

1-1-1995

The woman in the dock is a monster: An investigation of female criminality in the hearings of the Perth Supreme Court, 1890-1914

Debra A. Fletcher
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**"THE WOMAN IN THE DOCK IS A MONSTER" - An Investigation of
Female Criminality In The Hearings of The Perth Supreme Court, 1890-1914**

by

D. A. Fletcher B. A.

A Thesis Submitted in Partial Fulfilment of the Requirements for the Award of

Master of Arts (History)

at the Faculty of Arts, Edith Cowan University

Date of Submission: 25th August, 1995.

Women are what men make them. Why, a woman can't bear a child without it being received into the hands of a male doctor; it is baptised by a fat old male parson; a girl goes through life obeying laws made by men; and if she breaks them, a male magistrate sends her to gaol where a male warder handles her and looks in her cell at night to see she's all right. If she gets so far as to be hanged, a male hangman puts the rope around her neck; she is buried by a male grave digger; and she goes to Heaven ruled over by a male God or a hell managed by a male devil. Isn't it a wonder men didn't make the devil a woman?

Louisa Lawson, *Bulletin*, 24 October 1896

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USE OF THESIS

The Use of Thesis statement is not included in this version of the thesis.

DECLARATION

I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any institution of higher education; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where due reference is made in the text.

Date 05/8/95

ACKNOWLEDGEMENTS

A number of people have offered aid and suggestions which have enhanced this thesis and they include my supervisor, Dr. Jan Ryan, Ms. Sonia Walker, Dr. Paul Omaji, Ms. Rita Farrell, and other members of the Social Sciences Department at Edith Cowan University, Dr. Ed Jaggard, Professor Geoffrey Bolton and Mr. Dino Gava. Without the support and knowledge extended by these people, my task would have been far more difficult and less satisfying.

Dr. Neville Green, my employer, has been a constant source of support, encouragement and a font of information and suggestions. He, and my fellow staff members at the Land Claims Unit, have made my efforts more enjoyable and satisfying than they would have been had I been working alone.

I must also thank Ms. Michelle Ryan for materials she made available to me which made my task easier.

My husband, Dr. Rick Fletcher, has been a constant source of encouragement and practical help during all my studies, but especially during the writing of this thesis. He has read drafts, commented on them and offered constructive criticism, helped me with the computer when it wouldn't do what I wanted it to and, most importantly, looked after the children, cooked meals and given me love and been a stalwart in times of stress. To him, I owe an enormous debt of gratitude.

Our children, Taryn and Adam, have been wonderful and have **hardly ever** complained about not having Mum's full attention for the past few years. **They**

have been dragged into every library in Perth, sat patiently while I worked and suffered numerous trips to Uni to sort things out and have been wonderfully behaved and tolerant. I only hope that they have not been put off tertiary education by the experience.

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ABSTRACT

Published scholarly works on female criminal activity are limited both by their meagreness and lack of supporting empirical basis, being grounded in stereotypes and assumptions. Accurate studies based on the collection and analysis of data are required to address this paucity and to provide an historical basis for contemporary studies. It is, however, an accepted fact that historically women commit significantly less crimes than men and their criminal activity is generally of a far less violent nature. However, when women do physically harm others, the act most often involves family members and utilises domestic tools in the commission of the crimes. It has been mooted that women were controlled by their domestic roles along with the constraints placed upon them by society in the past, and as these constraints loosened, criminal activity by women would approach that of men. An examination of Perth Supreme Court records between 1890 and 1914, and media reports of the crimes, is expected to elicit information which should illuminate judicial and patriarchal attitudes towards women in the period and address the issues of why women committed crimes, what types of crimes they committed and how they were judged and punished. The examination of these crimes will be based on an attempt to determine whether women were treated harshly or leniently by the judicial system, in order to provide empirical support for the basis of criminological theories.

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INTRODUCTION

A careful examination of the literature relating to women's involvement in crime reveals, firstly, that criminologists have undertaken relatively little work in this field and, secondly, the studies which have been undertaken relate predominantly to the twentieth century, and more particularly, the mid to late twentieth century. Ngaire Naffin¹ discusses the significance of historical studies into female criminology and suggests that "historians have invested the female criminal of the past with a sense of her own interests and purposes within a specific historical context." She goes on to say that historians "have resisted the common notion that the female criminal has been simply the passive object of a range of social and legal controls." She further acknowledges that the historical knowledge obtained in these studies has contributed to the general field of criminology by providing a background against which contemporary studies can be compared; a claim which legitimises studies such as this by historians attempting to provide historical information about women's criminality.

Within the field of criminology there is a high level of disagreement among theorists relating to the treatment that women have received both historically and presently from the judiciary. These theories can be largely separated into two categories, and the theoretical perspective for this study is based on a desire to substantiate one of these two prevailing notions of women's criminology.

One argument centres on the belief that women are judged against their conformity to prevailing ideologies of women's nature and compliance with gender

¹ N. Naffin, "Women and Crime" in D. Chappell & P. Wilson (eds) *The Australian Criminal Justice System in the Mid 1980's*, Butterworths, Melbourne, 1986, p.131.

roles. More importantly, this proposition suggests that as women criminals have, by definition, already rejected conventional feminine behaviour, it is assumed that these women will be judged harshly, not so much for the crimes they committed, but for this rebuff of their pre-ordained gender roles. Thus, these theorists would argue that an examination of the records of women criminals should be expected to reveal biased judgements, harsh sentencing and moral censure of the women involved.² This argument will be referred to as the "morality" thesis in this study as it has been given no defining nomenclature among criminologists.

The opposing doctrine argues for the "chivalry" thesis³. Basically, this suggests that judges, juries and police are reluctant to charge, condemn and convict women and, as a result, women will be treated leniently within the judicial process. This "chivalry argument", has frequently been accepted as the basis of criminological studies and has, therefore, shaped a large number of discussions concerning female criminality. The two opposing schools of thought and the studies which support them will be discussed in detail in Chapter 2.

² Some relevant examples of studies which support this theory are N. Naffin, *op. cit.*; J. Scutt, "The Myth of the 'Chivalry Factor' in Female Crime", *Australian Journal of Social Issues*, Vol. 14, No. 1, 1979; M. Chesney-Lind, "Women and Crime: The Female Offender", *Signs*, Vol. 12, No. 1, Autumn 1986; P. Carlen, Introduction to P. Carlen (ed), *Criminal Women*, Polity Press, New York, 1985. These studies also discuss other relevant studies undertaken to support this thesis and review the available literature.

³ The most common exponent of the chivalry theory is Otto Pollak, whose influential work *The Criminality of Women* (1950) continues to be cited as evidence of the chivalry theory today by some criminologists. Subsequent studies have since negated his assertions, but his theory continues to influence a vast number of theorists. Other more contemporary studies which support the chivalry thesis include M. Wilkie, "Gender Bias in Sentencing" Sentencing Women", *Pre-Sentencing Reports and Constructions of Female Offenders, Research Report No. 9*, University of Western Australia Research Centre, September 1993; E.A. Anderson, "The Chivalrous Treatment of the Female Offender in the Arms of the criminal Justice System", *Social Problems*, Vol. 23, 1976; S. Box, *Power, Crime and Mystification*, Tavistock, London, 1983.

Given these divisions in the current debate on women's criminality, it is evident that further studies are required to clarify women's involvement in crime and their subsequent treatment. There has been a recent move by criminologists, mainly in Britain and the United States of America, to do this, but the majority of these studies have been based on contemporary empirical evidence. Australian criminologists and historians have, likewise, begun to address the shortcomings of criminological theory and examine the state of women's criminal involvement in both the past and the present.

Western Australian historians, in particular, have contributed to the advancement of study in this field, but chiefly in the areas prostitution⁴, abortion⁵ and women as victims of crime⁶. Therefore, in order to make effective observations about the involvement of women in all aspects of crime, studies need to be undertaken that will provide empirical evidence to support assumptions located in criminological theories. This study was undertaken with the aim to analyse Supreme Court proceedings with respect to women criminals. An examination of Perth Supreme Court⁷ cases between 1890 and 1914, along with the media reports of these crimes, is expected to elicit information which would

⁴ In particular, Raelene Davidson has addressed the study of women in prostitution in Western Australia in her thesis and article. "As good a bloody woman as any other bloody woman..." Prostitutes in W.A. 1895-1939" in P. Crawford (ed) *Exploring Women's Past: Essays in Social History* Sisters Publishing Ltd., Victoria, 1983.

⁵ Suellen Murray has looked extensively at women's involvement in abortion and birth related crimes in her work, one example of which is her article, "Breaking the Rules : Abortion in W.A. 1920-1950" in Hetherington, P. & Madden, P. (eds.) *Sexuality and Gender in History*. Centre for Western Australian History, University of Western Australia, Optima Press, 1993.

⁶ Jill Bavin-Mizzi, in her thesis, *Raping Matilda* at the University of Western Australia, looked at women in Western Australia and Victoria as victims of crime.

⁷ The Supreme Court was formed by the *Supreme Court Ordinance* of 1861 when the Civil Court and the Court of Quarter Sessions were amalgamated. For an offence to be heard in the Supreme Court, it must be indictable. See James Crawford's book *Australian Courts of Law*, Oxford University Press, Melbourne 1993 for further clarification of the judicial process.

demonstrate judicial and patriarchal attitudes towards women during the period. The issues of why women committed crimes, what types of crimes they committed and how they were judged and punished will also be addressed.

The time period of the late nineteenth/early twentieth century was chosen as explicit expectations existed which defined popular expectations of women's behaviour at this time. From this, clear and definite historical attitudes towards women criminals in Western Australia could be expected to be obtained. Only cases from the Supreme Court were chosen because these were classified as serious crimes during the historical period under review and, as such, the sentencing and attitudes towards women involved in these crimes would be expected to have been more easily identifiable.

The time period was chosen for a number of reasons. 1890 begins a period of social upheaval in the history of Western Australia, beginning with the discovery of gold, the influx of migrants, the increasingly disparate ratio of men to women, the resultant social discord, the granting of women's suffrage and the increasing social and political awareness of the Western Australian population.⁸ The Supreme Court Records were maintained with some regularity and reliability at this time and the majority of the cases have survived to the present day. As women criminals were a minority in the Supreme Court, the availability of records was a necessary requirement to gain the maximum benefit from the study. 1914 was chosen as the end date as the focus of society's interest changed due to the advent of World War I, women's experiences were about to undergo a major advancement due to the

⁸ See Appendix 6 for a table of population figures for Western Australia between 1890 and 1914 and the ratio of male to female populations.

deployment of women into the war effort and another study of women criminals in Perth⁹ was being undertaken which began in 1915.

The decision makers who decided the fate of these women criminals were of particular importance in determining whether bias was evident or not. In 1832¹⁰, provision was made for juries in Western Australia and all men aged between twenty one and sixty years of age who owned real estate worth £50 or a personal estate worth £100 were eligible for jury service. In 1898¹¹ this legislation was altered to include males between twenty one and sixty with real estate of at least £50, or a personal estate of £150 clear of encumbrances. These restrictions applied to the selection of juries throughout the entire period of this study. Therefore, it can be seen, that women were being arrested by policemen, and tried by and sentenced by men of means. Alongside this, the newspapers of the time were edited by men and the feature writers were also male. This study was sensitive to the fact that the available evidence on women criminals was prepared by men, most of whom had little in common with the women they were judging, and may be viewed as potentially biased, with certain reservations.

The main sources which formed the basis of this study were the Supreme Court records for the time period under investigation. Cases were chosen from the index and all cases involving women for the time period were examined. The court records were supplemented by the newspaper reports of the cases where available. Comparison of court records and newspaper accounts of the trials were found to be almost identical, so where case material had not survived, the newspaper

⁹ This study is a Ph.D. in progress by Rita Farrell at Murdoch University.

¹⁰ See 2 *Wm. IV No. 3 Jury Act* for details.

¹¹ 62 *Vict. No. 10 Jury Act*.

accounts of the trial were used as the foremost source. The Fremantle Prison Registers¹² were used to supply additional social information about women who received sentences, such as their birth place, literacy status, marital status, age and occupation as well as prior and subsequent convictions. Rica Erickson's *Dictionary of Biography of Western Australians* was also consulted in an attempt to flesh out the lives of the women studied, but there were only a few pertinent entries. Journals such as *Western Women* were consulted, along with newspapers, to provide a social background against which to judge public attitudes of the time. The records of the Swan Mechanic's Institute were also consulted in an attempt to find minutes of debates to ascertain whether the issue of female criminals was a significant one at the time. However, no records remain of debates in this time period. Issues of *The Police Gazette* were viewed in an attempt to ascertain police attitudes towards female criminals, but also elicited no relevant information. The annual reports of the Police Commissioner were also consulted to provide information on statistics and references to perceived problem areas and issues of concern

The study begins with two background chapters on the ideology of women and a review of criminological literature with reference to theories of female criminality, in order to provide the basis for the investigation, analysis and discussion of the crimes studied. The crimes were divided into areas of similarity and discussed in separate chapters. The study is concluded with a discussion of the findings and suggestions for further work in the field.

¹² These were found at the Western Australian State Archives at Consignment No. 4186, WAS 678, Item 1, 1897 - 1906 and Item 2, 1906 - 1927.

CHAPTER 1 - NINETEENTH CENTURY IDEOLOGY OF WOMEN

"A bad woman is the worst of all creations." - Vernon Harris

The nineteenth century was a period of rapid change, resulting in social upheaval and dislocation, which in turn caused a transformation in society's expectations of the family and family life. The industrial revolution altered the living conditions of a vast majority of the population; culminating in the greatest single turbulence effecting the European world to that date. Rural cottage based industries were dramatically reduced, and in their place arose urban based production of goods within a factory situation. Dislocation of families resulted, with individuals leaving their towns to seek employment in the city, thereby socially isolating a large percentage of the urban population, by removing them from the ascendant interest of family and extended network of friends and neighbours. As a result of this shift in values:

popular ideology sought to reaffirm the centrality of domestic life. In the process, women acquired an exalted, though still circumscribed, status. The message emerging from the press and pulpit alike was that women, though intellectually inferior to men, were morally and spiritually superior. Within their separate empires wives reportedly reigned supreme; from the 'throne of the heart', they shaped the character of their infants and thus 'dictat[ed] national morality'. To preserve their influence, women should not stray from their 'domestic altar' to mingle in sordid commercial or political affairs.¹³

Walter Houghton¹⁴ suggests that "the improvement in medical knowledge and standards of sanitation, reducing infant mortality, and the general ignorance of contraceptives increased the [family] size and complicated the problems of the

¹³ D.L. Rhode, *Justice and Gender: Sex Discrimination and the Law*, Harvard University Press, Cambridge, 1989, p.1.

¹⁴ W.E. Houghton, *The Victorian Frame of Mind 1830-1870*. Yale University Press, London, 1957, p. 342.

home", thereby forcing men to leave their coffee houses (which in the 18th century had been the centre of their social existence) to take an interest in their own domestic sphere. Concurrent with this renewed interest, the increasing demands that business and commerce placed on men in this period caused them to view their home life as a welcome relief from the demands and pressures of the outside world. John Ruskin, a popular Victorian writer, immortalised the prevailing concept of the home in the following way:

This is the true nature of home - it is the place of Peace; the shelter, not only from all injury, but from all terror, doubt and division [...] it is a sacred place, a vestal temple [...] and wherever a true wife comes, this home is always around her.¹⁵

Ruskin perceives the woman to be the central figure in the home and family, and his view was indicative of that which society fixed on the woman's role. Upon her shoulders rested the success of the family, and her success was measured by her worthiness as a wife and mother. He further "locates moral qualities in woman to compensate for man's naturally aggressive temperament"¹⁶; a point which will become very pertinent in following discussions of women criminals. The idealisation of women and their role in society through their familial influence made a virtue of women's subservient role. This in turn led to the ideology of "woman worship" which became particularly prevalent in the 1860s, in both England and Australia, and continued to exert its influence into the twentieth century.

¹⁵ J. Ruskin, *Of Queens' Gardens* Lecture II Lilies from Sesame and Lilies. (My copy was a reprint from *Sesame and Lilies* edited by A.E. Roberts, Macmillan, 1913). p.72.

¹⁶ C. Christ, "Victorian Masculinity and the Angel in the House" in Vicinus, M. (ed), *A Widening Sphere*, Indiana University Press, Bloomington, 1977 p.159.

One of the most popular poems of the mid-Victorian period was "The Angel in the House" by Coventry Patmore, the title of which indicates the theme of the poem.

Patmore associates woman with a complex of traditionally feminine values - love, intuition, beauty, virtue. Each of these values, however, results from woman's lack of desire to act. When woman does succeed, it is with "cloudless brow", without the determination of effort, in common activities. But she fails with equal grace because she had no ego investment in success or failure. She is unaffected by others' blame or praise because she has no desire to achieve. Woman is naturally passive for Patmore, and the better off for it.¹⁷

This expectation of women's innate passivity and "lack of desire to act" will also have significant implications for the discussion of feminist criminology to follow.

The literary concept of the passivity of the ideal woman was given extra credence through scientific investigation during the late nineteenth century. W.I. Thomas¹⁸ identified "biological factors that produced the distinctive quality of passivity in women and rooted them to an inferior position on the evolutionary scale."¹⁹ Further, it was not only men who attributed these basic biological differences to the genders, but American feminists like Charlotte Perkins Gilman also shared these beliefs. She argued that "beneath the artificial sexual images of woman and man imposed by society lay a female personality that was innately passive, nurturant, industrious, and uncreative, and a male personality that was

¹⁷ *Ibid.* p. 149.

¹⁸ W.I. Thomas, *Sex and Society*, Little, Brown and Company, Boston, 1907. This is the same W.I. Thomas who will be analysed in some depth in the following chapter on feminist criminology. His early work concentrated a great deal on the nature of women.

¹⁹ R. Rosenberg, "In search of woman's nature, 1850-1920" *Feminist Studies*, Vol 3 (1&2) F.11 1975, p. 143.

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¹⁹ R. Rosenberg, "In search of woman's nature, 1850-1920" *Feminist Studies*, Vol 3 (1&2) F.11 1975, p. 143.

essentially belligerent, passionate, selfish, lazy, and competitive."²⁰ Whilst other feminists also took for granted that there was a basic divergence in the natures of men and women, they did not necessarily agree that women were evolutionally less advanced than men.

Similar literary efforts to those of Patmore and Ruskin, extolling the virtues of women, were evident in the *Perth Gazette* in the 1860s to 1870s²¹, indicating that the ideology of woman had indeed travelled to the Swan River Colony. The *Western Australian Parliamentary Debates* in 1890 saw Mr. Parker, the Member for Perth, refer to women as "the gentler and nobler half of the human race"²², while many articles in *Western Women*²³, a journal produced by Western Australian women's groups from August 1914 onwards, testified that the ideology of the consummate woman was existent in Western Australia and continued well into the twentieth century. In the September issue of 1914²⁴, reference is made to Ruskin's "Of Queen's Gardens" and the author encourages her readers to aim for this archetype of womanhood that Ruskin's work depicts. In numerous other instances, the journal extols the virtues of women's role in life as the moral guides of men and invites its readership to have pride in their God given quality.

²⁰ Quoted in *Ibid.* p.145.

²¹ For example see the article entitled "Home and its Pleasures" in the *Perth Gazette* 11 March, 1859. p. 4.

²² *Western Australian Parliamentary Debates*, (hereafter *WAPD*) Legislative Council and Legislative Assembly, Vol. II, 7 December 7, 1891 to 18 March, 1892, p. 369.

²³ *Western Women* on microfilm in the Battye Library archives at 390 WES.

²⁴ *Western Women* 1 September, 1914, p.4.

To women of the nineteenth century, the only socially acceptable aspiration available to them was to become a wife and mother. In her role of wife and mother, a woman could exercise her moral and spiritual guidance (for which she was seen to be inherently fitted) over her family and, through her influence instil, particularly in her husband and sons, the basis to enable them to exert righteousness in the male dominated spheres of politics and economics. It was in this way that women were seen to contribute to the political and economic life of the country. The lack of acceptable social roles for women condemned those who, due to economic pressures, were unable to live as ladies of leisure and were forced to work outside the home. The efforts by these women to provide for their families and themselves were not acknowledged by society, with working women seen to be shirking their duties as wives and mothers by not placing the interest of the family foremost. Women who worked were blamed for husbands who drank, spent too much time away from the family home and for children roaming the streets and getting into mischief

While on the surface, this idealisation of women and the family appeared to place women upon a pedestal and increase their social standing, its limitations effectively assured that women would remain in their roles of homemakers and never attempt to move into male dominated sectors of life. The implication behind the ideology was that both God and Nature had ordained a role for women and she was therefore unsuitable for any other role in life. The most common method used to convince women of this were "scientific" arguments connected with women's physiology and their "fragile" physical state. The combination of inferior medical knowledge and a desire to maintain the subjection of women led to absurd arguments that women's brains were denied blood flow during menstruation²⁵, and

²⁵ M. Anderson, "Helpmeet for Man: Women in the mid 19th century W.A." in Crawford, P. (ed.) *op. cit.*, p.102.

that hysteria would befall them if they attempted to stray from their God-given place in society. Increasing interest in science led to the publication of such works as Darwin's, *The Origin of Species* in 1859 and *The Descent of Man, and Selection in Relation to Sex* and John Stuart Mill's *The Subjection of Women* in 1869, to name a few of the more commonly known works of the period.

In the late nineteenth century and early twentieth century evolutionary theory was applied in a multitude of ways in numerous and diverse fields [...] Evolution presupposed change, yet it was used primarily to argue against change in the status and position of women in society [...] In the context of evolution [...] [theorists] addressed themselves to two questions: first, what were women's natural capacities; secondly, what role was to be assigned to women to ensure future development and progress.²⁶

So-called "scientific" evidence was offered to justify the subjugation of women on the grounds of their inferior evolution. This was the basis for the later intervention of experts into the lives of women, advising how to rear their children, how to improve their housekeeping techniques and how to ensure that the family home was a haven from the harsh reality of the world.

Thus the ideology of women as homemakers and helpers of man was inculcated and utilised in an attempt to stabilise a society in a state of flux. The prevailing notion seems to have been that change was occurring too rapidly, and that society required the stabilising influence of the family unit in order to provide refuge and reassurance against the dissolution of traditional values. In order to do this effectively women's co-operation was required. Society at the end of the nineteenth century was not only reeling from the breakdown of traditional social

²⁶ S. Delamont, Ch. 3 in S. Delamont & L. Duffin (eds) *The Nineteenth Century Woman: Her Cultural and Physical World*, Croom Helm, London, 1978, p.57.

values, but was vulnerable to the threat of women's movement out of her traditional sphere. Agitation by women for suffrage, for access to better education, recognition within the law as persons independent of men, along with the decline in the birthrate, the supposed increase in abortion, contraceptive practices and prostitution, all served to fuel concerns about the future of society. The move for legislative changes to accommodate women's changing perception of their roles further threatened the stability of society. In the Western Australian Legislative Assembly Debates, this concern was voiced by Mr. DeHamel, Member for Albany, when he recalled:

I remember perfectly well, when I was in my articles, the Married Women's Property Act passing in England, and I remember how it was predicted that it would bring about an immense social revolution, and a subversion of all social relations, and that England, under such a law, would fall away like Rome did in ancient days.²⁷

In order to facilitate women's renewed interest in their domestic roles, what better way to gain their co-operation than by glorifying their work and instilling in them a belief that they alone could undertake their life's work, and insinuate that if they resisted their pre-ordained role, they would ultimately be responsible for the disintegration of society as it was known? The "angel in the house" ideology made a positive virtue of women's subservient role and sought to quell any aspirations she may have to altering her status in society, effectively preventing her from achieving equality with men.

By the latter half of the nineteenth century the excuses that originally justified confining woman to her sphere had taken on the authority of scripture. Men insisted that woman must be secluded from the world because she was by nature more delicate, more sensitive - all in all a finer creature. And after a

²⁷ *WAPD*, 1892 *op. cit.*, p.376.

time, convinced by their own florid rhetoric, some believed that woman was indeed the better half. Men began to fall over themselves in the scramble to transform popular ideology to public policy, to codify the legend as law.²⁸

Fundamental to the ideology of women was the notion of separate spheres for the sexes, who were seen to complement one another, but never intrude upon the other's territory. The man provided for the family and undertook the necessary business dealings with the outside world, while women "were said to live in a distinct 'world', engaged in nurturant activities, focused on children, husbands, and family dependents."²⁹

According to Delamont³⁰ "the woman appeared as the good conscience of Victorian society." To her befell the responsibilities of not only setting a good example, but of guiding her children and husband through the temptations of the world. If any of them succumbed to temptation and overstepped the demarcations of their prescribed roles in society, the woman was held responsible. To be seen as a success in life, a woman had to have reared a morally and spiritually correct family. In

the Victorian era two stereotypes of women prevailed. The ideal of femininity was invested in the middle-class wife and mother whose asexual, morally uplifting influence was held as a vital bulwark against the sordid intrusions of industrial life. Her antithesis was the epitome of female corruption - fallen from innocence, she has plummeted to the depths of degradation and contaminated all who came near her.³¹

²⁸ A. Jones, *Women Who Kill*, Victor Gollancz Ltd, London, 1991, pp. 188-89.

²⁹ L.K. Kerber, "Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History" *The Journal of American History*, Vol 75, No. 1, June, 1988, p.10.

³⁰ S. Delamont, *op. cit.*, p.70.

³¹ L. Zedner, *Women, Crime, and Custody in Victorian England*, Clarendon Press, Oxford, 1991, p.11.

The dichotomous view of women of the period has been discussed in depth by Anne Summers in her book *Damned Whores and God's Police*,³² the title of which clearly illuminates the opposing spheres wherein women were pigeonholed by society. The assumption was that women were either pure and upheld the sanctity of family life or were whores, unworthy to be either wives or mothers and unfit to redeem men. Additionally, the whores were not only unfit for the role of redeemer, but could be expected to lead any males under their influence further astray. This sentiment of women as "Damned Whores" becomes significant in the ensuing discussion of female criminals.

When the question of women convicts arose in the Swan River Colony, the resultant debate centred around the need for a greater female population in the colony in an attempt to civilise the male population, especially the convicts. The increasing numbers of single men in the colony were causing concern in a society which advocated the stabilising effects of family life. After unsuccessful attempts to encourage female immigrants from Britain, some members of the colony suggested that female convicts could provide the solution to their problem. The ruling members of the colony, in particular, were horrified at the notion of female convicts invading the sanctity of their colony and immediately sent up a protest. According to historian Margaret Anderson, "the ideological dilemma was this: if piety, purity and modesty were intrinsic to the female character, it followed that immorality, or irreligion were more difficult to countenance in women than in men,"³³ and female convicts were seen to be both immoral and irreligious. The editor of the *Perth Gazette* voiced the fears of this section of the population when

³² A. Summers, *Damned Whores and God's Police: the colonization of women in Australia*, Penguin, Ringwood, 1975.

³³ M. Anderson, *op. cit.*, p. 105.

he said "[...] it is universally admitted that crime in women is less easily eradicated than in men [...]"³⁴ The debate raged for some time, but eventually no female convicts were transported and the task of reforming the male convicts and guiding the male population was left to the small free female population.

Another assumption about women which arose in the nineteenth century, was the notion that women were basically mentally unstable. This conjecture influenced not only popularist theorists, but formed the basis for a forcible criminological theory, first espoused by Lombroso and Ferrero.³⁵ Prior to the advance of scientific theory, the medical profession had relied on the notion of the inherent instability of women to explain medical problems such as hysteria and in 1857 "Dr. Thomas Lightfoot stated simply and emphatically 'madness [...] is a sufficiently common result of disturbed ovarian function.' Here is a clear statement of medical diagnosis based on an over-riding social belief about women."³⁶ The medical profession concurred that nervous ailments such as "neuralgia, migraine, epilepsy, and choroas as well as impulses toward kleptomania, pyromania, dipsomania, homicide and suicide"³⁷ were all results of a malfunctioning menstrual cycle. These medical beliefs were pounced on by theorists when they began to grapple with social problems associated with women and formed the basis to their theories which enabled them to contain women in their subservient positions. As Jill Matthews discusses in *Good and Mad Woman*,³⁸ "mad women were defined as mad because they deviated from social

³⁴ *Perth Gazette* 5 May, 1854, p. 2.

³⁵ This issue will be explored in the next chapter on criminological theory.

³⁶ S. Delamont *op. cit.*, p.36.

³⁷ A. Jones, *op. cit.*, p.172.

³⁸ J.J. Matthews, *Good and Mad Women*, George Allen and Unwin, Sydney, 1984, p. 21.

norms" and this medical belief in the basic biological instability of women added further credence to criminologists' theories that a large number of deviant women were also certifiably insane. These issues will be more fully explored in the following chapters.

There is some evidence to suggest that the ideology of the "true woman" bore little analogy to the material lives of women living in the nineteenth century, particularly those in the Swan River Colony, and, more especially, those women who belonged to the working class. However, the ideologies did exert influence on all spheres of society in some way and according to Zedner³⁹, "[a]lthough [working class women] did not have the time, inclination, or, in many cases, the ability to digest manuals on etiquette or household management, working-class women were not immune from the influence of their teachings."

Diaries of gentry women in the Swan River Colony reveal they did indeed take this ideal seriously. Emma Thompson asks "why has God filled the Earth with these little bands of united individuals called families, if He had not in this arrangement designed to promote the virtues and the happiness of man? [...]. There is something in the very atmosphere which surrounds the family hearth which will not allow vice to luxuriate there."⁴⁰ Other similar quotations can be found in many other diaries and letters of the time period.

Apart from the fact that the families who emigrated to the colonies came from the society that was espousing such ideals, the conditions the immigrants

³⁹ L. Zedner, *op. cit.*, p.15.

⁴⁰ Doc. 6.1 in M. Aveling (ed), *Westralian Voices: Documents in W.A. social history*, University of Western Australia Press, Nedlands, 1979.

encountered upon arrival at the Swan River brought enhanced pressure to bear upon the female immigrants to the colonies. The very instability of the colony meant that the family unit was one of the few stabilising factors upon which the colonists could rely. According to Margaret Anderson;

In the relatively new and untried society at Swan River the role of the family assumed even more importance than usual [...] since it had to compensate for the weakness, or often the absence, of the restraining influence normally exercised by an established (and observant) community; by the Church and even by the law.⁴¹

Therefore the influence of the ideology of the time cannot be ignored when discussing the situation of women and the popular attitude towards them in the Swan River Colony.

Hence the nineteenth century ideologies of the sanctity of the family and the purity of the female nature were interwoven ideologies; neither of which could function effectively without the other. Consequently women's roles in life were pre-ordained and women who did not comply with their destiny were rejected as unworthy and became virtual outcasts. The ease with which women were judged as not respectable in this climate had a damaging effect on female criminals who by their mere appearance in court had erstwhile attained the label of unworthy females. Further evidence that these ideologies were indeed taken very seriously, by the gentry at least, is the fact that many laws of the time, the education of females and the prerequisites of the "deserving poor", were all based upon the notion that women were expected to be subservient and reliant upon either their father or husband (or suitable substitute) and women who found themselves

⁴¹ M. Anderson, *op. cit.*, p.101.

without a male protector were viewed suspiciously. Thus it can be seen that the popular Victorian concepts of womanhood directly affected the female population of the Swan River Colony and the manner in which women were perceived both by others and formed the basis of guidelines by which respectable women behaved.

Towards the end of the time period under examination, the notion of the true nature of woman underwent a change. The duality of womanhood nevertheless remained, but the stereotypes had altered. By the time of federation, and the advance to the throne of England by Edward VII, women had become a discernible market⁴² who were identified as a separate consumer clientele in their own right. Changes in legislation allowed women access to their own money, the attainment of a political voice through suffrage⁴³ and their concurrent expanded movement into employment, giving them money to spend and, as a result, more influence to exert. As a result of the increased visibility of women to politicians and businessmen, the official attention paid to women and social problems peculiar to their lives increased dramatically. The education system underwent an enormous change during the years 1900 to 1914, with more females receiving formal education for an extended period of time along with a broader exposure to academic disciplines. Concurrent with this advance in education was the rise of scientific intervention into women's lives. Domestic science curriculums were introduced and women were offered education and advice on cooking, cleaning, budgeting the housekeeping, shopping, clothes making and, most intrusive of all, the rearing of children. Regardless of the fact that women had successfully managed domestic arrangements for centuries, relying on a support group of

⁴² D. Crow, *The Edwardian Woman*, George Allen & Unwin, Sydney, 1978, p.13.

⁴³ Suffrage was obtained by women in Western Australia in 1899 and led to significant changes in attitudes towards women by the ruling patriarchy.

family and neighbours for help and advice, when the male professional class entered the debate, women's contributions and knowledge were dismissed and devalued, an alien and intimidating language and methodology were created, thereby manufacturing a sense of inferiority among women.

According to Ehrenreich and English⁴⁴ :

Healing was female when it was a neighborly service, based in stable communities, where skills could be passed on for generations and where the healer knew her patients and their families. When the attempt to heal is detached from personal relationships to become a commodity and a source of wealth in itself - then does the business of healing become a male enterprise.

The medical profession succeeded admirably in their intervention in obstetrics when male doctors decided to take over the traditional role of the midwife, and conclusively excluded women from their historical roles as birth attendants on the grounds of lack of formal education in the field. This intervention will be explored fully in further chapters pertaining to birth related crimes and abortion.

The ideal woman of the early twentieth century was not only knowledgeable and educated in the domestic sphere, but, as previously mentioned, was expected to act as saviours of those creatures less favoured than themselves. In this vein, Homes were established for single mothers where they could not only be protected but educated in the error of their ways, trained for domestic service

⁴⁴ B. Ehrenreich & D. English, *For Her Own Good: 150 Years of the Experts' Advice to Women*, Anchor Books, New York, 1979, p.41.

and sent out into the world a better woman. According to Daniels and Murnane⁴⁵ :

The lying-in homes had a disciplinary as well as a welfare function, and inmates had to perform washing, sewing and other domestic tasks: and although they were encouraged to place their child for adoption, they were compelled to care for it for six months, for the child was considered a 'humanizing influence' on the mother.

By 1914, however, arguments pertaining to the woman question "remained little changed but their tone was noticeable more resigned to woman's invasion of the public sphere, and, according to her critics, desertion of her maternal role."⁴⁶ But it should not be assumed that because the ideal of womanhood had become slightly more realistic that the notion of the "bad" woman had disappeared. The "new woman" "quickly became a scapegoat, held responsible for the decline of the family."⁴⁷ The "new woman" was "depicted as fast, irreligious, assertive, outspoken - "bold" was the term most commonly applied."⁴⁸ The decline in the birth rate, the infant mortality rate, the drop in marriages and the breakdown of social constraints upon women all concerned officials and invited investigation into women's lives and their attitudes. Concerns also led to legislative changes in an attempt to address the social dilemma, and women were often held responsible for the undesirable social changes. The patriarchy sought to promote as the desired norm: women who were involved exclusively in domestic and philanthropic duties, devoted to their family and

⁴⁵ K. Daniels & M. Murnane, *Uphill all the way : A Documentary History of Women in Australia*. University of Queensland. Press, St. Lucia, 1980, p.120.

⁴⁶ L. Zedner, *op. cit.*, p.70.

⁴⁷ L. Zedner *op. cit.*, p. 69.

⁴⁸ *Ibid.*

husband, and not entangled in the working world or selfishly concerned with decreasing her domestic responsibilities through limiting her offspring. The notion that professional male interference in women's traditional spheres of occupation may have been at least partly responsible for the dislocation of women never seems to have been given much, if any, credence. Through the movement of male professionals into women's spheres, women's confidence was undermined, their workload doubled with the emphasis on scientific household management and child rearing, and women were made to feel inadequate and insecure in their traditional roles.⁴⁹

Such was the social climate and prevailing attitudes towards women of the time period under discussion. It is obvious that a female criminal was intrinsically excluded from the feminine ideal merely through having come to the attention of the judicial system. She was labouring under the tag of a "damned whore" who had stepped out of her assigned sphere and as such had succeeded in losing any previous claim she may have had to respectability. If her crime involved children or domestic issues, which many of them did, she was doubly burdened by her rejection of women's prescribed socially accepted and "natural" personification. It will be investigated to what extent these women were judged on their crimes or if their perceived rejection of womanhood was used as a basis for punishment.

⁴⁹ For further information on this consequence of professional intervention into women's spheres, see J. Cook "Housework as Scientific Management: The development of domestic science in Western Australian State Schools, 1900-1940" *Time Remembered* No. 5 1982 and L. Connors, "Ideologies of Powerlessness: Attitudes to Women and the Working Class in Queensland Schools, 1919-39" *Hecate*, Vol. 11, No. 2, 1985.

CHAPTER 2 - CRIMINOLOGICAL THEORY

"No child is born a criminal: no child is born an angel: he's just born." - Sir Sydney Smith

"Theories of crime and punishment, both in the past and today, have reflected the expectations, ideologies and social conflicts of the period and the society they have served."⁵⁰ Whilst criminology is a study that has its roots in medieval times, it has predominantly been concerned with men, the crimes they committed, their motivations and punishments and/or reform within a social context. Women, reflecting their role in society, were subsumed by the dominant ideology of the time, traditionally based on white middle and upper class males. In fact:

before the 19th century there was practically no difference in the way society treated male and female prisoners. Sentences were the same, and prisons were mixed. Reformer John Howard was the first to create public disquiet about this in 1777, and his advocacy of single-sex institutions was furthered by Elizabeth Fry, a Victorian gentlewoman who was intent on making little ladies out of the inmates of Newgate Gaol. The concern of these reformers was right in one respect; women are far less criminally minded than men [...] and women are generally inside for much less serious crimes than their male counterparts [...] But in another respect, the do-gooders of the last century have handed down a dangerous and insidious legacy. In treating women as gentler, more vulnerable, biologically inferior, they paved the way for a confused and contradictory regime which on the one hand punishes women, and on the other hand patronises them, so that they leave under a double burden of helplessness and responsibility.⁵¹

⁵⁰ E. Windschuttle, "Women, Crime and Punishment" in Mukherjee & Scutt (eds) *Women and Crime*, George Allen & Unwin, Sydney, 1981, p. 31.

⁵¹ B. Bardsley, *Flowers in Hell: An Investigation into Women and Crime*, Pandora, London, 1987, p.67.

It is understandable why the Victorians never found the relatively low rate of female involvement in crime a cause for discussion. Due to the ideology of the time, they expected women to be morally superior and therefore would not have questioned their lack of criminal activity. Later, modern theorists have attributed the lack of interest in women's criminal involvement to the fact that, historically, women committed relatively few crimes compared to men, and that their involvement in crime was generally minor and non-violent. Only when the criminal acts of females were seen as a threat to the *status quo* did criminologists begin to address the issue of female criminals. This first occurred in the mid nineteenth century when philosophers had become concerned with the role of the family as a form of social control. The philosophers and moral guardians of the time were convinced that "society would not function in an orderly fashion unless the population was organized in stable family groups"⁵², and women criminals were perceived as a threat to this ideal. However, relating marriage to the effect of imprisonment, and thereby illustrating how little difference could sometimes be seen between the two, the Member for Perth, Mr. Parker⁵³ said in 1891, "the effect of marriage upon a woman is somewhat similar to the effect of a conviction in the case of a felon [...] As soon as the marriage ceremony is over she loses every article of property she possesses".

⁵² M. Anderson. *op. cit.*, p.102.

⁵³ WAPD *op. cit.* It must be noted, however, that Mr. Parker was a progressive liberal whose ideas and outspoken support of minority groups was highly unusual. Gradually, more and more people came to view the confines of the Victorian marriage as akin to slavery and agitation for women to have access to their own property and money increased. What then of a married woman who became a convicted felon - was she seen as being doubly punished or doubly deserving to be punished?

As discussed in the previous chapter, nineteenth century ideologies involving women and crime centred on women's perceived role in society. "Women's roles were those of the moral and spiritual guardians both of society and of the family upon which society was assumed to be built" and "[i]f women deserted their roles, this threatened the family and thus the fabric of society". The female deviant was seen to have "doubly threatened the social order, first by sinning and second by removing the moral constraints she held on the rest of society."⁵⁴ This premise has been implicitly built in to ensuing theories of female criminology that rely heavily on mythological interpretations of the role and nature of femininity.⁵⁵

However, while the question of women criminals was partially addressed in the nineteenth century,

the history of women offenders in the nineteenth century is mostly anecdotal documentation of the deviant activities of unusual women (eg. robbery and cattle rustling), which trivializes and/or ignores the criminal activities of ordinary women whose crimes involve prostitution, child abandonment and neglect, and spousal homicide that resulted from battering."⁵⁶

I.L. Moyer encapsulates the limitations found in the majority of published studies of women criminals in the late nineteenth/early twentieth centuries and addresses both the public's interest in sensational crimes committed by women, along with its general disinterest in the majority of women's crimes, which have a tendency to be

⁵⁴ Windschuttle, *op. cit.*, p.33.

⁵⁵ C. Smart, *Women, Crime and Criminology*, Routledge & Kegan Paul, London, 1977, p. 3.

⁵⁶ I.L. Moyer, (ed.) *The Changing Roles of Women in the Criminal Justice System*, Waveland Press, Illinois, 1992 p.32.

dismissed as boring and unimaginative. A glance through the newspapers of the nineteenth century illustrates the sensational presentation of women's involvement in certain areas of crime by the media. Moreover, "Victorian writers on female crime frequently abandoned objective assessment in favour of emotional outbursts and moral censure."⁵⁷ However, it is not only the media who employ stereotypes and sensationalism in the coverage of women's criminal involvement, but, the understanding of women criminals by both the general populace and academics alike is also grounded in these same stereotypes, compounded by ideologies of the "nature of women".

Among the more common assumptions found in studies relating to women criminals are that women are treated leniently within the judicial process of arrest, indictment, trial and sentencing (the chivalry theory)⁵⁸. A further assumption is that women's criminal involvement has increased both in severity and actuality over time - the liberationist theory⁵⁹. This supposed increase is attributed to women's emancipation from traditional roles and subsequent liberation, culminating with the movement of women into all spheres of the community. Compounding these assumptions implicit in the discussion of female criminals, were two further historical conjectures about criminality *per se*: that there was a definite, definable criminal class and that criminality was contagious.⁶⁰ These presuppositions

⁵⁷ L. Zedner, *L. op. cit.*, p.28.

⁵⁸ The most common exponent of the chivalry theory is Otto Pollak, whose influential work *The Criminality of Women* (1950) continues to be cited as evidence of the chivalry theory today by some criminologists. Subsequent studies have since negated his assertions, but his theory continues to influence a vast number of theorists.

⁵⁹ Freda Adler and Rita Simon's study *The Criminology of Deviant Women* (1979) was the first major study to espouse the theory that as women became increasingly liberated, they would participate to a greater extent in criminal activity, with the ultimate result that women's crimes would approach those of men's crimes both in severity and number.

⁶⁰ M. Sturma, *Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century New South Wales*, University of Queensland Press, St. Lucia, 1983, p.1.

illustrate the concerns of the authorities to identify the criminal class and control it, thereby preventing it from infecting the remainder of society.

As previously mentioned, crime is relative to a society and time. Behaviour which a society classes as deviant, at a particular time, may not be stigmatized by another society, or by the same society at another time. Therefore activities which are singled out and defined as criminal are reflective of the attitudes of a particular society at a given time and, further, are generally a representation of the attitudes of the powerful minority of that society. Philips agrees, stating, "for everyday purposes, a state will be concerned not with 'total crime' but with those offences and offenders who are felt to pose some sort of threat to the society, and who therefore come to the attention of the police and the courts."⁶¹ As previously stated, when women criminals were not seen as a threat to the *status quo* of the society, authorities were not particularly concerned with their activities. However, at a time when the declining birth rate and the supposed increase in the incidence of abortions and use of contraceptives by women in an attempt to limit their families became a social concern, women who were known or suspected abortionists and infanticide offenders would be expected to be targeted by the media and by officials.

An influential nineteenth century ideology, social determinism, influenced some penal reformers concerned with explaining, and consequently preventing, the rise of criminal activity. Penal reform was evangelical in origin and it saw crime as a product of adverse social conditions due to industrialisation.⁶² Though social

⁶¹ D. Philips, *Crime and Authority in Victorian England: The Black Country 1835 - 1860*, Croom Helm, London, 1977, p. 43.

⁶² E. Windschuttle, *op. cit.*, p. 34.

determinism was an influential movement, it remained the view of a minority of those interested in female criminality. "The dominant view in the second half of the nineteenth century came to be that of biological determinism which was articulated most forcefully after the publication of Darwin's *Origin of the Species* in 1859."⁶³

Biological determinism has remained a major influence in female criminology ever since its inception. This ideology formed the basis of theories espoused by numerous criminologists and has at its root assumptions about the inherent nature of women and their role in society. Women have conventionally been seen as pawns at the mercy of their biological cycle and, as a result, explanations of women's involvement in crime often centre on feminine recurrent instability. Criminologists interested in women's criminality have commonly perceived women as isolated from social forces and have interpreted their motivation to physiological or psychological explanations. These theories rely on the duality of the good/bad woman, as previously discussed. Problematic to this ideology is that the view of women's "true nature" is based upon the "mores and lifestyle of the Victorian middle class woman, a woman far distant from those who constituted the majority of women of the criminal class."⁶⁴

To illustrate the central ideologies which have influenced the study of female criminality, I will look at the most efficacious theorists, their hypotheses and discuss the limitations they imposed on the study of female criminals.

Italian psychiatrists Lombroso and Ferrero published their findings of a study of women criminals in 1895 and have remained among the most influential

⁶³ *Ibid.* p. 40.

⁶⁴ E. Windschuttle, *op. cit.*, p.42.

criminologists to date.⁶⁵ Their study is seen as a pioneer study in the area of women and crime. Taking a biological determinist position, they studied physical characteristics of female offenders in an effort to identify markers of deviance. Their theory was based on atavism⁶⁶ and social Darwinism and they believed that all criminals are "throwbacks to an earlier stage of human development."⁶⁷

Lombroso and Ferrero examined female offenders, noting cranium measurements, counting moles and tattoos and quantifying the amount of facial hair. They estimated that at least four or more signs of degeneration needed to be present before the offender could be termed a complete criminal type. When the results of their study showed that very few of the women they observed could be termed deviant through physical characteristics, they were not disheartened. They rationalised their findings by suggesting that women showed fewer signs of degeneration simply because they were less evolved than men. They also suggested that women were less inclined than men towards criminality due to their basic sedentary lifestyle which they reduced back to biological explanations of the vitality of the sperm versus the immobility of the ova.⁶⁸ "Aggressive behaviour in males, for instance, was often traced to the great vitality of the sperm, while passive behaviour in females was traced to the relative placidity of the egg. [...] Biology used in this way was simply confirming old prejudices, not bringing new understanding."⁶⁹

⁶⁵ C. Lombroso, & W. Ferrero, *The Female Offender*, Fisher Unwin, London, 1895.

⁶⁶ "Atavism" is the theory of ancestral, but not parental, characteristics. "Throwbacks" is the colloquial term generally employed.

⁶⁷ P. Carlen, Introduction to *op. cit.*, p. 2.

⁶⁸ *Ibid.*, p. 2.

⁶⁹ R. Rosenberg, *op. cit.*, p.149.

Lombroso and Ferrero dwelt upon women's physiological immobility and psychological passivity⁷⁰, their superior adaptability to surroundings compared to men and the view that women were innately cold and calculating. They also invoked the theory of the "good" and "bad" woman to explain the seeming contradictions in their explanations and findings. "Good" women were seen as feminine and chaste and not prone to criminal activity, but when they did resort to criminal activity they did so in a "feminine" way, rather than a violent, resourceful or "masculine" way.⁷¹ Women's crime was seen as unstimulating and boring in relation to crimes committed by men, which Lombroso and Ferrero viewed as more complicated and dynamic. "Bad" women, by contrast, were biological anomalies who were a threat to society. They even went so far as to pose the question of sterilization of these women for the ultimate stability of society. They summed up their findings by saying that among the women criminals they had studied, they perceived a distinct lack of maternal instinct :

Her maternal sense is weak because psychologically and anthropologically she belongs more to the male than to the female sex.⁷²

Assumptions about the true nature of women are central to Lombroso and Ferrero's argument, and it is this which has given their theory its durability, as many theorists continue to distinguish between the supposedly inherent differences between men and women, and use these as a basis for defining sex roles. While Lombroso and Ferrero's work has been criticised for its small sample size⁷³, and

⁷⁰ D. Klein, "The Etiology of Female Crime", in F. Adler & R. Simon (eds), *The Criminality of Female Crime*, Houghton Mifflin Co., Boston, 1979, p.61.

⁷¹ *Ibid.*, p.62.

⁷² Quoted by C. Smart, *Women, Crime and Criminology*, *op. cit.*, p. 33.

⁷³ R.B. Flowers, *Women and Criminality*, Greenwood Press, Connecticut, 1987, p. 93.

the fact that they studied criminality in isolation from the social context⁷⁴, criminologists have tended to use Lombrosian ideals as the basis of their theories until recently, resorting to male and female archetype as an explanation for the variance in criminal activity between the sexes.⁷⁵

W.I. Thomas was a sociologist who first came to public attention when he presented a paper in the *American Journal of Sociology* in 1896⁷⁶. The basis of the article was similar to that of Lombroso and Ferrero's thesis that women were less evolved than men, "his belief in biological reductionism did not last, however."⁷⁷ By the time he published his most influential works, *Sex and Society*⁷⁸ in 1907 and *The Unadjusted Girl* in 1923⁷⁹, he was commonly regarded as the first author in criminology to take a liberal view of the causes of crime and his theories "mark a transition from purely physiological explanations [...] to more sophisticated theories that embrace physiological, psychological and social-structural factors."⁸⁰ Thomas was the first criminologist to enter into the nature vs. nurture debate⁸¹. "Originally a firm believer in the idea that behaviour is motivated by instinct, he began to explore alternative sources of motivation, and he

⁷⁴ E. Windschuttle, *op. cit.*, p. 42.

⁷⁵ R. Omodei, "The Mythinterpretation of Female Crime", in Mukherjee & Scutt (eds), *op. cit.*, p.54.

⁷⁶ R. Rosenberg, *op. cit.*, p. 143.

⁷⁷ *Ibid.*, p. 148.

⁷⁸ W.I. Thomas, *Sex and Society*, *op. cit.*

⁷⁹ W.I. Thomas, *The Unadjusted Girl*, Harper and Row, New York, 1923.

⁸⁰ D. Klein, *op. cit.*, p. 64.

⁸¹ C. Smart, *op. cit.*, p.39.

developed the theory that behaviour is a product of unconsciously acquired habit."⁸²

The foundation of Thomas' work relied upon his assumption that men and women have essentially different personality traits. He saw women as fundamentally law-abiding and placid, but an involvement in crime was seen as an indication that their emotional needs were not being met through their family lives. He based his theory on the common Victorian stereotype of the woman as seductress, luring men to crime by means of her sexuality and for her own motivation.⁸³ Women's sexuality was also used as an explanation for the fact that women were often arrested for sex-related offences (predominantly prostitution) and crimes of passion, ignoring the obvious elucidation that they were more likely to be policed on moral issues than men. Thomas saw women's criminality as stemming from the breakdown of traditional social limitations that had previously kept women in the domestic sphere and had prevented them from becoming involved in work outside the family or marrying out of restrictive ethnic or community groups.⁸⁴ Obviously, Thomas' theory can be seen as restrained by his covert judgement of women by the norms set by society based on middle-class white women.

In an attempt to curb women's criminality, Thomas proposed greater control by the state over the family and the tightening of social constraints over women. He advocated that delinquent girls be made, through reform, to adjust to conventional female roles and this philosophy has "continued to be central to the

⁸² *Ibid.*

⁸³ D. Klein, *op.cit.*, p.68.

⁸⁴ C. Smart, *op. cit.*, p. 41.

philosophy of women's penal regimes both in the United Kingdom and elsewhere."⁸⁵ Thomas' work lends authority to the school of modern criminologists who assert that the influence of the women's liberation movement and the increased emancipation of women will inevitably lead to an increase in both the incidence and inherent violence of female crime.⁸⁶

Otto Pollak, a sociology professor, published his influential publication in 1950⁸⁷ and his thesis reflected the growing influence of sociology, psychology and psychoanalysis on criminology.⁸⁸ Pollak's study is considered the "definitive work on women and crime during postwar years."⁸⁹ Advancing on the theories of Lombroso and Ferrero and Thomas, Pollak acknowledged the significance of social factors on the criminal activities of women, but he sustained the theme of the inherently cunning and evil woman. He asserted that the statistics show little evidence of female criminality due to women's innate cunning, thereby enabling them to hide their involvement in crime and, moreover, "men hate to accuse women and thus indirectly to send them to their punishment, police officers dislike to arrest them, district attorneys to prosecute them, judges and juries to find them guilty."⁹⁰ He referred to this as the "masked" nature of female crime, and asserted that "since men are basically afraid of women, most criminologists have been eager

⁸⁵ P. Carlen, *op. cit.*, p.4.

⁸⁶ The criminologists who lead this school of thought are Freda Adler and Rita Simon to be discussed later in the chapter.

⁸⁷ O. Pollak, *The Criminality of Women*, University of Pennsylvania Press, Philadelphia, 1950.

⁸⁸ C. Smart, *op. c.*, p. 46.

⁸⁹ This quote comes from R.B. Flowers, *op. cit.*, p.96 and is supported by D. Klein, *op. cit.*, p.73, M. Chesney-Lind, *op. cit.*, p.88, P. Carlen, *op. cit.*, p.4, E.B. Leonard, *Women, Crime and Society: A Critique of Theoretical Criminology*, Longman, New York 1982, p.3, and C. Smart, *op. cit.*, p.46. Pollak's work was also discussed in every analysis of women's criminology read.

⁹⁰ O. Pollak, *op. cit.*, p. 152.

to rely on every bit of evidence, however shaky, that seems to support the belief that women do not participate in crime to any appreciable degree and to disregard all observations that seem to contradict the validity of this belief."⁹¹ This belief that women's criminal activity goes largely undetected continues to influence the work of some criminologists to this day.

Pollak attributed women's greater capacity for deceit to the passive role they take in sexual intercourse, claiming that they are able to (and often do) fake enjoyment in order to appease their partners, while men are not capable of the same level of deceit; echoing Lombroso & Ferrero's reduction of women's criminality to the sex act.⁹² This, according to Pollak, encouraged women to employ deceit in all areas of their lives.⁹³ He argued that "our sex mores force women to conceal every four weeks the period of menstruation" and [t]hey thus make concealment and misrepresentation in the eyes of women socially required."⁹⁴

Pollak further argued that women's participation in crime was better able to be concealed as they were usually the instigators of crime, with male accomplices actually perpetrating the transgression⁹⁵. Another major factor, enabling women to maintain the masked factor of their criminality, according to Pollak, was woman's role in society. Their tasks as home makers, nurses, teachers, mothers etc enabled them to commit crimes isolated in the relative privacy of the domestic sphere such

⁹¹ *Ibid.*, p. 151.

⁹² D. Klem, *op. cit.*, p. 73.

⁹³ P. Carlen, *op. cit.*, p. 4.

⁹⁴ O. Pollak, *op. cit.*, p. 11.

⁹⁵ R. Omodei, *op. cit.*, p. 55.

as infanticide, murder of family members and shoplifting.⁹⁶ Pollak reiterated a basic belief in the inherent mental instability of women due to their biological cycle which Lombroso and Ferrero also proposed, asserting : "the generally known and recognized fact that these generative phases [menstruation, pregnancy and menopause] are frequently accompanied by psychological disturbances."⁹⁷

Historically, there was little attempt by officials to distinguish between a "criminal" and a "lunatic" population and as already seen, "criminal acts are already a threat to the status quo. If these acts cannot be thoroughly justified in a logical manner, by courts, juries, newspapers and public, then the threat they pose is magnified. 'Mad' is a safe adjective for such manifestly dangerous behaviour."⁹⁸ By labelling deviant women bad, the threat to society is reduced and the obligation to find a cause and solution to her behaviour is lessened, the onus is thus placed on the individual, not the society. As already discussed in Chapter 1, in certain circumstances women were labelled "mad" merely because they displayed a deviation from those traditional female roles ordained by society. As early as 1857, doctors such as Dr. Thomas Lightfoot⁹⁹ were stating that women were more prone to mental disorders due to their biological cycle and the inherent instability caused by the hormonal processes of puberty, menstruation, pregnancy, lactation and menopause. Lightfoot said "madness [...] is a sufficiently common result of disturbed ovarian function."¹⁰⁰ It was generally agreed among physicians that

⁹⁶ D. Klein, *op. cit.*, p. 73.

⁹⁷ O. Pollak, *op. cit.*, p. 155.

⁹⁸ B. Bardsley, *op. cit.*, p. 97.

⁹⁹ S. Delamont & L. Duffin, *op. cit.*, p. 36.

¹⁰⁰ *Ibid.*

menstruation could trigger numerous pathological and psychological complaints commonly seen among women.

Studies of female criminality have highlighted the tendency of the judicial system to incarcerate women more often than men in lunatic asylums for deviant behaviour. Garton asserts that "women were not apprehended by the police in great numbers, but in lunacy trials women were more likely than men to be certified. The proportion of admissions made by 'request' was higher for women than for men."¹⁰¹

Unfortunately, this tendency to label deviant women as "mad" has not disappeared with time and continues to influence judgements of women criminals while "the debate about PMS rages still [...] We carry the legacy of Lombroso and Ferrero around still. They have yet to be refuted."¹⁰²

The crucial foundation of all the preceding criminologists' works (aside from the accepted belief in the instability of women) is the supposition that "women's biological nature gives them a fundamentally different orientation to criminality from men. Women as a group are [seen as] predisposed to *non-criminality*,"¹⁰³ and thus female criminals are viewed as unnatural women. While these theorists have been influential in the field of criminology, and indeed remain so, and while they take a "scientific" approach to the subject, their work is deeply flawed by the lack of tangible evidence for their hypotheses. In Lombroso and

¹⁰¹ S. Garton, "Bad or Mad? Developments in incarceration in NSW 1880-1920" in *What rough beast?*, Sydney Labour History Group, George Allen & Unwin, North Sydney, 1982, p.93.

¹⁰² B. Bardsley, *op. cit.*, p.100.

¹⁰³ B. Brown, "Reassessing the critique of biologism" in Gelsthorpe & Morris (eds.), *Feminist Perspectives in Criminology*, Open University Press, Philadelphia, 1990, p. 50.

Ferrero's case, they defend the lack of evidence for their hypothesis by asserting that women are less fully evolved than men - a tenet that can have no substantiation. Thomas advocates the differential "instincts" of men and women as the primary explanation for the difference in their criminal activities - again another unsubstantiated claim. Pollak overlooks the potentially "masked" nature of male crime within the domestic sphere - how many men violently abuse their wives and children and are never convicted of the offences?

In the late 1960s, husband and wife team John and Valerie Cowie and their colleague, Eliot Slater, published their study on delinquency in girls¹⁰⁴ and their stance was very close to the positivist tradition of Lombroso and Ferrero, relying on the view that criminology is a sign of pathology. Their study of delinquent girls looked for signs of defective intelligence, impaired physical health, poor grooming and a lack of femininity. From their studies they concluded that delinquent girls tend to be of "impaired physical health, overweight, lumpish, uncouth and graceless, with a raised incidence of minor physical defects."¹⁰⁵ As Smart points out, the study neglected to take into account the socio-economic bias of the sample and the fact that most of the girls studied came from the lower classes who have an increased tendency to exhibit these characteristics.¹⁰⁶

Although Cowie (et. al.) relied on physiological explanations for female criminal activity, they differed from previous biological determinists in that they viewed chromosomes as the cause of the aberration in girls. They explained that delinquency in boys was determined predominantly by social factors, (as males

¹⁰⁴ J. Cowie, V. Cowie & E. Slater, *Delinquency in Girls*, Heinemann, London, 1968.

¹⁰⁵ Reported in C. Smart, *op. cit.*, p. 55.

¹⁰⁶ *Ibid.*

interact in society to a far greater degree than females) while delinquency in girls was seen as evidence of a chromosomal abnormality, causing delinquent girls to act like boys.¹⁰⁷ The authors defined crime and delinquency as masculine behaviour and argued that women or girls who behave in this way were rebelling against the sex role of females.¹⁰⁸

Cowie (et. al.) can be seen as continuing the biological determinist position of Lombroso & Ferrero while G. Konopka¹⁰⁹ was influenced by W.I. Thomas and the liberal tradition of criminology. She justified her interest in deviant girls, rather than boys, by claiming she had noticed the influence girls have on boys in gangs.¹¹⁰ She thereby builds on the theory of women as moral guardians of men and boys. She explained female criminality as the attempt by maladjusted females to find love, security and protection not offered to them at home, and saw intrinsic emotional differences between males and females¹¹¹ "The delinquent girl suffers [...] from lack of success, lack of opportunity. But her drive to success is never separated from her need for people, for interpersonal involvement."¹¹²

Konopka's work relied on assumptions about female emotions and the physiological and psychological nature of women, aspects that are extremely subjective. She took institutionalised delinquent girls as the basis of her study, thereby assigning these girls as representative of all delinquent girls. While she

¹⁰⁷ P. Carlen, *op. cit.*, p. 6.

¹⁰⁸ D. Klein, *op. cit.*, p. 78.

¹⁰⁹ G. Konopka, *The Adolescent Girl in Conflict*, Prentice-Hall, New Jersey, 1966.

¹¹⁰ *Ibid.* p. 40.

¹¹¹ D. Klein, *op. cit.*, p. 76.

¹¹² G. Konopka, *op. cit.*, p. 41.

may have been correct in her insistence that females are more concerned than males with social acceptance, she failed to discuss the social restrictions on females which may have contributed to this. She relied heavily on the assumption that female delinquency can be seen as a form of social maladjustment. Biological determinism remained an influence in female criminology studies throughout the 1960s and it was not until the rise of the women's liberation movement that female criminality was explored in other terms.

With the rise of feminism in the 1970s a new direction entered the study of female criminology; the conjecture that women's emancipation would lead to a broadening of female criminal activity. This theory relied on the premise that traditional women's roles relegated them to the domestic sphere where they remained subject to social control. Thus women had fewer opportunities to participate in criminal activity as opposed to men who had fewer social constraints operating on them. With the breakdown of these social controls following liberation, women would be able to move into economic and political spheres thereby providing them with more opportunities for criminal activity. This ideology was a re-working of the old double standard of "Damned Whores and God's Police" - for the sake of society as a whole, women must be kept under social constraint.

Freda Adler was the main exponent of the liberationist paradigm.¹¹³ Her theory rested on her assumption that "[...] not so long ago, when women knew their place and men knew women's place, and while women had little direct access to power, they were accorded a certain compensatory status for abiding by a nonaggression pact. For eschewing violence [...] women were deferred to and

¹¹³ F. Adler, *Sisters in Crime*, McGraw-Hill, New York, 1975.

given certain privileges."¹¹⁴ She saw the breaking down of social and economic restrictions on women's role in society as the direct cause of what she believed was an increase in the nature and extent of women's crime in America. The concept of the rising female crime rate, however, did not emerge with Adler in the mid 1970s, rather Pollak was one of the earliest writers to suggest that the criminality of women was increasing in 1951, but the theory remained in the background until the women's liberation movement began to be perceived as a social threat. This, according to Carol Smart,¹¹⁵ can be seen as a backlash against the women's movement by those threatened by the changes it wrought. "As the Movement [...] is being conceived once more as a threat to the stable character of female criminality [...] contemporary observers may be found to be expressing similar comments to Lombroso and Thomas about the dangers of allowing the same 'freedoms' [to women] as men."¹¹⁶

Australian authors Mukherjee and Fitzgerald¹¹⁷ have suggested that Adler's analysis is "somewhat simplistic"¹¹⁸ and they analysed her data using another statistical method. Their reworking suggested that the women's movement had not significantly altered either the extent or nature of female crime. They analysed the available data on female criminality in four Australian states¹¹⁹ between 1900 and 1976 and came to the conclusion that "the claim that there has been a substantial

¹¹⁴ *Ibid.*, p. 2.

¹¹⁵ C. Smart, *op. cit.*, p. 71.

¹¹⁶ *Ibid.*, p. 23.

¹¹⁷ S.K. Mukherjee & R.W. Fitzgerald, "The Myth of Rising Female Crime" in Mukherjee & Scutt, *op. cit.*, Chapter 7.

¹¹⁸ *Ibid.*, p. 131.

¹¹⁹ This study involved analysis of data from New South Wales, Queensland, South Australia and Western Australia.

increase in the volume of crimes by females in recent years is somewhat tenuous."¹²⁰ Concomitantly, Chesney-Lind condemned the scholarship of Adler's book as "uneven and contradictory."¹²¹ She pointed out a few major objections which have been levelled at the emancipation hypothesis namely: (1) as women had not yet made sufficient inroads to the masculine economic world, the supposed increase in female crime could not be attributed to this, in fact some theorists had suggested that it was "economic discrimination rather than liberation" which best described women's criminality. (2) Studies of female criminals suggested they were women of extreme poverty who committed "traditionally female" crimes such as petty theft or prostitution which were predominantly economically motivated and not women who had been liberated by the women's movement. (3) Many scholars have reviewed the literature and have questioned whether there has indeed been a change in women's participation in crime at all.¹²²

The preceding theories represented the major hypotheses in feminist criminology until the 1980s. In fact, very little work has been done since Adler's work in 1975 on theories of women's criminality; the major works published since this time tend to rely on criticism of previous theories rather than offering alternative explanations.

According to Ann Jones¹²³, works on female criminology "come along from time to time in the anxious wake of feminist agitation, [...] diligently looking out for evil women." She points out that "[t]he ostensible 'father' of modern

¹²⁰ *Ibid.*, p. 164.

¹²¹ M. Chesney-Lind, *op. cit.*, p. 79.

¹²² *Ibid.*, p. 81.

¹²³ A. Jones, *op. cit.*, p. xxi.

criminology, Italian scientist Cesare Lombroso, with the help of his son-in-law William Ferrero, produced his definitive work on women, *The Female Offender*, in 1895, less than a decade after Ibsen's Nora slammed the door on European patriarchy." A few years later, "William I. Thomas produced his first study *Sex and Society* under Lombrosan influence in the last days of the fight for women's suffrage, and his second volume *The Unadjusted Girl* in 1923, just after the battle [for suffrage] was won." Following some years of social stability, "Otto Pollak's *The Criminality of Women*, the 'definitive' modern study still taken seriously in some quarters, appeared in 1950, just as a disgruntled Rosie the Riveter was shuffled off to premature suburban retirement." In the 70's "[t]hese studies were followed by Adler's *Sisters in Crime* in the wake of the last wave of feminism." Seeing a similarity in the release of these books she noted that

[e]ach of these studies was produced during a period of profound unease about woman's place in society or out-and-out reaction against the women's rights movement; each presented 'scientific' conclusions firmly mired in the prevailing cultural stereotypes; and each study, along with the attention paid to it, became an important part of the antifeminist and antiwoman backlash.

Jones believes that theories of women's criminology are reflective of society and its attitudes towards women as well as related concerns regarding changes in women's status in society. Investigation of data and social attitudes within this study will hopefully determine whether patriarchal views on women's criminal activity in Western Australia were entrenched in theories about the role of women and their influence in society. If this conjecture is proven to be true, reaction towards the crimes by women and the sentences inflicted will be not so much based in legalities, but rather social terms.

Female criminology has suffered from assumptions which are implicit in their theories, and "for the last hundred years or so explanations of female crime have oscillated between, on the one hand, positivist assumptions that tie women forever to their biology and, on the other, biblically-inspired superstitions which represent 'woman' as the source of all evil."¹²⁴ Criminologists interested in studying the role of the female in crime need to start addressing the crimes themselves and investigate the social causes which push women to commit crimes. Criminology needs to apply itself to the obvious differences between crimes committed by men and women - why do women commit so few crimes compared to men? Why do women not resort to violence typically? and why do women use self-regulation in their lives more than men?

With these prevalent theories about the involvement of women in mind, this study of female criminals in the Western Australian Supreme Court between 1890 and 1914 will analyse the specific cases in an attempt to answer the questions, what crimes were women brought to trial on? How were the women tried? Were they tried fairly? Did the conviction and sentence fit the crime? Did the ideologies and social theories which form the basis of contemporary criminological theories influence the judges, lawyers and press of the period and their attitudes towards women criminals?

It is acknowledged that the majority of criminological theories were developed in the twentieth century, however, theories of criminality were grounded in beliefs and assumptions of women's nature, the types of crimes women were "allowed to commit" and whether women were treated harshly or leniently within the judicial process. Therefore, an investigation of crimes in the period when

¹²⁴ P. Carlen, *op. cit.*, p. 1.

criminological theories pertaining to women began to **assert an influence in society** can only help illuminate whether these theories are **grounded in reality** or myth.

The basis of Chapters one and two form the theoretical perspective underlying this study. This perspective forms an investigation of whether women criminals were judged against the accepted ideology of woman and treated severely for their transgressions, or, as the chivalry thesis suggests, treated leniently and in a paternalistic and patronising manner.

CHAPTER 3 - CRIMES OF A NON-VIOLENT NATURE¹²⁵

"The more featureless and commonplace a crime is, the more difficult is it to bring it home." - Sir Arthur Conan Doyle.

Klein & Kress in their critical overview of women and crime¹²⁶ attest that "the great majority of women arrested are petty offenders", a fact which is borne out by this study, and indeed is supported by a significant number of studies conducted by criminologists.¹²⁷ The single dominating feature of this category of criminal activity is that no violence was employed by the female felons, another traditional acceptance relating to women's criminal activity.¹²⁸

As far back as 1895 Lombroso and Ferrero "noting that most known women criminals are petty offenders, [...] claimed that the majority of women are not capable of true criminality. Instead, women [they argued] are occasional criminals who are first led into crime by stronger-willed male partners and are then grossly incompetent in the performance of the felony and easily apprehended and brought to court."¹²⁹ William A. Bonger stated a similar belief in 1916, when he

¹²⁵ These crimes are lesser crimes heard within the Supreme Court records, not petty crimes heard in lower courts. They are minor crimes with no violence employed. Due to the nature of the available records, it is not made clear whether any of them are on appeal from the lower courts. An appeal against a finding in the lower courts could be taken to the Supreme Court, but the records in the archives only show the original depositions taken by the police and give no indication of previous hearings. Due to the fact that these cases were of little interest to the general public, the majority of them did not receive coverage in the newspapers, so the information available is minimal, however as they appeared in the Supreme Court, it must be assumed that the authorities deemed them to be of concern to the society at that time.

¹²⁶ D. Klein, & J. Kress, "Any Woman's Blues" in Adler & Simon (eds) *op. cit.*, p. 85.

¹²⁷ This claim is supported by the following studies : L. Zedner, *op. cit.* p.39 , C. Smart, *op. cit.*, Philips, *op.cit.*, p.44, Flowers, *op. cit.*, p.74, Naffine, *op. cit.*, p.1, Weisberg, *op. cit.*, p.166, Sturina, *op. cit.*, p.91.

¹²⁸ It must also be noted that the crimes of prostitution and drunkenness are not included in this study, the two offences which women are most often indicted for. These offences come under lower court jurisdiction.

¹²⁹ P. Carlen, *op. cit.*, p.3.

said "women participate less in the crimes which require strength and courage."¹³⁰ These suppositions illustrate the fact that theorists attribute a basic lack of cunning and intellect to women criminals, implying that they cannot be "good" criminals - an indictment which has also helped to limit interest in the study of women's criminality.

Nine of the cases dealing with non-violent crimes involve prostitutes, either implied or actual, with the woman robbing her "client": of these, six of the women had records as convicted prostitutes, offering further support for this conjecture. According to Lucia Zedner, theft was "the most common form of larceny from the person committed by women seems to have been theft by prostitutes from their clients."¹³¹ Most of the men involved showed little or no awareness of their vulnerability in the hands of these women and they were subsequently astounded at being cheated of their money and/or belongings, suggesting that the assumption of criminologists that women do not make clever criminals was also accepted within the community. The attitudes of these male victims indicated an inherent belief in the superiority of men over women and a reluctance to believe that they could be duped by a woman. However, H. Mannheim¹³² suggests that "men are more vulnerable and open to exploitation by female secretaries, chambermaids or prostitutes, and [...] such acts [...] will very rarely reach the courts", suggesting that these instances are not as rare as the statistics would indicate, and, further, that in certain circumstances, women are capable of committing crimes involving cunning and intellect.

¹³⁰ W.A. Bonger. "The Criminality of Women" in Adler & Simon (eds) *op cit* p. 19.

¹³¹ L. Zedner *op. cit.*, p.37.

¹³² H. Mannheim, "The Sex Factor : Female Delinquency" in Adler & Simon (eds) *op cit* p. 47.

Tables 1A, 1B and 1C, on the following pages, summarise the cases involving non-violent crimes in this study. The year the crime took place, the name of the woman involved, the charge, the verdict and the sentence are all included for easy reference.

TABLE 1A - NON-VIOLENT CRIMES 1890-1901

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1890	Julia Driscoll	Larceny from a dwelling house	Guilty	6 months hard labour
1893	Hannah Baldwin	Stealing contents of letter and receiving	-	-
1896	Emily Egerton	Gaining money by false pretences	Guilty	6 months hard labour
1897	Annie Key	Larceny	Not Guilty	
1897	Minnie Forrester	Larceny from person	Guilty	12 months hard labour
1898	Hannah Paterson	Forging and Uttering	Not Guilty	
1898	Laura Miller	Sending threatening letters	Not Guilty	
1898	Agnes Ryan	Arson	Not Guilty	
1900	Hetty Carlyle	Stealing from person	Not Guilty	
1900	Fanny Burton	Larceny from person	Guilty	14 months hard labour
1900	Lydia Knight	Larceny	Guilty	4 months suitable labour
1900	Mary McInnes	Forgery and uttering	Not Guilty	
1900	Mary McInnes	Forgery and uttering	Not Guilty	
1901	Alice Lawson	Larceny in dwelling	Not Guilty	
1901	Mary O'Connor	False Pretences	Guilty	6 months hard labour

Source: The Supreme Court Records Index 1890-1914

TABLE 1B - NON-VIOLENT CRIMES 1902-1907

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1902	Mary O'Connor	Embezzlement	<i>Nolle prosequere</i>	
1903	Ellen Fanchon	Uttering 4 charges	Guilty of all 4 charges	6 months hard labour for each charge
1903	Louisa Wilson	Stealing	Guilty	6 months good behaviour
1903	Mary Elizabeth Halliday	Stealing	Guilty	6 months hard labour
1904	Margaret Leyden	Stealing from person	Discharged	
1904	Elizabeth Smedley	Defamation	Discharged	
1904	Eva Twinham	Breaking and entering	Not Guilty	
1905	Marguerite McIntosh	Stealing and receiving	Guilty	Good behaviour for 12 months
1906	Mary Elizabeth Halliday	Stealing	Guilty	3 months hard labour
1906	Sarah Prestwick	Uttering	Not Guilty	
1907	Elizabeth Reardon	Stealing as a servant	Guilty	Good behaviour
1907	Ebel May Smith	Stealing and receiving	Guilty of receiving	Good behaviour
1907	Annie Langshaw	Stealing from a dwelling and receiving	Not guilty	
1907	Florence Jardine	Conspiracy	Guilty	2 years hard labour

Source: The Supreme Court Records Index 1890-1914

TABLE 1C - NON-VIOLENT CRIMES 1908-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1908	Emily Green	Stealing in a dwelling	Not Guilty	
1908	Sylvia Elaine Johnstone	Stealing a horse/Stealing	Guilty	12 months hard labour
1908	Sylvia Elaine Johnstone	2 counts of stealing	Guilty	12 months hard labour
1908	Elsie Handyside	Stealing	Guilty	12 months
1908	Samuella Rumble	Arson	Not Guilty	
1908	Rachel Kelly	Defamation	Guilty	Good behaviour
1908	Joan Barnes	Uttering	Guilty	2 years hard labour
1910	Isabell Griggs	Attempting to bribe	Guilty	Good behaviour
1910	Rebecca Sallinger	Stealing	Not Guilty	
1911	Kate Doyle	Perjury	Not Guilty by direction	
1911	Minnie Ebbs	Defamation	Not Guilty	
1912	Eva Quigley	Stealing from the person	Discharged	
1912	Lily Seely	Stealing from the person	Discharged	
1914	Mary Gilbert	Stealing	Guilty	Good behaviour
1914	Catherine Gillan	Receiving	Guilty	6 months hard labour

Source: The Supreme Court Records Index 1890-1914

From examination of Tables 1A, 1B and 1C, it can be easily seen the types of crimes to be examined in this chapter. Many of the cases were straightforward, the evidence was given and the verdict appeared consistent, as far as can be ascertained. Other cases were more difficult to discern due to lack of available evidence or confusion within the depositions. As noted at the beginning of the chapter, the files in the Supreme Court archives usually contain only the depositions taken at the police court and some cases have no other information in the files. There is no available evidence of the court transcripts containing the cross examination of witnesses, the legal arguments offered, or the judge's summing up of the case, therefore the analyses is limited. Further, it must also be remembered that the cases will be analysed with a view to determining whether they offer support for the chivalry thesis or the morality thesis, or alternatively, provide no conclusive support for either thesis.

A detailed analysis of the cases involved, with concentration on the evidence given and the ultimate sentence, suggests 10 of these women were dealt a sentence which did not appear consistent with the evidence given. Of these ten, seven were found not guilty, despite evidence presented which strongly indicated guilt, while the remaining three received harsher sentences than seemed justified from the trial proceedings. Jocelyn Scutt, in her article on the "Chivalry Factor" detected that "for crimes such as robbery, assault and burglary where males and females were tried, the males were more often convicted, the females more often let off"¹³³ which supports Wilkie's contention that "women are unlikely to be perceived as dangerous, as capable of causing harm or damage"¹³⁴. Supporting these contentions, a significant number of studies conducted by criminologists have

¹³³ J. Scutt, *op. cit.*, p.8.

¹³⁴ M. Wilkie, *op. cit.*

indicated a tendency by the judicial system to treat women leniently when minor crimes are involved. The most notable exception to this phenomena is women who commit violent crimes, especially when the victims are children. These women, in contrast to minor offenders, are seen to have rejected the feminine stereotype and, as such, are likely to be treated more harshly than their non-violent counterparts. Wilkie further asserts that "judges tend to view women as less than fully responsible¹³⁵" for their actions, thus in cases where a man was also involved, the implication of guilt will fall to him rather than the woman.

¹³⁵ *Ibid* p.21.

3i - FORGING AND UTTERING

One would expect crimes involving forgery and uttering to be economically motivated and committed by women with a lack of financial support from a husband or father, an expectation which is borne out by an analysis of the following cases. A number of the indicted women were alone, hailed originally from interstate and were solely responsible for themselves in a financially forbidding environment for women wage earners. Fraud has historically been considered "one of the more traditional 'women's offences'"¹³⁶. Given this vulnerability, these women were already viewed as vulnerable to exploitation and not under the control of a male figure which meant that they were marginalised and thus, there is the expectation that they may either be pitied and dealt with leniently, or alternatively, sanctioned even further for their behaviour. The analyses of the cases involving Hannah Paterson, Mary McInnes, Ellen Fanchone and Sarah Prestwick will, hopefully, give an indication of prevailing legal attitudes towards women who committed the minor crime of forging and uttering.

Hannah Paterson¹³⁷

In 1898 Hannah Paterson was charged with signing a withdrawal form for the sum of £12 from her brother's account in the Post Office Savings Bank. Hannah's guilt was directly implied by testimony which detailed her repeated attempts to obtain access to her brother's money, attempts at duplicating his signature and clumsy and ineffectual excuses for her brother's absence. Her

¹³⁶ Klein & Kress, *op. cit.*, p.86.

¹³⁷ Western Australian State Archives file on Hannah Paterson is found at Consignment No. 3474, WAS No. 122, Item No. 210, Case No. 2908.

brother, James, testified that Hannah used to visit his house regularly on Mondays, with unrestricted access, and thereby had the opportunity to acquire his bankbook, but he denied that he had signed withdrawal forms for her to use at any stage.

Further, the bank teller positively identified Paterson as the woman who had been in numerous times for forms and had attempted to access her brother's account, while comparison of signatures revealed that fraud had indeed taken place. Despite this evidence, Paterson was found not guilty and the case dismissed, offering support for the chivalry thesis. The evidence suggests that Hannah was the spinster sister who did her brother's weekly housework, remaining reliant on what she could earn and the money he allowed her. There is no indication of her age or social standing, but the fact that she had a brother responsible for her could indicate that the judge thought she should be released to his accountability, supporting the contemporary ideology that respectable women had a male protector who was ultimately held responsible for the woman's actions. Hannah Patterson did not show much intelligence in her foray into crime, but showed a great deal of tenacity, indicating that she was fairly desperate to obtain some extra money. It is impossible to conclude from the evidence given in the trial what Hannah required the money for, but the desperation of her act is illustrative of the social circumstances which made women beholden to their male protectors for their financial needs. There is no evidence of Hannah Paterson in the Prison Registers, suggesting that this was her only significant interaction with the judicial process.

Mary McInnes (O'Connor)¹³⁸

In 1900 Mary McInnes was brought up on two separate charges of forging and uttering, both involving the presentation of forged cheques in the name of her ex-husband: the first in payment for a hat, the second for groceries, and, despite the positive identification of Mary McInnes, she was found not guilty on both of these charges, again offering support for the chivalry thesis. However, the leniency shown to her on these two occasions did not have a major effect on her behaviour as in 1901 she again presented a false cheque in the name of Mary O'Connor (an alias she used often) as payment for a pair of shoes. This time, however, she was found guilty and sentenced to six months hard labour, suggesting that as she had been given two chances prior to this charge, the judge was determined to punish her for her continued forays into crime.

What also may have proved to be a significant factor in the different outcomes of her trials is that the first two charges were heard by Justice Hensman and the latter by the Chief Justice, Justice Onslow. Onslow had experienced some difficulties in his position which had led to an extended leave of absence beginning in early 1889 and extending to July 1891¹³⁹ and returned with a renewed vigour for his position and a determination to stamp his authority on cases tried before him. Of further importance is the fact that the two earlier charges against McInnes in 1900, were for forging and uttering, while the latter charge was one of false

¹³⁸ The three cases involving Mary McInnes (O'Connor) are to be found in the Western Australian State Archives at Consignment No. 3474, WAS No. 122, Item No. 229, Case Nos. 3061 and 3064; and Item No. 242, Case No. 3161.

¹³⁹ See Enid Russell, *A History of the Law in Western Australia*, University of Western Australia Press, 1980 pp. 208 ff for details of the career of Justice Onslow.

pretences, which was perceived as a more serious crime. The *Prison Register*¹⁴⁰ shows that Mary McInnes, also known by the aliases Mary O'Connor and Mary Claudis, was born in Victoria, belonged to the Roman Catholic church, was fully literate and was 28 years old in 1901. She had received two sentences, one for the above mentioned forgery charge and one for her escape from custody while imprisoned awaiting the case for this charge and she served a total of seven months hard labour, however, in 1902 she was brought up on a charge of embezzlement for which a *nolle prosequi* was entered, but no evidence was available for this case.

Mary McInnes was typical of a large number of women criminals in that she was involved in minor thefts, did not resort to violence, obtained food and clothing by false means and was a victim of social dislocation and a woman without male protection. Elizabeth Windschuttle¹⁴¹ discusses a paper by Australian researchers Lloyd Robson and H.S. Payne in the 1960s which concentrated on female convicts. They both "stressed the urban background of these women and particularly the fact that many of them had moved from their birthplace to towns or cities to live, inferring disorientation and therefore more possibility of turning to crime." They found that most of these women were not "habitually criminals" and that they often did not re-offend after arrival in the colony. English historian, J.M. Beattie, also found that crime amongst women was more evident when women moved away from family influences and experienced social dislocation. He further found that "fluctuation in crimes seemed clearly to be tied to economic conditions, and to two factors in particular: prices of consumer goods, especially food; and availability of

¹⁴⁰ *Fremantle Women's Prison Registers* at the Western Australian State Archives, Consignment No. 4186, WAS 678, Item 1 - 1897 - 1906.

¹⁴¹ E. Windschuttle, *op. cit.*, p.43.

work."¹⁴² Mary McInnes appears illustrative of this type of woman criminal, having separated from her husband. Given the social conditions at the time, she may have been able to obtain employment only intermittently and as she used a forged cheque for obtaining groceries on one occasion, it may be inferred that she required food for herself and perhaps dependent children. While the purchase of clothing items with false means may appear to be a frivolous pursuit, it must be remembered that women, then as now, were judged on their appearance and a certain level of "respectability" was attached to a woman's physical presentation. In order to obtain employment, a woman had to appear "respectable" and of some social standing.

Ellen Fanchone¹⁴³

In 1903 Ellen Fanchone was accused of four separate counts of uttering. All cases involved forged cheques being presented at hotels in payment for liquor: in at least two of the incidents she drank the liquor on the premises and she was arrested following information the police received from her husband. Given these circumstances, it is highly likely that Ellen Fanchone was an alcoholic who required treatment. She pleaded guilty to the four charges and was sentenced to consecutive terms of six months hard labour for each charge. Given that her husband had her arrested, it may be assumed that he was concerned about her drinking and it further indicates of the lack of medical and psychiatric support historically available for people suffering from drinking problems. The Prison

¹⁴² J.M. Beattie "The Criminality of Women in Eighteenth Century England" *Journal of Social History* 8 Summer 1975 referred to in Windschuttle *op cit.* p 44.

¹⁴³ The four charges facing Ellen Fanchone can be found in the Western Australia State Archives at Consignment No. 3474, WAS No. 122, Item No. 265, Case No. 3386.

Registers¹⁴⁴ revealed that Ellen Fanchone was also known as Ellen Waterman, that she had been born in Adelaide, South Australia, was 32 years old in 1903, married, a Protestant and literate. She, too, can be viewed as a victim of social dislocation and while registered as married, there is no indication given in the court evidence of whether she and her husband were still together. Her prison record shows only these four charges, so it is not known what happened to her after she left prison.

The case of Ellen Fanchone presents a problem to researchers because the evidence reveals she was guilty of the crimes she was charged with, however, contemporary thought suggests that treatment for alcoholism was a more relevant form of rehabilitation than a prison sentence. Thus, the modern historian approaches the case with a moralistic attitude towards the sentencing of such a woman, but it needs to be remembered that in 1903 medical and sociological thought did not consider alcoholism as a disease, rather that a person had voluntary control over their decision to drink. Alongside this, social problems caused by alcohol were a concern for authorities and affected their attitude towards habitual drunks, especially women. In conclusion, there is no clear cut decision to be made on this case and it offers no substantial support to either the chivalry or moralistic thesis of women's criminality.

¹⁴⁴ *Fremantle Women's Prison Register*, Consignment No. 678, WAS 678, Item 1 - 1897 - 1906, Record No. 296.

Sarah Prestwick¹⁴⁵

In 1906 Sarah Prestwick was charged with uttering. Mrs. Prestwick lived at Park Street Subiaco in a house jointly owned with her husband, a carpenter in regular employment. Mrs. Prestwick, like many other housewives, bought her meat regularly from Holmes Brothers & Company, who delivered it to her house, with payment due on delivery. Mr. O'Reilly, the delivery man, who had worked for Holmes Brothers for four or five years, had been originally charged with defrauding his employers of the money supposedly paid by Mrs. Prestwick, but he denied the charge, alleging that she hadn't paid him when he delivered the meat, and that she had indicated she would call in to the shop and pay. When questioned by the accountant of the firm, Mrs. Prestwick produced a receipt supposedly signed by O'Reilly for the money, which, when compared to others signed by O'Reilly, proved to be in different handwriting and the signature was not consistent with his signature on other forms and receipts. Further, the date on the receipt proved to be two days after O'Reilly had left the employment of Holmes Brothers to work for another firm, implying the innocence of the delivery man. While explaining her version of events to the accountant, Mrs. Prestwick was extremely nervous and said that she hoped there would be no bother and no court case as a result of the problem and when he returned with a summons a few days later for Mrs. Prestwick to attend court, she refused to attend until told she had to do so, suggesting that her involvement was not as innocent as she indicated. During the trial, a handwriting expert was called, examined the receipts, and gave his opinion in court that the receipt in question was signed by a different person than the other receipts, and contrary to Mrs. Prestwick's statement that O'Reilly had signed the

¹⁴⁵ The case details can be found at the Western Australian State Archives at Consignment No. 3474, WAS No. 122, Item No. 303, Case No. 3872.

receipt against the brick wall of the house, the expert maintained that the signature on the questionable receipt was written on a smooth surface and slowly and carefully, implying that someone had attempted to forge O'Reilly's signature.

During the trial proceedings, it was noted that Mrs. Prestwick had "an excellent character and has always payed promptly and regularly" while O'Reilly had "a wife and child in Victoria and used to bet a little on horse racing", but in his support, O'Reilly stated that while his wife and child remained in Victoria, he continued to support them. O'Reilly also alleged that Mrs. Prestwick had admitted to him and his friend that she had not paid the money to O'Reilly, but to the officials she maintained her story that she had paid the money to him. Whether she said this as a result of intimidation or whether indeed she had said it at all is impossible to ascertain. There were no other complaints against O'Reilly, or discrepancies in his bookwork, during his period of employment and no evidence pointing towards him being guilty. Mrs. Prestwick was found not guilty.

The proceedings and outcome of this case offer some difficulties in interpretation. While the evidence suggests that O'Reilly's signature had indeed been fraudulently produced and that the evidence given by Mrs. Prestwick was not consistent with both O'Reilly's evidence and that of the handwriting expert, there was also not enough evidence to directly implicate Mrs. Prestwick. Initially, there was a tendency to dismiss the finding as the moral and social judgement of the jury finding a respectable married woman's testimony more believable than that of a separated man who admitted a tendency towards gambling, but as O'Reilly had originally been charged with stealing, the case dismissed and Mrs. Prestwick consequently charged, it appears that his testimony was treated seriously.

Therefore this case remains one of conjecture as the evidence available does not allow any further conclusions to be made that can be firmly supported.

3ii - STEALING AND/OR RECEIVING

Akin to the charges of forging and uttering already discussed, crimes involving stealing and receiving are likely to be financially motivated and, as statistical evidence suggests women steal mostly items such as clothing and food, allowing us to infer that their involvement in criminal activity is indeed financially motivated. The cases of Ethel Smith, Annie Langshaw and Sylvia Johnstone will be analysed in an attempt to determine whether they offer any support for either the chivalry or moralistic thesis.

Ethel Smith¹⁴⁶

In 1907, Ethel May Smith was charged, along with Henry Johnson, with stealing and receiving goods¹⁴⁷ stolen from a house in Clausebrook Road when the occupants were out. Johnson admitted to receiving the goods, stating that he had found them wrapped up in a latrine in Wellington Street and had taken them to the house he shared with Smith, another woman named Crosby and a Chinese man named Chew Lai, in Wittenoon Street where he had hidden them. Ethel Smith was found guilty of receiving and given a good behaviour bond.

The fact that these four people were living together while unmarried, and that one of the men involved was Chinese could possibly have influenced the finding of the jury. This, combined with the fact that Ethel Smith was a convicted prostitute, could have led to an implication of guilt on the basis of her lack of

¹⁴⁶ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 307, Case No. 3918.

¹⁴⁷ The goods included kitchen goods, shaving equipment, men's clothing valued at upwards of £5.

respectability. Johnson denied Smith had any knowledge of the whole affair, and there was no evidence brought forward in the case to prove that she was involved. The only implicating circumstance was the fact that the goods were found on the premises she shared with the others, but this alone cannot be the basis for the determination of involvement. Despite this, Ethel Smith was found guilty of receiving while Johnson was found guilty of stealing and sentenced to 18 months hard labour. Given that the evidence given was purely circumstantial, and there was nothing presented which decisively proved Smith's involvement, it is unclear how the jury reached the conclusion they did, leading to the inference that Smith was found guilty on moral, rather than factual, grounds, thereby lending support to the moralistic thesis.

Annie Langshaw¹⁴⁸

A case in 1907 involved a married couple, John and Annie Langshaw, who were both charged with stealing from a dwelling and receiving stolen jewellery belonging to Mrs. Sarah Aitchison. Mrs. Aitchison was an elderly married woman living in York Street, Subiaco, who took her jewellery to East Perth to have it valued, following which she began to walk home. Due to partial paralysis on her right side, she found the journey slow and painful. She stopped to rest at Weld Square and met a lady (later identified as Annie Langshaw) whom she asked for directions to Lord Street, and who replied she would give her the directions if Mrs. Aitchison bought her a drink. They went to the Beaufort Street Hotel where Annie Langshaw spied the jewellery when Mrs. Aitchison opened her bag to pay for the drinks. This was discernible when Langshaw asked for another drink, Mrs.

¹⁴⁸ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 310, Case No. 3951.

Aitchison replied that she did not have money to waste on drinks and Langshaw replied that she knew she did, as she had seen the jewellery in her bag.

Mrs. Aitchison then left the hotel alone and a young girl approached her and offered to escort her home. Upon arrival at Mrs. Aitchison's house, Langshaw was waiting at her gate and asked if she had any furnished rooms to let. Mrs. Aitchison replied she had two vacant and the three women entered the house to view the rooms. While she showed Langshaw the rooms, the young girl remained in the dining room where the bag containing the jewellery had been left, and when Aitchison and Langshaw returned to the dining room, the girl and the bag had both disappeared and Langshaw supposedly went to search for the girl and the bag, but never returned.

Why Mrs. Aitchison allowed Langshaw into the house after what had occurred previously was not addressed in the court proceedings, nor was the reason she left the girl alone with the bag. This girl was never identified in the proceedings of the trial, nor was there an explanation given as to why Annie Langshaw was charged with stealing, despite the fact that the unidentified girl obviously took the bag. Clearly the two were working together, again negating Mannheim's assertion that women do not operate in gangs, but it seems that Mr. and Mrs. Langshaw were the only ones apprehended by the police, and the existing evidence failed to reveal why John Langshaw was charged with stealing. Various pawnbrokers identified both Annie and John Langshaw as the people who sold the jewellery to them, and other witnesses testified that they had observed the accused couple with various pieces of the stolen jewellery at different times, but this only provides evidence for receiving. Despite the evidence implicating Annie Langshaw along with the unidentified girl in the robbery, rather than John Langshaw, he was

found guilty of both stealing and receiving and sentenced to 12 months hard labour, while Annie Langshaw was found not guilty of both charges and released.

This case supports the assertions previously discussed by Wilkie that "judges tend to view women as less than fully responsible"¹⁴⁹ especially when they are found to be acting in collusion with a man, and by Scutt that "for crimes such as robbery [...] where males and females were tried, the males were more often convicted, the females more often let off."¹⁵⁰ In this case, John Langshaw, as Annie's husband, bore the brunt of the charge for failing to control his wife, and his criminal record of previous stealing charges would, more than likely, have influenced the judge and jury as to his guilt. From this case analysis, it may be inferred that within the judicial process it was believed that as a man, Langshaw was the likely culprit for organising the crime and he influenced his wife and the girl to work as his accomplices, regardless of the fact that his involvement was tenuous and only proven after the crime. This finding lends support to the thesis that women are treated leniently within the judicial system, especially when they conform to social expectations of having a male protector.

¹⁴⁹ M. Wilkie, *op cit.*

¹⁵⁰ J. Scutt, *op. cit.*, p. 8.

Sylvia Johnstone¹⁵¹

In 1908 Sylvia Elaine Johnstone, alias Alice Frost, a 28 year old Toronto born Canadian woman, whose husband had been admitted to the lunatic asylum three years previously, was accused of stealing a pony, sulky and a set of harness from the Atwell stables. Johnstone had rented the items, then sold the horse and sulky to John Tracey, a hotel keeper in Victoria Park for £9. The following month she appeared in court again on a similar charge where she had answered an advertisement for a horse for sale dressed in men's clothing posing as the son of a farmer. She took the horse for a "test ride" and never returned it, subsequently selling it to John King at the sales yard.

At her trial, she appeared in the dock with a baby in her arms and pleaded guilty but appealed that she was in debt, alone and had two children to care for. She had a prior charge of stealing for which she had served one month's hard labour and was convicted of a total of four counts of stealing and sentenced to two terms of twelve months with hard labour. When sentencing Johnstone, Mr. Justice Rooth said "that had the offence of which she pleaded guilty been her first offence he would have taken that fact into consideration, and might have been disposed to have dealt with her leniently. He was, however, sorry to say that it was not her first offence [...] and from what the constable had told his Honour, she had recently embarked on a career of crime."¹⁵² While it is obvious from the evidence that Johnstone was guilty of the charges, she was also certainly suffering severe strain due to her circumstances and the sentence is indicative of this lack of social

¹⁵¹ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item Nos. 316 and 317, Case Nos. 4016 and 4025.

¹⁵² *The West Australian*, Saturday, 14 March 1908, p.2.

support for women struggling to bring up a family without male assistance.

Whether she was also punished on moral grounds for having a young baby with her when her husband had been in the asylum for three years is difficult to know. One also wonders what became of her children when she was in prison for an extended period?

The Prison Register¹⁵³ shows, however, that some leniency prevailed as she was discharged on the 15th February 1909 and no further convictions were recorded against her. Johnstone's case challenges the contemporary image of women as incapable of committing crimes which depict any imagination and ingenuity, by her cleverly crafted crime clearly depicting imagination and resourcefulness, however, she was obviously not clever enough to evade conviction. The fact that she was an emigrant from Canada would have increased the chances of her detection, but her circumstances had wider implications. She had no family support to fill the void when her husband was committed, to care for the children nor provide economic assistance. As Chesney-Lind points out there was an "extremely limiting nature of the few options available to working class girls of [the early 20th century] - prostitution, marriage, and unskilled menial work"¹⁵⁴. Johnstone, being already married, had no option of marrying again, had perhaps already tried prostitution and found herself with another baby to feed, or alternatively was involved either casually or permanently with another man, leading to moral censure, and if she did find work, there was no-one to mind her children. Further, the nature of her crime and its masculine overtones probably influenced

¹⁵³ *Fremantle Women's Prison Registers* Consignment No. 4186, WAS 678, Item 2 - 1906 - 1927, Record No. F464.

¹⁵⁴ M. Chesney-Lind, *op. cit.*, p. 86.

the jury against her : "it occasionally appears that punitive treatment is accorded females for 'manly crimes'."¹⁵⁵

The case against Sylvia Johnstone, again, causes problems in analysis. She pleaded guilty to all charges and the verdict supported this. The length of sentence she received was quite severe, indicating that leniency did not prevail in her sentencing, but, as mentioned, she was given an early release, which complicates the analysis. However, as no empirical evidence was available to explain the discrepancy, it cannot be inferred what actually occurred.

The cases involving stealing and/or receiving do not, one again, provide conclusive support for either the chivalry or moralistic hypothesis. However, the fact that both Ethel Smith and Sylvia Johnstone were found guilty and sentenced harshly, respectively, while Annie Langshaw was found not guilty, does tend to suggest that women without a male protector will be judged more harshly and those with a level of respectability, like Annie Langshaw, will be dealt with leniently by the judicial process.

3iii - ARSON

The following two cases involving Samuella Rumble and Agnes Ryan, both charged with arson, are quite complex and difficult to analyse with any certainty. Originally I assumed that the motivation for both women was financial, especially as both had insurance, and Samuella Rumble had her insurance policy on hand. What complicates this assumption is the fact that both women were married to men who were employed and Agnes Ryan was also maintaining a boarding house which

¹⁵⁵ *Ibid* p.91.

would have offered another source of income. Why two women in seemingly financially secure positions would want to burn their belongings to obtain the insurance is difficult to determine. A more detailed analysis of the cases may shed some light on the subject.

Samuella Rumble¹⁵⁶

In 1908, Samuella Elizabeth Rumble was charged with setting fire to her residence at Rowland Street, Subiaco. Mrs. Rumble owned the house and furniture, along with her husband who was working in Pinjarra at the time, and on the night in question went to the theatre, accompanied by her grand daughter, Mrs. French. An investigation into the cause of the fire found holes in the walls, the presence of wool and other flammable material saturated with kerosene in the holes and in other parts of the house. The investigators stated that in a closed house, free of draughts, kerosene rags would smoulder for hours before the fire would be discovered, and the evidence suggested that the house had been fired in six different places. The furniture was insured for £50 and the house for £200 and, very damningly, when Mrs. Rumble went to the theatre that night she took her insurance policy with her for an unspecified reason. Evidence presented in the depositions suggested that Mrs. Rumble owed a great deal of money, supporting the suggestion that the fires was lit deliberately in an attempt to obtain the insurance money. Despite the incriminating evidence presented, she was found not guilty and the case dismissed.

¹⁵⁶ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 319, Case No. 4039.

The fact that she was a "respectable" woman, living with her husband in a property they owned possibly led the jury to believe that she could not have been involved in a crime. However, the evidence that she was in debt increased the suspicion of arson. Regardless of her motivation, the evidence presented appears overwhelmingly in favour of Mrs. Rumble's guilt, however the finding of not guilty lends support to the chivalry thesis.

Agnes Ryan¹⁵⁷

The only other arson case in the study, occurred in 1898 and involved a woman named Agnes Ryan who ran a boarding house in Hay Street Perth, rented from Mrs. Ellen Reid of Mounts Bay Road. During the trial proceedings, Mrs. Reid testified that the house was sublet to boarders by the Ryans without either her knowledge or consent. The furniture in the house belonged to Mr. William Ryan, the accused's husband, and was insured by the New Zealand Insurance Company and the Ryans, both originally from Melbourne, had been married for five years. This instance was not the first occasion Mrs. Ryan had experienced a fire in her boarding house - about four months prior to this charge a fire had broken out when Mrs. Ryan was airing some clothes which caught alight and the insurance company paid Mr. Ryan £16 in compensation.

The testimony of Mrs. Bridget Abell who ran a boarding house in Wellington Street stated that on the morning of the second fire she noticed that Mrs. Ryan had lit a large fire on top of the stove and when questioned about this, she replied that she was going to lie down and required a fire when she awoke.

¹⁵⁷ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 211, Case No. 2942.

Mrs. Abell later noticed smoke coming from the Ryan's roof and upon entering the house, she found Mrs. Ryan lying on her bed in a room off the kitchen with a paper in her hand, wide awake, and when told the house was on fire, she commented "I have made a mess of it this time". Mrs. Abell further reported that she had a conversation with Mrs. Ryan previously about the house and furniture and Mrs. Ryan had commented that she wished she could burn it all and get the compensation. Mr. Hale, who boarded with the Ryans, testified that when he tried to put the fire out, Mrs. Ryan told him to leave it alone and would not allow him to try and save the furniture. Mrs. Ryan had also previously offered a previous boarder, Mrs. Bray, £10 to burn the house down and told her she could take any furniture she wanted as payment, however Mrs. Bray had refused and left to find accommodation elsewhere. Despite all this evidence, Mrs. Ryan was found to be not guilty.

There was ample evidence in this case to suggest that Mrs. Ryan was guilty of arson and testimonies offered for the reason of the crime suggest that Mrs. Ryan saw her action as a way out of her responsibilities of running a boarding house and an opportunity to obtain some money from the insurance company. Evidence was not presented to suggest her innocence. Like Mrs. Rumble, Mrs. Ryan was a "respectable" married woman who was earning legitimate money and was thus less likely to cause suspicion than a single woman, which could explain the not guilty verdict. On the basis of the evidence presented and the findings of the court, this case lends further support to the chivalry thesis, as did the previous arson case discussed.

3iv - SENDING THREATENING LETTERS

There is only one case in this category, that of **Laura Miller in 1898.**

Laura Miller¹⁵⁸

In 1898 Laura Miller was charged with sending threatening letters to two shopkeepers of Arab origin, who ran a local store where Miller opened an account, bought various goods, developed a good credit rating, then bought a large quantity of clothes and paid nothing off her account. The shopkeepers had issued a summons against Miller in an attempt to recover their money and when served on Miller, she went to the shop and threatened the shopkeepers, stating that if they did not drop the charge, she would make trouble for them. The shopkeepers very soon afterwards received a letter threatening to expose them to the police as operators of an abortion practice, and Miller was immediately suspected. In an attempt to deflect attention from herself and further implicate the shopkeepers, she addressed a threatening letter from them to her fictitious brother and tried to collect it herself from the Registered Letter Office, where she was arrested and admitted she had written the letter to Mr. J. Thomas Miller and confessed that this brother did not, in fact, exist. Despite all this incriminating evidence, she was found not guilty, again lending support for the chivalry thesis. One supposition which can be drawn is that the evidence of the two Arab shopkeepers was not considered significant enough to be held above that of an Anglo Saxon woman. Future cases involving Chinese men point to the same conclusion.

¹⁵⁸ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 210, Case No. 2915.

CRIMES RELATED TO PROSTITUTION

In all comprehensive studies focusing on women criminals, both historical and contemporary, it has been shown that the most common type of crime women participate in is that of theft, when drunkenness and prostitution is discounted¹⁵⁹, and indeed, these findings are borne out by this study.

As discussed briefly in the introduction to this chapter, a number of the crimes committed in this category involved women either posing or working as prostitutes, thereby enabling them easy access to their "client's" money and/or possessions. The women involved were Minnie Forrester¹⁶⁰, Hetty Carlyle¹⁶¹, Fanny Burton¹⁶², Alice Lawson¹⁶³, Louisa Wilson¹⁶⁴, Mary Elizabeth Halliday¹⁶⁵ (twice), Emily Green¹⁶⁶, and Mary Gilbert.¹⁶⁷ All cases were straightforward and

¹⁵⁹ This generalisation is supported by the statistics generated from the police force in Western Australia, and reported in the Report of the Commissioner of Police on the 30th June each year, printed in *Votes and Proceedings*. From 1904 onwards, the statistics are broken down into offences committed by males and females, and the vast majority of crimes committed by women are included in Offences against good order, which were heard in the lower courts. The next most common crime committed by women were those of theft without violence, the number of offences in this category far and away above those committed by women in any other category.

¹⁶⁰ Full details of this case can be found at the Western Australian State Archives, Consignment No. 3473, WAS No. 122, Item No. 201, Case No. 2776.

¹⁶¹ Full details of this case can be found at the Western Australian State Archives, Consignment No. 3473, WAS No. 122, item No. 225, Case No. 3009.

¹⁶² Full details of this case can be found at the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 228, Case No. 3051.

¹⁶³ Full details of this case can be found at the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 237, Case No. 3114.

¹⁶⁴ Full details of this case can be found at the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 268, Case No. 3415.

¹⁶⁵ Full details of this case can be found at the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 268, Case No. 3415.

¹⁶⁶ Full details of this case can be found at the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 316, Case No. 4015.

the verdicts and sentencing were consistent with the evidence given. What was interesting about all of the above cases was the innocent vulnerability of the male victims. Contrary to Mannheim's assertions, not all male victims are reticent about making their misfortune public, in fact some of them showed so little intelligence in their actions that one wonders at their lack of dignity and self respect. Certain of the women implicated worked with partners, either other women or men, in various degrees of collusion; a fact which directly negates another bold assertion by Mannheim that "girls do not form gangs, although they may occasionally join them for the sake of sexual adventures, nor do they often commit their offences in company with other females."¹⁶⁸ The male victims in this study made no secret of the amount of money in their possession, nor attempted to hide any other items of worth; in fact most had gone to the extent of deliberately exposing their belongings for all to see. Drinking by one or both parties was a common element in these crimes - a considerable number of the meetings took place in a hotel and the promise, either explicit or implied, of sex prompted the parties' removal from the public venue to a private one, enabling the crime to take place.

W.I. Thomas, the sociologist discussed in previous chapters, argues that women use their sexuality as a vehicle to commit crimes, arguing that "[a]n unattached woman has a tendency to become an adventuress not so much on economic as on psychological grounds. Life is rarely so hard that a young woman cannot earn her bread, but she cannot always live and have the stimulation she craves."¹⁶⁹ This is a fairly harsh judgement on women and the historical evidence

¹⁶⁷ Full details of this case can be found at the Western Australian State Archives, Consignment Number 3473, WAS No. 122, Item No. 441, Case No. 4602.

¹⁶⁸ Mannheim, *op. cit.*, p.53.

¹⁶⁹ W.I. Thomas, reported in Klein, D. "The Etiology of Female Crime" in Adler & Simon (eds) *op cit* p. 68.

points to the fact that life could be, and often was, extremely hard for women of the working classes. Many factors influenced a woman's ability to obtain work - her appearance, level of respectability, whether she had children, her age and her work experience. Women were sometimes forced to resort to crime to make ends meet and often they could feed themselves, but not buy a new dress or hat which they required to maintain their respectability. The case of Sylvia Johnstone is illustrative of the hardships faced by women forced, through circumstances beyond their control, to live alone and have the added responsibility of raising a family.

SUMMARY

Women such as Hannah Paterson, Laura Miller, Sarah Prestwick, Mary McInnes, Ellen Fanchone, and even the women charged with arson, Agnes Ryan and Samuella Rumble, appeared to be respectable and under the protection of a male in the form of either husband or brother, but they may well have been experiencing difficulty in making ends meet. Their crimes may have been committed out of desperation in an attempt to gain access to some cash to alleviate immediate financial difficulties. Given that the majority of these women appeared in the criminal records only once and were not habitual criminals, lends further support to this assertion.

Other women, whose cases were not discussed in detail such as Catherine Gillan¹⁷⁰, who was charged with receiving stolen horse feed from her son's employer; Isabell Tait Griggs¹⁷¹, who wrote to the Public Service Commissioner in

¹⁷⁰ This case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 443, Case No. 4619.

¹⁷¹ This case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 336, Case No. 4201.

an attempt to bribe him into giving her husband a better appointment; **Elizabeth Riordan**¹⁷², who forged a promissory note; **Marguerite McIntosh**¹⁷³, who stole clothing and material from Boans Brothers; **Eva Twinham**¹⁷⁴, who gave information to her lover, Alfred Collins, on where to find the rent money a friend of hers collected; **Lydia Knight**¹⁷⁵, who posed as a widow and defrauded the Curator of Intestate Estates of £4; **Annie Kay**¹⁷⁶, a live-in domestic who was charged with stealing money from her employer; and **Emily Egerton**¹⁷⁷, who stole a Post Office Order all resorted to non-violent crime for unknown reasons and most of them were not habitual criminals: perhaps a significant fact when considering lenient treatment by the judicial system.

A further consequential factor is that of the 37 women who were convicted and subsequently incarcerated in Fremantle Prison, the registers show that only two of these women were originally from Perth¹⁷⁸. Of the remainder, 6 came from country Western Australia, 14 were from other colonies within Australia and the remainder from overseas, implying that women lacking family support were either

¹⁷² This case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 306, Case No. 3884.

¹⁷³ This case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 293, Case No. 3749.

¹⁷⁴ This case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 281, Case No. 3591.

¹⁷⁵ This case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 229, Case No. 3052.

¹⁷⁶ This case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 202, Case No. 2735.

¹⁷⁷ This case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 192, Case No. 2601.

¹⁷⁸ See Appendix 3 for a full summary of the origins of the women in this study.

more susceptible to a life of crime, or were more likely to be convicted. If the latter suggestion were true, it would demonstrate a bias within the judicial system towards outsiders. In order to ascertain the reality behind this suggestion, it would be necessary to compare the birth places of all the women brought up on charges but did not receive a prison sentence. However, this information is not available in the court records, so it remains merely supposition at this stage. Nevertheless, when the time period of the study is taken into consideration and the social dislocation caused by the influx of immigrants due to the gold rushes, it is likely that these women were especially vulnerable to a life of crime due to the scarcity of work and family and social support available.

The cases presented above give credence to the chivalry thesis which argues that when charged with a minor offence, women are treated leniently within the judicial process. It appears for whatever reason, juries and judges were reluctant to convict women brought up on minor charges, despite various amounts of evidence suggesting that they were in fact guilty. It may be that in some cases, such as that of Agnes Ryan, the evidence was hearsay and there was little concrete evidence for them to be charged upon, but it is difficult to ascertain why the ultimate decision was recorded in many cases, which allows the inferences of chivalrous treatment to be offered as a plausible explanation. Further the chivalry thesis is supported predominantly in cases where the women involved had a level of respectability and male protection. In other cases, where the women were alone and vulnerable, such as Sylvia Johnstone, the judicial process appeared to be harsh on them, lending weight to the suggestion that a moral bias can determine the verdict and sentencing of women criminals. However, given the lack of substantial evidence for a number of cases, the finding cannot, necessarily, be taken as a conclusive one, merely as a likely one.

CHAPTER 4 - ASSAULT AND VIOLENT ROBBERY

"So much of Australia's history took place outside the law there was more attempt to hide it than record it." - John Martin Douglas Pringle.

The category of violent robbery and assault includes crimes such as wounding with intent to do grievous bodily harm, robbery with violence, assault and related crimes; a category where, according to criminological theory, one would expect to find few women criminals, and this is indeed the case. In the twenty five years under review, there were only 15 women brought before the Supreme Court in this class of crimes, and interestingly the majority occurred in the period between 1905 and 1910 (see Table 2). An analysis of these crimes suggests that three of the women were dealt with in a manner which was not supported by the evidence given. As there are so few crimes in this category, I will give a brief analysis of a number of them, looking at some of the more complicated cases in detail in an attempt to distinguish a common theme linking them. The cases which will be examined in detail are those of Bertha Becker, Emily Cresswell, Esther Warden, Ellen Lanyon, May Rawlings and Dorethea Jackson, Alice Evanis, Dolly Martin, Myrtle Collins and Florence Redpath. Table 2 details the crimes studied in this category of violent assault and robbery.

TABLE 2 VIOLENT CRIMES 1890-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1900	Bertha Becker	Wounding with intent to do grievous bodily harm	Not Guilty	
1901	Vera Hayes	Demanding money with menace	Not Guilty	
1905	Emily Cresswell	Wounding with intent and causing grievous bodily harm	Guilty on second count	18 months hard labour
1906	Esther Warden	Assault occasioning actual bodily harm	Guilty	17 months hard labour
1906	Alice Grey	Robbery with violence and stealing from the person	Not Guilty	
1906	Florence Harford	Robbery with violence	Guilty	2 years hard labour
1907	Ellen Lanyon	Robbery in company	Guilty	4 years hard labour
1907	May Rawlings	Robbery with violence in company, assault with intent to steal in company and assault	Guilty on 2 counts	12 months hard labour
1907	Dorothea Jackson	Robbery with violence in company, assault with intent to steal in company and assault	Guilty on 2 counts	18 months hard labour
1908	Alice Evans	Unlawful wounding	<i>Nolle prosequi</i>	
1909	Emily Cresswell	Stealing from the person with violence and stealing	Guilty	6 months hard labour
1909	Dolly Martin	Unlawful wounding	Guilty	Good behaviour for 2 years
1910	Myrtle Connors	Entering a dwelling at night with intent	<i>Nolle prosequi</i>	
1910	Rose Williams	Stealing with violence in company	Not Guilty	
1910	Florence Redpath	Stealing with violence	Not Guilty	

Source: The Supreme Court Records Index 1890-1914

Following is a summary of the cases analysed, beginning with that of Bertha Becker in 1900.

Bertha Becker¹⁷⁹

In 1900 Bertha Becker, a Frenchwoman who was, by her own admission, working as a prostitute from her home in Essex Street Fremantle, was charged with wounding with intent to do grievous bodily harm. The case involved a labourer named John Morrison and two friends who had spent the day drinking and decided to add to their pleasure by visiting a prostitute. Unfortunately for Bertha Becker, they chose her house and initially she was reluctant to do business with the men as they were obviously drunk, but she eventually demurred and allowed them to enter. Morrison went to her bedroom with Becker and one of his friends went with Yvonne Leconte, who also lived in the house. Once in Becker's room, however, Morrison admitted he did not have enough money to pay for her services and was asked to leave and an argument ensued. The men reluctantly left, however, once outside the house, Morrison became violent and abusive, attacking and kicking Becker's dog and attempting to gain entry into the house by breaking the window. Becker, frightened and armed with a gun, threatened to shoot unless he went away and Morrison responded by breaking down the door and rushing inside, resulting in Becker shooting him in the leg - a flesh wound which barely broke the skin. After he left for the hospital, Becker went to the police and told them what had occurred. The police found Morrison later that night but, evidently concerned about the consequences, he denied any knowledge of the event at this time.

¹⁷⁹ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 225, Case No. 3017.

Regardless, the case went to trial and during the hearing, the Chief Justice instructed the jury that they were not obliged to hear the case through, as it was evident who was the wronged party. The report of the case in *The West Australian* was light hearted and, like the judge and jury, were clearly supportive of Becker. There was report of levity and sarcasm directed towards Morrison in the hearing and the "not guilty" verdict found in favour of Becker was never in doubt.¹⁸⁰

¹⁸⁰ As an example of the atmosphere in the court, I will include a report from *The West Australian* dated Saturday, 10 March 1900, p.11: "Bertha Becker was charged with having, on February 16th at Fremantle, wounded John Morrison, with intent to do grievous bodily harm. Mr. E. A. Harney, instructed by Mr. Barker, appeared for the prisoner, who pleaded not guilty. John Morrison, labourer, residing at Midland Junction, deposed that on Feb 16th he went to the home of the prisoner, "Kingsley Hall" Essex St. Fremantle with two friends. Witness was not sober. One of his mates went in first, and he and the other one were afterwards admitted by the accused after some demur. Prisoner was a woman of the town. They were in the house about half an hour altogether. Prior to his leaving he was put out (laughter). He and one mate returned and forced the back door open.

His Honour : With no more violence than was necessary I suppose? (Laughter)

Witness, continuing said that as he was going up the passage he heard the report of a firearm. He saw accused about four or five yards in front of him. He did not know who fired it.

His Honour: You were drunk I suppose?

Witness : Yes

His Honour : So drunk that you could not see? (Laughter)

Witness, replying for the Crown Solicitor said that after the discharge of the weapon he felt something strike his leg. He then left the house.

By Mr. Harney: He admitted that after his ejection he held a stone up at the window, and threatened to throw it at accused. He might have used bad language.

Dr. J. W. Hope deposed to having treated Morrison for a bullet wound on the right thigh. It was not dangerous, the bullet having merely passed through the skin.

Arthur Woolams, mill hand, employed in Essex Street, near Kingsley Hall, deposed that at about 5pm on the day in question he hear a dog howling, and saw Morrison and another man beating it with a kerosene tin. Morrison was calling the prisoner very bad names.

His Honour, interrupting the witness and addressing the jury, said that they were not obliged to hear the case through. When they had heard enough they could say so.

Witness: I am quite satisfied your Honour (Laughter)

His Honour : I am not speaking to you.

The foreman said the jury would like to hear further evidence.

Witness, resuming, said that he only heard the woman say "Go away". Morrison burst in the back door and entered, followed by his mates, almost immediately Morrison's mate sang out and said "She has shot him."

This closed the Crown case.

For the defence prisoner, on oath, related facts which the witness Morrison had admitted. In broken English (being a French woman) she said she had been very frightened of Morrison. She

This case is very significant due to the fact that Bertha Becker was a prostitute, working in a professional capacity when the foray broke out, nevertheless, the court appeared sympathetic to her plight and failed to impose a moral judgement on the case but judged it on its merits. This very fact goes against the implicit assumption that the respectability of the woman is a major factor in the verdict intrinsic in most theories of judicial processing regarding women. Whether or not Morrison and his friends were viewed as "larrikins" and, as such, were perceived as a greater threat to social stability than Becker is indeterminable, but not altogether unlikely. Certainly, Grabosky¹⁸¹ discusses the concern of authorities and the public with "larrikins" in Sydney and there are suggestions in the Western Australian newspapers that a similar concern existed in this state. This case, however, gives credence to the chivalry thesis of criminology.

fired the revolver in self defence, but did not know where she aimed at all. She herself sent for the police.

Mr. Harney addressed the jury and his Honour summed up briefly.

The jury at once returned the verdict of not guilty and the prisoner was discharged." This report is significantly different from others viewed which were all either sensationalised coverages or unemotive verbatim accounts, with little editorialising. The attitude of both the court and the newspaper is surprising given the fact that Bertha Becker was a self professed prostitute and many historical works would have us believe that prostitutes in this time period were automatically condemned by the upper class patriarchy.

¹⁸¹ P.N. Grabosky, *Sydney in Ferment: Crime, dissent and official reaction 1788 to 1973*. ANU Press Canberra 1977 p84 ff.

Emily Cresswell¹⁸²

In 1905 Emily Cresswell was charged with wounding with intent and causing grievous bodily harm to one Frederick Jamieson. The case involved a group of Western Australian criminals, all well known to the police, who linked up at the City Hotel in Perth on a particular night. There were numerous quarrels during the night's drinking and when the group finally broke up, Jamieson and Cresswell were last seen by the others walking off down William Street together. How events transpired after this is unclear, with contradictory evidence being produced in the trial. Cresswell claims they met up with some other men who had a grudge against Jamieson and attacked him, but he appeared to be fine when she left him. Contrary to this evidence, however, Jamieson was found staggering around the street with blood pouring from his head by a Chinese man, Charley Fook, who called Constable Daniel Thompson to Jamieson's aid. The policeman helped him to Perth Hospital where he was found to have a knife wound near his ear which had severed an artery culminating in severe blood loss. Before he collapsed he identified Emily Cresswell as the one who knifed him and substantiating this, other witnesses testified that they saw Jamieson hit Cresswell earlier during the evening and cut her lip open and that later she was seen retaliating against him in the street. There was an implicit suggestion in many of the testimonies that Jamieson and Cresswell were at least occasional lovers, and one police constable, Nathaniel Madden, testified that he had overheard an intense conversation between the two involving a child.

¹⁸² Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 290, Case No. 3715.

Emily Cresswell¹⁸²

In 1905 Emily Cresswell was charged with wounding with intent and causing grievous bodily harm to one Frederick Jamieson. The case involved a group of Western Australian criminals, all well known to the police, who linked up at the City Hotel in Perth on a particular night. There were numerous quarrels during the night's drinking and when the group finally broke up, Jamieson and Cresswell were last seen by the others walking off down William Street together. How events transpired after this is unclear, with contradictory evidence being produced in the trial. Cresswell claims they met up with some other men who had a grudge against Jamieson and attacked him, but he appeared to be fine when she left him. Contrary to this evidence, however, Jamieson was found staggering around the street with blood pouring from his head by a Chinese man, Charley Fook, who called Constable Daniel Thompson to Jamieson's aid. The policeman helped him to Perth Hospital where he was found to have a knife wound near his ear which had severed an artery culminating in severe blood loss. Before he collapsed he identified Emily Cresswell as the one who knifed him and substantiating this, other witnesses testified that they saw Jamieson hit Cresswell earlier during the evening and cut her lip open and that later she was seen retaliating against him in the street. There was an implicit suggestion in many of the testimonies that Jamieson and Cresswell were at least occasional lovers, and one police constable, Nathaniel Madden, testified that he had overheard an intense conversation between the two involving a child.

¹⁸² Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 290, Case No. 3715.

Jamieson incurred injuries which included the loss of his left eye, partial paralysis on his right side and had difficulty speaking as a result of the attack - injuries which were considered by the medical profession to be permanent. Cresswell was known to keep a knife of a similar size as that which caused Jamieson's wound on her person at all times and she also had a long history of offences.

In defending Cresswell in 1905, her lawyer Mr. LeMesurier argued that she had been dealt with unfairly by the police and that if she was guilty of the assault, she did so in self-defence. He suggested that it was "difficult to believe that [Jamieson's] wound could have been inflicted by such a frail woman as the accused" - the notion of female fragility erupts in judicial defence. When the guilty verdict was passed down, the *West Australian*¹⁸³ reported that "the prisoner burst into tears and fell to the ground, and had to be carried to the cells below." Cresswell appeared knowledgeable about how to act the part of the innocent female, as evidenced in her letters, in an attempt to gain leniency, but it patently did not work, and her photo in the Prison Register certainly did not suggest a frail, delicate female. Protestations of remorse and regret are considered very influential in determining the final sentence or verdict in theories of women's criminality and treatment within the judicial process. In fact, according to Zedner,¹⁸⁴ "descriptions of women's crime frequently referred to past conduct, marital status, protestations of regret, or shamelessness, and even to women's physical appearance." and it was these "protestations of regret" and remorse which often influenced juries and judges towards women. While Cresswell employed the suggestion of feminine fragility and remorse in her defence, her life of disrepute and previous criminal

¹⁸³ The *West Australian* Friday 4th August 1905 p.2.

¹⁸⁴ L. Zedner, *op cit* p.30.

record would have negated this by destroying any pretensions to respectability she may have had.

While awaiting trial on the charge, Cresswell sent a letter to the judge pleading for leniency. Dated 1st August 1905 it read:

"To His Honour, Judge,

Your Honour I beg for Clemency not for myself but for my aged mother who is to [sic] feeble to work and I have been her sole support for years since the Death of my eldest brother. She has no means of getting her living and if deserted now it means the poor house for her. She has only been discharged from Prince Alfred Hospital (Sydney) recently suffering from heart failure and catarrh of the lungs and my trouble will fall heavily on her. And Your Honour I beg for Mercy for her sake and I promise to lead a different life and go home to Sydney to her for the future if you will look Mercifully in my case. Your Honour, I brave your mercy and I ask you in goods fame to take into consideration the delicate state of health of my poor aged mother.

Your Honour I beg for mercy. Your Honour will you take into consideration I have been in Prison since the 10th of April.

Emily Cresswell."

This letter combines protestations of remorse, the responsibility of an aged and frail mother in Sydney and the suggestion that if she is dealt with leniently she will leave the State and return to Sydney to care for her mother and submit to the limitations of the prescribed gender roles.

However, she was not dealt with leniently and whether a further 12 month sentence with hard labour caused further moral degeneration or whether she was one of Lombroso's "true criminals", she incurred a later charge in the Supreme Court in 1909 of stealing from the person with violence, where she solicited a man from a hotel for the purposes of prostitution and then attacked him outside the

hotel and robbed him of his money. While awaiting trial for her conviction in 1909, when she wrote a similar letter as the previously discussed one to the judge:

"Your Honour"

Having now, been found guilty of this crime, and of which I can and do swear, on my sacred oath, that I am innocent of, I beg to throw myself on your mercy. I may state, I am the sole support of my aged and feeble mother who is in Sydney, Mrs. O. Wales, a widow and in destitute circumstances and I beg Sir to state that I have already served a long term for past offences and hope it will not have any incriminating effect on this case in hand. I have been very unfortunate in my career and intended leaving the country this year and would have done so, had I not been arrested. I beg for mercy on her account as she is very old. I ask you to deal leniently with me. Trusting Sir, you will give this your merciful consideration. I beg Sir to remain your very humble petitioner. Hoping Sir, you will also take into consideration I have already been waiting over two months for my trial.

Emily Cresswell"

The judge did not find the contents of this letter enough to induce him to release Cresswell or impose a lenient sentence upon her and sentenced her to six months imprisonment with hard labour. Her prison record shows Emily Cresswell to be an habitual criminal with offences including stealing, obscene language, prostitution and vagrancy entered from 1900, when she was 24 years old, to 1909. Having originally come from Sydney, she may have gone back there after her last release from prison as her letters suggest.

This case is not analysed for the apparent discrepancy in verdict from the evidence given, rather it is included as an example of the fact that some women are violent without extreme provocation and do make a life of habitual criminality: a contrast to theories of female criminology. If, as it appears from the evidence, Emily Cresswell appeared to the jury and judge as living a masculine life, any tendency towards chivalrous treatment would have been vilified, as the theories

suggest that chivalrous treatment is only accorded to women who abide by feminine mandates.

Esther Warden¹⁸⁵

In 1906 thirty one year old Esther Warden was brought up in the Supreme Court on a charge of assault occasioning actual bodily harm. A known prisoner with multiple pages of convictions on record, mostly involving vagrancy, drunkenness, disorderly conduct, damaging property and assault, she was constantly tried and imprisoned until 1936. The day of the crime, Wednesday 7th of March, was the day of the butcher's picnic and a young man named Charles Cowain met one of his friends, Harold Middleton, and they went to the Oddfellows Hotel in Fremantle for a quick drink. There, he was accosted by Warden who asked him to buy a drink for her. He, not knowing what to do, agreed and when he and Middleton finished their shandies they went for a walk towards the beach. Warden and another girl followed them and an altercation broke out between the two women and as a result a policeman approached and spoke to Cowain about the trouble. Warden later accosted Cowain and threatened his life for talking to the police about her and later that same afternoon, he and Middleton entered the Oceanic Hotel and were pounced upon by Warden who demanded that a man named O'Sullivan (who said he was her husband) defend her honour against Cowain whom she accused of denigrating her. Whether or not O'Sullivan was Warden's husband is open to conjecture as the Prison Register shows that she was married at some time, but does not indicate when or who her husband was, and a study of the *Western Australian Dictionary of Biography* did not draw out any

¹⁸⁵ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 296, Case No. 3798.

information on the couple. Warden and O'Sullivan began attacking Cowain and Warden broke a glass in his face, resulting in a large gash and causing profuse bleeding and Cowain staggered out into the street where he was found by a policeman who took him to the hospital where he lost consciousness until the next day. The medical staff attested that he was suffering from severe shock after the attack and had ongoing health problems due to the nature of his injuries from the attack. According to the testimony delivered at the trial, Cowain was a young, innocent man who had nothing to do with women, rarely drank and had never previously been involved in violence. He said he bought Warden a drink to get rid of her and the whole attack was unprovoked by either himself or his friend, testimony supported by his companion.

Warden, a domestic servant/housekeeper who was born in Galway Ireland, was one of those women who are largely unrepresented in the discussion of theorists of female criminality - the habitual criminal who seems to resort to violence as naturally as men do. Women are generally not attributed with the ability to employ violence, especially unprovoked violence against strangers and these types of crimes are considered to be the sphere of male criminals and women who invade this territory are seen to be anomalies who have taken on the traits of masculinity. In fact Freud suggests that "the deviant woman is one who is attempting to be a man"¹⁸⁶ by acting aggressively and taking on the roles attributed to men. Like the previous case involving Emily Cresswell, Warden was not a candidate for chivalrous treatment and the case bears this argument out. Warden appears to have been an habitual drunkard, who also had charges of vagrancy so she was not in regular employment. Having come from Ireland, she was a victim

¹⁸⁶ Sigmund Freud, *New Introductory Lectures on Psychoanalysis* quoted in Klein, D "The Etiology of Female Crime" *op. cit.*, p.70.

of social dislocation but she demonstrated she was subject to violent behaviour when drinking. Esther Warden disappears from the Prison Registers in 1936 and there is no further evidence of criminal behaviour on her part.

Ellen Lanyon¹⁸⁷

Ellen Lanyon, also known as Maud Jeffries, was another hardened, habitual criminal who eventually died of alcoholic poisoning in 1913 at the age of 34. In early December of 1907, she and Harry Christensen caught a train from Bunbury to Perth, where one of their fellow passengers on the train was a Chinese chef named Young Yow who worked at the Alexander Restaurant, Bunbury. After the train left Pinjarra, Lanyon, Christensen and Young Yow were left in the carriage on their own and Christensen and Lanyon began drinking, the result of which was intimidation, ridicule, theft and physical violence for Young Yow.

Ellen Lanyon was born in Echuca, Victoria and was married at some stage according to the Prison Registers. Both she and Christensen were as accountable as one another in the attack on Young Yow and there was no evidence of Lanyon being subjected to intimidation by Christensen in the course of the crime. Both prisoners were convicted to four years imprisonment with hard labour, suggesting that the judge felt that they were equally responsible for their actions, a fact which negates theories which suggest that when a man and woman commit a crime in collusion, the man is seen as the responsible party and subjected to greater punishment than the female. The fact that both had long prison records with no evidence of potential for rehabilitation and that neither one appeared to be a

¹⁸⁷ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 306, Case No. 3900.

dominating partner would have likely influenced the jury and judge. Further, Lanyon had rejected the constraints of femininity imposed by contemporary ideologies and gender restrictions, thereby subjecting herself to retribution in the masculine world like the previous two cases, and disqualifying herself as a candidate for chivalrous treatment.

May Rawlings and Dorothea Jackson¹⁸⁸

In 1907 two female felons, well known to the police and courts, May Rawlings and Dorothea Jackson, were charged with three counts of robbery with violence in company, assault with intent to steal in company and assault. The women accosted William Munday, a farm labourer who had travelled to Perth after finishing his employment up north and had about £13 or £14 in his possession when he arrived, in Wellington Street Perth one Sunday afternoon and asked him to buy them a drink. Munday was out for a drink on the day he met his attackers and the medical evidence of the staff at Perth Hospital following his admission, suggested that he was intoxicated. Munday readily agreed to buy the two women a drink and while walking along the street with them to a hotel, he was knocked unconscious and when he woke to find a constable picking him up from the street, he found his money gone. A witness to the attack said that he saw the trio walking down the street when Jackson began feeling in Munday's pockets and then she walked off. Munday then ran after the two women and demanded his money back and Jackson responded by punching him and knocked him down and then Rawlings ran up and punched him also. The two women temporarily moved away, but then Jackson ran back, picked up a stone and began hitting Munday with it, shouting

¹⁸⁸ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 308, Case No. 3295.

"I'll make you bleed you bugger and I've made you bleed. I never hit a man unless I make him bleed", then kicked him a few times in the chest and walked off.

Rawlings ran back, moved Munday off the road and placed a bandage around his head.

Jackson's record revealed a long list of convictions for drunkenness, prostitution, assault and stealing, while Rawlings had only a few for disorderly conduct, vagrancy and idleness. Rawlings was a quarter caste Aborigine, born in Albany Western Australia and Jackson was an Anglo Saxon, but the prison register does not reveal her birth place. While the two were awaiting trial, both the prisoners and Jackson's mother wrote to the judge, pleading leniency for the charge¹⁸⁹. The letter from Mrs. Ivory, Dorothea Jackson's mother, dated 7th May 1906 reads as follows:

"To His Honour,

Sir. I am forwarding this petition to you hoping and trusting you will have mercy on my unfortunate daughter. I am a mother appealing for her child and I pray to My God that you will take some notice of my appeal. I am an old woman; and I am expecting to go to the hospital before my unfortunate child comes before you for trial and God alone knows whether I shall come out again alive. So in mercy to me as well to my unfortunate and foolish child I again appeal for your mercy toward her. If your Honour deems fit to give her a chance her brother will pay her passage and send her by the first boat to her aunt in Durbin in South Africa. No matter what her faults have been she has been a good daughter to me and Your Honour, that covers a lot of transgressions. Give her only one more chance. Think Sir for God's Sake think deeply before you deal harshly with my poor unfortunate child. Let me send her away where she is not known, where she can regain the respect she has lost and where she will have no temptations. O, Sir, do have mercy on her and I will bless you for the rest of my days which have been shortened by this trouble. Temper Justice with Mercy and deal with us as you hope to you God to deal with you is the heartfelt prayer of a heartbroken mother of Dorothea Jackson.

Levina Ivory"

¹⁸⁹ Letters found in the previously noted archive file.

It is interesting that Dorothea Jackson's mother comments on the fact that her daughter has been a good daughter and as she says "that covers a lot of transgressions" suggesting that Dorothea has conformed to at least one aspect of expected feminine behaviour. Dorothea, herself, pleads her case to the judge in the following letter:

"Your Honour,

I ask you will you take a lenient view of my case and be merciful to me. I am only twenty one years of age and do not want to spend the best part of my life in prison. On March the 10th I was under the influence of drink, I do not remember using the weapon. Drink affects my brain considerably through the effects of chloroform being administered to me several times for certain operations and neuralgia in the head. I am at present in delicate health and have been under the doctor whilst waiting my trial and Your Honour, I have had severe trouble recently in the death of my child who had just been dead one month before I was arrested. Your Honour, I was not accountable for my actions on the 10th March. I had been drinking spirits, previous to meeting the prosecutor. Will Your Honour take into consideration my youth and the delicate state of my health. My mother is willing to send me from the colony, if you will deal mercifully with me. I have been waiting one month for trial. I ask your Honour to consider my case.

Dorothea Jackson."

Dorothea tries to attribute her problems to the effects of chloroform from operations and the fact that it contraindicates alcohol intake. She adopts a feminine attitude of frailty and helplessness with her comment that "I am at present in delicate health" and further draws upon her role as a mother who has lost a child with her comment that "I have had severe trouble recently in the death of my child who had just been dead one month before I was arrested." This excuse of diminished responsibility by calling on the physical and emotional fragility of women is well documented and was extremely effective in the nineteenth century and early twentieth century with the debate on the nature of woman being so prominent as previously discussed. Jackson not only employs the excuse of her

gender in her plea, but further suggests remorse and a desire to escape from the adverse influence of her friends in the state of Western Australia.

May Rawlings, however, approached the problem in a different way:

"To His Honour,

I ask you to deal leniently with me and take into consideration that I was intoxicated on the day the assault took place. And when the man was struck I took a handkerchief and bound his head. It was not that I struck him when he fell. I have been in a situation previous to getting into this trouble and if you will be lenient with me I will go to work again. I hope Your Honour you will be merciful in your dealings with me. I have been two months waiting for trial.

May Rawlings."

She pleads the fact that she tried to help Munday after the attack - "I took a handkerchief and bound his head", conjuring notions of femininity ministering to the ill, and that "it was not that I struck him when he fell". She neglects to mention that while she was not the instigator and did not strike the blow which felled Munday, she also contributed to the abuse afterwards and it may have been this fact which led the judge to sentence Rawlings to 12 months hard labour, while Jackson received 18 months as the main perpetrator. Both women, however, through their display of masculine-like aggression, were again excluded as potential candidates for chivalrous treatment by the law.

Alice Evanis¹⁹⁰

1908 saw Alice Evanis charged with unlawful wounding a "pretty little thing"¹⁹¹ Bertha Cottrill who had boarded with Mrs. Evanis and her family for the previous twelve months and the fracas resulted from Mrs. Evanis' jealous suspicion that Miss Cottrill was unduly interfering with her upbringing of her children. An argument broke out in the kitchen of the house and Miss Cottrill lunged at Mrs. Evanis, apparently intending to take hold of her and shake her, while Mrs. Evanis retaliated by picking up a nearby knife and stabbing her twice in the shoulder. Bertha Cottrill responded by thumping Mrs. Evanis and then running out into the yard to Mrs. Evanis brother-in-law, William Evanis. Doctors testified that Mrs. Evanis had recurring "trouble with her head" and Dr. Officer declared that "it was through internal complaints that [her] head was bad" and her husband concurred, saying "his wife had been frequently troubled with her brain, and more especially when she was 'put out'." This medical testimony utilises historical beliefs by the medical profession that problems with women's reproductive organs caused hysteria and other psychological conditions. Alice Evanis more than likely had a strong temper and when "put out" as her husband suggested, defended her beliefs in a loud, unfeminine manner, leading to the assumption that she had "trouble with her brain". While Bertha Cottrill may have been a "pretty little thing", she does not appear to be unduly innocent in the commotion and in fact was the one who made the first physical approach by lunging at Mrs. Evanis with intent to assault her, and evidence suggests that she played upon the assault and was nowhere near as injured as she led people to believe. In fact, the medical testimony indicated that

¹⁹⁰ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 321, Case No. 4050.

¹⁹¹ *Truth* Saturday July 18th 1908 p.7.

the wounds were minor, shallow and "not very serious". Bertha Cottrill and Alice Evanis appeared equally responsible for the melee, a fact reflected in the decision of *nolle prosequi*.

The outcome of this case is clear cut and offers no deviation from the expected conclusion given the evidence presented, however it remains significant for its use of feminine fragility and tendency towards hysteria offered in defence of Mrs. Evanis especially. The fact that this testimony was offered by medical experts and accepted by the judge and jury signifies that the discourse of feminine frailty and hysteria was an accepted contemporary defence and not merely an ideological perception. Further, by adhering to the accepted feminine stereotype of hysteria and the fact that Mrs. Evanis saw herself as defending her children and her home life, made her a suitable candidate for chivalrous treatment.

Dolly Martin¹⁹²

A similar violation occurred in 1909 when Dolly Martin attacked Mary Andas, a woman who boarded with Martin's sister, Grace Tuckwell. The three women and Grace's husband had been drinking all day and the instigation fracas broke out when Grace Tuckwell had left the house at some stage in search of opium. Dolly Martin and her brother-in-law went in search of Grace, and when they returned Martin accused Andas of allowing her sister to leave the house and stabbed her in the back of her neck, her back and the back of her arms. Unlike the case of Alice Evanis, however, the wounds inflicted were serious and Andas was admitted to hospital suffering from shock and haemorrhage from potentially fatal

¹⁹² Full details of this case can be found in the Western Australian State Archives at Consignmen: No. 3473, WAS No. 122, Item No. 328, Case No. 4139.

stab wounds. The jury found Martin guilty but strongly recommended her to mercy and she was released on a good behaviour bond for two years.

The entire story was difficult to obtain from the court records and there was no coverage of the case in the papers, so it is uncertain why she was given such a light term, despite the seemingly unprovoked crime and the severity of the wounds inflicted. Perhaps the fact that she attacked Andas because she was concerned about her sister's well being and that her brother in law showed similar concern could partly explain the sympathy of the jury, but regardless, the outcome remains perplexing and given the lack of supporting information, it is unlikely to be clearly determined, but again, like Mrs. Evanis, she was seen to be defending her family which may account for the chivalrous treatment accorded to her.

Myrtle Connors¹⁹³

In 1910, Myrtle Connors, in the company of Robert van Geyer and William Brown entered the dwelling of one Charlie Louey who shared his house with another Chinese man Ah Ling. Louey woke from his sleep to find Connors and the men in his room, they then turned on him and began assailing him, knocking him unconscious in the course of the assault. The motive of the attack was reportedly robbery, however, nothing at all was taken. Ah Ling rushed upstairs when he heard the commotion and testified in the trial that the three people he saw in Louey's room looked like the three accused but Louey could not identify his attackers as he was unconscious. The lawyer for the defence tried to procure an admission from Louey that Connors was a regular sleeping companion for him and

¹⁹³ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 401, Case No. 4247.

that he made the story up, however Louey affirmed his story. Louey and Ah Ling both testified through an interpreter, but a *nolle prosequi* was entered for indeterminable reasons, albeit that the three accused persons had substantial records for similar crimes. Despite the lack of supporting evidence, it appears that this is a case of xenophobia and reluctance to believe two Chinese men over three Anglo Saxon people, despite the evidence of Ah Ling's testimony.¹⁹⁴ This case, with its racial overtones, offers no support for either the chivalry or the morality thesis, but does offer some support for the historical acceptance of Australian society's dislike of the Chinese.

Florence Redpath¹⁹⁵

In 1910, Maud Lipshut, a professional pianist, was in Perth to spend the day with friends when she encountered Samuel Andrews and two of his friends, Florence Redpath, Thomas Roberts. Lipshut had known Andrews previously, but had not seen him for eight years. They renewed their acquaintance and Andrews offered to drive her to meet her friends. Instead of taking her to meet her friends, he drove off in a different direction. Maud became increasingly concerned about her safety and when the trio stopped at a hotel for drinks, Lipshut took advantage of the situation and asked the proprietor for directions to the station. The proprietor remembered her saying that she did not want to continue with the others

¹⁹⁴ For further support for this assertion see Jan Ryan's book, *Ancestors: Chinese in Colonial Australia*, Fremantle Arts Centre Press, South Fremantle, 1995, p. 100 where she discusses a case involving testimony presented by a ten-year-old European girl and when the reliability of her evidence was called into dispute by the defence counsel and she was likened to "Chinamen and blackfellows", the presiding judge retaliated by saying that "there was no comparison whatever between a child of Ada's tender age, who was under instruction at a proper school, and such persons as Chinamen and blackfellows."

¹⁹⁵ Full details of this case can be found in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 404, Case No. 4268.

and he gave her directions and saw her walk towards the station. Unfortunately for Maud, Andrews and the others caught up with her and dragged her back into the sulky, despite her repeated protestations, and they drove into the bush where Roberts dragged Lipshut out of the sulky and threatened to rape her.

At this stage, Andrews and Florence Redpath were still in the buggy and she pleaded with them from the bushes to come to her aid, Andrews appeared, but instead of helping her he held her down while Roberts raped her, then he pulled him off and raped her himself. Roberts then raped her again. During the whole ordeal, Lipshut said, she continuously pleaded with Redpath to come to her aid, however, Redpath, when she appeared, was only interested in divesting Lipshut of some of her goods. Maud Lipshut eventually gained her freedom when the trio were finished with her and she found a safe house where the occupant called the police, was taken to the hospital and examined by Dr. Tymms and another doctor. Dr. Tymms, in his testimony, would only say that she had obviously had intercourse recently, and that she had been handled roughly, but refused to affirm that she had been raped. This whole scenario was bad enough, but Florence Redpath and her co-conspirators were only brought up on a charge of stealing with violence and all found not guilty.

There was no newspaper coverage of the case and Lipshut did not have a conviction record, although in 1902 there was an article in *The West Australian* which reported the trial of Maurice Bloom on a charge of uttering, at which Lipshut and her husband (from whom she had separated by 1910) were witnesses and where Maud Lipshut detailed a conversation which took place in a boarding house between two others involved in the case. The article reported that "under cross-examination, she denied that she had ever been in houses kept by Mrs.

Chalker and Annie Wilson" (both of whom were well known brothel keepers). Whether or not she had a tarnished reputation which led to her testimony being questionable in the case of her reported rape it was difficult to determine, but it is certainly a possibility, especially as she was known to Andrews and the others who were all notorious criminals.

It would appear, from the available evidence, that Maud Lipshut's testimony was regarded as tenuous due to her divorce from her husband and her willingness to join the people involved in the sulky. It is interesting, though, that Redpath was not censured for her condonement of Lipshut's treatment, regardless of whether the jury believed she had been raped or not. Given the lack of substantial evidence, it is difficult to make an accurate assessment of this case.

SUMMARY

A significant number of the women studied in this chapter were women who made a living from criminal activity and were involved in prostitution, either regularly, or casually in times of need. Of the fifteen women investigated, eleven were habitual criminals with extensive prison records and prone to violence and, as such, were atypical of the stereotype of the woman criminal. Women such as Esther Warden, Emily Cresswell and May Rawlings and Dorothea Jackson can be considered extremely unusual in women's criminality as they employed violence for its own sake - a trait generally attributed by criminologists to male criminals. A study by Lucia Zedner¹⁹⁶ on Victorian women criminals in England found that offences against property with violence only accounted for 6% of female committals and offences against the person (which would also include

¹⁹⁶ L. Zedner, *op cit* p.39.

manslaughter, murder, infanticide, abortion which I will discuss in following chapters) accounted for 13% of female committals, evidence that women who employ violence in the process of a criminal act are exceptional and which is borne out by further studies of women criminals by other noted criminologists.

It has been a common contention that women do not commit crimes involving violence due to their lack of physical strength, and "[m]ore cynical late Victorian writers argued that woman's lack of physical strength and her natural passivity kept her from criminal activity. Such physical hindrances were said to prevent women from committing murder, assaults upon the person, or robbery with violence"¹⁹⁷. Quetelet, the first scientist of the nineteenth century to investigate female criminality, suggested that "the physical strength of women was half that of men and [he] attempted to demonstrate that female violent criminality approximated male violent criminality also by half"¹⁹⁸ However, as Beattie points out "in a society in which women were called upon to do a great deal of heavy labour this does not seem a very compelling explanation of why women constituted only 18% of those charged before the Surrey Courts with crimes against the person"¹⁹⁹ The rationalisation of physical inferiority to explain why women do not commit violent crimes relies on the inherent belief in the accepted gender roles assigned to them. As borne out by the discussion of crimes in this chapter, women can and do commit crimes involving violence and their physical "inferiority" to men offers little or no hindrance to this.

¹⁹⁷ L. Zedner, *op cit.* p24.

¹⁹⁸ A. Quetelet, *Sur l'homme et le développement de ses facultés: sa de physique sociale*" quoted in Adler & Simon (eds) *op cit* p.2.

¹⁹⁹ J.M. Beattie, "The Criminality of Women in Eighteenth Century England" in Weisberg, D.K. *Women and the Law : A Social Historical Perspective Volume 1 - Women and the Criminal Law* Schenkman Publishing Company Cambridge Massachusetts 1982 p.200.

It is not only unusual for a woman to commit violence, but when she does, she offends against the law but, of greater importance, she is also offending against the accepted notion of femininity. E. Erez discusses this assumption and notes that "the 'evil women' hypothesis has been offered to complement the chivalry or paternalism theses. This hypothesis states that women who violate gender-role expectations and behave in an 'unladylike' fashion are punished harshly for the double violation of gender and legal norms, and therefore are denied the chivalrous (and lighter) dispositions reserved for 'normal' women."²⁰⁰ This assertion is borne out by a number of the cases studied in this chapter, where women such as Emily Cresswell, Esther Warden, Ellen Lanyon, May Rawlings and Dorothea Jackson were given reasonable sentences with hard labour for their crimes. However, the crime of assault occasioning actual bodily harm was an offence for which the maximum sentence was imprisonment for three years with hard labour²⁰¹, so the sentences given to some of these women were not the maximum possible, and therefore a notion of chivalry could be applied to these cases.

Anne Edwards Hiller argues that "there is some evidence that courts are now more willing to convict women charged with violent offences than they seemed previously to be,"²⁰² suggesting that an historical study would be likely to find a reluctance by juries and judges to convict women associated with violent crime: a supposition which is challenged by this study - albeit the small numbers of

²⁰⁰ E. Erez, "Dangerous Men, Evil Women: Gender and Parole Decision-Making" *Justice Quarterly* Vol 9 No 1 1992 p.107.

²⁰¹ See *Western Australian 1902 Criminal Code*, Section 315 and 316.

²⁰² A. Edwards Hiller, "Women, Crime and Criminal Justice: The State of Current Theory and Research in Australia and New Zealand" *Australian and New Zealand Journal of Criminology* July 1982 Vol 15 p.80.

women involved. However, Klein & Kress suggest that "most women are not socially, psychologically or economically in a position at this time [1976] to aggressively steal, nor do those with male providers have such a need"²⁰³, which would suggest that, historically, there would be more likelihood of aggression in women's crime due to the difficult social circumstances and that women alone without male support would be the likely perpetrators. This supposition is likewise borne out in part by this study.

As is the case in the previous chapter, many of the women criminals investigated here used prostitution as either a permanent or casual means of obtaining money when required. Added to the social difficulties faced by women in the late nineteenth/early twentieth centuries in obtaining work, the women studied here had the added restricting factor of criminality. A significant number of these women had previous criminal records and as such would have faced social stigma which would have made it even more difficult for them to obtain regular employment at a pay rate to enable them to care for themselves and whatever family they had.

The analysis of crimes in this chapter which lead to the conclusion that chivalrous treatment did extend to certain women who committed violent crimes is extremely significant as it is generally accepted amongst criminologists that women who commit violent crimes will not be treated with chivalry. It appears, however, that women who transgressed their feminine image were penalized accordingly, which upholds the contention of many criminologists, that chivalrous treatment only extends to "deserving" women. The complexity of this issue suggests that

²⁰³ Klein & Kress "Any Woman's Blues", *op. cit.*, p.87.

more extensive research needs to be undertaken in this area to determine whether the accepted generalisation can be supported in any way by empirical evidence.

CHAPTER 5 - MURDER AND MANSLAUGHTER

*"To string a man up for the very worst crime,
Is like smashing a watch for not keeping good time..." - Charles Harpur*

Mannheim remonstrates that "historically seen, the crimes in which women were mostly involved in former ages used to be adultery and incest, witchcraft, poisoning and infanticide [...] there has been much less glamour in female crime since those romantic happenings."²⁰⁴ This sensationalist romanticism associated with capital crimes committed by women is a major component in studies of female criminology even today, and the female murderer, especially, fascinates the general public and theorists alike. One explanation for this tendency to treat women's criminality as thrilling, according to Bronwyn Naylor, is that "[t]he violation of a stereotype is likely to shock; where the stereotype is one of passivity and nurturance of others, its violation (by a woman who kills) can be seen as both shocking and a betrayal of trust."²⁰⁵ It could further be added that as women murderers are so few in number, when a woman does murder, it is sensational. Otto Pollak believes that "men are basically afraid of women"²⁰⁶ and their vulnerability in the hands of wives and mothers exaggerates this fear. It has been proven that when women do kill they "usually kill their husbands, lovers or children. In fact, close and intimate relationships (particularly spouses) are much more common among the victims of female offenders than male offenders"²⁰⁷ and,

²⁰⁴ H. Mannheim, *op. cit.*, p.48.

²⁰⁵ B. Naylor, "Media images of women who kill", *Legal Service Bulletin*, Vol. 15, No. 1, February 1990, p.5.

²⁰⁶ O. Pollak, *op. cit.*, p.149.

²⁰⁷ J. Totman, *The Murderess: A Psychosocial Study of Criminal Homicide*, R & E Research Associates, San Francisco, 1978, p.3. Further D.K. Weisberg in her book, *Women and the Law* p.201 acknowledges also that "it is clear that most of the women indicted for murder or manslaughter were accused of killing someone within their own domestic circle or at least in

as such, men are particularly exposed to women's violence in the domestic sphere.²⁰⁸

The women murderers studied in this chapter were an anomaly in the annals of crime: traditionally women have not resorted to violence and more specifically, they have not tended to murder²⁰⁹. The most common murder and manslaughter offences involving women perpetrators relate to infanticide, child killings or abortion and these crimes will be discussed in the following chapter. This chapter will concentrate entirely upon women who were charged with killing in other than birth related crimes. According to Michael Cannon²¹⁰, "[s]ince European settlement began in Australia, women have usually committed between ten and fifteen per cent of crimes once known as 'capital offences' - that is, punishable by lawful execution" and within the sphere of this study there were only seven women charged with these offences. It must be taken into account that this is the Western Australian criminal population only and that it does not include abortion or infanticide offences as mentioned, as Cannon's study did.

their neighbourhood" and Carol Smart in her book, *Women, Crime and Criminology* acknowledges also that women tend to murder husbands, lovers and close relatives.

²⁰⁸ This comment must also be tempered with the acknowledgment that women are even more vulnerable to domestic violence from men, however, this fear of women by men contributes to the media coverage of crimes by women and their reluctance to allow women murderers go free.

²⁰⁹ In Deborah Oxley's study of the women convicts transported to New South Wales, "Women Transported: Gendered Images and Realities" in *Australian and New Zealand Journal of Criminology* Vol. 24 July 1991, pp 83 - 98, she reported that "crimes of violence alone numbered less than 1% of the 6641 women whose crimes were recorded." This is further evidence for the lack of violence traditionally associated with women's involvement in crime. Further, an analysis of the criminal statistics for Western Australia provided by the Commissioner of Police's annual report informs that, for the years where offences were broken down by gender, that 109 men were charged with murder or manslaughter while only 6 women were charged or 5.5%.

²¹⁰ M. Cannon, *The woman as murderer*, Today's Australia Publishing Company, Mornington, 1994, p.7. Ann Jones, in her study of American murderesses (*Women Who Kill*, Victor Gollancz Ltd, London, 1991, p. xv.) found that "from one historical epoch to the next, the percentage of homicides committed by women remained about the same - at about 10 to 15 percent of total homicides."

Table 3 provides the pertinent information about the cases discussed in this chapter:

TABLE 3 MURDER AND MANSLAUGHTER 1890-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1897	Priscilla Rawson	Manslaughter	Guilty	4 months hard labour
1901	Catharine Ottey	Manslaughter	Not Guilty	
1903	Marie Fontan	Wilful Murder	Guilty	Death*
1903	Marie Dean	Wilful Murder	Guilty	Death*
1903	Lucienne Volti	Wilful Murder	Guilty	Death*
1909	Martha Rendall	Wilful Murder	Guilty	Death
1911	Emily Coates	Manslaughter	Not Guilty	
1913	Mary McClymans	Attempting to kill	Not Guilty	

Source: Supreme Court Records Index 1890-1914 * These charges were later reduced and convictions quashed.

The first case to be discussed is that of Priscilla Rawson.

Priscilla Rawson²¹¹

In 1897, Priscilla Rawson, a half caste Aboriginal woman was convicted of fatally stabbing her father, Alfred Rawson senior²¹². The family had a history of violence and instability with Priscilla having once been admitted as an inmate of the Perth Orphanage. Following her mother's death, Priscilla had assumed the running of the household, as typically female members of the family did under such circumstances, and Alfred Rawson regularly subjected his daughter to both ridicule and physical abuse, a fact supported by Priscilla's brother and neighbours called to testify at the trial. The fatal event occurred after the father had complained about

²¹¹ When not otherwise indicated, all information and quotes are taken from the Supreme Court records in the Western Australian State Archives. This case can be found at Consignment No. 3473, WAS No. 122, Item No. 194, Case No. 2657 (1897).

²¹² Alfred Rawson had been brought to Western Australia as a convict and served his term. He had left behind a wife and child in the United Kingdom, and married Jane, an Aboriginal, in 1873. Priscilla had been born to the couple in 1877.

Priscilla's cooking and the late hour she had served breakfast. A violent argument ensued, during which he struck Priscilla with a broom across the back. A butcher's knife was handy and Priscilla, thoroughly enraged, picked it up and drove it into her father's back near the shoulder blade, resulting in almost instantaneous death.

At the inquest and trial, Priscilla was painfully distressed and continued to express her remorse at having killed her father. Her brother testified that Priscilla "was subject to fits and was very excitable"²¹³ and *The West Australian* reported²¹⁴ that during the trial the "prisoner was very much excited and had a painful hysterical fit, causing the court to be adjourned until she recovered." These were common terms used as proposed explanations in the investigation of women's crimes; inviting a supposition that the reason behind women's extraordinary behaviour was instability and hysteria. By being labelled in such a way, Priscilla was being acknowledged as a true woman, subject to the inherent weakness of the gender.²¹⁵

Described as "a young woman of not unprepossessing appearance"²¹⁶, there was an evident feeling of sympathy for her in the court as a response to the unfortunate circumstances of her life and her obvious distress and remorse for

²¹³ *The West Australian*, Tuesday 26 January, 1897, p.5.

²¹⁴ *The West Australian*, Saturday 30 January, 1897, p.5.

²¹⁵ In her paper "Constructing Lizzie Borden : History, Feminism, and American Culture" in the *Journal of Australian Cultural History*, No. 12, 1993, Ann Schofield argues that in the well documented case of Lizzie Borden the jury returned a not guilty verdict because "they were[...]unable to envision the possibility that, if Lizzie Borden could commit parricide, their own wives and daughters might be capable of the same act, too." p.9 The same argument could be applied to this case, the jury unable to think that a woman was capable of murdering her father in cold blood.

²¹⁶ *The West Australian*, Friday 9 April, 1897, p.5.

causing her father's death²¹⁷. During the trial, she continually groaned when her father's name was mentioned or when details of the crime were discussed, causing further sympathy for her plight. The charge was reduced from wilful murder to manslaughter due to her father's provocation, and the fact that she acted in passion²¹⁸ and the crime was not premeditated. The jury found her guilty of manslaughter, but included a strong recommendation to mercy and she was sentenced to four months imprisonment with hard labour. Priscilla married Ernest Albert White in 1899 and did not reappear in the courts.

The case of Priscilla Rawson reflects the despair battered women suffered when they can take no more abuse, and the issue has since become a prominent contemporary one. Judith Allen suggests that "[m]en inflicted beatings on women primarily as discipline for a variety of everyday transgressions" and further that "[t]he bedrock of most habitual wife-bashing was the man's view that the woman had been insufficiently obedient, subordinate and attentive to his needs and desires and, as such, evolved around definite and traditional expectations of gender roles."²¹⁹ Priscilla Rawson can be viewed as a woman who sustained years of emotional and physical abuse and finally retaliated when she could no longer tolerate maltreatment, and because she was perceived as conforming to feminine ideals, she received a lenient sentence as "reward", therefore her case could be offered as support for the chivalry thesis.

²¹⁷ It is further interesting to note that racial prejudices did not appear to affect the feelings of the public or the judicial members and Priscilla Rawson was not marginalised due to her racial heritage.

²¹⁸ In her study of French murderesses between 1880 and 1910, Ruth Harris found that "the criminelle passionelle was acquitted because her stated motives seemed to re-inforce a portrait of the feminine which was neither socially dangerous nor morally deviant." "Melodrama, Hysteria, and Feminine Crimes of Passion in the Fin-de-Siecle", *History Workshop* 25 Spring, 1988, p.31-63.

²¹⁹ J. Allen, "The invention of the pathological family" *op. cit.*, p.4.

Catharine Florence Ottey²²⁰

A similar domestic tragedy occurred in 1901 when Joseph Ottey, the estranged husband of Alice Ottey, followed his ex-wife home from Perth to Guildford on the train, after encountering her while shopping. Alice's daughter, Catherine, had walked to the station to meet her mother, and her son, John, was loading a truck at the front of the station when the train arrived. The family knew from experience that trouble was to follow, and in an attempt to keep the inevitable incident private, mother and daughter began to walk home, ignoring Ottey, who followed them. Meanwhile, John finished loading his truck and arrived home just after the rest of his family did. Upon reaching the house, Mrs. Ottey and Catharine entered and Mr. Ottey forced his way in behind them and asked to speak to his wife alone. When she declined, Ottey then took off his jacket and vest and rushed at his wife, enforcing the family's perception that he was going to subject them to another violent scene. After a struggle, Catharine ran to get her mother's gun²²¹, returned to the room, and, seeing her mother being held around the throat by her father, shot him. She then ran for the police and a doctor. Ottey was removed to Guildford Hospital where he later died of peritonitis from a perforated bowel.

Investigations into the case revealed the family had been subjected to extreme abuse by Ottey who had done such things as cutting his young children's fingers with knives and rubbing salt into the wounds, enjoying their screams. The

²²⁰ When not otherwise indicated, all information and quotes are taken from the Supreme Court records in the Western Australian State Archives. This case can be found at Consignment No. 3473, WAS No. 122, Item No. 237, Case No. 3112 (1901).

²²¹ It transpired in the trial that John Ottey had persuaded his mother to buy a gun for self defence in the event that their father might force his way into the house and attempt to harm any of the family.

family had lived in Kalgoorlie between 1899 and 1900 and Catharine had repeatedly gone to the police in an attempt to restrain her father from ill treating her younger brothers, and resultant police investigations found there was just cause for complaint, but no evidence was given of any action taken against Ottey. Police called to testify for Catharine in the trial asserted that she was "known by the police to be of good reputation": an affirmation which did much to influence the jury and judge of her innocence. In an attempt to escape her violent husband, Mrs. Ottey had left him and moved to Sydney, but he had followed her and she returned to Western Australia to be with her children where he again followed her. The couple had been separated for approximately a year when he was shot, but he had continued to harass the family in that time.

When the jury returned after deliberation, they found Catharine not guilty of manslaughter, citing the fact that she believed her father was trying to kill her mother and she was acting in self defence. Medical evidence presented specified that the gun shot itself was not fatal, but unfortunately the bullet had perforated Mr. Ottey's bowel, thereby inducing peritonitis, Catharine was thus even less implicated. The *West Australian* summed up the case in the following way:

The Counsel commented upon the violence of the assault made by Ottey upon his wife; upon the habitual cruelty and repeated threats to take the lives of the mother and children; and upon the open manner in which the daughter admitted the shooting subsequent to the occurrence. The evidence was overwhelming that the unfortunate girl was in the presence of what she believed was a domestic tragedy, and that she believed that her father intended to carry out his threat to take the life of her mother.²²²

²²² The *West Australian*, Tuesday 19 March, 1901, p.7.

Catharine had fulfilled gender expectations in defending her mother and attempting to protect her siblings from Ottey's violence. She had also shown remorse for the killing of her father, although it was suggested by a number of the testimonies produced in the trial that he had proved himself undeserving of her remorse. The authorities had labelled Catharine as "respectable" and there was no hint of scandal associated with her, factors which further supported her as a suitable candidate for chivalrous treatment and dismissal of charges.

The first two cases discussed concern Priscilla Rawson and Catharine Ottey who both killed their fathers, following years of enduring habitual violence. In this context they can be viewed as victims of domestic violence who finally retaliated although most commonly, it is the wife who kills the husband, following years of violence. Priscilla Rawson, moreover, was motherless at the time of the crime and had been expected to assume the responsibility of running the household and, as such, was treated as a surrogate wife²²³. Catharine Ottey, on the other hand, lived with her mother at the time of the incident, but acted to protect her mother from her father, in the way that many women defend their children against physical abuse from their fathers.

²²³ During the hearings of the case of Priscilla Rawson, it was revealed that she had been subjected to years of physical abuse by her father, but it was never stated whether this included sexual abuse. On the supposition that it would have been mentioned in the trial if she had been such a victim, I can only conclude that she was not abused sexually by her father, alternatively, she may not have been prepared to disclose such intimate details.

The Smith's Mill Tragedy²²⁴

Lucienne Volti, Marie Dean and Marie Fontan were three women who, along with five men, were involved in the shooting of a vigneron in the Helena Valley during 1903, following a picnic in the hills. This case received an extraordinary amount of coverage in the newspapers, partly due to the fact that the felons were all foreigners. According to J.E. Thomas, "[a] matter of concern and comment at the turn of the century was that much of the crime in Western Australia was committed by people who were not native to the state."²²⁵ This issue had been a cause of concern for some time within Western Australia following the Royal Commission on the penal system in 1898-99 which recommended deportation and "other stringent measures"²²⁶ as a means to overcome the perceived problem.²²⁷

Mrs. Lauffer, the wife of the murdered vigneron, later testified that she had felt uneasy about the intentions of the group from the outset. Following a mild

²²⁴ When not otherwise indicated, all information and quotes are taken from the Supreme Court records in the Western Australian State Archives. This case can be found at Consignment No. 3473, WAS No. 122, Item No. 262, Case No. 3327 (1903).

²²⁵ J.E. Thomas, "Crime and Society" in C.T. Stannage (ed) *A New History of Western Australia*, University of Western Australia Press, Nedlands, 1981, p.636.

²²⁶ *Ibid.* p.637.

²²⁷ However, in contrast to this perceived concern, a despatch from F. Napier Broome to the Colonial Secretary dated 21 May 1888, found in the *Governor's Confidential Despatches* in the Western Australian State Archives, Consignment No. 390, WAS No. 1174, Item No. 48, reads: "My Lord, I have the honour to acknowledge the receipt of Your Lordship's Confidential Circular Despatch of the 31st March last, on the subject of legislation in Australia to prevent the influx of foreign criminals. 2. The question is not as immediate to this colony as to the Eastern communities of Australia. 3. The directions contained in Your Lordship's despatch will be duly observed, so far as occasion may arise." This suggests that Western Australian authorities were no unduly concerned about the influx of criminals from other states and as they never introduced the legislation to prevent such action, they continued to believe the threat was not as serious as some historians would have us believe.

altercation in the vineyard between her husband and the group, she saw the group walk off and disappear from sight and thus thought she was mistaken about their intentions. Shortly after this, however, shots were heard and the vigneron, Lauffer, and his assistant went to investigate, followed by Mrs. Lauffer and her young son. Encountering the party of foreigners again, a heated discussion arose and a trading of insults passed between Lauffer and the group. Exactly what happened next is uncertain due to conflicting testimonies, but during the trial Mrs. Lauffer insisted that the group began to throw sticks and stones at her husband, and he did not retaliate, while the accused party insisted that Lauffer had run at them with a large stone and had been the instigator of the trouble. It certainly seems apparent that Mr. Lauffer was not entirely innocent in the outcome of the tragedy.

During the tussle, Lauffer was knocked down and some of the men began kicking him, and when he finally stood up, an armed man, Mailliat, apparently threatened to shoot him and reputedly told the others that he would discharge once he could get a unimpeded line of vision. One of the women apparently told him to be careful or he would hit one of them and he supposedly replied "I will not hurt one of YOU" (emphasis in original court transcript). Some shots were then fired and Lauffer fell down - seemingly dead.

Mrs. Lauffer and the assistant, Rochiciotti, ran to the adjoining winery for help and on their return to Smith's Mill they passed some of the party walking along the road, apparently unconcerned about the preceding events: an attitude which was emphasised repeatedly in the trial proceedings. When they returned to the location of the shooting, they found Lauffer with some pear tree branches over his face, apparently put there by Marie Dean and Marie Fontan in an effort to shelter him: a gesture used by the defence counsel to prove that the women were

not heartless. When Mrs. Lauffer and Rochiciotti passed the party on the road, they believed that Mailliat was wearing Mr. Lauffer's hat, indicating further the indifference he displayed to the fatality.

The evidence given at the trial was conflicting - Mrs. Lauffer insisted that her husband had done nothing to provoke the attack, while the accused group maintained that Lauffer had been insulting to them and had called them "bastards and prostitutes". In fact, all three women had records as prostitutes and Marie Fontan was known to keep a brothel in Fremantle²²⁸. Mrs. Lauffer, moreover, denied that Marie Fontan tried to stop the fight or that Marie Dean had attempted to pull Lintauf off her husband: facts which the others all agreed upon. She also denied hearing Lechoix say "For God's sake, stop the fight." The assistant, Francisco Rochiciotti, said they all then began abusing one another, and Lauffer was the one who followed the others when they were going off the property and began the scuffle anew. He further said the Lauffer was the first one to pick up a stone, but, in agreement with Mrs. Lauffer, denied hearing Marie Fontan call for the fight to stop. In his defence, Mailliat maintained that the shooting occurred when the gun went off in the struggle²²⁹. One fact that all testimonies agreed on was that Mousset and Benoit Volti were not present at the time of the scuffle, which led to their release and the dismissal of charges against the two. Mailliat, in contrast to Marie Fontan, testified that 10 bottles of wine had been drunk between

²²⁸ Added to this, there was a report in *The West Australian* on Wednesday 3 September 1902, p.8, which told of Lucienne Volti appearing in court charged with procuring a girl named Ivy Davenport for prostitution in Kalgoorlie. The father of Ivy Davenport had brought the charge against Volti as his daughter was under 18 years of age, but he later decided not to proceed as his daughter was a willing accomplice to Volti. Ivy Davenport later appeared in the *Prison Registers* as a prostitute.

²²⁹ Contrary to this however, was the report of the coroner who stated that the entry wound was not consistent with Mailliat's testimony.

the eight of them, and the cellarman testified that the wine was 21% proof, suggesting that the party would likely to have been quite affected by drink.

Marie Fontan's testimony agreed with that of Mailliat in most details, however, and it was pointed out by their lawyer, Mr. Moss, and the police that the two had not had an opportunity to confer since the shooting, suggesting that their testimonies were independent and any similarities therefore likely to be reliable. The jury found the remaining six persons guilty and sentenced all of them to death. Following an appeal to the Full Court, the sentences of all, excluding Mailliat, were later quashed and despite protracted legalities, Mailliat's conviction stood and he was executed on 21 April 1903. Mailliat bore the full brunt of the force of law since he fired the fatal shot.

Newspaper reports of the affair stressed the questionable reputation of the three women and declared them to be of bad character, and thus, by implication and association, the men were seen as "bludgers" by the press and the public alike and condemned for this. Raelene Davidson said of bludgers:

[a]lthough it was rumoured that most of the French 'bludgers' were criminal escapees or ex-convicts from New Caledonia or French Guiana, no convincing evidence supports this claim. A man hung for the cold-blooded murder of a vigneron in 1903 was the only example discovered. His paramour, a prominent Fremantle madame for many years, was also from New Caledonia.²³⁰

As Davidson suggests, much was made of the foreign status of the eight people involved in this tragedy. A cartoon in *The Western Mail*, dated 28 March 1903, showed a list of contemporary murders in Western Australia committed by

²³⁰ R. Davidson, *op. cit.*, p.181.

foreigners, indicating the concern by authorities of the criminal element being allowed into the state from overseas.²³¹ This concern about crime committed by foreigners continued for many years and the Report of the Police Commissioner in 1909 read: "[a] number of habitual criminals have reached this State from New South Wales, Victoria and South Australia, and are giving us considerable trouble"²³² and in 1910: "Western Australia remains the dumping ground for criminals from the Eastern States and elsewhere".

The perceived indifference shown by the indicted men and women to the enormity of their act and their total lack of remorse, especially that of the women,

²³¹ While the authorities and a number of the public were concerned about the incidence of crime committed by foreigners in Western Australia, there was a letter from a Mr. E.A. Harney published in *The West Australian* on Monday 16 March 1903, p.5, which read: "*Sir, I feel constrained, however open to misconstruction my conduct be, to write a few lines in the hope of arousing a public protest against the appalling result of the trial of the accused in the Smith's Mill Murder trial. Personally, I am at a loss to discover upon what evidence the jury arrived 'without a rational doubt' at its verdict. All the circumstances seem to me irresistible to point to an accidental shot in a drunken affray, where both sides are equally to blame. But even if the shot were not fired accidentally, it was fired under circumstances which appear to me to reduce the crime of the principal actor to one for which any moderate term of imprisonment would be amply sufficient; and the crime of the so-called accessories to one which is frequently dealt with by a few month's incarceration. I fear the fact of the accused persons being foreigners will be regarded by many both within and without the State, as the explanation of this last scene in the Smith's Mill Tragedy. It may even be viewed by some as another of those astonishing extravagances to which out objection to all alien immigration is leading us.*" The following day, there appeared a letter in support of Mr. Harney which read: "*Sir, Mr. Harney's views, as expressed in your paper this morning, must be cordially endorsed by everyone. Things have come to a pretty pass if a party cannot spend a pleasant day in the hills without being tried for their lives. True, a respectable citizen was killed on his own threshold, beneath the eyes of his wife, and his body kicked like a football, but, then, regrettable incidents do sometimes occur during a frolic, when everyone is in high spirits. But the perpetrators would be the first to express regret in their calmer moments. I must candidly admit it is unsportsmanlike to catch hold of your quarry while you take aim, but the French are not up in the ethics of sport. And we must join Mr. Harney in deprecating this lamentable prejudice that is growing against foreigners, though I am afraid that the fact of six French and one Malay being found guilty of murder is not going to tell in favour of the foreigner to any extent. Yours H.T. Jenkin.*" The editor also noted that they had received many letters in support of Mr. Harney but as they were unsigned, the paper would not publish them. Therefore, while the newspapers and the authorities appeared condemnatory of the accused persons, there was some public support for them, at least.

²³² The Report of the Commissioner of Police for the Year Ending 30th June 1909, pp. 3-4 in *Western Australian Votes and Proceedings*.

galled the public and the press alike. The *West Australian* reported that "[t]he prisoners manifested an air of indifference after their arrest, although the females declined to accept the meal that was offered them by the lock-up-keeper during the evening."²³³ The next day the paper reported that "[a]dded to the feeling of sorrow and sympathy for the relatives is one of a desire for revenge [...] It is felt, too, that some measure should be taken to guard against similar tragedies again happening by permitting people of the character that some of the accused bear to roam at will throughout the country."²³⁴ The group was described by the press as "typical foreigners, the men being stolid looking [...] the women seemed light-hearted during the hearing, and several times were noticed to pass remarks to each other, which invariably caused all three to smile"²³⁵ This cavalier attitude of the prisoners was seen to be an expression of their guilt.

Public interest in the proceedings of the trial was great and newspaper coverage commented on the fact that "all was excitement" in the courtroom, with "discussion of the evidence and speculation as to the probably verdict". The *Western Mail* appeared more sympathetic to the indicted group than The *West Australian* and reported that as the criminal court proceedings drew to a close and the verdict was to be handed down;

Mailliat, with a flushed face, and feelings evidently kept under control by an effort came first, and he was followed by Mousset, Volti, Lintauf, Lechoix, Marie Fontan, Lucienne Volti, and Marie Dean, who all appeared nervous. Lintauf's face was deadly pale, and his trembling hands could hardly retain a hold on the rail of the dock. Volti appeared on the verge of breaking down, while Lucienne Volti, a demure and attractive-looking

²³³ The *West Australian*, Thursday, 5 February, 1903, p.5.

²³⁴ *Ibid.*, Friday, 6 February, 1903, p.5.

²³⁵ *Ibid.*, Friday 13 February, 1903, p.7.

little Frenchwoman, was also deeply affected. Marie Fontan, save for the strained expression of her face, appeared comparatively calm; Marie Dean was perhaps the most unconcerned of the women, and Mousset and Lechoix betrayed little or no excitement.²³⁶

The previous extract suggests that the gravity of their position had made itself clear to the majority of the party by this time. The Full Court eventually overturned the verdicts pertaining to Lintauf, Lechoix, Marie Fontan, Lucienne Volti and Marie Dean, on the grounds that they did not participate in the fatal shooting and when the news was conveyed to them, Marie Fontan stated, "Thank God! I will lead a different life after this to what I have been doing"²³⁷, however the prison registers show that her resolution did not last, as she was incarcerated on charges of prostitution and vagrancy in following years and both Lucienne Volti and Marie Dean were later imprisoned on charges of being of evil fame.

While the outcome of this trial appears consistent with the evidence and is not in dispute, the treatment accorded to the indicted women is indicative of the moral censure they faced due to their lifestyles. Investigations showed early on that only one person was responsible for the vigneron's death and there was no dispute that Mailliat was the perpetrator. Clearly, then, others present at the time of the murder should have, at the most, been charged as accessories due to their involvement in the scuffle. The fact that all were charged with murder could be an expression of the police concern about the number of crimes being committed by people not native to the state of Western Australia.

²³⁶ *The Western Mail*, 31 March, 1903, p.18.

²³⁷ *Ibid*, 4 April, 1903, p.14.

During the trial proceedings, the women especially were judged on accepted feminine roles and their actions during the incident examined in this light. Were they involved physically in the struggle? Did they attempt to stop the fight? Did they show concern for the victim? Were they remorseful and concerned about their actions? Most significantly, did they look like "real women"? Added to this censure, the fact that they were known prostitutes suggested that they were no longer respectable women and therefore not beholden to traditional feminine behaviour and, as such, their guilt was strongly suspected. In conclusion, then, it would appear on the surface that the women were accorded chivalrous treatment when it is seen that they were released, however, examination of the trial records and the implication of guilt evident in newspaper coverage of the case, they were virtually forced to prove their innocence. Due to their rejection of the ideology of womanhood, these women were subjected to an almost universal assumption of guilt by the authorities and the public alike

Martha Rendall²³⁸

The case of Martha Rendall in 1909 intrigued the general public at the time it occurred²³⁹ and continues to fascinate historians to the present day²⁴⁰. Martha Rendall was one of only three women ever to be hung in the history of Western Australia²⁴¹, and as such has retained a place in the history of the state.²⁴² and is

²³⁸ When not otherwise indicated, all information and quotes are taken from the Supreme Court records in the Western Australian State Archives. This case can be found at Consignment No. 3473, WAS No. 122, Item No. 331, Case No. 4154 (1909).

A similar case to that of Martha Rendall occurred in Melbourne in 1894, when Martha Needle went to trial for killing her husband, her two children, her fiancé's brother and attempting to poison another brother. According to newspapers of the time, Martha Needle "deserved to go to the gallows because in poisoning her loved ones she: 'betrayed that sanctity which is the most sacred of all, namely, that of household life. Her victims are usually those, who, by the law of GOD and of man are confided to her for comfort and support. Despite her sex there is no offender whom society can with more unconcern send to the gallows". This was reported in Kathy Laster's chapter "Arbitrary Chivalry" in D. Philips & S. Davies (eds.) *A Nation of Rogues?: Crime, Law and Punishment in Colonial Australia*. Melbourne University Press, Parkville, 1994, pp. 177-8.

²³⁹ In his Annual Report for the year ending 30 June 1910, the Police Commissioner remarked on the Rendall case. He said: "The case is unique in the annals of crime, particularly in regard to the methods employed by Rendall to produce the death of the boy Arthur Morris. The details of the crime, which received much wide publication at the time, were communicated to the authorities at Scotland Yard, London, who acknowledged the receipt of the report in appreciative terms." It is interesting to note that while the Police Commissioner refers to the trial and the hanging of Rendall, the statistics show no female charged with murder, suggesting that the reliability of the criminal statistics is doubtful.

²⁴⁰ For example, Tom Stannage gives a very expert precis of the case in *The People of Perth*, Perth City Council, Perth, 1979, pp. 263ff. A book written by historian Brian Purdue is due out at the end of 1995 and he also investigates the case of Martha Rendall, likewise a proposed paper by Anna Haebich analysing the same woman.

²⁴¹ This is compared with Victoria, a state which hung five women in the period between 1863 and 1919. For a full coverage of these five women, see Michael Cannon's *The Woman as Murderer*, *op. cit.*

²⁴² R. Douglas and K. Laster, in their paper "A matter of life and death: The Victorian Executive and the decision to execute 1842-1967" in *The Australian and New Zealand Journal of Criminology*, Vol. 24, No. 2, July, 1991, pp. 144-160, acknowledge that "[f]emales were consistently far less likely to be both convicted, and, if convicted, executed. The same pattern of apparent leniency to women is demonstrated in the significantly shorter sentences imposed on women as compared with men." But go on to say that in the case of the killing of children, "[i]t was clearly easier to assign individual criminal culpability to women who killed children rather than address the social economic predicament of women which drove some of them to kill their children."

viewed as one of the most notorious in the criminal history of Western Australia²⁴³. Rendall was brought before the Supreme Court for the death of Arthur Morris and the deaths of two of his sisters, Annie and Olive, were investigated in the process of the trial. Rendall was the 39 year old South Australian born paramour of Thomas Morris who had married his wife, Sarah in Melbourne "many years ago, so many that [Sarah] could not clearly remember the date when they linked their fortunes together"²⁴⁴ and later moved to South Australia. Together, Sarah and Thomas had nine children: seven in Victoria, two in South Australia. Of these nine children, one had died in Victoria, two had decided to remain in the eastern states when the family moved west, and the eldest daughter, Elsie, was in service in Perth. The five younger children lived with Mr. and Mrs. Morris until the couple separated, and then remained with their father.

According to Mrs. Morris, the beginning of their troubles had been when her husband had met Mrs. Rendall in Adelaide and continued when Rendall had followed the family to Western Australia. During the trial, evidence was given by a Mrs. Morris (who was no relation to the family) that she had rented a room to Martha Rendall and Thomas Morris in 1905 in which Rendall lived and Morris visited regularly, sometimes staying, confirming Sarah's suspicions of their continuing affair. The marriage broke down in 1906 with Mr. Morris turning his wife out of the house and ensconcing Mrs. Rendall as housekeeper.

²⁴³According to an article in *Truth*, dated 25 September, 1909, p.5, "it is a curious, though explainable, fact that the most notorious poisoners of ancient and of modern times have been females, and some statistical criminologist asserts that five-eighths of all homicides by poison have been wrought by women, whether wives, nurses, companions, or servants. The reason advanced is not so much that women are more inherently vicious than males, but that when there is a definite, deliberate intention to murder a particular victim, facility of access is a first, indispensable condition. And this is most available to women."

²⁴⁴ *Truth*, Saturday, 14 August, 1909, p.5.

The couple maintained separate bedrooms for the first fortnight, but "the attraction between the two adults was evidently too great for isolation, and Morris, senior, then shared the occupancy of the front room with the willing housekeeper."²⁴⁵ Sarah Morris visited her children regularly at first, but found that the children suffered at the hands of Rendall as a result, and ceased doing so and from therein received news of them via Elsie, until the daughter returned to Victoria. The strange happenings of the Morris household were unmasked when Willie met his mother accidentally and said that George wanted to run away. The boys told her the fate of her three youngest children and confided their suspicions of Rendall to her. She took George in to live with her, called in the police which resulted in Detective Sergeant Mann beginning an investigation into the deaths of three of the children.

Mrs. Sarah Morris was described by the *Truth* as "poorly, but neatly attired, and has the appearance of a mother whose whole life has been one of drudgery. One of those women who knows only work, work, work until they look to the grave as a welcome rest."²⁴⁶ The defence counsel attempted to disparage Mrs. Morris' testimony, implying that she was a drunkard who was involved with other men, and, it was further suggested, that she had been turned out of the house by Morris due to her unseemly habits, however there was no evidence produced to corroborate these insinuations. Regardless of her questionable morality, it was not she who was on trial for murdering the children, and it is significant that Mrs. Morris' respectability should be questioned at all. As a non-resident mother, she was presumed to have left her children to the fate of Rendall, even though her

²⁴⁵ *Truth*, Saturday, 14 August, 1909, p.5.

²⁴⁶ *Ibid.*

husband had turned her out of the home. Public perception at such time considered that no woman would be turned out of her home and sent away from her children without good cause, and therefore, Sarah Morris was in essence on trial as a mother alongside Rendall. Notably Thomas Morris was not judged in terms of his role as a father, despite his close proximity to the tragedies, proposing that women bore the brunt of domestic tragedies.

During the trial, William Morris, aged 17, stated that Annie, aged 9, was the first to take ill²⁴⁷ and told the shocked court that the day prior to the onset of her illness, Annie had refused to do what Mrs. Rendall had told her, saying that Rendall was not her mother, upon which, Rendall thrashed her. According to William, when their father came home and was told what had transpired, he thrashed her as well and she was sent to bed without any dinner. The *Truth* noted that "[t]here is a turning point in all things, and it is not too much to suggest that this incident may have been a turning point in the history of the Morris family when the male parent upheld his 'housekeeper' at the expense of his little ones."²⁴⁸ The following day Annie was sent home from school ill and it was about this time that William first noticed a bottle of spirits of salts (otherwise known as hydrochloric acid) in the dining room of the house. A doctor was called to attend Annie and meanwhile she was kept isolated from the rest of the family, who never saw her again before she died.

²⁴⁷ According to Otto Pollak, *op. cit.* p. 151, a women such as Martha Rendall was typical of the woman poisoner due to her domestic role. "Abundant temptations to commit crimes and opportunities to carry them out in a secretive fashion follow from these roles. Actually, woman's task of preparing food for the members of the family has made her the poisoner par excellence, and her function in nursing the sick has had a similar effect. The helplessness of children as victims of crime has brought within her realm a group of victims least equipped to put up any resistance against criminal attacks and practically unable to enlist the help of the law for purposes of prosecution."

²⁴⁸ *Ibid.*

Annie died on the 28th July 1907, with Mrs. Rendall attributing the death to a weak heart. The death certificate, signed by Dr. Cuthbert, gave the cause of death as epilepsy and cardiac weakness.

About a week following Annie's death, Olive, aged 7, became ill with a sore throat and on one occasion when he was allowed to see her, William noticed a bottle of spirits of salts in her room. During the course of Olive's illness she was delirious and always crying and Dr. Cuthbert, who again attended, called in Dr. Seed in an attempt to shed some light on the illness, but to no avail. Olive died on the 16th October 1907, ascribed by Mrs. Rendall to a disease the doctors did not understand, but the cause of death on the death certificate was given as haemorrhage and enteric fever by Dr. Cuthbert.

Arthur, aged 15, was the next of the Morris children to become ill, complaining of a sore throat. He, like the other children, was isolated during his illness by Mrs. Rendall who also sent William out to buy some spirits of salts at the first signs of Arthur's illness. Mrs. Rendall told the family that according to Dr. Cuthbert, Arthur was suffering from the same complaint that Olive had suffered, and it was the fear that Arthur's illness would conclude in the unhappy manner that Annie and Olive's had that prompted Dr. Cuthbert to obtain further opinions from some colleagues. Drs. Newton, Couch and Cleland were called in, but they too were mystified by the illness. In snatched conversations when Rendall was absent, Arthur told William and their brother George, that the medicine Mrs. Rendall gave him was spirits of salts and burnt his throat and chest. At one stage in his illness, Arthur improved a little when he refused to take the medicine any longer, but the damage was done and he died a week later on the 8th October 1908.

In all good neighbourhoods there is a gossip, and the **Morris/Rendall** neighbourhood had Mrs. Lena Carr who caused quite a sensation in the courtroom with her testimony. She gave evidence that due to the position of her house to **that** of the Morris', she could see quite clearly into the bedroom occupied by the children during their illnesses. Described as "a matronly woman, with good wife and loving mother indelibly impressed on her pleasing personality"²⁴⁹, it was her testimony which seemed to prove in the minds of the public and press, at least, that Mrs. Rendall was guilty as charged. She told of being witness to Arthur's pathetic struggle to get out of bed in his weakened state and of Mrs. Rendall laughing at his efforts, she said that when Arthur rallied a little, Dr. Cuthbert suggested some fresh air and sunlight would benefit him, and, in response, she saw Mrs. Rendall carry young Arthur to the verandah, throw him onto a chair and say "lay there and die" adding that "she had enough to do without having to cart him out into the sunshine."²⁵⁰ On one occasion when she visited Arthur, Mrs. Carr said that Mrs. Rendall handed her a bottle with greenish-yellow liquid in it and said it was the mixture Dr. Cuthbert had told her to brush Arthur's throat with. Mrs. Carr smelt the liquid, gasped and said "Good God, you are not using this for that child's throat, it is enough to kill a horse." To this, Mrs. Rendall calmly replied that the doctor had told her to use it and she was going to do as he said.²⁵¹

During her testimony, Mrs. Carr suggested that she had been disturbed by the odd behaviour displayed by Mrs. Rendall and her seeming disregard for the children's suffering, but she had done nothing due to her belief that Rendall was

²⁴⁹ *Truth*, Saturday, 14 August, 1909, p.5.

²⁵⁰ *Truth*, Saturday, 11 September, 1909, p. 6.

²⁵¹ *Truth*, Saturday, 14 August, 1909, p.5.

their natural mother. The unwillingness to interfere between a woman and her natural children was expressed by many people during the course of the trial and proffered as an excuse for their passivity. Neighbours, tradesmen who visited the house, the landlord who owned the property the Morris' rented and his wife, and even the many medical men who were called to attend the children, all expressed a reluctance to believe that Mrs. Rendall was an unnatural mother. Nevertheless, all professed that if they had known she was not the mother of the children, they would have alerted the authorities with their suspicions. The belief that a woman had strong innate maternal instincts which ultimately prevented her from harming her own children is directly related to historical ideological perceptions of woman's nature as discussed in Chapter I.

The family's landlord, Mr. Hawking and his wife testified that Rendall went by the name of Mrs. Morris and had said the children were hers. Mr. Hawking said he spoke to Dr. Cuthbert after the two girls had died and expressed his concern and maintained that he sensed the house was full of trouble but acknowledged Mrs. Rendall presented a "smooth and kind" persona to the outside world, but he felt that it was merely that - a persona and that she was a much more complex person. Both he and his wife were suspicious of Rendall's role in the children's death but did nothing about it.

William Morris testified that he never saw any more spirits of salts in the house after Arthur's death, but the suspicions of William and George were raised when Mrs. Rendall told them to behave themselves or they might be the next to go. Not long after this statement, George, 13 years old, complained of a sore throat to his brother and added that he had noticed that his tea tasted bitter and William advised him not to drink it. Afterwards, George and William ran away to their

mother and escaped the household unhurt. Both boys clearly disliked Mrs. Rendall and there was some suggestion during the trial that their testimony was slanted against Mrs. Rendall and that they had elaborated a little with the facts, and indeed, William had testified that he had never seen the spirits of salts in the house prior to Annie's illness and he did not know what it was used for, but he later admitted that he had used it in small quantities in his soldering activities. While the vast majority of the boy's testimonies was backed by other witnesses, there remained some uncertainty about the entire validity of their testimonies which were the primary ones of the trial, and which produced the most damning evidence against Rendall, besides that of Lena Carr.

George Morris corroborated William's evidence, but added that when Annie was ill, Rendall called him to come and see Annie struggling to get out of bed, but she was too weak and George said she was crying and delirious, she did not recognise George but Rendall did nothing to aid Annie on this occasion and stood and watched her struggle in gales of laughter. George further testified that he had been sent by Rendall on two circumstances to buy spirits of salts after Annie's death. In one instance, George testified, he had seen Rendall put a pair of scissors with wet wadding down Olive's throat, causing Olive to cry, resulting in a beating from Rendall.

George also presented some very damning evidence against both Mrs. Rendall and his father when he reported a conversation he had overheard between the two. His father lamented the fact that his children had died and said "I have only two left now". To this Mrs. Rendall answered, "Anyone would think I was the cause of it," and Mr. Morris responded, "So you are!". This conversation implicated Mr. Morris as an accessory to the fact of the crimes, if nothing else, and

suggested that he knew Mrs. Rendall had been responsible for the children's deaths, but directly implicated Rendall as the instigator of the tragedies.

As previously stated, Dr. Cuthbert attended the family from 1903. He, like others examined in the case, believed Rendall was Mrs. Morris and that the children were hers: a belief which coloured his perception of her behaviour. At the onset of the fatal illnesses, he thought Annie was suffering from a throat infection, but subsequently thought the illness very obscure and accounted for it by suggesting a nervous lesion following diphtheria, from which all the children had previously suffered, and which had affected the alimentary system. She could not sustain any food and as a result suffered from exhaustion, and she had developed convulsions, but a Silver Chain nurse was attending them regularly: evidence that the children were not neglected medically in their illnesses. During his attendance of Olive he noticed that she had developed a peculiar membranous condition in the throat and mouth which he had never seen before, and Annie had not shown signs of. Both girls experienced haemorrhaging of the bowels, although Annie suffered more than Olive from not being able to sustain any nutrition. The membranous condition persisted until Olive's death, and continued to puzzle both Drs. Cuthbert and Seed who could not account for it.

Arthur, during his illness, complained of pains in the chest and stomach, sustained vomiting and also developed the peculiar membranous condition that Olive had exhibited, although more markedly. Upon the boy's death, Dr. Cuthbert gave a piece of the membrane from Arthur's body to Dr. Cleland to examine in an attempt to determine the cause of it, but no solution was found. The doctors also wished to perform an autopsy on Arthur, which Rendall at first refused, but after they had contacted Morris for permission, she agreed that they could perform an

autopsy, but included the conditions that she remain present and that no part of the body be removed. The results of the post mortem were most unsatisfactory according to the doctors, due to Rendall's presence and her refusal to allow any part of the body to be removed for examination, however, they did agree that all signs pointed to death from an irritant poison and they believed the Coroner should be approached, but felt there was insufficient evidence to sustain an investigation. The doctors later agreed that if they had known that Rendall was not the child's natural mother they would have taken steps to have an investigation begun. During his testimony, Dr. Cuthbert denied that he had prescribed spirits of salts at any time and had no idea that it had been used, but he had, he added, prescribed something for swabbing the throat, which may have accounted for the swabbing activities witnessed.

Dr. Cumpston was called to examine Rendall about three months after Arthur's death, when she complained of suffering from a throat problem. Upon examination, he found the membranous condition evident in the children was absent in Mrs. Rendall, but there was a familiar patch on the left tonsil about the size of a shilling but it was not covered with membrane and he concluded that it was not an ordinary pathological condition, but one such as would be caused by a caustic irritant.

Dr. Samuel Macaulay testified that Rendall had come to him complaining of a sore throat and that a white membrane was present, but there were no signs of diphtheria or evidence of a temperature or swollen glands. She said to him that she was exhibiting the same symptoms as her children who had died and expressed concern about her own apparent ill health, but he said she appeared amused when discussing the children's deaths. The doctor finally came to the conclusion that the throat problem was not the result of some disease, but caused by some irritant.

He, in fact, thought it was self-induced and told her he was going to change treatments and if there was no improvement she would have to undergo some procedure to her throat: she then appeared to improve rapidly. He stated that she tried coughing at the first consultation for effect, but the doctor did not, either then or afterwards, think she was genuine. He concluded that he found her behaviour most peculiar and unsettling.

The pathology evidence produced upon exhumation of the children's bodies was inconclusive as the bodies had undergone severe deterioration and no significant traces of poison could be found in the children's bodies, which allowed for no decisive cause of death to be determined.

According to Michael Cannon, "[t]raditionally, lawyers always tried to avoid placing clients who faced capital charges in the witness box, for that rendered them liable to cross-examination by the Crown prosecutor, and possible incrimination out of their own mouths"²⁵². Martha Rendall's counsel, Mr. Clydesdale, followed tradition and Mrs. Rendall gave no evidence during her trial, but she was, however, called to the stand during the coroner's inquest. In her defence she testified that the spirits of salts in the house belonged to William Morris who used it for experiments and she denied that she ever used it for her own purposes. She maintained that she had only painted Arthur's throat with the medicine prescribed by the doctor and had used Condy's fluid on the brush as a disinfectant. She denied the reported conversations with Mrs. Carr and denied also laughing at either of the children's attempts to get out of bed. She admitted that she may have led people to believe that the children were hers, but could not state emphatically whether this was the case. She denied giving the children anything

²⁵² M. Cannon, *op. cit.*, p.23.

that had not been prescribed by the doctor. She explained her decision not to allow the doctors to remove any of Arthur's body parts on the grounds that she felt they had ample opportunity to examine him during the course of his illness. In short, her defence was based on denial.

During his concluding address, the counsel for the Crown, Mr. Barker stated that "he thought the details of the case, if true, were as atrocious as anything that had yet been unfolded in a court of justice."²⁵³ Even though Martha Rendall was on trial only for the death of Arthur Morris, the deaths of Annie and Olive were also covered fully in the trial and Mr. Barker said that;

[t]he object...in putting before the jury the death not only of Arthur, but of each of the other two children, was to satisfy them that the boy Arthur did not come by a natural or unintentional death. The evidence undoubtedly had a tendency to substantiate that. The jury had to bear in mind that the throat symptoms in the case of the other children were repeated in the case of Arthur, and that the other features such as wasting, gradual weakening, etc., were common to all the three children.²⁵⁴

He further suggested that "Morris had played a poor and contemptible part in the tragedy, but that was different from saying that he was advising or assisting Mrs. Rendall."²⁵⁵

Mr. Clydesdale, in his concluding address, said "it was undoubtedly one of the most important criminal trials yet heard in that Court, and the jury must be

²⁵³ *The West Australian*, Tuesday 14 September, 1909, p.3.

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

satisfied beyond all reasonable doubt that the accused was guilty."²⁵⁶ He further asserted that:

The Crown had failed to put it forward definitely and conclusively that there was a deliberate plan to destroy the lives of those children by means of spirits of salts. If Mrs. Rendall was possessed of the lust for crime would she have used the child and others who had entered the box as a means of obtaining spirits of salts with which to destroy the lives of the children? Her conduct in this respect alone was not consistent with the action of one bent on crime.²⁵⁷

Mr. Justice McMillan, the Chief Justice, presided over the case and delivered his summing up on the 14th September in which he stated that "he had never had to deal with a trial which had given him so much trouble and so much anxiety."²⁵⁸ He proceeded to warn the jury against paying attention to the reports published in newspapers and the general gossip which had surrounded the case and warned them to deal entirely with the details of the case as presented in court. He further cautioned the jury against judging the couple on trial on the grounds of them "living a life of immorality"²⁵⁹ and to beware of allowing themselves "to be led away from the case by a very natural dislike for"²⁶⁰ Mrs. Rendall on the basis of her harsh treatment of the children.²⁶¹ He added that he considered "the case

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *The West Australian*, Wednesday, 15 September, 1909, p.2.

²⁵⁹ *Ibid.*

²⁶⁰ Much was made in reports of the trial of the unappealing looks of Martha Rendall, her apparently indifferent and unremorseful demeanour and odd behaviour. Her physical descriptions bring to mind Lombrosian perceptions of "innate" female criminals who were seen to exhibit a tendency toward masculine appearances. If she had been a young, vital, attractive woman who pleaded her innocence and appeared distressed at the deaths of the children, would the outcome of the trial have been different?

²⁶¹ *The West Australian*, Wednesday 15 September, 1909, p.2.

against Mrs. Rendall was much stronger than against Morris"²⁶², and stated that "if George was telling the truth, the woman in the dock was a monster"²⁶³ and "a most horrible woman"²⁶⁴ and concluded by saying "if Mrs. Rendall was guilty, it was a crime to express the nature of which it was impossible to find the words. If the evidence for the Crown was true, she had practically tortured these children to death. It was a charge of an awful character but he was sure the jury would not find her guilty if there was any reasonable doubt."²⁶⁵

The jury retired to deliberate at 12.40 and returned at 4.25 pm with the finding that Morris was not guilty and Martha Rendall guilty as charged. Justice McMillan then stated prior to sentencing that the jury

had found her guilty of one of the most horrible crimes of which he had ever heard. She was a woman apparently responsible for her actions. Nobody had suggested that she was mad. If she was in her senses, she must be a moral deformity. Throughout the whole of the case his Honour had been astonished at her demeanour. Having regard to her behaviour in the court, and the nature of the case which had been disclosed, he could only term her an extraordinary woman.²⁶⁶

The judge's comment that Rendall was "a moral deformity" were seized upon by members of the public who felt that the case had shown an undue bias against Rendall from the start, and that she was never given a fair chance to prove

²⁶² *Ibid.*

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

her innocence. Letters²⁶⁷ to The *West Australian* included comments such as; "if, as the Judge says, 'she is a moral deformity,' then this is a proof that she is only partly responsible for her actions, and certainly she should not be sentenced to death." "Moral deformity is moral blindness, so that a person with a great weakness of character in that respect would see no difference [...] between killing a child and [...] picking a flower." "What is a moral degenerate? Do I understand it aright as one who has an imperfect knowledge of the effects of her actions..." "If she is (a moral degenerate), it is a legal murder to hang her." There appeared to be a large number of public supporters who felt this way - if she was insane, then she could not be held responsible for her actions and hanging was not a fair punishment. It also appears that the only support offered to Martha Rendall was on the basis that she was insane, and therefore could not be held responsible for her actions. I could find no evidence of support on any other grounds.

Truth reported that following her sentencing, "the condemned woman [...] was very chatty on her way to Fremantle after her final appearance at the Supreme Court, and her chief sorrow seemed to be that she had been irrevocably separated from her paramour, who was, she stated, the only true friend she had in the world"²⁶⁸ and the paper ran a series of reports discussing the fact that Mrs. Rendall was sentenced to death on circumstantial evidence only and called for an inquiry into the case.

The Western Australian Legislative Assembly sat on Tuesday 5 October, 1909 and Mr. Walker, the member for Kanowna, spoke on the case of Martha

²⁶⁷ These letters were printed virtually every day in The *West Australian* from the day the verdict was handed down, 15th September, to the day she was hung, 6th October.

²⁶⁸ *Truth*, Saturday, 25 September, 1909, p.6.

Rendall and pleaded for the Assembly to intervene on her behalf. He referred to the imminent execution as "a judicial murder"²⁶⁹ and suggested that she was tried, not so much on the crime, but rather on "the fact that she has not conformed to social customs" and that "before the jury went into the box, the woman was tried in the public mind and already condemned."²⁷⁰ In support of his argument, he read some letters from the morning's paper containing phrases such as "hang her and be done with it" "There is too much of this Mrs. Mitchell-Rendall business going on"²⁷¹ and "hanging seems too good for such as Martha Rendall. She should be given spirits of salts in the same way as she administered it to the poor children", indicating a substantial lack of sympathy for the condemned woman²⁷². He further asked "how it is that the doctors come day by day, and the children suppose they are being - and the latter ones know they are being - poisoned, and yet there is not a word to the doctor" and "if these children were crying 'Murder' because spirits of salts was put upon them, how it is the father never knew?"²⁷³ He then refers to the judge's remark that "the woman was a moral monstrosity, that her character was extraordinary" and suggests that "if that be so, if the woman is one of these moral monstrosities made by nature, incapable of knowing the effects of wrong-doing - if she be a monster, then we have no right to kill her. She is not responsible in the same sense as other people are; she is outside the ranks of human beings, she is a

²⁶⁹ *WAPD*. Legislative Assembly, Tuesday, 5 October, 1909, p.806.

²⁷⁰ *Ibid.*, p.807.

²⁷¹ In Judith Allen's study of family violence referred to previously, she found that for women indicted for murdering their spouses in New South Wales in the period between 1880 and 1939, 32 of the 60 cases involved poison. Anne Jones, in her study, *Women Who Kill*, stated that "[t]he poisoning wife became the specter of the century - the witch who lurked in woman's sphere and haunted the minds of men", p.77.

²⁷² The letters appeared to be duly balanced - some in favour of the hanging, others not. The most condemnatory of the letters, however, tended to come from women.

²⁷³ *Ibid.*, p.809.

creature of impulses uncontrollable"²⁷⁴ and Mr. Collier, the member for Boulder, agreed saying that "any person who will be guilty of such a crime could not be held responsible."²⁷⁵ Despite this, there was little support for Mr. Walker in the Legislative Assembly and the Premier, Mr. Moore, said that the Executive Council had "weighed minutely every particle of evidence put forward" and as a result "do not feel justified in altering the decision arrived at a fortnight ago."²⁷⁶ Martha Rendall was hung on Wednesday October 6 1909.

Martha Rendall was certainly an odd woman, but whether she wilfully murdered the three children of Thomas Morris remains uncertain. Unquestionably, there was insufficient evidence to sentence her to death on a charge of wilful murder: a fact which a great number of the public picked up on. On 30 September²⁷⁷, there was a letter to the editor in *The West Australian* from Thomas Morris which read:

I pray that you will grant me a small space in your valuable paper for this my appeal on behalf of Martha Rendall. All I possess, even my tools, were sold for my defence, so that I am powerless to do anything further than write to you on her behalf. [...] I know that some of the evidence given against me was incorrect. Then why not the same against her? I also know now that evidence could have been called in support of our case, but was not. I left everything to the lawyers, and no doubt they did their best with the money they had. But I say fearlessly, before God, I was innocent, and so is Martha Rendall. She was everything that was good and kind and attentive to my children, and did everything for their benefit. I know her better than anyone else, and I say she was incapable of doing what is attributed to her. She may have appeared hard outwardly, but no woman ever had a more tender heart than she...

²⁷⁴ *Ibid.*, p.814.

²⁷⁵ *Ibid.*, p.823.

²⁷⁶ *Ibid.*, p.819.

²⁷⁷ *The West Australian*, Thursday 30 September 1909, p.2.

and on the following day Thomas Skewes, who owned the local shop near the Morris household, wrote to say that he, and other local members of the community, had offered to speak on Rendall's behalf at the trial and attest to her concern about the children and make known the fact that she called the doctor to attend them regularly, but was not called by her counsel. He said "[e]ven if Mrs. Rendall is guilty of the charge preferred against her, and she is one of the worst of women, surely any evidence that could have been called on her behalf should have been called."²⁷⁸ J.C.G. Smith further recommended that "[i]n common justice let the whole of the evidence be submitted to a committee of the most eminent medical men in Australia. If this is not done it means that Mrs. Rendall is hanged because of her poverty."²⁷⁹

The evidence given at the trial was circumstantial only and much of it hearsay, but Martha Rendall was judged on her role as a woman and a mother (or step-mother) as much as for the actual crime. Concerned members of the public wrote to *The West Australian*, commenting on the unfairness of the verdict given the evidence presented at the trial. Charles Le Fevre wrote about the assumptions made in the case, "First, Martha Rendall knew more about the action of spirits of salts on the human system than the whole medical profession of the State. [...]" Another assumption is that the woman calmly, deliberately poisoned three children simply because she did not want to be bothered with them, and wanted their father to spend more money on her!" And most incriminating of all, "that because Rendall preserved a calm, unbroken front in the dock she must be a callous, hardened wretch."²⁸⁰ Others believed that such a woman should not be permitted

²⁷⁸ *The West Australian*, Friday 1 October 1909, p.7.

²⁷⁹ *The West Australian*, Tuesday 5 October, 1909, p.7.

²⁸⁰ *The West Australian*, Tuesday 5 October, 1909, p.7.

to remain living after she had invaded the sanctity of a married couple, broken their home and subjected the children of that marriage to cruelty if not death. To appease the concerns of the this group of the public, she had to be removed from their sight and hung.²⁸¹ In the words of Anne Monti from Mount Lawley, "[i]f Martha Rendall does not deserve hanging then nobody in the world ever deserved it."²⁸²

A desire to believe in Martha Rendall's innocence was also in the hearts of some of the public because, as one writer confirmed; "Is it not beyond our conception to believe that a woman, in whose breast the Creator has implanted all the finer instincts of humanity, the most sacred and tender, loving, mild and gentle emotions of motherhood, could possibly be guilty of the fiendish crime of which Martha Rendall has been pronounced guilty?" To believe that a woman, particularly one who was a mother herself and also responsible for another mother's children, could commit such a heinous crime was too much for some people. If Martha Rendall, sane and protector of children, could cold heartedly kill these children over an extended period of time, who could be sure what other women were capable of? No, it was easier and safer to believe that either she was insane or innocent. In the words of *The West Australian*, "Martha Rendall, whether innocent or guilty, was truly a most remarkable woman."²⁸³

²⁸¹ According to the findings of R. Douglas and K. Laster, *op. cit.*, "executions do seem to be associated with charge and with the general climate of opinion evidenced by trial date." p.153. The public attitude at the time of Martha Rendall's trial was extremely biased against women who treated children callously after the Alice Mitchell case and the abortion cases involving Maggie Tonkin and Elizabeth Pears, all of which received a great deal of media attention. At another time she may have escaped the death penalty and may even had been discharged altogether. See also previous footnote related to same article.

²⁸² *The West Australian*, Tuesday 5 October, 1909, p.7.

²⁸³ *The West Australian*, Thursday 7 October, 1909, p.6.

Emily Coates²⁸⁴

While the case involving Emily Coates received a great deal of publicity in the newspapers and an Inquiry was established into the running of the Swan Boys Orphanage as a result of the case, there seemed to be no great public outcry as a result of the dismissal of the charge against her. At a time when the infant mortality rate and the phenomena of baby farming was receiving a great deal of attention, it appeared that the lives of older children were not of concern to authorities and the general public, especially children who came from the unfortunate social background of an Orphanage boy.

In 1911 Emily Coates was matron at the Swan Boys Orphanage when George Everitt Jones, a young inmate, died at the Children's Hospital on 31 May. An inquest was held, during which the Judge, in his summing up, said "I put it to you that before you bring in a verdict which would necessitate my committing Mrs. Coates for trial on a charge of manslaughter you must be satisfied that her treatment on that Sunday was one not of ignorance, but that she had a wicked mind and that she did not care whether he died or not"²⁸⁵ He concluded his address by saying that "[t]here was no doubt that she had been seriously and culpably negligent, but whether the negligence was wilful was hard to find."²⁸⁶ However, the jury did not agree with him and found that "George Everitt Jones died from toxæmia accelerated by the gross neglect of the Matron of the Swan Boys Orphanage. Emily Coates was deemed a person so callous that she is totally

²⁸⁴ When not otherwise indicated, all information and quotes are taken from the Supreme Court records in the Western Australian State Archives. This case can be found at Consignment No. 3473, WAS No. 122, Item No. 412, Case No. 4334 (1911).

²⁸⁵ *Ibid.*

²⁸⁶ *The West Australian*, Friday July 14, 1911, p.8.

unfit for the care of children and in particular those children deprived of parental affection and care" and she was committed for trial on the charge of manslaughter.

Mrs. Coates was charged under section 271 of the Criminal Code which reads : "A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person"²⁸⁷.

During the proceedings of the trial, the Manager of the orphanage, the Reverend Alfred Burton, testified that the duty of the matron was to oversee the care and well being of the boys and she was the first judge as to whether a boy required medical treatment or not. He further stated that it was understood when Mrs. Coates was appointed matron that she was a certified nurse; which indeed she was, having acquired a certificate from the Alfred Hospital in Melbourne. This certificate, according to the head doctor of the Children's Hospital, Sir Walter James, was an official certificate and as such Mrs. Coates was recognised as a qualified nurse and had received sufficient medical training to fulfil the duties of matron.

The trial also took the role of an inquest into the Orphanage and the recently resigned Superintendent, Mr. Henry Charteris, stated that when he took up his position, he found the whole institution in disrepair and the boys only half clad, underfed and many verminous. The relationship between the boys and the staff was one of mistrust, with the boys afraid of the staff, and they, indifferent to the children under their care. Following persistent lack of support for his

²⁸⁷ 1 & 2 Edward VII, no. 14, *Criminal Code Act, 1902*, Section 271, p.99.

nominated improvements, Mr. Charteris and his wife resigned a few days prior to the admittance of the Jones boys, George, Willie and Arthur. The couple remained on the premises until Mr. Charteris regained his health, and as such, were called as reliable witnesses to the events leading up to George Jones' death, and they both testified as to the good health of the Jones boys upon their admittance to the institution.

The first indication of George's ill health began when he developed a sore foot, which Mrs. Coates dismissed as a chilblain, and accused him of shamming. The other orphanage boys testified to the fact that George was extremely ill, had difficulty in eating, kept falling asleep, could not walk, and became increasingly ill over the last few weeks of his residency. His elder brother, Willie, had to carry him to and from the toilet as George was too weak to go himself and he told of George crying all night in pain. In an attempt to improve his foot, Mrs. Coates put it in hot, dirty water on the Sunday morning his mother removed him from the orphanage, and reportedly slapped him about the face when he began howling in pain. When Mrs. Jones arrived, she found Willie in a distressed state outside the kitchen crying that Mrs. Coate was beating George and Mrs. Jones could hear the sound of slaps and of George crying. The orphanage boys testified to seeing Mrs. Coates on at least one other occasion forcing George's foot to the ground in an effort to compel him to walk.

Mrs. Jones was extremely concerned about her son and, noticing his high temperature, removed him from the orphanage, carrying him all the way to the local doctor, Dr. Clarke. The doctor agreed with her assessment of George's condition and advised her to take him to the Children's Hospital immediately. At the trial, Dr. Clarke testified that George was in an extremely bad state of health

and had obviously been that way for some time, which a qualified nurse should have noticed. He further testified that sending George to school and not allowing him to rest would definitely have accelerated his death. When Dr. Clarke saw him his temperature was 103° and his pulse was 120 to 130, whereas it should have been around 70. The admitting officer at the Children's Hospital, Eulalie Hammersley, testified that when George was admitted he was covered in vermin, filthy, dressed in ragged, dirty clothes, and obviously neglected and in great pain.

Other people who came in contact with George noticed his illness and the schoolmaster spoke not only of George's condition, but of the overall neglect the institution displayed towards their charges. He testified that George Jones was absent from school on the 10th, 11th and 12th of May and when he attended on the 15th he was very lame and obviously ill. George's teachers, Mary Stevens and Olive Berry, stated that George became increasingly ill over time, exhibiting intensifying lethargy, often falling asleep at his desk and that he had difficulty concentrating. He last attended school on the 19th of May but was sent home to the orphanage that afternoon and never returned to school.

Mrs. Mercy Jones, complained that her sons all had lice in their hair, their clothes filthy, that the management of the orphanage had refused her permission to visit her boys on numerous occasions and that they had threatened to have her arrested if she set foot on the grounds uninvited. In answer to her charges, the judge suggested that while he did "not think anyone ought to blame the conduct of Mrs. Jones in the slightest degree in her insisting upon taking the boy away after what she had seen in the kitchen, and after she had seen the condition of the boy [...] [s]he was a woman whose evidence had to be considered very carefully". He accused her of having committed perjury on at least one instance and he stated that

"she was not only never denied access to the children, but further than that it had been sworn that on several occasions her children were allowed to see their father at the Home of Peace". He summed up his opinion of Mrs. Jones, saying that "[n]o doubt she had given a good deal of trouble [...] She was a woman who was very likely in certain circumstances to give a good deal of trouble."²⁸⁸

While Mrs. Coates was nominally on trial for the manslaughter of George, his mother, Mercy Jones was judged as both a mother and a woman and found wanting. Her husband was resident in the Home of Peace as a cripple, and she had experienced difficulty in maintaining accepted domestic standards, with the result that the boys were removed from her care and placed in the orphanage. It was not considered adequate evidence in her defence that the boys were in extremely good health prior to their unrequested removal. If she did cause trouble at the orphanage, it was more than likely due to the resentment she felt at having her children taken from her and not provided with suitable care afterwards. Her concern for the well being of her sons is evident in her constant complaints about their state of dress, the fact that they were hungry and losing weight and her removal of George when he was obviously ill. Due to her motherly protection, George did not die an agonising death alone in the orphanage, but at least spent his last week of life being tended to at the Children's Hospital with his mother by his side.

The staff at the Children's Hospital were uncertain as to the exact cause of George's illness and treated him for acute rheumatism for two days before they diagnosed septicaemia. At the autopsy it was revealed that the cause of death was

²⁸⁸ All the previous quotes are taken from the trial transcripts in the State Archives. Consignment No. 3473, WAS No. 122, Item No. 412.

an abscess in his tooth which had led to blood poisoning and the problem with his foot was merely a secondary infection. In all probability, by the time of his admittance, illness had progressed too far for George to have been saved regardless of the speed of diagnosis. This evidence led to the release of Mrs. Coates as it was proven that even if she had called a doctor to attend to George early on in his illness, it was unlikely they would have made a full and proper diagnosis to save his life. Following this testimony Justice Rooth asked Mr. Parker, the Acting-Crown Prosecutor: "Do you say that the prisoner was criminally negligent in the sense that she was of a wicked mind or was reckless?" Parker replied "I do not contend that she acted wickedly or recklessly, but that she acted unreasonably." His Honour then stated "If that is so, there is an end of the case on the law." He continued that :

the prisoner was charged with unlawful killing, and if one person unlawfully killed another that person was guilty of a crime. But the allegation was that the death of the boy Jones was brought about by negligence, and that must mean unlawful and criminal negligence. The Code said that a person who did an act or made an omission so as to hasten the death of another was deemed to have killed that other person. That, however, did not create an offence and unless the killing was shown to have been unlawful it did not constitute manslaughter. The Crown did not allege that the prisoner had a wicked mind, and [he] was therefore obliged on the law to direct the jury to return a verdict of 'not guilty'.

Thus the prisoner was released and the trial closed.

Emily Coates was not subjected to close scrutiny by the media during her trial, as Martha Rendall had endured. There was little reference to her demeanour and none at all to her appearance. She was described as feeling "her position

keenly"²⁸⁹ and it was pointed out that she had done the right thing and resigned her position immediately she was indicted to trial, and as such, she was not to be seen as a potential threat to any other boy. Although the judge admitted "Mrs. Coates had gone in the witness-box and denied everything. She denied certain things which were obviously true, and he thought the jury should look at her evidence with a great deal of caution"²⁹⁰, she was given the benefit of the doubt and treated leniently. It appeared that Mrs. Mercy Jones, instead, was judged by the judicial process and the public. The sentiment appeared to be that if she had been a better mother the boys would not have been placed in the care of the orphanage and George would never have died.

SUMMARY

In discussing the well-known American case of Lizzie Borden in 1892, Ann Schofield makes the observation that "both the defence and the prosecution of the historical Lizzie Borden pivoted on her social role as a 'lady'. The defence claimed that, by definition, a lady could not be a murderer, while the prosecution charged that a serious aberration of that role led Lizzie to parricide."²⁹¹ In the same sense, the women in this study were judged by the similar standards, except none of them held an elevated social position akin to Lizzie Borden. Nonetheless, they were all judged from the perspective of how their behaviour resembled that of a "lady".

Priscilla Rawson could not be acknowledged as a true lady due to her lack of physical restraint and the attack on her father. However her remorse and

²⁸⁹ *The West Australian*, Wednesday 9 August, 1911, p.5.

²⁹⁰ *The West Australian*, Friday 14 July, 1911, p.8.

²⁹¹ A. Schofield, "Construction Lizzie Borden" *op. cit.*, p.6.

tendency towards hysteria was acknowledged as truly feminine behaviour, as a result, she received a light sentence.

Catharine Ottey, however, did not have the money to attain the true status of a lady, but her composed behaviour, her protection of her siblings and her mother, and the affirmation of her respectability by the police and community allowed her to be acknowledged as a lady and, as such, she was acquitted.

The three French women involved in the Smith's Mill shooting were severely judged on their perceived moral degeneracy and were tried for murder on this basis, even though it was evident that they did not kill Mr. Lauffer. Throughout the trial they were subjected to public discussion on their lifestyle and professions and the media, in particular looked for any signs of accepted femininity in their demeanours, without avail.

Martha Rendall failed the criteria abysmally. She had left a family interstate to fend for themselves, broken up a marriage and lived in sin with her lover. Any woman who could do such things would surely be capable of killing three innocent children in cold blood. Her composure during the trial and her hard looks only added to the censure and she was hung. Her conviction of murder appeared to be influenced by her failure to meet accepted standards of feminine behaviour.

Emily Coates was dismissed as "a person so callous that she is totally unfit for the care of children" and removed from her employment. No further punishment could legally be fixed upon her as the medical testimony suggested that while she was negligent and careless, she did not believe she was contributing to George Jones' death. While, on the surface, her case may be seen as supporting

the chivalry thesis, it must be remembered that she would have found it difficult to gain employment in her field after the media attention of this case. Legally, she could not be found guilty of the charge, and it would have been interesting to see what the outcome of the case had been if the medical testimony had been different. The case, as it stands, is inconclusive in its support for either criminological thesis.

In summary, murder is an atypical activity of women and, when they do murder, they choose as victims people in their care and direct domestic sphere. Supporting accepted criminological theory, most of the crimes studied embraced at least one of the trademarks of women's murder - the weapon used was a knife or household implement, the crime occurred in the house, most commonly in the kitchen and the incidents themselves were often spontaneous responses to unusual circumstances;²⁹² proposing that even within such extraordinary events, women remained constricted by their gender roles.

Martha Rendall and Emily Coates were seen to be abnormal, cold women who did not have the innate respect for life and ability to care for dependants as they were expected to do. As such they were condemned as women, not only criminals. As Bronwyn Naylor states: "[f]emininity, as a concept, prescribes passivity and gentleness; violence is 'unnatural'. Women who fail to conform to these expectations are likely to be treated, and depicted, severely"²⁹³ Only the case at Smith's Mill is unusual in that the victim was a stranger to the perpetrators, but in this case, it was proven to be a man who committed the crime and the women

²⁹² These hallmarks of women's crime are identified by Carol Smart, *op cit.*, p. 16 and are supported by numerous other studies into murder by women, such as those by Ann Jones and Jane Totman. The study of family violence by Judith Allen in O'Donnell, C. & Craney, J. (eds) *Family Violence in Australia*, Longman, Cheshire, 1982, p.3, mentions that "nearly all of the men's deaths occurred in the marital home, frequently in the kitchen."

²⁹³ B. Naylor, *op. cit.* p. 4.

were associated with it. Regardless of this, the women involved appeared culpable in that they did little or nothing to prevent the murder from taking place. In the contemporary ideology, as women, it was believed they had a moral responsibility to be the conscience of the group and guide their partners away from wrong, which they failed to do.

CHAPTER 6 - CRIMES AGAINST MORALITY - FAMILY AND BIRTH RELATED CRIMES

"Formerly we used to import all our criminals from England, but now we have developed our resources and manufacture our own, and competent judges - in ermine, too - have pronounced the manufactured equal, an in some points superior, to the imported article." - (George Herbert (Ironbark) Gibson

Family related crimes have special significance to the study of women's criminality as they directly threatened all that society held sacred. Women who were involved in these activities were seen as more inherently evil and threatening than other women law breakers. Women who belittled the sanctity of the family and failed to uphold moral values were seen to be particularly threatening in the late nineteenth/early twentieth centuries, when society was deeply concerned about the potential ramifications of the declining birth rate, the perceived increase in abortion and use of contraceptives and the threat of infanticide. In the view of the authorities, a major menace contributing to the declining birth rate was the network of women providing information about birth control in its various forms and working together within a protective structure. A significant difference between these crimes and others discussed was that male involvement was minimal: all of the victims were women or children, the majority of the abortionists were women and all the persons committing infanticide or concealment of birth were, by definition, women. "Women concealed rape and pregnancy and 'put away' infants out of fear of the guilt and shame that would befall them. These problems barely affected the men involved."²⁹⁴

²⁹⁴ R.P. Dobash, R.E. Dobash and S. Gutteridge, *The Imprisonment of Women*, Basil Blackwell, Oxford, 1986, p.96.

In order to rationalise the impact of these crimes, I will investigate them in groups of like crimes - infanticide, abortion, bigamy, incest and rape in an attempt to determine if any similarities occur within the areas under discussion.

6-I - ABORTION

*"No easy still it proves in factious times
With public zeal to cancel private crimes." - John Dryden*

Table 4A details the information about the cases to be discussed.

TABLE 4A - ABORTION 1890-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1898	Margaret Smith	Manslaughter	Guilty	7 years penal servitude
1902	Minnie Waugh	Supplying noxious drugs with intent	Not Guilty	
1908	Jane White	Conspiracy to procure abortion	Not Guilty	
1908	Elizabeth Pears	Murder	Guilty of manslaughter	7 years hard labour
1908	Maggie Tonkin	Using force with intent to procure a miscarriage	Not Guilty	
1908	Harriet Giraham	Using an instrument for miscarriage	Guilty	5 years hard labour
1913	Lucy Griffiths	Allowing an abortion	Guilty	3 months hard labour
1913	Minnie Dennant	Using force to procure a miscarriage	Not Guilty	

Source: Supreme Court Records Index 1890-1914

The criminal code concerning abortion remained consistent during the period of this study. The original sections were drafted in 1897 and remained unchanged by the introduction of the Criminal Code of 1902²⁹⁵. An abortionist was liable to imprisonment with hard labour for up to fourteen years, a woman who permitted an abortion to be performed on herself was liable for seven year's hard labour, a woman who attempted to abort herself was, similarly, liable for seven years imprisonment and a chemist or other person providing drugs or instruments for the express purpose of bringing on an abortion, liable for three

²⁹⁵ For a full coverage of the legislation involving the period, see an unpublished paper by David Anderson titled, "Abortion in Western Australia : How Legislation is Changed without Legislating", 1986, available from the Family Planning Association of Western Australia library.

years' imprisonment, yet, few abortionists were actually sentenced this harshly. If a woman was found to have performed an abortion on another woman who subsequently died, she could be charged with murder and was liable to capital punishment.

This section will begin with an analysis of the case of convicted abortionist Margaret Smith.

Margaret Smith²⁹⁶

The 1898 case of 49 year old Margaret Smith²⁹⁷ involved a nurse who operated a midwifery business from her house. She originally came from Adelaide, South Australia, where she had gained a certificate in midwifery from a doctor, but had not undergone examinations by a public body nor trained in a public institution. She believed that her certificate entitled her to act as a nurse and midwife and had even attended doctors and been found competent. Margaret Smith was brought to trial over the death of Margaret Buckley who had been staying with the family, and who died as a result of severe septicaemia following delivery of a foetus of approximately five month's gestation. The attending doctor became suspicious, refused to give a certificate of death, and the coroner and police were called in and searched Smith's premises. The bodies of three babies of various periods of gestation were found buried in the backyard²⁹⁸.

²⁹⁶ Unless otherwise stated, the information for this case was found in the Western Australian State Archives, Consignment Number 3473, WAS No. 122, Item No. 210, Case 2909.

²⁹⁷ *Supreme Court Records* Case 2909 WAS No 122 See also coverage in *The West Australian* Aug 9th, 12th, 13th, 15th, 17th, 20th, 24th and 31st 1898. And October 27th, and 28th 1898. Also *The Western Mail* Nov. 4th 1898.

²⁹⁸ Margaret Smith accounted for these bodies by testifying that they were children born early or still born babies of women who came to her premises for lying-in. One was even said to be the stillborn foetus of her own daughter.

As with the case of Martha Rendall, the evidence submitted at the trial was purely circumstantial and it was not conclusively proven whether the abortion on Buckley was actually performed by Smith or by Buckley herself, or indeed whether in fact an abortion or a miscarriage had taken place. There was certain evidence that pointed to the fact that Buckley may have performed her own abortion and that she may also have been suffering from gonorrhoea prior to coming to the Smith household, which would have complicated the onset of septicaemia. There was also strong evidence that Buckley hid her pregnancy from Margaret Smith and her family and had attempted to bring on a miscarriage by lifting heavy tubs of washing and drinking alcohol. Mrs. Smith swore that she didn't even know Buckley was pregnant until she found her in the throes of labour one night. Evidence against Mrs. Smith was given by neighbours whose testimony consisted of hearsay and innuendo.

There was a great deal of press interest in the domestic affairs of Mrs. Smith whose husband worked away from home as a baker, but supported the family and visited whenever he could. The household was put under a microscope and judged in relation to its "respectability" but neither Mrs. Smith nor her daughters fell short of the social expectations and were deemed to be "ladies". The house was immaculate and there was no other hint of scandal surrounding the family, in fact *The West Australian* reported that the interior of the house could lead observers to accept the occupants to be of "somewhat refined tastes."²⁹⁹

²⁹⁹ *The West Australian*, Saturday, 13 August, 1898, p.5.

The judge, in his final address, accused Margaret Smith of having led "a very wicked life" and went on to assert that "when an act as this has taken place, it must not be forgotten that the community is robbed of more than one life" and sentenced her to seven years penal servitude. This comment illustrates the concern authorities had over the falling birth rate - it was not only the dead mother who was lost to the population, but also future generations.

This case came to the fore at a time when public pressure was being exerted on authorities to address the falling birth rate (the New South Wales 1889 Royal Commission into the Birthrate had pinpointed abortion as a contributing factor)³⁰⁰ and the apparent alarming increase in infant mortality. Baby farming was becoming an emotional issue, the public was increasingly vocal in its concern for the rights of children and Mrs. Smith was clearly being judged in this context, rather than as a nurse who perhaps failed to do her medical duty.

The attending doctor took a moral stance in relation to the case and condemned both the supposed abortionist and the woman who apparently procured the abortion. He failed in many of his medical duties throughout Miss Buckley's illness, but was never damned by his colleagues or the judicial system. Not only were women forced to shoulder the full responsibility of reproductive control, but were also made the scape goats by authorities when birth related crimes came to their attention. According to Carol Smart, "leaders of the organised medical profession had special reasons for mobilizing against abortion. The issue provided doctors with a means of asserting technical, ethical, and social superiority over their competitors, particularly midwives and other practitioners who had not

³⁰⁰ P. Grabosky, *op. cit.*, Chapter 7.

graduated from approved educational programs."³⁰¹ This situation was addressed in detail in Chapter 1, (see pg.15ff).

Margaret Smith's lawyers took the case to the Full Court on appeal in December of the same year, arguing that the prisoner's counsel had objected, during the Coronial trial, that all evidence relating to the finding of any foetus other than the foetus of Margaret Buckley in the yard of the prisoner was legally inadmissible and prejudiced the jury, but the judge had ruled the evidence admissible. Further, at the conclusion of the Coronial trial, Smith's counsel submitted to the court that there was no case to go to jury as the given facts had raised only a light presumption of guilt. This objection had likewise been overruled. The Full Court heard the appeal on these grounds and came to the conclusion that the objections were valid, thereby the conviction against Margaret Smith was quashed and the prisoner discharged. Margaret Smith died in late 1907.

Margaret Smith was clearly judged on the predominant premise of female criminology that "good" women do not commit crimes, while "bad" women do. The case against her could not be upheld on medical grounds, but she was condemned for her rejection of her "innate" role as nurturer and was seen to have betrayed the sanctity of family life, lending credence to the morality theory. There was no consideration given to the fact that the abortion must have been requested by Margaret Buckley who was forced into this position by underlying social pressures. It is problematic that theories of female criminology overlook the fact that crime does not happen in isolation, but rather is reliant on the current social, economic and demographic situation and these factors must be taken in to consideration in any discussion on criminality.

³⁰¹ C. Smart, *op. cit.*, p.203.

Minnie Waugh³⁰²

In 1902, Minnie Waugh faced the court on a charge of supplying noxious drugs to Hylda Martin with the intent of procuring a miscarriage. Minnie Waugh, also known by the name of Madam Lever, advertised her services in *The Sunday Times* in the Ladies Only section. She specialised in "female complaints" and suggested her "remedies never fail and are safe and painless". Hylda Martin was unwillingly involved in this case through an unfortunate series of circumstances. Single and pregnant, she had written to Madam Lever for an appointment, but while awaiting a reply, was arrested by the police on a minor charge. Retained in the lock-up awaiting the outcome of this charge, her mail, including the reply from Madam Lever, was intercepted by the police. A deal was struck, whereby Hylda would keep the appointment with Madam Lever and help the police effect an arrest on Minnie Waugh, and the charges against her would be dropped. Hylda had no option but to agree, kept the appointment, was given a bottle containing tincture of ferric chloride and sulphate of magnesia and led the police to Minnie Waugh, alias Madam Lever. Unfortunately for the police, but fortunately for Minnie Waugh, the police mishandled the arrest, allowed Minnie to escape and no positive identification of Minnie Waugh as Madam Lever could be obtained. The jury came to the conclusion that "the Detectives should have taken steps to ascertain the address of the persons who kept the appointments and that greater discretion should be exercised in the future before arrest. We are also of the opinion that a great injustice has been done to Mrs. Waugh" and Minnie Waugh was released. Her husband's continued support and defence of his wife, aided Minnie Waugh's

³⁰² Full details of this case can be found at the Western Australian State Archives at Consignment Number 3473, WAS No. 122, Item No. 250 and Case No. 3224.

case greatly and allowed her to become an example of chivalrous treatment by the courts.

Meantime, Hylda Martin's unwanted pregnancy was not attended to and, no doubt, she would have been in too advanced a stage and concerned about police investigation to risk an abortion, and, therefore, would have been forced to have the baby.

Jane White³⁰³

Jane White was charged in 1908 with conspiring, along with Alice Snell, to commit an abortion on Elizabeth Coleman in November of the previous year. Elizabeth Coleman was a single, rural girl from Namina, who had been keeping company with a young man named Ivan Barry for some time. She became pregnant to Barry, who had offered to marry her when her condition was detected. However, Elizabeth did not want to marry out of necessity and travelled to Perth with Mrs. Snell to visit Jane White. When they arrived in Perth, Ivan Barry was waiting and attempted to prevent Elizabeth from undergoing an abortion. She would not assent to his demands and thus he went to the police in an effort to prevent the abortion from occurring. In the meantime, Elizabeth had been to see Nurse White who confirmed her pregnancy and examined her, but told her to come back the next day. Meanwhile the police stepped in, removed Elizabeth to the Perth Public Hospital where she was examined by Dr. Tymms who ascertained that she had not been aborted, but charges were laid.

³⁰³ Unless otherwise referred to the information for this case was found in the Supreme Court records in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 316, Case No. 4012.

Jane White was found not guilty on the ground that there was no evidence of any activity other than an examination performed on Elizabeth Coleman.

Elizabeth Coleman and Ivan Barry presented themselves at the trial as a newly married couple, with Ivan Barry explaining that he had taken action only to prevent his child from being killed and concern for the possible consequences of an abortion for his future wife.

Elizabeth Coleman was one of the lucky girls who had a partner willing to marry and support her, rather than disappearing and leaving her to face the pregnancy and the social ostracism alone.

Elizabeth Pears³⁰⁴

Elizabeth Pears, also known as Elizabeth Taylor, was a well known Victorian abortionist who "would flagrantly drive around the streets of Melbourne in her hansom cab" and "was brought to trial [in Victoria] no fewer than seven times."³⁰⁵ Eventually convicted and sentenced to death, which was later commuted to fifteen years' hard labour, she served her sentence in Melbourne and, upon her release, moved to Perth to begin business anew. In 1908, at age 60, she was brought before the Perth Supreme Court on a charge of murder caused by abortion.

³⁰⁴ Unless otherwise indicated, the information for this case was obtained from the Western Australian State Archives, Supreme Court records at Consignment No. 3473, WAS No. 122, Item No. 317, Case No. 4032.

³⁰⁵ K. Laster, "Arbitrary Chivalry" *op. cit.*, p.176.

The victim was Elizabeth (Lily) Turner³⁰⁶, a 35 year old woman who came to Nurse Pears supposedly complaining of gastritis. Pears claimed she treated Lily Turner for gastritis, placed a linseed meal poultice with mustard on her stomach to ease her discomfort, and eventually sent for Dr. Taaffe when Lily did not respond to her treatment. Dr. Taaffe also treated her for gastritis, with no results and eventually removed her to the hospital, where she succumbed to the effects of septicaemia and peritonitis as a result of an extremely violent abortion, according to the coroner's report.

Lily Turner was engaged to Mr. James Breydon³⁰⁷ who was interstate on business when the abortion took place. The couple had planned to marry soon after his return, and when he suggested that he delay his business trip for a few months to enable them to marry and combine the business trip with a honeymoon, she declined. The couple were corresponding regularly and she was aware he was to return to Perth the week after she died. James Breydon denied that they had ever had intercourse and said he knew nothing of a pregnancy. If he were telling the truth, it would explain why Lily was adamant that he go on his business trip as planned and why she required the abortion at that time.

The evidence presented at the trial suggested that Lily could not have been suffering from the effects of an abortion prior to going to Nurse Pears' residence as she was in good health, ran freely downstairs to greet friends and was working on her feet all day until the time she attended Nurse Pears' home. This evidence

³⁰⁶ Elizabeth (Lily) Turner was also a native of Melbourne, Victoria where Nurse Pears (Taylor) had been practising as an abortionist for many years. Whether they knew each other prior to this incident was not mentioned, nor whether Lily Turner had availed herself of Pears' services prior to this time.

³⁰⁷ According to *Truth*, Saturday, 4 April, 1908, p.8, Inspector James Breydon was a government officer with the Mines Department who was greatly distressed at the coroner's inquest.

challenged the evidence of Nurse Pears that Lily had undergone an abortion prior to her admittance but did not admit to it. Pears justified Lily's presence in her home as a convalescent stay. The fatal wound discovered by the autopsy was consistent with that which could be caused by an instrument found at Nurse Pears' residence.

When the judge was summing up the case, he gave the jury their instructions and stated that there were three counts upon which they could bring in a verdict. They could find the accused guilty of wilful murder if they believed she had actually performed the operation; or if they believed she had aided the deceased in performing the operation on herself; or finally, they could bring in a charge of manslaughter due to negligence if they believed that she had failed in her duties as nurse to her patient. The jury returned a verdict of manslaughter due to criminal neglect. The defence counsel took the case to appeal in the Full Court on the grounds that when a person faced indictment for murder, a jury could not legally return a verdict of manslaughter on the grounds of criminal neglect. The case was argued by the judges of the Full Court, but the decision upheld and release given for sentencing of the accused.

Elizabeth Pears (Taylor) was sentenced to seven years' imprisonment with hard labour and taken to Fremantle Prison, but she was transferred to Fremantle Public Hospital the following year suffering from erysipelas and died ten days later.

The *West Australian* covered the case with no emotion nor editorialising and the *Truth*, which usually revelled in sensational coverage and moral outrage, appeared to be defending Nurse Pears on the grounds that she was a kindly, gentle looking woman, loved by the neighbours, despite the fact that she had a long

history as a convicted abortionist. The media appeared to be influenced by the teachings of biological positivists such as Lombroso and Ferrero who maintained that an inherently evil, criminal woman would bear the physical evidence of her immorality. A kindly, grey haired matronly woman did not fit the proposed description, therefore she could not possibly be guilty while the jury and judge took a far more moralistic view of the case - perhaps influenced by Elizabeth Pears' previous history in Victoria.

Maggie Tonkin³⁰⁸

An unusual twist to this story is that Maggie Tonkin was the eldest daughter of Margaret Smith, who appeared in court in 1898 on an abortion charge. Maggie Tonkin was in the unfortunate position of being the third woman on an abortion related charge to appear before the Supreme Court in 1908, and as such her case was greeted with cynicism from the beginning.

Truth, on 4 April, introduced the case to its readers with the following paragraph:

Presumably, illegal operations for the purpose of relieving young women from the inevitable consequences of maidenly indiscretion, are no more rife in Perth than in any other important centre of the Commonwealth. Nevertheless, it would appear that the gossips have no sooner finished chattering over one episode of the kind, than they are provided with further food of a similar character that is so delectable to their perverted palates by the recurrence of another. The world of Perth has hardly yet had time to forget the last of these sensational cases when it is confronted with yet another and another.³⁰⁹

³⁰⁸ Unless otherwise referred to the information for this case was found in the Supreme Court records in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 318, Case No. 4036.

³⁰⁹ *Truth*, 4 April, 1908, p.5.

Maggie Tonkin was charged with performing an abortion on Gertrude Burrows who worked as a laundress at the Fremantle Lunatic Asylum, and whose life was hanging in the balance at the time of the arrest. Described as "a woman of striking appearance and sociable disposition"³¹⁰, Mrs. Tonkin was a married woman whose husband was working in the North-West and they had a son of about 14 years of age. Her home was described as "nicely furnished" and further evidence of her "respectability" was offered by the fact that she had engaged a female companion to live with her when her husband had to go north for employment.

By the 24th of April, approximately one month following the alleged abortion, Gertrude Burrows was sufficiently recovered from her ordeal to face the preliminary hearing of the case. She testified that she had gone to Mrs. Tonkin for the purpose of having an abortion performed, Mrs. Tonkin professed herself nervous about doing it, but agreed on the condition that Gertrude tell no-one. She then performed the operation³¹¹ and told her to return in a few days if she was not well. Three days after the operation, Gertrude suffered a miscarriage, but did not recover as expected. She haemorrhaged and experienced high temperatures and was eventually seen by Dr. Blackall of the Asylum who contacted the police.

During the Supreme Court trial, Mrs. Tonkin's husband returned from his employment to be with his wife and sat beside her during the trial, offering his

³¹⁰ *Ibid.*

³¹¹ Maggie Tonkin made certain Gertrude did not see what she did or see any instrument that she used, as the legal defence at the time stated that unless the instrument was sighted and could be identified, it was difficult to lay a charge of abortion and have it stick.

support. Also present with them was Mrs. Tonkin's companion, **Ethel Bowring**, both of whom added to Mrs. Tonkin's perceived "respectability" in the eyes of the witnesses and judiciary.

The jury decided that there was not enough evidence to uphold a conviction against Mrs. Tonkin and returned a verdict of not guilty. The fact that Mrs. Tonkin was an extremely good looking women, with an aura of respectability, supported by family and neighbours, may have encouraged a lenient finding. Regardless of the fact that her mother was a convicted abortionist and that there were reports of numerous women visiting her house, she did not appear to the jury as a killer, and was given the benefit of the doubt, suggesting, once again, that chivalrous treatment is more likely to be proffered to respectable women.

Harriet Graham³¹²

Mrs. Graham was a 45 year old Wesleyan nurse, originally from Geelong in Victoria, sentenced to five year's hard labour for unlawfully using an instrument to cause a miscarriage. The prison registers, however, show that her sentence was remitted on the 15th June, 1911, therefore she effectively served only 2½ years.

Graham ran a lying-in home in her premises in Ventnor Avenue, East Perth, and first came to the attention of the State when Mrs. Blackburn, an Inspector appointed under the State Children's Act, visited her home to inquire why she had not completed an application for her business to be licensed, as required under the 1907 State Children's Protection Act.³¹³ Her defence was that the doctor had refused to sign her application on account of her having the agency for the remedy known as "Orange Blossom"³¹⁴, and she had subsequently decided not to take any more patients.

The case involved a Mrs. Jane Parsons who, finding herself pregnant, visited a pharmacist in Barrack Street for advice. He directed her to Mrs. Graham's, and an operation was performed that afternoon. Mrs. Parsons stayed at

³¹² Unless otherwise referred to the information for this case was found in the Supreme Court records in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 324, Case No. 4081.

³¹³ *State Children's Act*, 7 Edw. VII, No. 31 (1907). The appropriate section is Part VIII - Lying-In Homes and Foster-Mothers. Section 97, which reads "No person shall, for gain or reward, keep any building, structure, or apartment as a lying-in home unless such premises are licensed by the Department for that purpose."

³¹⁴ In Rosemary Pringle's article, "Octavius Beale and the Ideology of the Birth-Rate" *Refractory Girl*, Vol. 3 Winter 1973, p. 197, she refers to a substance called "Orange Lily" which was really boric acid. This was used as an abortifacient. It is unclear whether this is the same product as the Orange Blossom referred to in the case of Harriet Graham, although it is likely they are essentially the same product.

Mrs. Graham's house for a few days, expelled a foetus, seemingly recovered from the operation, and returned home. The police became involved in the situation when Mrs. Parsons was admitted to hospital in a serious condition.

Upon interviewing other women who had been residing at Mrs. Graham's, the police conducted a water tight case against the abortionist, with testimonies from patients who had undergone abortions on the premises, letters from women reporting their safe arrival to their homes and their delivery of a foetus, a letter from a woman requesting a catheter be sent to her "to be sure" and evidence of abortionists' tools in her house. Mrs. Graham's domestic servant, Winifred Fleming, also testified that she had first met Mrs. Graham when her fiance died on their wedding day and, finding herself alone and pregnant, visited a chemist in Barrack Street who referred her to Mrs. Graham. Orange Blossom by insertion was prescribed and, following the failure of this, an abortion was performed by Mrs. Graham.³¹⁵ The amount of incriminating evidence produced against Mrs. Graham supports the finding and the sentencing in this case, thereby offering no support for either thesis.

³¹⁵ Patricia Knight, "Women and Abortion in Victorian and Edwardian England", *History Workshop*, Vol. 4 Autumn 1977, p.57 suggests that "women who attempted abortion generally used drugs in preference to instruments" and only when these remedies failed, was abortion resorted to. Many of these studies indicate the same rule, women tried other remedies first and only later turned to abortion, which was a more expensive alternative.

Lucy Griffiths³¹⁶

This is a very significant case in the records as Lucy Griffiths was charged with allowing Dr. William Bennett to perform a miscarriage on her, with Bennett being charged with performing an abortion on Griffiths, unlike other cases where the abortionist alone was charged. This suggests that the authorities were determined to punish women for participating in abortions along with the abortionists themselves. Lucy Griffiths was a 20 year old, single woman from Albany who found herself pregnant and turned to Bennett for an abortion. She was typical of many women who sought abortions: she was from a rural town, where it would be expected the access to abortionists was limited. Suellen Murray reports that "a high proportion" of the women in her study of abortion "lived in country areas of Western Australia [and] came to Perth for their abortion."³¹⁷ She suggests that "it is possible that country women in Perth had less 'local knowledge' and were more visible to the police."³¹⁸ Following the court case, Bennett was sentenced to 7 year's hard labour and Griffiths received 3 month's hard labour. The evidence presented pointed to the fact that the charge was legitimate, with a diary produced stating that a Miss L. Griffiths was expected on 30 January and "out" on 10 February, along with similar entries pertaining to other women.

It is notable that the jury recommended mercy for Lucy Griffiths, a 20 year old single woman, suggesting that they viewed her plight with sympathy and saw her actions as understandable. The Prison Register shows that she was admitted to

³¹⁶ Unless otherwise referred to the information for this case was found in the Supreme Court records in the Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 427, Case No. 4481.

³¹⁷ S. Murray, *op. cit.*, p.227.

³¹⁸ *Ibid.*

Fremantle prison on the 1st April 1913, the day after her committal for trial and discharged on the 11th April 1913, the final day of the trial, evidence that she did not serve her sentence, but no further explanatory information has survived. It may be that she was held in prison on detention during the trial and had thus already served three months.

The Supreme Court file on this case reported that the police had Bennett under surveillance and watched his dealings with Lucy Griffiths, but even though Griffiths suffered some problems as a result of the abortion, Bennett attended her well and had her removed to a private hospital until she was fully recovered - suggesting he ran a far more professional operation than many abortionists. The fact that Bennett was well-known as an abortionist is supported by the information in the file, among which is the fact that the local women knew him as "Butcher Bennett", implying that he did not attend all his patients this well.

This case was different to others studied by the fact that Lucy Griffiths was charged with conspiracy to procure an abortion, making her the only woman to be charged with such a crime in the period under review. This fact serves as the main interest factor in this case as the findings appear to have been consistent with the evidence available.

Minnie Dennant³¹⁹

Minnie Dennant was charged with using force with intent to procure a miscarriage on Mrs. Violet Keys who, along with her husband, had decided that she was not ready for a family and sought to have the child aborted. The couple had married the previous October, arrived in Perth in January and were both seeking permanent work. They wanted to establish themselves prior to having a family, so they discussed their options and decided to have the child aborted. Violet approached Minnie Dennant after obtaining her card from a local chemist, but there was no information in the file about how the abortion came to the attention of the police or if the abortion was actually successful, thereby negating this case as support for either hypothesis under review. As noted in other cases studied here, the local chemist seemed to be the person first approached by women seeking an abortion, and he recommended them to a woman in the area who could service them. Suellen Murray notes the same practice in her paper on abortion in Western Australia. She stated that "there was a professional network featuring chemists as key people in providing both men and women with information."³²⁰

³¹⁹ This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 430, Case No. 4503.

³²⁰ S. Murray, *op. cit.*, p.231.

SUMMARY

Kathy Laster's study of women criminals in Victoria³²¹ found that no abortionists were executed, a result which is substantiated by this study. She further found that abortionists "were repeatedly charged with capital offences only to have cases dropped for want of evidence or to be acquitted by juries."³²² She goes on to say that while it "was politically expedient to use capital punishment symbolically to censor reproductive crime [,] its erratic enforcement [...] suggests that the real message conveyed to all women was 'regulate reproduction but make sure you don't get caught'."³²³

Judith Allen, in her study of birth related crimes in New South Wales, states that "during the 1880s and 1890s the majority of indictments were for infanticide or concealment of birth. From the early twentieth century more cases involved abortionists,"³²⁴ a statement which is supported by the findings of this study in Western Australia. These findings suggest that the police, either on instructions from the courts or the Commissioner, targeted specific crimes at certain times. Patricia Summerling found a similar pattern in South Australia, suggesting that "more abortionists were charged after 1900 but convictions were still, nevertheless,

³²¹ K. Laster "Arbitrary Chivalry" *op. cit.*, p.176.

³²² *Ibid.*

³²³ *Ibid* Similarly, Suellen Murray's study of abortion in Western Australia found that "there were contradictions between the stated aims of the law and actual practice." p.227 Likewise, Patricia Knight in her article, *op. cit.*, p.57, stated that "prosecutions usually only took place if the woman died or became seriously ill."

³²⁴ J. Allen, "Octavius Beale reconsidered: Infanticide, babyfarming and abortion in NSW 1880 - 1939" in Sydney Labour History Group, *What Rough Beast?*, *op. cit.*, p.124.

scarce."³²⁵ In this study the emphasis on abortion appears to have occurred in 1908 with four of the eight cases occurring in this year, and another two in 1913.

Opposition to abortion stemmed from a strong belief in the importance of the family in society and that the strength of a nation lay in its population and, by implication, its birth rate. "Abortion was also opposed because it implied that women were rebelling against their traditional role of child-bearing, and was therefore a threat to the hierarchical family structure."³²⁶ After 1900, there was national concern over the declining birth rate and the belief that women were shirking their duties as wives and mothers and becoming increasingly selfish in their demands.

Opposition to birth control and abortion underpinned the view that women were supposed to have no interest in anything except 'care of the household, the satisfaction of men's desires and the bearing of children.' Those who failed to marry were 'redundant' and had 'failed in business', and those who had no children had not fulfilled their destiny. Motherhood was presented not only as women's chief role, but as a sublime and romantic experience.³²⁷

Rather than a desire to avoid their pre-ordained roles in life, women turned to abortion as a relief from the increasing demands being made on them. Women's lives became heighteningly more complicated with the expectation that women not only run the household and care for the family, but contribute to the family income and sustain extremely high standards of hygiene and cleanliness in the home. The movement to make housekeeping, cooking and child rearing more "scientific"

³²⁵ P. Summerling, "The darker side of motherhood: Abortion and Infanticide in South Australia 1870-1910" *Journal of the Historical Society of South Australia*, No. 13, 1985, p.112.

³²⁶ P. Knight, *op. cit.*, p.63.

³²⁷ *Ibid.*, p.64.

actually placed increasingly high demands on women's time and energy and resulted in their desire to decrease the size of their families, and the period under review is just moving into this increasingly scientific methodology. Patricia Knight found that women in Victorian and Edwardian England who sought abortions were most often "not [...] young unmarried girls, but married women who already had two or more children. Abortion was often resorted to in desperation after the birth of a number of children."³²⁸

"Abortion was the next logical step in a series of options that women could use for ridding themselves of an unwanted pregnancy. Following a failed abortion, the only other options open to women wishing to rid themselves of an unwanted child were infanticide or baby-farming."³²⁹

³²⁸ P. Knight, *op. cit.*, p.59.

³²⁹ P. Summerling, *op. cit.*, p.111.

6-II - INFANTICIDE AND BABYFARMING

"This is what a man gets for obliging people." - John Makin (Babyfarmer)

Table 4B provides the information for the cases which come under review in this chapter.

TABLE 4B- INFANTICIDE AND BABYFARMING 1890-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1891	Catherine Richardson	Manslaughter	Not Guilty	
1893	Sarah Spanswick	Concealment of birth	Not Guilty	
1897	Nellie Beustead	Murder	Not Guilty	
1900	Sarah Buchanan	Concealment of birth	Guilty	Discharged under 55 Vic. No 6
1900	Carmelia Phair	Abandoning a child	Guilty	Discharged under 55 Vic. No 6
1901	Elizabeth Corbett	Exposing and abandoning a child	Discharged due to prisoner's questionable sanity	
1902	Elizabeth Dunn	Concealment of birth	Guilty	Good behaviour
1903	Ellen Williamson	Concealment of birth	Guilty	Good behaviour
1907	Alice Mitchell	Willful murder	Guilty of manslaughter	5 years hard labour
1913	Florence Giese	Willful murder	Not Guilty by insanity	
1914	Jessie Ellis	Preventing child from being born	Not guilty by insanity	

Source: Supreme Court Records Index 1890-1914

In Victoria in the 1890's, there was widespread concern about infanticide and baby-farming.³³⁰ The increased incidence of these crimes could be directly attributed to the economic depression effecting this, and other eastern seaboard, states. The official concern and the ensuing public outcry led to the introduction of the Infant Life Protection Act in 1890. Western Australia, by contrast, was entering a boom period as a result of the gold rush. Added to this, the number of

³³⁰ It was reported in *The Western Mail*, 2 August, 1890, p.11, that Dr. Youl, the Melbourne City Coroner, in giving evidence before the Charities Commission, observed that "he was surprised at the number of cases of malpractice and infanticide" showing that the proceedings of the eastern states were being followed by interested parties in Western Australia.

women in the State was dramatically low (19,648 compared to 28,854 men³³¹) which meant that the incidence of birth-related crimes did not reach sufficient levels to create official concern. It was not until the first decade of the twentieth century that Western Australia experienced changes which led to similar concerns previously espoused by the eastern states. The economic boom had somewhat declined, immigration had seen the ratio of men to women become more equal and the population increase to significant levels. The 1907 baby-farming case involving Alice Mitchell horrified the State, much as the 1890's Victorian cases involving Frances Knorr and Emma Williams had, and led to the introduction of the State Children's Bill which was introduced in an attempt to control lying-in homes and child minding services.

Infanticide, or the killing of a child under one year of age, "is an important and historically prevalent crime."³³² As Kathy Laster observes, "it is difficult in this child centred society to imagine the enormity of the child disposal problem throughout the ages."³³³ In this day of acceptance of illegitimacy, social security, day care centres and strictly controlled child minding facilities, we cannot begin to imagine the horror an unmarried woman faced, prior to the middle of the twentieth century, when she found she was pregnant. If abortion failed, the woman faced the prospect of social stigma, loss of employment and the absence of child minding facilities to enable her to return to employment following the birth. A response to this, by a number of women, as instanced by this study, was to continue with the pregnancy, but either actively kill the child at birth or contribute to its early death

³³¹ Figures taken from R.T. Appleyard "Western Australia: Economic and Demographic Growth, 1850-1914" in C.T. Stannage, *A New History of Western Australia*, *op. cit.*, p.220.

³³² K. Laster, "Infanticide: A litmus test for feminist criminological theory", *Australian and New Zealand Journal of Criminology*, Vol. 22, No. 3, September 1989, p.151.

³³³ *Ibid.*, p.152.

through neglect. If either of these alternatives was too personal for women, they could place the child with a baby farmer who would dispose of the child. Of course, there were also mothers who decided to continue with the pregnancy and who wanted their child to survive, but who had no alternative except to place the child with a minder while they worked. Some of these child minders took it upon themselves to dispose of the babies under their care, without the consent of the parents, profiting by the required lump sum payment demanded upon placement of the child.

Women charged with the death of their children during or following birth, seemed "to fit a prototype" according to Kathy Laster. "They [were] mostly unmarried, in their early 20's, working as domestic servants most frequently in the country"³³⁴ and the women encountered in this study were no exception. **Sarah Spanswick**³³⁵, charged with concealment of birth in 1893, had been employed for eleven months as a domestic servant in a country town called Colyering. At age 22, she found herself single, pregnant and frightened. Managing to conceal the fact that she was pregnant for the duration of her pregnancy, she gave birth to a baby boy alone in her bedroom one night. In her testimony, she said that she was so ill after the birth and scared of the consequences, she remembered nothing after giving birth to a stillborn son. The body of the child was discovered by another employee in the toilet and the coronial evidence supported her belief that the child had been stillborn, as the lungs had never been expanded. The jury found Sarah not guilty, even though she admitted to concealing the birth of the child, the case

³³⁴ *Ibid.*, p.156.

³³⁵ This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 168, Case No. 2425.

was dismissed and she returned home with her family, offering support for the chivalry thesis.

Similarly, **Sarah Buchanan**³³⁶ arrived in Perth from Leonora in 1900, found herself alone and pregnant and "medical testimony was that her condition was such as to render her irresponsible for her actions."³³⁷ She took a room in a boarding house, admitted to the woman in charge that she was pregnant, but said that she would be confined elsewhere. Contrary to this, she gave birth to a son alone in her room on Friday, disposed of the body of the child and left the boarding house on Monday, supposedly for her confinement. When arrested, she was placed under the care of the Salvation Army, officials of which testified that she had "conducted herself very well"³³⁸ and stated they were prepared to offer her ongoing care and support. The judge released her under the First Offenders Act³³⁹, saying "but for the kindness of the officials of the Army he must have inflicted punishment."³⁴⁰

Elizabeth Dunn³⁴¹, a 25 year old woman originally from Melbourne, Victoria, was charged with concealment of birth in 1902, but released on a good behaviour bond for twelve months following her appearance in court. There were no records for this case, and it was not covered in the newspapers, so the details

³³⁶ This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 225, Case No. 3016.

³³⁷ *The West Australian*, Saturday, 10 March, 1900, p.11.

³³⁸ *Ibid.*

³³⁹ 55 Vic. No. 6.

³⁴⁰ *The West Australian*, Saturday 10 March, 1900, p.11.

³⁴¹ This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 259, Case No. 3298.

are not known. However, due to the fact that she was an immigrant from the eastern states, she fits the profile of a woman susceptible to enough despair to kill her child. Women such as Elizabeth Dunn had no family to support them in dire circumstances and as such often resorted to desperate solutions.

"Sudden unexpected delivery was a common excuse pleaded for a child's death at birth"³⁴² according to Judith Allen, and indeed, this was a defence used by Nellie Beustead in 1897 and Ellen Williamson in 1903. **Ellen Williamson**³⁴³ was staying at the Shamrock Hotel in Northam, supposedly on her way to Perth for confinement, when she was delivered of a son on Christmas Day 1902. The body of the child, dark in colour, was found wrapped in some paper near the garbage pile four days later and in her defence, Williamson said that she had been taken by surprise by the sudden early birth. She stated that she was so ill from the shock and the delivery that she did not know whether the baby had lived after birth, but said that it was dead the next morning when she disposed of the body. There was little information available on this case, but the fact that the baby was dark in colour, while Williamson was white, indicated that she would have suffered further social censure if she had kept the child. Ellen Williamson was given a good behaviour bond and released.

Nellie Beustead³⁴⁴, by contrast, was prepared for the delivery of her baby and had arranged a midwife to attend her when necessary. When her companion, May Quigley, went for the midwife, she stated that Nellie had gone into sudden

³⁴² J. Allen, "Octavius Beale re-considered." *op. cit.*, p.116.

³⁴³ This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 262, Case No. 3315.

³⁴⁴ This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 203, Case No. 2763.

labour and the child had been born almost immediately while Nellie was standing and had fallen on the floor. When the midwife arrived at the house she found Nellie Beustead kneeling on the floor, with the baby next to her, but still attached to its mother. The baby, a girl, had a discoloured neck, had blood oozing out of its ears and mouth, but was alive and moaning. A doctor was sent for, but the baby died after spending a night in agony from its injuries. Nellie Beustead accounted for the discolouration on the baby's neck by saying the cord had become stuck and had pulled on the baby's neck. The case seemed straightforward enough, until it reached court. Testimony was given that Nellie Beustead had wanted to be rid of the child and that May Quigley was party to the crime. The post mortem report suggested that the bruising on the neck had been caused by force of some kind, and not by the umbilical cord, and the cause of death was the resultant injury to the neck. Police evidence was given that when the police visited Nellie Beustead in hospital following her delivery, she admitted to killing the child by choking it, explaining she had been coerced by May Quigley.

Nellie Beustead was a half caste Aboriginal who had been "adopted" by William Beustead and his family and trained in domestic service. She had been "found" by the Beusteads in Alice Springs about seven years prior to the case and, according to William Beustead, "they had treated her like a daughter". She had received no formal schooling but "was fairly truthful - about what you would expect from her" - implying that she was as good as what one could expect from "an Aborigine". The exact role that this man played in Nellie's life is questionable.

The police profile of May Quigley and Nellie Beustead prepared for the Crown Solicitor³⁴⁵ stated that May Quigley was "looked upon by the neighbours as

³⁴⁵ This following information was found at the Crown Solicitor's Office archives. Accession No. 135, Box 18, File 119/1897.

making her living by prostitution and was very often under the influence of drink" and both she and Nellie were "generally recognised as being women of immoral character." May Quigley was known as "a woman of bad temper" but the police had not "heard of Nellie Beustead having a bad temper." Witnesses in the trial were also recipients of a character assessment by police, and Emma Williamson was dismissed as being a prostitute and "very fond of drink" while "Mrs. Jensen and Mrs. Arthur are supposedly respectable people" and their testimony could be believed. However, regardless of the negative character assessments, the suspicion surrounding the birth of the child, and the fact that many witnesses suggested that both Nellie Beustead and May Quigley had intimated that the baby was unwelcome, Nellie was found not guilty and released.

Alongside the plea of sudden delivery, Judith Allen identifies another commonly employed explanation to account for the death of a young child - that of being overlain by the mother.³⁴⁶ In 1891, Catherine Richardson used just that excuse, although excessive drinking was also a mitigating factor in this case.

Catherine Richardson³⁴⁷ was an unmarried mother who resided with her father in a boarding house located in Murray Street, Perth. Neighbours testified that she loved her three month old daughter, Helena, but that the baby was delicate from birth. On the night of the 26th August, 1891, Catherine visited a neighbour with the baby, had a glass of wine and went home. There was some confusion during the night, with men's voices disturbing the other residents, the baby crying and Catherine telling the men to go away as her father would soon be home. The following morning, Catherine was found senseless from drink, fully clothed on her

³⁴⁶ J. Allen, *op. cit.*, p.116.

³⁴⁷ This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 160, Case No. 2374.

bed, with the baby dead next to her. She was so drunk she was unable to be roused until late in the day when she became extremely distressed on hearing of her daughter's death. The coroner's report stated that the baby died from suffocation, was well nourished and cared for and Catherine insisted that she must have unknowingly smothered the baby while she was asleep.

Described as "a woman of intemperate habits"³⁴⁸ who was "always drinking, day and night", Catherine was treated sympathetically by the media and all involved in the case, found not guilty of causing the child's death, and released.

Kathy Laster points out that "'ordinary' women less than one hundred years ago, for a variety of reasons, regularly abandoned [or] neglected their children"³⁴⁹ and this study disclosed two women in this category - Carmelia Phair³⁵⁰ in 1900 and Elizabeth Corbett³⁵¹ in 1901. **Carmelia Phair** was a domestic servant employed by Mrs. Lily Dixon at Helena Valley for three years. She had been involved with a man called Henry Taster and found herself pregnant. She successfully concealed the pregnancy until the last few months, when her employer suggested to her that she may be pregnant. Denying the accusation, Carmelia was left alone and gave birth to the baby on the side of the river unexpectedly. She claimed she did not realise she was in labour, and was shocked when she delivered a baby. Fearing the consequences, she wrapped the baby in cloth and paper and

³⁴⁸ *The West Australian*, Thursday, 15 October, 1891, p.2.

³⁴⁹ K. Laster, "Infanticide and feminist criminology : 'Strong' or 'weak' women?" *Criminology Australia*, Vol. 2, No. 1, July/August, 1990, p.14.

³⁵⁰ This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 226, Case No. 3034.

³⁵¹ This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 243, Case No. 3175.

half buried it in the sand until she could send for the father and decide what to do. Carmelia swore that she loved and wanted the baby and had never intended for it to die. The baby was found, still alive but barely, after three days by one of the Corbett boys and Carmelia was immediately suspected. Mrs. Dixon was a good employer and forgave the girl when she confessed, and were sympathetic to her fear and shock. The baby recovered after a short stay in hospital and Mrs. Dixon adopted it and also retained Carmelia as her domestic. The recommendation by her employers that she had been well behaved, her conduct had always been excellent and she never had men hanging around the house, and the fact that they were willing to retain her services, undoubtedly aided her situation. The fact that the baby survived and had been placed in a good home also went in her favour, and she was given a good behaviour bond of twelve months and released into the custody of the Dixon family.

By contrast, **Elizabeth Corbett** gave birth to a baby girl in a boarding room off Essex Lane, Perth, at the end of July and placed the child on the verandah, hoping someone would find it and care for it. A neighbour suspected Elizabeth of being the mother, the police investigated and Elizabeth admitted her guilt. No further evidence was available in the file and there was nothing to suggest that she was insane, beside her desperate behaviour, however, the verdict given was the prisoner was "unable to plea pending the Governor's pleasure - prisoner's sanity. Discharged." What happened to her after this is unclear.

Kathy Laster found that "the keenness of the courts to accept 'madness' rather than 'badness' as an explanation for women who kill infants is reflected in the fact that, between 1885 and 1914, 23 women [in Victoria] were found to be insane and therefore unable to stand trial."³⁵² While this case supports her contention,

³⁵² K. Laster, "Infanticide - a litmus test" *op. cit.*, p.157.

only two other cases were found in this study where the woman's sanity was questioned. These cases occurred in 1913 when Florence Giese³⁵³ was charged with wilful murder for the death of her four month old son and in 1914, when Jessie Ellis³⁵⁴ was charged with preventing a child from being born, a charge which had been reduced from wilful murder. Lucia Zedner suggests that "since it was commonly held that after childbirth all women were seriously mentally debilitated, public opinion was primed to excuse the new mother as not fully responsible for her actions."³⁵⁵

Florence Giese had been widowed by her first husband and following his death had suffered a prolonged and severe illness, from which she never seemed to recover. She regularly complained of pains in her head and her husband said that she had suffered a difficult labour with her son and had been chloroformed for about three hours. He referred to her as a "woman who required considerable attention from me", while neighbours gave evidence of her frequent strange behaviour. Apparently she was discovered, on one occasion, crawling around the backyard on all fours, barking like a dog. The death of her baby occurred when Mrs. Giese heard a voice in her head, which she referred to as God, telling her to kill her child then herself. She swung the infant, and bashed it against a stump in the backyard, and he died as a result of haemorrhage due to liver rupture. She then covered the body with a blanket and began screaming and raving until a neighbour made the gruesome discovery. During a medical examination she suggested that

³⁵³This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 427, Case No. 4478.

³⁵⁴This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 436, Case No. 4562.

³⁵⁵ L. Zedner, *op. cit.*, p.88.

her trouble had begun when "hundreds of people commenced running round her house with drums and waving flags."³⁵⁶ She was pronounced insane and committed to the Claremont asylum for treatment.

Jessie Ellis, was a young woman living with her prospective husband and his mother. She and the mother did not get along, as the mother questioned her suitability as a wife for her son. The pregnancy was overt and Jessie did nothing to hide the imminent birth of her child, however, the mother-in-law was considerably agitated about the situation. Jessie went into labour and locked herself in her room until the baby was born. She said the baby cried a little upon delivery, the afterbirth was delivered, and then the baby stopped breathing. Medical evidence, however, suggested that the baby had been born alive and had subsequently died, and the presence of an apron string wrapped around the infant's throat did not support Jessie's statement. While it seems fairly obvious that Jessie strangled the child after birth, why she was found insane was not addressed in the court file, but it is likely that the jury found it difficult to accept that a woman could cold heartedly strangle her newborn baby.

In an attempt to rationalise such decision, lawyer Ania Wilczynski, in her article "Why do parents kill their children?", suggests that the horrified reaction which greets the news of children killed by adults "reflects our desire to separate the child-killer from the rest of society, and portray him or her as a bizarre aberration with no connection to 'us' or with general social attitudes, practices or condition."³⁵⁷ The most expedient way to achieve this end is to pronounce the

³⁵⁶ *The Western Mail*, 11 April, 1913, p.2.

³⁵⁷ A. Wilczynski, "Why do parents kill their children?" *Criminology Australia*, Vol. 5, No. 3, January/February, 1994, p.12.

child killer insane, or failing this, as an animal, unrelated to the human race.

Insanity is a commonly employed defence in cases involving women, which is supported by the general belief that women are inherently unstable. The implied argument is that it does not take much to push a woman to insanity, and therefore this defence explains why a woman would commit such a horrific crime. Kathy Laster suggests that "recognition of the prevalence of infanticide seriously challenges our faith in the ideology of 'motherhood'"³⁵⁸ and a charge of insanity relieves the threat of sane women deliberately disposing of unwanted children.

SUMMARY

As is evident from the preceding discussion, police, judges and juries did little to enforce the criminal code regarding infanticide and nothing to address the social conditions which forced women to resort to such extreme behaviour. Judith Allen³⁵⁹ notes that while the legislation existed to convict women of reproduction related crimes "apprehension rates were very low, convictions scarce, and sentences light. This contradiction raises question about the state aims and priorities in this area of criminal jurisdiction." She goes on to suggest that one of the main difficulties was getting the police to apprehend these women due to their sympathy for the plight of these same women. It was more often women of the lower classes who resorted to these lengths in an effort to rid themselves of an unwanted child, or one they could not afford, and the social origins of the police were very close to these women. They understood, from first hand experience, the consequences of illegitimacy, single mothers and an overcrowded household on a

³⁵⁸ K. Laster, "Infanticide: A litmus test" *op. cit.*, p.155.

³⁵⁹ J. Allen, "Octavious Beale Reconsidered" *op. cit.*, p.124.

limited income, and they also realised that the children would be further penalised if their mother received a prison sentence.

Along with this reluctance to apprehend women involved in crimes of reproduction, "the police and prosecution faced an almost impossible burden of establishing that a child had indeed been born alive and had subsequently been killed by mother and/or midwife"³⁶⁰ and "even the lesser crime of concealment of birth was difficult to prove."³⁶¹ The complex attitudes towards infanticide mean that these cases are difficult to use as support for either thesis of criminological, but due to the fact that no woman charged received a sentence, one would have to suggest that sympathy for the women played a part in the verdicts. The fact that all of these women were unmarried and, as such, were faced with likely moral censure, the verdicts offer contradictory evidence to most theories of women's criminality that suggest promiscuous behaviour among women is severely censured.

As suggested in previous discussions, when contraception failed, abortion and infanticide failed or were not an option, baby farming was a last resort for women who were faced with a child they could not care for or did not want. The reported incidence of baby farming was low in Perth, with only one woman brought to trial on this charge in the period under investigation.³⁶² That woman was the notorious Alice Mitchell.

³⁶⁰ K. Laster, "Infanticide: A litmus test" *op. cit.*, p.153.

³⁶¹ *Ibid.*

³⁶² Contrary to this information, both *Truth* and the *Daily News* published articles in 1907 which suggested that "there are hundreds of women as guilty as Mitchell" in Perth, but no action was being taken to stop them. Women had given the papers evidence of the incidence of baby farming, but were reluctant to go to the police and become involved as they "don't want to be mixed up in what may be a very serious affair." They remembered "the Makin case, and the trouble and scandal it created in Sydney."

Alice Mitchell³⁶³ - Babyfarmer³⁶⁴

Alice Mitchell, aged 46, ran a registered home for infant children in Perth between January 1901 and March 1907, moving from Wellington Street to Cavendish Street, to Peterson Terrace, to Lord Street and, lastly, to Edward Street. As a registered foster mother, she had a duty to maintain a register detailing the names of children admitted into her care, the date of admission, the name of the admitting person, the birth date of the child, the name and address of the parent or guardian and the date of removal of the child. She was also expected to obtain both a death certificate and a coroner's certificate if a child died while in her care. The conditions of the Infant Life Protection section of the 1898 Health Act, which was the controlling legislation at this time, stated that

Clause 104 - "if any time it is proved to the satisfaction of the Local Board that any person whose house has been registered as aforesaid has been guilty of serious neglect or is incapable of providing the infant entrusted to his care with proper food and attention, or that the house specified in the register has become unfit for the reception of infants the Local Board may strike his name and house off the register."

³⁶³This information for this case was obtained from the Supreme Court records in the Western Australian state archives. Consignment No. 3473, WAS No. 122, Item No. 307, Case No. 3920.

³⁶⁴ Mr. Benjamin Waugh, crusader against baby farming described the baby farmer in the following way: "When found, the procurer is mostly of clean, genteel, respectable clothing and manners. She often professes that she has been married three, five or seven years, has had 'no child' and is 'anxious to adopt one from the birth.' She wants something to compassionate and to love. For the receiving of the baby an appointment is usually made at a railway station, from which (when negotiations are successful) a wire to one of her receivers simply announces that she is on the way. Her business is to snare; her receiver's is to slay. They are infamous creatures, men she-things." Reported in *The Western Mail*, 9 August, 1890, p.19. This lurid description applies in part to the dealings observed in the Melbourne baby farmers like Frances Knorr and the Sydney Makins, but does not apply to Alice Mitchell to whom all the children were delivered.

The section also made allowance for inspectors to regularly assess the registered premises and ascertain if the register was being kept in order. Neither of these safeguards were employed in Mitchell's case, to the end that out of 43 children confirmed to have been placed in her care, 37 had died, apparently from neglect and starvation. The lady inspector appointed to her case, Miss Leneham, made only sporadic, cursory visits, often not even entering the house and never checked her register.

Mrs. Mitchell's greed proved to be her undoing. She complained to the police that Maude Brown³⁶⁵ had left her baby daughter in her care, payed the required lump sum and she had not been seen or heard from since.³⁶⁶ She requested the police find the mother, or make alternative arrangements for the child, as she was "looking after children as a business, not for love." The case was taken up by P.C. O'Halloran, who decided to visit Mrs. Mitchell to establish the facts of the case and was horrified by what he found on her premises. He found babies who were "dirty and fearfully emaciated", "in a frightful state", "too weak to cry" and with sore eyes with "great pyramids of flies clustered on them" in a house which was disgustingly filthy and smelt horrendous. He fetched the Medical

³⁶⁵ Little over a year after this trial, Maude Brown was again in the papers, having given birth to a son in squalid environs in Wanneroo Road. Her father lived in the tent next to hers and stated that he had tried to do the best for his daughter. *Truth* reported the incident and added that "apparently Maud did not profit by the lesson then learned [with Mitchell] and it is a pity that some Christian charity could not be extended to the poor girl to save her from ultimate destruction." They also suggested that the father of this child was none other than Maude Brown's father and that police were investigating the allegations. *Truth*, Saturday, 15 August, 1908, p.6.

³⁶⁶ This information was in fact contradicted by Maude Brown who insisted that she had visited her baby regularly, had offered to take the baby to the hospital herself when she could not afford Mitchell's doctor's fees and on numerous occasions was denied access to her daughter by Mitchell. She did admit, however, that she was experiencing difficulty in meeting the payments Mitchell demanded. She also provided the baby's food on her numerous visits - Allanbury's No. 1 food, Mellins food and eggs.

Officer of Health and had the babies removed to hospital where one subsequently died and the other was making satisfactory progress.

The baby who died, Ethel Booth, was the baby with whose murder Mitchell was charged. She was the daughter of a domestic servant, Elizabeth Booth,³⁶⁷ who had attended The House of Mercy for three months prior to her confinement and had remained there for the allowed three months after delivery. The baby was ten pounds at age two months, was breast fed for the first five weeks and thereafter bottle fed and was perfectly healthy and thriving when given to Mitchell to care for. She paid the lump sum of 10/- that Mitchell demanded, the regular doctor's fees of 5/- and the 10/- per week for the care of the child. She earned 15/- per week and the father of the child gave her 7/6 per week. She visited the baby regularly, and like Maude Brown, was often not permitted to view the baby. She was not allowed to visit her for three weeks and when she did, she said she could not recognise the child, she was so emaciated and covered with sores. Mitchell explained the baby had been ill with diarrhoea and teething, but Elizabeth Booth was not satisfied, eventually removing the baby to the hospital where she later died and the post mortem revealed the child had died from chronic starvation.

Evidence presented in the trial suggested that "as a rule the babies began to get sick about a fortnight after they were brought to Mrs. Mitchell's house"³⁶⁸, that Mitchell, when asked by Anglican Priest, Rev. Craggs, if she ran a baby farm,

³⁶⁷ Elizabeth Booth was described as being "a rather refined looking young woman, who was dressed in deep mourning" when she attended Mitchell's trial by *Truth*, Saturday, 13 April, 1907, p.5.

³⁶⁸ Evidence given by a resident in Mitchell's house, Mr. Carl Roux, who was described in *Truth* on Saturday, 13 April, 1907, p.5 as "a fair-headed, square-headed, round featured, clean shaven, intelligent-looking young fellow...[who], being evidently of an observant nature, he was able to throw considerable light on proceedings in the house, which, for six months, had been his home."

replied "Yes". Mitchell's daughter, Mrs. Gent, said to her mother, "those people in the front room [the Roux's] know just as well as I do that you kill the babies" to which Mitchell responded by telling her to keep her mouth shut. Neighbours testified about the disgusting state of the back yard and the smells and continuous cries of babies coming from the house. Mrs. Mitchell's long suffering husband, continually complained about the house being a pigsty and resorted to cleaning it himself on his day off, Sunday. The girl servant employed to help care for the children, Susie³⁶⁹, was suffering from venereal disease and riddled with lice, and it was she who prepared most of the babies' food and supposedly washed and dressed them.

Doctor Officer who attended all the children at Mrs. Mitchell's, had signed the majority of the death certificates and had managed to ignore the offensive surroundings and stated in court that he found no reason to suggest that Mitchell was not a fit woman to care for children. He "appeared anything but comfortable whilst seated in the witness-box, and exhibited an almost feverish anxiety to anticipate the questions which were put to him."³⁷⁰ It was reported in testimony that Dr. Officer and Mrs. Mitchell were conferring after the children had been removed from her house by the police, and he was overheard telling Mitchell "she had better keep her mouth shut" about the children, suggesting that he was involved in the illicit killing of the babies.

³⁶⁹ The Rev. Craggs reported that Mitchell had told him that Susie was suffering from syphilis and had given birth to seven children, all of whom had suffered from syphilis and died, and all of whom were illegitimate. He was called in to attend a dying child named Harry Turvey in Mitchell's care.

³⁷⁰ *Truth*, Saturday, 13 April, 1907, p.5.

Mitchell faced the court process without undue concern and appeared to be following the proceedings "without any apparent discomfort"³⁷¹ and when the Coroner's Court found sufficient evidence to convict her to appear at the Supreme Court on a charge of wilful murder, she "was apparently unmoved."³⁷² Her sentence of five years' hard labour at the conclusion of the Supreme Court trial was met with "just a suspicion of anxiety"³⁷³ and she did not react when Justice McMillan said the following at her sentencing: It is worth quoting the sentencing in detail as it depicts the attitude, not only towards Mitchell, but towards other women who were involved in such activities.

It has been a very painful case from the commencement and I have found a very great difficulty in coming to a conclusion as to what sentence I should pass on you. [...] It has been very painful to look at that long roll of children who have died while under your charge and it is still more painful to consider what their suffering must have been whilst they were dying. In most cases death must have been to them a happy release. I am quite satisfied in my own mind that for years past you have been like many other women who carry on the same business, perfectly callous to the suffering of those children who were entrusted to your care. Your only object was to make a living out of the business and to keep out of the clutches of the law and I am afraid that you fully appreciated how easy the work was made for you by the neglect of those whose duty it was to see that you cared for the children. You traded on that neglect, and the law for the protection of infant life became a law for the protection of yourself. I can find very little to justify me in extending to you the mercy I should like to show. All that can be said in your favour is that you are a woman getting on in life and therefore whatever term of imprisonment I may pass on you will affect you much more severely than it would another younger woman. Still I must sentence you to such a term of imprisonment as will not only punish you for your misconduct but will warn others who may be running the same risk as you have been running. In another case should the accused be a young woman she will not leave the box with such a light sentence as that which I am about to pass upon you which is one of imprisonment with hard labour for five years.

³⁷¹ *The West Australian*, Tuesday, 9 April, 1907.

³⁷² *The West Australian*, 12 March, 1907.

³⁷³ *The West Australian*, Tuesday, 16 April, 1907.

When the case of Alice Mitchell is compared to that of Frances Knorr in Victoria in 1894, an interesting discrepancy is illuminated. Frances Knorr was convicted on "inconclusive circumstantial evidence"³⁷⁴ and was obviously suffering from some form of mental illness, but was hung while the evidence presented against Alice Mitchell was far more incriminating and she was only given five years' imprisonment with hard labour. This disparity suggests that Alice Mitchell was treated leniently in her sentencing.

SUMMARY

Kathy Laster suggests that "babyfarming developed as a nineteenth century 'cottage industry' to assist women who were unable to care for their own children."³⁷⁵ She goes on to suggest that "many babyfarmers, probably with some justification, saw themselves as a social service."³⁷⁶ The profession of baby farming fulfilled a need of both the mother who required someone to care for her child while she worked, and the woman who wished to earn money but remain at home, often to care for her own children. Employment opportunities were scarce for women in the late nineteenth century/early twentieth century, especially in Perth which did not have a large population. Domestic service was one of the few possibilities available for women in this social climate, but domestic servants were not permitted to keep children with them. Often the mother placed her child in care expecting it to be well looked after, but just as often, the mother and the babyfarmer colluded and the expectation was that the child would be disposed of.

³⁷⁴ K. Laster "Chivalry or Death : Women on the Gallows in Victoria 1856-1975" *Criminology Australia*, Vol. 4, No. 2, October/November 1992, p.10.

³⁷⁵ K. Laster, "Arbitrary Chivalry" *op. cit.*, p.174.

³⁷⁶ *Ibid.*

In most circumstances, the care provided for the infants was unsatisfactory, due to the combined effects of overcrowding, poor hygiene, the incidence of disease among children which spread easily in these conditions and the weaning of the children from the breast. "It is ironic", says Kathy Laster, "that the development of substitute child care for working-class women should occur at a time when their upper-class sisters had lost faith in the widespread practice of sending babies away from home to be wet-nursed, and when there was increasing proclamation of the sacredness of motherhood and the importance of family life."³⁷⁷ The situation in Western Australia was doubly difficult as the majority of the population was without family support and had no-one to mind their children for them. To this end, babyfarmers provided a necessary service for the community, but too often their greed got the better of them and they slowly starved the children in their care to death. "The babies Alice Mitchell murdered, for example, were all illegitimate, and the desperate economic plight of their mothers made them particularly vulnerable to exploitation"³⁷⁸ and the wishes of the mothers were considered irrelevant.

At no time in the Alice Mitchell case were the social circumstances which allowed babyfarming to operate addressed, nor the question of the responsibility of the government in providing care for illegitimate children. The case did lead, however, to the introduction of the State Children's Bill in December 1907 which provided for the registration of both foster mothers and lying-in homes³⁷⁹ and

³⁷⁷K. Laster, "Frances Knorr: She Killed Babies, Didn't She?" in M. Lake and F. Kelly (eds) *Double Time: Women in Victoria - 150 Years*, Penguin, Ringwood, 1985, p.149.

³⁷⁸ P. Wilson, *Murder of the Innocents: Child Killers and their Victims*, Rigby, 1985, p.128.

³⁷⁹ This measure had been recommended by the Melbourne City Coroner, Dr. Youl, in 1890 and reported in *The Western Mail*, 2 August, 1890, p.11. This suggests that the Western Australian authorities did not take action against birth crimes until a notorious case forced them to do so.

regulations covering their operation. It further prevented the payment of a lump sum of money to the foster mother, and if this was more convenient to the mother, it was to be paid to the department overseeing these arrangements, who would arrange to provide the foster mother with regular instalments. The ultimate aim of the legislation was to "get the right people to act as foster parents - people who will take a child not so much for the money they are paid as for the sake of having a child about them"³⁸⁰. The number of children one foster mother would be allowed to care for would also be strictly limited and supervision of care would be more exacting.

³⁸⁰ W.A.P.D. *op. cit.*, 23 October, 1907, p.308.

6-III - BIGAMY

"Law is the crystallisation of the habit and thought of society" - Thomas Woodrow Wilson

There were five cases of bigamy in the time period under review and they offer an interesting portrait of attitudes towards women who dismissed the sanctity of marriage which was considered sacred at this time of social instability. Table 4C provides the background information to the cases discussed.

TABLE 4C - BIGAMY 1890-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1897	Margaret Sheppard	Bigamy	Guilty	1 month
1898	Lily Bird	Making a false declaration	Not guilty	
1903	Annie Hughes	Bigamy	Guilty	6 months good behaviour
1904	Hilda Brassington	Bigamy	Not Guilty	
1913	Gladys Nixon	Bigamy	Guilty	1 month hard labour

Source: The Supreme Court Records Index 1890-1914

Crimes involving bigamy reflect the concern of authority figures of perceived threats to the stability of married life and legislation can be found in the 1902 Criminal Code under Chapter XXXIV - Offences relating to Marriage and Parental Rights and Duties, Section 337, with the maximum penalty of seven years imprisonment with hard labour.³⁸¹ The only justifiable defence against the charge was if the person could prove that their previous spouse had been absent from them for seven years and they did not know if they were alive or dead.

Margaret Sheppard was charged with marrying another man, while technically still married to John Sheppard, a seaman. William Sheppard, the son of the first marriage testified that neither he nor his mother had lived with his father for fifteen years and had not seen or heard from him for 10 years, but despite this,

³⁸¹ Criminal Code Act 1902, *op. cit.*, p.113.

Margaret Sheppard was imprisoned for one month without hard labour. There was very little information available about this case, therefore it was difficult to obtain the full story in order to assess the judgement.

The case of **Lily Bird** in 1898 was unusual in that no-one could positively identify the woman charged with making a false declaration as the woman who had previously been married. The case was extremely strange in that Lily Bird was accused of marrying her dead husband's brother, but as no-one could or would positively identify the women as the same, a decision of *nolle prosequi* was entered and the case dismissed. *The Dictionary of Biography of Western Australians* by Rica Erickson has an entry for this couple. Lily Bird (nee Freeman) married Edwin Bird in Fremantle. She was the daughter of James and Ellen Freeman and had been born in Carnarvon. Edwin Bird was the son of Thomas and Selina Bird, born in 1861. They must have moved to Carnarvon after marrying as Edwin was a police constable stationed, for many years, at the Gascoyne Junction/Carnarvon. The couple had four children, Hilda May, born in 1903; Lilly Perline, born in 1905; Nellie May, born in 1907 and Robert James, born in 1909.

Annie Hughes was charged with bigamy in 1903. In 1893 she married George Hughes in Perth, but the marriage was not a happy one and Hughes was convicted of assaulting his wife in 1897 and sentenced to prison for a few months.³⁸² Upon his release from prison, Hughes and his wife lived together again, but ultimately separated. In July 1900, she met Mathias Watson while she was working as a domestic servant. She introduced herself as Annie Wilson and after they had kept company for a few months, she told him that she had been married

³⁸² The file was illegible in parts and I could not determine how many months Hughes was jailed for.

but her husband had deserted her. She said she had no idea where he was and believed him to be dead as a result. Watson believed her and they married in December 1900 and had lived together happily since and had a family together. Watson testified that Annie had been a good wife and a good mother to their children. Evidently the treatment she had received from Hughes and her subsequent respectability as Watson's wife and mother to their children held her in good stead as she was given a six months good behaviour bond and released.

It is indeterminable whether Annie really thought her first husband to be dead or not, but regardless she had been treated badly in her first marriage, and when she met a man who offered her the chance to live a respectable, protected life as a responsible wife and mother, she was given sufficient reason to ignore the fact that she was required by law to divorce before remarrying. Divorce was a costly and exposing procedure which most people sought to avoid whenever possible.

Hilda Brassington had married Charles Brassington and bore him a child, but he assaulted her frequently, gave her no money for herself or the child and, as a result of this treatment, she left him and did not see or hear from him again. She later met Frederick Heath and they wanted to marry. Hilda took out an advertisement in *The Age*³⁸³ in Melbourne, where Charles Brassington had last been heard of, which read :

CHARLES LESLIE BRASSINGTON, late of Carrabin, Eastern Gold Fields Railway, Western Australia, last heard of at West Brunswick Melbourne. TAKE WARNING that unless you RETURN and Support me within three (3) months from this date I shall assume that you are dead, and I shall marry again.

³⁸³ *The Age*, Friday, 22 April, 1903, p.1. Copy of notice included in Western Australian State Archives file: Consignment No. 3473, WAS No. 122, Item No. 279, Case No. 3565 (1904).

Dated this 14th day of February 1904. **HILDA
BRASSINGTON, Doodalkine, Western Australia.**

There was no attempt to hide the marriage and Hilda's sister and father were both at the ceremony and knew what had occurred. There was no evidence in the file of when the first marriage had taken place and how long the couple had been separated, but the jury treated Hilda with leniency and she was found not guilty.

Gladys Nixon married Frederick Nixon in New Zealand and they subsequently moved to Western Australia to live. They had been married a few years when Gladys moved to Pinjarrah to find work and wrote regularly to Frederick in Perth, but when he went to visit her, Frederick found her living with another man, whom, it was eventually proven, she had married. In her defence, Gladys denied being formally married to Frederick and claimed they had merely lived together, but he produced a marriage certificate which proved differently, and Gladys was sentenced to one month in prison with hard labour as a result.

The verdicts against Margaret Sheppard and Annie Hughes can be considered harsh given the evidence supplied. In a society where women required the moral and financial protection of a male, they were penalised for attempting to do so. Both women could not help that they had previously been married to men who mistreated them and then disappeared from their lives. Divorce was an expensive option, unavailable to most of the population, so when a chance for security was offered to them, it must have been tempting to ignore their previous marriages and hope no-one told the authorities. Given the fact that these women married their second partners, rather than lived with them without the benefit of marriage, also suggests that they were attempting to conform to society's expectations of respectability.

6-IV - INCEST

"The women of Australia are not her finest product." - Beatrice Webb

Only one charge of incest was found in this study and Table 4D provides the relevant details of the case.

TABLE 4D - INCEST 1890-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1902	Annie Smith	Incest	Not Guilty	

Source: Supreme Court Records Index 1890-1914

According to the Criminal Code Act of 1902, "[a]ny person who carnally knows a woman or girl who is, to his knowledge, his daughter or other lineal descendant, or his sister or half-sister, is guilty of a crime, and is liable to imprisonment with hard labour for life [...] It is immaterial that the carnal knowledge was had, or that the attempt was made, with the consent of the woman or girl."³⁸⁴ Section 198, Incest by adult female, reads: "[a]ny woman or girl of or above the age of eighteen years who permits her father or other lineal ancestor, or her brother, or half-brother, to have carnal knowledge of her, knowing him to be her father or other lineal ancestor, or her brother, as the case may be, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years." It continues that "[i]t is a defence to a charge of the offence defined in this section that the woman or girl was, at the time when she permitted her father or other lineal ancestor, or her brother, or half-brother, to have carnal knowledge of her, acting under his coercion."

From the outset, then, it is apparent that the woman is considered by the law to be less responsible than the man in this offence, and will be dealt with far

³⁸⁴ Criminal Code Act 1902, *op. cit.*, Chapter XXII - Offences against Morality, Section 197, pp. 82-3, Incest by man.

more leniently in the judicial process. This attitude stems from the contemporary ideological belief that a woman under a man's influence was less responsible than he and subject to his coercion.

The case involved Annie Smith and George Duke Smith who were siblings of the same mother, but different fathers. The couple were not brought up together, until 1900 when the mother fetched Annie home to live with them. It appears that the attraction between the two was mutual and rapid, as their mother testified she was constantly having to keep them apart. They left the house to live together in a tent at Gingin, where a police constable obtained evidence that they were living together as man and wife.

In her defence, Annie Smith denied that George was her brother and accused her mother of having children by many different men, including her uncle. She testified that her mother had compelled her to sleep in a bedroom with five of her brothers at times, although she was not sure of their exact relationship.

In the summing up, the judge commented that "the case disclosed one of the saddest stories ever chronicled in the history of Western Australia" and that it 'showed that the whole of our back³⁸⁵ [sic] population had not yet come under the influence of education and religion."³⁸⁶

The jury found both of the accused guilty as charged, but added a strong recommendation to mercy regarding Annie Smith "on account of the deplorable

³⁸⁵ This is the way this quote appeared in *The West Australian*, but whether it is a misprint and the judge actually said "black" or whether the judge was referring to the "back" population in respect to rural "backwater" people is not clear.

³⁸⁶ *The West Australian*, Wednesday, 6 August, 1902, p.6.

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³⁸⁶ *The West Australian*, Wednesday, 6 August, 1902, p.6.

circumstances surrounding the case". The judge agreed and "expressed the opinion that her present position was due to the circumstances under which she had been brought up."³⁸⁷ Annie Smith was released on a good behaviour bond of £25 and George Duke Smith was considered the guilty party and given 3 months imprisonment with hard labour. As noted in the beginning of this section, the contemporary legal situation provided acceptance of women's supposed inferior reasoning powers, and allowed for her to be excused under the notion of misguidance by the man. Thus, the findings of this case are double-edged. Not only was Annie Smith dealt with leniently by the judicial process, but there was in place a legal expectation of this finding, suggesting that chivalry by law was excused, and indeed expected, in some circumstances.

³⁸⁷ *Ibid.*

6-V - RAPE

"Nothing is so delicate as the reputation of a woman; it is at once the most beautiful and most brittle of all human things." - Fanny Burney

As with the previous section, there was only one case in the period under review which came under this category. Table 4E provides the detail for the case studied.

TABLE 4E - RAPE 1890-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1903	Maria Horn ³⁸⁸	Rape	Guilty	6 months hard labour

Source: Supreme Court Records Index 1890-1914

Rape is not a crime which is generally associated with women, and Maria Horn could really be considered an accessory to the crime of rape. The victim of the rape was a girl named Florence Squires, aged 14 at the time of the trial. She was the daughter of Maria Horn, who lived with James Horn as husband and wife. James Horn was not the natural father of Florence Squires, although she was under this impression until after she left home and charged him with rape.

The case is, unfortunately, all too common. Maria Horn left the family home in 1900 to tend to her ailing mother, and while she was absent, James Horn made advances towards his stepdaughter, which she refused. He then beat her for her disobedience and raped her. He continued to rape her periodically until her mother's return, as well as beating her on regular occasions. For a time after her mother returned, Florence was left in peace, but soon Horn recommenced raping her. Her mother became aware of the situation, but did nothing to help her daughter. As a result of a discussion between Maria and James Horn, Maria took

³⁸⁸ There is some confusion over the correct name of this woman. All records, Supreme Court transcripts, Full Court appeal notes, newspaper reports and prison register show her both as Maria Ann Horn and Ann Maria Horn. Maria Horn appears to be slightly more common, so I will refer to her by this name.

Florence into the bedroom where James was, told her to comply with his wishes and when her daughter refused to do as she asked, locked her in the bedroom with Horn.

From 1900 to 1903 the rapes and beatings continued on a regular basis, with Maria Horn's knowledge, until Florence could withstand the abuse no longer and ran away to her grandmother's house. However, her mother retrieved her and forced her to return to the family home and face Horn. Florence then ran away to the Salvation Army who offered her protection and refused to allow either parent to take her away. At the time of the trial, she was still living at the shelter.

The case was first heard in the Criminal Court with the couple charged under Section 323 of the Criminal Code which read:

[a]ny person who has carnal knowledge of a woman or girl, not his wife, without her consent, or with her consent, if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of a crime which is called rape. Any person who commits the crime of rape is liable to imprisonment with hard labour for life, with or without whipping.

The jury found James Horn guilty of carnal knowledge of Florence Squires, but could not decide if it was with or without her consent and they could not come to a unanimous decision regarding Maria Horn. The lawyers for the defence argued that this decision was tantamount to an acquittal, but a second jury was empanelled, and they found that the finding was inconsistent with acquittal and both the defendants were convicted. The case then went to the Full Court on the grounds that there was no evidence that Florence did not consent and that the charge of rape was wrong. It was argued that the charge should have been laid

under Section 188 of the Criminal Code which read: "[a]ny person who has or attempts to have unlawful carnal knowledge of a girl under the age of sixteen years is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years, with or without whipping."

The Full Court was unanimous that James Horn had been acquitted on the first charge of raping Florence Squires on 20 January, and that the second charge of raping Florence Squires on 18 January was a distinct offence and the convictions were to stand. Maria Horn was charged of the same offences and found guilty. It was stated in court that "if she could have shown a marriage certificate the law would have presumed that a wife is more or less under the influence of her husband"³⁸⁹ and she would have been dealt with far more leniently. It is a purely moral judgement to say that when a couple marry, the husband can exert influence over his wife which a man living with a woman as husband and wife minus the benefit of a certificate of marriage cannot do. James Horn was sentenced to 10 years imprisonment with hard labour, while Maria Horn was sentenced to six months imprisonment.

Truth said of the case; "[i]f the girl was held blameless and the man guilty, how could the woman be held equally guilty...She could have had no motive whatever to assist her husband, except a motive of fear, and she was not responsible."³⁹⁰

The judge, in his address prior to sentencing, noted that Horn had been remorseful of his actions and had previously been known to be a man of good

³⁸⁹ *Truth*, Saturday, 10 October, 1903, p.2.

³⁹⁰ *Ibid.*

character. The judge also said that he realised how the protracted trial must have effected Horn and caused him to suffer and taking all the previous in mind had decided to be merciful towards him.

To Maria Horn he said :

I accept the view that you occupied a peculiar position at the time of the commission of the offence. Probably you were more under the man's influence than if you had been married to him. I recognise that you did your best when you came to Perth to remove the girl from the influence of your husband, and through your instructions she was taken to the Salvation Army Home. I am bound, however, to give some effect to the verdict of the jury. I take into consideration that they strongly recommended you to mercy. The sentence of the court is that you be imprisoned for six months with hard labor, to count from July last, consequently you will have to remain in prison for three months more.³⁹¹

While to some the actions of Maria Horn may seem more unnatural than those of James Horn, given that she was the girl's mother, to whom she was supposed to turn for protection and comfort, she was dealt with leniently by the courts on the supposition that she was responsible to her de-facto husband and therefore under his influence. In this way, this case connects to the previous one involving incest, with the woman given lenient treatment under the supposition that she was influenced by her partner. "Male responsibility for female criminality" was also seen to operate in a more general way. Whilst women were supposed to be able to rely on the protection of a 'good man', their downfall was often attributed to the corrupting influence of 'vicious' men. In such circumstances, women were recognized to be less culpable."³⁹²

³⁹¹ *Ibid.*

³⁹² L. Zedner, *op. cit.*, p.58.

It is also interesting to note that in the media coverage of the trial, *Truth* took a fairly lenient view, especially of Maria Horn's actions and referred to the case as "The Horn Case", while the conservative *West Australian*, headlined the case "A Shocking Case" and was more condemnatory of the couple.

CHAPTER SUMMARY

The decline in the birth rate at the turn of the century resulted in increasing community concern about the state of the family and, of more consequence, the threatened future of the Australian society. Strength in population was seen to be the prerequisite for strength in State and this was of great concern due to Australia's first involvement in wartime conflict with the Boer War. It was felt that the "selfishness, immorality and downright lack of patriotism of those who, through the practice of birth-control were destroying the race."³⁹³ "A high birth rate was required to provide cannon fodder, to maintain racial purity by ensuring that the fittest strains would survive, and to maintain a superior morality through the emphasis on family and religious values, the spirit of sacrifice, sense of duty and strength of character inspired by the rearing of children."³⁹⁴ The values of family life were central to these beliefs, and women who were involved in crimes which threatened the birth rate and threatened the sanctity of family life became targets of official concern. However, there was a strong contradiction in place. While the authorities espoused concerns about family values and while women who were involved in crimes which threatened this were targeted, they were not punished severely. The law was sending out the message that it would target these women, but they need have little concern about long reaching consequences.

³⁹³ R. Pringle, *op. cit.*, p.193.

³⁹⁴ *Ibid.*, p.194.

Little effort was made to address the social conditions facing women who were expected to maintain the values of family life. How did they care for children while earning a wage to feed them? How did they care for another child in a family which was already in poverty? Women were blamed for the undesirable influences which were creeping into society but nothing was done to alleviate the conditions which forced women to attend to matters in their own way.

The findings of this chapter are difficult to determine with any accuracy. The subject matter, combined with the prevailing contemporary ideologies regarding women and the family, would suggest that women charged with birth related crimes would be harshly censured on moral grounds. An expectation of high rates of conviction and harsh sentencing, however, was not realised within this study. Abortifacients were perhaps dealt the harshest sentencing, especially those who were seen to cause the death of a woman in the process. The women charged with infanticide were dealt with sympathetically. Alice Mitchell, the baby farmer, was given a substantial sentence, but not when compared to other convicted baby farmers such as Frances Knorr and the Makins in New South Wales. The bigamists were dealt with in a manner which seemed severe for their crimes, while Annie Smith and Maria Horn were treated leniently, making it difficult to arrive at any conclusive support for either the chivalry or moralistic thesis. It would seem obvious that a more detailed study is required in these areas of women's criminality.

CHAPTER 7 - PROSTITUTION AND RELATED CRIMES

"History shows that you can make prostitution illegal, but you can't make it unpopular." - James McClelland

Raelene Davidson, in her study of prostitutes in Western Australia 1895 - 1939, states that "[p]rostitution itself was not illegal in Western Australia, but the laws were structured so that it was virtually impossible to carry on a legal prostitution business. Brothel-keeping was illegal, as was soliciting[...]and loitering for the purposes of prostitution"³⁹⁵ and most prostitution charges came under these definitions. Loitering and solicitation charges were heard in the lower courts and only charges associated with keeping a brothel were heard in the Supreme Court. The 1902 Criminal Code stated at Chapter XXIII - Nuisances and Misconduct relating to Corpses, Clause 207, Bawdy Houses that ; "[a]ny person who keeps a house, room, set of rooms, or place of any kind whatever for purposes of prostitution, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years".

Davidson contends that prostitution became a concern of the Western Australian community in the late 1890s as a result of the large influx of prostitutes attracted to the goldfields; a situation which lasted until about 1905.³⁹⁶ The Annual Reports of the Police Commissioner during this period do not reflect this concern, but they do refer to the concern of the Commissioner with the large numbers of unattached men immigrating to Western Australia as a result of the

³⁹⁵ R. Davidson, *op. cit.* p.173.

³⁹⁶ *Ibid.*, p.175.

discovery of gold and the inevitable social consequences.³⁹⁷ Davidson also maintains that while the police took steps to remove any nuisance to rate payers resulting from prostitution related activities, "[p]rostitutes continued to operate with relatively little interference from the law."³⁹⁸ The new Criminal Code of 1902 and the reported community concern regarding the evils of prostitution could possibly explain why relevant charges only appeared in this Supreme Court study after 1902, and Davidson's claim of police leniency would explain why there were only two charges in this time period related to brothel keeping.

Table 5 details the facts of cases involving prostitution in this study, and it will at once be realised that the number of these charges brought before the Supreme Court in the period under review was extremely small.

TABLE 5 - PROSTITUTION CRIMES 1890-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1902	Martha Anderson	Keeping a brothel	Guilty	3 months hard labour
1902	Maria Giudotti	Detaining a girl with intent	Guilty	2 years hard labour
1906	Louisa Chalker	Keeping a house for the purposes of prostitution	Guilty	12 months good behaviour

Source: Supreme Court Records Index 1890-1914

The chapter begins with a review of the case involving Martha Anderson.

³⁹⁷ See Annual Reports of the Police Commissioner in *Western Australian Votes and Proceedings* for the relevant years.

³⁹⁸ *Ibid.*

Martha Anderson³⁹⁹

In 1902 Martha Anderson was charged with keeping a brothel in Perth. Mrs. Anderson, who had no record in the Prison Registers, and as such cannot be regarded as an habitual prostitute, had rented a shop in William Street Perth, apparently one of six streets identified by police as having a high number of brothels⁴⁰⁰. The shop window contained a few cigarette boxes and some soft drink cans, but no retail trade seemed to occur in the shop. Presumably acting on a complaint, the police observed the shop⁴⁰¹, and watched the comings and goings of the men who entered the shop. Two of the detectives involved in the case entered the shop one night, and found the defendant sitting on a chair in front of the door and another woman named Annie Renach sitting behind the window curtain. Upon asking for a stick of tobacco and a cigar, they were served, but they remained in the shop and struck up a conversation with the ladies, who asked if they were going to buy drinks. Detective Unwin suggested that she would be making a profit from the drinks and Mrs. Anderson replied that she needed extra money to meet the rent of the shop which was exceedingly high. Anderson attempted to solicit the men's custom for 7/6 or 30/- for the night. When the men did not respond, Anderson suggested they make up their minds or leave as they were spoiling their custom. During the proceeds of the trial, the Detectives noted that the women appeared respectable and there was nothing indecent about them or their dress.

³⁹⁹ Unless otherwise stated, the information for this case was taken from the Supreme Court Records at the Western Australian State Archives, Consignment No. 3473, WAS No. 122, Item No. 253, Case No. 3254.

⁴⁰⁰ See C.T. Stannage, *The People of Perth*, p.262.

⁴⁰¹ It would be interesting to know if the police were investigating the shop as a result of a complaint by a neighbour, however, this seems unlikely given the fact that the street was well known for prostitution.

As stated previously, Martha Anderson had no record in the Prison Registers, suggesting that she was not an habitual prostitute or else had not received a sentence for prostitution. It is difficult to know her financial circumstances and whether she resorted to prostitution out of desperation or not, but given the fact that she had money to pay the rent in advance and was well dressed, it does not suggest that she was extremely poor. She received a sentence of three months imprisonment with hard labour, but as previously stated, it is uncertain if she actually served this sentence as there was no record of her in the Prison Registers at Fremantle. Given that the maximum sentence for this offence was three years with hard labour, the case appears to fit Davidson's contention that women working as prostitutes in Western Australia were treated relatively leniently by the law.

Louisa Chalker⁴⁰²

Louisa Chalker, a madam of some local repute, was brought up before the Supreme Court on the charge of keeping a brothel in 1906. Testimony given by prostitutes formerly in her service, Ivy Davenport⁴⁰³, May Palmer and Neta Russell stated that the girls were charged board and lodging, laundry costs and for the liquor provided on the premises. While they were paid 5/- in the pound from their clients, the cost of living in the brothel was very expensive and most of the girls came into the brothel with no money and left with no money.

⁴⁰² Unless otherwise stated, the information for this case was taken from the Supreme Court Records at the Western Australian State Archives, Consignment No. 3473, WAS No. 122, Item No. 295, Case No. 3771.

⁴⁰³ Ivy Davenport was the girl referred to in Chapter 5 in relation to working with Lucienne Volti while under 18 years of age. Obviously she retained her interest in the profession and made her living by prostitution.

Davidson argues that after 1905, social changes in Western Australia effected changes in the attitude of officials towards prostitution, resulting in a less lenient attitude towards prostitution and related activities. Following the boom period resulting from the gold rush, families had moved to the State to join husbands and fathers and the ensuing social stability meant a less tolerant attitude to prostitution prevailed. When the population of the State consisted predominantly of men, prostitution was viewed as a necessary evil and a means of protecting the "respectable" women in the State, but with the narrowing ratio of men and women, this was no longer required. However, the lenient sentence given to Louisa Chalker disputes this claim. There was no doubt that she was keeping a brothel and employing a large number of girls, but she was merely given a good behaviour bond, offering more support for the chivalry thesis.

Maria Guidotti⁴⁰⁴

The case of Maria Guidotti involves an Italian girl of about 16 years (she did not know exactly how old she was), Assunta Spazziani, whom Guidotti and her "pimp" Charles Cozzi spirited out of Italy to the goldfields of Kalgoorlie for the purposes of prostitution.⁴⁰⁵ Spazziani was born in Rome, Italy and had lost both her parents when she was very young, and had subsequently lived with her grandmother and educated in a convent. She then lived with her aunt for a year, but her aunt died and she went into service for a Roman family for about two years until they left Italy, at which time she began looking for a position in domestic

⁴⁰⁴ Unless otherwise indicated, all information and quotes are taken from the Supreme Court records in the Western Australian State Archives. This case can be found at Consignment No. 3473, WAS No. 122, Item No. 256, Case No. 3285 (1902).

⁴⁰⁵ According to *The Sunday Times*, 24 August, 1902, p.5, there was "a regular trade in importing girls from Europe - especially from Italy and France - as sacrifices to the Meloch of West Australian lust."

service at the Registry Office, and it was here that Charles Cozzi found her. He presented himself as an employer looking for a young girl for domestic service and chose her from five or six others after organising the terms of her employment with the manager of the Registry Office.

Assunta left the Registry Office with Cozzi and went to the house where she met Guidotti. She was told that she would be paid 35 francs a month and that she would go with them to another country soon where they would pay her fare and provide her with the appropriate wage once there. She was not told which country she would be going to and was never led to believe that she would do anything but domestic duties.

Maria Guidotti and Assunta Spazziani left Italy on the 23rd March and arrived in Fremantle some time in April, where they were met by a man and later taken to catch a train for Kalgoorlie where they booked into a hotel. After breakfast the following day, Guidotti took Assunta to a house in Brookman Road where Cozzi was waiting with a Japanese boy. When Assunta opened the curtains she noticed that there were the large number of women congregated on the verandah of the opposite house and inquiring of Guidotti what they were doing, she was told "when you are like them you will know all about them." That evening Cozzi took her for a walk and told her of their intentions for her, explaining that if she did well she could make a lot of money once she had repaid her fare and board. For days she refused to co-operate and as she was ill from the journey, they let her be, but after a few days Cozzi became angry with her and sent her out on the verandah with Guidotti. She refused to participate and Cozzi locked her in her room for another few days.

Eventually Cozzi's patience wore thin and he locked her in a room with her first client who raped her. She had been a virgin until this time. Afterwards, Cozzi came in and told her that the customer had complained that she was unsatisfactory and she was told that if she did not improve he would be very angry. Over the next few months, she was given about 10 customers a day, each of whom raped her and Cozzi became increasingly angry and violent towards her, even threatening her with poison on one occasion.

Assunta's freedom was gained when a painter came to paint the house. He noticed that Assunta was very sad and upset, but as she was chaperoned continuously, he could not find out why. After he had finished the house, he returned one day for payment, Guidotti was out shopping and Assunta told him her sad story. He arranged her release and escorted her to Perth where the police were contacted. Initially, Assunta's story was met with cynicism and she was asked why she did not make a move to leave the two earlier. Through an interpreter, Assunta explained that she knew only Italian, did not even know what language was being spoken, let alone how to communicate in it and did not know where she was or where to run to. She was placed in the care of the Salvation Army and Cozzi and Guidotti were brought to trial in the Supreme Court.

The Criminal Code Act of 1902 stated at Chapter XXII - Offences against Morality, s.191, that "[a]ny person who[...]procures a women or girl to become a common prostitute either in Western Australia or elsewhere[...] is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years."⁴⁰⁶ However, it also provides that "[a] person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one

⁴⁰⁶ The Criminal Code Act of 1902, *op. cit.* p.80.

witness"⁴⁰⁷ which meant a conviction in this case may prove difficult as Assunta was the only witness to the events apart from Guidotti and Cozzi, who were unlikely to corroborate her evidence. Prior to the trial, however, police upgraded Cozzi's charge from a misdemeanour to a felony by charging him under Chapter XXXII - Assaults on Females : Abduction, Section 327, sub-section 1 which reads "[a]ny person who with intent to marry or carnally know a women, or to cause her to be married or carnally known by any other person, takes her away, or detains her against her will is guilty of a crime, and is liable to imprisonment with hard labour for fourteen years."

The *West Australian*⁴⁰⁸ covered the trial and said of Guidotti that :

[t]he female prisoner affected a defiant, if not brazen, attitude in the dock and met the gaze of the crowd unflinchingly. Throughout the day she sat facing the spectators, listening intently to the girl's answers to the questions put by the interpreter, and smiling for the most part, sneeringly at each. Occasionally she would scowl and indulge in expressive shrugs of the shoulders when the girl made some serious allegations. Guardotti (sic) is a sharp-featured women, with lowering eyebrows, and thin, through firm, lips. Her companion is a dark, big-faced man, with heavy eyebrows and moustache. He, too, manifested intense interest in the girl's evidence.

At one stage during the hearing, the presiding judge, Mr. Roe, asked Guidotti's counsel, Mr. Mayhall to "request the female prisoner to refrain from unseemly conduct in the dock. She had, up to then, been indulging in cynical smiles and vigorous shrugging of the shoulders when the witness answered questions."⁴⁰⁹ She

⁴⁰⁷ *Ibid.*, p.81.

⁴⁰⁸ *The West Australian*, Wednesday, 27 August, 1902, p.4.

⁴⁰⁹ *Ibid.*

was reminded that she was in court on a charge which might cost her 14 years in prison.

Compared to the descriptions of the two felons charged, Assunta Spazziani was described as a "pretty child", with "her very beauty[...]her greatest source of danger." She was attributed with " [t]hose large, brown, bright Italian eyes; that mouth, with its gleaming white teeth and the rich warm rosy lips, that might serve as models for a Raphael; her shapely compact, womanly development, yet displaying all the charms of girlhood, have been to her as a awful curse - an allurements to the Soul-destroying Vultures."⁴¹⁰ She was hailed as "a very modest girl"⁴¹¹, evidence supported by a doctor who gave evidence in the trial and described how he had great difficulty in performing an internal examination of Assunta due to the fact that she was modest and fearful of the examination. From the examination he found evidence of forced penetration and no sign of disease and from this he concluded that she was not an habitual prostitute.⁴¹² Comparing the descriptions of Guidotti who was described as "a reputed prostitute"⁴¹³ and of Assunta, who had proven her respectability, shows how moral judgements were made in every instance of the trial, extending to physical descriptions. The influence of Lombroso and Ferrero and the biological positivists lived on still.

In his concluding address, the counsel for Assunta Spazziani asked the jury "to consider the girl's demeanour in the box"⁴¹⁴ to decide if she was a willing

⁴¹⁰ *The Sunday Times*, 24 August, 1902, p.5.

⁴¹¹ *The West Australian*, Thursday, 28 August, 1902, p.2.

⁴¹² *The West Australian*, Friday, 29 August, 1902, p.5.

⁴¹³ *Ibid.*

⁴¹⁴ *The West Australian*, Saturday, 13 September, 1902, p.8.

accomplice to Cozzi and Guidotti, implying that a woman's respectability, and therefore innocence, could be easily established by her behaviour. The judge stated in his summing-up that "the case was an important one in the interests of women. It was very important in this community, that such conduct as that alleged against the accused should not be permitted, no matter what the nationality of the woman concerned might be." He deemed it "necessary that juries should protect all classes of women, high or low, rich or poor, or the meanest of foreigners." However, he concluded by saying "the jury, however, should give the prisoners the benefit of any reasonable doubt."⁴¹⁵

Apparently, despite contrary indications, Cozzi and Guidotti were only tried on the original charge of detaining a girl with intent as the judge felt that it "was his bounden duty to inflict the maximum penalty which the law provided for the offence, viz. two years' imprisonment with hard labour in the case of each of the accused."⁴¹⁶ when the guilty verdict was returned, and he added that he thought the sentence totally inadequate punishment for the offence as related.⁴¹⁷

It was to be expected that Guidotti's behaviour would be deplored on the grounds of women's supposed innate protective instinct of those in their care. Ideologically, too, one would have expected her to be condemned for failing to influence Cozzi and guide him from the path of wrongdoing, but I could find no

⁴¹⁵ *Ibid.*

⁴¹⁶ *Ibid.*

⁴¹⁷ This statement was applauded by *The Sunday Times*, Sunday 14 September, 1902, p. 1, which read "[a]ll right minded people will deplore with him the inadequacy of the law which only permits of two years' being recorded for an offence which is more appalling than murder." It went on to add "[n]o doubt a graver charge might have been laid, but there would have been difficulty in sheeting it home, and the police, who handled the case wisely and with great ability, did well in running no risk."

references to such views. The judge and jury obviously held both parties as equally responsible and punished them accordingly, suggesting that this case does not support either thesis.

SUMMARY

The evidence presented in the above cases points to the fact that moral judgements were used in discussion of cases, especially by the media, but did not appear to extend to the sentencing as the three women were clearly guilty, but none were treated unfairly by the judicial process. Louisa Chalker may have received a lighter sentence than Martha Anderson due to changing public or judicial perceptions of brothel keepers, but both received light sentences compared with the three years imprisonment with hard labour the charge could incur, providing some support for the chivalry thesis. The case of Maria Guidotti, however, is significant in that Assunta Spazziani was virtually forced to prove *her* innocence prior to charges being laid. When the case was brought to trial, however, Guidotti, while subjected to moralistic and sexist discourse, was treated fairly and punished equally with her male companion, suggesting that contrary to criminological theory, not all women were judged more severely than men when charged with crimes of morality involving children. This theory suggests that Guidotti should have been seen as more culpable as she betrayed the nurturing instinct of women by allowing a young girl to be abused by men, but clearly it did not extend to this case.

Clearly, however, the scarcity of charges related to prostitution in the Supreme Court records for the twenty five year period of this study, reflects the

fact that the police did not consider prostitution to be of major concern to criminal activity and did little to circumvent the operation of prostitutes.

The small number of cases in this category proved to be a limiting factor in determining any conclusive support for either the chivalry or moralistic thesis. A study involving much larger numbers would be required to reach any definite conclusion about factors effecting the sentencing of women charged with prostitution related offences at Supreme Court level.

CHAPTER 8 - ATTEMPTED SUICIDES

"One difference between men and women is that, at any rate, a woman knows when she is bad." - Rose Scott.

The offence of attempting to commit suicide is detailed in the Criminal Code⁴¹⁸ under Chapter XXVIII - Homicide : Suicide : Concealment of Birth, Section 287 and reads "[a]ny person who attempts to kill himself is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year" and according to James Crawford, in his book, *Australian Courts of Law*⁴¹⁹, a misdemeanour is a less serious offence than a felony and punishable only by a fine or short term of imprisonment. As a misdemeanour, punishable by a maximum of one year in prison, it would be expected that attempted suicides would be heard in the lower courts, but due to society's strong view against suicide they appeared in the Supreme Court at this time.

Table 6 provides the details of the cases reviewed in this chapter.

TABLE 6 - ATTEMPTED SUICIDES 1890-1914

YEAR	NAME	CHARGE	VERDICT	SENTENCE
1896	Ellen Bonning	Attempted suicide	Guilty	1 year good behaviour
1907	Vera Pearce	Attempted suicide	Guilty	Good behaviour
1908	Grace Davenport	Attempted suicide	Guilty	1 year good behaviour
1909	Beatrice Johns	Attempted suicide	<i>Nolle prosequi</i>	
1910	Christina Carter	Attempted suicide	Guilty	Placed under care of Salvation Army
1912	Josephine Lindker	Attempted suicide	Guilty	12 months good behaviour
1912	Maud Travis	Attempted suicide	Guilty	Good behaviour
1913	Lily Bass	Attempted suicide	Guilty	Good behaviour
1914	Ethel May Smith	Attempted suicide	Guilty	Good behaviour
1914	Sarah Brandt	Attempted suicide	Guilty	Good behaviour

Source: Supreme Court Records Index 1890-1914

⁴¹⁸ 1 & 2 Edward. No. 14, *The Criminal Code Act*, 1902.

⁴¹⁹ J. Crawford, *Australian Courts of Law*, Third Edition, Oxford University Press, Melbourne, 1993 p.90.

Maintaining a common stereotype, a number of these women attempted suicide following a failed love affair, for instance **Ellen Bonning**⁴²⁰, in 1896, attempted to drown herself following a quarrel with her previous live in lover, John Hendy, who had left her three weeks previously. Having lived with a man without the benefit of marriage, Ellen would not only be suffering from a broken heart, but her reputation as a respectable women would have been ruined. She may also have relied on Hendy financially, and have been in despair about her future prospects. **Ethel May Smith**⁴²¹, who was charged in 1907 with stealing and receiving, and who was later tried for keeping a house of ill fame in 1914, attempted to kill herself by drinking Lysol, also after a fight with her lover. She, like Ellen Bonning, was placed on a good behaviour bond. In 1914 **Sarah Brandt**⁴²² took a non fatal dose of Lysol after she and her husband had quarrelled over money matters in the morning. During the trial proceedings it also appeared that she was concerned by, and jealous of, her husband's attentions to their boarder, Mrs. Tyrer, to whom he, in his wife's eyes at least, paid more attention than his wife.

Alcohol appeared to be a contributing factor in a number of suicide attempts, a fact which is supported by studies which suggest that "the suicide rate of alcoholics, especially of women alcoholics, is much higher than that of the general population"⁴²³ and they also show that "a third of all suicides have alcohol

⁴²⁰ Full details of this case can be found at Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 193, Case No. 2634.

⁴²¹ Full details of this case can be found at Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 439, Case No. 4579.

⁴²² Full details of this case can be found at Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 440, Case No. 4585.

⁴²³ G.C. Davison & J.M. Neale, *Abnormal Psychology: An Experimental Clinical Approach*, 3rd Edition. John Wiley & Sons, Inc., Toronto, 1982, p.297.

as a contributing cause."⁴²⁴ **Vera Pearse**⁴²⁵ who attempted suicide in 1907 was 28 years old and had a long record of convictions mostly for drunkenness, disorderly conduct and prostitution. She attempted suicide by ingesting an irritant poison, but there was no evidence of why she did this, or in fact, if it was deliberate.

Christina Carter⁴²⁶, in 1910, was charged with attempted suicide by drinking Lysol. She and other witnesses confirmed that she had been drinking heavily and she insisted that she had not attempted suicide, merely had drunk too much and picked up the wrong bottle and did not realise she was drinking a poison. Despite this, she was charged, faced trial and was placed under the care of the Salvation Army, suggesting that she required supervision and perhaps a chance to change her lifestyle which was considered socially unacceptable, especially for a woman.

In 1908 **Grace Davenport**⁴²⁷ attempted to kill herself by administering chloroform and was released to the House of the Good Shepherd in Leederville for twelve months when she recovered. She had been employed by Mrs. Nancy Lewis who found her in a collapsed state and admitted that Grace had been recently depressed but did not know why. Grace was one of the fortunate women in this study. She was employed by a caring woman who was concerned about her servant, in fact had allowed her to spend a number of days in bed prior to her suicide attempt as she could see she was unwell. Her employer was willing to give her back her position when she recovered and she was sent to a convent to

⁴²⁴ Davison & Neale. *op. cit.*, p.297.

⁴²⁵ Full details of this case can be found at Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 307, Case No. 3919.

⁴²⁶ Full details of this case can be found at Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 339, Case No. 4232.

⁴²⁷ Full details of this case can be found at Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 325, Case No. 4086.

recuperate and thereby given another chance. Given the preceding facts, it appears likely that Grace had suffered an unhappy love affair or else was suffering from medical depression as she appeared to be living in a comfortable environment.

Lysol became a popular choice of those women who attempted suicide in the early 20th century, perhaps due to its ease of purchase. **Josephine Lindker**⁴²⁸ drank some Lysol in an attempt to kill herself in 1912. She, like Grace Davenport, had reportedly been depressed prior to the incident, but none of the witnesses called could enlighten the jury as to why she had been depressed. She had admitted to a few people that she was thinking of drinking Lysol and would then be put in Karrakatta, suggesting that she was crying out for help and did not really want to kill herself. She was given a twelve month good behaviour bond and did not appear again in the records or the newspaper, so it is unknown what happened to her.

In 1913 **Lily Bass**⁴²⁹ also took Lysol in an attempt to commit suicide, but a letter from the Rector of St. George's Cathedral pleading for leniency aided in securing her a good behaviour bond. The Rector said Lily had declared herself willing to begin a new life and was penitent about her attempt to end her life. Whether or not he did anything concrete to help her in her new life is not known, but it can be hoped that he did and that she made a success of it.

The judges in none of the above cases of attempted suicide invoked their right to sentence the defendant to prison, and all women were given a good

⁴²⁸ Full details of this case can be found at Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 417, Case No. 4373.

⁴²⁹ Full details of this case can be found at Western Australian State Archives at Consignment No. 3473, WAS No. 122, Item No. 427, Case No. 4469.

behaviour bond or placed under the care of an organisation such as the Salvation Army or Home of the Good Shepherd, or sometimes both placed under care and given a good behaviour bond. There was very little information given in the Supreme Court records of these cases and they were not considered important enough to be covered in the papers, so there is little supporting evidence for any proposed argument. It would be an interesting and informative comparative study to investigate how men were treated in the courts for attempted suicide.

Theoretical works on suicide suggest that more men than women succeed in committing suicide, while three times as many women as men attempt suicide⁴³⁰, however the statistics gleaned in this study do not support this contention. For the years where the statistics are broken down by gender, the Reports of the Police Commissioner inform that: in the years ending 30th June for 1905 13 men and 2 women were convicted of attempted suicide; 1906 - 7 men and 3 women; 1908, 14 men and 6 women; 1909, 20 men and 3 women; 1911, 13 men and 3 women; 1912, 13 men and 5 women; 1913, 18 men and 3 women; 1914, 17 men and 3 women. These figures all report a significant difference in the numbers of males and females charged with attempted suicide, with the number of males consistently outnumbering women. There remains the difficulty, however, of determining whether these statistics reflect the true situation - did as many, or more, women than men attempt suicide, but it remained undetected, or did the police not press charges? These questions cannot be answered, however, it seems unlikely that such a significant difference in numbers could be accurately attributed to chivalrous treatment, but it is likely that some women may have attempted suicide and were found by family members or friends, who did not report this. On the same hand,

⁴³⁰ Davison & Neale, *op. cit.*, p.261. This is but one of a number of texts consulted on suicide facts and theories.

however, this argument could easily be extended to suggest that some men who committed suicide were not brought to the attention of the police.

In keeping with their inherently non-violent nature, women are also reportedly less likely to use violence in suicide attempts than men, suggesting that women, even in the depths of their despair, conformed to the acceptable assumptions of "true womanhood".

An attempt to commit suicide has further been linked with the supposed tendency of women towards hysteria due to their menstrual cycle. "Physicians generally agreed that menstruation could trigger such nervous ailments as 'neuralgia, migraine, epilepsy, and chorois' as well as impulses toward 'kleptomania, pyromania, dipsomania', homicide and suicide"⁴³¹ However, it is interesting to note that in none of the cases studied was there an attempt to associate the women charged with instability either related to her cycle or the fact that she had attempted to take her life, suggesting that this theory evoked little response at the judicial level for this charge. No women was committed to psychiatric care as a result of her attempt and there was never a suggestion of any type of abnormality, psychological or social, involved in any case investigated. It could be suggested that in attempting suicide as a potential solution to their problems, these women were conforming to stereotypes of women as helpless creature, reliant on men for their place in society, but it could just as easily be argued that they saw suicide, or the attempt, it as an expression of frustration, despair and isolation. "Cesare Lombroso, father of modern criminology, told us almost a century ago that a woman abandoned by her man would find her only honorable course in suicide"⁴³²

⁴³¹ A. Jones, *op. cit.*, p.172.

⁴³² A. Jones, *op. cit.* p.352.

and while some of the women did indeed attempt suicide following a failed relationship, it is exaggerating to suppose that their actions were entirely due to their perceived failure. They could just as readily be concerned about their future, their loss of respectability and their future prospects.

Sociologist Maxwell Atkinson undertook a study of how coroners categorise deaths as suicide and made an important observation, suggesting that "in the process of deciding how a death occurred, coroners looked for things that could be associated with a suicidal death and that these 'cues' implied what kinds of further evidence it would be relevant to collect. The more suicidal cues that could be found, the more likely it would be that a death would be categorised as a suicide."⁴³³ This has similar implications for attempted suicide: how do the authorities distinguish between an accident and an attempt to take one's life? In cases involving drink, drugs and drowning, especially, it is difficult to determine whether the victim intended to take their own life or if they suffered an accident. In the following cases, there was a tendency by the police to obtain depositions from people closely associated with the victim to determine if that person had been acting out of character, displaying signs of depression or had been undergoing a life crisis prior to the event. If any of these factors were present, they concluded that the person was attempting to take her life and pressed charges to that effect, supporting the suggestion that the difference between attempted suicide and an accident is extremely subjective.

Due to their inclusion with the more serious offences heard in the Supreme Court, it could be suggested that attempted suicide was seen as a serious offence

⁴³³ M. Atkinson, "Coroners and the Categorisation of Deaths as Suicides: Changes in Perspective as Features of the Research Process" in C. Bell & H. Newby (eds), *Doing Sociological Research*, The Free Press, New York, 1977, p. 44.

by the legal profession, but the leniency shown towards those charged does not support this theory. Perhaps because all these women conformed to the contemporary notion of women's innate hysteria and lack of ability to cope with problems they were given chivalrous treatment by the courts. This crime, like that of abortion offences and infanticide, suggest that there was a discrepancy between what the law was and how it was enforced. It could be suggested that when a woman attempted suicide, the police were called by a member of the public and were, therefore, compelled to lay a charge against the woman and the leniency shown by the court was a way of offering sympathy and understanding for the woman's plight. However, for whatever reason, chivalrous treatment was unconditionally displayed towards women who were charged with attempted suicide in this study

CONCLUSION

"A model woman according to a very prevalent conception of the character is little better than an amiable idiot". - George Higinbotham.

The findings of this thesis are complex, however the collection of empirical evidence has added significantly to the existing body of work on female criminality. The accepted basis for female criminology that women are not charged with many crimes has been upheld by this study with the finding that only 108 women appeared in the Supreme Court in Perth in the 24 years from 1980 to 1914. The majority of these women were charged with non-violent crimes, empirical evidence which further supports the findings of other empirical studies of women's criminal activity. The "liberationist theory" propounded by Simon and Adler which argues that as social restraints were lifted upon women, there would be a corresponding increase in their criminal activity has been negated by this study. The time period under investigation revealed a shift in controls placed upon women, but did not reveal a significant increase in criminal activity which could not be accounted for by the population increase. However, the complexity of the issues involved meant that the empirical evidence offered no clear and unqualified support for either the chivalry thesis or the morality thesis.

One issue which must be understood is that the question of innocence or guilt, and subsequent sentencing, is not connected only to the crime itself, but further entangled with social issues. Whilst the actual crime is of concern, the behaviour of the woman involved, how she is perceived by the judiciary, the media and the public, are interwoven issues which can have a bearing on the outcome. The social climate at the time of the crime is a further determining factor which cannot be ignored. The desire to punish or the need to find a scapegoat can influence whether a woman standing trial is likely to be viewed

leniently or harshly. When there is a perceived increase in a type of crime, it can often result in a desire by authorities and the public alike to make an example of one particular person in an effort to assuage fear. The letters and statements of people condemning Martha Rendall illustrated this fear with the suggestion that "there was too much of this Mrs. Mitchell-Rendall business going on."¹ However, "for crime and criminal justice to become a major public issue, it is often sufficient for the media simply to declare it to be one"² and for the public to be influenced by this. This necessity to punish such women is rationalised by Durkheim when he states: "the deviant person is created by and necessary to the community, both as a focus for group feelings and as an indicator of prevailing social boundaries of attitudes and behaviour."³ This theory becomes extremely relevant when applied to women who were seen to have rejected the gender expectations contained in the Victorian idealisation of women, and more specifically, at a time when the restraining and ordering influence believed to be inherent in women was seen as a necessary factor in negating the social dislocation of the time. Paradoxically, however, "even where a woman seemed undisputably guilty, the public - and media - of the time would often back her up and declare her innocence"⁴, as in the case of the abortionists Maggie Tonkin and Elizabeth Pears, if she appeared to have remained faithful to her gender role.

Overall, however, there does appear to be an indication that women were accorded lenient treatment within the judicial system of the Supreme Court in

¹ See page 142 for this quote and the surrounding discussion.

² P. Wilson & P. Grabosky, *Journalism and Justice: How Crime is Reported*, Pluto Press, Sydney, 1989, p 1

³ Reported in B. Bardsley, *op. cit.*, p.139.

⁴ B. Bardsley, *op. cit.*, p 135.

Perth between 1890 and 1914, but the exceptions are numerous. Moreover, a further complication is the lack of available supportive evidence which, in many cases, meant that the presumed corroboration of either thesis cannot be taken as definitive. "The traditional woman is supposed to be domesticated, passive, dependent and conformist or criminal only in feminine ways. The non-traditional woman is allegedly aggressive, independent and likely to break the law. But the evidence reveals that women do not slot comfortably into such categories:"⁵ neither do the cases slot perfectly into either thesis of criminality.

The singular characteristic which does arise in the preceding study, is that women who were deemed "respectable", especially if they were under the protection of a male, or were seen to have committed their crime under the direct influence of their husband, father or brother, were treated more leniently than their sisters who were seen to have rejected gender expectations of the time. This finding is supported by the study undertaken by Ngaire Naffine who found that "the theory that women are accorded chivalrous treatment by the law has been shown to be false when the seriousness of the offence and criminal records are accounted for."⁶ Lucia Zedner arrived at a similar conclusion in her study of women criminals in England and suggested "whilst chivalry may have operated in the favour of first offenders, it does not provide a plausible explanation in relation to women with previous convictions, towards whom attitudes were generally much less sympathetic"⁷. Meda Chesney-Lind also revealed that the same duplicity is involved nowadays in the judicial system, when she suggested that

⁵ N. Naffine, *op. cit.*, p. 103.

⁶ *Ibid.*, p. 1.

⁷ L. Zedner, *op. cit.* p. 27.

women who were economically dependent on someone else and were 'respectable' - that is, without records of prior psychiatric care, drug or alcohol use, employer censorship, or peer deviance - received less severe dispositions than did their independent, 'freer,' and less 'respectable' counterparts. Indeed, a woman's degree of respectability appears to be as significant as previous involvement with the law.⁸

This chivalry proffered to women by the judiciary acts as an affirmation of the restrictions of the ideology of women, and reasserts the social belief that women must remain dependent on a man for her economic and social protection and serves to maintain the inequality between gender roles.

As has been discussed in the thesis, the media representation of the crimes was influential, but it must be acknowledged that "mainstream media images of the criminal woman serve to mirror, highlight and reinforce the female stereotypes set up by conventional society."⁹ The discussion of media reports, therefore, serves a purpose in attempting to define the concerns of the society and how these women were perceived to have rejected expected feminine behaviour and if, therefore, they "deserved" to be punished.

A significant finding of this thesis was addressed in the discussion of violent crimes by women. Not only did the empirical evidence of this study refute findings by some theorists that women are not capable of acting violently in the mere pursuit of a "thrill" and do not form gangs with other women, it was also

⁸ M. Chesney-Lind, *op. cit.*, p.91.

⁹ B. Bardsley, *op. cit.*, p.124.

revealed that chivalrous treatment **did** extend to certain of these women: a **finding** which belies the assertions in many criminological theories.

The chapter on birth related crimes also added significantly to the assertions of historians like Kathy Laster, Judith Allen and Suellen Murray who have concluded that while the legislation existed to charge women involved in infanticide and abortion, it was often not employed or the women released with a minor sentence. This suggests that despite concerns about the falling birth rate and increase in promiscuity and the increase in contraceptive practises which have been taken for granted by historians, the concern did not extend to the judiciary.

Due to the complexity of the issues involved, and the lack of surviving evidence available to historians from the time period 1890-1914, it is difficult, if not impossible, to offer a conclusive denouement of the topic. It would appear that further work needs to be undertaken in order to provide a substantial response to either thesis of women's criminality. A comparative study of men and women criminals would be more likely to ascertain to what extent women were treated differently to men in the judicial process, if at all.

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APPENDIX 1A

Summary of cases studied 1890-1902

YEAR	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902
NON VIOLENT CRIMES													
Larceny/Stealing	1			1				2			3	1	
Fraud							1		1		2	1	1
Other									1				
TOTAL	1			1			1	2	2		5	2	1
VIOLENT CRIMES													
Robbery with violence												1	
Assault													
Wounding with intent											1		
TOTAL											1	1	
CAPITAL CRIMES													
Murder Mansl.								1				1	
Rape													
TOTAL								1				1	
BIRTH & FAMILY CRIMES													
Abortion									1				1
Concealment				1									1
Infanticide		1						1			1		
Abandonment											1	1	
Bribery								1	1				
Incest													1
TOTAL		1		1				2	2		2	1	3
PROSTITUTION													
Keeping a Brothel													1
Detaining													1
TOTAL													2
ATTEMPTED SUICIDE													
ARSON							1						
GRAND TOTAL	1	1		2			1	5	5		9	5	6

Source: Supreme Court Records Index 1890-1914

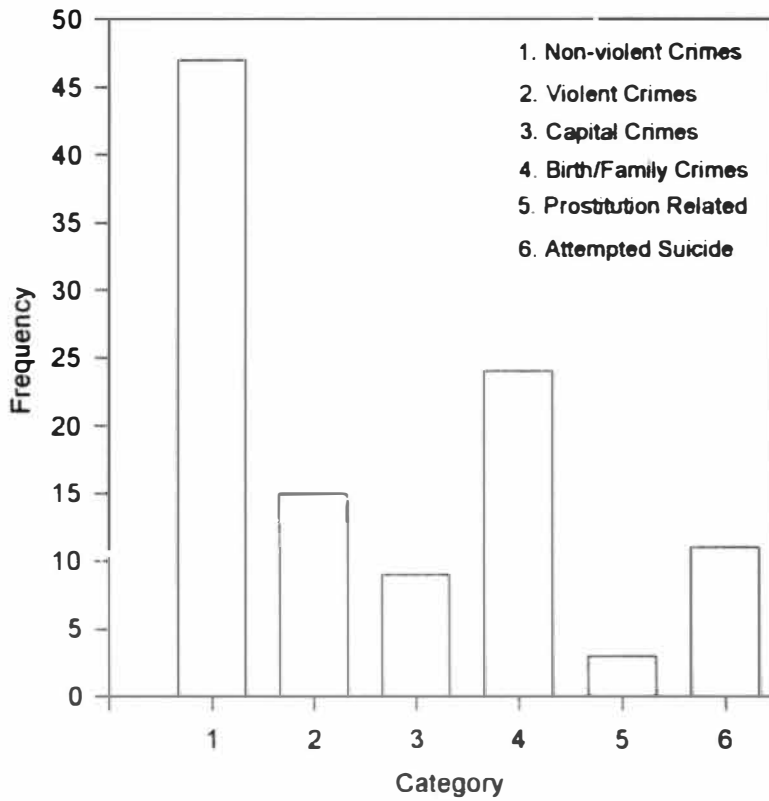
APPENDIX 1B

Summary of cases studied 1903-1914

YEAR	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914
NON VIOLENT CRIMES												
Larceny Stealing	2	3	1	1	3	5		1		2		2
Fraud	4			1		1			1			
Other		1			1	1		1	1			
TOTAL	6	4	1	2	4	7		2	2	2		2
VIOLENT CRIMES												
Robbery with violence				2	3		1	2				
Assault				1								
Wounding with intent			1			1	1	1				
TOTAL			1	3	3	1	2	3				
CAPITAL CRIMES												
Murder Mansl.	3						1		1		1	
Rape	1											
TOTAL	4						1		1		1	
BIRTH & FAMILY CRIMES												
Abortion						4					2	
Concealment	1											
Infanticide					1						1	
Abandonment												
Bigamy	1	1									1	
Incest												
TOTAL	2	1			1	4					4	
PROSTITUTION												
Keeping a Brothel				1								
Detention												
TOTAL				1								
ATTEMPTED SUICIDE												
					1	1	1	1	2	1	2	
ARSON												
						1						
GRAND TOTAL	12	5	2	4	9	14	4	6	5	3	7	2

Source: Supreme Court Records Index 1890-1914

APPENDIX 2

Crimes During the Entire Period of Study

Source: Supreme Court Records Index 1880-1914

APPENDIX 3

TABLE OF WOMEN CRIMINALS CONVICTED - DATA GAINED FROM FREMANTLE PRISON REGISTERS

Note that ages have been rounded to 1900, as some women had long records and the offence studied for this thesis may not have been her first recorded conviction, or her last

NAME	BIRTHPLACE	AGE IN 1900	MARITAL STATUS	RELIGION	OCCUPATION	LITERACY	HABITUAL CRIMINAL?
Emily Griffiths	Guildford WA	41	Married	Roman Catholic		Illiterate	No
Esther Warden	Galway Ireland	25	Single later married	R.C. then C of E	Domestic/housekeeper	Literate	Yes
Mary McInnes	Victoria	27	Married	Roman Catholic		Literate	Yes
Elizabeth Mary Halliday	Gippsland Victoria	35	Married later widowed	Presbyterian	Prostitute	Literate	Yes
Maria Ann Horn	York WA	41	Married	Protestant		Literate	No
Florence Pedpath	Sydney NSW	21	Single	Church of England	Domestic Servant	Literate	Yes
Nellie Beustead	Adelaide SA	20	Single	Protestant	Servant	Read not write	Yes
Florence Harford	Guildford WA	23	Single. later married	Protestant	Menial worker	Literate	Yes
Lucienne Volti	Paris France	20	Single	Roman Catholic	Menial worker	Literate	Yes
Margaret Ann Smith	England	51	Married		Menial worker	Literate	No
Emily Cresswell	Surry Hills Sydney	24	Single. later married	Roman Catholic	Menial worker	Literate	Yes
Fanny Burton	Ballarat Victoria	25	Single	Protestant	Menial worker	Literate	Yes
Lydia Knight	England	51	Married	Protestant	Menial worker	Literate	No
Maria Guidotti	Italy	24	Single	Roman Catholic	Prostitute	Literate	Yes
Marie Fontan	New Caledonia	25	Married	Roman Catholic	Prostitute	Literate	Yes
Marie Dean	New Caledonia	20	Married	Roman Catholic	Prostitute	Literate	No
Minnie Forrester	Dunedin NZ	29	Single later married	Roman Catholic	Prostitute	Literate	Yes

NAME	BIRTHPLACE	AGE IN 1900	MARITAL STATUS	RELIGION	OCCUPATION	LITERACY	HABITUAL CRIMINAL?
Ellen Lanyon	Echuca Victoria	21	Married	Roman Catholic		Literate	Yes
Ellen Fanchon	Adelaide SA	29	Married	Protestant		Literate	No
Elsie Handyside	Hobart Tasmania	15	Single, later married	Church of England		Literate	Yes
Ellen Martin	Essex England	45	Married	Protestant		Literate	No
Vera Pearce	Tasmania	21	Married	Roman Catholic	Prostitute	Literate	Yes
Mary Rawlings	Albany WA	18	Single	Protestant		Literate	Yes
Dorothea Jackson		16	Married	Roman Catholic	Prostitute	Literate	Yes
Ivy Davenport	England	13	Single	Protestant		Literate	No
Alice Mitchell	Perth WA	40	Married	Wesleyan	Nurse	Literate	No
Florence Jardine	Castlemaine Victoria	22	Married	Protestant		Literate	No
Sylvia Elaine Johnstone	Toronto Canada	20	Married	Protestant		Literate	No
Elizabeth Pears	Manchester England	53	Married	Protestant	Nurse	Literate	No
Harriet Graham	Geelong Victoria	37	Married	Wesleyan	Nurse	Literate	No
Dolly Martin	Albany WA	11	Single	Church of England	Housemaid	Illiterate	No
Martha Rendell	Hope Valley SA	30	Single	Wesleyan	Housekeeper	Literate	No
Elizabeth Dunn	Melbourne Victoria	24	Married	Church of England		Illiterate	No
Lucy Helena Griffiths	Albany WA	7	Single	Church of England		Literate	No
Bernice Gladys Nixon	Wellington NZ	10	Married	Church of England	Waitress	Literate	No
Ethel May Smith	Perth WA	12	Single	Church of England	Prostitute	Literate	Yes
Catherine Gillan	Galway Ireland	28	Married	Roman Catholic		Literate	No

APPENDIX 4**CITY OF PERTH - INFANT LIFE PROTECTION.****NURSE'S REGISTER OF INFANTS RECEIVED TO NURSE**

Table Source: Crown Solicitor's Office Archives.
Acc No. 135, Box No. 27, File 1694/7. *Rex v Alice Mitchell*

DATE OF RECEIPT	NAME OF CHILD	BIRTH DATE	PARENT OF CHILD	ADDRESS OF PARENT	DATE OF REMOVAL
Dec 1900	Alfred Roy Lees	8th July 1900	Gertrude E. Lees	c/o Mr. Paisford Mount St	
Dec 1900	Doris Margery Hall	7th July 1900	Emma Hall	c/o Mr. Palsford, Mount St	
Jan 16th 1901	William H. Muir				
6th April 1901	Maude Martin Ede	25th January 1901	Violet Ede	c/o Mrs. Harding, Way St	Died 7th May 1901

DATE OF RECEIPT	NAME OF CHILD	BIRTH DATE	PARENT OF CHILD	ADDRESS OF PARENT	DATE OF REMOVAL
2nd April 1901	Leslie Wilson	2 months old	Mrs. Wilson	Mrs. Wilson Bridgewater Manse. Thomas St.	
11th Feb 1904	William Freckleton	5 months old	L. Freckleton	c/o Mrs. Farmer, Claremont	Died May 8th 1904 - Certificate Dr. Officer
29th March 1901	Ronald Brown	5 months old	Gertie Brown	9 Cavendish St.	Taken by mother, April 23rd
April 19th 1901	Leslie Wilson		E. Wilson	405 Beaufort St	
12th July 1904	Herbert Barthop	2 weeks	Louisa Barthop	32 Esplanade	
7th October 1904	Maitland Burn	17 months old	Emily Burn	9 Cavendish St.	Removed by mother, October 1904 to P.P.H.

DATE OF RECEIPT	NAME OF CHILD	BIRTH DATE	PARENT OF CHILD	ADDRESS OF PARENT	DATE OF REMOVAL
7th October 1904	Horace Ladham		Mrs. Ladham	Bulwer St.	Removed by Mrs. Cupperson (aunt) to Bulwer St.
7th October 1904	Noel Wilson		Alice Wilson	132 Lake St	
3rd December 1904	Reginald Guilderslieves	3 months old	Mary Guilderslieves	12 Wade St.	Died 13th December 1904
5th December 1904	Charles Rushfort	7 weeks	Mary Rushfort	c/o Mrs. Joseph. Mundaring	Removed 12th Dec 1904 by Mary Rushfort c/o Mrs. Rushfort, Midland Junction
7th January 1905	Henry Johnson	1 month old	Elizabeth Johnson		Died 14th Feb 1905
9th January 1905	Olive Pullen	6 months old	Lucy Pullen	246 Brown St.	

DATE OF RECEIPT	NAME OF CHILD	BIRTH DATE	PARENT OF CHILD	ADDRESS OF PARENT	DATE OF REMOVAL
16th December 1902	Grace Theresa Corbet	3 months old	Elizabeth Corbet	Thompson Rd. Nth. Fremantle	
31st December 1902	Dorrie Warby	14 days old	Mr. Warby	48 Francis St	Died 28th Feb 1903 - reported by Mrs. Mitchell
31st December 1902	Albert McIluray	2 days old	Mrs. McIluray	Fremantle	Died 28th Feb 1903 - reported by Mrs. Mitchell
14th May 1903	Eileen M. Holland	3 months old	Eileen Holland	c./o Mrs. Wilkinson 257 Hay St.	
3rd August 1903	Grace Kruger	10 days old	Connie Kruger	154 Brown St	Died 11th Nov 1903 - Dr. Saw

APPENDIX 5

"THE LITTLE BABY-FARM"
A Mournful melody

*"Do you hear the children weeping, oh, my brothers,
 Ere the sorrow comes with years?"*

Sing a song of West Australia, Makinism rife,
 Baby farmers, angel-makers, nigger man and wife.
 Sing of Susie syphilitic, sore-eyes, lousy Sue!
 Sing the motor-driving doctor, sing of all the crew.

"Suffer little children!" (sing it, sing, ye beggars, sing):
 Suffer, starve and perish children (sing it, damn y', sing).
 Suffer for a little, babies, life is not for you,
 For the farmers have you listed : they will put you through.

Sing a song of half a dozen babies in a den,
 Lying dying, pining, starving (sing up, women, men):
 Sing of eight-and-twenty of 'em, killed in five short years,
 Think of all the care they had not in this Vale of Tears.

Suffer, little children, suffer (lift your voices, all):
 Short the strife and speedy freedom (sing up! from earth's thrall).
 Suffer little babies (rise it, blast y', sing th' song).
 See the dear king doctor coming - now we shan't be long.

Sing a song of black-eyed Susan (eyes blacked with the fits,
 "Knuckled out" by bashing yearling babies off the list).
 Sing of women, reeking, rotten (save OUR babes from harm),
 Pigging with the starving infants, up there on the farm.

Suffer little children, suffer, born were ye in sin
 (Sing up free as well as bonded, kin and next-of-kin).
 Starve poor little misbegottens, while the fees are paid,
 Then the doctor bloke will see you (sing up, man and maid).

Sing a song of waifs unwanted, sing the Nurse's trade:
 Sing the recent suicided doctor, all afraid.
 Sing the social slips and lapses "turned down" from the farm,
 Sing the panic in the dove-cotes, sing the great alarm.

"Suffer little children (say she), unto me to come,
 "On a weekly payment basis - for a solid sum -
 "Label each 'Unwanted' plainly, I will do my best:
 "And we three - I, Nurse and Susie - we will give them rest."

Sing of croup and diarrhoea, measles, chicken-pock,
 Marasmus, conjunctivitis (these are all in stock).
 Sing of whooping cough, consumption, colic, cramp and chills:
 Sing of all the known, and unknown, baby ails and ills.

(Sing up)! Suffer little children, brief will be your stay,
 Angel Makin, as a business, can be made to pay:
 Little risk, and less of charges, and the profit great
 With an expert baby-farmer for a business mate.

Sing of Bits-of-God-in-Heaven (Babyland is there),
 Big-eyed, pouting, white-souled cherubs, born so sweet and fair:
 Starving in a dirty kennel, fit not for a dog,
 Where a Christian would not house a soulless bacon hog.

Suffer little children! (Sing ye, let the chorus swell
 To the Throne of God Almighty, to the Hobs of Hell!
 To the halls of earthly Justice, through our native land,
 Sing until the spark of general wrath to flame is fanned.

Sing a song of earthly vengeance, life for baby life!
 Simple justice on the partners of the nigger's wife.
 This will be allotted to them either THERE or here.
 "Judge 'em now and punish later!" reads our message clear.

Suffer, little children, suffer, wanting food and care,
 If there is a Heaven, where God is, surely ye are there.
 Sing a hell for baby-farmers, superheated through,
 And a special griddle bearing West Australia's few.

APPENDIX 6

n/a indicates data not available for that date

YEAR	MALE POPULATION OF W.A.	FEMALE POPULATION OF W.A.	RURAL POPULATION OF W.A.	URBAN POPULATION OF W.A.
1890	28 854	19 648	n/a	n/a
1891	32 176	21 001	26 431	23 351
1895	69 733	30 782	n/a	n/a
1901	117 885	75 716	87 317	96 807
1904	141 694	97 714	n/a	n/a
1905	146 498	103 640	n/a	n/a
1911	167 993	125 930	n/a	275 098
1914	178 978	143 111	n/a	n/a

Source: Combined statistics from *Australians Historical Statistics* edited by Wray Vamplew, Fairfax, Syme and Weldon Associates, 1987, p.41 and C.T. Stannage (ed.) *A New History of Western Australia*, University of Western Australia Press, Nedlands, 1981, p.234.