

To the Beat of her Own Drum:
Feminine Agency in
Colonial New South Wales,
1873 – 1881.

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¹ SRNSW NRS13594 (0027/1879).

² SRNSW NRS 13594 (0034/1875).

³ SRNSW NRS 13504 (0104/1879).

Abstract

This thesis analyses the ways that some colonial women achieved a measure of personal autonomy by engaging in an adulterous affair. It argues that despite entrenched structural inequalities, the adulterous woman was able to exercise agency in the context of her infidelity. Through an analysis of four cases tried by jury in which a husband sued for divorce on the ground of his wife's adultery, I explore how social class influenced a woman's capacity for agency. Using documentary evidence taken from the Supreme Court archives and the colonial press of 1873 to 1881, I suggest that even the powerless and disempowered can at times act with intentionality and autonomy, and that infidelity provided some women with a space in which to resist and challenge their oppression. However, exploring the interaction of social class with gender reveals that this resistance took very different forms according to the individual's material circumstances and position in society. Each of the four women here did indeed march to the beat of her own drum, but whilst facing an economic, political and legal disempowerment that severely hampered her efforts.

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Finally, I thank the four women whose lives I have probed and dissected over the past months. Their stories have moved and inspired me and I have tried to restore to them the respect and dignity they rarely received in their lifetimes.

This thesis is all my own work and has not been previously submitted for assessment at a tertiary institution.

Signed:

A handwritten signature in blue ink, appearing to be 'M. O.', followed by a long, horizontal, wavy line.

8 October, 2016.

In loving memory of my mother Marijke Coy, 1938 – 2007,

As a tribute for her life-long journey

From victim to agent,

And for Claudia,

Always.

Chapter One

A narrative of victimhood: Prevailing perceptions of colonial women

In the Australian historical imaginary, an unfeeling colonial male roams the countryside, ruled by 'natural' urges and leaving a trail of abandoned women in his wake. The women who appear in this vision are frequently worn out by multiple pregnancies and drudgery, yet how they came to be 'in the family way' has less often been investigated. As a result, the bulk of colonial women hover in sexual limbo somewhere between the supposedly lusty convict whore and the respectable social reformer of the late nineteenth century, both the subject of much historical inquiry.

Prevailing perceptions of sexuality for colonial women stem largely from stereotypes depicting them as passive subjects rather than active agents. Consider the Victorian prude, deserted wife and seduced domestic servant; each endures rather than enjoys sexual activity and suffers male sexual attention as the result of force, exploitation or economic necessity. As Judith Allen so aptly asserted, the dominant paradigm is of 'enforced whoredom' -of varied origins -but whoredom nonetheless.¹

¹ Judith Allen, Ch. 12, 'From Women's History to a History of the Sexes', in James Walter (ed), *Australian Studies: A Survey*, 1989, 226.

The need for further investigation into physical and emotional intimacy in the colonial era is thus critical. If we are to extend and complicate scholarly knowledge of sexuality in this time, research is needed to show how women of different classes negotiated physical desire and its associated emotions. Despite the efforts of first women's and then feminist historians, there remain wide gaps in our knowledge of a diverse colonial womanhood, and what is known often is limited to presumably shared experiences such as childbirth and domesticity.

In the following thesis, I ask how adulterous women challenge scholarly and popular understandings of feminine sexual agency in colonial society. At the same time, by comparing the adulterous affairs of two working and two middle-class women, I investigate the relationship between social class and agency. I suggest that such questions share a concern with how gender shaped women's lives and choices in colonial New South Wales. With these considerations in mind, I ask how representations of gender and social class functioned within the voluminous legal discourse of the early Divorce Court of New South Wales.

My chief sources are the legal files generated by each case and related press coverage, both of which reveal an intense preoccupation with the intimate lives of others. Based on these materials, I argue that while colonial women were largely excluded from political, economic

and cultural power and privilege, this did not necessarily render them victims. My work explores those spaces in which women could and did demonstrate agency, a process that necessarily involved transgressing gender constraints.² I propose that it is crucial to recognize, as feminist historian Ann Curthoys suggests, that one can be an agent whilst possessing limited power; the two concepts must not be confused. Agency can be expressed in small spaces and moments, ‘in the workplace, ... street, ... theatre or ... home, behind the backs of the powerful.’³ Within the context of this discussion, I believe we should add ‘in the bedroom.’

Between 1873 and 1881, different grounds for divorce saw men initiate 112 and women a mere 58 from a total 170 cases of marital dissolution.⁴ From these official records, I have selected four in which women from distinct social classes obtained legal representation and appeared in court. To complicate and nuance social class, one of the poor was employed and ‘respectable’, and the other was ‘vagrant and disorderly’, while one middle class woman was married to a high-profile merchant, and the other was less affluent or prominent. This allows as full an exploration as possible of feminine diversity.

² Kay Saunders and Raymond Evans, ‘Introduction’, *Gender Relations in Australia: Domination and Negotiation*, NSW, 1992, xix.

³ Ann Curthoys, ‘Three Reviews of *Creating a Nation*’, *Labour History*, 68, 1995, 199.

⁴ Divorce Case Papers, 1873 – 1930 – State Records NSW, at www.records.nsw.gov.au

My work uses an interpretive and qualitative case study approach to understand how individuals made sense of their lives ⁵ and experienced patriarchal oppression.⁶ Cloaked as they are in gendered language and saturated with masculine authority and power, the divorce records provide an ideal vehicle to develop such an understanding. Importantly, case study research allows complex subjects to be analysed, and can expose the workings of those institutions through which power operated, simultaneously revealing how these affected the individual.⁷

Within the current discussion, power is understood as Foucauldian, which views it as both technique and process.⁸ The ‘multiplicity of discursive elements’ at work in the colonial Divorce Court support Foucault’s contentions as to how power, knowledge and sexuality are symbiotically related.⁹ In the courtroom, the trial process functioned as a means to ‘reactivate’ power,¹⁰ so that testimonies and press reports reveal how it was inculcated within and throughout the social body.¹¹ Via this inculcation, the ‘criminal’ adulteress was identified as

⁵ *Introduction to Qualitative Research*

[https://www.blackwellpublishing.com/content/BPL/Images/Content_store/Sample_chapter/9780632052844/001-025\[1\].pdf](https://www.blackwellpublishing.com/content/BPL/Images/Content_store/Sample_chapter/9780632052844/001-025[1].pdf) accessed 4.6.16

⁶ Judith Bennett, ‘Feminism and History’, *Gender & History*, 1:3, 1989, 260.

⁷ *Ibid.*, 263.

⁸ Michel Foucault, ‘The Subject and Power’, *Critical Inquiry*, 8:4, 1982, 781.

⁹ Michel Foucault, *History of Sexuality*, Vol. 1, New York, 1980, 100.

¹⁰ Michel Foucault, *Discipline and Punish*, trans. Colin Smith, England, 1977, 49.

¹¹ *Ibid.*, 81-2.

a 'common enemy'¹² and those around her assisted the state in its efforts to highlight her transgressions.

The discussion further proceeds according to several key feminist conceptual frameworks. Firstly, it presents women as named historical actors and the locus of inquiry, offering an antidote to androcentric depictions of the past.¹³ The experience of women rather than men provides the focal point and structuring mechanism for my narrative,¹⁴ and this necessarily entails a view of women as *doing*, rather than *being done to*. As Marilyn Lake argued when reflecting upon a field predicated on stories of masculine achievement, feminist history functions to 'position women as the subjects of History...doing, viewing and speaking.'¹⁵

Within the current context, the thesis defines agency as the ability to 'make things happen by one's actions.'¹⁶ While it presupposes intent behind those actions, this definition does not presuppose a fully autonomous actor.¹⁷ It would be foolish to suggest that any woman in colonial New South Wales had complete command of her life, given a

¹² Ibid., 90.

¹³ Patricia Grimshaw, 'Falling into Women's History', in Bain Attwood and Joy Damousi (eds.), *Feminist History*, Victoria, 1991, 18.

¹⁴ Kay Daniels, 'Feminism and Social History', *Australian Feminist Studies*, 1:1, 1985, 27.

¹⁵ Marilyn Lake, 'Rewriting Australia: Rewriting Women,' *Island*, 68, Spring 1996, 99.

¹⁶ Albert Bandura, 'Social Cognitive Theory: An Agentic Perspective', *Annual Review of Psychology*, 52, 2001, 1-3.

¹⁷ Holly Wardlow, *Wayward Women: Sexuality and Agency in a New Guinea Society*, London, 2006, 12.

stridently patriarchal society and masculine stranglehold on legal, political and economic power. Prevailing analyses of colonial gender relations rightly depict the relationship between men and women as grossly unequal. However, beneath an umbrella of inequality, women could -and did- resist.¹⁸ Abundant evidence within the divorce files - refusing to have a baby circumcised, ¹⁹ insisting on separate bedrooms ²⁰ or physically attacking a husband ²¹ – suggests that women could and did challenge male authority.

In the context of resistance, scholars who argue the significance of corporeal experience lend substance to the idea that using one's body to satisfy physical desires is a means of enacting embodied agency.²² Wendy Parkins, for example, describes how English suffragettes harnessed the autonomy of their bodies via an “embodied feminist agency’ that demonstrated to others their corporeal resistance to gender constraints.²³ Using this interpretation of embodied agency, I suggest that in acting outside the gendered norm for sexual conduct, and engaging in extra-marital sex, the adulterous woman could contest gender constraints that positioned her husband as an

¹⁸ Kay Daniels, ‘Women’s History’ in G. Osborne and W. Mandle (eds)., *New History: Studying Australia Today*, Sydney, 1982,49.

¹⁹ SRNSW NRS13594 (0007/1873).

²⁰ SRNSW NRS13594, (0027/1875); SRNSW NRS13594 (0109/1879).

²¹ Ibid.

²² Maurice Merleau-Ponty, *Phenomenology of Perception*, trans. Colin Smith, London, 1962; Julia Levin, ‘Bodies and Subjects in Merleau-Ponty and Foucault: Towards a Phenomenological/Poststructuralist Feminist Theory of Embodied Subjectivity’, Unpublished PhD Thesis, UPenn, 2008.

²³ Wendy Parkins, ‘Protesting like a girl: Embodiment, dissent and feminist agency’, *Feminist Theory*, 1:1, 2000, 59.

authority figure and decision-maker who had a theoretical (and legal) power over his wife's body.²⁴ In this way, sexuality functioned as a personal arena in which limited autonomy was possible, and the adulterous affair provided the context for this to take place.

While colonial women possessed little political, legal or economic power, they *did* have some inherent sexual autonomy. Single and married women could sleep with whomever they chose- if they were prepared to suffer the consequences. Married women could and did refuse to fulfill sexual obligations to husbands.²⁵ Unless subjected to domestic violence and rape, women's bodies were their own.

This does not deny that women exercised such theoretical autonomy against an entrenched double standard²⁶ and irrefutable gender barriers, or that individual men could be physically abusive and controlling.²⁷ In outlining the circumstances of adultery and its investigation by law, the colonial divorce case files provide an opportunity to develop an understanding of how individual women could enact an 'embodied agency'.²⁸ In probing its consequences, they shed equal light on the way that legal authorities and the wider community responded to such transgressive conduct.

²⁴ Henry Finlay, 'Lawmaking in the Shadow of the Empire: Divorce in Colonial Australia' *Journal of Family History*, 24:74, 1999, 75.

²⁵ For example SRNSW NRS13594 (0027/1879); SRNSW NRS13594 (0109/1879).

²⁶ Hilary Golder, *Divorce in Nineteenth-Century New South Wales*, Kensington, 1985, 85.

²⁷ *Ibid.*, 190-191.

²⁸ Parkins, 'Protesting', 59.

The concept of intersectionality guides my investigation as to how social class interacted with gender to mould individual experience. Intersectionality asserts the existence of multiple rather than single axes of oppression, and that it is neither possible or helpful to suggest that women share an identical experience of subjection because they share biology. Instead, the individual will experience differently her position as a woman, which is always 'intermeshed' in other social divisions such as social class and age.²⁹ While such divisions shape material and other circumstances, in colonial society they also altered the moral lens through which legal authorities conducted a specific case. Within this lens, judgments about a woman's conduct were based on essentialist assessments of her worth and position on a scale of virtue and purity.³⁰

These considerations are gathered within an over-arching recognition of gender relations as a major power dynamic.³¹ In 1986, Marilyn Lake and American feminist Joan Scott both argued the vital importance of adopting gender as a category of historical analysis.³² Exposing gender as social and cultural rather than purely biological in origin means that it is theoretically possible to identify how categories

²⁹ Nira Yuval-Davis, 'Intersectionality and Feminist Politics', *European Journal of Women's Studies*, 13:3, 2006, 195.

³⁰ See Kathy Davis, 'Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful', *Feminist Theory*, 91, 2008, 67-85 and Yuval-Davis, op.cit.

³¹ Jill Matthews, 'Feminist History', *Labour History*, 1986, 150.

³² Marilyn Lake, 'The Politics of Respectability: Identifying the Masculinist Context', *Historical Studies*, 22:86, 1986, 116-131; Joan Scott, 'Gender: A Useful Category of Historical Analysis', *American Historical Review*,

of sexual difference were constructed within a particular time and place.³³

In colonial New South Wales, idealised gender norms worked to legitimate masculine authority and subordinate women. Within the Divorce Court, these norms functioned to govern the ways that legal authorities pronounced judgment upon those individuals who appeared before them; conduct that failed to achieve those ideals necessitated punishment. Testimonies suggest that gendered expectations for women were an important aspect of social control, lending substance again to Foucault's proposed linkage between sexuality and power.

Extensive oral and written testimony from early divorce cases has bequeathed us abundant documentation concerning intimate lives. This offers insight into sexual activity, and reveals such varied details as that lovers often gave one another a 'portrait' or 'likeness' of one another,³⁴ that middle class men could visit houses of assignation³⁵ without risk of censure,³⁶ and that the Heads in Sydney was popular

³³ Marilyn Lake, 'Women, Gender and History', *Australian Feminist Studies*, 3:7-8, 1988, 2.

³⁴ For example SRNSW NRS13594 (0007/1873); SRNSW NRS13594 (0109/1879); SRNSW NRS13594 (0027/1879).

³⁵ According to Kay Daniels a house of assignation was an establishment visited solely for the purpose of illicit sexual intercourse, and couples could rent rooms for anything from a few minutes to a few hours to a night (in *So Much Hard Work: Women and Prostitution in Australian History*, Australia, 1984, 99).

³⁶ 'The Great Slander Case', *Australian Town and Country Journal*, March 13, 1880, 8.

for overnight trysts.³⁷ Resulting from the court's obsession with extra-marital sex, the documents offer such 'hidden' sexual details,³⁸ and provide an important salve to the challenges of investigating past sexual behaviour.

Despite their distinct methodological challenges, legal records are an invaluable source of information about past sexual behaviour and societal attitudes towards morality.³⁹ They allow insight into cultural, political and social perspectives and particularly illuminate gender and women's history.⁴⁰ As such, it is important to recognize their limitations and admit their contrived and constructed nature. In the nineteenth-century court process, male law clerks under instruction scribed witness testimony into dramatic and hyperbolic rhetoric. Such emotive, contrived and highly gendered language easily reveals a privileged and dominant masculine point of view, while blatantly gendered assumptions suggest dominant colonial ideologies of idealized behaviour. Since the orchestration of each case presented a highly controlled and manipulated version of the dissolving marriage, these materials are anything but objective.⁴¹

³⁷ SRNSW NRS13594 (0027/1879).

³⁸ Frank Bongiorno *The Sex Lives of Australians*, Victoria 2012, 39.

³⁹ Ibid., 48.

⁴⁰ Carolyn Strange, 'A Case for Legal Records in Women's and Gender History', *Journal of Women's History*, 22:2, 2010, 145.

⁴¹ Golder, *Divorce*, 7, 10.

Witness statements also present challenges, since not only did lawyers coach deponents⁴² in charged ways, those who testified strove to conform with prevailing notions of morality and to present themselves in a flattering light. Nevertheless, the documents convey distinctly gendered attitudes towards marriage and infidelity and describe the minutiae of daily life. Domestic arrangements, childcare and an extraordinary geographical mobility are among the intriguing details revealed for men and women across social classes in colonial society.

While those who sought divorce cannot be seen as typical, the circumstances of their daily lives most certainly were. Using the abundant incident detail captured within the files, the thesis builds a strong sense of place and community. It reveals extensive gossip and rumour mongering amongst people of all classes, and suggests, as Kirsten McKenzie has so convincingly shown, that colonial Australians engaged frequently and willingly with scandal.⁴³

Australian sexual history remains a relatively new and undeveloped field.⁴⁴ While historians have explored subjects such as sodomy, bestiality and rape in the colonial period, and a growing scholarship

⁴²Tom Gilling, 'Frenzy: The story of the Mount Rennie Outrage', Unpublished PhD thesis, 2012, UTS Digital Theses Collection, available at <https://opus.lib.uts.edu.au/handle/10453/21806>, 23.

⁴³ Kirsten McKenzie, *Scandal in the Colonies: Sydney and Cape Town 1820 - 1850*, Melbourne, 2004.

⁴⁴ Ann McGrath, 'Sexuality and Australian identities', Ch 4 in *Creating Australia*, Wayne Hudson and Geoffrey Bolton (eds), St Leonards., 1997, 50.

examines gay and lesbian sex, unremarkable or consensual heterosexual relationships in the mid to late nineteenth century have received limited attention. Although Frank Bongiorno's recent history of Australian sex lives provides a detailed overview of the subject, it does not discuss at length the colonial period, or highlight individual cases.⁴⁵ Lisa Featherstone's research into a range of sexual phenomena is also of vital importance, but material relating to the colonial period relates chiefly to maternity and medicine, while other works focus either on men or on twentieth century developments, and are thus outside my period of interest.⁴⁶

While scholars have utilised statistical and demographic analyses or generalised from the experiences of a few in order to reconstruct sexual behaviour, such approaches have definite drawbacks. Thus although figures such as pre-marital pregnancy rates may *imply* how many couples had sex before marriage,⁴⁷ they say little about associated courtship, power relations or the emotional impact of sexual experience.

⁴⁵ Bongiorno, *Sex Lives*.

⁴⁶ Eg. Lisa Featherstone, 'Breeding and Feeding: A Social History of Motherhood and Medicine in Australia, 1880-1925', PhD Thesis, Macquarie University 2003; 'Pathologising White Male Sexuality in late Nineteenth-Century Australia through the medical prism of excess and constraint', *Australian Historical Studies*, 41:3, 337-351; 'Rethinking Female Pleasure: purity and desire in early twentieth-century Australia' *Women's History Review*, 21:5, 715-731.

⁴⁷ Bongiorno, *Sex Lives*, 40.

My work offers a complement to quantitative approaches, and aims to extend an understanding of colonial sexuality by revealing the experiences of a mere handful of women.⁴⁸ I extract the details relating to each case and deconstruct the language that legal authorities used to describe the adulterous affair. I examine extensive news reports recounting legal proceedings, and probe the ideas of morality that obsessed colonial inhabitants. I identify the language used to describe illicit sex, and consider how an entrenched double standard held women to unimpeachable standards of virtue and chastity, but allowed men to indulge an 'animal nature'.⁴⁹

Sexual behaviours are now widely acknowledged as historically and culturally specific. Accordingly, it is possible to examine the context of complex cultural and social practices and attitudes in which sexuality is embedded.⁵⁰ While sex has a biological origin, how it is played out and understood is ultimately social, and varies across cultures.⁵¹ Obvious differences between such practices as arranged marriage, polygamy and unmarried cohabitation clearly refute an essentialist

⁴⁸ E.g. Bongiorno, *Sex Lives*; Daniels, *So Much Hard Work*.

⁴⁹ 'New South Wales Parliament', *The Sydney Morning Herald*, April 15, 1870, 2.

⁵⁰ Stephen Garton, *Histories of Sexuality: Antiquity to Sexual Revolution*, New York 2004, 1-2; Harry G. Cocks 'Approaches to the history of sexuality since 1750', Ch. 2 in *The Routledge history of sex and the body: 1500 to the present*, Sarah Toulalan and Kate Fisher (eds), New York, 2013, 39-40.

⁵¹ Robert Padgug, 'Sexual Matters: On Conceptualising Sexuality in History', *Radical History Review*, 20, 1979, 9.

view of sexual behaviour as trans-historical, fixed or purely biological.⁵²

My work argues that individual cases of adultery can extend our understanding of both colonial sexuality and feminine agency. Such cases overturn the idea that domesticity and reproduction determined the lives of all women. The prevalence of this assumption helps to explain why the agency of colonial women has been denied or overlooked. Prior to feminist history in the 1970s, most conservative historians emphasised masculine affairs and ignored the diversity of feminine experience. As business and economic historian Leanne Johns has observed, while historians happily assumed that women were 'wives, mothers, domestic servants, mistresses and prostitutes, they rarely expected them to be businesswomen or shareholders'.⁵³ Generalisations can be dangerous unless they are substantiated by individual examples.

Scholarship focusing only on this familial or domestic 'role' has helped to build a perception of victimhood for colonial women. A belief that reproductive and familial responsibilities dictated their existence⁵⁴ short-changes the unmarried and childless. In deeming the family the chief 'configuring structure' of colonial life for example, Patricia

⁵² Cocks, 'Approaches', 42.

⁵³ Leanne Johns, 'The first female shareholders of the Bank of New South Wales' 294.

⁵⁴ Allen, 'From Women's History', 225.

Grimshaw fails to recognise family diversity, perpetuating the idea that all women were either somebody's wife or somebody's mother. Grimshaw suggests that 'companionate' marriage prevailed in rural areas of colonial Australia.⁵⁵ Deriving conclusions from statistics and focusing primarily on the rural pioneering family, her work ignores class and other differences between women, and strives impossibly to generalise about the 'typical' or 'ordinary' woman or family.⁵⁶

One of the first works challenging a dominant narrative of victimhood was the collaborative feminist history of Australia, *Creating a Nation*,⁵⁷ a consciously gendered history recognising that women necessarily have different experiences from men. Broad in scope and focus, it aims to unsettle the long saga of androcentric national history. However, I would argue that whilst asserting feminine agency, men remain the chief actors. Most importantly, it does not extend an understanding of sexuality, and perpetuates the notion that all women were confined to the domestic sphere and subject to masculine dictates.

This tendency to generalise and categorise women in terms of familial responsibilities is also clearly evident in Beverley Kingston's analysis

⁵⁵ Patricia Grimshaw, 'Women and the family in Australian history: A reply to the real Matilda', *Historical Studies*, 18:72, 1979, 412, 416-417.

⁵⁶ Golder, *Divorce*, 1-2.

⁵⁷ Curthoys, 'Three Reviews', 196.

of women and work, *My Wife, My Daughter and Poor Mary-Anne*.⁵⁸ As a rally for equality in contemporary Australia, Kingston's work adds to the sense of victimhood for colonial women, using a vocabulary of passivity and subjection; 'victim', 'slave' and 'conscription' (this last in reference to marriage) are constantly repeated. Marriage and reproduction enslave Kingston's subjects, while she implies that women engaged unwillingly in sexual activity because it led so often to pregnancy. Kingston examines women only in relation to men, rather than as legitimate actors in their own right.⁵⁹

An inevitable consequence of seeing women as united chiefly by sex is that class and status distinctions are sidelined.⁶⁰ Projections of the 'average' family consisting of ten to twelve children are also of limited help.⁶¹ In reality, husbands sometimes died, couples had fertility problems, lived apart, experienced sexual difficulties or practiced primitive forms of contraception. Nor did a large family necessarily confine women to 'house arrest', as Judith Allen once suggested it did.⁶² Affluent women in particular had various means to 'offload' their children when it suited them. My research reveals women frequently engaging in the world outside of home and family for

⁵⁸ Beverley Kingston, *My Wife, My Daughter and Poor Mary-Anne*, *Women and Work in Australia*, Melbourne, 1975.

⁵⁹ Lake, 'Rewriting Australia: Rewriting Women', 99.

⁶⁰ Marian Simms, 'Writing the history of Australian women', in *Labour History*, 34, 1978, 93.

⁶¹ See for example Patricia Grimshaw, Marilyn Lake, Ann McGrath and Marian Quartly, *Creating a Nation*, Victoria 1994, 117; Bongiorno, *Sex Lives*, 41; Marilyn Lake, *Getting Equal: The History of Australian Feminism*, St Leonards, 1996, 19.

⁶² Allen, 'From Women's History', 234.

purposes of both employment and leisure and suggests that by no means all had the burden of a large family.

A theme of victimhood is similarly evident in two other early feminist works, Miriam Dixson's *The Real Matilda* and Anne Summers' *Damned Whores and God's Police*.⁶³ In both texts, women suffer persistent abuse and exploitation at the hands of men.⁶⁴ Emerging in the midst of the Women's Liberation movement of the 1970s, these canonical works are understandably saturated with anger and resentment.⁶⁵ In a determination to highlight structural oppression, however, both scholars deny the possibility of agency and resistance for women. Everything that happens to women occurs as the result of men's actions, which necessarily renders them passive and subjected.⁶⁶

As a journalist rather than historian, Summers admitted that her arguments about convict women relied on secondary rather than primary sources, and that her conclusions about convict women as prostitutes were based on the writings of male observers.⁶⁷ While she alleged that extant records pertaining to women furnished only

⁶³ Miriam Dixson, *The Real Matilda; Women and identity in Australia 1788 - 1975*, Australia, Ringwood, Australia, 1976; Anne Summers, *Damned Whores and God's Police, The Colonisation of Women in Australia*, Melbourne, 1994.

⁶⁴ Daniels, 'Feminism and Social History', 32.

⁶⁵ Dixson, op.cit. 13; Summers, op.cit. 60.

⁶⁶ Sally Alexander, 'Women, Class and Sexual Differences in the 1830s and 1840s: Some Reflections on the Writing of a Feminist History, *History Workshop* 17, 1984, 128.

⁶⁷ Summers, op.cit. 2.

‘fragmentary details’, newer scholars have overturned this claim.⁶⁸ Michael Sturma and Marilyn Lake, for example, have since shown that the opinions of such observers were so heavily coloured by their own obsessions and preconceptions as to render them suspect.⁶⁹ Alana Piper also suggests that the very actions Dixson and Summers describe as indicative of exploitation and subjection reveal instead a high degree of personal autonomy and agency amongst convict women.⁷⁰

While Dixson’s experimental psycho-historical approach was ambitious and innovative, its writers’ anger overwhelms *The Real Matilda*. As a historian, it is difficult to accept such contentions as that convict women had ‘a deeply crippled self-vision.’ Dixson draws an impossibly long bow to posthumously⁷¹ psychoanalyse entire populations of women without the evidence to facilitate this. Like many early works of feminist history, both Dixson’s and Summer’s works are located firmly in what Marian Sims once called the ‘poor woman’ category of writing. In depicting them as such, their female subjects became indeed ‘the victim of victims.’⁷²

⁶⁸ Ibid., 60; See for example Alana Piper, ‘Female convicts: Victims or Agents?’ in *Crossroads, An interdisciplinary journal for the study of history, philosophy, religion and classics*, 1:1, 2006, 55-60.

⁶⁹ Marilyn Lake, ‘Convict women as objects of male vision: An historiographical review’, in *Bulletin of the Centre for Tasmanian Historical Studies*, 2:1, 1988: 40-48; Michael Sturma, ‘Eye of the Beholder: The Stereotype of Women Convicts, 1788 -1852’, *Labour History*, 34, 1978, 3-19.

⁷⁰ Piper, ‘Female convicts: Victims or Agents?’ 57.

⁷¹ Daniels, ‘Women’s History’, 33.

⁷² Sims, ‘Writing the History of Australian Women’, 97.

While limited scholarship attends specifically to sexual activity based on the physical and emotional desires of women rather than men, two major feminist scholars have examined other aspects of female sexuality. Kay Daniels' work has certainly extended our understanding of colonial prostitution, but this necessarily explores sexual activity as economic rather than sexual in impetus.⁷³ However, while such research into prostitution is vital, it does not extend our knowledge of sexual activity based on women's physical and emotional desires.

Penny Russell's extensive research into Melbourne 'Society' and the lives of elite women is invaluable in understanding the relationship between social class and sexuality.⁷⁴ Her work is particularly important for situating notions of female gentility within sexuality and it is difficult to imagine exploring the life of an affluent woman without reference to her findings. However, Russell's research is heavily oriented towards normative standards of behaviour, and her subjects confess forbidden desires but do not necessarily expound the details of illicit love affairs. In addition, because it concentrates on the experiences of middle and upper class women, Russell's research offers little insight into the sexuality of the working class. However, I regard Russell's work as a crucial adjunct to my own investigations

⁷³ Daniels, *So Much Hard Work*, op. cit.

⁷⁴ Penny Russell, *A Wish of Distinction: Colonial Gentility and Femininity*, Melbourne, 1994, 92.

and it is difficult to imagine any exploration of elite womanhood that does not engage with her scholarship.

Housed at State Records, New South Wales, the colonial divorce case files contain abundant detail relating to physical and emotional sexual desire and are relatively untouched. Only two previous scholars have studied them at length, and neither adopts a case study approach. These works differ in purpose and focus only superficially on individuals who accessed divorce within the first legislative period. In writing the first comprehensive history of colonial divorce⁷⁵ and using materials as a collective from 1873 until 1901, Hilary Golder's approach to sources and subject is wide-ranging. Her *Divorce in Nineteenth Century New South Wales* is a mandatory starting point for anyone approaching the subject. The work reviews the social and political context of the divorce debate and various legislative developments, as well as probing differences between the cases of male and female petitioners. Individual cases are touched on only briefly.

The second scholar to write at length about divorce was Henry Finlay, an academic lawyer whose major review of legislative developments from 1858 to 1975 is a wide-sweeping parliamentary and legal history. It presents limited focus on human actors other than those men

⁷⁵ Golder, *Divorce*, op. cit.

involved in the law.⁷⁶ Finlay's legal background is invaluable in establishing the context of the divorce debate and presenting inter-colonial differences in legislation.⁷⁷ However, his work does not provide an understanding of individual women who divorced, whether at their own or a husband's instigation.

Recent publications by Catherine Bishop and Clare Wright have worked substantially to overturn ideas of passivity or victimhood for colonial women.⁷⁸ Both writers restore to the record accounts of independent women whose achievements historians have ignored or overlooked, either because of androcentric conceptual categories, or because new sources have been uncovered. Bishop's study of entrepreneurial women in Sydney shows women engaging in diverse businesses and heavily involved in the city's mercantile culture. However, it does not analyse the structural barriers against their participation in economic activities outside of a limited number of possibilities I would describe as 'trade' or traditional female occupations such as teaching.

⁷⁶ Henry Finlay, *To Have But Not To Hold: A History of Attitudes to Divorce and Marriage in Australia 1858-1975*, Sydney 2005; Australian Institute of Family Studies *Family Matters* 71, 2005, Obituary Henry Finlay, at [https://aifs.gov.au/sites/default/files/dr\(5\).pdf](https://aifs.gov.au/sites/default/files/dr(5).pdf), accessed 12.9.16.

⁷⁷ eg. 'Divorce and the Status of Women: Beginnings in Nineteenth Century Australia', *Australian Institute of Family Studies Seminar Paper*, Sept 20, 2001; 'Lawmaking in the Shadow of the Empire', 74-109.

⁷⁸ Catherine Bishop, *Minding Her Own Business, Colonial Businesswomen in Sydney*, Sydney, 2015; Clare Wright, *The Forgotten Rebels of Eureka*, Melbourne, 2013.

Wright's creative and innovative study of women at Eureka equally reveals their distinct presence there, starting innovative businesses, fossicking for gold and attending protest meetings. The work conveys an abundance of surprising detail about women's mobility and independence. Lending support to my chief argument, Wright contends that the history of the Eureka rebellion is based on a number of stereotypes that imply victimhood, like prostitutes and deserted wives, and 'obedient chattels'.⁷⁹ The primary value of her research in this context is in showing how colonial women could exercise personal agency, and in overturning the idea that they were confined to the domestic sphere. Significantly, Wright exposes the large numbers of women who led independent, single lives, without expecting or wishing to marry, quoting from letters and the contemporary press to show that women too had ambition and hopes for the future.⁸⁰

Whilst not denying the value of both Bishop's and Wright's contributions to the historiography, their work foregrounds feminine agency but does not concentrate overly on the structural barriers that simultaneously provided its context and limited its expansion. However, both have helped to overturn perceptions of colonial women as victims and contributed worthy female actors to the literature. In

⁷⁹ Clare Wright, 'New brooms they say sweep clean: Women's political activism on the Ballarat Goldfields 1854', *Australian Historical Studies*, 39:3, 2008, 306.

⁸⁰ Wright, *Forgotten Rebels*, eg 57-61.

addition, Bishop and Wright have successfully challenged unrealistic statistical data as to women's limited involvement in paid employment and suggested their far greater engagement within the public sphere.

British feminist historian Sally Alexander once contended that while men 'have much to answer for...the envy and fears and desires of one sex cannot carry all the determinants of history.'⁸¹ With this in mind, the current thesis presents the stories of four women who tried to shape their own lives, albeit under conditions outside of their individual control.⁸²

In what follows, I begin by laying out the legal requirements set out in 1873 for divorcing couples. This establishes a key vocabulary relating to the process of divorce, and the materials its protagonists were required to furnish to the court. I go on to present four separate case studies in chronological order.

My first case study describes the divorce case of Martha Anderson, a Sydney seamstress (1873). I continue on to the case of Fanny Teas, another Sydney-sider married to a prosperous merchant (1875). My third and fourth case studies present two women who spent considerable time in rural New South Wales, starting with Annette Miller, a woman of 'vagrant and disorderly' habits (1876). I end with

⁸¹ Alexander, 'Women, Class and Sexual Differences', 128.

⁸² June Purvis 'Using Primary Sources When Researching Women's History from a Feminist Perspective,' *Women's History Review*, 1:2, 1992, 291.

the complicated narrative of Jane Dibbs, who was married to a member of the mercantile elite (1880). The cases are spread out across the first legislative decade of divorce law, spanning social class and geography.

The thesis concludes with a discussion of what the case studies reveal about the relationship between gender and social class in colonial New South Wales. It outlines my key findings in relation to women's sexual agency, and suggests further directions for research.

The Long Arm of the Law: The Matrimonial Causes Act of 1873 and the Colonial Divorce Court.

Until 1858, the dissolution of marriage was not legally possible in Australia's colonies. Unhappy couples turned instead to informal alternatives such as cohabitation and desertion, or illegal options like bigamy. When it introduced its own divorce legislation in 1857, England suggested that for Empire parity the colonies do the same.¹ However, when New South Wales finally followed this advice in 1873, it had experienced sixteen years of parliamentary debate and proponents for divorce had made no fewer than eight failed attempts to see legislation passed.²

Why the colony took so long to pass its first *Matrimonial Causes Act* is a complex issue with no single or simple explanation.³ One of the primary motivations for those striving to implement divorce law was that deserted wives and children could not receive alimony without it, nor could women find another provider through re-marriage.⁴ Despite these concerns, both Protestant and Catholic churches between 1858 and 1873 waged a strident campaign against what they saw as a substantial threat to Christian marriage and public morality. Office-

¹ Finlay, *To Have But Not to Hold*, 50.

² Ibid., 99.

³ Golder, *Divorce*, 46.

⁴ Finlay, 'Lawmaking in the Shadow of the Empire', 74; J.M. Bennett, 'The Establishment of Divorce Laws in New South Wales', *Sydney Law Review*, 1963, 241.

holders in the major denominations petitioned the Legislative Assembly against divorce, some theologians arguing that remarriage constituted adultery and children of such unions would be theoretically illegitimate.⁵ Alongside exhaustive parliamentary consideration, letters, sermons and editorials explored the issue at length and in church assemblies regular discussion predicted dire social ramifications should divorce become available.⁶

With adultery its main criterion, passage of the first *Matrimonial Causes Act 1873* saw the law's gaze extend into the bedrooms of ordinary citizens, widening in scope from a previous focus on criminal sexual activity involving sodomy, bestiality and rape. Extra-marital infidelity became a civil offence and its prosecution entailed an extensive portfolio of detailed and wide-ranging documents.⁷ A typical case file contains at minimum a detailed petition outlining grounds for divorce, a marriage certificate or copy thereof and numerous supporting affidavits. It may also contain arrangements for alimony and child custody.⁸ Jury files tend towards the voluminous, whilst uncontested cases tried only by affidavit and interview in the Judge's Chambers are relatively meagre.

⁵ Bennett, 'Establishment of Divorce Laws, 243; See for instance the *Protestant Standard*, 23 April 1870 8.

⁶ Golder, *Divorce*, 17.

⁷ Frederick Harvie-Linklater (ed) *The Matrimonial Causes Act, 1873 (36 Vic., No. 9) : with the rules and regulations concerning the practice and procedure thereunder, of the 8th July 1873 ; to which are added notes and reports of all the cases heard or determined by His Honor Mr Justice Hargrave*, Sydney, 1878, 15.

⁸ Golder, *Divorce*, 10.

Not surprisingly, a prominent rhetoric of moral judgment and condemnation hung over the first years of the Court, seeping through the multiple documents required for each case. The language used to probe guilt and innocence brooked no deviation from a tightly controlled ideal of sexual conduct taking place only within the marital bedroom.⁹ However, an entrenched double standard prevailed. While women were believed to be ‘possessed of...the gift of chastity’ the belief was widespread that this was ‘a feeling which man could scarcely conceive’.¹⁰

Presumably, the double standard accounts for different grounds for male and female petitioners. While a husband could sue for adultery alone, wives had to demonstrate ‘aggravated adultery’. This involved proving that infidelity was compounded by an additional offence selected from the limited repertoire of bigamy, desertion, cruelty, incestuous adultery, sodomy and bestiality.¹¹ For women, the consequences of being legally pronounced an adulteress were extremely serious; already publicly shamed through press reports and court proceedings, this verdict also meant losing custody of children to the aggrieved petitioner.¹²

⁹ Foucault, *The History of Sexuality*, 11.

¹⁰ ‘New South Wales Parliament. Legislative Council.’ *The Sydney Morning Herald*, April 15, 1870, 2.

¹¹ This meant having sexual intercourse with somebody you were not legally entitled to marry; Golder *Divorce*, 8.

¹² The person suing for divorce was called the *petitioner*; the person charged with adultery was the *respondent*, and the person with whom they were alleged to have engaged in an affair was the *co-respondent*.

Furthermore, if a woman had inherited property, the court could confiscate it 'for the benefit of the innocent party and of the children of the marriage.'¹³ Even petitioning wives with cruel or abusive husbands faced losing their children, since the law held that a man had an inviolable common-law authority when it came to raising his offspring.¹⁴ Consider the case of Mary Richardson, who in 1874 'prayed for access' to her children after leaving an abusive husband. In determining that she should be allowed to see at least her two year old, Judge Hargrave announced that 'naturally ..it would be different if there had been any misconduct on Mrs. Richardson's part.'¹⁵ In a number of ways then, women's bodies could be subjected to disciplinary power as punishment for challenging masculine authority and control.¹⁶

Despite an overt sexual prudery, the Divorce Court's overwhelming concern was clearly with intimate behaviour. Sexual (mis)conduct lay at the heart of its operation. The Court¹⁷ investigated marital and extra-marital relationships in strictly-controlled ways, using a language of sexual activity framed in euphemism; lawyers and witnesses referred to intercourse as 'having connexion' and described it variously as 'improper,' 'illicit' and even 'illegal' and 'criminal'.

¹³ No. IX *An Act to confer jurisdiction on the Supreme Court in Divorce and Matrimonial Causes* 1873, Clause 28.

¹⁴Ex Parte Richardson', *The Sydney Morning Herald*, Dec 18, 1874, 5.

¹⁵ Ibid.

¹⁶ Angela King, 'The prisoner of gender; Foucault and the disciplining of the female body', in *Journal of International Women's Studies*, 5:2, 2004, 29.

¹⁷ When 'Court' is capitalized, it refers to the Divorce Court.

Inaugural Judge John Fletcher Hargrave contended his personal vigilance as to affidavits containing ‘improper or scandalous detail’ and could order such documents sealed if he deemed it necessary. This injunction aimed to protect the wider community from ‘salacious’ information, and dissuade those ‘of a prurient disposition’ from attending Court.¹⁸

The process of divorce began with a petition presented to the judge and a number of supporting affidavits confirming its contents.¹⁹ The petitioner was also required to enter ‘a full and clear affidavit denying collusion and connivance’ with her or his spouse.²⁰ This was to prevent unhappy couples from manipulating the justice system without genuinely satisfying strict legal requirements.

When the *Matrimonial Causes Act 1873* was assented to in March of that year, the new Divorce and Marital Causes Jurisdiction published the Act in its entirety in the *Government Gazette* and major urban and rural newspapers.²¹ Along with detailed information about costs, the

¹⁸ ‘Divorce and Matrimonial Causes Jurisdiction: Opening of the Court’, *The Sydney Morning Herald*, July 10, 1873, 2.

¹⁹ An affidavit is a written statement prepared by a party or witness and in contemporary court process is still the main way that evidence is presented to a court (Family Court of Australia, at <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/affidavits/preparing-an-affidavit>, accessed 5.7.16).

²⁰ Harvie-Linklater, *The Matrimonial Causes Act, 1873*, 15.

²¹ ‘An Act to confer jurisdiction on the Supreme Court in Divorce and Matrimonial Causes’, *New South Wales Government Gazette*, March 7, 1873, 729; e.g. *The Sydney Morning Herald*, *Illawarra Mercury*, *Australian Town and Country Journal*, *Empire*, *Evening News*, *The Cornwall Chronicle*, *The Monaro*

Court advertised the precise format required of divorce petitions, providing an explicit procedural account to ensure no hapless petitioner was rejected at the first hurdle because of errors in paperwork.²² The papers were formulaic and repetitive, with petitioners merely filling in blank sections to achieve the desired result. Once the mandatory details were completed, however, there was considerable leeway to enter additional documents such as letters; one file even includes a roughly sketched floor plan indicating who slept where and with whom, no doubt to prove 'impropriety'.²³

Through its early publications, the Court conveyed to the wider population a strict temporal regimentation of processes supporting its disciplinary control. Such regimentation is eerily reminiscent of Foucault's hypothetical prison timetable- inflexible, dogmatic and precise to the last detail.²⁴ Cases proceeded in a highly rule-bound and bureaucratic manner. Rigid timeframes dictated the number of days to elapse before the next citation could be served. Each citation required an affidavit to attest to the precise circumstances of its service. The judge immediately rejected documents failing to meet these exact standards and could summon the petitioner to his

Mercury and Cooma and Bombala Advertiser, Queanbeyan Age, The Maitland Mercury and Hunter River General Advertiser.

²² 'Form of Petition for Divorce To his Honor John Fletcher Esq., Judge of the Court for Divorce and Matrimonial Causes in the colony of New South Wales', *Queanbeyan Age*, Thursday July 17, 1873, 4.

²³ SRNSW NRS13594 (0109/1879).

²⁴ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 1975, Penguin edition, London, 1991, 6-7.

Chambers, no doubt an intimidating experience that reinforced the Court's power and authority.²⁵

Cases tried by juries of four to twelve men were heard on Tuesdays, Wednesdays and Fridays, but the Court sat only four times a year, in February, May, August and November.²⁶ Jury cases were tried at the Central Police Court in Darlinghurst, while those proceeding by affidavit and interview in the judge's Chambers took place at the King Street division of Sydney's Supreme Court. An entrenched air of criminality thus clung to the entire process, stemming from the Act's and the Court's obsession with sexual conduct outside of prevailing social norms.

For those cases tried by jury (a decision left to the judge), subtle techniques of spatial control supported the Court's temporal regimentation. Various legal protocols imposed these techniques upon those appearing in the courtroom and were evident in the upright stance and authority of the barrister, a bewigged and gowned judge, and strict directions as to how and where people should stand and speak. Those in the witness box stood rather than sat, sometimes for hours at a time while they were cross-examined. An attending audience eagerly looked on, in high-profile cases thronging the public gallery. This regimented temporal and spatial framework encompassed

²⁵ Harvie-Linklater *Matrimonial Causes Act*, 15.

²⁶ 'Regulations for the Divorce Court', in *The Sydney Morning Herald*, July 11, 1873, 2.

the movements as well as physical and psychological condition of those appearing in Court, whether as participant or onlooker.²⁷

When combined with a discourse of criminality, such techniques involved all who entered in vital processes of judgment and condemnation, to achieve an over-arching aim of social and moral control. Legal discourse was permeated with notions of guilt and innocence, respectability and depravity, which the wider community co-opted and disseminated via gossip and character assassination. That this took place is evident in how frequently affidavits referred to rumour ('I heard talk') to prove a cohabitating couple was not legally married, or had behaved improperly. 'Justice' demanded the exposure of adultery, and accusations of extra-marital sexual conduct were 'grave charges' indeed.²⁸

Within the law, the Divorce Court judge had substantial leeway. He was at liberty to condemn an adulterous wife as 'a bad woman,' or judge a husband according to whether he was a good provider, drank excessively, gambled, or was 'notorious to police.'²⁹ The judge could also ask Sydney's Inspector-General of Police to 'make inquiries' about a petitioner and respondent, and reveal his findings to the jury. Trial was as much by character assassination as supposed evidence.

²⁷ See Maren Wehrle, 'Normative Embodiment. The Role of the Body in Foucault's Genealogy. A Phenomenological Re-reading.' *Journal of the British Society for Phenomenology*, 47:1, 2016, 58.

²⁸ 'Ex parte Shepherd: Re Dibbs v Dibbs and Blair' *New South Wales Law Reports*, 5, March 1880, 3.

²⁹ SRNSW NRS 13594 (0024/1875).

In the Court's early years, the dissolution of a marriage was time-consuming, difficult and expensive. However, its high cost did not mean divorce was only for the rich. To the contrary, many of these first cases involved working class couples, whose lack of means saw them go undefended. This meant the 'accused' 'did not appear or make a statement denying charges. Many women whose husbands petitioned simply ignored legal proceedings. They could refuse to answer the door when someone knocked with an official-looking paper or walk away when documents were served, leaving citations and subpoenas on the ground.³⁰ This was possibly the only form of resistance they felt open to them.

Some women left the colony permanently to avoid scandal, no doubt to start life afresh far away.³¹ In this event, the petitioner's lawyers could publish an announcement that the case would be heard in the absence of the (named) respondent. This was yet another way to destroy a woman's reputation and social standing. A few brave souls attended the courthouse to swear an affidavit explaining their version of events. While this involved no expense, it was confronting, especially for those with limited literacy and no experience of the law. The judge could then announce his disregard for such testimony,

³⁰ SRNSW NRS 13594 (0024/1875)

³¹ E.g. SRNSW NRS 13594 (0024/1875); SRNSW NRS 13594 (0093/1879).

leaving the respondent no further redress.³² Against such strategies, only a few of the more courageous and resourceful took the stand.

Divorce in colonial New South Wales was not for the faint-hearted. As the case studies reveal, the process of marital dissolution saw at least one party of a marriage greatly reduced in either wealth or social standing, and often both. For the adulterous woman, divorce was an ordeal that often led to social annihilation and financial destitution. It is small wonder then that from a New South Wales population of almost nine hundred thousand in the 1870s, only a very few were prepared to take such a drastic step.³³

³² SRNSW NRS 13594 (0024/1875)

³³ ABS, population statistics NSW 1875, at <http://www.abs.gov.au/ausstats/abs@.nsf/Products/F3AF616665E821A6CA2575D2001AA12E?opendocument>, accessed 3.9.16; Golder, *Divorce*, 101.

Chapter Two

Martha Anderson- The Seamstress and the Commercial Traveller

When charged with adultery, surprisingly few women obtained legal representation to defend themselves.¹ In some cases, this was because they were not aware of their entitlement to legal counsel. In others, they had long cohabited with another man and may have had children since leaving their marriage.² Perhaps these women regarded divorce as a non-event. No doubt, the public humiliation associated with a court appearance also deterred many from engaging in legal process.³ The small number of women who appeared in court thus renders particularly surprising that a penniless seamstress obtained an eminent legal team to refute her husband's petition. Equally curious is that Martha Anderson⁴ convinced judge and jury of her innocence, and emerged with reputation -and marriage- intact.

The Anderson divorce was the first case to be tried by jury in the new Divorce Court.⁵ Only a handful of people attended proceedings,⁶ possibly because the wider public was not yet aware of the potential excitement such events provided.⁷ Perhaps the marital disruptions of

¹ Golder, *Divorce*, 141.

² Ibid., 144; See for example SRNSW NRS 13594 (0012/1874)

³ McKenzie, *Scandal*, 94.

⁴ SRNSW NRS13594 (0007/1873).

⁵ 'Divorce Court, Before his Honor Mr. Justice Hargrave', *Sydney Mail and New South Wales Advertiser*, March 7, 1874, 306.

⁶ Ibid.

⁷ McKenzie, *Scandal*, 10, 92.

a lowly seamstress and commercial traveller were of little interest to a community weaned on scandal and salacious gossip.⁸ Golder certainly suggests that less prominent couples received little attention either in court or in the press.⁹ The fact that co-respondent Charles Thompson did not appear and was not represented¹⁰ possibly also rendered the trial of less interest.

The details of the case reveal a storyline that is almost a cliché: working-class girl meets middle-class boy, begins a sexual relationship and falls pregnant, upon which the couple hastily marry to ensure the child's legitimacy. In this instance, however, marital harmony was soon disrupted when Frederick received an anonymous letter alleging Martha's 'grossly immoral conduct' with a married man.¹¹ It maintained that their newborn baby was not Frederick's child, and that together Martha and her lover had conspired to convince him otherwise.

The letter's writer depicted Martha as a more than willing sexual partner, and described 'enjoying himself' on her sofa the day after the marriage ceremony, and sometimes 'twice a day.'¹² He contended that she 'cared more for one hair on his head than she did for her entire

⁸ McKenzie, *Scandal*, 10.

⁹ Golder, *Divorce*, 106.

¹⁰ 'Divorce Court, Before his Honor Mr. Justice Hargrave', *Sydney Mail and New South Wales Advertiser*, March 7, 1874, 306.

¹¹ 'Divorce Court', *Sydney Morning Herald*, Feb 27, 1874, 3.

¹² SRNSW NRS13594 (0007/1873).

husband's body' and was 'head over ears and heels' in love with him.¹³ Although unsigned, the letter contained clues that enabled Frederick to trace it to Charles Thompson, a married man with whom he once worked in the remote town of Tumut.

Although Martha initially proclaimed her innocence, she eventually confessed in front of Frederick and her sister Janet that she was indeed 'improperly intimate' with Thompson before and after her marriage.¹⁴ Frederick immediately went to see his employer Sigmond Hoffnung for advice, before making an appointment with his solicitors.¹⁵ Highly successful, Sigmond Hoffnung was prominent in Sydney's Jewish community and the auditor of its York Street Synagogue.¹⁶ Frederick's lawyers were well acquainted with his family and agreed to represent him for a moderate sum. Eliciting advice from these older male powerbrokers suggests – not surprisingly – Frederick sought reassurance by aligning himself with the realm of male privilege and authority.¹⁷ Martha's infidelity was naturally a blow to his pride, reputation and sense of honour.¹⁸

¹³ SRNSW NRS13594 (0007/1873).

¹⁴ 'Divorce Court', *Evening News*, Feb 27, 1874, 2.

¹⁵ 'Divorce Court', *Empire*, Feb 27, 1874, 3.

¹⁶ G. F. J. Bergman, 'Hoffnung, Sigmond (1830–1904)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, <http://adb.anu.edu.au/biography/hoffnung-sigmond-3779/text5971>, published first in hardcopy 1972, accessed online 9 July 2016.

¹⁷ Saunders and Evans, 'Introduction: Gender and Reproductive Relations', *Gender Relations*, 99.

¹⁸ Finlay, 'Victorian Sexual Morality', 48.

There is little doubt Frederick felt compelled to instigate divorce proceedings. Nor did he question Thompson's honesty rather than his wife's; Martha had introduced 'spurious issue' into his household and it would not do.¹⁹ As Keith Thomas argued in probing the double standard, this reflected the idea that men feared a woman's infidelity because of its potential to introduce an illegitimate child into the household.²⁰ In colonial society, the cult of chastity held that a woman's body belonged only to her husband, and to share it with another man was an unforgiveable transgression: she was his property.²¹

Various testimonies within the case file offer further intriguing insight into manly conduct and masculinity in the late colonial era. Of particular interest are a number of affidavits sworn by Frederick's male associates. An important component of such statements lay in delivering personal moral judgment as to the behaviour of those charged, based on gendered ideals of how men and women should conduct themselves. This simultaneously condemned the wrongdoer and established the witness as someone above such transgressions. Much the same as middle-class men would later disparage the larrikin as unmanly, the men testifying against Charles Thompson strove

¹⁹ Keith Thomas, 'The Double Standard', *Journal of the History of Ideas*, 20:2, 1959, 195.

²⁰ Ibid., 210.

²¹ Golder, *Divorce*, 70.

through the discourse of noble manliness to distance themselves from his disreputable conduct.²²

Accordingly, they took pains to express their contempt of Thompson's ungentlemanly conduct. Thompson was well known for bragging about his sexual exploits, having told several witnesses he slept with Martha before and after her marriage. Several of them 'detailed disgusting conversations' with Thompson,²³ but Judge Hargrave declared that the evidence was not against Mrs. Anderson, and unless Thompson's statements could be proven, these testimonies would just convince everyone concerned that he was 'a blackguard'.²⁴

It seems that Thompson's ungentlemanly conduct offended Hargrave's sense of the masculine ideal, and this may account for his willingness to suspend disbelief concerning Martha's virtue. Golder suggests that a judge's verdict in the Divorce Court was influenced more by his assessment of character and sexual stereotyping than by verifiable evidence.²⁵ Nor was the fact that Martha 'had to get married' such an issue, so long as she had entered the conjugal state by the time she

²² Cameron White, 'Promenading and picnicking: The performance of middle-class masculinity in nineteenth-century Sydney', *Journal of Australian Studies*, 30:89, 28.

²³ 'Divorce Court', *Sydney Mail and New South Wales Advertiser*, March 7, 1874, 306.

²⁴ 'Divorce Court, Thursday', *Empire*, February 27, 1874, 3.

²⁵ Golder, *Divorce*, 10.

gave birth.²⁶ Martha was thus respectable when she appeared before the judge.

As legal historians acknowledge, trial depositions were statements coached by manipulative lawyers, rather than a simple recalling of event,²⁷ and so whether or not Thompson's sexual boastings genuinely offended these young men is not the primary issue. Of greater value is what such statements reveal about the idealized version of manhood these men understood they were expected to convey. Their accounts offer valuable insight into colonial normative masculinity, and confirm that witness statements evolved from within a 'highly rigid regulatory frame' that shaped and confined them. Accordingly, 'the script' available to these young men was selected from a limited number of options before they took the stand.²⁸

Given the court's tendency to view women as either 'good' and 'bad,'²⁹ Judge Hargrave may have favoured Martha because none of the young men who testified had anything bad to say about her, and admitted

²⁶ Renate Howe and Shurlee Swain, Ch. 8, 'Fertile Grounds for Divorce: Sexuality and Reproductive Imperatives', in Saunders and Evans, (eds), *Gender Relations in Australia: Domination and Negotiation*, Sydney, 1992, 167.

²⁷ Gilling 'Frenzy', 28, 37.

²⁸ Sara Salih, Chapter 3, 'On Judith Butler and Performativity', in *Judith Butler*, Routledge Critical Thinkers: Essential Guides for Literary Studies, United Kingdom, 2002, 55-56.

²⁹ Joy Damousi, 'Beyond the 'Origins Debate': Theorising sexuality and gender disorder in convict women's history', *Australian Historical Studies*, 27:106, 1996, 59-60; Henry Finlay, 'Victorian Sexual Morality: A Case of Double Standards', *Australian Journal of Law and Society*, 3, 1998, 43.

that they 'knew nothing against her character.'³⁰ To the contrary, Martha presented as a respectable and hard-working young mother. As Christine Twomey has shown, legal authorities treated women very differently if they perceived them as 'bad women', but if a woman convinced the court that she was 'a deserving case', she was far more likely to be treated generously.³¹ Clearly, the concept of respectability was an integral element in conceptions of 'deserving' and 'undeserving'. At the same time, however, the Divorce Court clearly regarded a husband's duty as 'synonymous with providing support'.³² It seems that John Hargrave judged harshly Frederick's unwillingness to support Martha.

Like the young men who appeared in court, Martha had a similarly limited repertoire at hand. With her reputation at stake, her only hope lay in persuading others she was innocent; in court, her confessions of impropriety before marriage imply an effort to admit wrongdoing. Within the Christian discourse of confession and absolution, Martha managed to persuade the court that while she knew she 'done wrong', she wanted to purge her conscience.³³ Evidently, her court performance was convincing. It seems likely that Judge Hargrave saw

³⁰ 'Divorce Court, Thursday', *The Evening News*, Feb 27, 1874, 2.

³¹ Christina Twomey, 'Courting men: mothers, magistrates and welfare in the Australian colonies', *Women's History Review*, 8:2, 1999, 235.

³² Ellen Ross, 'Fierce questions and taunts': married life in working-class London, 1870-1914, *Feminist Studies*, 8, 580-581, cited in Twomey, 'Courting men', 235.

³³ 'Divorce Court', *Sydney Morning Herald*, Feb 27, 1874, 3.

Martha Anderson as one of the deserving poor as well as a vulnerable wife and mother, and relied on these perceptions to guide him.

When Frederick lodged his petition for divorce in October 1873, Martha was 24 and he was 27. The couple met seven years before on George Street – a ‘favoured promenade’ for those trying to avoid Sydney’s narrow and chaotic streets³⁴ – when Martha worked at a clothing manufactory nearby and Frederick was a commercial traveler for a prosperous Pitt Street warehouse company.³⁵ Frederick told the court he initially resisted talking to Martha because of her ‘lower social rank’, but she obviously ‘wished to become acquainted.’³⁶

Evidently overcoming his reticence, the pair began ‘walking out’ which quickly led to ‘improper intimacy’.³⁷ Frederick regularly travelled to New Zealand for business and was often away for several months. This was the case in late November 1872, when he returned from a lengthy absence. Discovering within a fortnight that she was pregnant, Martha began several weeks of ‘frequent importunities’ for Frederick to marry her.³⁸ Not surprisingly, her state of mind was one

³⁴ Michael Cannon, *Life in the Cities: Australia in the Victorian Age* 3, Melbourne 1975, 31.

³⁵ ‘Messrs. Hoffnung and Co.’s New Warehouse’, *The Sydney Mail and New South Wales Advertiser*, February 3, 1872, 138.

³⁶ Divorce Court: Before His Honor Mr. Justice Hargrave’, *Sydney Mail and New South Wales Advertiser*, March 7, 1874, 306.

³⁷ ‘Divorce Court’, *Empire*, Feb 27, 1874, 3.

³⁸ Ibid.

of desperation. Despite a high colonial rate of illegitimate births,³⁹ the prospect of having a child out of wedlock was 'a Fate Worse Than Death',⁴⁰ deeming a woman unrespectable.⁴¹

In contrast, masculine culture lauded the bachelor state, and Frederick Anderson was obviously reluctant to renounce his independence. It is likely that if Martha had not fallen pregnant, no proposal would have been forthcoming. Sydney in the 1870s offered a range of sexual options for men, chiefly via widespread prostitution,⁴² and Frederick had after all been enjoying 'illicit intimacy' with Martha for several years.⁴³

Clearly forced into marriage, on January 28th, 1873 Frederick succumbed to Martha's desperation and accompanied her to the Reverend Dr. James Fullerton's so-called 'marriage shop.'⁴⁴ Fullerton was widely known to perform marriage rites without prior notice and asked no questions of the couple presenting at his front door.⁴⁵ This

³⁹ Patricia Grimshaw and Charles Fahey, Chapter 9, 'Family and community in nineteenth-century Castlemaine', in Patricia Grimshaw, Chris McConville and Ellen McEwen, (eds), *Families in Colonial Australia*, Sydney 1985, 94.

⁴⁰ Ruth Teale, *Colonial Eve: Sources on Women in Australia 1788 – 1914*, Melbourne, 1994, 135.

⁴¹ Saunders and Evans 'Introduction: Gender and Reproductive Relations', *Gender relations in Australia*, 101.

⁴² Renate Howe and Shurlee Swain, 'Fertile Grounds for Divorce: Sexuality and Reproductive Imperatives', in Saunders and Evans, *Gender Relations*, 161.

⁴³ 'Divorce Court', *Empire*, Feb 27, 1874, 3.

⁴⁴ Ibid.

⁴⁵ Alan Dougan, 'Fullerton, James (1807–1886)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, <http://adb.anu.edu.au/biography/fullerton-james-3582/text5547>,

suggests a step taken on impulse; a 'marriage shop' was also much cheaper than a church ceremony.⁴⁶ Finding Charles Thompson at Martha's home, the pair set off in a hansom cab to Sydney's South Head for their first night as husband and wife. (To those unwilling or unable to risk exposure or expense by renting a room, this was popular for sexual encounters,⁴⁷ but a questionable choice on this occasion.)

That Frederick chose to spend his first night as a married man in this way was only one of many indications he did not consider the marriage bona fide. Surprisingly, the couple continued to live apart and although Frederick stayed on and off with Martha, they did not set up a separate household. It appears likely that Frederick's family was unaware of his marriage, since they are absent from trial documents, and I have been unable to locate them elsewhere.

Travelling to New Zealand shortly after January, Frederick asked Martha to join him in Auckland, and so in June or July of 1873, heavily pregnant, she sailed alone. This is impressive given that many colonial women remained at home when their condition became obvious.⁴⁸ Arriving to find no one to meet her, and nowhere to stay, Martha simply set to and made her own arrangements. Frederick's

published first in hardcopy 1972, accessed online 11 September 2016': e.g. 'The Rev. Dr. Fullerton's Case', *The Argus*, July 29, 1851, 2.

⁴⁶ Teale, *Colonial Eve*, 157.

⁴⁷ Caroline Ford, 'Gazing, Strolling, Falling in Love: Culture and Nature on the Beach in Nineteenth-Century Sydney', *History Australia*, 3:1, 2006, 08.6.

⁴⁸ Teale, *Colonial Eve*, 121.

apparent annoyance that she failed to use an assumed name in Auckland ('Mrs. Henderson') also implies he did not intend to acknowledge her as his wife.⁴⁹

Discovering after only a few weeks that Auckland did not suit her, and possibly homesick for her sisters with confinement imminent, Martha returned to Sydney against Frederick's wishes. On the stand, she professed no wifely remorse at doing so. Frederick deposed that he hoped the baby would be born in New Zealand to avoid 'suspicion upon his wife's fame,'⁵⁰ but given that marriage had ensured Martha's respectability, it is more likely he simply wanted her out of the way. Whatever the case, Martha returned home in late July or early August, Frederick arrived on August 12th and baby Percy Frederick Anderson was born the following day.⁵¹

When proceedings began, Martha lived in Strawberry Hills, a working class suburb popular with seamstresses and characterized by poor quality housing built near swampland.⁵² She shared a four-roomed house with her baby and five other adults, including an unmarried and married sister with her husband, and another couple related to the sisters. These and other domestic details reveal how Martha's familial group functioned as an economic unit, providing essential

⁴⁹ 'Divorce Court', *Empire*, Feb 27, 1874, 3.

⁵⁰ Divorce Court, Thursday', *Evening News*, Feb 26, 1874,3.

⁵¹ Birth Certificate of Percy F Anderson, born August 13, 1873, Registrar of Births, Deaths and Marriages NSW, 2239/1873.

⁵² Shirley Fitzgerald, *Rising Damp: Sydney 1870 - 1890*, Melbourne, 1987, 27.

emotional, financial and domestic support.⁵³ Certainly, her sisters stood by Martha throughout the trial and its aftermath, and it was evident that she managed only by pooling resources with them when her husband withdrew financial support.

The household was evidently a busy one, with people dropping casually by to play cards or just spend time chatting and 'joking around'.⁵⁴ The McLean's moved freely throughout the local area and Sydney's main business streets, traveling to and from work usually on foot, as omnibus service to the area was woefully inadequate.⁵⁵ Strawberry Hills was near Sydney's Moore Park, a large recreational area they and their friends visited by day and evening. Martha on occasion attended a concert and was evidently outgoing and engaging.

Witnesses described frequently meeting friends and acquaintances on nearby streets, and certainly the sources show that Martha and her sisters were by no means confined to the domestic realm.⁵⁶ For the working class in particular, this concept appears as unrealistic then as it is now.⁵⁷ Given their lengthy working hours (her sisters were also 'needleworkers'),⁵⁸ the daily walk to and from work and frequent

⁵³ Grimshaw et al. *Creating a Nation*, 161-2.

⁵⁴ SRNSW NRS13594 (0007/1873).

⁵⁵ 'A plea for the inhabitants of Strawberry Hill', *SMH*, Jun 11, 1877, 2.

⁵⁶ Raelene Frances, 'Never done, but always done down', in Verity Burgmann and Jennifer Lee (eds), *Making a Life: A People's History of Australia Since 1788*, Victoria 1988, 124.

⁵⁷ Teale *Colonial Eve*, 80.

⁵⁸ Fitzgerald, *Rising Damp*, 24.

strolling in the nearby park or local streets, the women were more often out than in.

Despite its economic challenges, working class life evidently provided many opportunities for leisure and enjoyment. Testimonies reveal a definite freedom amongst the many who visited the McLean household. Walking offered a cheap form of transport and diversion, and an easy escape from cramped living conditions. Trial documents convey a lively street life and substantiate the idea that Sydney was predominantly a city for walking.⁵⁹

Within a small community, however, privacy was limited and anonymity impossible;⁶⁰ several testimonies derived from what witnesses saw whilst out walking. Any visible transgression of conduct served to separate the respectable and disreputable within the community.⁶¹ Given that people were on the constant lookout for scandal, it is doubly surprising that Martha remained 'respectable' when the case ended.

During the trial, Frederick admitted to marrying Martha only because he realized 'he did her a wrong' in seducing her.⁶² He clearly felt unable to acknowledge her socially, introduce her to his family or

⁵⁹ Ibid., 43.

⁶⁰ McKenzie, *Scandal*, 10.

⁶¹ McKenzie, *Scandal*, 47.

⁶² SRNSW NRS13594 (0007/1873).

establish a household with her, and yet was equally unable to stay away from her. He did however 'instruct her' to give up working, no doubt as a matter of male pride. It is not surprising that Martha so easily followed this first husbandly edict. In Sydney's 'rag trade', seamstresses were generally exploited, working long hours for grossly inadequate pay despite the high level of skill required.⁶³ If like many other young women at this time, Martha wanted to set up a home, it was probably as much to escape her daily grind as to realise a domestic fantasy. Given also that women expected to gain their status through a husband, she could have been forgiven for hoping to shed her working class origins.⁶⁴

Furthermore, in a growing cult of respectability, the ideal husband was expected to provide adequately for his family, and this meant a wife who did not work outside the home.⁶⁵ Yet Martha made much of her disappointment in Frederick as a provider, complaining that he 'did not even furnish or provide a house or residence for (us) to live in, or any furniture or other things for me to use in the said house.'⁶⁶ Her individual experience of marriage contradicts the notion that it always provided an economic solution to a woman's financial struggle.⁶⁷ Martha's sense of grievance suggests she saw marriage as a

⁶³ Edna Ryan and Anne Conlon, *Gentle Invaders: Australian women at work*, Victoria, 1989, 31; Fitzgerald, *Rising Damp*, 24.

⁶⁴ Teale, *Colonial Eve*, 83.

⁶⁵ Saunders and Evans, 'Introduction: Gender and Reproductive Relations', *Gender Relations*, 101.

⁶⁶ SRNSW NRS13594 (0007/1873)

⁶⁷ Fitzgerald, *Rising Damp*, 195.

partnership based on economics,⁶⁸ and believed that Frederick had failed to honour his side of the bargain.

When Martha appeared in court to refute Frederick's charges, she was experiencing considerable financial hardship. The cost of trying to raise a baby alone was overwhelming, and Frederick had renounced his financial responsibilities along with paternity. As the mother of a young baby, her working hours were necessarily reduced, and Martha had been unable to earn more than twelve shillings a week. The colonial employment system did not recognize women as breadwinners, and women's wages were far lower than men's to begin with.⁶⁹ Perhaps Martha's story of abandonment and struggle generated considerable recognition of her difficult circumstances. Evidently, it was enough to foster substantial sympathy on the part of judge and jury, who took only five minutes to find her not guilty of adultery, and the case was dismissed.

It is tempting to assume that anti-Semitism was at work to sway the Court, given that Frederick, his employer and legal team were all Jewish. However, Sydney's Jewish community was small and apparently integrated successfully into the wider community,⁷⁰ so perhaps a more likely explanation is that John Hargrave based his

⁶⁸ Twomey, 'Courting men', 236.

⁶⁹ Margaret Anderson, Chapter 11, 'Good Strong Girls: Colonial Women and Work', in Saunders and Evans, *Gender Relations*, 229.

⁷⁰ 'Antisemitism in Australia' at <http://guides.naa.gov.au/safe-haven/chapter6/antisemitism.aspx#chap6note57>

verdict primarily on his assessment of Martha's character and dismissed circumstantial evidence because 'the very fact of criminality' could not be proved.⁷¹

Martha's defence team made much of the fact that Frederick's lawyers had not asked Janet McLean to testify and Judge Hargrave would not admit Martha's confession to Frederick because it was between husband and wife. Equally intriguing is that the evidence of the letter and Frederick's personal testimony were not enough to convince the court of Martha's guilt, while other divorce cases were predicated on equally circumstantial material.

Martha's story counters the suggestion that within the domestic realm, male dominance was a given.⁷² She frequently opposed her husband's wishes and professed no remorse at doing so. Frederick's admission that Martha 'would not consent to the performance of the rite' of circumcision provides an intriguing glimpse into the couple's balance of power.⁷³ While her refusal would have upset him, she placed maternal obligation above wifely obedience and clearly, he was not prepared to push the issue. Their example confirms the idea that

⁷¹ 'Divorce Court This Day', *Evening News*, Feb 27, 1874, 3.

⁷² See for example Grimshaw et al., *Creating a Nation*

⁷³ 'Divorce Court', *The Sydney Mail and New South Wales Advertiser*, March 7, 1874, 306.

it is unrealistic to stereotype all men as powerful and all women as subjected.⁷⁴

Despite her disenfranchised social position, Martha Anderson was no victim. She acted with intent to satisfy her own needs and desires. This began by flirting with Frederick as she walked along the street, overturning the idea that only men initiated and dictated courtship.⁷⁵ It extended to her willing engagement in a sexual relationship with Thompson, and her entreaties that Frederick marry her. Martha's personal agency is also evident in her confident undertaking of a rugged sea voyage, and independent navigation through a strange city. She made significant decisions such as when to return from Auckland, and refused to have her baby circumcised. Most impressively, she negotiated a powerful masculine legal system, retaining her dignity and respectability despite substantial attacks on her character.

Most significantly, Martha's story reveals some of the many ways that social class determined individual circumstances. Her working class background meant that being a deserted wife and mother did not necessarily mean her family's abandonment. She was able to earn an independent income, however small. Martha moved freely around her

⁷⁴ Saunders and Evans, 'Introduction: Gender and Reproductive Relations', *Gender Relations*, 102.

⁷⁵ Grimshaw et al, *Creating a Nation*, 93.

local neighbourhood and appears to have been part of a friendly community.

However, the case also reveals the unfairness of the colonial gender system, whereby Frederick's future was guaranteed because of his sex and social class. His employment at Hoffnung and Co provided a definite career path, while Martha had no such avenue. As she told the court, she and her sisters had only what they could earn 'through their own labour'.⁷⁶ Although declared insolvent as the result of trial costs, Frederick quickly recouped his losses and his estate was released from sequestration within twelve months.⁷⁷ This would only have been possible with the financial support of family and friends.

A news report summarizing the divorce cases conducted between 1873 and 1879 described the Anderson case as the only one that 'fell through'.⁷⁸ Despite Frederick's insolvency, and the revelations he had heard during the trial, the couple reconciled almost immediately. Six months later, Martha was back in court charging her husband for 'having neglected to provide her with adequate means of support';⁷⁹ this was dismissed when she admitted that they lived together occasionally 'until Thursday last'.⁸⁰ Frederick and Martha Anderson

⁷⁶ SRNSW NRS13594 (0007/1873)

⁷⁷ Frederick Augustus Anderson Insolvency, # 11867, March 19, 1874; State Records NSW.

⁷⁸ 'The Divorce Court', *Evening New*, Sept 16, 1879, 6.

⁷⁹ Anderson v Anderson', *Empire*, June 9, 1874, 4.

⁸⁰ Ibid.

went on to have two more children and may well have had a long and happy marriage after its initial upheavals.⁸¹

The Anderson case suggests that the ability to earn an income could provide a sense of personal empowerment that affluent women often achieved less readily. In this way, to see colonial women as in any way cohesive or homogeneous is patently false. While *all* women experienced gender oppression, Martha Anderson's story reveals how within the broader category of 'women,' additional variables greatly shaped a woman's life.⁸²

Despite her spirited nature, the details of Martha's daily life confirm that women experienced an entrenched structural poverty. This stemmed from their limited employment options, and the grossly inferior remuneration they provided.⁸³ Despite a high degree of expertise, Martha earned less than half her unskilled husband's wage. She could have worked day and night without earning an adequate income. Thus while Martha Anderson often chose her own path, she did so within a limited set of possibilities tightly circumscribed by the fact that she was a woman.⁸⁴

⁸¹ Birth Certificate of Gertrude Sarah Elizabeth Anderson, born August 2, 1881 02380/1881; Birth Certificate of Frederick George Anderson, born September 6, 1886, 03233/1886, Registrar of Births, Deaths and Marriages NSW.

⁸² Ann Curthoys, Chapter 3, 'A feminist voice, 56-72, in A. Clark and P. Ashton (eds.) *Australian History Now*, Sydney 2013, 70.

⁸³ Judith Allen, *Sex & Secrets: Crimes involving Australian Women Since 1880*, Australia, 1990, 19.

⁸⁴ Allen, 'From Women's History', 240.

Chapter Three

Fanny Teas – ‘On the Highway to Ruin’¹

The divorce case of a leisured member of the middle class reveals markedly different pressures from those facing a penniless seamstress, but the life of Fanny Teas² was not without its challenges. While poverty ensnared Martha Anderson, Fanny was forced to negotiate the relentless demands of propriety that constrained women of her social class.³ Ultimately, gender shaped the lives of both women in ways they could not escape.⁴

When she arrived at Sydney’s Darlinghurst courthouse in late November 1875 for the first day of proceedings, Fanny was dressed in ‘deep black’.⁵ Her choice of mourning dress was an important aspect of the genteel performance.⁶ For the adulterous woman, proving her innocence meant convincing legal authorities she was both virtuous and chaste, and this demanded a complex display based upon deportment, attire and utterance. Such a performance distanced her from the ever-present shadow of the fallen woman, and accordingly the show was intensely gendered.⁷

¹ SRNSW NRS13594 (0027/1879).

² SRNSW NRS13594 (0027/1879).

³ McKenzie, *Scandal*, 117.

⁴ Saunders and Evans, Introduction, *Gender Relations*, xviii-xix.

⁵ ‘Extraordinary Divorce Case’, *Australian Town and Country Journal*, Nov 27, 1875, 26.

⁶ Russell, *A Wish of Distinction*, 58.

⁷ *Ibid.*, 63, 92.

For women in the middle and upper social strata, demonstrating restraint was also an important aspect of establishing class status.⁸ This was doubly important in the Divorce Court where, as in society, chastity was held to be the normal feminine state;⁹ the adulterous woman therefore had to prove she was incapable of impropriety. Since class attitudes held that ‘bad’ women were more prevalent in society’s lower levels,¹⁰ it followed that the ‘accused’ sought desperately to show she did not belong in this category.

Clearly, such contrived behaviour and the stylized nature of testimony¹¹ render it difficult to accept as based on fact either court performance or written testimony. However, in the Teas divorce case, identical depositions from a number of witnesses suggest that Fanny and co-respondent James Smithers did indeed have an affair. Of the four subjects presented here, she is the only one whose passion and desire for her lover break clearly through a mass of conflicting evidence.¹² Despite consistent avowals of innocence, Fanny’s feelings for her ‘dear Jim’¹³ are writ large throughout extensive legal documentation and press reports.

⁸ Simmonds, ‘Promises and Pie-Crusts’, 116.

⁹ Finlay, ‘Lawmaking’, 91.

¹⁰ Finlay, ‘Victorian Sexual Morality’, 43.

¹¹ Golder, *Divorce*, 11.

¹² SRNSW NRS13594 (0027/1879)

¹³ ‘Divorce Court’, *Evening News*, Nov 23, 1875, 5.

As a case 'of considerable importance in aristocratic circles',¹⁴ 'Teas versus Teas and Smithers'¹⁵ excited strong public interest and the court overflowed for three days.¹⁶ Frequent references in the newspapers of the day to standing room only suggest a society particularly eager for scandal when it concerned the wealthy.¹⁷ Joseph Teas was founding partner of a well-known warehousing firm located in substantial premises at the corner of York and Barrack Streets.¹⁸ Fanny's lover James Smithers worked as a clerk at the Bank of New South Wales in George Street.

Many of Sydney's mercantile and banking elite attended proceedings,¹⁹ either as a gesture of their support for Joseph Teas, or to witness his misfortune and savour the salacious details of his wife's misconduct. In colonial New South Wales, reputation was crucial for men and women, albeit in sexed and classed ways. For the middle and upper classes, men strove to be seen as honest and honourable; women cultivated a demeanour of dignified virtue.²⁰ In addition, commerce was linked closely to social and political connections,²¹ meaning that Joseph Teas was probably as concerned about the trial's effect on his business as he was about the rupture of his marriage.

¹⁴ 'Divorce Court, Sydney', *Miners' Advocate and Northumberland Recorder*, Nov 24, 1875, 3; Teas v Teas 0027/1875.

¹⁵ 'Teas v Teas and Smithers', *Evening News*, Dec 20, 1875, 4.

¹⁶ 'Divorce Court', *Evening News*, Nov 22, 1875, 3.

¹⁷ McKenzie, *Scandal*, 11.

¹⁸ John Sands, *Sands Sydney Directory*, Part 5, Sydney, 1875, 455.

¹⁹ 'Extraordinary Divorce Case' *Australian Town and Country Journal*, Nov 27, 1875, 26.

²⁰ McKenzie, *Scandal*, 83; Russell, *A Wish of Distinction*, 92.

²¹ McKenzie, *Scandal*, 10.

The scandal of Fanny's affair and his involvement in divorce proceedings would have posed considerable threat to Joseph's status,²² not to mention to his masculine honour and pride.

The daughter of a prosperous Mudgee storekeeper, Fanny Woods married Joseph Teas in 1863 when she was nineteen and he was twenty-six. The couple began their married life in Mudgee before moving to Eden's Twofold Bay, where they remained for several years. Joseph's career path demonstrates the high degree of social mobility that characterized colonial society:²³ arriving in the colony in 1860 from Londonderry, Ireland, he started out as a commercial traveller, then kept a store in Eden, became a local magistrate and sat on the Public Schools Board. Evidently, he prospered enough to establish in 1870 a wholesale drapery in Sydney.²⁴

Fanny gave birth to five children between 1864 and 1870, three surviving infancy. The couple's son Joseph Sydney was born in 1864, but two girls born in 1865 and 1867 - both named Fanny - died before their first birthdays.²⁵ Abigail was born in 1868 and Mary

²² Ibid., 93; Teale, *Colonial Eve*, 168.

²³ Penelope Russell, 'The Brash Colonial: Class and Comportment in Nineteenth-Century Australia', *Transactions of the Royal Historical Society*, Sixth Series, 12, 2002, 434.

²⁴ *New South Wales Government Gazette* Dec 27, 1865, Issue 269, 2954; *New South Wales Government Gazette* March 18, 1873, Issue 63, 820; *New South Wales Government Gazette* July 2, 1867, Issue 106, 1530.

²⁵ Death Certificate of Fanny Teas, died July 31, 1914, 4103/1866; Death Certificate of Fanny M Teas, died March 28, 1868, 4102/1868; Registrar of Births, Deaths and Marriages NSW.

Hester in 1870.²⁶ Despite a prevailing perception that the lives of colonial women involved an endless cycle of childbearing and childcare,²⁷ by no means all women had large families, and many obviously knew how to prevent pregnancy.²⁸ To begin with, abstinence offered a foolproof method of birth control for a highly mobile workforce.²⁹ Other forms of birth control had become more widely known and available, and clearly some women were able to limit the size of their families.³⁰ This may have been the case for Fanny, or it may have been simply that because she did not like her husband (a fact emerging often during testimony)³¹ she avoided sleeping with him when she felt her family was complete.

From various trial depositions by Joseph and a number of servants, the Teas marriage was clearly not a happy one. The couple fought often, and this sometimes extended to physical violence on the part of both husband and wife. Fanny in particular could become extremely violent, on at least two occasions using an object at hand to strike her husband so forcefully that he lost consciousness.³² Despite the disquieting level of aggression witnesses described, it is difficult not to feel some sense of admiration for Fanny's determination to stand up

²⁶ SRNSW NRS13594 (0027/1879).

²⁷ See for example, Allen, *Sex and Secrets*, 4; Bongiorno, *Sex Lives*, 41; Lake, *Getting Equal*, 19; Grimshaw et al *Creating a Nation*, 120; Teale, *Colonial Eve*, 127.

²⁸ Grimshaw et al, op. cit, 94; Teale, *Colonial Eve*, 126-7.

²⁹ C.J. Fox, 'Working in the country', Chapter 3 in Charlie Fox, *Working Australia*, Sydney 1991.

³⁰ Teale, *Colonial Eve*, 127.

³¹ SRNSW NRS13594 (0027/1879).

³² SRNSW NRS13594 (0027/1879).

for herself, particularly in a society where male violence against women was common.³³

By 1875, Joseph Teas was a man of considerable means. When the trial began, he had returned only recently from opening a new branch in London. Intending to be away less than a year, he had in fact been absent for nineteen months. In court, Fanny expressed considerable resentment at being deposited in Mudgee with her parents before Joseph left the colony. Taking such a step against his wife's wishes is highly revealing of the masculine control and domination that often characterized the colonial marriage.³⁴ By removing his wife to Mudgee from the city where she obviously wanted to remain, Joseph Teas transferred his control over her to her father, suggesting that in colonial marriage, the authority of one man over a woman was simply replaced with that of another.³⁵

The idea that women were not capable of managing their own affairs was also evident in financial arrangements that Joseph made with Fanny's father, whereby George Wood was to dole out in weekly installments an annual allowance of £350 deposited with Joseph's solicitor. That he could do so stemmed from the law of coverture

³³ See for example Grimshaw et al., *Creating a Nation*, 17; Golder *Divorce*, 37, 202. Golder's review of almost 1000 cases of divorce confirms an entrenched violence by men against women.

³⁴ Howe and Swain, 'Fertile Grounds for Divorce', 158.

³⁵ Russell, *A Wish of Distinction*, 139.

giving a husband complete financial control over his wife.³⁶ Fanny's father and husband thus forced her into a state of protracted dependence. It is evident that Joseph and George Wood frequently collaborated to influence Fanny when she made decisions they disapproved of. It is just as plain however that Fanny was prepared to challenge both men.

On this particular occasion, she returned from Mudgee to Sydney after nine months, going against her father to do so but interestingly, 'with her mother's blessing'.³⁷ Once away from her parents, Fanny began for possibly the first time in her life an independent existence, renting a small cottage in Manly, a small community in which she and Joseph had lived before he left for England. By the 1870s, this beachside location was fast becoming a highly desirable seaside resort for the middle and upper classes and a handful of private homes were available to rent.³⁸ Fanny located a suitable cottage by sending from Mudgee various letters of inquiry, again suggesting decisiveness, initiative and a sense of personal autonomy.

With her husband in England and now living a substantial distance from her domineering father, Fanny was without a chaperone. It is

³⁶ Catherine Bishop, 'When Your Money Is Not Your Own: Coverture and Married Women in Business in Colonial New South Wales', *Law and History Review*, 33:1, February 2015, 182-183.

³⁷ 'Divorce Court' *Evening News*, Nov 20, 1875, 5.

³⁸ Paul Ashton, Chapter 7, 'Inventing Manly 1853-1890' in Max Kelly (ed.) *Nineteenth Century Sydney: Essays in Urban History*, Sydney 1978, 156.

not particularly surprising that a 'prepossessing' young wife³⁹ so long alone should find distraction in a love affair. Meeting James Smithers when he prevented her daughter from falling overboard on the steamer, Fanny seems to have become instantly smitten with him. Her own age, Smithers was married but long separated from his wife, and lived in Manly with his parents. The pair immediately began what both swore was merely a close friendship, but others testified was a romantic relationship; whatever the case, Fanny did not languish alone in Joseph's absence.

Once settled in Manly, Fanny enjoyed considerable leisure, and details of her various activities convey an easy movement between public and private spheres.⁴⁰ Leaving the girls at home with a servant (her son was at boarding school in Parramatta), she travelled regularly into town, taking the horse-drawn omnibus from Circular Quay to Wynyard Square.⁴¹ Sometimes she stopped in at her husband's warehouse to see what the latest overseas shipment had to offer (Joseph's firm sold fabrics and various other imported items).⁴² At Miss Horner's Hotel in Wynyard Square Fanny always arrived before Smithers to engage separate rooms, but with a sitting room in between and a curtain drawn across supposedly for privacy. Since

³⁹ 'Divorce Court', *Evening News*, Nov 22, 1875, 3.

⁴⁰ Bridget Brereton, 'Gendered Testimonies: Autobiographies, Diaries and Letters by Women as Sources for Caribbean History', in *Feminist Review*, 50, Rethinking Caribbean Difference, Summer 1998, 143.

⁴¹ 'Divorce Court' *Evening News*, Nov 23, 1875, 5.

⁴² 'Imports, July 7' *Sydney Morning Herald*, July 8 1874, 4.

Smithers worked in George Street, it was an easy matter for the pair to meet.

In town, Fanny would arrange tickets for theatre or opera, and sometimes 'an oyster supper' after the performance.⁴³ Her enthusiastic and confident engagement in such pursuits and the amount of time she spent away from her rented cottage certainly counters the notion that genteel women found public space inherently threatening. Suggesting that respectable women moved as quickly as possible through public spaces, Penny Russell for example depicts the middle class woman as locked in the 'safe haven' of her home.⁴⁴ This image is not borne out by either the experiences of Fanny Teas or those of Jane Dibbs, my fourth case study.

Catherine Bishop's investigation of colonial women in business also suggests that women enjoyed a far greater level of physical mobility than has to date been perceived.⁴⁵ Bishop suggests an active involvement for many women in commercial projects, and whilst her research focuses on those in employment, it seems logical that if public space was to be avoided at all costs, entrepreneurial women

⁴³ SRNSW NRS13594 (0027/1879).

⁴⁴ Penny Russell, 'In Search of Woman's Place: An Historical Survey of Gender and Space in Nineteenth-Century Australia' in *Australasian Historical Archaeology*, 1993, 28-29.

⁴⁵ Catherine Bishop, 'Women on the move: Gender, moneymaking and mobility in mid-nineteenth-century Australasia', *History Australia*, 11:2, 2014, 38.

could not have achieved the success they did.⁴⁶ Nor do the writings of middle class women themselves convey any such sense of confinement at home, or avoidance of public space. The diary of Blanche Mitchell, for example, reveals a young woman often out alone, making arrangements with the dress or bonnet maker, or catching the omnibus or ferry from her home in Woolloomooloo to visit friends in town and across the harbour. ⁴⁷

Like Blanche, Fanny would have needed to make regular visits to have dresses and bonnets custom-made.⁴⁸ (In fact, her dressmaker was one of the witnesses testifying in Fanny's favour). ⁴⁹ Naturally, her entertainment schedule required fashionable clothing. Fanny moved independently throughout town and community in the context of such activities. I suggest that this necessitated also a definite degree of personal confidence. Given what the documents reveal about her character, it is difficult to imagine Fanny scurrying through the city rather than enjoying her outings. Furthermore, it is unrealistic to assume that colonial mothers would not have relished some respite from the relentless demands of children and household.

Fanny's life in this period offered substantial free time and little hardship. However, this was only because she had servants to do her

⁴⁶ Ibid., 58.

⁴⁷ *Blanche, an Australian Diary, 1858-1861: The Diary of Blanche Mitchell*, with Notes by Edna Hickson, Sydney 1979.

⁴⁸ Bishop, *Minding Her Own Business* 4.

⁴⁹ 'Teas Divorce Case', *Evening News*, Nov 22, 1875, 3.

bidding. Like many women of her class, the main challenge in Fanny's life was managing her rather unruly domestic staff.⁵⁰ The number of different names cropping up in the documents suggests considerable servant turnover. Fanny's clearly troubled relationship with her employees confirms that 'the servant problem' was an ongoing issue for the affluent woman.⁵¹ Despite this, without their services to care for her children, cook meals, wash and clean, Fanny would not have been able to enjoy such ample leisure time.

Furthermore, Fanny's ready access to entertainment, her overnight sojourns in private hotels and various other outings were only possible because of her privileged class status and the access to money that accompanied this. With her husband's prosperity widely known, Fanny could draw extensively on credit in his name whenever and wherever she chose. This was apparently necessary, because Fanny contended that the allowance she received each week was inadequate (and admittedly life was not cheap; Fanny had expensive tastes, and the steamer fare alone was an exorbitant four shillings).⁵² She also claimed that her father had given her less than Joseph allowed, and this had to cover her son's school fees as well as all other expenses.

⁵⁰ Teale, *Colonial Eve*, 84.

⁵¹ Anderson, 'Good Strong Girls', 231.

⁵² Ashton, 'Inventing Manly', 154.

As a result, while her husband was away Fanny ran up at a number of businesses hefty sums in credit. Upon his return, Joseph faced additional bills totaling £200, much of which appears to have been spent on schnapps, brandy and ale for Fanny and Smithers, who sent the servants often with a jug to be filled at a nearby public house at all hours. (If they did not stay in town, Smithers slept at Fanny's house several times a week, although naturally in court they swore to separate bedrooms.) In this way, Fanny was able to circumvent the web of pecuniary authority and control that husband and father spun around her.

Under the laws of coverture, a wife's debts were her husband's debts.⁵³ Since women had no money of their own unless they were employed, it is difficult to see how else they could get the 'necessaries' of life without involving their husbands. However, one of Joseph's chief complaints upon his return to the colony was that not only had Fanny spent more than her budget allowed, she had paid no household bills. Perhaps Fanny took some pleasure in thwarting her husband in this manner since he had abandoned her for so long. Not surprisingly, an apparent disinterest in the state of her domestic affairs suggests that Fanny found it preferable to spend time with her lover than manage her household.

⁵³ Bishop, 'When Your Money Is Not Your Own', 182-183.

Time away from home to attend the opera and pursue other activities provided Fanny with an ideal context to exercise her autonomy and independence. Leisure historian Carmel Foley suggests that leisure activities offered the colonial woman a potential site of resistance against masculine authority, and a brief escape from the mundane routine of everyday life. It provided the spaces (physical, emotional and intellectual) in which women could experience personal empowerment and the fantasy of freedom. Significantly, leisure also allowed temporary escape from a husband's control.⁵⁴

If leisure offered a context for resistance, how much more so did the adulterous affair provide a space in which a woman could exert her own power? When she was with James Smithers, Fanny not only resisted her husband's control and flouted social norms, she indulged her physical and emotional desires as infidelity and leisure coincided. She and Smithers evidently enjoyed a never-ending party; with no responsibilities or chores to disrupt their bacchanalian romp, and no financial concerns, Fanny's adulterous journey allowed her to use her body in ways that perhaps for the first time in life were intended only to bring her pleasure.

In this way, the sexual realm offered significant potential to assert an embodied personal autonomy. Witness statements in this case

⁵⁴Carmel Foley, 'Subversive Possibilities: An exploration of women's leisure resistance using historical case studies', *Annals of Leisure Research*, 8:4, 2005, 228, 230, 232.

suggest that Fanny behaved with just such a sense of freedom. A house maid described her lurching around drunk and 'half-naked', another attested to her mistress acting with Smithers at all hours 'as if they were man and wife'; most damning of all was the domestic servant who saw Fanny 'having connexion' 'three or four times' (after peering in through her bedroom door).⁵⁵ With her hair down, her bodice on one occasion ripped (following a lover's quarrel with Smithers in the dining room), and often drinking to excess, Fanny's conduct was thus the opposite of feminine restraint and passivity.⁵⁶

However, the level of freedom that Fanny experienced away from home was not always matched in her domestic circumstances. At the cottage in Manly, she was usually surrounded either by watchful servants or demanding children. By unfortunate coincidence also, the minister who had baptized one of her girls in Eden was living nearby, and was greatly concerned by Fanny's behaviour after witnessing her sitting with Smithers on the beach at 9.30pm 'just as a sweetheart and her intended would be'. It seems he maintained a close eye on this former member of his flock.⁵⁷

⁵⁵ 'The Teas Divorce Case', *Argus*, Nov 27, 1875, 9.

⁵⁶ *Ibid.*

⁵⁷ SRNSW NRS13594 (0027/1879).

Witness testimonies throughout the trial suggest that an obsession with female sexual reputation⁵⁸ seeped down from women in the middle and upper classes to those beneath them. Fanny's servants were highly judgmental of her behaviour, and not surprisingly one of them told Joseph Teas on his return that Smithers 'was here while you was away.'⁵⁹ On the stand, a number of their testimonies reveal highly conservative moral sensitivities. Perhaps also being able to denounce publicly their peremptory mistress offered these disempowered women a brief taste of superiority and some sense of retribution for her demanding behaviour. In an overt condemnation of Fanny's sexual transgressions, they sought to distance themselves from her immoral conduct, confirming that the notion of respectability had indeed made its way into the moral code of the working class,⁶⁰ but also reminding us that colonial citizens had only a limited script when it came to adulterous behaviour. To condone her behaviour would have been unthinkable.

The manner in which a number of servants spoke often to Fanny confirms suggestions that the colonial servant/mistress relationship was not one an easy one.⁶¹ Certainly there was often little deference in their choice of words to her,⁶² possibly because they resented being drawn into her improprieties (Fanny's servants acted as go-betweens

⁵⁸ Penny Russell, *Savage or Civilised: Manners in colonial Australia*, Sydney, 2010, 143.

⁵⁹ 'Divorce Court', *Evening News* Nov 22, 1875, 3.

⁶⁰ Howe and Swain, 'Fertile Grounds', 160.

⁶¹ Grimshaw et al, *Creating a Nation*, 80; Teale, *Colonial Eve*, 240.

⁶² Anderson, 'Good strong girls', 231.

with Smithers, running errands and taking him notes and personal items). One told Fanny she 'could not stop in a house where a man was received in a lady's bedroom', at which her mistress 'gave her the length of her tongue, and threatened to send for a policeman'; another asked 'if it was not a sin to carry on with another man, when her husband was alive,' upon which Fanny reported that she 'liked Mr Smithers, and would have who she liked.'⁶³

Sarah Leekison, one particularly truculent general servant, often challenged Fanny as to how she treated her husband, suggesting it was 'a shame to go on at such a good man, who gives you everything' (yet again revealing that a good provider was seen as a 'good' husband). Fanny simply told her that she did not care because 'it's my dear Jim that I love.'⁶⁴ Far from displaying the outraged delicacy required of a lady, Fanny showed a determined resistance to any interference in her love affair.

Perhaps another reason her servants appear so willing to denounce their mistress was that Fanny did not set them a good moral example.⁶⁵ Clearly, her improper conduct threatened the rigid class distinctions that kept everyone secure as to their place.⁶⁶ Since the respectable woman was expected to suppress indications of her carnal

⁶³ 'Extraordinary Divorce Case', *Australian Town and Country Journal*, Nov 27 1875, 26.

⁶⁴ SRNSW NRS13594 (0027/1879)

⁶⁵ Foley, 'Subversive Possibilities', 235; Kingston, *My Wife*, 25.

⁶⁶ Bongiorno, *Sex Lives*, 47.

being, her servants could be forgiven for concluding that their mistress was no lady.⁶⁷ Empowered by such knowledge, they felt confident in expressing outrage at her behaviour. Within the home, Fanny clearly behaved with Smithers as though they were alone, and her frequent displays of abandoned behaviour were an affront to those who expected order and restraint from their mistress.⁶⁸

Unlike working class women, Fanny had no financial concerns. However, while Martha and Frederick could enjoy a lengthy pre-marital sexual relationship with little comment, Fanny endured intensive scrutiny from those around her and was harshly judged when she transgressed social and sexual norms. Reading the saga of Fanny's affair and divorce trial, it is difficult not to conclude that the poorer woman was far less hampered by societal constraints, and ultimately had greater control of her own life.

In the end, despite a feisty avowal that she would see whomever she chose, Fanny Teas was defeated. Before the trial had concluded, Fanny's father stepped in and removed her children, evidently handing them over to Joseph immediately. Although the jury struggled to agree and accordingly were locked up for the night, they

⁶⁷ Ibid., 49.

⁶⁸ Russell, *A Wish*, 169.

returned a guilty verdict, awarding Joseph Teas £2000 in damages against James Smithers.⁶⁹

Joseph was still operating his business in Sydney in 1877, when he announced publicly that it would be carried on both in Sydney and London,⁷⁰ and in 1879, when he appeared in the press in relation to another business matter.⁷¹ He died in 1899 and is buried in Balmain Cemetery beside the second of their infant daughters.⁷²

Fanny died on July 31st, 1914, and is buried in Manly Cemetery in an unmarked grave. According to the Electoral Roll, at the time of her death, Fanny was living at 59 The Esplanade, an address now boasting a substantial residence but then a decrepit boarding house demolished a year later.⁷³ This confirms a considerable loss of status and material comfort following her divorce. Sadly, it does not seem that Fanny and her 'dear Jim' remained together, although I cannot say this definitely. Nor do I know if she maintained contact with her children, or resumed relations with her parents. By transgressing so publicly the strict moral code of colonial society, Fanny forfeited her reputation and respectability, and her downfall was assured.⁷⁴

⁶⁹ 'Teas Divorce Case', *Evening News*, Nov 22, 1875, 3.

⁷⁰ *New South Wales Government Gazette* Nov 6, 1877, Issue 353, 4342.

⁷¹ *Ibid.*, March 21, 1879, Issue 98, 1297.

⁷² *Balmain Cemetery Registry Index 1868 – 1912*, 89.

⁷³ Email communication from John MacRitchie, Local Studies Librarian, Northern Beaches Council, 29.7.16.

⁷⁴ McKenzie, *Scandal*, 10-12.

Chapter Four

Annette Miller - 'Of Idle and Vagrant Habits.'¹

It may seem suspect to offer as an exemplar of feminine agency a woman who was at times homeless and an inmate of Darlinghurst Gaol. However, if feminist social history strives to reveal women as purposeful and valid actors, Annette Miller² more than warrants our consideration.³ In a life that poverty, vagrancy and alcohol abuse came to define after she left her husband, Annette serves as a reminder that an individual may act with agency and yet be anything but empowered.⁴ When her adulterous relationship also ended, structural barriers to women's financial independence⁵ overwhelmed Annette's efforts to survive without engaging in criminal activity.

Unlike the previous cases tried by jury, Compton Miller's petition for divorce proceeded by means of affidavit and an examination of material witnesses through *viva voce* testimony.⁶ Those subpoenaed to attend appeared at the Darlinghurst courthouse and in Judge Hargrave's Chambers. Compton's petition was initially undefended, and clerks who attempted to serve papers on Annette stated that they could not do so, 'in consequence of the said Annette Miller having no fixed place of abode and being of vagrant habits.' Nor could anybody

¹ SRNSW NRS 13594 (0034/1875).

² SRNSW NRS 13594 (0034/1875).

³ Lake, 'Convict women as objects of male vision' 48.

⁴ Parkins, 'Protesting', 60.

⁵ Lake, 'Intimate Strangers', 160.

⁶ *Viva voce* testimony was oral rather than written.

locate the co-respondent, despite making 'diligent inquiries of the police...and other places.'⁷ Smith was rumoured to have joined a whaling expedition more than a year before proceedings, and the couple had already parted some time previously. After careful reflection, Judge Hargrave allowed the case to continue with no correspondent.

The Miller divorce would have been straightforward had Annette not arrived in the midst of proceedings, no doubt causing considerable consternation to those present in the courtroom. Compton Miller's barrister was about to call evidence when attorney James Greer stood up and stated that 'the petitioner's wife was in court and had just instructed him to defend her case.' Naturally, he requested an immediate postponement. When Judge Hargrave asked why she had not appeared before, Annette stated that 'want of means' had prevented her from employing counsel.⁸

Evidently, she managed to overcome the lack of financial wherewithal in order to obtain legal representation. Those few newspapers covering the trial described Mrs. Miller as a 'well-dressed middle-aged woman'⁹ and commended the manner in which she 'answered the questions put to her with much firmness.'¹⁰ In view of disparaging witness

⁷ SRNSW NRS 13594 (0034/1875)

⁸ 'Divorce Court', *Australian Town and Country Journal*, May 13, 1876, 8.

⁹ *Ibid.*,

¹⁰ 'Divorce Court', *Australian Town and Country Journal*, May 27, 1876, 6.

statements and the derogatory contents of her husband's petition, those present no doubt expected to see the shabby and dilapidated creature they had heard so much about. Her smart attire and the manner in which Annette conducted herself on the stand suggest instead an impressive chutzpah in negotiating the court's masculine legal authority. Her no-nonsense demeanour is in marked contrast to the fragile vulnerability of Fanny Teas, demonstrating how class and gender combined to shape in different ways the embodied feminine performance.¹¹

It is tempting to assume that Annette's change of circumstances and her respectable outward appearance resulted from ill-gotten gains, but there is no evidence to suggest this other than a logical suspicion based on her criminal record. However, it is difficult to understand how else she obtained the money to buy new clothes or engage a solicitor. Annette did not appear to be in contact with her family, nor had they provided any previous support, financial or otherwise.

It is highly significant that Annette Miller was the only one of the four subjects considered here whose husband did not pay her legal expenses. As Hilary Golder points out, while in theory a husband was responsible for his wife's legal costs, this was not always enforced.¹² In Annette's case, the generous attitude was nowhere in sight that John

¹¹ Russell, *A Wish*, 112.

¹² Golder, *Divorce*, 193-4.

Hargrave had displayed towards Martha Anderson. As a result, despite Annette's obvious efforts to appear respectable, Judge Hargrave refused her petition for alimony and her later appeal for costs, leaving her with a hefty legal bill that she would have struggled to pay.

The facts of the Miller case of 1876 are relatively simple. In April 1861, Annette Bain married Compton South Miller at the Congregational Church in Maitland. The Scottish bride was 27 years old and her English-born groom a year older. I have been unable to identify when either arrived in the colony. For the next four years, the couple lived in a number of country locations where Compton worked as a station overseer. They had no children. Before her marriage, Annette was a barmaid and a 'stewardess on board one of the Hunter River Steamers,'¹³ indicating a working-class background despite some assertions on her part of a once higher station.

When Compton sued for divorce on the grounds of his wife's adultery with one 'Jack or John or Thomas Smith', Annette was 'about forty.'¹⁴ Since leaving her husband more than ten years before, she had worked in a number of casual jobs, served time in jail, lived in a refuge and stayed for some months at the Sydney Infirmary.¹⁵ Compton testified to delaying proceedings because he had been in

¹³ SRNSW NRS 13594 (0034/1875)

¹⁴ Ibid.

¹⁵ SRNSW NRS7851 (2/4422)

England for several years and only discovered on his return to the colony that divorce had been introduced in his absence. When the case went to trial, he was living at Garoorigang near Goulburn, and 'not following any particular occupation.'¹⁶

Since he had only recently returned from two extended visits to England, this seems unlikely. In her application for alimony, Annette estimated Compton's income at £500 per annum and stated that he had been in England to purchase 'four blood horses.'¹⁷ No doubt, Compton Miller's ulterior motive in downplaying his income was to minimize the capacity to give money to or for an errant wife. (At the same time, Annette probably exaggerated his income to be granted alimony).

Compton Miller told the court that in February 1865 his wife travelled from Armidale to Sydney, ostensibly for a brief visit to relatives. (These relatives were never named and Annette's obvious lack of support in Sydney suggests they either did not exist or broke off contact). She did not return, and refused her husband's entreaties to do so. Surprisingly, he continued to support her financially. After sending her £1 per week for several years, and additional sums in response to frequent requests by mail, Compton Miller learned that Annette had gone to Darlinghurst Gaol for larceny, and that 'after her liberation

¹⁶SRNSW NRS 13594 (0034/1875)

¹⁷ Ibid.

she had led an immoral life in Sydney among disreputable characters'. As a result, he immediately instituted divorce proceedings and 'ceased writing to her'.¹⁸

Naturally Annette challenged this, describing instead Compton's ultimatum that she leave or he would be forced to do so, and her resultant decision to leave Armidale. She did not elaborate on the reasons for their apparent rift. Travelling to Sydney, she 'took lodgings', until Compton 'sent for her' to come back, whereon Annette informed him that 'she could not take the same position in society after being turned away from her home.'¹⁹

This latter explanation is distinctly at odds with the image of someone the press described as 'one of the unfortunate class' in detailing one of her several arrests.²⁰ Nor does it fit a woman who 'gave her husband the Venereal Disease' before she went away, something Annette denied with indignation,²¹ and possibly was yet another attempt to discredit her. If from the time of their marriage she was indeed of 'drunken, dissipated habits', and on several occasions left home without Compton Miller 'consenting thereto', ²² it is hard to understand why he was so eager for her to return. (It seems likely that

¹⁸ 'Divorce Court', *Australian Town and Country Journal*, May 27, 1876, 6.

¹⁹ Ibid.

²⁰ 'Central Criminal Court', *Maitland Mercury and Hunter River General Advertiser*, February 20, 1875, 8.

²¹ SRNSW NRS 13594 (0034/1875).

²² SRNSW NRS 13594 (0034/1875).

Compton manufactured or at least exaggerated Annette's failings, because in an earlier affidavit he stated that they parted 'on good terms – very good' and he 'knew nothing against her.')

²³

Once in Sydney, Annette took up with Smith, whose first name was variously John, Jack or Thomas. Calling herself 'Annie Smith', the couple lived 'as husband and wife' in different locations and moved where various short-term jobs were available. The range of casual unskilled jobs Annette carried out suggests a wide variation in the kinds of employment that those of different classes could access.²⁴ For some time the pair cut rags at Liverpool's paper mill, carrying out tasks that were by far the least pleasant task in the papermaking process.²⁵

In addition, Annette worked as 'cook and laundress' for a shipping clerk in Newtown, while Smith worked nearby as a gardener.²⁶ She took short-term employment as a 'needlewoman', indicating that while she possessed the skills to lead a settled and respectable life, for some reason Annette was unable or unwilling to do so.²⁷ Certainly her unstable workforce participation and peripatetic lifestyle confirm that

²³ Ibid.

²⁴ Martha Bruton Macintyre, 'Recent Australian Feminist Historiography', *History Workshop*, 5, 1978, 110.

²⁵ Eileen Wallace, *Children of the Labouring Poor: The Working Lives of Children in Nineteenth-Century Hertfordshire*, 2010, United Kingdom, 100.

²⁶ SRNSW NRS 13594 (0034/1875).

²⁷ SRNSW NRS 13594 (0034/1875).

the colonial employment system in no way acknowledged or catered to the needs of self-supporting women.²⁸

Annette's denial of her affair with Smith was imaginative and innovative. She contended he was 'a cranky sort of a fellow' and 'a shingle short', and told everyone around them Annette was his wife because of a 'mania' manifesting in the urge to do so.²⁹ Yet obviously they lived as a married couple, renting rooms and cottages together and travelling around for casual employment.

It is possible to see beyond the many descriptions of Annette Miller suggesting that she was dissipated and immoral,³⁰ drank too much and associated with prostitutes.³¹ In order to prove her identity, given that Compton Miller had not seen his wife for many years, several witnesses described in almost identical terms Annette's physical appearance. I offer one of these to add to the current discussion an image that suggests an appealing character;

'a medium sized, spare framed, dark complexioned woman of about forty years of age, and of a very gentle figure with a thin face, medium-sized nose, rather a large mouth with thin lips, dark black piercing eyes,

²⁸ Anderson, 'Good Strong Girls', 226.

²⁹ SRNSW NRS 13594 (0034/1875).

³⁰ 'Law. Divorce Court'. *The Sydney Mail and New South Wales Advertiser*, May 27, 1876, 691.

³¹ SRNSW NRS 13594 (0034/1875).

*... a scar under one of the lower eyelids (and) short black curly hair, which she used to wear in ringlets*³²

Given a dearth of visual evidence for working class women in particular, and no other written descriptions of the women considered here, this portrait conveys a definite vulnerability to counter notions of the drunken harridan Judge Hargrave and others clearly assumed Annette Miller to be.

As Penny Russell argues, a woman's class and sexual identity were rarely separated in colonial society, and the middle and upper classes already presumed the 'lower orders' to be inherently degraded and disorderly.³³ To those privileged men observing Annette Miller in court, it would have been a simple matter to marry rumour and hearsay with moral judgment, and on this basis denounce her accordingly. In a society where women were viewed primarily within a domestic framework as wives and mothers³⁴ - or whores³⁵ - Annette was slotted easily into the second category, because she did not belong in the first.

³² SRNSW NRS 13594 (0034/1875).

³³ Russell, *A Wish of Distinction*, 92.

³⁴ Anderson, 'Good strong girls', 229.

³⁵ Summers, *Damned Whores*, 313.

As one of the disparaged underclass that colonial society deemed the 'unrespectable' or 'undeserving' poor,³⁶ Annette seems to have fallen near the bottom rung on the ladder of social prestige. Her story suggests yet again the fluid rather than fixed nature of social class in colonial society,³⁷ but in Annette's case the movement was downward rather than up. Several witnesses stated that she 'had seen better days' and seemed to have 'occupied a better position than she (now) held.' Others testified that Annette sometimes told people her mother 'had money'.³⁸

On the stand however, Annette was forced to admit that she could not say exactly how many times she had been 'taken up by police' for larceny and receiving stolen property, and she admitted to being in jail for drunkenness 'three or four times or more',³⁹ which suggests the number was probably greater.⁴⁰ Jotting notes in reference to Annette's jail sentences, John Hargrave wrote '4 or 5 times...never kept count'.⁴¹ (Since I have found repeatedly that information in press reports mirrored almost verbatim that in the Judges' Notebooks, this particular variation is curious.)

³⁶ Julie Kimber, 'Poor Laws: A Historiography of Vagrancy in Australia', *History Compass* 11:8, 2013, 538.

³⁷ Russell, 'The Brash Colonial', 434.

³⁸ SRNSW NRS 13594 (0034/1875).

³⁹ 'Divorce Court', *Australian Town and Country Journal*, May 20, 1876, 6; Larceny was simply the theft of personal property;

⁴⁰ As Annette Miller adopted the alias of 'Annie Smith' after she left her husband, I have been unable to locate her criminal record; there are several Annie Smith's in the archive, with few identifying details.

⁴¹ SRNSW NRS7851 (2/4422).

When the Miller case went to trial in 1875, prevailing colonial attitudes attributed the misfortunes of the so-called undeserving poor to their own moral failings rather than social or economic conditions.⁴² In a society that believed anyone could rise above his or her station through persistent application, those who did not do so were evidently to blame for their own circumstances.⁴³ This overlooked an absence of social welfare, which forced many apparent profligates to supplement an inadequate or non-existent income through petty crime.⁴⁴ For this the courts regularly handed out jail sentences and fines that offenders struggled to pay. Their ‘crimes’ included such offences as using obscene language, vagrancy, larceny, drunkenness and prostitution. A variety of laws thus rendered criminal the activities associated with a particular social group.⁴⁵

The gendered nature of such crimes and their punishments is also striking. The vagrant male endangered physical safety, but the vagrant woman posed a sexual threat to social order.⁴⁶ Accordingly, any woman seen ‘loitering about’ or drunk was assumed to have loose

⁴² Anne O’Brien, ‘Pauperism Revisited’ *Australian Historical Studies*, 42:2, 2011, 212; Stephen Garton, ‘Once a Drunkard always a Drunkard’: Social Reform and the Problem of ‘Habitual Drunkenness’ in Australia 1880-1914’, *Labour History* 53, 40.

⁴³ Alan Mayne, ‘City back-slums in the land of promise: some aspects of the 1876 report on overcrowding in Sydney’, in *Labour History*, 38, 1980, 26.

⁴⁴ Stephen Garton, ‘Colonial slums and working for a wage’, in *Out of Luck: poor Australians and social welfare 1788 – 1988*, Sydney 1990, 37.

⁴⁵ Kimber, ‘Poor Laws’, 543, 549.

⁴⁶ Julie Kimber, ‘A nuisance to the community’: policing the vagrant woman’, *Journal of Australian Studies*, 34:3, 2010, 280.

morals.⁴⁷ In view of Annette's criminal record and evident economic hardship, it is perhaps unsurprising that the courts assumed her to be wickedly undeserving. This was confirmed by the fact that she had been in jail not once but several times, and recidivism was regarded as further evidence of depravity.⁴⁸

The manner in which Compton Miller found out about his wife's adultery is highly revealing of the colonial rumour mill that helped to undo Fanny Teas. As Joy Damousi points out, the phrase 'they used to say' was heard often in colonial society, and such utterances quickly attained the status of discursive facts.⁴⁹ Nobody actually saw Annette having 'connexion' with Smith, but those around them immediately concluded adultery because the couple lived together and 'acted as ... husband and wife'.⁵⁰ Such conclusions became factual by a ready circulation through gossip and innuendo. Given that until at least the middle of the nineteenth century, witnesses gave evidence based on hearsay,⁵¹ it is not surprising that a substantial component of testimony throughout the four case studies stemmed purely from what people 'heard'.

In this way, Compton Miller 'was informed' by a number of witnesses that Annette 'lived and cohabited...with this John Smith' and 'always

⁴⁷ Russell, 'In Search of Woman's Place,' 29.

⁴⁸ Kimber, 'A nuisance to the community,' 280.

⁴⁹ Damousi, 'Beyond the 'Origins Debate' 65.

⁵⁰ SRNSW NRS 13594 (0034/1875)

⁵¹ Simmonds, 'Promises and Pie-Crusts', 105.

associated with prostitutes'.⁵² One 'friend' even took the trouble to write to Miller in England to say he had seen Annette at a Sunday morning 'Breakfast for the Poor' in Pitt Street's Temperance Hall and she now purported to be married to someone else. He went to the further trouble of 'inform(ing) him ... personally' when Miller returned to the colony.⁵³

This and many other occasions on which gossip was tendered as evidence reveal its multiple functions. Along with scandal, it helped to engender a strong sense of community cohesion and keep people on their moral toes. In addition, it was used to affirm or destroy reputation and to determine who should belong and who should be excluded from the social group, based on assessments of their moral character.⁵⁴ In the Divorce Court, gossip and scandal were of obvious importance in helping authorities to determine guilt and innocence. As discursive practices, they were also the means by which ordinary citizens positioned themselves within wider networks of social control and thereby participated in the collective policing of transgressive behaviour.⁵⁵

⁵² SRNSW NRS 13594 (0034/1875)

⁵³ Ibid.

⁵⁴ McKenzie, *Scandal*, 10, 34.

⁵⁵ Weeks, 'Foucault for Historians', 108; Foucault, *History of Sexuality*, 11.

The story of Annette Miller reveals yet again the class-based nature of oppression.⁵⁶ Despite their obvious individuality, each of the women considered here was positioned clearly within a distinct social class that dictated much of her daily existence.⁵⁷ Since Annette was childless, it cannot even be asserted that they had childbirth in common.⁵⁸ If the hard-working seamstress and the leisured middle-class woman led sharply different lives, that of the petty criminal was even more distinct.

The circumstances of Annette Miller's life indicate that a simple conceptual division between haves and have-nots does not reflect the true complexity of colonial class structure. In reality, society was divided sharply along gender, racial and class lines, resulting in a distinct social hierarchy.⁵⁹ As a result, it is impossible to view colonial women as homogeneous in any way,⁶⁰ a contention for which the current studies lend weight. Annette's story conveys both the repeated trope of the fallen woman, whose supposed sexual contamination necessitated decisive and punitive legal action,⁶¹ and the manner in which the feminine ideal altered according to class in the minds of

⁵⁶ Macintyre, 'Recent Australian Feminist Historiography', 110.

⁵⁷ Estelle B. Freedman, and John D'Emilio, 'Problems encountered in writing the history of sexuality: Sources, theory and interpretation.' *The Journal of Sex Research*, 27:4, 1990, 491.

⁵⁸ Kingston, *My Wife*, 7.

⁵⁹ See Saunders and Evans, 'Introduction: Gender and Reproductive Relations', *Gender Relations*, 102; McGrath, 'Sexuality and Australian identities', 39.

⁶⁰ Ann Curthoys, 'A Feminist Voice', in Anna Clark and Paul Ashton (eds), *Australian History Now*, Sydney 2013, 59; Saunders and Evans, 'Introduction', *Gender Relations*, xxii.

⁶¹ Damousi, 'Beyond the 'Origins Debate' 63.

legal authorities.⁶² That men of the law perceived working class women through what June Purvis has termed 'a deficit model' is highly apparent in the sources relating to Annette Miller,⁶³ and renders even more surprising that the court dealt so favourably with Martha Anderson.

As Judith Allen argues, female offenders of any kind were invariably judged in sexualized ways, no matter what their supposed crime.⁶⁴ The frequent references Compton and his legal counsel made to Annette's association with prostitutes were probably more to discredit her testimony⁶⁵ than to state facts, since there is no evidence that Annette was a prostitute. Then as now, the attempt to discredit the witness was a common technique aiming to cast a woman in an unfavourable light and persuade the court of her guilt.⁶⁶ In maligning Annette as a prostitute, authorities demonstrated how in the colonial court, evidence was 'disregarded if it (came) from a vagabond (and) reinforced... if ... provided by 'a considerable person' ⁶⁷ Accordingly, the statements by the so-called respectable gained immediate purchase, while judge and court easily discounted Annette's version of events and assertions of innocence.

⁶² Purvis – 'Using Primary Sources' 289.

⁶³ Ibid., 281.

⁶⁴ Allen, *Sex and Secrets*, 12.

⁶⁵ Ibid., 16.

⁶⁶ Ibid., 21.

⁶⁷ Foucault, *Discipline and Punish*, 37.

As a childless woman, Annette did not have to fear losing custody of her offspring to a vengeful husband. (Although she may have been childless because she practiced contraception, it seems more likely that Annette was infertile.) Relatively unencumbered, she could move freely within and outside of Sydney. Reproduction did not dictate her life as it did for women with large families or limited means. However, her childless state also meant that Annette could not access maintenance through the Deserted Wives Act and this is probably why she was not granted alimony. She could not garner public sympathy for her plight, since her predicament was clearly the result of her own failings and not because she had helpless mouths to feed.

Annette's decision to leave her marriage certainly challenges the idea that this institution was for all women 'the Great Australian dream'.⁶⁸ Although in material terms her life would have been markedly easier if she had returned to Compton, that Annette chose not to suggests her freedom was of greater value than the economic security a husband could provide. In rejecting the economic contract that marriage entailed,⁶⁹ Annette's actions convey a definite sense of personal autonomy and determination, and equally, an ability to accept the consequences of her actions. The steps taken to end her marriage also challenge the idea that such a bond was for life and escape

⁶⁸ Kingston, *My Wife*, 99.

⁶⁹ Allen, *Sex and Secrets*, 19.

impossible.⁷⁰ However, in considering what became of Annette Miller after she left her husband, we are forced to acknowledge that she may have leapt from the frying pan into the fire.⁷¹

Frequently 'drunk and disorderly' and at various times 'of vagrant habits', Annette clearly refused to conform to the prevailing notion that subservience and fragility defined the feminine.⁷² If leisure provided a context for resistance, consider the dark shadows in which the criminal underclass existed, and how such women challenged the feminine ideal. While women were expected to model a demure and constrained deportment, those drunk and disorderly women lurking about on the streets clearly resisted such ideas. If we consider how embodied experience is always mediated within its social and historical context,⁷³ several of Annette Miller's actions appear as a rejection of colonial bodily limitations, an expression of resistance, and an 'I don't give a damn' display of freedom, albeit illusory and short-lived. Even asserting that she 'never kept count' of jail terms for drunkenness may be interpreted as thumbing her nose at the law.⁷⁴

Annette overturned colonial gender norms in other ways. The mill labourer who hired her and Smith deposed that it was she who came

⁷⁰ Ibid.

⁷¹ Garton, 'Three Reviews', 203.

⁷² Joy Damousi, 'Depravity and Disorder': The Sexuality of Convict Women', *Labour History*, 68, 1995, 33.

⁷³ See Sandra Lee Bartky, 'Iris Young and the Gendering of Phenomenology', in *Dancing with Iris: The Philosophy of Iris Marion Young*, Ann Ferguson and Mechthid Nagel, New York 2009, 41-2.

⁷⁴ SRNSW NRS 7851 (2/4422).

to the paper mill to ask for work for herself and 'her husband Jack Smith,' displaying an intriguing role reversal and determination.⁷⁵ Attending 'Breakfast for the poor' was also gender-atypical, since men predominated at this kind of event (one contemporaneous news account tallied ninety men and three women receiving the 'bounty').⁷⁶ Resorting to charity suggests that Annette had hit rock bottom, given that obtaining colonial benevolence was apparently somewhat of an ordeal.⁷⁷ (Perhaps this was why Smith waited outside rather than 'enjoying' the coffee with bread and butter available in the hall.)⁷⁸

As an independent woman, Annette seems to have lived much of her life in the spaces somewhere between public and private- in 'the streets', 'at the races' and no doubt in the public house.⁷⁹ Her rejection of domestic confines led inescapably to economic hardship and criminal activity. Despite her confident responses on the stand, adultery was 'proven' and divorce granted. Not surprisingly, Annette did not appeal the decision and the Decree Nisi easily became Absolute after six months.

Despite extensive searching, I have been unable to locate any evidence to suggest what became of Annette following the trial. Her use of the alias Annie Smith makes identification difficult to begin with, and

⁷⁵ SRNSW NRS13594, (0034/1875).

⁷⁶ 'Sunday Breakfasts for the Poor', *Empire*, June 6, 1871, 2.

⁷⁷ Fox, *Working Australia*, 66.

⁷⁸ 'Sunday Breakfasts for the Poor', *Empire*, June 6, 1871, 2.

⁷⁹ SRNSW NRS13594, (0034/1875).

certainly later press reports of crimes involving an Annie Smith appear to refer to a much younger woman. Although I may never know what happened to Annette Miller, I doubt it was a happy ending.

In distinct contrast, Compton Miller prospered, throughout the 1880s and 1890s obtaining licenses for several substantial land tracts in New South Wales.⁸⁰ By virtue of the multiple economic opportunities open to men,⁸¹ he moved on with little apparent consequence following his successful petition for divorce. Meanwhile, forced to battle an entrenched structural poverty, with limited economic purchase,⁸² and no family support, this was anything but an even playing field for Annette Miller and others like her.

⁸⁰ 'Private Advertisement. Real Property Act.' *New South Wales Government Gazette*, April 1, 1881, 1840.

⁸¹ Saunders and Evans, 'Introduction', *Gender and Reproductive Relations*, in *Gender Relations*, 99.

⁸² Allen, *Sex and Secrets*, 19.

Chapter Five

Jane Dibbs – ‘Reduced to the Lowest Pitch of Want and Starvation.’¹

The Dibbs² divorce was arguably the most notorious of any in the colonial period. News headlines referred to ‘The Great Divorce Case’, and one journalist quipped that it required only the pen of Charles Dickens to achieve immortality.³ John Campbell Dibbs accused his wife of committing adultery with Charles Lithgow Blair, a Newcastle bank clerk, and alleged that Blair had fathered the youngest of five Dibbs offspring. Over the course of proceedings, Dibbs and his lawyers attempted to add not one but two further co-respondents to the petition, a move Judge William Windeyer rejected but that shows what a vengeful husband would do to discredit a faithless wife.

Based in Newcastle, John Dibbs was the middle brother of a fraternal triumvirate that included a prominent banker and George Richard Dibbs, future Premier of New South Wales.⁴ For the Dibbs brothers, familial relationships were also business relationships.⁵ As members of a mercantile elite, they belonged to a tight circle bound by political,

¹ SRNSW NRS 13594 (0104/1879).

² SRNSW NRS 13594 (0104/1879); SRNSW NRS 13594 (0109/1879).

³ ‘Colonial Extracts: The Dibbs Affair’, *Queanbeyan Age*, Feb 11, 1880, 3.

⁴ Bruce E. Mansfield, ‘Dibbs, Sir George Richard (1834–1904)’, *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, <http://adb.anu.edu.au/biography/dibbs-sir-george-richard-3408/text5179>, published first in hardcopy 1972, accessed online 27 September 2016.

⁵ Russell, *A Wish of Distinction*, 29.

social and economic ties closely dependent on reputation and status.⁶ In opposing John Dibbs within a court of law, Jane faced the combined wealth and authority of men accustomed to winning.

Born in Belfast, Ireland, Jane Wood arrived in the colony in 1863 to stay with her wealthy aunt and uncle in Newcastle.⁷ In 1864 at the age of seventeen, she married the 32-year-old John Dibbs, already a successful merchant. Over the next nine years, Jane gave birth to six children, the first stillborn.⁸ By all accounts the marriage was soon unhappy, which Jane attributed to John's cold and interfering family but he put down to her 'acts of misconduct' and particularly the inability to economise after 'the panic of 1866' when he suffered serious business losses.⁹

While ordinary divorce cases were rarely the centre of press attention, the Dibbs case achieved great notoriety¹⁰ because John's September 1879 divorce petition spawned two equally sensational trials.¹¹ The timeline is convoluted in relation to this case, and deserves mention to establish its extraordinary character. Most significantly, Jane is the

⁶ McKenzie, *Scandal*, 10.

⁷ 'The Great Slander Case', *Australian Town and Country Journal*, March 13, 1880, 8.

⁸ Birth Certificate of Female 11636/1864; Birth Certificates of Amy F Dibbs 12138/1865; Sydney R Dibbs 4770/1867; Charles H Dibbs 14933/1869; Robert C Dibbs 14202/1871; Frank H Dibbs 14295/1872; Registrar of Births, Deaths and Marriages NSW, exact dates unknown.

⁹ SRNSW NRS13594, (0109/1879).

¹⁰ Golder, *Divorce*, 105.

¹¹ SRNSW NRS13594, (0109/1879).

only woman presented here who launched independent legal action rather than appearing in defence only. However, she could only do this with the financial and emotional support of privileged family and friends, particularly James Coles Ellis, a successful Newcastle ship and landowner who with his wife Maria often lent or gave Jane money. Her aunt also helped 'in providing clothing and other necessities'¹² and sometimes a roof over Jane's head.

Jane's legal efforts began in November 1878 when, four years after signing an official deed of separation, she successfully sought access to her children in the Equity Court.¹³ In August 1879, clearly dissatisfied with her situation (she was struggling to make ends meet on maintenance of £10 per month), Jane launched a Suit for Restitution of Conjugal Rights,¹⁴ upon which her husband immediately lodged a counter-suit for divorce. Revealing himself as the prime mover in his brother's suit, George Dibbs then accused Jane of committing adultery with her solicitor John Shepherd. As a result of Shepherd's responding suit for slander, Dibbs went to jail for twelve months rather than pay damages.¹⁵ Incredibly, Shepherd's case gave further rise in May 1880 to a trial for perjury when a witness falsely swore that he had seen Shepherd and Jane having 'connexion'

¹² SRNSW NRS13594, (0104/1879).

¹³ SRNSW, NRS13574 (5/4516).

¹⁴ SRNSW NRS13594, (0104/1879).

¹⁵ 'Extraordinary Slander Action', *Australian Town and Country Journal*, Feb 28, 1880, 6.

on his office couch.¹⁶ As Hilary Golder remarked, this was a ‘tortuously extended’ case.¹⁷

As a result of these developments, the trial began only in December 1880, and by its close Jane was a courtroom veteran who had endured ‘three great witness-box ordeals’.¹⁸ In true testament to the double standard, her reputation was in tatters after the press revealed intimate details of her marriage and adultery, while John Shepherd and other men admitted to regular visits to houses of assignation and brothels with no apparent consequence and far less public interest.¹⁹

The chief legal sources used here are Jane’s suit for the restoration of her conjugal rights, and John’s divorce petition. In addition, I have accessed the extensive press reports relating to Shepherd’s suit for slander as well as the divorce, as these describe Jane’s conduct in court, allegations of her sexual relationship with Shepherd, and abundant detail as to her movements between 1874 and 1880. Not surprisingly, the files are voluminous and contain multiple diverging accounts, forcing the contemporary investigator to abandon ideas of truth or falsehood – let alone guilt and innocence – and concentrate instead on an intensely gendered discourse predicated on Jane’s

¹⁶ ‘The Sampson Perjury Case’, *Newcastle Morning Herald and Miners’ Advocate*, May 21, 1880, 3.

¹⁷ Golder, *Divorce*, 105.

¹⁸ ‘The Dibbs Divorce Case’, *Evening News*, Dec 3, 1880, 2.

¹⁹ ‘The Great Slander Case’, *Australian Town and Country Journal*, March 13, 1880, 6-7.

virtue, or lack thereof. With so much at stake – reputation, honour, and financial survival - each person who took the stand or swore an affidavit had abundant reason to lie.²⁰ For Jane, lying was clearly preferable to an admission of guilt, and she may well have been the ‘unblushing perjurer’ her husband’s barrister contended.²¹

Having replaced John Hargrave when he retired after a mental breakdown, Judge Windeyer ²² presided over a Special Jury of twelve men for seven intense days. The courtroom filled ‘directly the doors were opened,’ ²³ and at one stage the crowd was so large that authorities called in ‘the police and an army of auxiliary janitors to watch the doors’. ²⁴ The apparent drawcard was the ‘social position of the parties to the suit’, so that each day, the court ‘thronged with members of the legislature, magistrates and social magnates.’²⁵ For a woman whose identity was based on notions of restraint, dignity and virtue,²⁶ to have her intimate life probed and dissected in such a public forum was humiliating in the extreme.

Jane’s story reveals the devastating effects of divorce on the genteel woman, for whom reputation and status were her most valued

²⁰ Robertson, ‘What’s law got to do with it?’, 162.

²¹ ‘Dibbs v Dibbs and Blair’ *Armidale Express and New England General Advertiser*, Dec 17, 1880, 6.

²² Golder, *Divorce*, 112, 116.

²³ ‘The Dibbs Divorce Case’, *Evening News*, Dec 2, 1880, 2.

²⁴ ‘The Great Slander Case’ *Cornwall Chronicle*, March 17, 1880, 3.

²⁵ ‘Extraordinary Slander Action’, *Australian Town and Country Journal*, Feb 28, 1880, 6.

²⁶ Russell, *A Wish*, 92.

assets.²⁷ As someone who placed respectability foremost, the sources reveal her struggle to prevent the details of her personal life from dismantling a carefully contrived public persona.²⁸ Lessening the fallout from the collision of public and private lives necessitated for Jane the genteel performance par excellence.²⁹ Within the sources, her Janus-face juxtaposes the image of delicate gentility against that of an independent woman who fought to shape her own life. For the elite woman, femininity was a set of constraints that simultaneously defined and confined.³⁰

In a protracted display of an idealised feminine self, Jane Dibbs thus faced a double-edged sword; while her performance ensured her continued inclusion in an elite social class, it restricted to a marked degree what she could do in her personal life.³¹ To be believed in the courtroom as a woman of unimpeachable virtue, Jane had to deny the many occasions on which her behaviour contradicted this. This meant twisting the evidence into a shape that could satisfy the impossible demands of ladylike conduct.

²⁷ Russell, *A Wish of Distinction*, 92.

²⁸ McKenzie, *Scandal*, 181.

²⁹ Ibid.

³⁰ Russell, *A Wish of Distinction*, 3.

³¹ Penny Russell, 'For better and for worse': Love, power and sexuality in upper-class marriages in Melbourne, 1860-1880.' *Australian Feminist Studies*, 3:7-8, 1988, 11.

If as Penny Russell has argued, the genteel performance comprised 'cultural capital',³² it is not surprising that Jane Dibbs put on the show of her life when she appeared in court. Dressed in 'deep mourning,' wearing two veils and always accompanied by two or more friends who 'led her into the Court,'³³ she displayed the quintessential image of fragile and vulnerable femininity. Given that adultery brought significant opprobrium upon a woman once it became known,³⁴ it was vital she proclaim her innocence under any circumstances. Since a divorced woman could no longer move in respectable society,³⁵ divorce was in effect social death. These considerations help to explain why women like Fanny Teas and Jane Dibbs were prepared to perjure themselves; the stakes were too high to tell the truth.

In a society obsessed with scandal and reputation,³⁶ improper conduct threatened simply by association.³⁷ Since a woman's reputation could be damaged beyond repair if she were associated in any way with a divorce case,³⁸ even Jane's sisters were willing to sacrifice their relationship when rumours first circulated about her conduct. Before the trial Jane's sister Florence complained to John Dibbs that reports 'prejudicial to her sister's character, were in

³² Russell, 'The Brash Colonial', 453.

³³ 'Dibbs Divorce', *Australian Town and Country Journal*, March 13, 1881, 6.

³⁴ Russell, 'For better and for worse,' 23.

³⁵ *Ibid.*, 24.

³⁶ McKenzie, *Scandal*, 83.

³⁷ Russell, *A Wish of Distinction*, 15.

³⁸ Russell, 'For Better and for Worse', 24.

circulation, and ... ought to be immediately arrested.'³⁹ Another sister confessed to suffering 'great anxiety' and demanded to know if 'her sister's conduct was unblemished,' because otherwise she could not visit. ⁴⁰ These examples suggest firstly that Jane was not the chaste and virtuous innocent she maintained, but also the dire repercussions of scandal.

Through detailed news reports, we know that in court Jane 'gasped', was 'crying', answered 'with agitation' and 'in tremulous voice', when asked directly about sexual intercourse rather than questions framed in the usual euphemistic or allusive language.⁴¹ Since in colonial society the respectable woman was never allowed to indicate that she possessed sexual knowledge of any kind⁴² it is not surprising that the demands of this performance necessitated Jane's display of intense embarrassment and distress upon being asked to speak of such indelicate matters. ⁴³ Only 'bad women' possessed an obvious knowledge of sex, while 'good women' like Jane were expected to be ignorant of anything sexual (despite the fact that they may have had several children). ⁴⁴ In much the same manner as breach of promise cases, divorce proceedings threatened the illusion of feminine

³⁹ 'Supreme Court- Sittings in Divorce' *Australian Town and Country Journal*, Dec 11, 1880, 6.

⁴⁰ 'The Great Slander Case', *Australian Town and Country Journal*, March 13, 1880, 6-7.

⁴¹ *Ibid.*, 18.

⁴² Russell, 'Brash Colonial', 450.

⁴³ Russell, 'For better and for worse'18.

⁴⁴ *Ibid.*,19.

modesty,⁴⁵ and it was up to the woman on the stand to reconstruct the fantasy as quickly as lawyers sought to topple it.

However, abundant evidence suggests that like many others of her class, Jane Dibbs was a passionate woman who enjoyed male company and attention.⁴⁶ She met up on a number of occasions with Charles Blair in Melbourne and Deniliquin, sending him incriminating telegrams later tendered as evidence. She stayed often with Rosa Parks and a visiting American seaman Arthur Coulson (who died during the trial and could not proffer his version of events) and admitted to paying over thirty visits to John Shepherd's office. These details Jane declared to be circumstantial, maintaining her innocence throughout proceedings.

It is hard to imagine a case more revealing than this of the colonial gender dynamic or the realities of male oppression. Within a vigorously patriarchal social order, economically powerful men like John Dibbs exercised a combination of physical and economic strength and sexual liberty. All a woman could offer in return was to be a dutiful and loving wife.⁴⁷ Jane evidently found this difficult, and a substantial part of her husband's case was dedicated to portraying her as anything but domestically devoted. Clearly, this was no

⁴⁵ Simmonds, 'Promises and Pie-Crusts' 112.

⁴⁶ Russell, 'For better and for worse,' 17.

⁴⁷ Ibid., 15.

companionate marriage.⁴⁸ John evidently saw himself as an individual patriarch and accordingly expected obedience from a submissive wife.⁴⁹ Given what Howe and Swain have aptly described as a predominant 'masculinist culture' in colonial society, Jane was expected to exist in her husband's shadow and derive satisfaction only from her domestic role.⁵⁰

Abundant evidence from John Dibbs and numerous other witnesses testified to her failure to do so. In Newcastle, Jane spent long hours either horse riding, driving out in a carriage or playing the piano with Charles Blair, (both Jane and Blair were musical, and John Dibbs was often absent on business.) She organised a private letterbox of which her husband knew nothing, to receive letters from her lover. She often opposed husbandly edicts and according to John was utterly spoiled, physically violent on occasion, and unable to economise. Since the place of a married woman was in the home,⁵¹ Jane's obvious efforts to lead her own life counter suggestions of her gentility and compliance.

Most damning of all, John told the court that shortly after their youngest child was born his wife informed him he was not its father. From thereon the couple occupied separate bedrooms 'by mutual

⁴⁸ John Hirst, 'Women and History' in John Hirst, *Sense and Nonsense in Australian History*, Victoria, 2009, 48.

⁴⁹ Saunders and Evans, 'Introduction: Gender and Reproductive Relations', *Gender Relations*, 100.

⁵⁰ Howe and Swain, 'Fertile Grounds', 158.

⁵¹ *Ibid.*, 161.

consent.⁵² Certainly the fact that both Fanny Teas and Jane Dibbs refused to sleep with their husbands challenges the belief that a colonial woman could not refuse access to her body.⁵³ However, their experiences also reveal that doing so risked serious consequences. For working class women like Martha Anderson, claiming a separate domain was not possible; in cramped living conditions, privacy and solitude were elusive.⁵⁴ The luxury of a separate bedroom and withdrawing sexual services was available only to the affluent.

John's determination to dictate his wife's social circle proved the catalyst for the couple's separation in 1874. Membership of the gentility meant staying away from the undesirable,⁵⁵ (obviously, even if they were related to you), and John had firm ideas about who was and was not suitable for his wife to mix with. On this and many other occasions Jane simply went against her husband's wishes. Taking only Frank and Amy as well as a servant with her (but almost immediately depositing her daughter with 'Mrs Barton on Cockatoo Island'),⁵⁶ she boarded the steamer to Sydney and embarked upon a social whirl, staying with the unsuitable Rosa Park and others in a beach cottage near Sans Souci and at Wentworth House, another small hotel in Wynyard Square.

⁵² SRNSW NRS13594, (0109/1879).

⁵³ Lake, *Getting Equal*, 3.

⁵⁴ Bongiorno, *Sex Lives*, 41.

⁵⁵ Russell, *A Wish of Distinction*, 43.

⁵⁶ SRNSW NRS13594, (0109/1879).

When John and George Dibbs appeared at Wentworth House to demand that she return with them to Newcastle, Jane refused, telling John to ‘take the law’ and do his best.⁵⁷ As many colonial husbands did, he immediately placed an advertisement in the paper announcing he would no longer be answerable for any debts his wife might contract. This kind of action had the effect of closing the supply gates and starving someone out. In Jane’s case, she testified that she only signed a deed of separation because George Dibbs persuaded his brother not to give her a penny unless she did so. She did however stand her ground and insist that the deed be amended to delete a clause dictating that she remain ‘chaste and virtuous’, an extraordinary attempt by John Dibbs to maintain control over his wife’s body.⁵⁸

Given her complete financial disempowerment, it is intriguing to consider the various machinations to which Jane was forced to resort in acting on her own desires, both before and after she left her husband. On more than one occasion during her married life, she travelled without the money to pay her fare, forcing John to compensate at a later date. She also inveigled small amounts of cash from local tradesmen, no doubt promising her husband would repay them. Staying with Rosa Park, Jane ran up bills that John considered extravagant, and spent what she wanted. Raised with every material

⁵⁷ SRNSW NRS13594, (0109/1879).

⁵⁸ SRNSW NRS13594, (0104/1879).

comfort, it is not surprising she found economising difficult, or that £10 per month (more than Martha Anderson could ever earn) was not enough to live on.

Unlike Fanny Teas, Jane Dibbs possessed a marketable skill in her piano playing and accomplishments in fancy work, both acquired in the genteel drawing room.⁵⁹ She showed remarkable initiative in the years after her separation, first taking lessons from a well-known piano teacher to present herself as his pupil and gain further credibility. She had business cards printed and handed these out in various musical establishments, even travelling to Echuca in response to an advertisement for a music teacher. Despite her efforts, Jane could not earn an adequate living.

The details of Jane's life after leaving her marriage suggest an independent and self-determined existence, even while structural barriers impeded her realisation of this. Her financial circumstances reveal how in turning from one oppressive situation, many women simply encountered another from which it was equally difficult to escape.⁶⁰ Jane's efforts to forge her own way demonstrate once again how the disempowered subject may still enact an embodied agency, chiefly by the capacity to make things happen via the bodily 'I can'.⁶¹ While Jane could take her body –and share it – where and with whom

⁵⁹ Russell, *A Wish of Distinction*, 97.

⁶⁰ Garton, 'Three Reviews', 203.

⁶¹ Levin, *Embodiment*, 56.

she chose, she could not earn enough to live in the style to which she was accustomed, or keep her children when faced with masculine legal and economic authority. Thus the agency she could achieve was limited in time and space.

From the time she left her husband, Jane wrote numerous letters and sent telegrams to curry favour and portray herself as innocent and vulnerable, and letter writing clearly provided her a context for resistance.⁶² Consider the following, written to two friends whom Jane implored to testify on her behalf:

*'Frank is to be taken from me, and I shall be cast adrift on the world to die if you all do not come forward to speak for me. ...I am a helpless and heart-broken little woman – bereft of all in this world, tho' trusting to God to help me.'*⁶³

Over the years, Jane also wrote extensively to her husband, although he admitted to leaving her letters unanswered. In these, Jane presented herself as starving, and begged to be allowed to return to the family home. She scattered frequent religious references throughout, in an effort to suggest piety and chastity.⁶⁴ Only one of these letters remains in its original, stapled to the pages of Judge

⁶² Foley, *Subversive possibilities*, 228.

⁶³ Jane Dibbs letter, September 27, 1879, cited in *The Great Slander Case*, *Australian Town and Country Journal*, March 13, 1880, 8.

⁶⁴ Foley, *'Subversive possibilities'*, 229.

Windeyer's notebook.⁶⁵ In a round, childish script, Jane tells her husband that she forgives him, that her heart is broken, and although she is 'a lonely cast-out little woman, God' will help her.

Using these epistolary conventions to curry favour, to sway her husband and extract more money from him suggest that Jane saw herself as an agent with the capacity to bring pressure to bear on those around her, despite her calculated portrayal of helpless passivity. In other letters and telegrams, written to friends and to Charles Blair, Jane revealed repeated attempts firstly to orchestrate her affair, and secondly to influence the outcome of her court case. Witnesses testified – and letters in court confirmed – that Jane always wrote an instruction at the bottom of the letter for them to destroy it later. In this way, while Jane had only limited choices at her disposal, clearly she manipulated these as the occasion demanded.

Despite her efforts to suggest otherwise, the evidence suggests many ways in which Jane Dibbs transgressed norms of feminine conduct. Infidelity offered a context for resistance and rebellion, allowing Jane to challenge the boundaries of the domestic and marital and inhabit a realm separate from her husband's authority.⁶⁶ She travelled often between Sydney and Melbourne, renting rooms in respectable and less respectable boarding houses. The independent existence she led after

⁶⁵ SRNSW NRS7851 (4/1412)

⁶⁶ Parkins, 'Protesting like a girl', 59.

leaving her husband suggests that Jane tried to arrange her life in ways that denied her subordinate position,⁶⁷ living outside his controlling and authoritarian supervision.

That John Dibbs was indeed controlling is evident in another of his legal provisions, this time with regard to his wife's access to her children. While the Equity Court decreed that Jane should be able to see her children at all reasonable times, access was provisional with supervision by a third party, to be appointed by John Dibbs' solicitor. This galling proviso confirmed that her husband's authority over her did not end with separation. John's cruelty was evident in a number of other ways, including his return of gifts and letters she sent to her children, his refusal she be allowed to see them, and his sale of her beloved piano, fancy work and other personal possessions.

Once again leisure provided Jane with a space for resistance. During her marriage, horse riding (which John Dibbs did not enjoy) and piano playing offered clear opportunities to escape marital constraints. After her separation, Jane's leisure activities are equally suggestive of freedom from masculine control. Despite her financial difficulties, she clearly enjoyed various outings and social events, on occasion going on fishing expeditions and picnics with abundant champagne and spirits in tow; hiring a boatman and travelling to deserted locations, such activities allowed her to escape social constraints entirely

⁶⁷ Allen, 'From Women's History', 240.

without being observed (although naturally the boatman appeared in court to describe what he saw).

As for Fanny Teas, leisure and love coincided to provide Jane with a context in which to reject the cloak of submissiveness that patriarchal society and an authoritarian husband threw over her.⁶⁸ As she wrote her letters, expressed her opinions and sought to encourage a particular course of action, Jane achieved a level of personal autonomy and a sense of being able to influence people and events.⁶⁹ Clearly helpless as to the financial resources at her disposal, she could only control and influence through manipulating her genteel persona. By writing letters, travelling, enjoying extensive leisure and spending time with her lover, Jane Dibbs became the autonomous agent she could never be in her role as wife and mother.

Perhaps Jane's efforts were not in vain, because despite months of extensive legal preparation by three defence teams⁷⁰ and the testimonies of almost fifty witnesses, the jury could not reach a verdict, and was dismissed. This meant that adultery was not proven and the marriage could not be dissolved; frustratingly, the documentary trail relating to the Dibbs marriage ends there. By the trial's end John Dibbs was more than £1000 out of pocket for Jane's

⁶⁸ B.M. Wearing, *Leisure and Feminist Theory*, London 1998, 146.

⁶⁹ Foley, 'Subversive Possibilities', 241 244.

⁷⁰ For John Dibbs, Jane Dibbs and Charles Blair.

defence alone,⁷¹ and Jane departed for Melbourne, where she no doubt strove to put scandal behind her. Following a short illness, she died aged only 42, on June 11th, 1889 from cirrhosis of the liver and jaundice.⁷²

George Dibbs went on to enjoy an illustrious parliamentary career, was knighted, and elected three times as Premier of New South Wales. John Campbell Dibbs continued throughout the 1890s⁷³ as a successful mine- and -landowner and doubtless enjoyed a prosperous existence until his death in 1899 at the age of 69. The Dibbs divorce case was conducted on an unequal battleground that saw men of considerable economic substance pitted against a woman armed only with the ineffectual weaponry of genteel conduct, making this a conflict in which one party fought with bare hands against multiple gloved opponents. It reveals once again how for men a patriarchal society provided multiple economic, political and legal possibilities, but forced women to contend with one closed door after another.⁷⁴

⁷¹ Golder, *Divorce*, 118.

⁷² Death Certificate of Jane Dibbs, died June 11, 1889, Registrar of Births, Deaths and Marriages Victoria, 6572/1889.

⁷³ *New South Wales Government Gazette*, June 28, 1892, 5229.

⁷⁴ Saunders and Evans, 'Introduction: Gender and Reproductive Relations', *Gender Relations*, 99.

Chapter Six

Conclusion – The Iron Cage of Gender Constraints

As feminist scholars have long sought to do, I began this thesis aiming to counter stereotypes and reveal the life-stories of strong women, to challenge our understanding of intimate life in late colonial Sydney.¹ Deconstructing the intensely gendered discourse of the colonial Divorce Court, I sought to overturn what I regard as a dominant perception of colonial women as victims. In my research, I have encountered women who were determined to shape the circumstances of their own lives. In conducting adulterous affairs, these women demonstrated intent and autonomy in diverse ways to challenge masculine authority and control.

However, I want to conclude by reiterating the impenetrable constraints that gender placed around women in colonial New South Wales. My analysis suggests that such barriers overwhelmingly shaped the circumstances of each individual life according to social class. I am forced to acknowledge the many feminists who have paraphrased Karl Marx, and admit that while women may have made their own history, they did not do so under conditions of their own making.²

¹ Joan Scott, Chapter 3, 'Women's History' in *New Perspectives on Historical Writing*, Peter Burke (ed), Cambridge, 1991, 42.

² For example, Purvis, 'Using Primary Sources', 291; Allen, 'From Women's History', 240.

Armed with the concept of intersectionality, my research has uncovered striking differences between women according to their experience of an extra-marital affair, and its legal and social fallout. These differences suggest that the intersection of social class with gender was a key dynamic for women in colonial society, influencing feminine identity and the choices available to different women.³ Most significantly, the case studies suggest that it is impossible to discuss colonial womanhood in any unified way. The differences between and among women were so marked that they defy homogeneity. As Ann Curthoys and many others have shown, women in the past- as in the present-were 'riven by conflicts and divisions'.⁴

The research also reveals the many ways in which social class influenced the performance of gender in the courtroom. Fanny Teas and Jane Dibbs displayed an excessive vulnerability and fragility in order to confirm their membership of an elite social group. To these women, proving their virtue and chastity was of the utmost importance. In contrast, Martha Anderson and Annette Miller could present a far more robust character to the court, whose lens accordingly switched to simplistic assessments as to whether they were 'good' or 'bad' as opposed to 'pure' or 'unchaste'. Their working class lives demanded a physical strength and vigour that the two more affluent women were not expected to possess. In this way, the

³ Curthoys, 'Three Reviews', 197.

⁴ Curthoys, *A Feminist Voice*, 59.

gendered performance was classed in significant ways and subject to extensive individual manipulation.

My thesis began with the case of Martha Anderson, who overturned notions of victimhood and passivity from the moment she cast her flirtatious eye on Frederick Anderson and initiated a chain of events that landed her in the colonial Divorce Court. Details of her movement around Sydney, her desperate ‘importunity’ that Frederick marry her, her solo travel to and within New Zealand, and a willingness to engage with a masculine legal system suggest that Martha Anderson possessed a definite sense of selfhood. This carried her successfully through the trauma of an extra-marital pregnancy and her husband’s abandonment.

Of the four women, Martha suffered the least from her courtroom ordeal, and not just because the jury found in her favour. She did not have to move house when her marriage came undone, because she and Frederick had not set up a household together. Although Martha complained in court about this unorthodox arrangement, it meant that when her relationship with Frederick faltered, she still had somewhere to live. She was also able to rely on her family’s economic and emotional support and her relatives were clearly less judgmental than those of Fanny and Jane. Martha’s evident self-reliance also derived from her ability to earn a steady if small income through a skilled occupation. While structural limitations to a woman’s wage

meant that this income would always be inadequate, Martha at least would not be 'reduced to the pitch of want and starvation' of which Jane Dibbs complained.⁵

Since Frederick's income was also limited, and the couple had not established joint financial arrangements during their brief marriage, Martha did not rely on accessing credit in her husband's name. She is the only one of the four women who did not resort to this method of circumventing financial disempowerment. Most significantly, because he believed that he was not the father of Martha's baby, Frederick did not seek custody of their child. These factors combined to give him less leverage over his wife.

However, Frederick Anderson was also the least established and prosperous of the four male petitioners. It is likely that as a young man with relatively limited financial and personal authority, he was less able to exact revenge on a faithless wife. Given that the couple soon resurrected their marriage, it is also possible that personal qualities were at work here, and Frederick Anderson was simply a kinder and less vengeful husband.

In contrast to Martha, Annette Miller was without emotional or financial support, with no children or other relatives and her lover long gone. Annette had fewer means to engender sympathy or support

⁵ SRNSW, NRS13594, (0104/1879).

because of her childless state. However, her story similarly eschews suggestions of victimhood. Her determined decision to leave a husband who was a good provider was the first indication that she wanted to make her own way in life.

The details of Annette's travel around the colony with Smith in search of casual employment also suggest considerable initiative and resourcefulness. She was not afraid of hard work and would accept charity if she had to. At no time did she scurry back to Compton Miller, and she continued alone even with Smith gone. Her resolute performance on the stand suggests again a sense of selfhood that even a punitive legal system could not demolish. For Annette and other women of the so-called undeserving poor, defiance of the law provided a context in which to flout oppressive gender expectations and assert an individual autonomy, albeit severely limited and eliciting harsh repercussions. Significantly, her case confirms yet again that ordinary women have received limited historical attention other than as wives and mothers.

The case of Fanny Teas was one of the first divorce files I encountered. At the time, I was struck by Fanny's obvious passion for her lover and determined opposition to those who tried to prevent her affair, and the details of her visits to Miss Horner's hotel, her delightful trips to the opera and oyster suppers to follow, and of course her lusty romps at home with Smithers. Fanny's physical defiance of her husband's

authority suggests anything but victimhood. Her case reveals how leisure provided for the middle class woman an easily accessible sphere in which to indulge in an adulterous relationship, and thereby to escape a husband's authority.

Away from home, Fanny was an autonomous agent who moved with obvious freedom. In the presence of children, servants and a prying community, however, she faced a continued surveillance that sought to tame her. Fanny's lack of employment skills meant she had no capacity to earn an income and was doomed to economic dependence. As a result, the consequences of attempted independence and agency were dire, and her sad final years alone in a boarding house are testament to the retribution exacted of those who transgressed gender norms.

The case of Jane Dibbs presents a marked disjuncture between the helpless creature on the stand and the woman behind this contrivance. Jane's passivity in the courtroom is in great contrast to the woman who left home against her husband's wishes because she wanted to visit unsuitable friends. Jane's movement between Newcastle, Sydney and Melbourne, her rich social life and her frenetic letter writing combine to reveal a firm sense of herself as an autonomous agent who could effect change. As for Fanny, the overlapping spheres of leisure and adultery formed a context in which Jane could achieve a sense of personal autonomy and control over her

environment. This equally enabled her to resist and challenge her husband's authority.

That circumstances ultimately defeated Jane Dibbs was because a colonial legal system gave a man complete authority over his wife and children. The Dibbs divorce case reveals most forcefully the capacity of individual men to be cruel and punishing within a patriarchal society and a legal system that validated their right to be so. Jane's attempts to resist and escape her husband's control and authority are highly evident, but her ultimate dispossession and premature death must be linked somehow to her legal and emotional ordeal.

That so few adulterous women appeared in court renders my sample undeniably atypical and unrepresentative. These were extraordinary women, even among the ordinary. Perhaps only those with relatively small families had the time and energy to engage in an extra-marital relationship. Possibly their stories may be attributed simply to individual idiosyncrasies of character and circumstance. Whilst recognizing these concerns, I believe that the case studies presented here have portrayed women who did indeed challenge and resist masculine authority, and sought self-determination despite the iron cage of gender constraints.

In a field marked by a dearth of realistic female identities, this thesis has contributed extensive insight into the intimate lives of four flesh

and blood individuals. Significantly, it has explored the experiences of working class women for whom the documentary evidence is sparse. The divorce archive remains relatively untapped, and has ample potential to further extend our understanding of female sexuality in the colonial era. In particular, an in-depth study of substantially more cases over a longer period could allow a comparison of changes in intimate life from 1873 to 1901. Further research is also needed to probe the relationship between the capacity for agency and the number of children a woman had, to see how family size affected independence and mobility. Given that the last third of the nineteenth century saw substantial changes in the role of women, the question remains as to how such changes influenced intimate life for the individual. Clearly, the source material offers a number of significant potential avenues for further investigation.

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