him ... I know there has been a lot of talk about ... Parsons ... being the father of my baby. That is not true... I have never had anything to do with the man. I have never been the same as a wife to him.<sup>130</sup>

Yet when asked shortly afterwards whether she had told "Mrs Ostler the youngest baby was Parsons', [she replied] Yes."<sup>131</sup> During her three hours in the witness box she further claimed to be "on very good terms with her husband: 'I never had a breath wrong with my husband in my life until Leonard Parsons came along.'" Fred was aware that she was with Leonard when she was away from home, but this had never caused even a quarrel.<sup>132</sup> Moreover, in Charlotte's version of the truth it was Parsons who "was after me and not me after Parsons":

He wanted me to leave my husband. He wanted me to go away with him... Leonard Parsons knew I did not want him. I had a husband of my own."<sup>133</sup>

She repeatedly denied all knowledge and possession of weed-killer or poison with these words: "I could not tell you poison."<sup>134</sup>

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<sup>128</sup>ASSI 26/48 XC3601 CL. Testimony of Dr John Tracey p.23; Ellen Kate Stone p.16.

<sup>129</sup>ASSI 26/48 XC3601 CL. Testimony of Frederick Charles Staunton p.9.

<sup>130</sup>Evidence of Charlotte Bryant quoted in *Manchester Evening News* 28th May 1936.

<sup>131</sup>Evidence of Charlotte Bryant quoted in *Manchester Guardian* 30th May 1936.

<sup>132</sup>Evidence of Charlotte Bryant quoted in *Manchester Guardian* 30th May 1936.

<sup>133</sup>Evidence of Charlotte Bryant quoted in *The Times* 30th May 1936.

<sup>134</sup>Evidence of Charlotte Bryant quoted in *The Times* 30th May 1936.

As can be seen from his comments to the jury before calling on Charlotte to give evidence, her KC recognised that her disreputable character would create a negative impact on the jury:

The Solicitor-General has told you that this is not a court of morals. I know you are not going to hold that against a woman. A woman may be very immoral. You may think there is nothing to be said for her from the moral point of view, and while she is living with her husband, she is going away for two or three days at a time with another man who was staying at the house. Unfortunately, there are women and men who do this sort of thing, but it does not follow from that that they are guilty of murder. Do not let anything of that sort cloud your minds. Just because she is not a moral woman I know you are not going to say that she is a murderess.<sup>135</sup>

Mr Casswell furthermore attempted to destroy the motive of "the eternal triangle" put forward by the prosecution, by arguing that since Fred did not protest at the arrangement between Charlotte and Leonard, there was no need to murder him:

Mrs Bryant had a good home and a good husband. Would she have left that for no home at all to associate with a man the police were after and who had warrants against him for the maintenance of his illegitimate children?<sup>136</sup>

However, the defence of Charlotte Bryant remained a hopeless task. Whereas female poisoners Dorothea Waddingham and Ethel Major - whose trials were heard three and 19 months earlier respectively - possessed redeeming features, for example in their role as mothers, Charlotte had none. Instead, her personal conduct and behaviour ensured that she was perceived as a sexually unruly and highly dangerous woman. In an era where - as described earlier in this chapter - marriage was considered sacrosanct and motherhood the only way through which a woman could feel 'complete', Charlotte failed to respect either role. Instead of embracing the role of a loyal and obedient wife she failed to recognise the authority of her husband. Instead of putting her children first and sacrificing her own interests, she neglected them in favour of pursuing an illicit sexual liaison with Leonard Parsons, himself an undesirable individual in terms of family ideology, who, apart from betraying a friend by engaging in a sexual relationship with his wife, had also left his own common-law wife and four children to fend for themselves.<sup>137</sup> Instead of accepting her domestic

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<sup>135</sup>Defence KC Mr Casswell quoted in *The Times* 30th May 1936.

<sup>136</sup>Defence KC Mr Casswell quoted in *The Times* 30th May 1936.

<sup>137</sup>According to Leonard Parsons he and Fred "were quite friendly." (*The Times* 29th May 1936). Leonard's common-law wife, Pricilla Loveridge gave evidence that she had lived with him for 11 years. "He was a fancy woman's man, and was a man who would break any man's home up." (Quoted in *The Times* 29th May 1936).

responsibilities she allowed the house to become dirty. Instead of guarding her reputation and aspiring to respectability she drank alcohol and engaged in prostitution.<sup>138</sup> In short, Charlotte had ignored every one of the moral assumptions and ideological expectations associated with 'normal' womanhood in general and the 'good' woman in particular as discussed in Chapter Five. As I also argued, these assumptions and expectations play an important role in the final outcome of female defendants who face the bench. They were of particular relevance in Charlotte's case for apart from having committed the most feared and despised type of murder, she had also stepped far beyond the boundaries of acceptable female conduct and as such was a 'doubly' deviant woman. None of the usual control mechanisms appeared to be effective in moderating her behaviour. Instead she had failed to internalise any of the commands and disciplinary practices which - in Foucauldian terms - produce the self-controlled and docile body. Yet, despite fitting the image of the 'loose' woman - morally, verbally and in terms of her mobility (with Leonard Parsons) - she continued to enjoy male patronage, not only from her husband, but also from her lover. Far from being under the dominating gaze of patriarchy, it was she who dominated Fred. Despite having made no effort to conform to acceptable standards of motherhood, domesticity, respectability, marital and sexual conduct, Charlotte had not suffered either informal or formal punitive consequences, since Fred had failed to fulfil his obligation to discipline an 'uppity' wife by 'putting her in her place' as discussed in Chapters Three and Five. However, where Fred had failed the State was soon to succeed as it took responsibility for her punishment following the guilty verdict, reached by an all-male jury after an hour's consideration.<sup>139</sup>

### An Alternative Truth.

The file relating to Charlotte Bryant is - like many of the women's case-files examined in this thesis - extremely slim, and does not include a medical report or any other assessment of the defendant. We will therefore never know whether Charlotte would be considered fully responsible for her criminal action according to the criteria defined in modern law. Mr Casswell, Charlotte's defence counsel is reported to have said that she was "not very strong in her mind."<sup>140</sup> Huggett and Berry shared this opinion and questioned her ability to understand court-room procedures:

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<sup>138</sup>Huggett & Berry 1956:150. According to the authors, Fred appreciated the extra income and told a neighbour that "Four pounds a week is better than thirty-bob."

<sup>139</sup>*Daily Express* 14th July 1936.

<sup>140</sup>Quoted in Huggett & Berry 1956:159.

Although she was bright enough to know why she was standing in the dock, undoubtedly the procedure at the Magistrate's Court was a drawn out, meaningless ritual of mumbo jumbo.<sup>141</sup>

We furthermore know that Charlotte, who had been brought up in impoverished conditions in Ireland, had not had the benefit of education and hence was illiterate and could not tell the time, conditions which by definition limit access to knowledge and information within a literate society.<sup>142</sup> I have already indicated that Charlotte's vocabulary was limited, as when she asked what 'inquest' meant, and also when she responded 'I could not tell you poison'. Evidence is also available which indicates that Charlotte was unfamiliar with court-room etiquette, as when she sat in the dock, sucking sweets.<sup>143</sup> Moreover, if it is assumed that the jury's verdict of guilty was correct, an examination of the remaining evidence strongly indicates that Charlotte was at the very least, an extremely naive person who had not taken even the most rudimentary precautions against being exposed as a murderess, as can be gathered from the following: First, she had made no attempt to hide the murder weapon, for as noted above, the tin of weed-killer was still in its usual place *after* a police search. Second, the prosecution alleged Charlotte had attempted to destroy the weed-killer tin by burning it. Yet when she found herself unable to light the copper fire she called Lucy and asked for her assistance, which resulted in Lucy finding "a burnt tin amongst the ashes."<sup>144</sup> Third, only two days prior to Fred's death, Charlotte told insurance agent Edward Tuck that she would like to insure her husband. Tuck testified that "Bryant looked a very sick man" and after seeing his condition, refused to insure him.<sup>145</sup> Fourth, only five days after Fred's death she added credibility to the supposed motive for the murder by embarking on a two-day search for Parsons.<sup>146</sup>

It was actions such as these, coupled with her careless remarks and comments quoted earlier, which led Huggett and Berry to conclude that Charlotte's "ideas were severely circumscribed by ignorance."<sup>147</sup> Moreover, they suggested her

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<sup>141</sup>Huggett & Berry 1956:159.

<sup>142</sup>See for example testimony of Lucy Ostler ASSI 26/48 XC3601 CL; Huggett & Berry 1956:169.

<sup>143</sup>Huggett & Berry 1956:159.

<sup>144</sup>ASSI 26/48 XC3601 CL. Testimony of Lucy Ostler p.15

<sup>145</sup>Trial proceedings reported in *Manchester Evening News* 28th May and *The Times* 29th May 1936.

<sup>146</sup>Huggett & Berry 1956:153.

<sup>147</sup>Huggett & Berry 1956:148.

ignorance was so great that it was questionable whether she could be considered capable of carrying out the murder by herself. As noted above, Charlotte herself attempted to present an alternative truth during her three hours in the witness box when she claimed that it was Leonard who was pursuing her, not the reverse, as claimed by the prosecution. If she was speaking the truth, Leonard would also have had a motive for killing Fred. Furthermore, while there was no evidence that Charlotte had ever purchased arsenic, Leonard admitted he had attempted to buy arsenic from a chemist but had been refused because he "was not known" in Sherbourne.<sup>148</sup> Moreover, the weed-killer which Lucy had noticed in the cupboard while in Charlotte's presence could equally have belonged to Leonard who had only left the cottage two months previously; indeed Lucy herself testified that Charlotte had commented "that 'Parsons' generally did bring things like that home."<sup>149</sup> Hence, within the context of Charlotte being responsible for five young children, her comment 'I must get rid of this' seems perfectly reasonable.

Finally, Charlotte's daughter Lily, testified that she had witnessed Leonard pouring liquid from a bottle "on the stone outside and [he] said to mummy: 'If you don't look out I will ram that down your throat.' The liquid 'fizzled all up.'"<sup>150</sup> Charlotte herself provided a final tantalizing clue to the true circumstances surrounding the poisoning when in a dictated letter from the condemned cell she wrote: "It's all ... fault I'm here ... I listened to the tales I was told. But I have not long now and I will be out of all my troubles."<sup>151</sup> The missing name had been crossed out by the prison authorities.

As reiterated throughout this thesis, its goal is not to provide excuses for women who have committed murder. Rather, as discussed in Chapter Five, the aim is to demonstrate a close relationship between the delivery and quality of justice and the *type* of woman facing the bench. Fred Bryant was by all accounts, including Charlotte's, a placid and peace-loving individual whose protracted suffering and agonising death cannot be justified or excused. Neither can unsafe convictions, especially in capital cases. The fact that Charlotte had deviated from expected standards in every one of the areas associated with 'normal' womanhood and was consequently found severely lacking in respectability, domesticity and as a wife and mother ensured that it did not require much effort to believe that she was also capable of murder. Yet, apart from Charlotte's own tackless remarks there was no

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<sup>148</sup>Quoted from trial transcript in *The Times* 29th May 1936.

<sup>149</sup>ASSI 26/48 XL3601 CL. Testimony of Lucy Ostler p.14.

<sup>150</sup>Testimony of Lily Bryant quoted in *Manchester Guardian* 30th May 1936.

<sup>151</sup>Letter quoted in Huggett & Berry 1956:179.



undisputed evidence against her. 'Expert' evidence concerning the arsenic content of the ashes found by the burnt tin described earlier carried great weight during the trial, since it was assumed to prove that Charlotte had attempted to burn the remaining weed-killer. However, when another expert, Professor William Bone, read about this evidence during the trial he contacted the defence, declaring that the natural arsenic content present in coal varied greatly, and the amount found in these particular ashes fell well within the normal range. He was willing to testify accordingly at Charlotte's Appeal hearing.<sup>152</sup> Following this revelation, Charlotte's lawyer applied for a re-trial. Permission was refused. When her KC Mr Trapnell attempted to introduce this new evidence into the Court of Appeal, Lord Hewart - who had also heard the appeals of Edith Thompson and Ethel Major - remained unimpressed and "said sternly" that "the application is of the objectionable kind which we foresaw in a recent case when in very exceptional circumstances we admitted further medical evidence":

The Court is unanimously of opinion that there is no occasion for the further evidence. It would be intolerable if this Court, on the conclusion of a capital charge or other case, were to listen to the after-thoughts of a scientific gentleman who brought his mind controversially to bear on evidence that had been given. We adumbrated that possibility in the recent case and we set our minds like flint against any such attempt. It is clear there was no mistake in the Court below.<sup>153</sup>

While Lord Chief Justice Hewart and his colleagues felt so certain about Charlotte's guilt that their minds 'were set like flint', other observers of the case expressed severe unease about her conviction. Charlotte was so poor she could not afford to buy shoes and had to make do with a pair of slippers. She was refused admittance to a dental surgery due to a major infestation of head-lice.<sup>154</sup> She was illiterate. When her husband died she had to move into the local Poor House.<sup>155</sup> The man Charlotte supposedly killed for, Leonard Parsons, was himself penniless and hiding from the police. Such details, together with the lack of, and disputed evidence, led Huggett and Berry to question the prosecution's motive of illicit passion which they regarded as "extremely shaky."<sup>156</sup> Others shared their unease about the case. Labour MP Sydney Silverman expressed concern about the

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<sup>152</sup>Reported in *Daily Express* 15th July 1936; *Daily Mirror* 30th June 1936; *The Times* 29th June 1936. Professor Bone was employed at the Imperial College of Science and Technology.

<sup>153</sup>Lord Chief Justice Hewart's judgement on the Appeal of Charlotte Bryant, quoted in *Daily Mirror* 30th June 1936 and *The Times* 30th June 1936.

<sup>154</sup>Huggett & Berry 1956:156.

<sup>155</sup>This was the Sturminster Newton Institution where her children remained after Charlotte's arrest. See for example *Daily Mirror* 28th May 1936.

<sup>156</sup>Huggett & Berry 1956:181.

inequality between defence and prosecution in the case and told the House of Commons that "her defence was in the hands of junior counsel only, whereas the prosecution was undertaken by the Solicitor-General, another Kings's Counsel, and junior counsel."<sup>157</sup> Did the quality of Charlotte's defence reflect her poverty and powerlessness? Was the jury more likely to find her guilty of murder as a result of her immorality and inadequacies as a wife and mother? Would Lord Hewart have allowed new evidence to be admitted in the Court of Appeal if Charlotte had been a respectable and powerful member of her community? Silverman was concerned enough about these issues to raise them in Parliament where he asked:

is the Right Hon Gentleman aware that there is considerable public uneasiness about this case, and does he not think that when a case of such difficulty as to justify the prosecution by a Law Officer in person is defended by junior counsel only, there is a considerable danger of a miscarriage of justice? ... does he not think that where there is such a heavy battery of legal gentlemen on one side the effect on the mind of a rustic jury may be considerable?<sup>158</sup>

The Home Secretary disagreed and argued that the Crown was "engaged in trying to present the facts of the case with complete propriety and with the greatest impartiality."<sup>159</sup> However, another MP Mr Pritt, was also concerned enough to ask a parliamentary question on the same matter which the Home Secretary initially refused to answer because "he was thoroughly convinced of Mrs Bryant's guilt, had refused to advise a reprieve ... [and] considered Mr Pritt's inquiry might cause disquiet in the public mind."<sup>160</sup> By the time the Home Secretary asked to have the question "restored to the order paper" it was too late to save Charlotte from the gallows, but future defendants would have benefited from Mr Pritt's proposal that legislation should be introduced which "secure[s] that verdicts founded on mistaken evidence shall be subject to inquiry on appeal."<sup>161</sup> Astonishingly, the Home Secretary referred to the Bryant case as an example of why such legislation remained unnecessary:

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<sup>157</sup>Parliamentary Debates, House of Commons June 29 to July 17 Session 1935-36 Vol 314 cols 1400-1401.

<sup>158</sup>Parliamentary Debates, House of Commons June 29 to July 17 Session 1935-36 Vol 314 cols 1400-1401.

<sup>159</sup>Parliamentary Debates, House of Commons June 29-July 17 Session 1935-36 Vol 314 cols 1400-1401.

<sup>160</sup>*Daily Express* 16th July 1936.

<sup>161</sup>Parliamentary Debates, House of Commons June 29-July 17 Session 1935-36 Vol 314 col 2221.

No such legislation is required as, of course, an allegation of mistaken evidence can be considered on appeal and, as I have said, it was in fact considered and fully allowed for in the present case.<sup>162</sup>

In proposing an alternative truth about Charlotte Bryant it has not been my intention to claim that she was innocent of the crime for which she was executed. Rather, I have suggested that the evidence needed for a conviction was absent in this case, and that Charlotte's personal inadequacies, immorality and disreputable behaviour were allowed to replace the missing evidence. In Chapter Five, I referred to Carlen's argument that the majority of women are punished, not according to the seriousness of their crimes, but "primarily according to the court's assesment of them as wives, mothers and daughters." I also referred to Wilson's point that punishment is, in some cases, imposed according to "deviations from the expected form of feminine behaviour" rather than as a result of the offence which has been committed. To those two points, a third may be added: that in cases where a woman has severely transgressed acceptable female standards in a multitude of areas, poor quality evidence is more likely to be accepted. As pointed out by Huggett and Berry twenty years after Charlotte's trial:

Trials in this country are based on evidence, and if incorrect evidence is put forward by the Prosecution then a prisoner should be entitled to a re-trial. It creates a dangerous precedent to admit that false evidence was given but that nevertheless you think a prisoner guilty ... Even if the Appeal Judges and the Home Secretary were convinced of her guilt ... [their] attitude is to be deplored.<sup>163</sup>

Charlotte's solicitor demonstrated strong commitment to her case both when he fought on her behalf to obtain a re-trial, and when he attempted to have her case heard in the House of Lords.<sup>164</sup> Her solicitor and KC had been appointed under the Poor Prisoner's Law and it is not known how much time was available to prepare her case. We do know that an alternative truth could have been presented in court in a multitude of areas. For example, there was no evidence that Fred had suffered from arsenic poisoning on the previous occasions he had been ill. Indeed two doctors had assumed he had suffered from gastro-enteritis at the time of his illnesses and only suggested arsenic poisoning after the result of Fred's post-mortem became known.<sup>165</sup> No examination was conducted in the gravel pit where Fred worked which was renowned for its high arsenic

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<sup>162</sup>Parliamentary Debates, House of Commons June 29-July 17 Session 1935-36 Vol 314 col 2222.

<sup>163</sup>Huggett & Berry 1956:181.

<sup>164</sup>*Manchester Evening News* 15th July 1936.

<sup>165</sup>ASSI 26/48 XC3601 CL. Testimonies of Drs John Brodrick Tracey and Richmond McIntosh p.23 and 24.

content.<sup>166</sup> The implausibility of Charlotte poisoning Fred single-handed within the context of her illiteracy was not raised, nor was the possibility that the weed-killer found in the cottage could equally well have belonged to Leonard Parsons, who claimed he used arsenic to treat horses.<sup>167</sup> Had Charlotte's defence arranged for its own expert witness and analysis of the ashes in her house, the prosecution's expert witness could have been challenged in court. Instead this crucial evidence was only discovered as a result of an expert volunteering his knowledge and services. When these issues are considered in the context of the lack of evidence discussed above - that it could not be proved whether Charlotte had either bought or administered arsenic - we begin to gain an insight into the rudimentary nature of Charlotte's defence. It is difficult to avoid the conclusion that far from being blind, justice recognises sexual transgression, immorality, poverty and powerlessness at a glance and acts accordingly. Mary Hartman's sentiment that if women "intended to dispose of somebody" it was wise to be 'respectable', refers to women who killed in the 19th century, but after the examination of 14 case-studies it will have become apparent that this was equally true of the first half of the 20th century.<sup>168</sup>

#### Concluding Remarks - Motherhood Re-visited.

Ironically, Charlotte Bryant learned to write while she awaited her execution. This enabled her to write to the King in a last effort to save her life:

Mighty King, Have pity on your lowly, afflicted subject. Don't let them kill me on Wednesday. Ask them to give Mrs Van der Elst an opportunity of saying what will prove my innocence. Form the brink of the cold, dark grave, I am a poor, helpless woman. I ask you not to let them kill me. I am innocent.<sup>169</sup>

It was sorely needed for no one had initiated a public petition on her behalf. Nor did anyone take the trouble to submit a petition on behalf of her five children aged between 18 months and 12 years. Yet there was plenty of evidence that Charlotte was a much loved mother. For example *The Daily Mirror* published a photo-copy of a letter by her 12 year old son, Ernest:

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<sup>166</sup>Huggett & Berry 1956:179.

<sup>167</sup>Evidence of Leonard Parsons reported in *The Times* 29th May 1936.

<sup>168</sup>Hartman, M. S. (1985) *Victorian Murderesses* Robson Books, London p.1.

<sup>169</sup>Quoted in *Manchester Evening News* 15th July 1936.

Dear Mum, When are you coming back to us. We all want you back. It has ben [sic] such a log [sic] time sins [sic] I had see you [sic]. Lily is ill. Pleas [sic] come back soon. from [sic] your loving son Ernest Bryant.<sup>170</sup>

The day after Charlotte had been sentenced to death, Ernest asked a *Daily Mirror* correspondent where his mum was and whether she would be back soon:

I cried myself to sleep last night. I could not help it. Only Lily and I know about it. The babies have not been told yet. ... Do you think if I wrote to the Judge he would let Mummy come home? She has been away for such a long time. ... I was all right waiting because I thought Mummy would be coming back in the end. I do not know what to do now.<sup>171</sup>

Like her son Charlotte too was tormented by the separation from her children. When her appeal was dismissed she wrote to Ernest: "Think of me as last I was" and "asked him to let his brothers and sisters know that she was thinking of them always."<sup>172</sup> As the end drew near, Charlotte's demeanour was "that of a woman resigned to her fate", never betraying the "slightest emotion. Her only concern has been for the welfare of her children."<sup>173</sup> Mr Arrow, her solicitor, visited her three days before the execution and confirmed that "she talked mainly of her children." She also protested "her innocence time and again."<sup>174</sup> In her farewell letter to Mr Arrow she asked him to look after her children and requested that her entire wealth "- five shillings and eight pence, halfpenny, - should be divided among them."<sup>175</sup>

As can be gathered from the above, newspapers did not shy away from exposing the emotional heart-ache an execution of a mother caused. In addition to the above publications the *Daily Mirror* also published photos of Ernest Bryant and referred to the "tear-stained note" from his mother which he had been carrying "in his pocket for the last two days."<sup>176</sup> The implications of the deliberate killing of a mother of five young children were not lost on the general public who began to express concern at the execution through letters to newspapers. Some also considered the hardship in Charlotte's life a mitigating factor:

It is indeed a terrible ordeal for the children of Mrs Bryant, as it is for all children connected with such tragedies. Many times I have discussed the plight of such children with other women. The condition of life is enough

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<sup>170</sup>*Daily Mirror* 1st June 1936. Lily was Charlotte's 10 year old daughter.

<sup>171</sup>Ernest Bryant quoted in *Daily Mirror* 1st June 1936.

<sup>172</sup>Quoted in *Daily Mirror* 30th June 1936.

<sup>173</sup>*Daily Express* 15th July 1936.

<sup>174</sup>Mr Arrow quoted in *Daily Mirror* 13th July 1936.

<sup>175</sup>*Manchester Evening News* 14th July 1936.

<sup>176</sup>*Daily Mirror* 1st and 30th June 1936.

to unbalance any woman who has no time whatever but to struggle with poverty and bear and rear children.<sup>177</sup>

Another letter read:

Probably most of us remember what torture it was for us as children to think that the mother we loved might some day die. Now think what is happening to these children.<sup>178</sup>

However, only one member of the public translated such sentiments into direct action - Mrs Van der Elst. Not only did she drive through a rope-barrier erected by police which was designed to deter demonstrators on the morning of the execution, she also announced, that she was establishing a fund for children of murdered and executed parents, and that she personally would contribute £50,000 towards it.<sup>179</sup> That Mrs van der Elst's demonstration was greeted with hostility by many of the 1000 crowd outside the prison, demonstrates the ambivalent and contradictory attitude towards motherhood. This attitude can be understood by exposing the contradictions on which the discourse of motherhood itself is built. As I discussed in Chapters Three and Six, this discourse was not created for the benefit of child-welfare, but in order "to preserve the ideologically important construct of [the] maternal instinct", which in turn acts as an important mechanism of social control on women.<sup>180</sup> The sentiments attached to motherhood are only applicable to mothers who are married, respectable, chaste and living above the poverty line. Poor mothers, adulterous mothers or mothers of illegitimate children are dangerous mothers and "may find themselves punished for their transgressions."<sup>181</sup> In the same way that Carol Smart discusses the creation of the 'normative woman' who imposes "a homogeneity which is all too often cast in our own privileged, white likeness", so sentimental and romantic notions of motherhood applies only to the 'normative mother' who poses no threat to the male dominated social order.<sup>182</sup> Charlotte was not a 'normative' but a

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<sup>177</sup>Letter quoted in Huggett & Berry 1956:173-4.

<sup>178</sup>Letter quoted in Huggett & Berry 1956:174.

<sup>179</sup>Gatley, C.N (1972) *The Incredible Mrs Van der Elst* Leslie Frewin, London, 121-2. See also *Manchester Evening News* 15th July 1936 and *Daily Mirror* 16th July 1936. Mrs Van der Elst defended herself against police accusations that she was 'mental' and typical of her flamboyant style, after paying a fine of £5 for breaching the peace, she donated another £5 to the police sports fund. Her fund never came into existence, instead she donated money to Dr Barnardo Homes and the RSPCC.

<sup>180</sup>Matus, J.L. (1995) *Unstable Bodies* Manchester University Press, Manchester p.189.

<sup>181</sup>Naffine, N. (1990) *Law & The Sexes* Allen & Unwin, London p.142; Smart, C. (1992) 'Introduction' in Smart, C. (ed) (1992) *Regulating Womanhood* Routledge, London p.23.

<sup>182</sup>Smart, C. (1995) *Law, Crime and Sexuality* Sage, London p.198.

highly dangerous mother and unfaithful wife. Hence, her status as a mother carried no currency with the State, despite the fact that she was loved and missed by her children in the same measure as would have been the case if their upbringing had been more privileged. Charlotte's punishment was of a higher priority than compassion for her children, for she had transgressed acceptable female behaviour in a multitude of areas and had finally succumbed to the most dangerous form of violence - murder by poison. In sum, in the case of Charlotte Bryant, as had been the case with Dorothea Waddingham three months previously, the discourses of motherhood were easily subsumed under those of the woman poisoner for as the *Daily Express* reminded its readers:

No reprieves are ever granted in cases of murder by poisoning; the crime is regarded as the most serious it is possible to commit against the community... Poisoners must die.<sup>183</sup>

To this we may add that 'suspected poisoners must also die' for just as discourses of the female poisoner easily overruled those of motherhood, so the discourses around Charlotte's immorality and perverse womanhood overruled the need for a safe conviction.

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<sup>183</sup>*Daily Express* 14th July 1936.

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## Chapter Eight - Part III

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'Perhaps after I die the truth will be known.'

### The Case of Ruth Ellis.

Much debate has gone on as to why the Ruth Ellis case captured the interest of the public to such an unprecedented extent. Why is she still remembered forty years on? She was the last of fifteen women to be hanged this century, a fact that most people whom I encounter appear to know whatever their age. However, I never come across anybody who can name any one of the other fourteen.<sup>1</sup>

This court is not a court of morals. We do not sit here to adjudicate on questions of morality. This is a criminal court and the function of it is solely to determine on the evidence whether a person is or is not guilty of the charge which is made against her. You will not, therefore, allow your judgment to be swayed or your minds to be prejudiced in the least degree against the accused because, according to her own admission, when she was a married woman she committed adultery or because she was having two persons at different times as lovers. Dismiss those matters wholly from your minds.<sup>2</sup>

A member of the public gallery remembers her as being a 'typical West End tart'. If that was the impression she left on the jury then the case was lost before she had said a word in her defence.<sup>3</sup>

Of the 15 cases of executed women during the 20th century in England and Wales the case of Ruth Ellis is the only one to have received academic, legal and media attention equal to that of the Edith Thompson case. The two women were however, very different from each other and indeed Ruth Ellis's method of murder was unique compared to the 14 women whose cases have already been analysed, for she shot her lover four times in a public place and in full view of several

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<sup>1</sup>Ellis, G. (1996) *Ruth Ellis, My Mother: Memoirs of a Murderer's Daughter* Smith Gryphon Publishers, London p.5. The heading 'Perhaps after I die the truth will be known' is a quote from Ruth Ellis, 12th July 1955, the day prior to her execution. It appears on an unnumbered page in her daughter Georgie Ellis's book.

<sup>2</sup>DPP2/2430 23271 Trial transcript of the Ruth Ellis case, summing-up by Mr Justice Havers p.81. This transcript is not available for public inspection but access to it may be gained by contacting Miss Grey, Crown Prosecution Service Headquarters, 50 Ludgate Hill, London EC4M 7EX.

<sup>3</sup>Marks, L. & Van den Bergh T. (1990) *Ruth Ellis: A Case of Diminished Responsibility?* Penguin, London p.148.



witnesses. Hence, she became only the second of the 15 women to confess to her crime, although like Margaret Allen, six years earlier, she was persuaded to plead not guilty to murder by the time she stood trial.

As had been the case with the Edith Thompson case 23 years earlier, the intriguing and scandalous features surrounding the Ruth Ellis case ensured its status as a *cause celebre*. Almost immediately after the shooting, and long before the case went to trial, the discourses responsible for placing Ruth firmly within the 'bad' rather than the 'mad' category were activated. She was variously described as 'a model' and a 'club-hostess' - the implication being she was a lower class woman employed in non-respectable professions. This image contrasted sharply with that of her lover David Blakely, who was considered to be 'a play-boy', came from an upper-class background and enjoyed a private income. In order to fully appreciate the significance not only of Ruth's lack of respectability, but also of the class difference between the couple, it is necessary to place this case within the social climate of the 1950s.

The Second World War had left an aftermath of austerity, social disruption and commodity shortage in Britain, conditions which made the country ripe for racketeering, corruption, fraud, gambling and prostitution.<sup>4</sup> Official crime statistics appeared to confirm that Britain was in the grip of an "appalling wave of crime."<sup>5</sup> Juvenile convictions which had risen by 250% between 1939 and 1947 were of particular concern to the government, and were thought to be linked to "inadequate early socialisation".<sup>6</sup> This theory was coupled with a recognition that families had been "weakened or broken by the experience of war" hence were now in need of support in the task of reintegrating lawless youth into family life and society.<sup>7</sup> The fear of "an imminent collapse of the family" was further fuelled by the rate of illegitimate births which had risen from 25,942 in 1939 to 64,064 in 1945.<sup>8</sup> By 1955 5% of all children born were illegitimate.<sup>9</sup> Divorce rates also

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<sup>4</sup>See for example Chibnall, S. (1977) *Law and Order News* Tavistock, London p.51.

<sup>5</sup>Pearson, G. (1983) *Hooligan* MacMillan, London p.14. Statistics which concerned the Government included those for fraud which rose from 13,122 in 1945 to 27,415 in 1951, an increase of 108.9% (Taylor, I. (1981) *Law and Order: Arguments for Socialism* MacMillan p.54. Murder statistics too were rising and by 1948 "a murder was being committed every two days" (Yallop, D. (1990) *To Encourage the Others* Corgi Books, London p.33.

<sup>6</sup>Taylor 1981:62; Yallop 1990:29.

<sup>7</sup>Taylor 1981:48.

<sup>8</sup>Smart, C. (1981) 'Law and the Control of Women's Sexuality: The Case of the 1950s' in Hutter, B. & Williams, G. (1981) *Controlling Women* p.47; Taylor 1981:48.

<sup>9</sup>Marwick, A. (1990) *British Society Since 1945* Penguin London p.60.

increased sharply during the period 1946-1948.<sup>10</sup> Lastly, prostitution came to be regarded as a serious threat to family life during the 1950s. While it is doubtful there was an actual increase in prostitution during this period, a moral panic was never-the-less "successfully orchestrated" in which the prostitute became the new folk-devil as a result of her increasing visibility.<sup>11</sup> Although Britain in the 1950s remained a class-ridden society, class distinctions in the post-war period were in the process of change.<sup>12</sup> Thus, while the majority of prostitutes were drawn from the working-class, they "could no longer be held as a class apart from respectable women; the separate spheres were merging, and in this way the prostitute became more of a threat to respectable family lifestyles":

Her proximity, both socially and spatially presented a challenge to all the values embodied in ideologies of family life and motherhood so prevalent in the 1950s.<sup>13</sup>

With such an array of perceived threats to family-life the state's plans for post-war social reconstruction strongly emphasised the centrality of marriage and the nuclear family as a basis for organising society. This focus on family ideology was supported by legislation around issues such as family law and sexual behaviour, the overall aim being to preserve family stability as well as "reproducing, in some instances, patriarchal relations within the family ..."<sup>14</sup>

The role of women came under particular scrutiny as can be gathered from the findings of the *Morton Commission* which sat between 1951-1955. The Commission identified women's social and economic emancipation as being responsible for the increased divorce rate, and emphasised "moral values" and the "duties of married life" in an attempt to stem the rising tide of marital break-down. At the same time it refused to introduce progressive changes to the laws around divorce.<sup>15</sup> For Carol Smart, this strategy had the effect of renewing "legitimacy to dominant

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<sup>10</sup>HMSO Table reproduced in Smart, C. (1984) *The Ties That Bind* RKP London p.33.

<sup>11</sup>Smart 1981:50; 49; 48.

<sup>12</sup>See for example Hall et al: "... social changes unhinged many traditional patterns of class relations in the immediate sphere of social life, reorganising some attitudes and aspirations, dismantling some of the stable forms of working-class consciousness and solidarity, and setting aside some of the familiar landmarks of traditional pre-war society." (Hall, S., Critcher, C., Jefferson, T., Clarke, J., Roberts, B. (1978) *Policing the Crisis* MacMillan, London p.231.

<sup>13</sup>Smart 1981:50.

<sup>14</sup>Smart 1981:57.

<sup>15</sup>Smart 1984:37; 36. The official title of the Morton Commission was *The Royal Commission on Marriage and Divorce*.

ideologies concerning the patriarchal family."<sup>16</sup> It also provides an example of how the state was actively engaged in maintaining "a particular form of patriarchal relations" by *non-intervention*, that is by refusing to modernise the divorce laws.<sup>17</sup>

Women were furthermore singled out as being responsible for maintaining the moral standards of their community, as can be seen from Lord Denning's comment that "the morality of the race depends on the morality of the women folk."<sup>18</sup> The converse was that 'deviant' women were subverting the morality of the nation. This philosophy was used to justify the differential treatment of adulterous women. While the attitude towards men's adulterous behaviour was largely one of tolerance, the double standards applied to women's morality described in Chapter Five, now received state legitimacy in the form of legislation. Thus while an adulterous husband may have left his wife years ago, she could lose maintenance immediately upon becoming sexually active with another man. Not only did this law encourage separated husbands to keep their wives under surveillance, it could also coerce a woman into economic dependence on another man. In this way "the patriarchal marital relationship was reconstituted."<sup>19</sup>

A second strategy mobilised in support of the family and patriarchal relations can be observed in the state's response to the increased rate of illegitimate births noted above. As a result of the ideal female model being that of a wife and mother those who did not conform - such as unmarried mothers - inevitably found themselves at the receiving end of punitive attitudes, for example in the form of a "meagre means-tested allowance." This legitimised the constant surveillance of lone mothers' sexual behaviour, since - like the deserted wife - the unmarried mother would have her allowance withdrawn if suspected of cohabiting with a man.<sup>20</sup> Another attempt to eliminate families which did not conform to the nuclear model took the form of encouraging unmarried mothers to have their babies adopted, a policy which, "at a period where motherhood was so revered", showed a lack of concern for the feelings a mother may have for her baby. This lack of concern led one author to conclude that unmarried mothers were regarded

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<sup>16</sup>Smart 1984:40.

<sup>17</sup>Smart 1984:40.

<sup>18</sup>Smart 1984:45.

<sup>19</sup>Smart 1984:43.

<sup>20</sup>Spensky, M. (1992) 'Producers of legitimacy: Homes for unmarried mothers in the 1950s' in Smart, C. (1992) *Regulating Motherhood* Routledge London pp. 105-6.

as "no more than social deviants", who were marginalised by the new welfare state, "possibly more than the Poor Law had done."<sup>21</sup>

A final legislative measure by the state to protect the nuclear family can be observed in the form of the Street Offences Act which was introduced as the result of recommendations by the Wolfenden Committee set up in 1953 as a response to the moral panic around prostitution. This legislation justified a tightening of the system of surveillance of prostitutes with the result that street walkers were "surrendered even further into the control of the criminal law."<sup>22</sup>

In summary, the period 1945-1955 was one of profound social change and reconstruction. The perception that the structure of the post-war family was under threat as a result of increased rates of illegitimacy, soaring divorce rates and an increased level of visibility of prostitute women, brought the country close to a moral panic. This moral panic was responded to by the State in two inter-related ways: first by presenting the ideal woman as a wife and mother committed to a life of domesticity and caring; second, by identifying this wife and mother as being responsible for the nation's moral standards. These two responses in turn, were reinforced by state legislation designed to 'protect' the nuclear family. For women the material reality of this legislation meant an increase in official surveillance over female sexual behaviour, whether she be separated or divorced, an unmarried mother or a prostitute, for in a culture struggling to maintain the patriarchal ties of the nuclear family, these three types of women represented a particularly dangerous form of womanhood. Ruth Ellis fulfilled the criteria for every one of these categories and it is within this social context that she stepped out into a public place and shot David Blakely, her lover, and thus became one of the most 'visibly' deviant women of the 1950s.

In this case-study I shall argue that the discourses and ideologies surrounding women's role in the 1950s, coupled with the moral panic around the break-down of the family played a major role in ensuring that Ruth received no pity or compassion, either by the legal or the political establishment. Instead her status as a 'bad' woman proved impossible to challenge, either by the trial procedures generally or by her own defence counsel in particular, for she was perceived to encompass every strand of the 'moral decay' deemed to be responsible for the decline of family life in post-war Britain. This perception became established as a

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<sup>21</sup>Spensky 1992:116; 117.

<sup>22</sup>Smart 1981:51.

result of Ruth breaking every one of the social conventions of the era and thus committing transgressions in all of the areas identified in Chapter Five - respectability, sexuality, motherhood, domesticity. Her final act of violence provided the ultimate reinforcement of her dangerousness, ensuring that in addition to her 'moral bankruptcy', she now also fitted the image of the stereotypical *femme fatale* - "the blonde with perverse sexuality and social aberration" who executed her lover in cold blood in an act of revenge.<sup>23</sup> Meanwhile, as a result of the double standards discussed in Chapter Five, David never suffered damage to his status as victim either by the media or by trial proceedings, despite being a promiscuous and violent alcoholic. Below I intend to challenge this clear-cut demarcation between victim and aggressor so easily accepted by both the legal profession and the media at the time of the trial.

### Ruth Ellis - A Life.

At the age of 16 Ruth was already identified as a 'good-time' girl with a 'reputation' as a result of her association with Allied soldiers stationed in London. At 17 one such association resulted in her becoming a single, teenage mother when her son Andy was born.<sup>24</sup> At 18 she had worked as a nude model and was about to embark on a career as a hostess in a night-club owned by Maury Conley, a vice-racketeer, fraudster and brothel-keeper who had been named by *The People* as "Britain's biggest vice boss", and therefore just the sort of person who was at the centre of the moral panic about crime in the 1950s.<sup>25</sup> In her capacity as a hostess she met George Ellis whom she married in 1950. She soon learned that he was both an alcoholic and wife-beater, and the couple consequently separated within a year prior to the birth of Ruth's second child.<sup>26</sup> As a single parent, separated, soon-to-be divorcee of questionable reputation and a history of

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<sup>23</sup>Birch, H. (1993) 'If looks could kill' in Birch, H. (ed) (1993) *Moving Targets* Virago, London p.52. See also Hancock, R. (1989) *Ruth Ellis* Weidenfeld, London p.6, who, on this page alone, refers to Ellis as 'the blonde' no less than three times.

<sup>24</sup>Ruth's son was named Clare Andria after his French-Canadian father but was known as Andy.

<sup>25</sup>It was journalist Duncan Webb who wrote in *The People* "I hereby name him as Britain's biggest vice boss and the chief source of the tainted money that nourished the evils of London night life." (11th December 1955 quoted in Hancock 1989:20). See also Goodman, J. & Pringle, P. (1974) *The Trial of Ruth Ellis* David & Charles, London p.15.

<sup>26</sup>Ruth Ellis' biography is outlined in Marks & Van den Bergh (1990); Hancock (1989) and Goodman & Pringle (1974). See also Ellis 1996:47 and Ballinger, A. (1996) 'The Guilt of the Innocent and the Innocence of the Guilty: The cases of Marie Fahmy and Ruth Ellis' in Myers, A. & Wight, S. (eds) (1996) *No Angels* Pandora, London p.12.

immorality, Ruth epitomised the type of woman guaranteed to fuel the moral panic about the break-down of family-life and moral values in austere, button-lipped post-war Britain.<sup>27</sup> This image was further reinforced when in 1953, after only two weeks of courtship she allowed another customer from the club - David Blakely - to move in with her and become her lover.

The ensuing 19 months were taken up with their complex, stormy and intense love-hate relationship. Initially Ruth did not take the affair seriously, and it was she who appeared to be the dominant partner - "confident and self-possessed while [David] was weak and ineffectual."<sup>28</sup> This power balance, however, shifted towards the end of their relationship when "the tables had turned" and David repeatedly left Ruth guessing and uncertain about their future together as he see-sawed from promising her marriage one moment to ignoring her the next - sometimes disappearing for days on end - during which he would be involved in other sexual relationships.<sup>29</sup> Ruth, in a state of nervous exhaustion and mentally drained from these uncertainties, finally shot him on Easter Monday 1955, following yet another protracted period of contradictory and provocative behaviour by David which had left her in mental agony - seething, furious and powerless - for three days. When David had left Ruth on Good Friday morning he had been loving and attentive - hinting at marriage and promising to return in the evening to spend the Easter weekend with her. Instead he went into hiding at a friend's house. Ruth guessed where he was staying and attempted to contact him on numerous occasions during the weekend by phone and by calling at the house. David however, refused all contact, and would not even come out for the purpose of returning her key. She suffered the additional humiliation of being removed from outside the house by police officers, who had been called by David's hosts. The shooting took place only 10 days after she had suffered a miscarriage brought on by one of David's beatings.<sup>30</sup>

#### The Trial of Ruth Ellis - The Prosecution.

All eyes turned to the wooden dock as she entered. Many of the public were surprised at what they saw. Instead of a dejected young woman, tired-looking, sombre, and about to stand trial for her life, she looked like she was attending the premiere of a West End show.<sup>31</sup>

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<sup>27</sup>Bardsley, B. (1987) *Flowers in Hell* Pandora, London p.139.

<sup>28</sup>Goodman & Pringle 1974:106;107; Healey, T. (1985) *Crimes of Passion* Hamlyn, London p.34.

<sup>29</sup>DPP2/2430 2371 Trial transcript. Evidence of Ruth Ellis p.45.

<sup>30</sup>DPP2/2430 2371 Trial transcript. Evidence of Ruth Ellis p.45.

<sup>31</sup>Marks & Van den Bergh 1990:134.

With her newly dyed hair, smart suit and stilettos Ruth made no attempt to activate the discourses of victimhood by looking meek or pathetic, but instead appeared confident and glamorous - "like a film-star." Moreover, rather than signalling sorrow or remorse over her violent act "she was cool, proud and self-possessed."<sup>32</sup> Thus, Ruth's deviance and dangerousness - already firmly established as a result of her masculine murder method and her blatant disregard for social conventions - was further reinforced by her presentation of herself during the trial, where she failed to show either remorse or 'appropriate' feminine emotions such as tearfulness, nervousness or hysteria. Her appearance, coupled with her attitude, simply did "not match the line of her defence" of provocation but instead ensured the jury felt neither compassion nor sympathy for her.<sup>33</sup> Moreover, just as the courts have shown reluctance to accept the rape of prostitutes,<sup>34</sup> so there was a reluctance to accept that a sexually experienced, 'immoral' woman could suffer provocation equal to that of an 'innocent' woman:

Her crime was not that of a sexual innocent suddenly discovering man's inhumanity to woman. It seemed like the vengeance of a cool sophisticate, proud of her lone act of savagery.<sup>35</sup>

The struggle to reconcile Ruth's femininity with what appeared to be a rational determination to seek out her lover for the sole purpose of killing him was encapsulated in this newspaper comment:

It [the murder] was committed by a woman certainly; but a woman capable of such a crime can hardly expect the leniency traditionally given to her sex.<sup>36</sup>

In short, her composure and calmness were interpreted overwhelmingly in negative terms - confirmation of her dangerousness as a cold, calculating and ruthless killer as can be seen from this description:

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<sup>32</sup>Goodman & Pringle 1974:50; 51.

<sup>33</sup>Birch, H. 'Twice unnatural creatures' in *New Statesman* 18th March 1988:25.

<sup>34</sup>Lord Chief Justice Bingham's recent comment that "prostitutes were as much entitled to the protection of the law as anyone else" suggests that the rape of prostitutes is finally being taken seriously - at least in theory. (*The Guardian* 22nd January 1997).

<sup>35</sup>*Sunday People* 2nd December 1973.

<sup>36</sup>*Daily Telegraph* (editorial) 14th July 1955.

Ruth describes the shooting of the man with whom she has been living, like a male motorist reporting the running down of a stray dog.<sup>37</sup>

Moreover, Ruth made no attempt to excuse her violent act, but instead set out "to prove that she had been morally justified in killing David" - that he had deserved to be shot because of his treatment of her.<sup>38</sup> It was this attitude - this refusal to be sorry - combined with what was considered her sexually provocative conduct, which guaranteed she would fit into the stereo-typical mould of a dangerous - and in the event - lethal - *femme fatale*.<sup>39</sup> In turn this image, together with the manner in which the murder took place, ensured the case came to be regarded as 'open and shut'. Unlike the previous cases discussed in this thesis, this case did not rely on circumstantial evidence. Ruth had shot David in full public view and never attempted to deny this. Indeed, in her statement after her arrest, she specifically stated:

When I put the gun in my bag I intended to find David and shoot him.<sup>40</sup>

Not only did she freely admit her intention to kill David which in itself was enough to send her to the gallows, she made no attempt to excuse the killing by presenting it as a *crime passionel* but instead described it in terms which suggested a cold-blooded assassination:

He turned and saw me and then turned away from me and I took the gun from my bag and I shot him. He turned round and ran a few steps round the car. I thought I had missed him so I fired again. He was still running and I fired a third shot.<sup>41</sup>

Her intention to shoot to kill was further confirmed by the pathologist who testified that one bullet "had been fired at a distance less than 3 inches."<sup>42</sup> Her trial was thus perceived to be no more than a formality - the 'facts' speaking for themselves and the outcome a foregone conclusion - as can be gathered from the opening statement by the prosecutor, who after only 20 lines of outlining the case told the jury:

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<sup>37</sup>Hancock, R. (1989) *Ruth Ellis* Weidenfeld Paperbacks, London, p.14.

<sup>38</sup>Goodman & Pringle 1974:42.

<sup>39</sup>See for example *News of the World* 8th October 1972 p.10 which describes Ruth as 'experienced', 'worldly, and 'sexually provocative.'

<sup>40</sup>CRIM 1/2582, Exhibit 10. This file is not available for public inspection but access to it may be gained by contacting Mr Manu, Supreme Court Unit Manager, Royal Courts of Justice, London WC2A 2LL.

<sup>41</sup>CRIM 1/2582, Exhibit 10 - Statement by Ruth Ellis after her arrest.

<sup>42</sup>DPP2/2430 2371 Evidence of Lewis Charles Nickolls p.22



That, in a very few words, is the case for the Crown, and nothing else I say to you in however much detail will add to the stark simplicity of that story.<sup>43</sup>

The implication was that Ruth's guilt was *obvious* as can be seen from his repetition of the '*stark simplicity*' of the case as he concluded his opening speech:

Members of the Jury, there in its stark simplicity is the case for the Crown, and whatever be the background and whatever may have been in her mind up to the time when she took that gun, if you have no doubt that she took that gun with the sole purpose of finding and shooting David Blakely and that she then shot him dead, in my submission to you, subject to my Lord's ruling in law, the only verdict is wilful murder.<sup>44</sup>

If members of the jury still harboured doubts about her guilt the prosecution's emphasis on her immorality in the opening speech may have assisted them in reaching a decision:

In a word, the story which you are going to hear outlined is this, that in 1954 and 1955 she was having simultaneous love affairs with two men, one of whom was the deceased and the other a man called Cussen... It would seem that Blakely ... was trying to break off the connection. It would seem that the accused woman was angry at the thought that he should leave her, even although she had another lover at the time. She therefore took a gun which she knew to be fully loaded which she put in her bag. She says in a statement...: "When I put the gun in my bag I intended to find David and shoot him." She found David and she shot him then by emptying that revolver at him ...<sup>45</sup>

The above paragraph was to become the essence of the dominant truth about Ruth throughout the trial, and was never seriously challenged, even by the defence. In this uncomplicated version of the truth Ruth was portrayed as "the epitome of the 'jealous tart'" who unreasonably and unjustifiably gunned down her lover in cold blood.<sup>46</sup> Moreover, issues such as Ruth's relationship with Desmond Cussen which the prosecution considered to be irrelevant to the murder but which emphasised her immorality, were emphasised. The prosecution further alleged that "she was living ... with both men" [David and Desmond] simultaneously, and termed Desmond "her alternative lover."<sup>47</sup> Reinforcing the discourses that Ruth was a 'loose' woman who lacked moral standards, prosecutor Christmas Humphreys commented:

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<sup>43</sup>DPP2/2430 2371 Opening speech by prosecutor Christmas Humphreys p.2.

<sup>44</sup>DPP2/2430 2371 Opening speech by prosecutor Humphreys p.6-7.

<sup>45</sup>DPP2/2430 2371 Opening speech by prosecutor Humphreys p.2.

<sup>46</sup>Bardsley, B. (1987) *Flowers in Hell* Pandora, London p.140.

<sup>47</sup>DPP2/2430 2371 Opening speech by prosecutor Humphreys p.2; p.3.

At some date, I think early in March, *not that it matters very much*, her decree absolute came through. But ... you are not here in the least concerned with adultery or any sexual misconduct. You are not trying this woman for immorality, but for murder...<sup>48</sup>

The implication was that Ruth's decree absolute 'did not matter' because she was the 'kind' of woman who slept with other men, regardless of her marital status. Moreover, by instructing the jury to ignore Ruth's immorality and adultery, Humphreys achieved exactly the opposite by drawing attention to it. The fact that she and David had lived together as husband and wife for almost the entire duration of their relationship, was freely described by Ruth and was never disputed in court, yet their sexual relationship received constant attention by the prosecution as when Humphreys questioned their landlady:

During the course of your duties did you take tea to their room and find them occupying the same bed?<sup>49</sup>

Similarly, the prosecutor informed the jury that "it will be proved that she and Blakely occupied the same room" in a hotel while away for a weekend, a fact which had never been in dispute.<sup>50</sup> Thus while Humphreys claimed Ruth's immorality was not an issue for the jury's consideration, he none-the-less emphasised it whenever the opportunity arose.

### The Defence.

Defence counsel Melford Stevenson barely attempted to challenge the dominant truth about the case as outlined by the Crown; instead he reinforced it by specifically telling the jury:

... the Prosecution's story which has been described as one of stark simplicity, as indeed it is, passes without any challenge or question from those who are concerned to advance the defence.<sup>51</sup>

While the Crown had called 16 witnesses - some of them for no other apparent reason than to 'prove' that Ruth and David had shared a bed - the defence called just two, one of whom was Ruth herself. Against her wishes she had been

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<sup>48</sup>DPP2/2430 2371 Opening speech by prosecutor Humphreys p.3. My emphasis.

<sup>49</sup>DPP2/2430 2371 Evidence of Joan Winstanley p.9.

<sup>50</sup>DPP2/2430 2371 Opening speech by prosecutor Humphreys p.3.

<sup>51</sup>DPP2/2430 2371 Opening address by Melford Stevenson p.31.

persuaded to plead not guilty on the grounds of provocation.<sup>52</sup> Her evidence did nothing to improve her status as an immoral woman, but confirmed her casual attitude towards sexual relationships and lack of respect for her marriage vows. Thus, she agreed that when she was still married, she allowed David to move in with her and become her lover. Yet when asked if she was "very much in love with him", she replied: "Not really."<sup>53</sup> Here, she demonstrated not only her willingness to commit adultery, but also that her attitude to sex was so casual she did not even require the basic ingredient of being "in love" prior to sexual intimacy. Her immorality and vindictiveness were further confirmed when she was questioned about her affair with Desmond Cussen:

Why did you ... [have the affair]?

*Well, David had gone to Le Mans motor racing, and he was away a long time. He should have been back some considerable time before he did arrive back. He stayed away longer than he should have done.*

....

When you had that affair with Cussen, what did you hope or think would happen to your association with Blakely?

*I thought it might finish it; I thought that Desmond would tell David we had been intimate ...<sup>54</sup>*

Not only was Ruth so faithless and disloyal that she immediately took a lover when her partner failed to return on time, she also appeared to use sex to manipulate his feelings for her, an emotion which - as noted in earlier case-studies - carries special significance in relationships between the 'older woman' and her 'young lover' as was the case between David and Ruth. Furthermore, when Ruth was offered the chance to become 'respectable' as when David offered to marry her after they discovered she was pregnant, she refused:

*... he offered to marry me, and he said it seemed unnecessary for me to get rid of the child, but I did not want to take advantage of him.*

When he offered to marry you, what did you say to that? How did you take it?

*I was not really in love with him at that time, and it was quite unnecessary to marry me, I thought. I could get out of the mess quite easily.<sup>55</sup>*

In the social climate of the 1950s the jury may well have thought Ruth - a "brassy blonde" - ought to be grateful to David - an upper-middle class person - for the

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<sup>52</sup>When her advocate at the committal proceedings, Sir Sebag Shaw entered a plea of not guilty, Ruth "was very angry with him" and proclaimed her guilt stating: "I killed him, and I've got to die for it" (quoted in Goodman & Pringle 1974:48).

<sup>53</sup>DPP2/2430 2371 Evidence of Ruth Ellis p.34.

<sup>54</sup>DPP2/2430 2371 Evidence of Ruth Ellis p.36.

<sup>55</sup>DPP2/2430 2371 Evidence of Ruth Ellis p.34.

offer of marriage.<sup>56</sup> Yet, thwarting social expectations as ever, she did not appear interested in becoming 'respectable'. Worse still, the above quotation suggested an off-hand if not uncaring and callous attitude towards motherhood. Not only did Ruth describe the foetus as 'the mess' but she also appeared to prefer abortion to marriage and motherhood, an attitude which would have done nothing to endear her to the jury during an era where abortion was illegal and concern about the nuclear family had reached the level of a moral panic. Yet, apparently unperturbed, the defence QC continued this line of questioning until Ruth revealed that she did in fact "get out of the trouble by [her]self" when she had an abortion in 1954.<sup>57</sup> Stevenson's inappropriate questioning of Ruth led Hancock to comment:

Neither her answers nor Mr Stevenson's questions made her early association with David in the least human. ... He could have stressed that the first abortion she had was her attempt not to involve a young man of good family, who was engaged to be married, in an unpleasant dilemma which might provoke a damaging scandal. Instead all he got from Ruth was matter-of-fact answers which dealt with the abortion as casually as a woman might discuss whether she should have the green, or green-patterned, carpet in the front room.<sup>58</sup>

It was also the defence's line of questioning, which resulted in Ruth revealing her decision to give up her baby daughter to her alcoholic husband without a struggle:

*... I wanted a divorce, and I decided to not claim any maintenance or defend myself in any way and also give my husband my daughter.  
Did you do that?  
I did that on the ground I was going to marry David, or so I thought.*<sup>59</sup>

In sharp contrast to the ideal mother described in Chapter Five, who is driven by her maternal instinct and is therefore loyal, loving, compliant and altruistic - always putting the interests of her children before her own - Ruth had not only had an abortion but had also voluntarily given up her young child to a highly unsuitable parent in order to secure more free time to spend with her lover.

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<sup>56</sup>Goodman & Pringle 1974:57.

<sup>57</sup>DPP2/2430 2371 Evidence of Ruth Ellis pp.34-5.

<sup>58</sup>Hancock 1989:158.

<sup>59</sup>DPP2/2430 2371 Evidence of Ruth Ellis p.38.

The second and last witness called for the defence was Duncan Whittaker, a psychologist. Once again, it was the defence's questions, rather than the prosecution's, which led to confirmation of Ruth as a 'bad' mother:

Did you ask her any questions with a view to finding out whether she considered the consequences of what she was doing.  
*I asked her if she thought about her children. She said she did not think of them at all.*<sup>60</sup>

The defence had thus reinforced the already existing image of Ruth Ellis as an immoral woman, as well as contributed new information which in addition revealed her to be a bad mother and an abortionist. Yet, worse was to come, for while the defence was constructed on the grounds of provocation, the actual effort to prove such behaviour was half-hearted and feeble if not outright negligent. Of the 16 witnesses called by the prosecution, Melford Stevenson cross-examined only two. One of them was Anthony Findlater, the friend with whom David had been staying during the three days leading up to the shooting. Ruth was convinced he and his wife Carole had been conspiring to separate her from David and held them partly responsible, not only for his failure to return to her, but also for the shooting itself. This was because of her belief that the Findlaters 'tempted' David with their nanny, in order to hasten the end of his relationship with Ruth. Her belief was supported by her claim that when she had kept vigil outside the Findlaters' house during the Easter weekend, she had observed David and 'the nanny' holding each other and giggling - an event which led her into an intense state of jealousy, which in turn, contributed to her decision to shoot him.<sup>61</sup> She communicated her belief to her defence counsel "that they had deliberately and repeatedly lied to her over David's whereabouts over the Easter weekend, and that they had from the outset, intended to ostracise her from David's friends."<sup>62</sup> Indeed it was not disputed that the Findlaters had played an important role in denying Ruth access to David, had repeatedly hung up on her when she phoned and had called the police when she kept vigil outside their house in the hope of speaking to him. Yet, Stevenson did not call Carole Findlater, an important witness to the motive of provocation as she could have helped to establish that "Ruth was deliberately fobbed off with a pack of lies all over the Easter weekend and that she became more and more hysterically out of control as

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<sup>60</sup>DPP2/2430 2371 Evidence of Duncan Whittaker p.60. Hancock wrote of Ruth's attitude to motherhood: "In times of upset and disaster a mother's immediate thoughts go to her children. It was only while her statement was being taken down that this woman casually disclosed that she had a son." (Hancock 1989:14).

<sup>61</sup>See for example Hancock 1989:154.

<sup>62</sup>Ellis 1996:177.

her every phone call was refused."<sup>63</sup> Moreover, Carole herself had had an affair with David, just the kind of behaviour which would help to establish a motive of provocation.<sup>64</sup>

Anthony Findlater's cross-examination took a most cursory form with him repeatedly claiming that he could not remember the events of the Easter weekend despite the fact he had appeared as a witness for the Crown in the Magistrate's Court only one week after the shooting.<sup>65</sup> He also denied that Ruth had appeared to be "in a considerable emotional disturbance", despite having witnessed her - in a fit of temper and frustration - pushing in the windows of David's car which was parked outside his home.<sup>66</sup> Since Findlater claimed not to remember or know about David's friendship with 'the nanny', we might expect her to have been called for the defence. Instead, she was not even identified by name. So inept and half-hearted was Stevenson's attempt to establish reasonable grounds for Ruth's jealousy that *the prosecutor* Mr Humphreys explained to Findlater what Stevenson was attempting to say:

You will appreciate what is being suggested, that here is some reason for Ruth Ellis being jealous by some reason of some new woman being on the stage.

*I did not even know that Mrs Ellis knew we had a Nannie. She knew we had one, but this one was quite a new one.*

What my friend is putting is that Ruth Ellis in hanging about might have seen Blakely in the presence of an entirely new young woman. I am sure you will help if you can if you were fooling about or anything of that sort. Was there any incident with a young woman outside the house that you can remember?<sup>67</sup>

We can only speculate whether Mr Humphreys' sense of 'fair play' was so offended that he decided to intervene. This was the interpretation of one author and observer of the trial who commented: "Perhaps Mr Humphreys felt Mrs Ellis was being unnecessarily deprived of legal assistance."<sup>68</sup> Whatever his reasoning, he deserves credit for this gallant attempt to establish jealousy as a mitigating circumstance to the murder, a task which ought to have been performed by Mr Stevenson.

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<sup>63</sup>Ellis 1996:187.

<sup>64</sup>Hancock 1989:55.

<sup>65</sup>See for example Hancock 1989:138.

<sup>66</sup>DPP2/2430 23371 Evidence of Anthony Findlater pp.15-18.

<sup>67</sup>DPP2/2430 23271 Humphreys re-examining Anthony Findlater p.19.

<sup>68</sup>Hancock 1989:154.

The second of the two people to be cross-examined by the defence was Desmond Cussen, the man whom the prosecutor had called Ruth's 'alternative lover'.<sup>69</sup> Like George Ellis and David Blakely, Desmond Cussen had also been a customer in the club where Ruth worked. Unlike George and David, Desmond never committed violence against Ruth.<sup>70</sup> While Ruth remained committed to her relationship with David, she maintained her friendship with Desmond and he appeared to be her only source of emotional and financial support during her last weeks of freedom when she became increasingly traumatised by David's attitude towards her. He had witnessed David's treatment of Ruth on several occasions and had defended her when David became physically violent. In establishing a defence of provocation, it would seem essential to highlight evidence of such behaviour. Yet Stevenson neither referred to David's unreasonable and boorish behaviour nor asked who had been responsible for Ruth's injuries:

Have you ever seen any marks or bruises on her?

Yes.

How often?

*On several occasions.*

Have you sometimes helped her to disguise them with make-up and that sort of thing?

Yes. ...

Did you help to disguise bruises on her shoulders?

Yes.

Were they bad bruises?

Yes. ...

I do not want to press you for details, but how often have you seen that sort of mark on her?

*It must be on half a dozen occasions.*

Did you on one occasion take her to Middlesex Hospital?

Yes, I did.

Why was that?

*She came back when she was staying at my flat, and when I arrived back I found her in a very bad condition.*

In what respect?

*She had definitely been very badly bruised all over the body.*

And did she receive treatment for that condition at Middlesex Hospital.

Yes.<sup>71</sup>

The cross-examination was thus concluded, without any reference to who might have inflicted these injuries, an omission which led two commentators to conclude that defence counsel appeared "more concerned with her treatment at the hospital ... than her treatment at the hands of Blakely."<sup>72</sup> Thus, despite having

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<sup>69</sup>DPP2/2430 23371 Opening speech for prosecution p.3.

<sup>70</sup>He had repeatedly proposed marriage to Ruth and assisted her financially, for example by paying her son's school fees.

<sup>71</sup>DPP2/2430 2371. Cross-examination of Desmond Cussen by defence QC p.12.

<sup>72</sup>Marks & Van den Bergh 1990:140.

put forward a defence of provocation, Stevenson made the extraordinary statement that he did not want to 'press for details' - the very information which would have been crucial in establishing this type of defence. He also failed to call the evidence of staff at Middlesex hospital who had treated the injuries.<sup>73</sup>

When Ruth gave evidence, the jury was not further enlightened, for while she revealed David "was violent on occasions" she immediately added "he *only* used to hit me with his fists and hands, but I bruise very easily", a statement which sounded as if the violence was of little consequence, perhaps even caused by Ruth's skin texture.<sup>74</sup> Moreover, David's violent outbursts were - in his words - caused by Ruth "tarting round the bar" where she worked which made him "very jealous" of other male customers.<sup>75</sup> As I discussed in Chapter Five, this type of violence has been widely accepted as justifiable amongst men who consider it not only their responsibility but their *duty* to keep their women in check.

Ruth raised the issue of violence again when, describing the latter stages of their relationship, she said that "instead of being jealous of the 'bar', he was being jealous of Desmond":

What did he do to you?  
He used to hit me.<sup>76</sup>

Stevenson did not ask for elaboration. Yet, despite this reluctance to 'press for details', Ruth testified that ten days prior to his murder, "David got very, very violent" and punched her in the stomach, an act which was "followed by a miscarriage."<sup>77</sup>

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<sup>73</sup>For example Dr Robert Hunter Hill who had noted "multiple bruises on both arms and legs, the left hip, and around the left eye; ... [and] a more severe bruise over her left ankle", asked what had been the cause of the injuries. Ruth replied "that she had been beaten up by a friend who was a racing driver." (Goodman & Pringle 1974:24-5.

<sup>74</sup>DPP2/2430 23271 Evidence of Ruth Ellis p.39. My emphasis. See also Kelly, L. & Radford, J. (1990) "'Nothing really happened": the invalidation of women's experiences of sexual violence' in Hester, M, Kelly, L. & Radford, J. (eds) (1996) *Women, Violence and Male Power* Open University Press, Milton Keynes, where they argue "that as women we tend, and indeed are systematically encouraged, to minimize the violence that we experience from men." (p.19).

<sup>75</sup>DPP2/2430 23271 Evidence of Ruth Ellis p.39.

<sup>76</sup>DPP2/2430 23271 Evidence of Ruth Ellis p.42.

<sup>77</sup>DPP2/2430 23271 Evidence of Ruth Ellis p.45.



The two most common causes of provocation - violence and unfaithfulness - were both present in this case. Yet, when the second issue - unfaithfulness - was raised, Stevenson was equally reluctant to 'press for details':

... did you have occasion to complain to Blakely about his conduct with any other women. *I do not want you to mention any names, but did you?*<sup>78</sup>

Here was a second opportunity to prove the intense jealousy that Ruth had justifiably felt, and which Stevenson had failed to uncover in his cross-examination of Findlater; yet he merely hinted at David's unfaithfulness and repeatedly refused to secure proper evidence of such provocative behaviour as can be observed from his line of questioning:

Again I do not want to mention any names, but ... was some [sic] some trouble about a young woman?

Yes.

And again without mentioning names was that a woman down at Penn or Beaconsfield?

Yes.<sup>79</sup>

Mr Stevenson's desire to show tact and remain a 'gentleman' seems rather extreme. Given that his client's life was at stake it would have been more appropriate to call these various women to give evidence for the defence rather than concerning himself with protecting their 'reputation'. Moreover, apart from adding to the inadequacy of Ruth's defence, Stevenson's failure to provide evidence of David's numerous affairs provides a blatant example of the double standards of morality discussed in Chapter Five. David's sexual conduct was far more 'immoral' than Ruth's. Apart from living with Ruth, he was engaged to Linda Dawson, a woman from his own class background.<sup>80</sup> He was also having an affair with 'a married woman' in his home town. Like 'the nanny' with whom he was alleged to be having an affair at the same time, 'the married woman' remained nameless, and was never called to give evidence.<sup>81</sup> It is not known how many women David had affairs with, however, "when he was working ... at the hotel, David was wonderfully placed to exploit his charm in return for free meals and drinks."<sup>82</sup> When Ruth was engaged in identical work as a hostess, she was

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<sup>78</sup>DPP2/2430 23271 Stevenson questioning Ruth Ellis p.43. My emphasis.

<sup>79</sup>DPP2/2430 23271 Stevenson questioning Ruth Ellis p.44.

<sup>80</sup>See for example Hancock 1989:57; Ellis 1996:69.

<sup>81</sup>Farran 1988:42.

<sup>82</sup>Hancock 1989:51. See also Marks & Van den Bergh 1990:188 who write: "David was a conceited braggart, living off women and afraid of facing up to the scenes his behaviour inevitably provoked."

called a prostitute. David's behaviour however, was considered to be that of a 'play-boy'.<sup>83</sup> The fact that none of the above women were called to give evidence of his promiscuous and faithless character illustrates how the discourses around the double standards of morality, combined with the discourses around social class generated two results: first, that David's status as a victim remained intact. Second, that the other women with whom he had had affairs were considered to be entitled to protection from moral scrutiny, a privilege never extended to Ruth, for apart from being a 'tart' she was also a lower class woman, and thus stood utterly alone against David and his friends and lovers who, without exception, came from a higher social class.<sup>84</sup> This isolation was compounded by the defence team's failure to call the evidence of women from a similar class background to Ruth's. For example other waitresses in the club, where she had worked had witnessed David's boorish and violent behaviour "and could have indicated the stresses and strains endemic in the relationship as well as his general attitude and behaviour."<sup>85</sup> As no explanation was offered as to why such witnesses were not called we can only speculate that Ruth's defence team shared the 'culpability' discourse outlined in Chapter Five that women who 'tart around bars' - are to a certain extent - responsible for the violence directed against them.<sup>86</sup> From the perspective of this discourse Ruth's failure to police her behaviour in the public sphere legitimised David's violence and provides an example of a man disciplining his 'out of control' or 'uppity' partner, a subject also discussed in Chapter Five.

In sum, the two most common causes of provocation - violence and unfaithfulness - could be found in abundance in the relationship between Ruth and David, yet defence counsel made no serious effort to prove either and called no witnesses to support Ruth's testimony about this behaviour. Furthermore, there was "astonishingly little examination of such crucial events as to where and how the intent to kill was formed."<sup>87</sup> Ruth's statement that she "had a peculiar idea [she] wanted to kill David",<sup>88</sup> was simply accepted at face-value, and was never problematized - for example, by linking it to the amount of mental and physical abuse she had suffered, or her mental state following the miscarriage. After a

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<sup>83</sup>See for example Hancock 1989:80.

<sup>84</sup>Farran 1988:85 writes of Linda Dawson, 'the married woman' and 'the nanny': "All three would have been of a different and 'better' class than Ruth Ellis, and there might have been a general reluctance to 'bring shame' on 'respectable' women by calling them."

<sup>85</sup>Farran 1988:87; Ellis 1996:94.

<sup>86</sup>As noted above (p.406), this was how David himself both excused and explained his violence against Ruth.

<sup>87</sup>Farran 1988:43.

<sup>88</sup>Quoted in Farran 1988:43.

close inspection of the trial transcript we cannot fail to agree with Georgie Ellis who, 40 years after her mother's execution wrote of her defence:

The harm that David Blakely inflicted upon my mother had been but peripherally touched upon and thinly portrayed. Thereafter it had been glossed over by a parade of almost irrelevant trivia that had nothing to do with Ruth's state of mind, nor with that which had driven her to exterminate her perfidious lover.<sup>89</sup>

The only possible excuse to be made for the defence's conduct was the fact that Ruth herself grossly understated her suffering at the hands of David:

As Ruth stepped down from the witness-box, the jury knew nothing of her background whatsoever. She had deliberately suppressed her hardships, her early poverty, the fact that Andy was illegitimate ... the entire gamut of circumstances that might have incited some degree of sympathetic consideration from the twelve members of the jury.<sup>90</sup>

We are thus left with the question: why did Ruth's defence team not argue her case with more vigour? Why did the defence team not question the state of mind of a woman - not yet 30 - who appeared to be totally indifferent to her fate and made no effort whatsoever to save herself, but instead told her junior counsel:

You will make certain, won't you ... that I shall be hanged? That is the only way that I can join him [David].<sup>91</sup>

In Chapter One I argued that women who refuse to demonstrate commitment to the conventional female role - particularly in the areas of sexuality, respectability, domesticity and motherhood - may become victims of judicial misogyny. In this case-study I have argued that concern about women's conduct in these four areas was especially intense during the 1950s, as the apparent break-down of family values and moral decay was responded to by an increase in the surveillance, regulation and control of women. The overwhelmingly male-dominated legal establishment did not (and does not) operate in an ideological vacuum but was an integral part of a culture which believed that increased regulation and surveillance of women should form a key aspect of the strategy for stemming the tide of moral decay. Mr Stevenson's superficial style of cross-examination can

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<sup>89</sup>Ellis 1996:189.

<sup>90</sup>Ellis 1996:187.

<sup>91</sup>Rawlinson, P. (1989) *A Price Too High* Weidenfeld and Nicolson, London p.61. Despite being the junior counsel for the defence in what was arguably the most notorious murder trial of the 1950s, Sir Peter Rawlinson who was to be appointed Attorney-General in 1970, failed to remember the correct date of Ruth Ellis's execution in his autobiography and wrote she was hanged on 12th July 1955.

thus be placed within the context of an era stifled by snobbery and respectability which helps to explain why he called Ruth's story 'sordid'<sup>92</sup> and appeared to be more concerned with "unnecessary mud-slinging" than with saving her life.<sup>93</sup> Even 27 years later, and after several commentators had questioned the justice of her sentence, Stevenson when asked if justice was done when Ruth was hanged, replied: "I'm afraid it was. But may I in justice to her say how I revere her memory. She was a splendid girl."<sup>94</sup> Rather than exposing the cruelty and violence David had inflicted on her, which might have secured a recommendation for mercy, his concern was with upholding the manners and propriety of his class as when he told the court that "it is always an unpleasant thing to say anything disagreeable about someone who is dead."<sup>95</sup> After all, David was a member of the upper-middle class like Stevenson himself, while Ruth was a "brassy ... blonde tart" whose attempts to 'better' herself had been regarded with contempt by various commentators prior to the trial.<sup>96</sup> In the words of one observer:

Again and again Mr Stevenson threw away points ... [which] could have won the jury's sympathy... [because] he appeared to have decided that it was best not to probe the unconventional half-drunk world of Ruth Ellis, or to get behind the 'hostess front' and release to the Court the self-love, jealousy and ambition that was really her.<sup>97</sup>

Ruth fitted the criteria for the 'type' of person who was responsible for the apparent break-down of clearly defined class barriers. Her existence and her 'visibility' made it impossible to deny the hypocrisy of a culture which, simultaneously emphasised morality and family values, yet also accommodated the desire of many male members of the 'respectable' classes, to spend time with women like Ruth in day-time drinking clubs.<sup>98</sup> Gone were the days when an 'unsuitable' relationship could be resolved by a 'gentleman' marrying someone from his own class-background whilst satisfying his less respectable urges by maintaining a mistress.<sup>99</sup> Instead of accepting her place as David's mistress, Ruth

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<sup>92</sup>DPP2/2430 23271 Mr Stevenson's opening speech for the defence p.32.

<sup>93</sup>Stevenson quoted in Hancock 1989:152.

<sup>94</sup>Sir Melford Stevenson quoted in *Sunday Telegraph* 21st March 1982.

<sup>95</sup>DPP2/2430 23271 Mr Stevenson's opening speech for the defence p.32.

<sup>96</sup>Marks & Van den Bergh 1990:134; *The Daily Mail* 22nd April 1955 quoted in Bardsley 1987:140. *The Mail* reported that despite taking elocution lessons "she failed to rid herself of a Manchester accent ... every turn failed, for Blakely was still ashamed of her."

<sup>97</sup>Hancock 1989:159.

<sup>98</sup>Hancock 1989:22.

<sup>99</sup>See for example Ryan, B. with The Rt Hon Lord Havers (1989) *The Poisoned Life of Mrs Maybrick* Penguin, London p.28 which describes the case of Florence

was an 'uppity' woman as described in Chapter Five, who demanded to become fully acknowledged as David's wife. As such she can be seen to exemplify the shift in 'visibility' of the 'immoral' woman discussed above - an aspect which added yet further reinforcement to her dangerousness.

Apart from disobeying the code relating to social class, that of 'knowing your place', Ruth had also repeatedly disobeyed the gender code of conduct. During her trial she failed to display signs of emotional upset and she failed to show redemption or remorse, or any other characteristics considered appropriate and typical of the female. Instead the judge and jury saw a woman who appeared extremely capable and rational, characteristics in keeping with the existing image of Ruth as a cool, calculating, ruthless and unemotional *femme fatale*. Most serious of all, these characteristics did not meet the requirements of Ruth's defence of provocation but instead added up to an image of dangerous womanhood. So dangerous, that no-one - including her defence counsel - appeared willing to slow down the speed with which Ruth was hurtling towards her death. Indeed no-one even questioned her adamant wish to die - it was merely another deviant characteristic in an already deviant personality. Even Duncan Whittaker's expert testimony that "an apparent attitude of indifference or detachment ... [could be] a solution to some intolerable problem", fell on deaf ears, as Mr Justice Havers ruled a defence of provocation inadmissible.<sup>100</sup>

### The Judgement.

In the Ethel Major case-study I discussed the impact of cumulative abuse and provocation on women, and the difficulties that women have experienced in having this form of defence accepted in a court of law. I pointed out that the law has been defined according to how 'the reasonable man' would act under provocation, which has resulted in the acceptance of 'heat of the moment' retaliation. A planned killing however, even after cumulative and severe provocation, is still largely regarded as a heinous act of revenge, carried out by a scheming and cunning individual. The Ellis case provides a poignant example of the history of this male-defined view of provocation. Stevenson was well aware of

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Maybrick who in 1889 stood trial for the murder of her husband James Maybrick. As well as being married with two children he also had an entire unacknowledged 'parallel' family consisting of a mistress and five children, two of whom had been born after his marriage to Florence.

<sup>100</sup>DPP2/2430 23271 Evidence of Dr Duncan Whittaker p.59.

the difficulties facing him before a defence of provocation could be accepted. He told the judge:

We are all very, very familiar with ... the degree of provocation which is required so far as a man is concerned ... but ... one finds ... complete silence in the authorities as to the effect of jealous conduct on the average female's mind... I know, of course, that one of the elements of provocation is the question whether or not in the particular case there is a reasonable interval between the provocation arising and the act of which complaint is made to allow for cooling of the passion.<sup>101</sup>

Mr Stevenson attempted to introduce the notion of cumulative provocation by reminding Mr Justice Havers:

Repeatedly during the time that she was in this state of emotional tension about him he went off and consorted with other women; marks upon his body which indicated a love affair with another woman were observed by her from time to time while he received financial support, clothes, food, and other advantages from her.<sup>102</sup>

It was within this context that "provocation derived from jealousy, provocation derived from emotional pressure ... had caused her immense suffering over a long period of time."<sup>103</sup>

Even Mr Humphreys, the prosecutor, agreed she had been provoked beyond the tolerance level of the 'reasonable' human being:

... I accept fully that there is evidence before the jury that this woman was disgracefully treated by the man who died, and I accept my learned friend's proposition that it would tend to lead her into an intensely emotional condition, even as that hypothetical person 'the ordinary reasonable human being' ...<sup>104</sup>

It was to no avail. Mr Justice Havers maintained "the whole doctrine relating to provocation depends on the fact that it causes or may cause a sudden and temporary loss of self-control."<sup>105</sup> Neither judge nor defence QC had been able to find a precedent concerning how a 'reasonable woman' might act in the face of severe provocation. Ruth Ellis, like Ethel Major and countless others before and after her, therefore had to be judged according to how the 'reasonable man' would act. Hence, Havers directed the jury "that the evidence in this case does not

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<sup>101</sup>DPP2/2430 23271 Mr Stevenson to Mr Justice Havers pp.62-3.

<sup>102</sup>DPP2/2430 23271 Mr Stevenson to Mr Justice Havers p.63.

<sup>103</sup>DPP2/2430 23271 Mr Stevenson to Mr Justice Havers p.63.

<sup>104</sup>DPP2/2430 23271 Mr Humphreys to Mr Justice Havers p.69.

<sup>105</sup>DPP2/2430 23271 Mr Justice Havers to Mr Stevenson p.68.

support a verdict of manslaughter on the grounds of provocation."<sup>106</sup> Mr Stevenson's defence of provocation which had been argued half-heartedly throughout the defence, had thus collapsed completely, as the jury was told that manslaughter on the grounds of provocation was no longer an option. With the judge's ruling Melford Stevenson gave up any pretence of defending Ruth, and announced to the jury that there would be no closing speech on behalf of the defendant since such a speech would invite "the jury to disregard your Lordship's ruling..."<sup>107</sup> The omission of a closing speech on behalf of the defence resulted in the judge commencing his summing up immediately after Ruth had made a particularly damaging reply. In what has been described as "the shortest cross-examination in a murder trial in the records of Number One Court", Humphreys asked Ruth just one question:

Mrs Ellis, when you fired that revolver at close range into the body of David Blakely, what did you intend to do?

*It is obvious that when I shot him I intended to kill him.*<sup>108</sup>

With this answer Ruth had practically convicted herself but the judge nonetheless ensured that the jury was partial to his personal opinion before he commenced dealing with the evidence for the defence:

... even if you accept every word of it, it does not seem to me that it establishes any sort of defence to the charge of murder.<sup>109</sup>

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<sup>106</sup>DPP2/2430 23271 Mr Justice Havers to the jury p.71. Arthur Koestler would not have been surprised by Justice Havers' ruling for while he acknowledged that "there always existed humane judges", he also maintained that "as a body, the judges of England have, as far as historical evidence goes, at every crucial juncture exerted their influence in favour of maximum severity as against any humanitarian reform." With specific reference to the concept of precedent, Koestler wrote in 1956, the year following Ruth Ellis's execution: "Their judgments are preserved as records, and 'it is an established rule to abide by former precedents ... The extraordinary deference paid to precedents is the source of the most striking peculiarities of the English Common Law.' ... Since precedent must be their only guidance, by the very nature of their calling [judges] had their minds riveted on the past. They not only administered the law; they made it." (Koestler, A. (1956) *Reflections on Hanging* Victor Gollancz, London p.27; 28). Cases such as those of Sara Thornton, Emma Humphries and Kiranjit Ahluwalia lend credence to Koestler's contentions, since more than 40 years after Ellis's execution, the issues of cumulative provocation and 'delayed' rather than 'heat of the moment' retaliation to such provocation remain highly controversial. For further discussion on this subject see Edwards (1989); Ballinger (1995); Stanko & Scully (1995).

<sup>107</sup>DPP2/2430 23271. Mr Stevenson's reply to Mr Justice Havers's ruling p.72.

<sup>108</sup>DPP2/2430 2371 Trial transcript p.58.

<sup>109</sup>DPP2/2430 23271 Judge Havers' summing up p.81.

Mr Justice Havers ended his summing up by dismissing the evidence of the only witness for the defence apart from Ruth herself, Duncan Whittaker, claiming it had "no relevance in this case," before telling the jury:

According to our law ... it is no defence for a woman who is charged with murder of her lover to prove that she was a jealous woman and had been badly treated by her lover and was in ill-health and, after her lover promised to spend the Easter holidays with her, he left her without any warning and refused to communicate with her, or that he spent holidays with his friend or in the company of another woman, or if he was committing misconduct with another woman, and that as a result of that she became furious with him and emotionally upset and formed an intention to kill him which she could not control. None of these facts individually afford any defence, nor do they all collectively afford any defence.<sup>110</sup>

This quote illustrates how - after dismissing a defence of provocation - Havers took the liberty of re-writing the events which had been utilised to demonstrate this behaviour. For example, being "badly treated" became a synonym for mental cruelty and physical violence, and "ill-health" became a synonym for suffering a miscarriage after a beating from the baby's father. We may assume that this verbal sanitising of the evidence helped the jury to reach the verdict for it took only 14 minutes to find Ruth guilty of murder. According to one juror, even that short time was not devoted to discussing the case:

...the thing that sticks out in my mind was that the others were going backwards and forwards to the toilet.<sup>111</sup>

While some may question the integrity of a jury who could spare only 14 minutes on deciding whether a woman should live or die, others may argue that the judge had already decided the verdict when he refused to accept a verdict of manslaughter on the grounds of provocation, hence there was really nothing to discuss as noted by one jury member:

The fact was the judge didn't direct us towards leniency... There was really nothing to argue about. I mean, it was Mrs Ellis, herself, who admitted she meant to kill him.<sup>112</sup>

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<sup>110</sup>DPP2/2430 23271 Judge Havers' summing up p.87.

<sup>111</sup>Quoted in Marks & Van den Bergh 1990:162. who interviewed this juror. In several publications the jury was reported to have been out for 23 minutes. It is recorded in the court transcript however that the jury retired at 11.52am and returned at 12.06pm. The entire trial lasted less than a day and a half, making it the third shortest after the trials of Emily Swann and Margaret Allen.

<sup>112</sup>Quoted in Marks & Van den Bergh 1990:162. For further discussion of the verdict see Farran, D. (1988) *The Trial of Ruth Ellis* Studies in Sexual Politics, Sociology Dept, University of Manchester pp.94-98 where she argued the judge's summing up gave the impression to the jury "that there were no mitigating circumstances."



When Ruth was asked if she had anything to say in response to her sentence she did not reply. Her case had remained 'open and shut' from beginning to end.

### An Alternative Truth.

In this final section I take issue with the dominant truth about Ruth Ellis as a cool, calculating, rational killer who carried out a premeditated murder in cold blood. I shall also argue, that far from being the lone, vengeful *femme fatale* which the popular press portrayed her to be, Ruth had an accomplice who played a far more active role in the murder than, for example, Edith Thompson had done as Freddy Bywaters' supposed accomplice. However, while Edith paid with her life, Ruth's *male* accomplice was simply ignored despite the authorities' knowledge of his activities. While this thesis would not wish to argue in favour of a male victim equivalent to Edith Thompson, the comparison never-the-less reinforces the gendered nature of punishment, a subject which I return to in the final chapter.

Ruth had told the jury about the three days leading up to the shooting. She had told them that she had had no sleep during the last two nights, had eaten little but drunk plenty of alcohol and smoked many cigarettes, as her pursuit of David became increasingly desperate. Yet the trial generally, and the defence in particular never captured the passion, turmoil and tension endemic within the relationship which led to Ruth's increasingly desperate pursuits of David at all hours and her obsessive vigil of the house where he was staying, before the final dramatic and violent conclusion to the relationship was drawn. These were all acts which belied the idea that Ruth was cold, unemotional and above all - *rational*. However, a more accurate description of her mental state never emerged because the jury was not given the opportunity to hear the evidence of Dr Rees, a psychiatrist who had treated her for several months prior to the shooting. She was still under the care of Dr Rees at the time of the shooting, being treated with tranquillisers for "intense emotional distress."<sup>113</sup> Dr Rees' partner, Dr William Sargant, was later to comment that the combination of tranquillisers and alcohol, which had been the main components of Ruth's diet in the three days before the shooting, "would have made her completely without

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<sup>113</sup>Marks & Van den Bergh 1990:157. Dr Rees would have given the jury a different picture of Ruth's state of mind as he was aware that since George Ellis was at Warlingham Park Mental Hospital, being treated for alcoholism, Ruth had been taking tranquillisers. "She had not only shouted for anyone to hear at the hospital that her husband had been having an affair with a woman doctor, but had gone up and down the bus queue outside demanding to know if anyone had seen him misconducting himself at the hospital with the doctors or nurses."

control."<sup>114</sup> There was therefore a long history of Ruth's troubled emotional state prior to the killing which could have been utilised by the defence as a contributory factor in her inability to deal with the deterioration of her relationship with David. At the same time it is important to note that even a more stable person may have found his behaviour highly provocative. As the relationship deteriorated so the extent of David's exploitation of Ruth increased. He contributed nothing to rent or other household expenses and did not pay for the drinks at the bar where Ruth worked but left her to settle his bills. He took her out only if she was prepared to pay all expenses herself. He refused to contribute to joint expenses such as hotel bills even when he had the necessary funds.<sup>115</sup> He attempted to emotionally black-mail her by saying he would have to sell his much loved racing car because of lack of funds. When Ruth protested he responded: "If you can find me £400 I won't need to sell it."<sup>116</sup> As a result of her relationship with David Ruth had lost her flat, her job, her money and her dignity:

The woman who once had pounds to waste had six-pence in copper in her bag when she was arrested and nothing in the bank. The poverty that she had always feared was here.<sup>117</sup>

In addition to being increasingly humiliated as a result of this exploitation, David's infidelities added jealousy to her already volatile mental state:

The fires of her jealous insecurity had been continuously stoked during the last week before the murder. Whatever moments of tenderness there had been ... were obliterated by the realisation that David would never marry her. ... All the illusions about 'being somebody' had disappeared.<sup>118</sup>

Thus, far from being cool, calm and unemotional Ruth was over-wrought and disturbed to the point of suffering from diminished responsibility:

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<sup>114</sup>Quoted in Marks & Van den Bergh 1990:161.

<sup>115</sup>Ruth would give money to David so he could pretend to pay the bills in public. For example, he asked her for £5 to pay for a hotel room. Ruth almost immediately discovered that David was in a financial position to pay the bill himself. Typically, she understated her feelings about the incident when during the trial she said: "I just thought it was a mean way of getting money from me ..."  
(DPP2/2430 23271 p.46).

<sup>116</sup>DPP2/2430 23271 Evidence of Ruth Ellis p.48.

<sup>117</sup>Hancock 1989:185.

<sup>118</sup>Hancock 1989:185.

I believe that Ruth Ellis shot her lover because she was temporarily insane with jealousy and humiliation, and her sense of responsibility was destroyed by alcohol.<sup>119</sup>

Similarly, others have argued that Ruth found "herself in something like an emotional prison guarded by this young man, from which there seemed to be no escape"<sup>120</sup>:

It was a case where Ruth Ellis had gone through all the transports of rage and jealousy until I am quite convinced she had got into a very calm state of mind where she was in a sort of stratosphere of emotion, in which she thought everything she did was right and justified.<sup>121</sup>

Indeed several commentators, including Ruth's solicitor, have argued the case was a major factor in establishing the defence of diminished responsibility two years after her execution.<sup>122</sup> Ruth herself gave several clues to her state of mind, for example by refusing to appeal against her conviction and when she wrote: "I was in a terribly depressed state."<sup>123</sup> With reference to the Findlaters she said: "I don't mind hanging, but I don't see why they should get away with it."<sup>124</sup> When her solicitor implored her to tell the whole truth about the killing she responded: "I'll tell you ... if you promise not to use it to try and save me."<sup>125</sup> She asked her mother to smuggle sleeping tablets into the prison because she wished to commit suicide.<sup>126</sup> This determination to die as well as her continued insistence that the Findlaters were responsible for David's death ought to have caused concern about her mental state. But, as a result of Ruth's failure to articulate her femininity through dominant modes of expression - in this case by presenting herself as a victim - it was not even questioned. Her failure to fulfil gender-role expectations inside the court-room fitted only too well with her refusal to demonstrate commitment to conventional female roles in her personal life, especially within the areas most likely to give rise to judicial misogyny - those of sexuality, respectability, domesticity and motherhood. Instead of seeing a woman who had

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<sup>119</sup>Hancock 1989:184.

<sup>120</sup>*The Sun* 21st September 1972 quoting Mr Melford Stevenson.

<sup>121</sup>Ruth Ellis's solicitor Mr Bickford quoted years after the trial in Marks & Van den Bergh 1979:158. Ruth was to change her solicitor to Mr Mishcon after the trial.

<sup>122</sup>See for example Marks & Van den Bergh 1990:158; Ellis 1996:2.

<sup>123</sup>Quoted from a statement made the day before Ruth Ellis's execution in Marks & Van den Bergh 1979:205.

<sup>124</sup>Quoted in Hancock 1989:173.

<sup>125</sup>Bresler, F. 1965:247. Fenton Bresler interviewed Mr Mishcon for his book.

<sup>126</sup>Interview with Ruth's sister Muriel Jakubait in *Daily Express* 14th February 1985.

been repeatedly exploited, betrayed and beaten until her mind was so disturbed that her responsibility had become diminished the jury saw "a mechanical, unfeeling doll," ... a "hard-faced, unemotional woman [who] had been left by a man and because she was jealous, she had shot him in the back, one shot having been fired from a distance of less than three inches."<sup>127</sup> Because of what was 'known' about Ruth as a woman there appeared to be no need to problematise this apparently 'open and shut' case. Her transgressions of the female role ensured that she had become categorised as a 'bad' woman even before the killing. As had been the case with Margaret Allen, these transgressions were so severe that they "threatened a crisis of sexual difference" for Ruth had indulged in liberties usually reserved for men.<sup>128</sup> That is, she exercised freedom of movement - entering night-clubs when and where she pleased; she enjoyed economic independence, indeed she was engaged in the traditional male role of being the sole provider; she had sexual relationships when and with whom she pleased without shame; she allowed other family members to take the main responsibility for her children's upbringing and allowed the other parent to take sole responsibility for her daughter following her divorce - all liberties which, when engaged in by men are hardly considered liberties at all, but normal and taken for granted behaviour. But Ruth was 'worse' than Margaret Allen because of her outward conformity to feminine standards. Unlike Margaret whose deviance was obvious from her appearance, Ruth was 'a wolf in sheep's clothing', for she imposed all the disciplinary practices which inscribe femininity in the female body as argued in Chapter Five. Her carefully applied make-up, dyed hair, slenderness, smart suits and stilettos indicated that Ruth was a woman who accepted the "dominating gaze of patriarchy" as argued by Bartky.<sup>129</sup> Yet, underneath that exterior lurked a woman, capable of killing the perpetrator of the patriarchal gaze. Thus, the manner of her violent act as well as her chosen murder method served to reinforce her dangerousness still further for they made her femininity "appear only as an outrage, as something inappropriate and out of place"<sup>130</sup>, which in turn became one of the factors that ensured she came to experience the full force of judicial misogyny.

So far I have indicated a deep unwillingness to challenge the dominant truth about David Blakely's murder by those inside the court-room (including Ruth herself). However, officials working on the case outside the court-room also

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<sup>127</sup>Hancock 1989:159; 167.

<sup>128</sup>Rose, J. (1993) *Why War?* Basil Blackwell, Oxford p.50.

<sup>129</sup>See Chapter Five p.27.

<sup>130</sup>Rose 1993:51.

demonstrated a singular lack of interest in investigating the full details of the murder as I shall now illustrate.

Virtually everybody involved in the case - police officers, lawyers, jury members, defence and prosecuting counsels, even the trial judge - admitted they did not believe Ruth's story that she had obtained the murder weapon as security for a debt.<sup>131</sup> But as a result of the 'open and shut' nature of her case no effort was made to investigate how she had obtained the gun. It was not even tested for finger-prints. Only after continued pressure from her lawyer Mr Mischon, did Ruth agree to make a new statement less than 24 hours before her execution:

... it is only with the greatest reluctance that I have decided to tell how it was that I got the gun with which I shot David Blakely. I did not do so before because I felt I was needlessly getting someone into possible trouble. I had been drinking Pernod ... in Desmond Cussen's flat and Desmond had been drinking too. We had been drinking for some time. I had been telling Desmond of Blakely's treatment of me. I was in a terribly depressed state. All I remember is that Desmond gave me a loaded gun. Desmond was jealous of Blakely as in fact Blakely was of Desmond. I would say that they hated each other. I was in such a dazed state that I cannot remember what was said. I rushed out as soon as he gave me the gun. He stayed in the flat. I rushed back after a second or two and said: "Will you drive me to Hampstead?" He did so, and left me at the top of Tanza Road. I had never seen the gun before. ...<sup>132</sup>

Fenton Bresler who interviewed Mischon about this statement, described events rather more bluntly:

... by ... Easter Sunday Ruth Ellis and this man were in a maudlin state: "If I was near David now I'd shoot him!" she said. "Well, I've got a gun," he replied. ... That evening when there was still no word from Blakely ... the man drove her to the end of the road where the Findlaters lived, handed her the gun and said: "Go and shoot him!" and as she turned to walk down the street with his gun in her hand he drove off. Minutes later Blakely was dead.<sup>133</sup>

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<sup>131</sup>See for example Marks & Van den Bergh 1990:212.

<sup>132</sup>Statement by Ruth Ellis 12th July 1955 quoted in Marks & Van den Bergh 1990:204-5. This statement was also published by *The People* 2nd December 1973. According to Georgie Ellis, Ruth's son Andy who was ten at the time of the murder "saw Desmond Cussen place a gun in mother's handbag. He was not capable of inventing such a story and was able to describe to me precisely where he was in the flat when Cussen deliberately armed Ruth." (Ellis 1996:75). Writer Laurie Manifold traced Desmond Cussen to Australia in 1973 where he confronted him with Ruth's last statement. He responded: "I won't say she's a liar. But funny things go through people's minds at the 12th hour. (*The Sunday People* 2nd December 1973).

<sup>133</sup>Bresler 1965:248.

The Home Office and police response to Ruth's final statement is shrouded in mystery and contradiction. Mr Mishcon suggested that police officers were not given enough time to investigate the possibility of Ruth having an accomplice, hence the Home Secretary should have postponed "the execution so that proper inquiries could be made."<sup>134</sup> The Home Secretary however claimed:

The police were, in fact, able to make considerable inquiries. But anyway it made no difference. If anything, if Mrs Ellis's final story was true it made her offence all the greater. Instead of a woman merely acting suddenly on impulse here you had an actual plot to commit murder, deliberately thought out and conceived with some little care. Even if a man were also guilty he would only have been an accessory before the fact: she would still have been the principal.<sup>135</sup>

The Home Secretary's opinion about 'the man' stood in sharp contrast to official opinion about Edith Thompson 32 years earlier, whose co-accused - Freddy Bywaters - repeatedly insisted that he was not only the principal but indeed the sole participant in the killing of Percy Thompson. Moreover, Tenby's claim that inquiries were 'considerable', was challenged by three journalists:

At 4.30pm on the day before the execution two detectives ... were detailed to investigate Mr X. The two detectives missed their quarry at his office by a narrow margin - he had left 20 minutes before they arrived. They rushed to his home - to find that he had been seen leaving with two suitcases. The detectives maintained their vigil until what they call "late in the evening," when they were instructed to withdraw by a Deputy Commander at Scotland Yard. Ruth Ellis was hanged early next morning.<sup>136</sup>

Ruth's previous solicitor John Bickford, told *The People* that he could have confirmed the truth of Ruth's statement because "Mr X had confessed his part in the crime to Mr Bickford, even admitting he had shown Ruth how to use the gun." Ruth had forbidden him to use this information during the trial and he had no knowledge that Ruth had now told the whole truth, thus releasing him "from his duty to keep silent":

The Home Office did not contact me. The police did not come near me. Yet I possessed the evidence they were seeking ... I could have given the facts that would have saved Ruth Ellis.<sup>137</sup>

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<sup>134</sup>Mr Mishcon quoted in Bresler 19975:250.

<sup>135</sup>Lord Tenby interviewed by Fenton Bresler 1975:250.

<sup>136</sup>Report by Laurie Manifold, Harry Warschauer & Alan Ridout in *The Sunday People* 9th December 1973. Goodman & Pringle 1974:72 also challenge Lloyd George's claim that inquiries were 'considerable' and write that he omitted to add "that these inquiries all failed."

<sup>137</sup>John Bickford quoted in *The Sunday People* 9th December 1973. Mr Bickford gave an official statement to the police in 1972 in which he relayed that Desmond

These statements throw severe doubt over Home Secretary Lloyd George's claim that inquiries were 'considerable', and instead suggest a lack of interest or desire to discover an alternative truth which would reveal the case to be less 'open and shut' than first believed. It suggests that it was in fact the Home Secretary's attitude which was 'open and shut' rather than the case of Ruth Ellis. Lloyd George appeared to confirm this himself when - presumably recognising that if evidence was revealed that Ruth had been encouraged to kill David whilst intoxicated or of unsound mind attitudes would change drastically in her favour - he stated: "If she isn't hanged tomorrow, she never will be."<sup>138</sup>

When the execution was only two days away, Lloyd George went to stay with his sister Lady Megan, where he was observed stroll[ing] out to sniff the roses in the garden ... [and] walk[ing] in sunny Welsh lanes..."<sup>139</sup> During the last 24 hours of Ruth's life when vital evidence concerning the gun could have been uncovered and a life spared, the Home Secretary refused to see both her lawyers and "a group of socialist M.P.s."<sup>140</sup> Meanwhile, the Home Office Permanent Under Secretary, Sir Frank Newham, "was in the Royal Enclosure at Ascot racecourse."<sup>141</sup>

The failure to complicate the 'stark simplicity' of the Ruth Ellis case by all those involved, demonstrates the power of judicial misogyny. From the very moment of her arrest when police officials failed to order a blood-test to determine Ruth's alcohol level or to examine the gun for finger-prints, throughout the trial, and through to the last 24 hours of her life, when it became increasingly clear, that far from being an 'open and shut' case, this was in fact a highly complex one involving a second jealous lover, who may have believed he had much to gain by David's death, there was a total failure by law-enforcement agencies, legal personnel and state servants to question the 'obviousness' of this case. In short, no-one in a position of power appeared to be interested in saving this woman's

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Cussen had told him that he (Desmond) had oiled the gun, given it to Ruth and taken her to a wood for target practice, after which he drove her to the scene of the murder: "He showed her how it worked, his explanation being that she was so beside herself and so persistent and he was so much in love with her that he eventually gave in." According to Mr Bickford, the statement was passed on to the Director of Public Prosecutions who "propose[d] to do no more in the matter." (*The Sunday People* 2nd December 1973). See also *Daily Express* 13th July 1955 which reported that "a report [concerning the ownership of the gun] was made to the Home Office. But it was decided that it had no direct bearing on the case."

<sup>138</sup>Lloyd George quoted in Goodman & Pringle 1974:73.

<sup>139</sup>*Daily Express* 11th July 1955.

<sup>140</sup>*Daily Express* 13th July 1955.

<sup>141</sup>Ellis 1996:21; Bresler 1965:248-9.

life. Ruth was not the 'type' to invoke sympathy but instead repeatedly displayed the signs of dangerous womanhood. By the time she was awaiting execution she had been revealed to be a heavy drinker, an ex-prostitute and a club-hostess, a divorcee, a mother of an illegitimate child, an abortionist and a 'bad' mother living a highly immoral existence with her 'toy-boy' lover. During her trial she had continued her pattern of deviancy by failing to mobilise emotional or hysterical images of femininity or down-trodden and pathetic images of victimhood. Instead she activated yet another discourse associated with dangerous womanhood - that of a glamorous but brittle, jealous and vengeful, immoral woman. Her appearance and demeanour, coupled with her social class, life-style and attitude towards sex, marriage, motherhood and domesticity ensured that all those involved in her case, including her defence, perceived her in a negative, condemnatory manner, for she encompassed every one of the characteristics conducive to judicial misogyny, which in turn ensured she was perceived to be less deserving of a reprieve:

She died because she did not plead for mercy, and because she was not sorry. She died because she made fools of those ... who wanted a soiled, identikit, anti-heroine to take pity on, and were confronted instead with a complex, intelligent human being.<sup>142</sup>

While the prospect of Ruth's execution was met with either indifference or support amongst those with the authority to prevent it, it provoked resistance, hostility and outrage in vast numbers of the public both in Britain and abroad. Over 100,000 individuals in Britain signed a petition "to reduce the charge against her from murder to manslaughter."<sup>143</sup> Spontaneous petitions for a reprieve were started throughout the country <sup>144</sup>, with individuals such as Frank Neale - a friend of Ruth's - collecting 5,000 signatures alone.<sup>145</sup> Another petition was

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<sup>142</sup>Bardsley 1987:143. Similarly, Farran has written: "Ruth Ellis was hanged not just because of her act of killing David Blakely, but also and more particularly because of how that killing was constructed and how she was constructed by the popular press, and then by both the prosecution and defence at her trial." (Farran 1988:12).

<sup>143</sup>Clare Cox in *Police Review* 22nd August 1986.

<sup>144</sup>For example, Frieda Pratt, who herself had been accused of the attempted murder of her abusive husband four years previously, started a petition, arguing that "we were both faced with emotionally impossible situations." *Daily Express* 5th July 1955. See also Ellis 1996:209.

<sup>145</sup>*Daily Express* 12th July 1955.



signed by 35 members of London City Council.<sup>146</sup> Four days prior to the execution 25,000 signatures had reached the Home Secretary.<sup>147</sup>

The decision to allow the execution to take place was also condemned internationally. In France *Le Monde* argued that: "the Englishman ... believes himself to be a creature of *sang-froid*, and the legal system in force supports this fiction in over-ruling once and for all any emotional troubles or irresistible impulses ... the fundamental argument of the traditionalist rests much less, in the long run, on the deterrent effect of the system ... than on the old law of 'an eye for an eye.'"<sup>148</sup>

The American writer Raymond Chandler, who was staying in London at the time of the execution, presented his own version of an alternative truth:

The case of Ruth Ellis was no bestial or sadistic killing ... It was a crime of passion committed, I feel certain, under a kind of shock which may have flared up uncontrollably shortly before the man was shot. *The phrase 'cold-blooded' doesn't come into it. This woman was hot-blooded ... Sure she is a woman with a back-ground but that doesn't mean to say she can't fall in love...*<sup>149</sup>

Large crowds chose to register their protest at the execution by standing outside the prison gates the night beforehand, and, under the leadership of Mrs Van der Elst, chanted "Evans - Bentley - Ellis."<sup>150</sup>

In the aftermath of the execution several Labour MPs and one Ulster Unionist MP voiced their disagreement with the practice of capital punishment, while Labour MP Emmanuel Shinwell called for its abolition.<sup>151</sup> The issue of abolition

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<sup>146</sup>*Daily Express* 13th July 1955.

<sup>147</sup>*Daily Express* 9th July 1955. Ruth Ellis's execution was also met with resistance in leading articles from diverse publications such as *The Daily Mirror* 30th June 1955 and *The Lancet* 23rd July 1955.

<sup>148</sup>Quoted in *The Times* 13th July 1955.

<sup>149</sup>Interview with Raymond Chandler in *Daily Express* 1st July 1955. My emphasis.

<sup>150</sup>*The Times* 13th July 1955. This was a reference to Timothy Evans and Derek Bentley whose executions have remained controversial to the present day.

<sup>151</sup>Parliamentary Debates, House of Commons 18th-28 July 1955 Session 1955-56 Vol 544 cols 538-543. Astonishingly one MP, Lieut-Colonel Lipton appeared to object to the fact that Ruth Ellis had been given brandy immediately prior to her execution when he asked "what prison regulations govern the supply of alcoholic liquor to persons sentenced to death." When the Home Secretary answered that the allowance was 1 pint of beer per day, Lipton asked: "How does the Home Secretary reconcile that with the evidence disclosed at an inquest last week? Will he also say whether hanging takes place whatever the degree of intoxication might be immediately before the hanging?" To Lloyd George's credit he

maintained a high profile in the media for several weeks after the execution with *The Howard League* renewing its call for abolition and the *National Campaign for the Abolition of Capital Punishment* being launched only weeks later.<sup>152</sup> Seven months after the execution the House of Commons passed a Bill to abolish capital punishment. It was rejected by the House of Lords, however two years later the defence of diminished responsibility became established in law.<sup>153</sup> Years later, Labour MP Tony Benn, who had played an active part in the campaign to abolish capital punishment, commented:

Undoubtedly the Ruth Ellis case played a large part in developing public opinion against capital punishment.<sup>154</sup>

Her very death had caused her immortalisation. Ruth herself never doubted the existence of an after-life and remained convinced that by dying she would rejoin David.<sup>155</sup> She continued to defy gender expectations to the very end by remaining calm, composed and dignified. Less than 24 hours before her execution she told a friend:

Have you heard the big news? I'm not going to be reprieved. Don't worry, it's like having a tooth out and they'll give me a glass of brandy beforehand.<sup>156</sup>

During her last evening she wrote to another friend:

I must close now, just remember I am quite happy with the verdict but not the way the story was told. There is so much that people don't know about.<sup>157</sup>

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answered: "I do not think I need to enter into that." In fact *The Royal Commission on Capital Punishment 1949-1953 Report* had recommended that the Prison Medical Officer's discretion "should be indulgently exercised." (col 541).

<sup>152</sup>*The Times* 4 and 26th August 1955. See also debates in the 'Letters' pages of *The Times* throughout June-July 1955.

<sup>153</sup>MPs passed the Abolition Bill on 12th March 1956 with 286 in favour and 262 against abolition. (Parliamentary Debates, House of Commons Session 1955-56 12th-29th March 1956 Vol 550 cols 36-151). The defence of diminished responsibility became established in law as part of the Homicide Bill which was passed on 6th February 1957 with 217 in favour and 131 against the bill. (Parliamentary Debates, House of Commons Session 1956-57 vol 564 cols 454-567).

<sup>154</sup>Quoted in Goodman & Pringle 1974:76.

<sup>155</sup>See for example interview with Sir Melford Stevenson in *Sunday Telegraph* 21st March 1982 where he stated: "She was deeply convinced that she was going to be reunited in the hereafter with ... [David] ..."

<sup>156</sup>Letter to Jacqueline Dyer quoted in Hancock 1989:183.

<sup>157</sup>Letter reproduced in *Daily Express* 14th July 1955.

Her final letter was to her solicitor and demonstrates that to the very end she remained convinced that the Findlaters were partly to blame for David's death. She also referred to a letter from David's brother and sister-in law in the *Evening Standard* where they wrote that they required "a great deal more proof than that provided by the defence at the trial that any of the allegations against his character were founded on fact"<sup>158</sup>:

I am now content and satisfied that my affairs will be dealt with satisfactorily. I also ask you to make known the true story regarding Mrs Fin[d]later & her plan to break up David & I - she should feel content, now her plan ended so tragically.

... I would also like to answer David's brother's (newspaper remarks). ... he said he would have to have more proof than he heard in court before he would believe my story.

My reply to Derek is, I am sorry. I cannot give any more proof than I have. I did not defend myself. I say a Life for a Life. What more proof can he want?

I have spoken the truth, and I want to make the truth known for my family and son's sake.

Well, Mr Simmonds, the time is 9.30. I am quite well and not worrying about anything. Thanks once again.<sup>159</sup>

To the very end Ruth demonstrated the existence of an alternative truth about herself. For example, during her final hours she was concerned not about herself but with reassuring those she was about to leave behind as the following postscript to Mr Simmonds' letter indicates:

Just to let you know, I am still feeling alright. The time is 7 o'clock A.M. - everyone is simply wonderful in (staff) Holloway. This is just for you, to console my family, with the thought, that I did not change my way of thinking at the last moment.

Or break my promise to David's mother.

Well Mr Simmonds, I have told you the truth, that's all I can do.

Thanks once again.

Goodbye.<sup>160</sup>

Her efforts to comfort and reassure others challenges the one-dimensional image of Ruth as an uncaring, selfish and vindictive killer and instead indicates a complex and sensitive character, who even at the moment of death put the feelings of her family and friends before her own. Her dignity and bravery in facing death stood in sharp contrast to her executioner's coarse attempt to pay her a compliment:

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<sup>158</sup>Letter to the *London Evening Standard* by Mr & Mrs Derek Blakely 7th July 1955. Given the insipid nature of the defence their comment was entirely fair.

<sup>159</sup>Letter reproduced in Goodman & Pringle 1974:69

<sup>160</sup>Letter reproduced in Goodman & Pringle 1974:71.

She was no trouble. She wobbled a bit, naturally. Any woman can do that. Nothing went wrong with her. She was as good as bloody gold, she was.<sup>161</sup>

For those whom Ruth left behind however, her execution signalled the beginning of their punishment. Thus, less than three years later, her ex-husband George Ellis committed suicide by hanging.<sup>162</sup> Ruth's father Arthur Hornby, died next - "from depression and [a] broken heart ..." <sup>163</sup> The mental health of Ruth's mother began to deteriorate immediately after the execution, and prior to her death, she spent many years institutionalised in a mental hospital.<sup>164</sup> Ruth's sister Elizabeth "starv[ed] herself to death, her heart broken by Ruth's fate."<sup>165</sup> Arguably, most tragic of all, Ruth's son Andy never recovered from the trauma of his mother's execution:

... in a pattern that was repeated throughout his life, he had been left to fend for himself without adequate means, skills or powers of reasoning to do so ... he was a destroyed man, unable to fulfil a useful role in society.<sup>166</sup>

In June 1982 at the age of 38, Andy was found dead in his flat. He had committed suicide. His body had laid undiscovered for three weeks.<sup>167</sup> The coroner reported that he had had "an awful problem with depression."<sup>168</sup> Andy had finally re-established contact with his half-sister Georgie in the latter years of his life. During much of the time they spent together, he believed that Georgie was his mother and addressed her as such.<sup>169</sup> Arguably, such trauma was the ultimate consequence of a defence which the trial judge in later years was to call "so weak it was non-existent."<sup>170</sup> Unarguably, it is from such trauma that we learn what the reality of capital punishment means.

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<sup>161</sup>Albert Pierrepoint quoted in Ellis 1996:4.

<sup>162</sup>Ellis 1996:58.

<sup>163</sup>Interview with Ruth's sister Muriel Jakubait in *Daily Express* 20th July 1982.

<sup>164</sup>Marks & Van den Bergh 1990:189.

<sup>165</sup>Ellis 1996:77. See also Marks & Van den Bergh 1990:189. See also *Daily Express* 20th July 1982, where Ruth's sister Muriel Jakubait stated: "All the deaths were directly involved with my sister being hanged for murder."

<sup>166</sup>Ellis 1996:77.

<sup>167</sup>*Daily Telegraph*, *Daily Mail*, 29th June 1982; *Daily Express* 28th June 1982.

<sup>168</sup>*The Times* 20th July 1982.

<sup>169</sup>Ellis 1996:78.

<sup>170</sup>Mr Justice Havers quoted in *Daily Telegraph* 29th June 1977.

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## Chapter Nine

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### Conclusion.

I introduced this thesis by pointing out that 91% of women sentenced to death in the first half of the 20th century had their sentence commuted. Although this figure had come about mainly as a result of the large proportion of women who had committed infanticide I quoted the *Royal Commission on Capital Punishment 1949-1953 Report* to illustrate that there was 'a natural reluctance' to carry out the death sentence on a woman. In view of this 'reluctance' I posed the question 'why were the 15 women whose cases have now been examined, not worthy of a reprieve?' Without background information we might presume that they represented the ultimate irredeemable face of criminality - that they were 'monsters' or 'irretrievables'<sup>1</sup> - the 15 'worst' female criminals of the first half of the 20th century. Yet, in several of these cases, it seems highly unlikely the women would have committed further crimes had they lived. Even Miss Cronin - the deputy governor of Holloway prison at the time of Edith Thompson's execution, who "was not at all a sensitive or easily moved person" - was of the opinion that "if she had been spared she could have become a very good woman."<sup>2</sup> Conversely, Sarah Lloyd - who had been found guilty of beating to death her 86-year-old neighbour Edith Emsley with a spade - was due to be executed on 7th July 1955, six days before Ruth Ellis's execution. Prior to the beating "Mrs Lloyd had poured boiling carrots and onions over her."<sup>3</sup> Witnesses at her trial testified "that Mrs Lloyd stood chatting casually as the street inhabitants watched incredulously as Edith Emsley was carried into an ambulance. Cool as they come, that night Mrs Lloyd went out with her daughter to the cinema."<sup>4</sup> Sarah Lloyd was reprieved one week prior to Ruth Ellis's execution.

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<sup>1</sup>Koestler, A. (1956) *Reflections on Hanging Gollancz*, London p.150.

<sup>2</sup>PCOM 9/1983 XC2662. Margery Fry quoted by Arthur Koestler in *The Observer* 11th March no year, but quoted and discussed in this document. Given this quotation we may assume Miss Cronin was speaking from the perspective of a person accepting Edith Thompson's guilt.

<sup>3</sup>Ellis, G. (1996) *Ruth Ellis, My Mother* Smith Gryphon, London, p.208. See also Goodman, J. & Pringle, P. (1974) *The Trial of Ruth David & Charles*, London p.60.

<sup>4</sup>Ellis 1996:209.

It is examples and comparisons such as that between Ellis and Lloyd which demonstrate that women were not simply executed or reprieved according to 'merit' as the Home Secretary who was responsible for deciding the fate of these two women, claimed.<sup>5</sup> No impartial criteria existed which the Home Secretary could apply in order to determine whether Ruth Ellis's crime was 'worse' than that of Sarah Lloyd's. Rather, as I have argued throughout this thesis, what is known about female defendants as individual women play a considerable role in determining how their crimes are perceived and constructed. In particular, in the Introduction, I set myself the task of applying two questions - devised by Anne Worrall - to the cases-studies: "under what conditions do certain people claim to possess knowledge about female law-breakers?" and "what is the process whereby such claims are translated into practices which have particular consequences for female law-breakers?" I further argued that the personal conduct of women plays a crucial role in establishing such knowledge claims, particularly in the areas of sexuality, respectability, domesticity and motherhood. In applying this argument to the 15 case-studies I have repeatedly demonstrated that women who stepped outside patriarchal definitions of acceptable female behaviour in these four areas became constructed as 'dangerous' women which in turn resulted in them experiencing the full force of judicial misogyny. In other words, the discourses of dangerous womanhood were mobilised by the women's personal conduct and sexual behaviour. The consequences for these female law-breakers was initially judicial misogyny and ultimately death by hanging.

A brief reminder of the extent of these 15 women's transgressions will reinforce the central hypothesis of this thesis that women who have failed to conform to traditional expectations in the areas of sexuality, respectability, domesticity and motherhood are more likely to be the victims of judicial misogyny with the consequent result that they receive harsher punishment than women who conform to conventional models of femininity. Bearing in mind that the total sample consists of 15 women the following statistics apply: five had been prostitutes at some point in their lives; two had abortions; seven had illegitimate children; six had affairs while still married; five had lived with men who were not their husbands; six had children who were in care or otherwise not living with

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<sup>5</sup>After the execution of Ruth Ellis Labour MP Emmanuel Shinwell asked Lloyd George, whether, rather than the Home Secretary exercising the prerogative of commuting death sentences, this decision could be transferred to "a panel of persons qualified to judge." Lloyd George replied: "... all these cases are decided on their merits, and I am sure that I need hardly remind him that enormous care is taken in each case." (Parliamentary Debates, House of Commons, 18th -28 July Session 1955-56 vol 544, col 539).

them; three had separated from their husbands at a time when divorce was extremely rare; five had affairs/relationships with men several years their junior; six were described as promiscuous or over-sexed; seven had previous criminal records (two more would have had records if their abortions had been discovered); four were repeatedly described as heavy drinkers or alcoholics. Numbers in each category may have been higher since much of the data are unavailable. 13 of the 15 women had committed between two and seven of the above transgressions. One woman had committed all but one of them.

Having uncovered the extent of these women's transgressions and deviations from traditional ideas about women's nature - their supposed "passivity, submissiveness, asexuality and gentleness"<sup>6</sup> - we are in a position to demonstrate two important theoretical contentions. First, the story of executed women in the first half of this century confirms the hypothesis outlined in Chapter Five - that those who step furthest beyond the boundary of acceptable female conduct and behaviour also receive the harshest form of punishment. In Foucauldian terms, these women's stories have demonstrated that those who fail to regulate their behaviour and impose appropriate disciplinary practices upon their bodies (and indeed their minds) will come under increased surveillance, discipline and control, which - in extreme cases - extend to the point of extermination.

Second, the women's stories provide a challenge to the traditional portrayal of criminal women as 'mad or bad' as discussed in the Introduction - and instead allow us to tell an alternative truth about them. In that alternative truth we learn that women who kill are not the victims of 'raging hormones' or related biological functions - a portrayal which denies the rationality and agency behind their crimes. Equally, we learn that female murderers are not 'evil' aberrations of womanhood who can be set apart from 'normal' women and 'true' feminine conduct and behaviour. Instead, the behaviour of murderous women is firmly rooted within the social world with the patterns of their crimes reflecting "the changing social conditions of women."<sup>7</sup> Thus, as discussed in Chapter Three, the fact that infanticide was a common crime amongst female servants in the 17th century, was not due to defective personality traits or 'madness', nor was it due to an unusually high concentration of 'bad' women. Instead it was both a desperate and rational response to social conditions which regarded an unmarried mother

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<sup>6</sup> See Introduction footnote 30 (Morris, A. & Wilczynski, A. (1993) 'Rocking the Cradle: Mothers who Kill their Children' in Birch, H. (ed) (1993) *Moving Targets* Virago, London, p.199).

<sup>7</sup> Jones, A. (1991) *Women Who Kill* Gollancz, London p.xvi.

as immoral, unchaste, 'spoiled' and unemployable; while legal conditions ensured the master was rarely, if ever, punished for impregnating a servant. Nor could fathers be held responsible for maintaining their illegitimate children due to the "bastardy clauses".<sup>8</sup> In such circumstances committing infanticide became a matter of *survival*.

Similarly, the preponderance of 'baby-farmers' could only come into existence in a paternalistic culture dominated by "patriarchal concern for women's virtue ... which enshrined chastity as the measure of a woman's worth."<sup>9</sup> The fact that virtually all baby-farmers were women reflected an androcentric culture which placed child-care responsibilities almost solely upon the female sex. In order to justify this arrangement motherhood was elevated during the Reformation and the 'maternal instinct' was discovered in the 20th century. Thus, with regard to the women in Chapter Six who had killed children, the gendered nature of their trials can be understood as a result of them being on trial not just for murder but also as *mothers*. Their cases demonstrate the existence of the 'double standards' discussed throughout the thesis for Ada Williams' husband William did not stand trial as a father. Nor was it ever suggested at Louise Masset's trial that the absence of Manfred's father - and hence his failure to share the responsibility for the boy's welfare - was a contributing factor to his murder.<sup>10</sup> In an ungendered universe where the role of the father is treated equally to that of the mother, we would expect the total absence of a father to count as a mitigating circumstance if and when a mother failed to ensure the welfare of her child. It is frequently a mitigating circumstance where single fathers are concerned.<sup>11</sup>

With reference to the women in Chapter Seven, who had killed other women, I argued that two of these women - Margaret Allen and Styllou Christofi - ought to have belonged within the 'mad' category - that is - they suffered from mental illness and should not have been considered fit to either plead or hang. The fact that they were hanged demonstrates once again the consequences of what was known about them as women. That is to say, their mental illness could not be traced to their biological functions, and their crimes did not fit those usually associated with 'mad' women such as infanticide or the kidnapping of babies.

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<sup>8</sup>Clark, A. (1987) *Women's Silence Men's Violence* Pandora, London, p.108; 12.

<sup>9</sup>Clark 1987:109.

<sup>10</sup>This point carries equal weight regardless of whether Louise Masset was guilty or innocent.

<sup>11</sup>As can be seen from the case-study of Emily Swann, even a *partially* absent mother became a mitigating circumstance for William Swann's violence against his wife.



Instead knowledge about these women's past behaviour and conduct reinforced and amplified their current transgressions and final criminal acts.

Meanwhile, Louie Calvert became the ultimate example of the deeply entrenched and gendered belief, that "an evil woman must be more evil than an evil man", a belief which has come about because such a woman "departs more markedly from her ascribed gender role"<sup>12</sup>, whereas a comparatively high level of deviance and aggression in men has traditionally been regarded as part of 'normal' masculinity.<sup>13</sup>

In the remaining two cases - those of Dorothea Waddingham and Louisa Merrifield - we find this belief of women being 'doubly bad' amplified to the point where their two male accomplices were released while the women were hanged. That this should be the case was directly related to the women being judged not only as murderers but also as carers of the sick and helpless, arguably the job most closely associated with women's 'caring instinct' and 'natural' desire to nurture. As had been the case with Ada Williams, the fact that Dorothea and Louisa were executed while their male partners were released was not a result of these women's inherent 'evilness' or maladjustment compared to the men, but was instead tied in with both pre-conceived ideas about women as carers as well as the reality of that role which meant that - unlike their male partners - they carried out many of the day-to-day care duties almost single-handed, which resulted in them being observed to have a closer relationship to their victims. In turn this relationship generated more evidence against the women than their spouses, for it will be recalled, that neither Joe Sullivan nor Alfred Merrifield were found to be innocent; they were released as a result of lack of evidence. Similarly, William Williams, Ada's husband, was not declared innocent, but was found guilty of being an accessory after the fact. Again therefore, it is the social role of women as carers rather than individual pathology, which helps us to make sense of these cases and allows us to understand that it was not simply 'bad luck' or 'chance' but discourses around gender and carers, which resulted in the execution of Ada, Dorothea and Louisa while their men walked free.<sup>14</sup>

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<sup>12</sup>Cameron 1996:25.

<sup>13</sup>Susie Orbach has written: "Men who are violent, men who steal, men who commit sexual crimes, are still perceived as being an exaggeration of what man is. A man has to be a Fred West to be counted a real transgression from the norm." (*The Guardian* 1st March 1997).

<sup>14</sup>As noted in the case-study of Ruth Ellis in relation to Desmond Cussen, this thesis does not argue in favour of executing these men; instead this point is made to demonstrate the different standards by which men and women are judged, which in turn results in differential punishment between the sexes.

Lastly, with reference to women who kill their spouses, I have aimed to demonstrate that in the majority of cases, such killings came about - not as a result of the perpetrators being 'mad' or 'bad' - but as the result of a severe crisis in their personal relationships and within the context of male domination and female subordination.<sup>15</sup> As I indicated, this domination extended to physical violence in four of the five cases. I also described how that violence was severely under-stated and on certain occasions was not only excused altogether but also justified. Such excuses and justifications could only take place within a culture which accepts the subordination of women and therefore also accepts the belief "that there are times when every woman needs to be taken in hand":

Usually these are occasions when a woman challenges a man's authority, fails to fulfil his expectations of service, or neglects to stay in 'her place.'<sup>16</sup>

These case-studies have therefore demonstrated the presence of the 'double standard' by pointing out that a woman who has killed her spouse is not only judged for the murder of which she is accused, but also for her performance as a wife. In that sense the case-studies have provided historical back-ground and context to the modern issue of battered women who kill as exemplified in cases such as those of Kiranjit Ahluwalia, Emma Humphreys and Sara Thornton, who were all given life-sentences after being found guilty of murdering their abusive partners, but who after subsequent appeals and re-trials were released, having had their charges reduced to manslaughter.

Current debates around women who kill abusive partners clearly demonstrate that double standards still surround such women during their journey through the criminal justice system. For example, Sara Thornton was given a life-sentence for the murder of her husband Malcolm - an alcoholic who frequently became violent when drunk, and who had threatened to kill Sara's daughter Luise prior to his murder. Yet, as I noted in Chapter Eight, only two days after rejecting Sara's appeal, the same court allowed Joseph McGrail to be released immediately after his trial:

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<sup>15</sup>Beatrix Campbell makes this point in relation to contemporary women who kill in 'Foreword' Jones 1991:xi.

<sup>16</sup>Dobash, R.E. & Dobash, R. (1980) *Violence Against Wives* Open Books, Shepton Mallet p.93.

McGrail had kicked to death his common law wife Marion Kennedy. His excuse was he had come home to find her drunk again. The judge said "that woman would have tried the patience of a saint."<sup>17</sup>

The case of Joseph McGrail is not an isolated example, instead many such cases do not even go to trial as a consequence of 'plea-bargaining' involving the prosecution accepting "a plea of manslaughter in return for a guilty plea."<sup>18</sup> While men's most frequent excuse for killing their partners is infidelity, women are not considered to have the right to be equally provoked by their partners' unfaithfulness as the case of Diane and Alan Hunt demonstrates:

When she discovered her husband was having an affair she punched him on the nose. (It required hospital treatment.) He told her he had had two other affairs. She kicked him. He strangled her. A jury found him not guilty of murder. He walked free. The judge ... said, 'He had been outrageously provoked.'<sup>19</sup>

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<sup>17</sup>McNeill (1996) 'Getting Away With Murder' in *Trouble & Strife* 33, Summer 1996 p.7.

<sup>18</sup>Lees, S. (1997) *Ruling Passions* Open University Press, Milton Keynes p.143. Researchers for the Channel 4 programme 'Till Death Us Do Part' found "a worrying discrepancy in the way men who kill their wives are treated by the courts. It seems women's lives are worth a lot less than those of a stranger on the street, or the contents of a security van or Post Office safe." Their sample indicated that "in 46% of domestic killings either a plea of guilty to manslaughter was accepted, or a jury returned a manslaughter verdict; only 32% of non-domestics resulted in manslaughter convictions." (Reported in *The Guardian* 13th September 1995).

Susan Edwards has provided an in-depth critique of Home Office figures which indicated that women were nearly "twice as likely" to be indicted for manslaughter compared to men: "The issue is not and never has been about a crude comparison of figures. The debate is about whether certain facts are more or less likely to result in a successful defence of provocation ... Attention should have been directed towards an analysis of any differences in the treatment of the male and female cases according to their facts, rather than the statistical end product of these highly problematic and discretionary processes. Issues of discretion regarding decisions as to appropriate indictments, which shape the numerical outcomes were neither raised nor noted, as being of relevance. Hence, the Home Office's stark conclusion that 'women were nearly twice as likely as men' to be indicted for manslaughter ... would only be valid, if at the outset the male/female, and female/male homicide were strictly comparable on the facts. Whilst the circumstances surrounding the killing of male spouses by women are likely to be characterised by the abuse of the defendant over a long period, the killing of female spouses, is by comparison, characterised by an escalating trajectory of violence by the defendant which culminates in the killing. The two distinctly different imprints of circumstances surrounding the homicide are not comparable (Edwards, S. (1996) *Sex and Gender in the Legal Process* Blackstone Press Ltd, London pp.371-2).

<sup>19</sup>This case took place in 1994 and is discussed in McNeill 1996:6-7. Alan Hunt was given an 18 month suspended sentence. See also *The Guardian* 29th October 1994.

This and other cases reinforces the point made by Bochnak that "a woman's husband simply does not belong to her in the same way that she belongs to him."<sup>20</sup>

Repeatedly, and at several different levels, the criminal justice system indicates that "different criteria are applied to male and female behaviour."<sup>21</sup> *The Guardian* for example, made the following comparison in 1995:

A man who battered his nagging wife to death was given a sentence of only three years at the Old Bailey. He lost his temper with his wife and hit her over the head with a hammer 13 times. Last month, a woman received a sentence of three and a half years for GBH after cracking a bottle over the head of her pregnant sister's violent boyfriend.<sup>22</sup>

It is not necessary for a woman to have been violent for her partner's defence of provocation to be accepted after he has killed her. Mark Williams, for example, "strangled his wife after eavesdropping on her telephone calls and discovering she was having an affair..."<sup>23</sup> His plea of provocation was accepted and he was sentenced to five years imprisonment for manslaughter. An identical sentence was given to Graham Barrie who also had his defence of provocation accepted after discovering his wife June had an affair:

June Barrie staggered bleeding on to the pavement outside the couple's butcher shop .. after her husband stabbed her several times. As a number of people gave her first aid Barrie went out and stabbed her another four or five times.<sup>24</sup>

Such cases demonstrate that "for provocation to be argued in aid of a woman who has killed her partner, the man must be persistently violent; in the reverse situation, women need only be insubordinate."<sup>25</sup> As pointed out in the case-study of Ethel Major, whereas women trapped within violent relationships are continually asked why they 'don't just leave', no-one asks why men 'don't just leave' when they find women's behaviour provocative:

If women have violence used *against* them and *fail* to leave, they lack self-respect. If men are stressed by *non-violent* behaviour (e.g. nagging) their use of violence is justified as necessary. This reasoning presupposes the

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<sup>20</sup>Bochnak quoted in Lees 1996:144.

<sup>21</sup>Lees 1996:142.

<sup>22</sup>*The Guardian* 23th October 1995.

<sup>23</sup>*The Guardian* 24th November 1993.

<sup>24</sup>*The Guardian* 21st October 1995.

<sup>25</sup>Lees 1996:142.

traditional belief that a *man's* self-respect *depends* on the use of violence in such a case.<sup>26</sup>

Similarly, neither Arthur Major or David Blakely, nor Malcolm Thornton or other violent and abusive men who were eventually killed by their victims were considered to have provoked their own deaths or 'asked for it', a reasoning frequently applied to women who have either been perceived to be insubordinate in some way or have failed to adequately police their appearance or behaviour. The concept of women 'asking for trouble' is employed to excuse all types of violence by men - including rape and murder - and is a mechanism which displaces the responsibility for male violence onto their victims - arguably the most common form of victim-blaming in existence. It is a reasoning which accepts men's uncontrollable urges in relation to rape and uncontrollable anger in relation to violence against and murder of their spouses. It is a reasoning which "reflects the victim's conduct rather than that of the offender."<sup>27</sup> It is also a reasoning which "establishes that non-compliant women are beyond ... [the law's] effective protection."<sup>28</sup> As indicated in Chapter Five, if women are scantily clad in public, out alone at night, hitchhiking or back-packing, they may be considered to have precipitated in their own violent deaths. Thus it matters not whether a woman is a victim or defendant, it is always *her* reputation which is the focus the trial.<sup>29</sup> In the case of Evelyn Howells, for example, whose husband and two sons were found guilty of her murder, it was her reputation as a wife and mother which became the focus of the trial rather than her husband's failure to remove himself and his sons from her care.<sup>30</sup> Similarly, the case of Sara Thornton increasingly came to resemble a modern version of the Ruth Ellis case - both in terms of the focus on the women's reputations rather than that of their partners - and in the sense that neither woman fitted the role of a 'victim'. Instead Thornton was described as "a violent liar" and a "'victim' ... [who] was mostly drunk."<sup>31</sup> The victim status of women such as Ruth Ellis and Emily Swann (who - like Thornton - were both described as heavy drinkers) was further undermined by the fact that they had lovers several years their junior. Similarly,

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<sup>26</sup>Hoff, L.A. (1990) *Battered Women as Survivors* Routledge, London p.125. Emphasis in the original. See also *Scotland on Sunday* 13th July 1997 where Sue Lees writes that judges do not ask male defendants "why they do not seek help for marital dis-harmony rather than kill, but instead extend sympathy to them."

<sup>27</sup>Joan Smith writing in *The Guardian* 17th June 1997 p.15.

<sup>28</sup>Lees 1996:143.

<sup>29</sup>Lees 1996:147.

<sup>30</sup>See for example *The Guardian* 13th February 1997.

<sup>31</sup>*The Guardian* 14th and 15th May 1996.

the other women within the 15 case-studies who were not victims of chronic male violence but who had lovers considerably younger than themselves - Louise Masset, Edith Thompson and Dorothea Waddingham - were soon to find that this fact helped to ensure they fitted the stereo-typical image of 'the evil temptress' who brings 'innocent' young men to their ruin.<sup>32</sup> The assumption was - especially where the women were considered sexually attractive such as in the cases of Louise Masset, Edith Thompson and Ruth Ellis - that *they* rather than the men, took the lead and pursued their 'prey'. The fact that they had allowed their sexuality to become visible confirmed the continued existence of the ancient male fear of female sexuality discussed in Chapter Three, which resulted in these women being considered "sexually insatiable and weak in character" and hence out of control.<sup>33</sup> No similar moral judgement was passed on William Williams or Alfred Merrifield despite the fact that William was double the age of Ada, and Alfred was 24 years older than Louisa.

The focus on a woman's character and reputation becomes particularly noticeable in cases involving double trials which include a male and female defendant. Thus, while I have argued that the reputation of all 15 executed women came under scrutiny, the five male/female double trials analysed in this thesis adds emphasis to this point as a result of the outcome of these trials. That is, three of the five men walked out of court free individuals while their spouses faced their executioner alone. In the two remaining cases - those of John Gallagher and Freddy Bywaters - I demonstrated that despite indisputable evidence in the Thompson/Bywaters case that it was Bywaters, not Thompson, who had carried out the murder; and despite evidence which - at the very least - pointed to Swann and Gallagher being equally involved in the murder of William Swann, the two women were non-the-less repeatedly considered 'worse' than their male co-defendants. In the Thompson/Bywaters case, this took the extreme form of a woman being executed, who today is almost universally considered to have been innocent.

I further argued that in the cases of Charlotte Bryant and Ruth Ellis, where evidence suggested the women may have had a male accomplice, no serious attempt was made to either establish or disprove the existence of an accomplice.

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<sup>32</sup>The 'evil' temptress has her modern equivalent in - for example - Tracy Whalin (33) who eloped to America with her son's best friend - Sean Kinsella (14). See for example Decca Aitkenhead writing in *The Guardian* 1st August 1997.

<sup>33</sup>Barstow, L.A. (1994) *Witchcraze* Pandora London p.14. See also Decca Aitkenhead in *The Guardian* 1st August 1997 who confirms the existence of such discourses in contemporary culture: "a woman's lust is fine when she's faking it for the boys; when she really means it, we panic."

The portrayal of women in double trials as 'worse' than their male co-defendant indicated yet another manifestation of judicial misogyny and 'double standards'. Moreover, such portrayals did not end with the abolition of capital punishment but have their modern equivalents in double trials such as that of Ian Brady/Myra Hindley and the single trial of Rosemary West, whose name - despite her husband Fred West's suicide prior to their trial - remains inextricably linked to his. Thus, Debbie Cameron has observed that Rosemary West was not only judged for the crimes of which she stood accused, but also as a *mother*. Yet:

*Fred West also abused the children of his own household. That fact, however, while it was absolutely obvious, did not occasion the same kind or quantity of comment. ... Strangely we hear nothing about Fred West's 'failure of fathering': that phrase has an odd as well as unfamiliar ring. Why do people not talk about men's sexual abuse of children in these terms? Is it because we expect so much of mothers and so little of fathers?*<sup>34</sup>

With reference to the Brady/Hindley case, despite this trial taking place more than 30 years ago, the repugnance felt towards Myra Hindley is today as strong as ever and far exceeds that expressed towards Ian Brady. As was the case with Rose West, this repugnance is rooted in Hindley being judged as a mother, even though she was not literally a mother:

*... because of the unquestioned cultural tendency to conflate femininity and maternity ... Myra Hindley's crimes were placed firmly in the context of women's natural and instinctive propensity to nurture children. The greater repugnance felt then and now towards Myra Hindley than towards Ian Brady arises from a conviction that the abuse of children by a woman is peculiarly heinous because it is against the order of nature.*<sup>35</sup>

Hence while the horror of the crimes of Rosemary West and Myra Hindley has resulted in these women becoming regarded as 'monsters' - the most dangerous women of modern times - it is none-the-less the case that their murderous capacities have been constructed in gender-specific ways. This is because such women "threaten a crisis of sexual difference", that is, they force us to challenge what is *known* about women.<sup>36</sup> The employment of the 'mad/bad' categories to criminal women has endured for so long because it is a mechanism for avoiding a re-examination of femininity - and ultimately for avoiding the creation of new

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<sup>34</sup>Cameron, D. (1996)'Wanted: The Female Serial Killer' in *Trouble & Strife* 33 Summer 1996 p.26; 27. Emphasis in the original.

<sup>35</sup>Cameron 1996:25.

<sup>36</sup>See footnote 310 Chapter Eight (Rose, J. (1993) *Why War?* Blackwell, Oxford p.50.

discourses around criminal women. Thus it is not only her gender but also her *sanity* which has ensured that Myra Hindley has remained one of the most reviled female criminals in England and Wales. For while Ian Brady "at least had the decency to go mad"<sup>37</sup> and has furthermore stated that he does not wish to be released, Myra Hindley appears frighteningly 'normal'. Hindley herself has emphasised her sanity:

In my 30 years in prison I have met, spoken with and been examined by psychiatrists and, in particular, a senior psychologist with whom I did a series of tests, the results of which ruled out psychopathy, schizophrenia, manic depression, episodic dyscontrol and any form of psychosis or neurosis. In a word, there was no evidence of a mentally disordered mind. And my EEGs revealed no abnormalities or dysfunctions. Nor was I ever, as a child or teenager, cruel to animals or children.<sup>38</sup>

Her 'normality' is reinforced by the reasonable and articulate tone of her letters and articles which have been published, as well as her desires, hopes and aspirations for the future, so normal that we all recognise them, which is precisely why we are so outraged by them. She is simply not *different enough* from us. This is too much to bear for those who - despite her apparent normality - see Hindley's 'evilness' as her *only* characteristic - immutable and unchanging - and thus persist in situating her in the 'bad' category in an attempt to make her stand apart from the rest of the world generally, and from femininity in particular:

The woman who kills is exactly what she is supposed *not* to be. Her act is deemed not only unnatural but impossible in a real woman; so she is 'unwomaned' by her violence and seen as the classic aberration, exiled from her community and her gender.<sup>39</sup>

The attempt to 'exile' Hindley - not only from her community but also from humanity - has meant that whatever she has to say is irrelevant because no one is *listening* - instead those who answer her are responding to a stereo-typical evil image of womanhood which allows the 'bad' category to remain unchallenged. Yet, Hindley's persistent attempts to be heard exemplify the competition between traditional discourses around 'bad' women and new knowledges and discourses of 'alternative truths' about violent women, for every time she speaks, she is re-opening the space within which such new discourses and new knowledges about

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<sup>37</sup>Ann West - the mother of Lesley Ann Downey - quoted in Birch, H. (1993) 'If Looks Could Kill' in Birch, H. (ed) (1993) *Moving Targets* Virago, London p.55.

<sup>38</sup>Letter to *The Guardian* 4th October 1995.

<sup>39</sup>Campbell, B. (1991) 'Foreword' in Jones, A. (1991) *Women Who Kill* Gollancz, London p.xi.



violent women can be created. And every time, regardless of what she has to say, the response is always the same - vociferous and swift attempts to close that space - to 'mute' her account. To do otherwise would challenge idealised and traditional beliefs about women's 'nature'. It would mean facing up to the reality that the propensity to commit violent acts affects both men *and* women. It would mean moving beyond 'mad/bad' stereotypes and generalisations about violent women, in order to examine the complex set of relations and interactions which eventually lead to murderous crimes. It would mean an end to the comfort we gain from the 'them and us' mentality which is the product of the exploitation of stereo-typical images of violent women as 'mad or bad'. And it would mean a recognition that this exploitation is ultimately designed "to highlight and promote the image of a good, desirable woman. The monsters serve as the sick/bad backdrop for her potential normalcy."<sup>40</sup>

I introduced this chapter by asking whether the 15 women who have been executed during the 20th century in England and Wales were 'monsters' or 'irretrievables'. Today such labels are still applied to women like Myra Hindley and Rosemary West by those who believe that a desire to understand what led to these women's involvement in murder demonstrates a lack of sympathy for their victims or a condoning of their crimes. But labelling murderous women 'monsters', 'mad' or 'bad' merely serves to over-simplify their violent acts and does nothing to prevent the death of future victims. Instead it signals our desire for seamless truths and freedom from contradictions. However, in challenging these categories we learn that even criminals like Hindley are not made up solely of monolithic 'evilness' but - like the rest of us - are contradictory human beings who also share emotions and characteristics with so-called 'normal' women. Hence, the danger Myra Hindley presents to society today can be understood as rooted not only - perhaps not even primarily - in a fear she may kill again, but in her ability to be a 'monster' - yet 'normal' simultaneously. Similarly, while the crimes and circumstances of the 15 women who were executed were very different to those of Myra Hindley, they did not possess a unique capacity for violence which set them apart from 'normal' women. Instead it was the ordinariness, 'normality' - and in some cases - even dreariness of their lives which united these women. It is appropriate here to repeat and reiterate the quotation referred to in the Introduction that "the story of women who kill is the story of women."<sup>41</sup>

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<sup>40</sup>Faith 1993:259.

<sup>41</sup>Ref 38 Introduction - Jones 1991:xvii.

In recent years the discourses of the mad/bad woman have been increasingly challenged by feminist activists and groups such as Justice for Women and Southall Black Sisters. These activists have argued for the creation of a new language which would include terms such as 'self-preservation' as a partial defence, and hence help to create new discourses around women who kill.<sup>42</sup> Some success has been achieved, particularly with reference to battered women who have killed their spouses, and it is now possible to point to cases where a battered and abused woman has escaped a prison sentence altogether.<sup>43</sup> Yet, as I pointed out in Chapter Two, new knowledges never entirely replace old ideas and the authority to define 'truths' and 'facts' is always linked to "existing power relations within given social contexts."<sup>44</sup> Thus certain victories have been rather hollow as was the case for example with Sara Thornton, described above. Her release from prison was only secured after the judge had told her she had a 'personality disorder':

... your responsibility for killing your husband was diminished by your abnormality of mind."<sup>45</sup>

Here the judge simultaneously acknowledged the existence of an alternative truth about the killing of Malcolm Thornton whilst also placing Sara Thornton firmly within the 'mad' category. This ruling exemplifies the up-hill struggle facing feminist activists in keeping open the spaces on which to create a new language and new knowledge which in turn will signal the end of the muted state that has traditionally surrounded violent women. In the words of Faith:

By giving names to lies about women who have been historically denied a forum for speaking in their own voices, we open the doors to the cacophony of dissent and reaction. We also expand our range of vision so as to more clearly see that, through their actions of resistance, unruly women have persistently articulated a refusal to acquiesce.<sup>46</sup>

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<sup>42</sup>See for example Stanko & Scully 1996:71.

<sup>43</sup>See for example the cases of Marjorie Tooley (*The Guardian* 18th December 1996; Susan Murphy (*The Guardian* 2nd July 1996; Ernestine Smith (*The Guardian* 20th May 1995). However, other cases demonstrate the continued failure to punish men who kill their wives using infidelity as an excuse for their violence. At the time of writing David Swinburne walked free after having stabbed his wife 11 times after she had told him of her intention to leave him for another man. (*Scotland on Sunday* 13th July 1997).

<sup>44</sup>Chapter Two opening quotation Faith 1993:9.

<sup>45</sup>Mr Justice Scott Baker quoted in *The Guardian* 31st May 1995.

<sup>46</sup>Faith 1993:9.

In their various and individual ways every one of the 15 women analysed in this thesis refused to acquiesce to their circumstances and took direct action to change those circumstances. Despite their 'ordinary' lives, despite the sometimes threatening, violent and dangerous situations they found themselves in and - in some cases - despite their destitute and bleak existences - each and every one were to take actions which would eventually cost them their lives. In doing so they exposed the presence of judicial misogyny within the criminal justice system. That their cases remain almost totally unknown is a testimony to the criminal justice system's (and by extension the wider society's) ability to mute those who refuse to speak through dominant modes of expression. The "cacophony of dissent and reaction" which now surround murderous women who have been exposed to judicial misogyny came too late for the 15 women executed this century. However, that "cacophony" has a history which leads directly to their lives and their deaths. As such they are entitled to be restored to their rightful position in the history of the present.

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## Appendix I

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Dr George Bernard Manning, a consultant pathologist to the Bolton Hospital Group, had carried out the post-mortem on Sarah Ricketts. It was therefore as a result of his post-mortem report and evidence in the Magistrate's Court that it was established Mrs Ricketts had died from phosphorus poisoning. In other words, without his report and evidence Louisa and Alfred Merrifield could not have been found guilty of murder.<sup>1</sup> His report, however, was strongly criticised by Professor James Webster "who had been chief of the Forensic Laboratory at Birmingham for 20 years."<sup>2</sup> So strongly did Professor Webster feel about the medical evidence in the Merrifield case that he wrote a four-page A4 letter to the Permanent Under Secretary of State, Sir Frank Newsham. Professor Webster's opinion of the medical evidence presented at the trial may be gathered from the following extracts:

... I was appalled to see Manning's post-mortem report. If you had seen this document, I think you will agree that in two respects at least no person has ever been condemned to death on a more defective post-mortem report. The two points to which I would address your attention particularly are:

- a. There is not a single weight of any organ in that report. This was a poisoning case and therefore the weights of the organs were of paramount importance. Their omission reflects considerably upon the efficiency of this medical investigation.
- b. This so-called post-mortem report does not even contain a cause of death. I should like to know of any other murder case where that important detail has been absent from the autopsy report...

I was amazed to find that he had only sectioned three things - one piece of tissue from the liver and two blocks from the marrow of the sternum. Again I would point out that this was a case of poisoning where the effects of phosphorus on the organs are quite well known and where in particular this Prosecution averred that death was due to the impact of phosphorus on the heart. There was not a single section of heart, kidneys, thyroid, or brain stem, but despite this, extremely categorical statements were made by Manning and the Prosecution with regard to the cause of death.

What is much more important is that the liver shows undoubted evidence of damage long before death. That is not merely my opinion, but the opinion of a Professor of Pathology at one of the London schools to whom I showed the section, as I really began to think that I was becoming mental when I saw the appearance of this liver through the microscope and remembered that Manning had definitely said there was no damage or fat in this organ...

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<sup>1</sup>Dr Manning's evidence to the Magistrate's Court can be found in ASSI 52/785 pp.70-2.

<sup>2</sup>*Parliamentary Debates* (House of Commons) 1954-55 vol 536 25th January - 11 February 1955 col. 2170. Professor Webster was Director of West Midland Forensic Science Laboratory.

No attempt was made to see how far along the alimentary tract the phosphorus had progressed. The whole of the intestinal contents were banged together into a flask and examined in this way. This prevented either the Prosecution or the Defence therefore having any certainty as to when the phosphorus was administered.

In view of the fact that no phosphorus was found in any of the other organs, it is astonishing that no analysis was done of the stomach wall and the intestines themselves...

There is no chemical or pathological evidence which specifically proves that phosphorus was absorbed from this woman's alimentary canal. There is merely a theory put up by the Prosecution that it was absorbed...

I shall never believe that the Prosecution proved beyond any reasonable doubt that Mrs Ricketts died from phosphorus poisoning. All they did do was prove there was phosphorus in the stomach contents and intestinal contents. Some day in the future I shall in all probability write up this case. By that time it will probably have been discussed widely, and so far as I am concerned, I have no feeling as to whether Louisa Merrifield hangs or not. All I am concerned with is this: That the principal tenet of British justice, namely, that the prosecution should prove a person guilty and not that a person should prove his innocence, should be maintained. In the Merrifield case I feel that we are back to the days antecedent to the first Infanticide Act when a woman had to prove that the thing she was accused of killing was born dead - a defect which was rectified by the first Infanticide Act which laid upon the prosecution the burden of proving that the thing that she had killed was born alive and had had a separate existence.<sup>3</sup>

Both Dr Manning and Professor Webster gave evidence at the trial, the professor maintaining that Sarah Ricketts had "died from the effects of liver necrosis and not phosphorus poisoning as alleged by the prosecution."<sup>4</sup> Had his explanation been accepted the Merrifield's could only have been charged with attempted murder.

Louisa Merrifield's appeal document included criticism of the trial judge for omitting certain aspects of Professor Webster's evidence in his summing-up.<sup>5</sup> As can be seen from the transcript of the appeal, the Appeal Judges dealt with this criticism in the following manner:

His [Prof. Webster's] view was that Mrs Ricketts died from natural causes. It is therefore raising the issue: Did phosphorous poisoning kill Mrs Ricketts? This was clearly an issue for the jury. The evidence from Professor Webster was technical. On behalf of the Appellant it is said that the learned Judge should have explained it, and he did not. It is said that the failure on the part of the learned Judge to explain it left the jury to flounder in their room. Is that criticism well founded? This Court says that it is not. ...

[Quoting trial judge] "He [Prof. Webster] has read a number of books and read passages from them in support of his theory - I can call it no more -

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<sup>3</sup>HO29/229 XC2573 Letter from Professor Webster to Sir Frank Newsham dated 8th September 1953.

<sup>4</sup>*The Times* 29th July 1953.

<sup>5</sup>HO291/230 27359 - document entitled 'Particulars of Grounds of Appeal Additional to those set out in the Notice'.

and a number of books have been read to him by the learned Attorney-General in the opposite sense. You must use your practical commonsense."

Criticism was offered of this last sentence. Does it amount to any more than inviting the jury to give as reasonable a consideration as they could to the medical evidence on both sides?

This Court has arrived at the conclusion that the essentials of the medical evidence was left to the jury, and one question which they took with them on their retirement was, Did [sic] the phosphorous poison kill? Their verdict indicates how they answered it.<sup>6</sup>

Although the Appeal was dismissed the controversy surrounding the medical evidence was raised again during the House of Commons debate on capital punishment in 1955 when MP for Northampton R.T. Paget stated:

The jury, coming to a conclusion upon an issue between two experts - on an issue upon which, frankly, they were not competent to express an opinion, upon the direction which I have read - found Mrs Merrifield guilty, and she was allowed to hang for a murder which Prof Webster said had never taken place.<sup>7</sup>

Paget further drew attention to Prof Webster's high status within his profession:

Prof Webster who had been chief of the Forensic Laboratory at Birmingham for 20 years; who had been the prosecution's witness in every murder case on the Midland Circuit since, I and, I believe the former Attorney-General came to the Bar, and had been relied upon by the prosecution as the foremost pathologist in the Midlands, gave evidence in the trial that the deceased lady had died a natural death.<sup>8</sup>

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<sup>6</sup>HO29/229 XC2573 Transcript of Appeal before Mr Justices Cassels, Slade and Barry, dated 3rd September 1953.

<sup>7</sup>*Parliamentary Debates* (House of Commons) 1954-55 Vol 536 25th January - 11th February 1955 col 2170.

<sup>8</sup>*Parliamentary Debates* (House of Commons) 1954-55 Vol 536 25th January - 11th February 1955 col 2170.

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## Appendix II

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Arthur Koestler, who was a keen anti-hanging campaigner, published a book - *Reflections on Hanging* in 1956. In this book he quoted the following passage from a confidential Home Office instruction to Prison Governors dated shortly after Edith Thompson's execution<sup>1</sup>:

Any reference to the manner in which an execution has been carried out should be confined to as few words as possible, e.g., "it was carried out expeditiously and without a hitch". No record should be taken as to the number of seconds, and if pressed for details of this kind, the Governor should say he cannot give them, and he did not time the proceedings, but "a very short interval elapsed", or some general expression of opinion to the same effect.<sup>2</sup>

Koestler suggested that these instructions had been amended as a result of the horrendous details that emerged concerning Edith Thompson's execution which he also documented in his book. These instructions were so secret that neither the House of Lords nor the House of Commons knew of their existence.<sup>3</sup> His book together with an article he wrote for *The Observer* (4th March 1956) therefore caused great a furore amongst anti-hanging MPs who asked for full details of these instructions in the House of Commons. The secrecy of the instructions meant that answering questions in relation to them became a matter of extreme delicacy as can be seen from a comment by the Permanent Under-secretary to the Home Office - Sir Frank Newsam: "the subject [is] a particularly difficult one to deal with in the House by way of question and answer, when many people will be looking for every opportunity to trip the S. of S. up on these now highly controversial matters."<sup>4</sup> Home Office staff consequently prepared draft answers for the Home Secretary to assist him in answering MPs' questions, one of which included the following paragraph:

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<sup>1</sup>Koestler claims this document was dated 10th January 1925, but a document bearing almost identical wording can be found in the Public Record Office (PCOM 9/1983 XC2662) and is dated 28th August 1924.

<sup>2</sup>Quoted in Koestler, A. (1956) *Reflections on Hanging* Gollancz London pp.139-40.

<sup>3</sup>PCOM 9/1983 XC2662. MPs were aware of a document which outlined the practical procedures for executions, but did not realise a second document existed which instructed prison staff in how to respond to the media following executions.

<sup>4</sup>PCOM 9/1983 XC2662 Memo dated 28th March 1956.

Nothing happened at the execution to call for the amendment of the instructions governing executions and no amendment was made in consequence of it. These instructions have always been treated as confidential and I am not prepared to depart from the practice of my predecessors.<sup>5</sup>

Another advisory memo to the Home Secretary read:

It would be impossible to give details of the amendments without revealing to some extent the nature of the instructions which have already been declared to be confidential and it is suggested that the most that should be said is that since the date of the execution the instructions have been amended on six occasions, the first being in 1925 and the last in 1954.<sup>6</sup>

Despite these statements a Prison Commission communication reveals that the document Koestler was quoting from bore the following introductory paragraph:

In view of certain remarks made at inquests on recently executed prisoners, it has been thought desirable to amplify the instructions given to Governors in Circular No. 880 of the 31st March, 1922. That circular is, therefore, cancelled and the following *fresh* instructions will be carefully observed.<sup>7</sup>

The instructions referred to are of interest to the Edith Thompson case in particular and to all other executed women discussed in this thesis in general for two reasons. First, at various points in this thesis I have argued that the state considered a confession highly desirable because it added legitimacy to the execution. The Edith Thompson case demonstrated that this principle also worked in reverse. That is to say, when a prisoner proclaims her innocence incessantly, even on her way to the scaffold, as Edith did, it adds *illegitimacy* to the execution. Thus, coincidentally or not, the 'fresh' instructions dated 28th August 1924, no longer recommended the pursuit of a confession:

It is undesirable that information should be given to the public as to whether, or not, a prisoner under a capital charge, or an executed prisoner, has made a confession. Governors are, therefore, informed that should they, or any other officer of the prison, be questioned on the point at the inquest, or otherwise, the answer will be: "I have no authority to say whether a prisoner has confessed or not"... Similarly, any reference to any

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<sup>5</sup>PCOM 9/1983 XC2662. Draft answer for Home Secretary. (Undated).

<sup>6</sup>PCOM 9/1983 XC2662 Memo entitled 'Amendments to Instructions'. (Undated).

<sup>7</sup>PCOM 9/1983 XC3662 Circular to Prisons from A.J. Wall, Secretary to the Prison Commission 28th August 1924. My emphasis. The word 'fresh' is of course ambivalent but suggests the introduction of new instructions.



remarks such as prisoner may have made, or not made, on the scaffold, or elsewhere, should be avoided.<sup>8</sup>

It will be remembered that the remark by Louise Masset, executed in 1900, "what I am about to suffer is just" was immediately interpreted as a 'confession'. It will be recalled that Ada Williams's failure to confess was interpreted as "fear of implicating her husband", a totally irrational interpretation since a confession would surely have the opposite effect of exonerating her husband. Leslie James's comment that she was "truly repentant for breaking the law" was interpreted as a confession, even though this statement did not in any way undermine her claim that the baby's death had been accidental. Emily Swann too was reported to have "expressed contrition for the crime", an expression which I argued allowed observers to *infer* the guilt of the prisoner. Yet, by 1926 when Major Blake - who - as I pointed out in Chapter Eight - had been governor of Pentonville prison at the time of Freddy Bywaters' execution - published his memoirs which included Freddy's confession to Percy Thompson's murder the night before his execution, Blake was prosecuted for breaching the Official Secrets Act. He also revealed that Freddy had "insisted just before his execution that Mrs Thompson ... was innocent."<sup>9</sup> Major Blake's trial was the first case ever of a "prosecution of an official using information for journalistic purposes."<sup>10</sup> Blake's defence KQ argued that the information regarding Freddy and Edith "had done nothing but shock and annoy some people at the Home Office ... The authorities had decided upon a glorious prosecution" even though they could have settled the case in the police court, "but they loaded the dice against the defendant by taking him to the Central Criminal Court, where though he was calling no evidence, his counsel was denied the last word" because he was being prosecuted by the Attorney General.<sup>11</sup> The prosecution replied that "if Major Blake had desired to write history, he should have asked the permission of the Home Secretary who was in a better position than he to judge whether such publication would do harm or not."<sup>12</sup>

Apart from Major Blake's revelations, details about the last moments of condemned prisoners' became almost non-existent after the execution of Edith Thompson. After an extensive search in the PRO and newspaper archives I have located only one comment - that Ruth Ellis died bravely.

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<sup>8</sup>PCOM 9/1983 XC2662 Circular from Mr Wall.

<sup>9</sup>*The Times* 16th December 1926 - Report of Major Blake's trial.

<sup>10</sup>*The Times* 16th December 1926. Major Blake had received 300 guineas from the *London Evening News* for the extracts from his memoirs.

<sup>11</sup>*The Times* 16th December 1926 - Report of Major Blake's trial.

<sup>12</sup>*The Times* 16th December 1926 - Report of Major Blake's trial.

The second part of the circular of interest to the case-studies in this thesis is the following paragraph which is almost identical to that quoted by Koestler:

Any reference to the manner in which an execution has been carried out should be confined to as few words as possible, e.g. "it was carried out expeditiously and there was no hitch." No record should be taken as to the number of seconds, etc., and if pressed for details of this kind the Governor should say he is not able to give them as he did not time the proceedings but "a very short interval elapsed" or some general expression to the like effect may be used.<sup>13</sup>

With these instructions in mind we are fully able to appreciate statements such as that released at the time of Louie Calvert's execution when the hanging was described as having been carried out "humanely and expeditiously." We may also feel concerned about a comment by the executioner John Ellis, who after stating that "when they hanged Edith Thompson, everybody present was upset to vomiting point" added: "We don't make mistakes nowadays ... it's all taped and worked out, and even if there should be some slight mishap the whole government machine goes all out to save the hangman's face. They have to."<sup>14</sup> We may question whether it was coincidence that Mr Young, a prison officer who had been present at Edith's execution should write in 1948: "I performed my duty at the execution which was carried out *without a hitch*..."<sup>15</sup> As I pointed out in Chapter Eight, this letter was written in response to a claim by Beverley Baxter, the editor of the *Daily Express*, that two men had entered his office and given an account of the horrendous circumstances surrounding the execution of Edith Thompson. As Mr Young also stated in the letter, if he had revealed such details, he would have been "guilty of a Breach of the Secret Act."<sup>16</sup> In short, the existence of these instructions entitles us to treat with scepticism statements to the press along the lines that a given execution "was carried out without a hitch." While such glib statements may have been based on truth in some cases, the existence of these instructions demonstrates that this was not *necessarily* the

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<sup>13</sup>PCOM 9/1983 XC2662 Circular from A.J. Wall.

<sup>14</sup>PCOM 9/1983 XC2662. Underlining in the original. This Home Office document is referring to an interview Ellis gave to *The Observer* 18th March 1956. According to a Prison Commission document Ellis had had first hand experience of having his face 'saved' for the execution of the next woman after Edith Thompson - Susan Newell, a Scottish woman executed 10th October 1923 - did not go smoothly: "Ellis bungled the job to the extent that he did not pinion her wrists securely so that she was able to free her hands and tear off the cap." (PCOM 9/1983 XC2662 Seven-page document, undated).

<sup>15</sup>PCOM 9/1983 XC2662 Letter from M.H. Young to Sir John, 15th April 1948. My emphasis.

<sup>16</sup>PCOM 9/1983 XC2662 Letter from M.H. Young 15th April 1948.

case. It demonstrates that the state could not be relied upon to tell the truth about actions taken in the name of the nation's people. For example, as I indicated in Chapter Eight, we have reason to suspect that Ethel Major suffered greatly prior to her execution. But we do not *know* the exact facts since they are not included in her file. By insisting that prison staff adhered closely to the 'fresh' instructions the state ensured that supporters of abolition would never again have a martyr on the scale of Edith Thompson. For it is not just due to the fact that Edith was innocent of the crime of which she was accused that she is still remembered today, it is also as a result of the horrific circumstances of her execution, circumstances which Home Office staff did their utmost to deny. Yet despite this recalcitrance various details have emerged which have served to increase sympathy for Edith and which may ultimately have assisted the abolitionist cause. Some of these details have already been discussed in Chapter Eight. Others included Prison Commission documents which revealed that she had been severely drugged throughout her last night and in the morning had received a hitherto unheard of combination of strychnine, hyoscine and morphia:

Dr Snell says he has never known such a combination of stimulants and sedative to be given and cannot account for it.<sup>17</sup>

This combination of drugs rendered her incapable of walking. Hence, contrary to Home Office instructions, her wrists and legs were strapped while still in the condemned cell, which led to her being carried to the scaffold:

The Governor explained to me that the prisoner's feet were pinioned in her cell as well as her wrists (behind back). It was thought best in this case to do it in the cell. Prisoner was therefore unable to walk and had to be carried the few yards to the drop. Governor thought she could have walked with assistance but if she had collapsed on the way the necessary pinioning of the feet before the drop fell would have delayed matters and been awkward.<sup>18</sup>

In view of such details it is not surprising the Prison Commissioners drew the following conclusion:

It seems impossible to avoid giving a full answer [to MPs]. Since the answer will be written, there is less objection to making it long and it seems imperative to avoid giving ground for suspicion that the Department is trying to conceal some unmentionable part of the story. Whatever the starting point chosen, the account of subsequent events should be fairly full. There would be some advantage in beginning with Mrs Thompson's reception as a convicted prisoner but this would make the reply

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<sup>17</sup>PCOM 9/1983 XC2662 Six-page document, undated.

<sup>18</sup>PCOM 9/1983 XC2662 Six-page document, undated. Underlining in the original.

unconscionably long. Perhaps the best starting point will be the day before the execution. This will bring out that on her last complete day alive Mrs Thompson remained cheerful.<sup>19</sup>

It is of course this sanitising of events surrounding executions which made the practice acceptable for so long, a fact prison and Home Office staff would have been well aware of, otherwise they would not have been so concerned about being seen to be involved in a cover-up in the execution of Edith Thompson and several draft answers to MPs would not have been necessary. Nor would it have been necessary to devote several files to allegations made by both individuals as well as the press regarding the execution, together with extensive discussions as to how the Home Office ought to deal with such allegations. As Koestler pointed out, the grotesque aspect of executions is not just connected with "the brutality but with the macabre, cold-blooded politeness of the ceremony, in which the person whose neck is going to be broken is supposed to collaborate in a nice, sensible manner, as if it were a matter of a minor surgical operation."<sup>20</sup> In refusing to play her part politely, Edith Thompson not only challenged the state's sanitised accounts of capital punishment, but also succeeded in exposing the secrecy engaged in by both the Home Office and the Prison Commissioners in order to make this form of punishment palatable to the general public.

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<sup>19</sup>PCOM 9/1983 XC2662 Six-page document, undated.

<sup>20</sup>Koestler 1956:139.

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