“The More Things Change:”

Gender Relations and Married Life

Across a Time of Transformation

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Statement of Originality

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Marian J. Lorrison

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'The More Things Change': Gender Relations and Married Life Across a Time of Transformation

Abstract

This thesis explores major historical questions about marriage, the family and sex, by examining seven dysfunctional marriages exposed in the Divorce Court of NSW between 1883 and 1912. It is a considerable challenge to uncover intimate gender relations within a bygone era, but my thesis describes the pedestrian detail of intimate confrontation by using a micro-historical case study approach and interrogating transcripts created within the Supreme Court, Divorce and Matrimonial Causes Jurisdiction. The thesis combines these comprehensive legal case files with extensive press material and genealogical information to investigate gender relations and gendered conflict as these emerged in domestic contexts and the legal arena.

Using each unravelling marriage to examine such issues as contraception, domestic violence, sexuality and parenting, the thesis humanises an historiography based predominantly on quantitative and statistical claims and the study of exceptional women. By doing so, it extends our knowledge and understanding of past intimate life and the pivotal role of gender and social class in determining individual circumstances. The thesis reveals the intensely gendered substance of marital conflict, the manner in which battles were waged, and the attitudes of a masculine and misogynistic legal system towards male versus female protagonists. It confirms that gender roles and responsibilities served as prime fodder for marital conflict, while male dominance persisted alongside continued structural disempowerment for women. Despite its promises, citizenship offered Australian women little benefit in their married lives.

The thesis contends that despite a rhetoric of growing emancipation for women, men continued to dominate the domestic realm unless a wife had either an independent income or

the capacity to earn one. Only through economic empowerment could women escape their subordinate position. Although there were definite changes to the feminine role, men resisted any threat of change to the dominant notion of male supremacy, and society remained intensely patriarchal. While women's position within the family and economic dependence ensured their ongoing oppression, the thesis explores how women nonetheless resisted masculine dominance, finding ways to assert their identities that included a rejection of the constraints of marriage through application for divorce. Uncovering numerous instances of women's agency and resistance, the thesis adds named individual women to an historiography that continues to be blighted by a dearth of feminine identities.

Contents

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Finally, I thank those women and men whose traumatic histories I have investigated. Although I sometimes left the archive weighed down with their suffering, I have tried to channel my sadness into showing 'my' women in particular the dignity and respect they did not always receive when they were alive.

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This thesis is dedicated to my late mother Marijke Spoelstra Coy (1938-2007) and the countless women through time who have suffered and continue to suffer domestic violence.

You wanted me to write, Mum. I hope I've made you proud.

A Tale of Progress?

> "All happy families are alike:
> each unhappy family is unhappy in
> its own way." [1]

This thesis investigates seven disintegrating marriages which appeared in the Divorce Court of New South Wales (NSW) between 1883 and 1912. In doing so, the thesis explores major historical questions about marriage, the family, parenting and sexuality, as those within the legal arena pondered their many complexities. Pertaining largely to what went on behind closed doors—behaviours that are notoriously difficult to investigate—divorce cases contribute human subjects who allow us to test those scholarly assumptions which dominate the historiography of intimate life. Such cases have abundant potential to extend our understanding of intimacy, particularly in providing extensive detail to chronicle the parameters of interpersonal conflict. By investigating a number of individuals as they engaged in a brutal struggle over gender roles and responsibilities, my research explores intimate lives and private angst.[2]

Consider, for example, the circumstances of twenty-four year old Flora Horwitz, who in 1883 appeared in Sydney's Divorce Court to face her husband's charges of adultery.[3] As the mother of two small children, Flora had few means of earning an income, and relied upon an affluent brother-in-law for financial support when her abusive husband evicted her from the family home. She did not possess a bank account or independent property, and was too old to benefit from the recent expansion of educational opportunities for women.[4] If found

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[1] Leo Tolstoy, *Anna Karenina*, trans. Richard Pevear and Larissa Volokhonsky, (UK: Penguin Group, 2002), 12.
[2] Claire Sellwood, "'A Series of Piteous Tales: Divorce Law and Divorce Process in Early Twentieth-Century New South Wales," (Phd Thesis, University of Sydney, 2016), 15.
[3] State Records NSW: Supreme Court of New South Wales, NRS 13495, Divorce Case Papers 1873-1978, [200/1883], *Michael Horwitz - Flora Horwitz,* (hereafter SRNSW: NRS 13495 [200/1883], *Horwitz v. Horwitz*).
[4] The *Public Instruction Act* (NSW) was passed on April 16, 1880 and came into operation on May 1, 1880. "The New Education Act," *The Riverine Grazier,* April 24, 1880, 2; Majorie R. Theobald, *Knowing Women: Origins of Women's Education in Nineteenth-Century Australia*, (Cambridge, UK, New York: Cambridge University Press, 1996), 92.

guilty, Flora would forfeit both the custody of her children and her standing in the community.[5] Legally dispossessed, married to a coercive spouse and without a penny to her name, she had few opportunities to experience autonomy or empowerment. The laws of coverture held that upon marriage, a woman surrendered to her husband all her worldly goods and any future earnings or property. Although the passage of the *Married Women's Property Act* of 1882 such the steady eroding of such laws,[6] the idea persisted that a husband possessed financial and legal control over a wife.

Almost thirty years later, the 1911 divorce petition of Louisa Moss featured a woman endowed with the self-possession and financial capacity not only to initiate a divorce action but to pay her own legal costs.[7] Within the Moss family, bank accounts were in Louisa's name and it was she rather than her husband Edward who negotiated with various stakeholders to operate the small clothing manufactory which, in theory at least, belonged to both partners. The *Divorce Amendment and Extension Act* (NSW) of 1892 had significantly widened women's access to divorce, and Louisa was legally entitled to distance herself from a marriage turned sour.[8] As an independent legal entity, she could vote, and as a small-business owner, earned an adequate income. Born in 1871, Louisa was among the first generation of women to benefit from compulsory schooling. Unlike Flora Horwitz, for whom divorce signalled social annihilation, it offered Louisa Moss an opportunity for greater independence.

As my seventh and final case study, the forthright Louisa is a very different creature from the visibly disempowered and submissive Flora, the subject of my first chapter.

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[5] Heather Radi, "Whose Child? Custody of Children in New South Wales 1854-1934," in *In Pursuit of Justice: Australian Women and the Law, 1788-1979,* (Sydney: Hale & Iremonger, 1979), 119.
[6] A.R. Buck, "'A Blot on the Certificate:' Dower and Women's Property Rights in Colonial New South Wales," *Australian Journal of Law and Society* 4 (1987): 89.
[7] State Records NSW: Supreme Court of New South Wales: NRS 13495, Divorce Case Papers 1873-1979 [7862/1911], *Louisa Moss – Edward Moss* (hereafter SRNSW: NRS 13495 [7862/1911], *Moss v. Moss.*
[8] Hilary Golder, "'A Sensible Investment,' Divorce in Nineteenth-Century New South Wales," (PhD Thesis, University of New South Wales, 1982), 12.

Courtroom revelations of Edward Moss's ongoing sexual and verbal abuse, however, suggest the Moss marriage was sorely compromised, and proceedings would confirm Louisa's distress at her husband's inability (or unwillingness) to provide for his family. Her vigorous engagement in the world of business derived not from the search for fulfilment, or personal ambition, but financial necessity. Much as for the Horwitz marriage, testimony confirms that gender roles and responsibilities served as the primary source of conflict between the spouses. Although gender did not necessarily constrain Louisa's access to material resources, it nonetheless shaped and defined her domestic life. And rather than lauding her income-earning capacity, Edward transposed his resentment of Louisa's success onto bizarre and ongoing attempts to control her sexuality.

It is relatively straightforward to investigate legislative and other societal developments, enshrined as these are within the statutes and manifestly documented. It is a greater challenge to trace intimate gender relations within a bygone era. Although press sources in the Anglophone nations between 1880 and 1910 describe a protracted and divergent public debate over gender roles and comportment, such debate typically remains at the level of ideology and opinion.[9] While extensive research describes feminist agitation for social and legislative change, it rarely describes the pedestrian detail of intimate confrontation.[10]

To some degree, limited evidence exists in relation to intimate gender relations because research has examined the writings of prominent figures and their public activities,

[9] See for example Stephanie Forward, "Attitudes to Marriage and Prostitution in the Writings of Olive Schreiner, Mona Caird, Sarah Grand and George Egerton," *Women's History Review* 8 no. 1 (1999): 53-80. As Forward suggests (p.53), the era in question was "electric with new ideas" and the wider community intent on dissecting and debating marriage as an institution.

[10] Some major book-length works investigating suffrage in Australia include Audrey Oldfield, *Woman Suffrage in Australia: A Gift or a Struggle?* (Melbourne: Cambridge University Press, 1992); Susan Magarey, *Passions of the First Wave Feminists,* (Sydney: University of NSW Press, 2001). Like article-length analyses of the suffrage movement, these works focus on the key arguments that first-wave feminists put forward for change, and on biographical details relating to the movement's leaders. Since many of those leaders, like Vida Goldstein and Rose Scott, were not married, or else like Louisa Lawson, had become anti-marriage through experience, there is little focus on intimate gender conflict within the suffrage literature.

but the private lives of ordinary people have escaped historical attention. We know little of how changes in the wider society and the feminine role transferred to marriage. Nor do we know much of marital relations for the unexceptional, while working-class marital relationships have proven "exceptionally elusive areas of study," as Leonore Davidoff remarks of marriage in England. Furthermore, the evidence that *does* exist is typically related from one side only, and usually that of the dominant partner.[11]

It is a truism to suggest we gain insight into marriage and sexuality through an examination of divorce, but in airing their "dirty laundry" within a legal arena, divorcing spouses unconsciously mirrored the accelerating gender battle at play within the wider society.[12] Literary scholars and historians, suffrage campaigners and their biographers have explored at length the changing feminine role, but how the crisis in gender relations affected the unremarkable woman remains largely unexamined. We therefore have a mere handful of female subjects to demonstrate the implications of changes in the feminine role and the society in which such changes took place.

To address such a deficit, I turn to the archival divorce case files generated within the Supreme Court of New South Wales, Divorce Division, beginning with the Horwitz case of 1883 and ending with the Moss case of 1912, with five cases intervening. To these sources I add comprehensive related press coverage of trials and hearings, and where such detail is available, genealogical information concerning principal actors. From 1899, lengthy transcriptions of court proceedings provide additional source material. While a vast conglomerate of sources and competing, contradictory voices within those sources make it almost impossible to state with certainty "what really happened," the endless ricochet of

[11] Leonore Davidoff, "Mastered for Life: Servant and Wife in Victorian and Edwardian England," *Journal of Social History* 7, no. 7 (1974): 407.
[12] Hayley Marina Brown, "Loosening the Marriage Bond: Divorce in New Zealand, c. 1890s to 1950s," (PhD Thesis, Victoria University of Wellington, 2011), 3; For an extended discussion of this gender conflict, see Marilyn Lake, "Historical Reconsiderations IV: The Politics of Respectability: Identifying the Masculinist Context," *Historical Studies* 22, no. 86 (1986): 116.

accusations which characterise proceedings offer an exceptional opportunity to probe the domestic circumstances of a feuding couple.[13] And in those multiple narratives that make up legal testimonies,[14] it is possible to trace retrospectively the pre-eminence of gender roles in constructing the particular "story" which lawyers presented to the court.

Issues relating to gender roles and responsibilities thus form the primary source of contention in the ample written discourse that formal marital disruption once created. Placing the gendered navigation of marital conflict beneath a scholarly microscope, I ask what such conflict can tell us about gender relations in a crucial time of change, and how the unremarkable woman across social class responded to prevailing conditions of marriage in late colonial and early twentieth century Australia. To explore this question, I consider how women and men in the legal context presented their contrasting versions of "the truth" by assembling these conflicting models according to the "favourable stock story" which formed the basis of a legal case.[15]

My research asks how the ongoing asymmetry of gender relations manifested in the sex-based struggle for control within the individual marriage, despite legislative changes that purported to ameliorate (but certainly did not eradicate) many of the entrenched structural conditions maintaining women's disempowerment. The thesis extends scholarly knowledge about marital disunity in specific marriages and exposes how supremely gendered were those issues over which spouses did battle, including household spending, sexual (mis) conduct and jealousy, family size, domestic violence and contraception.

The primary aim of the research, however, is to extend our understanding of sexual and emotional intimacy for women and men across social class, between 1880 and 1914.

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[13] A. James Hammerton, "Victorian Marriage and the Law of Matrimonial Cruelty," *Victorian Studies* 33, no. 2 (1990): 276.
[14] Peter Brooks and Paul Gewirtz (eds)., *Law's Stories: Narrative and Rhetoric in the Law,* (New Haven and London: Yale University Press, 1996), 8.
[15] Ibid., 9.

These years reflect an extended period of substantial societal upheaval, when gender relations came under increasing scrutiny.[16] In particular, the thesis asks what alterations manifested in the long-held notion that wives should submit to husbands, and how an "accelerating quest for autonomy" on the part of growing numbers of women affected their negotiation of intimate gender relationships.[17]

The thesis builds upon my previous investigation of four adulterous women who appeared in the NSW Divorce Court in the 1870s. This research has led to a close knowledge of the divorce archive, and an understanding of how social class and gender shaped in multiple ways individual experience.[18] Together, these four decidedly colonial stories provide a strong contextual basis for understanding how gender continued to constrain women, even as modernity took firm hold. Of equal import, these earlier case files provide a baseline from which to chart altering expectations in the years that followed.

If we are to understand why gender inequality persists in contemporary Australia, and why women remain bound to limited and limiting notions of feminine conduct—in spite of presumed alterations in sex role behaviour—it is important to understand how power dynamics have operated within individual marriages of the past. Only through real-life examples of dissenting and disgruntled spouses will we comprehend why that "battle between the sexes" so famously taking place at this time ultimately failed to release women from the shackles of patriarchal control.[19] And while we can never really know what went on in the bedrooms of the past, legal records describing marital conflict and divorce offer one of the few potential means to gain insight into historical sexual practices and to examine how others regarded those practices.[20]

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[16] Susan Magarey, "The Politics of Passion: Sex and Race in the New Body Politic," *Australian Feminist Studies* 12, no.25 (1997): 31.
[17] Hammerton, "Law of Matrimonial Cruelty," 270, 272.
[18] Marian J. Lorrison, "To the Beat of her Own Drum: Feminine Agency in Colonial New South Wales, 1873-1881," (Master's Thesis, Macquarie University, 2016).
[19] Lake, "Historical Reconsiderations IV," 116.
[20] Lesley A. Hall, *Sex, Gender and Social Change in Britain Since 1880,* (London: Macmillan Press, 2000), 5.

Background to the Research

I began this introduction by describing two women for whom the world outside of the domestic context differed markedly, particularly regarding their access to sources of economic empowerment. In three key decades, legislative changes targeted the narrow feminine role to transform opportunities for women outside of the domestic context. These amendments typically begin with the *Married Women's Property Act* 1879, which for the first time recognised married women as independent legal entities.[21] The *Public Instruction Act* followed in 1880 and aimed to render more equal those educational opportunities which men had long taken for granted. Then in 1883, the Department of Public Instruction established several public secondary schools for girls, their actions confirming a growing societal belief in the importance of education for both sexes.[22]

Alongside these developments, new forms of employment in fields such as clerical and manufacturing saw women move in increasing numbers away from the drudgery of domestic service and into factories, widening their available employment avenues.[23] The *Divorce Amendment and Extension Act* of 1892 extended the provisions for divorce, and allowed women to petition on such grounds as drunkenness and desertion, paving the way for an easier dissolution of miserable marriages.[24] Perhaps most significantly, and following intense and ongoing campaigns for suffrage, the *Commonwealth Franchise Act* of 1902 gave women the right to vote.[25]

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[21] *Married Woman's Property Act 1879 (NSW).*
[22] *Public Instruction Act* 1880 (NSW); Marjorie Theobald, "The PLC Mystique: Reflections on the Reform of Female Education in Nineteenth-Century Australia," *Australian Historical Studies* 23, no. 92 (1989): 242.
[23] Beverley Kingston, *My Wife, My Daughter and Poor Mary-Anne: Women and Work in Australia*, (Melbourne: Thomas Nelson, 1971), 57, 75.
[24] Hilary Golder, *Divorce in Nineteenth Century New South Wales,* (Kensington, NSW: New South Wales University Press, 1985), 9.
[25] *Commonwealth Franchise Act (1902).*

From the late 1880s, a rising Woman's Movement inspired a sense of feminine consciousness, and was supported in its efforts by an expanding press machine.[26] Gender relations came under mounting scrutiny, naturally more so from women than men, since male conduct formed the main substance of contention.[27] As the law relinquished its formal hold on suppressing women, other informal cultural alterations to their lives also occurred, including a shift away from the restrictive clothing of the colonial area and a move towards looser and more comfortable dress, which allowed women to move more freely.[28] And for reasons still largely unknown,[29] rates of childbirth decreased significantly to liberate many women from the tyranny of relentless reproduction and childcare that was formerly almost a given in their lives.

Given such changes in combination, many scholars perceive the period in question as transformative in its implications for gender roles and the status of women. As Melissa Bellanta and Alana Piper observe, however, a rupture between old and new is rarely quite so dramatic or significant as it may appear with historical hindsight.[30] Nor do legislative reforms necessarily wreak so marked a change as we may retrospectively assume. Already in 1979, feminist historian Judith Allen had argued that legal changes are not always synonymous with progress, and legislation does not automatically ensure individual betterment.[31]

My research similarly reveals the differential effects for women of legislative changes. Complicating factors such as age, marital status and social class influenced the import of legal amendments that aimed to target women's unequal position. Close

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[26] Golder, "'A Sensible Investment,'", 380.
[27] Magarey, "The Politics of Passion," 31.
[28] Tracy J. R. Collins, "Athletic Fashion, "Punch," and the Creation of the New Woman," *Victorian Periodicals Review* 43, no. 3 (2010: 318.
[29] Despite ongoing research, explanations for fertility decline remain "a corpus of ideas" rather than a decisive theory. Josef Ehmer, "The Significance of Looking Back: Fertility Before the "Fertility Decline," *Historical Social Research* 36, no.2 (2011): 12.
[30] Melissa Bellanta and Alana Piper, "Looking Flash: Disreputable Women's Dress and Modernity, 1870-1910," *History Workshop Journal* 78, no. 1 (2014): 72-74.
[31] Judith Allen, "Breaking into the Public Sphere: The Struggle for Women's Citizenship in NSW, 1890-1920," in *In Pursuit of Justice: Australian Women and the Law, 1788-1979,* eds. Judith Mackinolty and Heather Radi (Sydney: Hale & Iremonger, 1979), 115.

examination of educational reforms, for example, reveals that the *Public Instruction Act* of 1880 did *not* provide girls with an education that was equal to that of boys; girls were not offered Greek or Latin, subjects which were essential for entry into the professions, and a substantial component of their primary schooling was devoted to domestic skills like needlework.[32] The lives of female children continued to be predominantly domestic in orientation, and it was girls rather than boys who were kept home to help with younger siblings, or undertook unskilled employment to supplement a family's income.[33] The goal of education for girls remained to equip them to manage "the divine workshop" of the home, not to study at university or enter a well-paid career.[34]

I confine my research to the decades between 1880 and 1914, for several reasons. To begin with, 1880 often appears as an invisible boundary to mark the end of the old and the start of the modern era.[35] A highly visible "finish" line appears in the cataclysmic rupture of the First World War, which many regard as marking the "true" birth of the Australian nation.[36] Above all, 1880 to 1914 involves the transition from the colonial to the modern era. As feminist historian Susan Magarey remarked in 1989, a belief is well-established in the formative character of those decades before and after the turn of the twentieth century, an era which constitutes "a legend in the historiography of colonial Australia." Magarey acknowledges the popular scholarly view of this period as one of extraordinarily progressive change, comprising an increasing urbanisation and industrialisation in conjunction with a newly developing spirit of nationalism, and a growing national identity based on increasing awareness and celebration of a uniquely (and supremely masculine) Australian landscape and

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[32] Theobald, *Knowing Women,* 116.
[33] Noeline Kyle, *Her Natural Destiny: The Education of Women in New South Wales* (Kensington: New South Wales University Press, 1986), 28.
[34] Ibid., 51.
[35] Hall, *Sex, Gender and Social Change*, 1.
[36] See for example Marilyn Lake and Henry Reynolds, *What's Wrong with Anzac? The Militarisation of Australian History* (Sydney NSW: University of New South Wales Press Ltd., 2010), 173; Although I do not concur with the view of WW1 as marking the birth of nationhood, it certainly heralded multiple changes within society, which is another reason it serves as a suitable dividing line.

lifestyle.[37] In her later investigation of the suffrage movement, Magarey argues the crucial importance of this particular time frame because the "First-Wave" Woman's Movement campaigns began and accelerated at its inception.[38] Whilst acknowledging Magarey's perspective as to why the period is important, I suggest that the significance for gender change of the time frame in question lay chiefly in its unsettling of the gender status quo, rather than in achieving identifiable change.

Within the wider society and the judicial system in particular, the belief endured that men were superior to women, and that women should submit to their husbands in marriage.[39] Rather than revealing a steady narrative of growing gender equality over time, my research instead exposes the ongoing imbalance of gendered power within the marital relationship. It suggests, furthermore, the continued prevalence of misogyny and male brutality, and I must conclude that the balance of marital power remained firmly in the hands of men. While legal reforms pertaining to child custody, property and divorce endeavoured to achieve equality between the sexes, and to afford women greater rights, they did little to eradicate the patriarchal bent persisting within public opinion and legal attitudes.[40]

A Brief History of Divorce Law in Late Colonial Australia

To fully comprehend the legal aspects of those marriages I investigate here, it is important to understand how divorce law functioned, in its varying permutations, between the 1873 *Matrimonial Causes Act* and amendment in 1892. In NSW, the 1873 Act was finally introduced after no less than sixteen years of public and parliamentary wrangling, which saw

[37] Susan Magarey, "Notes Towards a Discussion of Sexual Labour: Australia 1880-1910," *Lilith: A Feminist History Journal* 6 (1989): 10.
[38] Susan Magarey, *Passions of the First Wave Feminists* (Sydney: University of NSW Press, 2001), 3.
[39] Hammerton, "Law of Matrimonial Cruelty," 272.
[40] Colin James, "A History of Cruelty in Australian Divorce," *ANZLH E-Journal,* ANZLHS Conference Hobart 8-10 December (2006): 17; Hammerton, "Law of Matrimonial Cruelty," 270.

significant opposition to divorce from mainstream churches and conservative politicians.[41] Before the Act was finally accepted, it was introduced and rejected not once but eight times, while from 1858 each of the other colonies had gradually passed a law to facilitate divorce.[42] The NSW Act was restrictive in its construction, rendering marital dissolution particularly difficult for women, and laying out different grounds on which the sexes could proceed. While men could sue because of a wife's one act of indiscretion, women had to prove aggravated adultery, which meant demonstrating a husband's *repeated* adultery *and* the likes of bestiality, bigamy, sodomy, cruelty or desertion.[43]

The laws governing marital dissolution were predicated upon gendered notions of guilt and innocence, and comprised explicit and implicit rules and ideals for the sexes as to acceptable versus transgressive conduct.[44] Petitioners, respondents and co-respondents were forced to conduct themselves in court—and to prove that they behaved in a similar manner outside of its confines—in a way which conformed to those norms.[45] As such, the laws reveal how prevailing conceptions of womanhood altered at a time of social upheaval which witnessed the widespread rupture of gender relations.

Recognising the inherent unfairness of the law and its limitations in assisting those women whose husbands had deserted them, campaigners began almost immediately to try and eradicate from the legislation its undeniable double standard.[46] While the *Matrimonial Causes Act Amendment* of 1881 was brief in nature, its consequences were powerful, and altered law to allow women to sue on the grounds of a single act of adultery, without the need

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[41] For a detailed account of the debate, see Golder, *Divorce*, 8-10.
[42] Henry Finlay, "Lawmaking in the Shadow of the Empire: Divorce in Colonial Australia," *Journal of Family History* 24, no. 1 (1999): 83.
[43] Golder, *Divorce,* 8.
[44] Finlay, "Lawmaking," 75; J.M. Bennett, "The Establishment of Divorce Laws in New South Wales," *Sydney Law Review* 5 (1965): 241.
[45] Golder, *Divorce*, 11; A petitioner was the individual who initiated proceedings, the respondent was the other spouse who defended his or her case, and the co-respondent was the person charged with adultery with the Respondent.
[46] Henry Finlay *To Have But Not To Hold: A History of Attitudes to Marriage and Divorce in Australia, 1858-1975*, (Leichhardt: The Federation Press, 2005), 133.

to prove aggravating circumstances.[47] However, the Act did not completely abolish the double standard, nor did it provide women with equal access to divorce.

Recognising that such access remained unequal because the Act continued to insist upon adultery, Chief Justice and legislator Sir Alfred Stephen began almost immediately to campaign for the further widening of divorce grounds.[48] Judge William Windeyer of the NSW Divorce Court joined the quest, inspired by the many deserted wives who were forced to remain in unhappy marriages, or else faced marital limbo because their husbands had committed any number of marital transgressions, but not been unfaithful.[49] Finally, in 1892, the *Divorce Amendment and Extension Act* extended the grounds for female petitioners, and now included drunkenness, assault and desertion, without the need to prove adultery.[50]

The consequences of the 1892 Act were substantial. By introducing legal aid qualifications, Judge Windeyer greatly increased women's access to divorce and remarkably, his aid provisions remained in place until 1935.[51] By the 1890s, more than twice as many women as men were petitioning to end a marriage.[52] In extending cruelty and assault grounds, legislators acknowledged that domestic violence against women was a significant social problem, and highlighted its consequences.[53] As current circumstances show, unfortunately, such acknowledgement had little effect upon the rate or the nature of such violence. This thesis will reveal how women were able to utilise these significant legislative changes in combination, as they strove towards greater personal autonomy.

By no means all divorce petitions resulted in a lengthy courtroom saga, as have those I examine. An undefended case could proceed via witness interview in the judge's chambers, or a simple and brief court hearing. Defended cases, however, went to court, and the judge

[47] Golder, *Divorce,* 157.
[48] Ibid., 75.
[49] Ibid., 215.
[50] Ibid., 8.
[51] Ibid., 8, 35.
[52] Sellwood, "'A Series of Piteous Tales,'" 9.
[53] Ibid., 26.

decided whether they would proceed before a jury or only a hearing. If a jury heard the case, trials took place at Darlinghurst Courthouse and then later at Sydney's King Street Courthouse. As these details confirm, a definite sense of criminality overwhelmed the entire process, even though the dissolution of a marriage was a civil rather than criminal matter.

A Dearth of Individuals

The divorce archive of NSW comprises a rich source of detail concerning the past lives of women and men, but few researchers have probed its depths in relation to individual subjects. Hilary Golder was the first scholar to tap the archive for her 1982 doctoral thesis, which investigated divorce in the nineteenth century.[54] Published three years later in book form, Golder's impressive analysis examines legislative debate and progress until federation, and takes a largely quantitative approach to develop statistical generalisations and assumptions concerning divorce per se.[55] Examining 799 divorce petitions between 1873 and 1892, and another 300 between 1892 and 1900, Golder's achievement lies particularly in her delineation of gendered differences in divorce process, and her finely detailed account of legislative and social developments that affected the dissolving of a marriage. Her focus is, however, on "men" and "women," rather than on named individuals. While Golder's work is invaluable for anyone researching the archive, it does not add to our understanding of intimate life other than to furnish its legal and social context.

The second scholar to consider colonial divorce was Henry Finlay, a lawyer who has contributed several key works which provide the context of agitating for divorce, and legal amendments to divorce law in Australia as a whole, rather than just NSW.[56] Finlay's research

[54] Golder, "'A Sensible Investment.'"
[55] Golder, *Divorce.*
[56] Henry Finlay, "Victorian Sexual Morality: A Case of Double Standards," *Australian Journal of Law and Society* 3 no. 14 (1998): 43-63; "Lawmaking," 74-110; "Divorce and the Status of Women: Beginnings in

examines parliamentary debate regarding the introduction of divorce law, and considers how Australian law gradually came to differ from its English legislative origins. Finlay also investigates changing view of marriage, and the legal basis of marriage over time, but as a legal scholar, he aims primarily to suggest widescale statistical and legal generalisations rather than to provide a detailed account of divorcing individuals. Finlay's research nonetheless provides a valuable complement to Golder's work, and his examination of divorce law is particularly noteworthy.

Most recently, Claire Sellwood's doctoral thesis has investigated the relationship that developed from 1900 to 1930 between the tabloid press and the Divorce Court of NSW.[57] Sellwood uses Court Reporting Office Transcriptions (available from 1899 for many divorce cases) and multiple press sources to probe the culture of divorce and scandal in early twentieth century Sydney. The thesis is of significant value in charting the changing character of scandal, and the wider public's frenzied engagement with divorce as a form of entertainment. In addition, the work furnishes an important background understanding of legal conceptions of sexuality over time. (Sellwood also deals briefly with the Dalley case, which is the subject of my sixth chapter, but only in relation to press accounts of trial proceedings.) Her aim is to reach widescale generalisations about divorce and the press, rather than to investigate at length specific couples. While the combined works of Golder, Finlay and Sellwood are mandatory reading for anyone analysing the divorce files for further research, they do not contribute to the canon of women as named historical actors and the locus of inquiry, nor are they works of feminist or women's history. Given their divergent aims and methodologies, these works complement mine but do not replace the need to further investigate gendered conflict in the context of individual experience.

Nineteenth Century Australia," Seminar Paper, Australian Institute of Family Studies (2001); *To Have But Not To Hold.*

[57] Sellwood, "'A Series of Piteous Tales.'"

It is largely due to the efforts of feminist and women's historians that we know of how women have been marginalised from both our conceptions of the historical past and its investigation. In the 1970s and 1980s, several scholars called for male historians to overturn an unrecognised and ongoing androcentric bias in their works, and to acknowledge the rightful place of women in historical accounts. I do not intend to discuss at length the ground-breaking works of Anne Summers, Miriam Dixson or Beverley Kingston, whose mid-1970s publications lamented angrily the exclusion of women from the historical canon.[58] I acknowledge, however, that in exposing a prevalent and ongoing misogyny in Australia's past and present, these writers laid the ground for future feminist historical investigations. Each book was in essence a call to arms, depicting White Australia as a society characterised by grossly unequal relations between the sexes, where gendered violence, abuse and economic exploitation were a common experience for many women.[59] While each scholar wrote before gender was identified as a key analytical tool, their works prefaced a new direction in historical inquiry and for the first time focused upon relations between the sexes as socially constructed rather than biologically inevitable.

Given that gender is acknowledged to be primarily about power, it is self-evident that any investigation of marriage and divorce must recognise the centrality of power relations within these institutions.[60] Landmark studies pertaining to the conceptual and analytical deployment of gender first appeared in the 1970s and 1980s, when feminist historians identified gender as "the major power dynamic within history."[61] In step with American

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[58] Anne Summers, *Damned Whores and God's Police* (Sydney: New South Publishing, 1975); Miriam Dixson, *The Real Matilda: Woman and Identity in Australia- 1788 to the Present*, (Sydney: UNSW Press, 1999); Beverley Kingston, *My Wife, My Daughter and Poor Mary Ann: Women and Work in Australia*, (Melbourne: Thomas Nelson, 1975).
[59] Ann Curthoys, "Visions, Nightmares, Dreams: Women's History, 1975," *Australian Historical Studies* 27, no. 106 (1996): 12.
[60] Marilyn Lake, "Women, Gender and History," *Australian Feminist Studies* 3, no. 7-8 (1988): 1.
[61] Lake, "Historical Reconsiderations IV," 116.

historian Joan Scott, Australian feminist Marilyn Lake argued equally for gender to become "a central category of all historical analysis."[62]

In the same year, Lake published an incendiary article which has stimulated ongoing debate, accusing (largely male) historians of failing to recognise that gender is socially constructed, and of continuing to elevate "masculinist values" to "the status of national traditions."[63] She described the male subjects in their works as sexless, "neutered and neutral historical agents," and argued the imperative of acknowledging "manhood," "manliness," and "masculinity" as social constructions rather than biological givens.[64] Taking aim at classic works such as Russel Ward's influential account of (male) national character, Lake described Australian manhood as providing men "their chief source of pride and identity," highlighting the need to acknowledge both masculine and feminine identities as social in origin.[65]

Lake's argument has important implications for my research in establishing the dominant sexual antagonism of the late nineteenth and early twentieth centuries and substantiating the notion that many women were increasingly willing to challenge the gender status quo. In examining the overtly anti-women stance of the *Bulletin* journalists, Lake melds primary source analysis with statistics to confirm how unequal marital relations mirrored the paper's blatantly misogynistic discourse. At the time in question, male desertion rates were high, women were often subject to domestic overwork, the consequences were dire of unchecked pregnancy and women increasingly eschewed marriage. This was indeed a society where "the home was a battleground, and the issue was masculinist culture."[66]

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[62] Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *The American Historical Review* 91, no.5 (1986): 1053-1075; Lake, "Historical Reconsiderations IV," 116.
[63] Ibid., 127.
[64] Ibid., 116.
[65] Russel Ward, *The Australian Legend* (Melbourne: Oxford University Press, 1958); Lake, "Historical Reconsiderations IV," 116, 126.
[66] Lake, "Historical Reconsiderations IV," 126.

That conflict between the sexes assumed "crisis proportions" at the time is well-documented.[67] Understandings of gender conflict are often supplemented by analyses of the contemporaneous suffrage platform, whereby the revolution which prominent women desired for marriage was founded upon "the centrality of sex and sexual relations."[68] Investigating the suffrage campaign and its protagonists, feminist scholar Susan Magarey contends that its foundational "discourse of health" targeting male sexual conduct was a major threat to the gender status quo, at a time when the double standard and men's sexual incontinence had serious implications for the lives of women and girls. In battling widespread misogyny, the Woman Movement strove to achieve greater access for women to economic independence, whilst also challenging essentialist views of male sexuality.[69]

Many feminist scholars identify the colonial "marriage bed" as the chief site of ideological struggle in late nineteenth century colonial society, confirming how sexual relations were key to the First Wave Feminist platform.[70] A burgeoning women's press amplified the struggle, proclaiming the extent of male misconduct and inspiring feminist challenge against such behaviour. Although women continued to face ongoing structural impediments to autonomy, and formal exclusion from parliament, the press at least offered an outlet for their personal and public expression: within this conduit, gender roles and relations comprised the main issue.[71]

Where the suffrage platform was concerned, the gender discontent of the 1890s was directly linked to an increasing realisation that so long as women depended financially on

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[67] Alison Mackinnon, *Love and Freedom: Professional Women and the Reshaping of Personal Life* (New York: University of Cambridge Press, 1997), 45.
[68] Magarey, *Passions of the First Wave Feminists*, 3.
[69] Ibid., 3, 6.
[70] See for example Susan Sheridan, "The *Woman's Voice* on Sexuality," in *Debutante Nation: Feminism Contests the 1890s,* eds. Susan Magarey, Sue Rowley and Susan Sheridan (St. Leonards: Allen and Unwin, 1993), 114-124; Susan Magarey, "History, Cultural Studies and Another Look at First Wave Feminism in Australia," *Australian Historical Studies* 27, no.106 (1996): 96-110; Barbara Caine, "Woman's 'Natural State': Marriage and Nineteenth Century Feminists," *Hecate* 3, no. 1 (1977): 86.
[71] Susan Sheridan, "Louisa Lawson, Miles Franklin and Feminist Writing, 1888-1901," *Australian Feminist Studies* 3, no. 7-8 (1988): 31.

men, they would remain subject to exploitation and abuse.[72] South Australian writer and feminist Catherine Helen Spence was overly optimistic when in 1878 she prophesied that the woman of the future would choose "not between destitution and marriage, but between the modest competence she can earn and the modest competence her lover offers."[73] She was, however, correct in identifying the vital importance of economic independence in facilitating personal autonomy and empowerment. It is no coincidence that only two of my seven case studies had the capacity to earn an independent income when their marriages ended. The experiences of those two women suggest the remarkable effects that financial autonomy has upon female subjectivity, revealing economic independence to be the most significant and dramatic factor in transforming the relationship between the sexes.[74]

My thesis answers a need for qualitative research to investigate the experience of intimacy for women across a time of change. Historical divorce case files have significant potential to reveal such experience, particularly when studied across an extended time frame and in different contexts. As legal historian Stephen Robertson suggests, court records "take the researcher...into the social and cultural worlds" in which events take place."[75] My previous research of adulterous women in colonial NSW confirms that abundant incidental information about everyday life is to be found within the early divorce records, alongside extensive insight into intimate life. The sources furnish delightfully rich and serendipitous historical detail to enrich our understanding of past lives, in their wider social context.

[72] Lake, "Historical Reconsiderations IV," 122.
[73] Cited in Magarey, "Notes Towards a Discussion of Sexual Labour," 18-19.
[74] Writing of middle-class women, Gillian Sutherland identifies economic independence as the main requirement for women to pursue independence. Gillian Sutherland, *In Search of the New Woman: Middle-Class Women and Work in Britain* (Cambridge: Cambridge University Press, 2015), 8.
[75] Stephen Robertson, "What's Law Got to Do With It? Legal Records and Sexual Histories," *Journal of the History of Sexuality* 14, no.1-2 (2005): 161-162.

Sexuality

Sexuality is particularly challenging to investigate in retrospect, and scholarship has often relied on ideology rather than reality, by turning to journalistic writings and parliamentary debate rather than lived example: the repressive and repressed Victorian comes to mind as an illustration of this point.[76] In this section, I contend the importance of recognising how "sexuality, political and economic subordination" are intertwined within a symbiotic relationship.[77] Like domestic violence, sexuality comprises one of the chief fields through which power operates, bound with notions of suppression and repression, prohibition and censorship.[78] This is because sexuality is almost always "informed by a moral verdict," as Australian historian Joy Damousi observes of female sexuality in the convict era. Damousi argues that throughout the ages, an "obsessive interest in feminine sin" has influenced men's legal and moral perceptions of women. Although the convict era precedes my time frame, Damousi's work establishes the context in which men in authority viewed with a censorial gaze the women beneath them.[79]

In explaining how powerful men assessed convict women as depraved and immoral, however, we learn primarily about the society in which they lived, and not about female sexuality. In 1978, unsettling prevailing understandings of convict women's sexuality, Michael Sturma complained that in basing the ongoing interpretations of the issue upon flawed primary sources —those judgmental and biased viewpoints of men in authority, who

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[76] For more about Victorian ideas of repression, see Michael Mason, *The Making of Victorian Sexual Attitudes* (Oxford: Oxford University Press, 1994), 1, 9, 10.
[77] Susan Mendus and Jane Rendall, Introduction, in *Sexuality and Subordination: Interdisciplinary Studies of Gender in the Nineteenth Century,* eds. Susan Mendus and Jane Rendall (London & NY: Routledge, 1989), 2.
[78] The link between power and sexuality forms the crux of Foucault's repressive hypothesis and is investigated at length in his "history" of sexuality. Michel Foucault, *The History of Sexuality: An Introduction*, Trans. Robert Hurley, Vol. 1 (New York: Vintage Books, 1990).
[79] Joy Damousi, "'Depravity and Disorder:' The Sexuality of Convict Women," *Labour History* 68 (1995): 30-45.

stereotyped all female prisoners as "prostitutes"—historians were perpetuating such inaccuracies, and continuing to construct false perceptions of convict women.[80]

Damousi argues that the Foucauldian notion of "dividing practices" is of use in understanding assessments of convict women and their sexuality. This is a concept equally evident in relation to the sexuality of women within the process of divorce. Such dividing practices suggest how individuals are categorised in subjective and discriminatory ways: for women, sexuality serves as a vehicle whereby they are classed according to their position on a scale of moral worthiness, being either "good" or "bad," or, in some contexts, "fallen." Within legal discourse, notions of feminine purity or sin and contamination battle for supremacy both within the performance of female actors within the courtroom, and in how the men around them perceived their actions. By extension, the process confirms Foucault's contention that dividing practices derive from the "economy of power relations" in which we are all enmeshed.[81]

Australian feminist historian Penny Russell's examination of class distinctions and elite femininity in nineteenth century Melbourne establishes the close link between class and sexual identities for women.[82] While masculine identity was predicated on such variables as wealth, status and occupation, women had only the tools of genteel femininity with which to establish their difference from those beneath them.[83] Russell investigates the class-based nature of sexual identity, and probes how *others* viewed the sexuality of the elite woman. Her analysis remains, however, at the level of ideology and observable behaviour, suggesting little of actual sexual conduct or sexuality other than as abstract ideas. In contrast, my recently published investigation of the Dibbs divorce case of 1879 investigates the

[80] Michael Sturma, "Eye of the Beholder: The Stereotype of Women Convicts, 1788-1852," *Labour History* 34 (1978): 3.
[81] Michael Foucault, "The Subject and Power," *Critical Inquiry* 8, no. 4 (1982): 777-79.
[82] Penny Russell, *A Wish of Distinction: Colonial Gentility and Femininity* (Melbourne: Melbourne University Press, 1994), 92.
[83] Ibid., 1.

circumstances of an elite woman "behind the scenes," who strove to lead an independent life in which she developed strong extra-marital relationships and enjoyed male attention.[84] I believe real-life examples of intimate life are essential to complicate and substantiate our historical understandings of this crucial aspect of human existence.

As such, the thesis goes beyond the socially constructed veneer of ideal conduct, to seek those "twilight moments" of which American historian Anna Clark writes, socially prohibited actions and longings in which the individual continues to engage. My research examines the gendered consequences which awaited those who had been driven from "the uneasy ambiguity of twilight," and into the glare of the Divorce Court.[85] Clark explains how the exposure of covert and hidden behaviour will lead to temporary alienation within society, but ultimately sees the individual restored to his or her former position, with "rumours eventually forgotten."[86] By investigating a number of marriages over a significant period, my research also asks whether the process of divorce lessened in its social implications of having one's transgressions fade from the public eye, and particularly how this figured for women.

Lengthy investigations of past Australian sexuality are few and begin with Lisa Featherstone's monograph examining sexuality from "Federation to the Pill."[87] As an historian of sexuality, with a professed interest in sexual violence, Featherstone's work is ambitious and broad in scope. Her research considers how ideas about female sexuality have altered over time, and confirms the close relationship between reproduction and sexuality, as well as the important role of the "medical man" in defining women.[88] Featherstone's rich cultural history is based on a range of sources including demographic statistics and medical and legal case files. The work explores sexual ideals, the double standard, notions of

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[84] Lorrison, "Adulterous Agency," 349-364.
[85] Anna Clark, "Twilight Moments," *Journal of the History of Sexuality* 14, no.1-2 (2005): 140.
[86] Ibid., 141.
[87] Lisa Featherstone, *Let's Talk about Sex: Histories of Sexuality in Australia from Federation to the Pill* (United Kingdom: Cambridge Scholars Publishing, 2011), 19.
[88] Lisa Featherstone, academic profile, *The Conversation,* https://theconversation.com/profiles/lisa-featherstone-402880

deviance and gendered differences in concepts of sexual purity. In marrying advances in sexual knowledge and understanding with wider developments within society, Featherstone's work creates an important context for understanding sexual experience in the early twentieth century. This applies also to her analyses of white male sexuality in the late nineteenth century, and female sexual desire in the early twentieth, both of which investigate key themes in the evolution of sexuality.[89]

Australian historian Frank Bongiorno's extended examination of Australian sexuality from white settlement onwards serves as an important adjunct to Featherstone's work.[90] Both Bongiorno and Featherstone recognise sexuality as a political and social, rather than private phenomenon.[91] Bongiorno's treatise relies heavily on statistics to analyse white sexuality in the first decades following settlement, describing for example the reproductive rate of the "average" woman, and the effects of ongoing childbearing upon sexual activity. Like Featherstone, Bongiorno's longitudinal approach targets a general readership to paint a broad canvas, providing an overarching context and identifying major themes in sexual attitudes and behaviours.

In contrast, adopting a micro-historical approach, my research places "small units of research" into those crucial wider contexts[92] which scholars like Bongiorno and Featherstone so effectively construct. By revealing infidelities, sexualised insults, deviant sexual conduct and sexual jealousy, divorce cases provide individual accounts of sexual experience in a foregone era and expose the endless diversity of heterosexual intimacy. Such diversity and a small sample size may suggest that my findings cannot be generalised to the wider

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[89] Lisa Featherstone, "Pathologising White Male Sexuality in Late Nineteenth Century Australia Through the Medical Prism of Excess and Constraint," *Australian Historical Studies* 41, no.3 (2010): 337-351; "Rethinking Female Pleasure: Purity and Desire in Early Twentieth Century Australia," *Women's History Review* 21, no.5 (2012): 715-731.
[90] Frank Bongiorno, *The Sex Lives of Australians: A History* (Collingwood: Black Inc, 2012).
[91] Ibid., xv; See particularly Featherstone, "Rethinking Female Pleasure."
[92] Sigurður Gylfi Magnusson, "Tales of the Unexpected, the "Textual Environment," Ego-documents and a Nineteenth Century Icelandic Love Story—An Approach in Microhistory," *Cultural and Social History* 12, no.1 (2015): 77.

population. On the contrary, the content of judicial pronouncements over time and the details of courtroom process provide vital insight into general trends and patterns in the changing nature of marital intimacy, an observation that James Hammerton makes with regard to British divorce records, but which I suggest pertains equally in the current context.[93]

Domestic Violence

The subject of domestic violence occupies a central location within feminist historiography.[94] Many historians in Australia have attempted to account for the past and present prevalence of male violence against women, and the nation's "virulent androcentric culture," as a recent publication contends.[95] In the meantime, a persistent media focus on contemporary domestic violence confirms little change in its rate of occurrence, while political efforts to address the problem have had minimal effect. Harrowing accounts of domestic violence in three of my seven case studies and the pronounced thread of masculine domination within the divorce case files offer a unique opportunity to investigate from differing perspectives specific examples of abuse.

Understanding family violence in the past is of significance in addressing its contemporary form, and the divorce case files have the potential to expose the conflictual web of gender relations in which victims and perpetrators of domestic violence were embroiled.[96] It is important to remember also, as feminist scholar Jill Julius Matthews suggests, that "women and men and the nature of misogyny and oppression" will differ

[93] Hammerton, "Law of Matrimonial Cruelty," 272.
[94] In a recent publication, Zora Simic reviews the feminist literature describing domestic abuse in Australia and outlines the term's definitional variation over time. Although domestic violence was known in the late nineteenth century as "wife-beating," I use the current term to set the historical within the contemporary context. Zora Simic, "Historicising a "National Disgrace:" Towards a Feminist History of Domestic Violence Since 1788," in *Gender Violence in Australia: Historical Perspectives*, eds. Alana Piper and Ana Stevenson (Clayton, Victoria: Monash University Publishing, 2019).
[95] Piper and Stevenson (eds)., *Gender Violence in Australia,* 10.
[96] Tanya Evans, "Discovering Violence in the Family," in *Gender Violence in Australia,* eds. Piper and Stevenson, 21.

qualitatively across time and place.[97] These qualitative variations comprise the focus of my research.

Much of the scholarship concerning domestic violence confirms the crucial role of gendered power dynamics in the phenomenon. In a recent collection of essays, editors Alana Piper and Ana Stevenson point to the juxtaposition of feminine "dependency and submissiveness" against "male independence and assertiveness." This gendered characterisation is highly relevant to my research, whereby women's economic dependence and "obedience" to a husband combine with tightly held ideals of patriarchal authority and dominance.[98]

Major investigations of domestic violence in Australia begin chronologically with Judith Allen's 1982 investigation of the "pathological family," in which she outlines legal and political approaches to domestic violence. Examining class-based differences in both the type of violence and how legal authorities responded to perpetrators and victims, Allen's argument is a sobering portrayal of a grossly unequal society, in which women had little legal or personal redress against the men who assaulted them.[99] While her investigation includes numerous examples of shocking violence, however, for reasons of brevity it does not examine in any detail the wider circumstances of the women whose experiences she probes.

Taking an equally wide-angled approach, Kay Saunders's "exploratory paper" of 1984 aims to reach tentative conclusions about domestic violence in colonial Queensland between 1859 and 1900.[100] Saunders highlights the disjuncture between ideologies of the family as a haven of personal tranquillity, and the common experience for many women of

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[97] Jill Julius Matthews, *Good and Mad Women: The Historical Construction of Femininity in Twentieth Century Australia* (North Sydney: George Allen & Unwin, 1984), 5.
[98] Piper and Stevenson, Introduction, *Gender Violence in Australia*, xvi.
[99] Judith Allen, "The Invention of the Pathological Family: A Historical Study of Family Violence in NSW," in *Family Violence in Australia*, eds. Carol O'Donnell and Jan Craney, 1-27, (Melbourne: Longman Cheshire, 1982).
[100] Kay Saunders, "The Study of Domestic Violence in Colonial Queensland: Sources and Problems," *Historical Studies* 21, no.82 (1982): 68-84.

violence. She cites the central contributing locus of unequal power relations to the perpetration of such abuse, and suggests the importance of locating those factors which lead to violence in some marriages, but not in others.[101] This particular analysis of marital violence is acutely sensitive to the structural dispossession and disempowerment of women, identifying the imbalance of gendered power as the core that incites and enables violence against women, and mapping foundational structures which allow domestic violence to take place. In striving to identify the common features of the "wife-beater," while acknowledging that domestic violence crosses class and cultural backgrounds, Saunders bravely attempts to sketch the parameters of an issue that has defied further categorisation. She simultaneously provides the contextual basis for investigating further specific examples of domestic abuse.

In 1990, Judith Allen published *Sex & Secrets: Crimes Involving Australian Women Since 1880*, an historical investigation of women's engagement with crime and the law, a connection that Allen conceptualises as founded in relations of sexual power.[102] Allen suggests that crimes which derive from relations between women and men can potentially illuminate aspects of their shared history. In a book-length work, she has greater leeway in detailing various cases at length, and in confirming both her earlier assumptions regarding the crucial role of the gendered power imbalance in perpetuating violence, and its structural support from within the wider society. Like Kay Saunders, Allen's work relies heavily on legal records, and offers an interpretation of how the law responded to specific instances of violence against women.

In general, the growing literature about domestic violence tries to explain why it occurs, describe individual cases and identify official responses to assault. What is less common is a detailed investigation of specific cases, with the capacity to explicate the

[101] Ibid., 68.
[102] Judith A. Allen, *Sex & Secrets: Crimes Involving Australian Women Since 1880* (Australia: Oxford University Press, 1990), 2.

contextual basis of the violence and the perspectives of both perpetrator and victim. By identifying the need to consider both perspectives, I am certainly not an apologist for male violence, nor do I attempt to excuse such violence on the grounds that "it was like that then," or to normalise it, as some individuals have done.[103]

On the contrary, I offer this argument because perpetrators' accounts of how and why they beat their wives provide an example of efforts to justify violence through a legally and socially sanctioned route. As historian of emotion Katie Barclay suggests, this route is part of the way abusers "make sense of themselves (and) how men made sense of each other." Both elements are "key to their conception of self."[104] As individual case files expose the violence perpetrated, they also reveal its experiential dimensions for those involved. Of equal importance, the cases expose judicial and societal attitudes and opinions towards domestic violence.

Scholarly investigations of domestic violence have investigated its causal and contributing factors, and the inadequate responses of legal authorities. Such investigations confirm the difficulties for women of escaping from abuse, given their economic reliance on a breadwinning perpetrator. They especially confirm the role of motherhood in impeding a woman's ability to escape violence. What such studies have done to a lesser degree, however, is to add detailed accounts of domestic violence in its interpersonal context, with insight into what Davidoff et al so wonderfully describe as "the messy small change of the quotidian."[105]

Insight into the minutiae of marital conflict and negotiation is to some extent apparent in James Hammerton's wide-sweeping examination of "the darker side of conjugal life" in

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[103] Conducting family history research, one of the descendants of Tanya Evans's subjects voiced his disappointment that she had not "placed (a perpetrator's) actions in the context of the social expectations of the day and not in the morality and social values expected in today's society'—in other words, excused the violence. Evans, "Discovering Family Violence," 24.
[104] Katie Barclay, *Men on Trial: Performing Emotion, Embodiment and Identity in Ireland, 1800-1845* (Manchester: Manchester University Press, 2019), 1.
[105] Leonore Davidoff, Megan Doolittle, Janet Fink and Katherine Holden, *The Family Story: Blood, Contract and Intimacy 1830-1960* (Harlow, United Kingdom: Pearson Education Ltd., 1998), 6.

Victorian and Edwardian England, a text which no investigation of historical marital relations should ignore.[106] Relying also on legal case files to explore instances of domestic violence, Hammerton's treatise is a rich social history which brings together diverse sources to examine how prevailing ideologies of marriage and class differences influenced marital conflict. The work provides valuable background to develop an understanding of marriage and divorce, but its English setting means that implications do not necessarily fit neatly onto the Australian context.

Finally, I return to the recently published collection of essays with which I opened this section. Alana Piper's account of economic abuse as domestic violence is particularly relevant, confirming the role of money and financial control in inspiring violence and perpetuating continued dependence for female victims.[107] Piper's work explores gendered inequality, describing the symbiosis of financial power and personal authority within marital relationships. My cases confirm such a connection, and equally confirm that for some men, financial authority engenders a sense of dominance. While Piper provides an insightful overview of economic control within a violent relationship, once again for reasons of brevity she does not provide a detailed account of the background to violence, the woman's experience or assault or the male justification thereof. Piper also admits the limitations of her sources and acknowledges a court system disinterested in "the way such violence existed within a wider context of marital power relations."[108]

Like Piper, Tanya Evans's chapter in the same collection highlights the structural constraints that prevented many working-class women from escaping their abuser.[109] Drawing her subjects from the records of the Benevolent Society, the chapter extends Evans's book-

[106] A. James Hammerton, *Cruelty and Companionship: Conflict in Nineteenth Century Married Life* (London and New York: Routledge, 1992), 1.
[107] Alana Piper, "Understanding Economic Abuse as Domestic Violence," in *Gender Violence in Australia*, 36.
[108] Ibid., 40.
[109] Evans, "Discovering Family Violence," 21.

length treatise using the same archive, providing named individual examples and detailing the brutality that many women endured.[110] The significance of Evans's lengthier work lies particularly in how she has contextualised domestic violence in its social, economic and legal surroundings. This context creates a strong sense of the overwhelming difficulties that many women faced in confronting their perpetrators. In contributing named individual women to accounts of domestic violence, Evans highlights their humanity and value, while in harvesting the rich source of genealogical information that family historians can offer, she demonstrates the fruitful potential of these collaborative relationships.

My work similarly uses family history and genealogical sources, acknowledging that such materials provide the historian with insight otherwise impossible to attain, and offer an important link between past and present. The unique treasures of personal family archives, including photographs, letters and anecdotes, are of invaluable benefit to the historian, who must otherwise limit themselves to the professional archive or newspaper database. In describing the experience of domestic violence for those of my case studies who endured a husband's brutality, my research focuses a wide lens on the issue. While the perpetration of domestic violence has typically been shrouded in secrecy, and prosecution rates are low against an abuser,[111] my work extends insight into the reality of violence for specific named couples, to investigate the gendered positioning of perpetrators and victims, to reveal women's agency in navigating violence and its threat, and to embed violent incidents within their wider context. My research contributes to the literature those much-needed accounts of feminine experience which are notably absent from the institutional focus of mainstream historical works.[112]

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[110] Tanya Evans, *Fractured Families: Life on the Margins in Colonial New South Wales* (Sydney: New South Publishing, 2015).
[111] Allen, *Sex & Secrets,* 46.
[112] As Caroline Daley and Deborah Montgomerie contend in investigating white women's historical experience in New Zealand, this "woman-centred focus" is typically missing from such accounts. Caroline Daley and Deborah Montgomerie (eds)., *The Gendered Kiwi* (Auckland: Auckland University Press, 1999), 7.

Method and Approach

Adopting an interpretive and qualitative case study approach, my research strives to understand how subjects made sense of their lives, and maps experience in relation to sexual activity and behaviour.[113] Case study research allows the analysis of complex subjects, exposing those institutions through which patriarchal power operated and revealing how these institutions controlled individual women.[114] That overarching context provides the backdrop to examine specific circumstances—employment, income, division of labour and so on—to understand the socio-historical context of experience.[115] The interpretive approach is ideal for exploring women's agency within the context of adultery and divorce.

I have selected my case studies according to several criteria, foremost being that both husband and wife appeared in court to pursue or answer a case. Many women, especially those accused of adultery, chose not to respond to a husband's accusations, and did not appear in the courtroom. Many deserting men were long gone from town or colony and could not be located for the service of legal documents. I wanted to show how both parties responded to divorce process, and what their testimonies can tell us about the marriage. It was therefore essential that both spouses speak through the documents and feature in press reports. Historical accounts suggest that women and men had very different experiences of marriage, and my research strives to expose these contrasting perspectives of the same relationship.[116]

My second criterion was that the legal case be extensively documented, which involves numerous detailed witness depositions and abundant related material. Given the

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[113] Part One: *Introduction to Qualitative Research*, Chapter 1: The Nature of Qualitative Research: Development and Perspectives," retrieved from Blackwell Publishing, 3.
[114] Judith Bennett, "Feminism and History," *Gender & History* 1, no.3 (1989): 263.
[115] Anol Bhattacherjee, *Social Science Research: Principles, Methods and Practices,* 2nd edn., http: scholarcommons.usf.edu/oa_textbooks/3 (2012), 106.
[116] Katie Holmes, "'Spinsters Indispensable:' Feminists, Single Women and the Critique of Marriage, 1890-1920," *Australian Historical Studies* 29, no.110 (1998): 69.

formulaic structure of legal documentation, I searched for cases including something additional to the mandatory inclusions. A third requirement was that a case include extensive related press coverage, with further details about the trial or hearing itself, and the main actors. To reveal the effects of class and gender in their intersecting, I selected couples from different social classes. In combination, a case meeting each criterion should be amply documented, with plentiful incidental information about the marriage partners, their experiences and circumstances.

Finally, I searched for cases based on differing legal issues, to demonstrate the wide variation in legal grounds that lawyers utilised in moving forward. As such, each of my chapters not only deals with a separate divorce case, it also analyses one or more issues of legal significance. I begin with Flora Horwitz, an exemplar of the dispossessed and disempowered colonial woman, subjected to her brutal husband's will, financially dependent and restricted by normative genteel femininity.

My second chapter features Harriet Dorn, who migrated from Britain to New Zealand before sailing to Australia with her husband and the illegitimate child she gave birth to in Dunedin. Over the course of a long life, Harriet petitioned variously for breach of promise, child maintenance, judicial separation and divorce. She resisted her husband's efforts to divorce her for adultery, and as often happened, a technicality saw the suit dismissed. Harriet engaged on multiple occasions with the law and endured extensive and ongoing domestic abuse. Her circumstances demonstrate the overwhelming constraints that an unskilled woman typically faced in trying to earn a living and support her children.

My third subject is Emily Bradley, married to wealthy one-time Randwick mayor and successful auctioneer Walter Bradley, and the mother of fourteen children. Emily petitioned in 1891 for judicial separation on the grounds of cruelty, and then sued for divorce in 1892 as soon as the law's amendment allowed her to do so. Her case is a useful vehicle to explore the

changing conception of cruelty, which altered so that the demonstration of physical violence was no longer essential. The Bradley case is also of interest in exposing the business ambitions that a wife could harbour, despite her presumed confinement to the domestic context, and her husband's attempts to thwart her attempts to engage in his financial affai

The subject of my fourth chapter is Catherine Kirchner, who appeared in Sydney's Divorce Court in 1898. As a member of the Theosophy society, Catherine established a "Ladies Agency" in Sydney, where she read the crystal ball and offered a palmistry service. She worked at several jobs, most of which she herself initiated. Her case reveals the opportunities and constraints many women continued to face in attempting to earn an adequate living. Catherine's forceful character and conduct emerge during proceedings in which her husband petitioned for divorce, alleging her adultery with a business associate with whom she was professionally and personally entangled.

The subject of my fifth chapter is Hannah Webb, who was married to a violent and cruel dentist in the rural town of West Maitland. The Webb case exemplifies the cult of motherhood that emerged in early nationhood amid fears of a declining population. Subjected to intense scrutiny as a wife and a mother, and desperate to prove her fitness for both roles, Hannah's circumstances are disturbing in the domestic violence that proceedings would reveal. Confirming the persistent reality for many women of male domination and oppression, legal acceptance of George Webb's abuse is equally chilling.

My sixth case study is Pauline Dalley, who was married to the eldest son of leading statesman William Bede Dalley (1831-1888).[117] Tried in 1906, the Dalley case suggests that the elite woman remained subject to those strictures of genteel femininity which constrained Flora Horwitz more than twenty years before, despite the passage of time. The extensively

117 Martha Rutledge and Bede Nairn, 'Dalley, William Bede (1831–1888)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, http://adb.anu.edu.au/biography/dalley-william-bede-3356/text5057, published first in hardcopy 1972 (accessed June 3 2019).

documented trial provides considerable detail about the lives of the idle rich, and the legal grounds of collusion and connivance in divorce process.

My case studies conclude with Louisa Moss, whom I mentioned at the start of this chapter. Although seemingly empowered, Louisa's case reveals the ongoing prevalence of gender conflict, and suggests that women had not sloughed off the shackles to the extent often assumed. Although in each chapter I present individual men and women, I place women at the centre of my analysis to examine how they negotiated the confines of marriage and male power. Within the stated aim of contributing to the feminist project, my work considers how gender shaped my subjects' lives, but also emphasises the role of agency and resistance in their circumstances.[118]

Selecting seven case studies for each of the decades between 1881 and 1914, my research investigates the effects upon the individual woman of changes within society, asking what the return to a domestic orientation meant for them, and especially how it influenced the potential for empowerment that in the 1880s had seemed to promise so much. Focusing on adultery, cruelty and the balance of marital power, divorce records have abundant potential to answer such questions, and to further extend our knowledge of sexual intimacy across a time span of several decades.

Theoretical

In keeping with the aims of social history and "history from below," my thesis examines how a handful of ordinary women responded to and experienced historical change.[119] Despite my small sample size, in conducting a micro-historical research project of

118 Daley and Montgomerie (eds.,), *The Gendered Kiwi*, 8.
[119] Martyn Lyons, "A New History from Below? The Writing Culture of Ordinary People in Europe," *History Australia* 7, no.3 (2010): 59.1.

this nature, my aims are multiple and extend well beyond the seemingly restricted focus of a mere handful of marriages. My work strives to unsettle ideas of homogeneity for Australian women, and to contribute named individuals to a scholarship that is undoubtedly lacking in such identities. The foremost goal of my research, however, lies within the primary focus of micro-history itself, which is to illuminate the wider context by focusing minutely on a small and discrete unit, in this instance the individual marriage.[120]

While legal records pose definite methodological challenges for the historian, they remain an invaluable source of information about sexual behaviour and moral attitudes, and allow insight into cultural, political and perspectives, at the same time illuminating gender and women's history.[121] Although it is important to recognise the limitations of the records, and their contrived, constructed nature, such contrivance is valuable in revealing how those within the legal forum manipulated gendered ideals. By recognising the performative function of the documents, and their capacity to act as historical agents, our task must involve asking what it was that the documents were expected and required to do, in their original context.[122] Most importantly for my current purposes, the records shed light on how the gradual processes of change shaped and transformed such ideals, particularly when compared to those documents from the 1870s which formed the basis of my master's research and the foundation for the current thesis.

My research engages closely with the law to understand its operation in *fin-de-siècle* and early twentieth century society, and to recognise how historically specific rules determined the trajectory of a particular case.[123] Stephen Robertson suggests it is vital that historians understand the rules which governed legal trials and determined archival context,

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[120] Magnusson, "Tales of the Unexpected," 77.
[121] Bongiorno, *Sex Lives,* 48; Carolyn Strange, "A Case for Legal Records in Women's and Gender History," *Journal of Women's History* 22, no.2 (2010): 145.
[122] Shannon McSheffrey, "Detective Fiction in the Archives: Court Records and the Uses of Law in Late Medieval England," *History Workshop Journal* 65 (2008): 66.
[123] Robertson, "What's Law Got to Do With It?," 163.

and avoid retrospective attempts to decide issues of guilt and culpability.[124] While Robertson proposes this approach as an alternative to reading against the grain, I believe it must supplement rather than replace. Certainly, my master's research convinced me of the futility of trying to determine innocence or guilt, given that the documents are so contrived and verging on formulaic. The tightly-gendered views that lawyers deployed within the courtroom had substantial influence upon perceptions of the adulterous woman and her paramour, and significantly affected—if not determined—the outcome of a trial or hearing.

Feminist theory provides another key research framework for the thesis, aiming to challenge a dominant white masculine worldview and to deconstruct gender's determining of the pattern of women's lives. As both an ideology and a theoretical approach, feminism insists on the value of women's experience, recognising women's stories as legitimate historical sources. I contend that marrying experience to its socio-historical context has the capacity to reveal how a changing society shaped the individual life,[125] and shed further light onto the nature of that society.

Adopting an intersectional feminist lens, my research examines the combined effects of gender and social class upon the circumstances of seven very different women. By doing so, it intends to emphasise Australian womanhood as complex and diverse, and to counter any suggestions of homogeneity amongst women either in the past or the present. The sources indicate that legal process increasingly provided a socially sanctioned route for individual women to confront masculine misconduct.[126] Multiple cases within the divorce archive of NSW suggest that from the 1880s, increasing numbers of women turned to the law to sever ties to irresponsible and abusive husbands. By engaging with the law in relation to

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[124] Ibid., 168.
[125] The Personal Narratives Group (eds.,) *Interpreting Women's Lives: Feminist Theory and Personal Narratives* (Bloomington and Indianapolis, 1989), 4.
[126] Hilary Golder's review of divorce legislation confirms that legislators specifically amended the laws to expand women's capacity to petition, so that they could distance themselves from abusive men and so be able to marry again, rather than rely on the state or charity. Golder, *Divorce*, 11, 84.

the three key axes of the feminine role—maternity, matrimony and sexuality—these women acted in decisive and autonomous ways made possible by legislative and societal changes which targeted men's conduct within the family.[127] While it is well-recognised that women's oppression began in the family,[128] it is less rarely remarked that their resistance sprang from within the institution of marriage in which they were predominantly situated.[129]

The thesis also relies heavily on the idea of embodied agency, derived from French philosopher Maurice Merleau-Ponty's theory of the lived body. Embodied agency forms the conceptual basis to examine extra-marital sexual activity as a physical context for the exercise of individual autonomy.[130] Recognising that individuals who are disconnected from power can nonetheless exercise agency, my research aims to examine how sexuality could potentially function as an arena of personal autonomy, and asks if this changed over time in response to increasing modernisation.[131] At all times, I bear in mind the astute observation of the late feminist historian Kay Daniels, that if "women are not actors: at best they become victims."[132]

Finally, my theoretical approach recognises sexual behaviour as socially constructed rather than biologically oriented, a perspective which implies that societal norms influence physical desire and its enactment.[133] A social constructionist approach governs those questions I ask of the documents, guiding my interpretations as to questions such as whether they depict the sexuality of men as less socially constructed than that of women, and more strongly based in "natural" biological urges.[134]

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[127] Ibid., 8.
[128] Carol Smart, Introduction, in *Regulating Womanhood: Historical Essays on Marriage, Motherhood and Sexuality* ed. Carol Smart (London and New York: Routledge, 1992), 2.
[129] Judith Allen, "From Women's History to a History of the Sexes," in *Australian Studies: A Survey* ed. James Walter (Melbourne: Oxford University Press, 1989), 234.
[130] Wendy Parkins, "Protesting Like a Girl: Embodiment, Dissent and Feminist Agency," *Feminist Theory* 1, no.1 (2000): 59.
[131] Ann Curthoys, "Review: Three Views on "Creating a Nation," *Labour History* 68 (May 1995): 199.
[132] Kay Daniels, "Feminism and Social History," *Australian Feminist Studies* 1, no.1 (1985): 29.
[133] Harry G. Cocks, "Approaches to the History of Sexuality Since 1750," in *The Routledge History of Sex and the Body*, edited by Sarah Toulalan and Kate Fisher (United Kingdom: Routlede, 2008), 45.
[134] 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, no.4 (1990): 445-6.

Much of the earlier divorce scholarship obscures the true identity of subjects, no doubt recognising, as Australian historian Alecia Simmonds so eloquently contends, that these individuals are now among "the unconsenting dead," and powerless to prevent the use of their personal information for such purposes as this.[135] Since my research takes place almost forty years on from these major initial works, I have decided to include full names and identifying details for my subjects.[136] Wherever possible, I have contacted family historians and shared my research with them. I believe that the passage of time is such that anonymity is no longer necessary for those women and men whose life experiences I describe, and I wish to afford them the dignified and respectful attention they deserve. I feel that the best way to achieve this is by acknowledging and identifying my subjects in full.

[135] Alecia Simmonds, "Intimate Jurisdictions: Reflections upon the Relationship between Sentiment, Law and Empire," in *Transnationalism, Nationalism and Australian History*, edited by Anna Clark, Anne Rees and Alecia Simmonds (Singapore: Palgrave Macmillan, 2017), 179.
[136] Hilary Golder, for example, does not refer to individuals by name and uses only the initial letters of surnames and archival identifying numbers.

Chapter One—Horwitz v. Horwitz, 1883: "I Must Break Her into My Ways."[1]

Image 1.1 and 1.2:
Michael Henry Horwitz and Flora Horwitz. The photographs were attached to Horwitz's petition to confirm the identity of petitioner and respondent.

SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*

[1] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*

Introduction

On a Monday morning in early September 1883, Flora Horwitz entered Darlinghurst courthouse for the first day of her divorce trial, making her way through a private access door reserved for those directly involved in court proceedings. She would spend the next eight hours standing in the witness box to answer her husband's petition and refute his accusations of adultery. Walking past "the vulgar crowd," Flora was forced to endure the impertinent comments and insults of leering onlookers as they remarked upon her appearance and speculated as to her guilt or innocence. With her "charming figure...pleasing face" and "large, dark liquid eyes," Flora was no doubt an object of curiosity and fascination.[2]

Over twelve days in September, the Horwitz trial provided Sydney with scandal-filled entertainment, and the public gallery fairly bulged when Judge William Windeyer issued a court order forbidding the press from publishing his findings until the trial was over.[3] Realising that press reports would not be immediately forthcoming, public attendance increased on each day of proceedings, as ordinary individuals flocked "to gloat over the evidence as it fell fresh from the lips of the witnesses." The triumvirate of petitioner, respondent and co-respondent in the case were members of "the Jewish faith," and Sydney's small and well-established Hebrew community was particularly dismayed by such intense public attention.[4]

The English-speaking world was on the threshold of a new era when the Horwitz trial began. Change was in the air, and newspapers which covered proceedings also advertised that

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[2] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon. Full Account of the Trial," *Sydney Daily Telegraph* 15 September 1883, 5.
[3] "Editorial," *The Wagga Wagga Advertiser*, 8 September 1883, 2; "The Late Divorce Suit, Horwitz v. Horwitz and Solomon. Full Account of the Trial," *Sydney Daily Telegraph* 15 September 1883, 5.
[4] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon. Full Account of the Trial," *Sydney Daily Telegraph* 15 September 1883, 5. Australian Jewish historian Suzanne Rutland points out that Jews in Australia were "more British than the British," and conservative in outlook. Suzanne Rutland, *The Jews in Australia* (New York: Cambridge University Press, 2006), 6.

high schools for boys and girls were to open in Sydney on the first of next month, and a public meeting for the Women's Christian Temperance Union was scheduled for the following day.[5] Rational dress, particularly the divided skirt, had been the subject of press debate for some months, although one prominent fashionista predicted the corset would remain "the inevitable destiny of every woman."[6] Despite a range of legislative changes and diverse other efforts to transform the lives of women, however, the possibilities of equality or independence for those of the middle-class like Flora had not gained purchase.

In many ways, Flora serves as an exemplar of the disempowered middle-class woman, hovering on the cusp of change but firmly in the colonial era. As a dependent entity, she possessed little autonomy. She could not vote, earn an adequate wage or maintain custody of her children in the face of her husband's paternal rights.[7] In attempting to resist such iron-fisted control, Flora's young adult life took place when few economic alternatives existed for women, particularly the more affluent. For the elite woman, the fact of "stereotypical femininity," as Penny Russell remarks, involved establishing a superiority to those women beneath them. In turn, this process demanded that one eschew such demeaning activities as employment.[8] An intersectional approach suggests that for women of the upper social strata, the demands of social class took precedence above all else.[9] And for the genteel woman accused of adultery, social class had specific implications, because her sexual reputation comprised as much a resource as a man's reputation in the world of business.[10] To be deprived of that reputation was nothing short of catastrophic.

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[5] "Advertising," *Sydney Morning Herald*, 3 September 1883, 1.
[6] "Fashion," *The Cootamundra Herald*, 2 June 1883, 2; "Rational Dress," *The Narracoorte Herald,* 14 September 1883, 3.
[7] Heather Radi points out that "English common-law established a father's absolute right to his children," an observation that my research certainly confirms. Radi, "Whose Child?" 119.
[8] Penny Russell, "'For Better and For Worse:' Love, Power and Sexuality in Upper-class Marriages in Melbourne, 1860-1880," *Australian Feminist Studies* 3, no.7-8 (1988): 11-26.
[9] Ibid., 10.
[10] Kirsten McKenzie, *Scandal in the Colonies: Sydney and Cape Town, 1820-1850,* (Melbourne: Melbourne University Press, 2004), 90.

The foundation of Michael Henry Horwitz's petition lay in his accusation that Flora had committed adultery with a young man by the name of Henry Alberto Solomon. These improprieties, Horwitz alleged, took place "between the 5th of December 1882 and the 5th of April at divers (sic) places."[11] Flora's husband was a shipping and commission agent some nineteen years her senior, while the baby-faced Solomon was a stockbroker and only twenty-two, although he looked much younger, with one news report describing him as "a mere boy in appearance."[12] The young man had lodged for some months in rooms across the lane behind *Levoni House*, the substantial home the Horwitzes had rented for the past five years.[13]

When Flora and her husband moved into the property in 1878, Darlinghurst was a prosperous residential area, known for its grand terraces and housing many members of Sydney's respectable middle-classes.[14] The main events pertaining to the marriage and its disruption take place in Darlinghurst and the surrounding inner-city suburbs of Sydney, as well as in Sandringham, La Perouse and Sans Souci, popular beach-side locations for the city's inhabitants. The case provides remarkable evidence as to the daily movement and surprising geographical mobility of the affluent colonial Sydneysider, with much of the Horwitz-Solomon romance conducted inside the covered confines of hansom cabs and broughams. These vehicles were hired for long hours at a time, providing Flora and her beloved with a mobile conveyance for lovemaking, the blinds drawn to provide a privacy that was otherwise difficult, if not impossible, for a respectable woman to obtain.

The sources in the Horwitz case include a comprehensive legal file and several hundred newspaper reports. In an editorial pertaining to the trial, the *Wagga Wagga*

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[11] In most cases, a petition simply specified the time and place where infidelity occurred, but Horwitz's allegations extended over several paragraphs. I have extracted his time frame and geographical locations from press reports, in particular "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial." *Sydney Daily Telegraph*, 15 September 1883, 5.
[12] One account estimated his age at "19 or 20." "Divorce Case," *Clarence and Richmond Examiner and New England Advertiser,* 11 September 1883, 2; "The Great Divorce Case. The Evidence Completed," *Evening News*, 15 September 1883, 5.
[13] "Sydney Divorce Suit, £5000 Damages," *Evening Post* Vol. XXVI, Issue 75, 26 September 1883.
[14] Michael Clayton, *Who's Master, Who's Man?* (Melbourne: Currey O'Neill, 1982), 75.

Advertiser noted that the press had a veritable "corps of shorthand writers" ready to take down testimony.[15] Leading Melbourne papers also reported at length on the Sydney cause célèbre, as did regional papers in NSW and Victoria. Many of these accounts extended to several thousand words, while incredibly, some are almost 20 000 words in length.[16] Those latter articles cover the entire proceedings, and are in essence an early form of the Court Reporting Office Transcriptions which did not come into being until 1899.[17] With a substantial press presence, the many journalists in attendance functioned as informal court reporters well before the position was officially established.

During a high-profile trial such as this, courtroom journalists transcribed almost verbatim the oratory of barristers, witness responses under cross-examination, the judge's remarks and the reactions of those in the public gallery. A reporter's aim was to write as complete and detailed an account of events as was possible, and in an era before radio or television, to serve as eyes and ears for those unable to attend court.[18] Press accounts generally reflect a surprising fidelity to the legal documents, and their contents were known to spread easily from Sydney to London, rendering uncontained and uncontainable any potential damage to the reputations of those concerned.[19]

The documentation in the Horwitz legal case file includes witness affidavits, viva voce testimony and the lengthy report of an official legal Commission appointed to garner evidence in Melbourne, where at one stage the three protagonists had travelled and briefly

[15] "Editorial," *Wagga Wagga Advertiser,* 8 September 1883, 2.
[16] "Extraordinary Divorce Case," *Sydney Morning Herald*, 15 September 1883, 8-9. Given the detailed nature of these accounts and their fidelity to the legal documents, I have relied at length upon a small corpus of press reports. Another reasons for my reliance on only a few of these newspaper accounts is that the various papers copied verbatim from major urban papers, and many reports were identical to one another.
[17] State Records NSW, Supreme Court of New South Wales, NRS 2713, Court Reporting Office Transcripts, 1899-1939.
[18] McKenzie, *Scandal in the Colonies*, 111.
[19] Ibid.

lodged.[20] Whereas in most trials the judge's notes take up only a few pages, in this instance they fill two separate volumes.[21]

Image 1.3: The two volumes of Justice Windeyer's notebooks in the Horwitz case, and an example of his notes. Judges were notorious for their illegible handwriting, which in some instances is impossible to decipher.

SRNSW: NRS 7852, Notebooks: Divorce [Justice W.C. Windeyer], 1879-1895.

[20] Viva voce means literally "by voice," and refers simply to evidence given orally in court rather than via writing. *Duhaime's Law Dictionary*, http://www.duhaime.org/LegalDictionary/V/VivaVoce.aspx; I write in greater detail about Commissions in Chapter 7. Establishing a Commission was common if more than a few witnesses lived some distance from where the trial took place. This saved the petitioner from having to pay for witnesses to travel from another colony, and for their accommodation during the trial. In effect, a Commission took the court to the witness, rather than vice versa.
[21] SRNSW: NRS 7852, Notebooks: Divorce [Justice W.C. Windeyer], 1879-1895.

The file also contains eight original and copied telegrams sent between the three protagonists, and affidavits which clerks at the Victorian Telegraph Office swore to confirm when and where the missives were despatched. These documents proved highly incriminating of Flora's infidelity, but just as importantly, reveal how colonial citizens strove to conquer time and distance before the telephone was widely available.

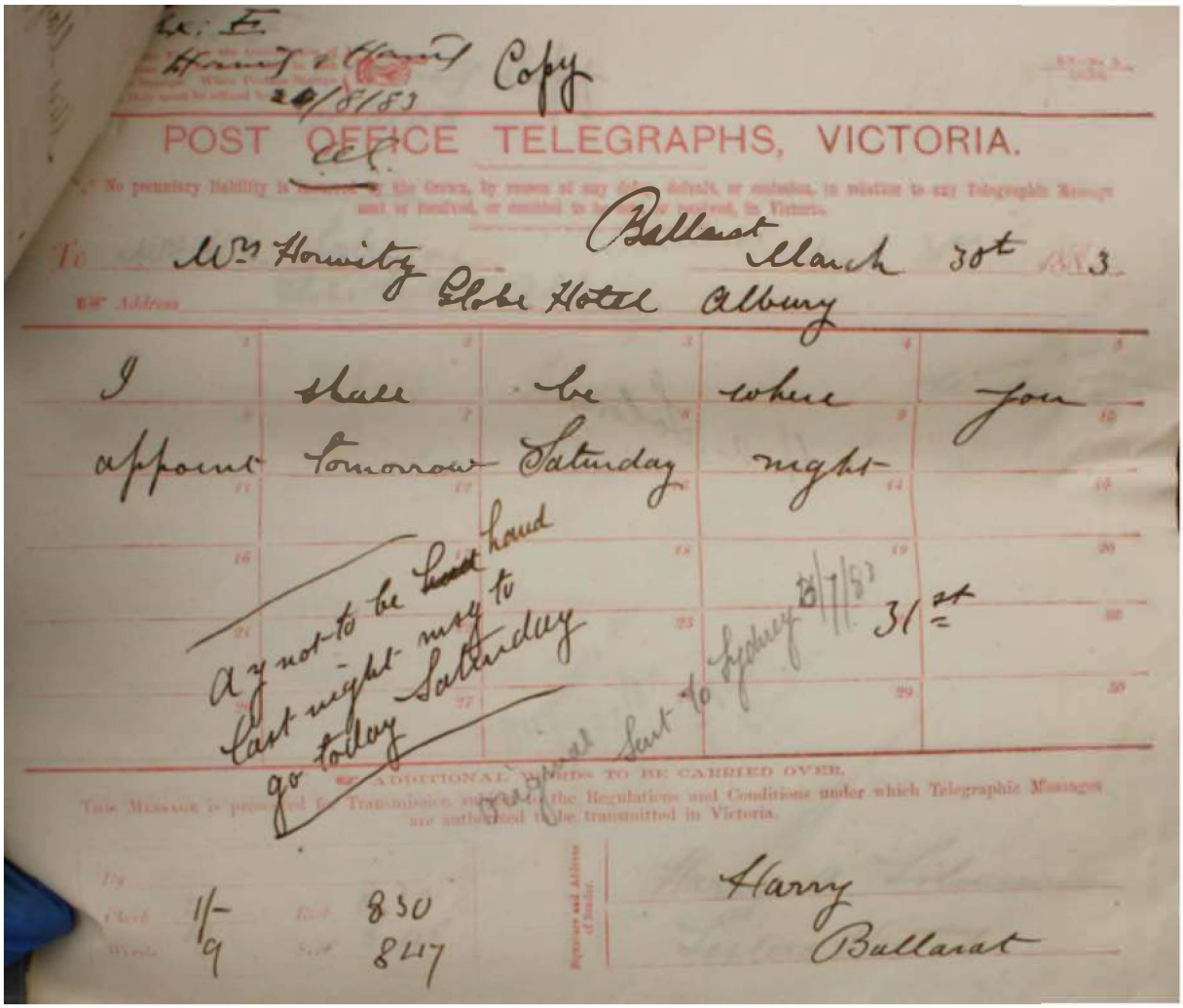

Image 1.4: One of Henry (Harry) Solomon's telegrams, which he sent to arrange a meeting with Flora.

SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*

With such detailed source material at hand, *Horwitz v. Horwitz* offers ample insight into my main theme of marital intimacy and extends an understanding of several subsidiary themes. These themes include the asymmetry of gender relations, the persistence of patriarchal power and authority, and the common experience for women of widespread subordination and oppression. When examining the sources, it is important to bear in mind that a legal case file was prepared well in advance of proceedings, while press reports describe what transpired during a trial or hearing. Both sources are therefore necessary to construct as complete a picture as is possible of specific examples of marital conflict and intimacy.

I analyse the Horwitz case armed with several complementary goals. As well as exploring intimate marital conflict and divorce process, my primary aim in this first chapter is to trace the distinct limits of female autonomy in the early 1880s, when women were subject to formal and informal measures constraining any independence to which they could lay claim. I ask how, within such restrictive parameters, Flora Horwitz strove to exercise a modicum of personal autonomy. As a corollary, I trace the extent of masculine authority within the Horwitz marriage, and examine judicial attitudes towards a husband's conduct, particularly his use of physical means to "chastise" an errant wife. To situate the three main actors in their historical and social contexts, I begin by providing a brief biographical overview for each and continue this structure in the case studies that follow.

The Music Teacher and the Shipping Agent

One of five surviving children, Flora Martha Marks was born in Hobart Town in 1858, to a Jewish father Abraham and English gentile mother Emily, nee Whittaker. As a political refugee from the Polish town of Strzelno, Abraham Marks arrived in the colonies in

1849 by way of London, where he had met and married Emily Whittaker.[22] The sources suggest that Emily was Abraham's second wife, and he married her after his first wife Rebecca died, but with no documentary evidence to support such an inference, family historians suggest Emily and Rebecca were probably one and the same, and Emily had simply taken a Jewish name.[23] In Flora's childhood, the family moved from Tasmania to the Ballarat goldfields, joining a well-established, significant and conservative Jewish community there.[24] Abraham Marks was variously a hawker and general merchant, before becoming a gold-broker and money-lender.[25] His sudden death in October, 1875, saw the family in severe financial straits when £900 from a recent gold sale was snatched from his corpse as he lay on the floor of a train carriage, after suffering a heart attack.[26] When Abraham's entire estate was "indebted to the Bank of Australasia...in an amount exceeding its assets," and less than a year later Emily too was dead, the orphaned family battled creditors for their parents' few material effects.[27]

The siblings' financial difficulties forced the seventeen-year-old Flora to seek employment, and she obtained a position as a teacher of music instructing piano at Mrs. James' Ladies School in the Melbourne suburb of Fitzroy.[28] The school was situated in a large two-storey terrace house which still stands, and the building's dimensions suggest that the number of pupils was fairly small. Teaching was then one of the few socially acceptable jobs open to an educated woman, and that Flora could obtain such a position indicates she

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[22] Kerry Close, "Abraham's Journey," *Croker Prize for Biography,* Entry 1506, 2015. The Society of Australian Genealogists offers the annual Croker Prize to members for a biographical essay, and some are published online, which is how I found and contacted Abraham Marks's great-great-granddaughter Kerry Close.
[23] Kerry Close, email to author, 24 November 2019; Some family trees mention Rebecca and a son Louis, but there are no birth or marriage certificates to substantiate the connection.
[24] Rutland, *The Jews in Australia*, 25.
[25] Kerry Close, "Abraham's Journey."
[26] "Sudden Death of Mr. Marks in a Railway Train," *Ovens and Murray Advertiser*, 16 October 1875, 7.
[27] Victorian Public Records Office 28/P unit 162, item [13/908], Probate Abraham Marks, Date of Grant 25 November 1875, Date of Death 1 October 1875, Occupation Gold Buyer, Residence Ballarat. Probate and Administration Files, Master of the Supreme Court.
[28] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz;* Kerry Close, email to author, 24 November 2019; *South Fitzroy Conservation Study,* prepared by Jacobs Lewis Vines Architects, in Conjunction with Dr. M.B. Lewis and the Fitzroy Planning Office (March 1979), 178.

was a young woman of some accomplishments, and from a more genteel background than her humbled circumstances would imply.[29]

Image 1.5: The building above (where Flora taught music) was leased to Mrs. Phillipa James from 1871 to 1877 for use as a ladies' college, and in 1875 the third floor was added to the building.

Public access image, courtesy of the University of Melbourne Archives

[29] Patricia Jalland, "Victorian Spinsters: Dutiful Daughters, Desperate Rebels and the Transition to the New Woman," in *Exploring Women's Past: Essays in Social History,* ed. Patricia Crawford (Carlton Victoria: Sisters Publishing, 1983), 130.

Teachers in the late 1870s were not expected to have formal qualifications, nor did such training academies exist.[30] Music, however, was a specialist subject, and Catherine Bishop suggests that those who taught it were typically expected to have European credentials. Such a requirement suggests either that Mrs. James catered to less elite pupils, or else Flora possessed definite musical skill.[31] Her musical abilities are not referred to again within the sources, unfortunately, and it is noteworthy that Flora did not contemplate a return to teaching when her marriage fell apart.

During the trial, Flora provided the details of her yearly salary as a teacher-in-residence.[32] Instructing eighteen individual students, she was paid three guineas per quarter for each girl.[33] Teaching seven of the students covered her board and residence, while she received one guinea per quarter for the other eleven students. She also taught six external students, at four guineas per quarter. By my calculations, this amounts to more than £228 per annum, which seems inordinately substantial given that an average yearly wage in the early 1880s was around £75.[34] I am forced to ask whether Flora's account of her income was simply inaccurate or designed to mislead.

Known as Harry (although he always signed himself M.H. Horwitz), Michael Henry Horwitz was one of five children and born in 1841in London, to a Prussian father Morris (Manuel) Horwitz and English mother, Hannah Hart Horwitz, both Jews.[35] According to genealogical details, Morris Horwitz was a tailor and slop-seller, meaning that he sold cheap,

[30] Catherine Bishop, *Minding Her Own Business: Colonial Businesswomen in Sydney* (Sydney: NewSouth Publishing, 2015), 67.
[31] Ibid., 89.
[32] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[33] A guinea was a gold coin, worth just over one pound.
[34] In analysing the circumstances of postmistress Annie Ludford, Prue Vines cites this figure. In her coveted occupation, Annie Ludford received £130, suggesting that Flora's estimates of her teaching salary were exorbitant. Prue Vines, "Annie Ludford, Postmistress: The Married Women's Property Acts and Public Service Employment in 1890s New South Wales," *Law and History* 2 (2015): 160, 175-6.
[35] England & Wales, Civil Registration Birth Index, 1837-1915, [database on-line].

ready-made garments.[36] I have uncovered little other detail regarding Horwitz's family background but it is significant that Abraham Marks was for many years in partnership with one Henry Horwitz. Although I have been unable to identify a definite kin relationship between Michael and Henry Horwitz, and family historians have similarly failed to do so, it seems too great a coincidence that Flora's husband was not related in some way to her father's business partner.[37]

As Henry Solomon was also known as Harry, to avoid confusion I refer to Flora's husband simply as Horwitz. Following several years in Fiji, where he managed a store, Horwitz arrived in Victoria in the early 1870s, fleeing the former Fijian capital of Levuka after an incident in which he was charged with stabbing another man (not fatally) during an argument. When Horwitz refused to appear before the consul, a vigilante committee formed to make him comply, but their rage fizzled out and he escaped punishment.[38] In possession of significant mercantile ability, by 1883 Horwitz headed a thriving business at the Circular Quay end of Sydney's Pitt Street, and was earning around £1000 per annum.[39] This considerable figure allowed him to operate a large household with several servants, and to accrue impressive financial assets which included a large share portfolio and substantial bank account.[40]

Australia's Jews were then predominantly English in origin, and easily absorbed into the mainstream Anglo-Saxon community.[41] Horwitz was typical of other colonial Jews in his engagement within the field of merchandising, the most common Jewish occupation, but he was unusual in his success and the rapidity with which he achieved it. Despite the common

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[36] Morris (Manuel) Horwitz (Hurwitz), *Census Returns of England and Wales, 1851*. Kew, Surrey. England: The National Archives of the UK (TNA): Public Record Office (PRO), 1851. Data imaged from the National Archives, London, England.
[37] Kerry Close, email to author, 24 November 2019.
[38] "Shipping and Commerce," *Leader*, 13 February 1869, 14; "Life in Fiji," *Maitland Mercury and Hunter River General Advertiser,* 4 August 1870, 4.
[39] "The Sydney Divorce Case," *Queensland Figaro,* 29 September 1883, 3.
[40] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[41] Rutland, *The Jews in Australia*, 9.

misconception that all Jews were wealthy, many if not most belonged to the lower middle-class, as Flora's family did.[42] Out of the eleven case studies which comprise my master's and doctoral research, three have involved Jewish men married to gentile women, and Horwitz is exceptional in his prosperity.

When the nineteen-year-old Flora was re-introduced to the thirty-eight year old Horwitz one Friday evening at a social evening in Melbourne (she had met him briefly in childhood), she agreed only two days later to become his wife.[43] The Horwitz marriage appears typical of those many relationships between native-born women and immigrant men, which involved an older man marrying a much younger woman. Australian historian Beverley Kingston contends that many such marriages—and indeed many colonial marriage—displayed a definite "father/daughter dynamic," because of the often-substantial age gap between bride and groom.[44] In contributing to existing inequality and disadvantage, such an age differential may explain the relative powerlessness so many women endured in marriage.[45]

The haste with which Flora accepted Horwitz's proposal of marriage suggests she was anxious to divest herself of spinsterhood. Despite a significant increase in women entering the workforce from the 1880s onwards, subsistence wages and the ongoing perception of marriage as "the crown and summit" of achievement for a woman ensured it remained the primary means of economic survival for most.[46] Certainly Flora's eagerness to accept a marriage proposal from a man she had just encountered implies her belief that marriage would be preferable to the life of a single working woman.

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[42] Australian Jewish historian Hilary Rubinstein points out that the Jewish community chose to identify as a race rather than a faith, culture or denomination. Hilary Rubinstein, *Chosen: The Jews in Australia* (Sydney: Allen & Unwin, 1987), 7, 10, 62.
[43] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[44] Beverley Kingston, *My Wife, My Daughter and Poor Mary Ann*, 97. Cited in Allen, *Sex & Secrets*, 4.
[45] Saunders, "Domestic Violence in Colonial Queensland," 68.
[46] Kingston, *My wife, My Daughter and Poor Mary Ann,* 6; See also Shirley Fisher, "Sydney Women and the Workforce, 1870-1890," in *Nineteenth Century Sydney: Essays in Urban History,* ed. Max Kelly, 95-105, (Sydney: Sydney University Press, 1978).

On December 5, 1877, Horwitz and Flora married according to the rites of the Jewish church, at the home of Melbourne money-lender Abraham Levy.[47] The principal of the Melbourne Hebrew School, one Reverend Raphael Benjamin, performed the service.[48] As Flora's mother was a Christian, she was not theoretically considered a Jew. Hilary Rubinstein points out, however, that Jewish men significantly outnumbered marriageable Jewish women, and often had little choice other than to select a non-Jewish wife.[49]

Although each of the three protagonists in the case identified with the Jewish faith, they do not appear to have been particularly religious, although Flora was from a deeply religious background. Her father was instrumental in establishing a Hebrew school in Hobart, serving as a warden in the Synagogue there and for a considerable time as its treasurer.[50] Horwitz usually worked on Saturdays, the Jewish Sabbath, but this was typical for a Jewish employer, most of whom did not allow their employees to observe the Sabbath either. Rubinstein suggests one of the main reasons Australian synagogues were so poorly attended was that few employers were prepared to grant time off for religious observance. For employees, it was a matter of choosing between religious and economic necessity, and the latter usually triumphed. Over time, the inability to observe the Sabbath led to a weakening of religious ties, which ultimately had long-term implications for the strength of Jewish practices and traditions.[51]

Harry Solomon's father John was one of Sydney's richest men, owning substantial real estate in the city and engaging with diverse other business interests.[52] He was also the son of Isaac "Ikey" Solomon, a renowned English Jew and criminal, upon whose life Charles

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[47] SRNSW: NRS 13495 [200/1883], *Horwitz v. Horwitz*; "Insolvency Court," *The Argus*, 2 April 1879, 3.
[48] "Melbourne Hebrew School," *The Argus*, 16 June 1879, 6.
[49] Rubinstein, *Chosen,* 7,10.
[50] "Law, Court of Requests," *The Mercury*, 9 January 1863, 2; "Presentation to A. Marks Esq.," *The Mercury*, 26 September 1866, 3.
[51] Rubinstein, *Chosen,* 84.
[52] "The Sydney Divorce Case," *Evening Journal*, 20 September 1883, 3.

Dickens based the character of Fagin in his novel *Oliver Twist.*[53] Despite being Jewish, Harry Solomon regularly attended services at St. John's Anglican Church in Darlinghurst Road, while Flora was more likely to be out shopping or socialising than at the newly-built Synagogue in nearby Elizabeth Street.[54] Although synagogue attendance was compulsory for men, women were theoretically able to decide for themselves whether to go to services.[55] It is difficult to assess the level of religiosity characterising the lives of the chief actors in this case, given that Australian Judaism at the time was what Jewish scholar Lancia Roselya describes as "domestic Judaism." This term refers to a style of religious observance which manifests predominantly in domestic cultural practices, rather than outward signs of religiosity such as synagogue attendance.[56] There is nothing to suggest Judaism was not important to the three protagonists, and it appears to have formed a definite part of their cultural identities, but I suggest that they regarded being respectable members of the upper middle-class as equally if not more important. It is important to note, however, that in his later years Horwitz became increasingly attached to Judaism, while Flora and her children became decidedly less so.

Flora and Horwitz had two children, Claude aged four years and four months, and three-year-old Bertha. In an era characterised by high fertility and infant mortality, Flora was atypical, her circumstances challenging the idea that childbearing, feeding and rearing then dominated a woman's entire existence.[57] Judith Allen's analysis of colonial fertility in the 1880s suggests Flora was unusual in giving birth to only two children in five years of marriage, and also in watching them thrive. Nor as far as I know had she lost a baby in

[53] State Library of New South Wales, "Australian Jewish Community and Culture: Ikey Solomon and his Adventures," https://www.sl.nsw.gov.au/stories/australian-jewish-community-and-culture/ikey-solomon-and-his-adventures
[54] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[55] Lancia Quay Roselya, "Jewish Women's Lives in London and Sydney, 1850-1900," (PhD Thesis, Australian National University, 2007), 124.
[56] Roselya, "Jewish Women's Lives," 226.
[57] Allen, *Sex & Secrets*, 3.

infancy, experienced stillbirth, spontaneous miscarriage or complications during delivery, all potential realities for the colonial woman of a reproductive age.[58]

Although Flora was not considered a Jew, it is important to consider that Judaism had unique beliefs and practices which maintained a low rate of fertility for Jewish couples, and it is possible she was well aware of these beliefs and practices. To begin with, Jewish families in the nineteenth century regarded from one to three children as the ideal family size.[59] The religion also encouraged certain contraceptive practices such as drinking a herbal abortifacient known as "a cup of roots." Perhaps most importantly, the attitude towards abortion was more liberal than amongst the gentile population, mainly because Judaism recognised childbirth as inherently dangerous to women and placed a woman's health above that of an unborn child.[60]

Given the fertility decline emerging in developed nations some years before the Horwitz case came to court, it is possible Flora and her husband practised a form of simple birth control, such as withdrawal or the rhythm method.[61] It is equally likely that the conflict-ridden and unhappy relationship involved some form of sexual avoidance. Horwitz often displayed signs of extreme sexual jealousy, and according to Flora, placed "an impure construction" on anything she said to him. He would ask her if she wanted to sleep with any man in whose direction she glanced, and demonstrated intense interest in sexual matters.[62] It is difficult to avoid concluding that Horwitz suffered from severe psycho-sexual anxiety, a feature Kay Saunders identifies as common in marriages characterised by physical abuse.[63] Horwitz's anxiety manifested from the very beginning of the marriage, when he burned

[58] Ibid., 27.
[59] Roselya, "Jewish Women's Lives," 207.
[60] Ibid., 209.
[61] John C. Caldwell and Lado T. Ruzieka, "The Australian Fertility Transition: An Analysis," *Population and Development Review* 4, no.1 (1978): 91.
[62] Saunders, "Domestic Violence in Colonial Queensland," 73; "Horwitz v. Horwitz and Solomon, Mrs. Horwitz's Evidence," *Wagga Wagga Advertiser*, 18 September 1883, 3.
[63] Saunders, "Domestic Violence in Colonial Queensland," 69.

"faded bouquets, schoolgirl letters and other "trifles" from her school days" which the young and romantic Flora had saved: rifling through his new wife's possessions, Horwitz ferreted out her beloved mementos, and hurled them into the fireplace.[64]

According to Flora, her marriage ended on the morning of March 15, 1883, when without provocation, her husband "kicked her about the room...attacked her...and dragged the false teeth from her upper jaw." Before leaving for his office, Horwitz placed the dentures in a strongbox located within a wardrobe, and locked both, taking with him the keys. No doubt he felt secure knowing his wife would not dare to leave the house without her teeth in place, as this drastically altered her appearance. In fact, Flora was so distressed, she would speak only with a handkerchief held over her mouth. Flora then vowed she would rather drink "a cup of arsenic" than return to her abusive spouse.[65]

It was not unknown in the late colonial era for a jealous and controlling husband to sometimes lock his wife inside the house.[66] Keeping Flora's teeth under lock and key functioned in much the same way and prevented her engagement with the outside world. This particular incident encapsulates the crucial power dynamic of dominant and subordinate which characterised the Horwitz marriage.[67] When Horwitz left for his office, Flora immediately signalled to Solomon, who arrived with a locksmith *and* solicitor in tow, and set about retrieving his beloved's teeth. With her dentures restored, Flora left the house and took rooms at the nearby Royal Hotel, paying with money Solomon had given her.[68] Two days later, Horwitz "discovered" where his wife had gone, and "not knowing that any impropriety

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[64] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[65] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[66] Sarah Allwood, Patricia Easteal and Jessica Kennedy, "Law's Indifference to Women's Experience of Violence: Colonial and Contemporary Australia," *Women's Studies International Forum* 35 (2012): 88.
[67] Saunders, "Domestic Violence in Colonial Queensland," 76.
[68] There are several hotels with a similar name in historical sources and I have been unable to locate this particular building other than to infer that it was within the inner-city area nearby to Darlinghurst.

had taken place beyond (her) removal from his...house, begged her to return to him, but in vain."[69]

Heading towards Melbourne where she intended to visit members of her family, Flora departed Sydney by train, and informed Horwitz via messenger boy that she wished to meet him en route in the regional town of Albury on the NSW border.[70] What then transpired appears to have been the equivalent of a colonial wild goose-chase, as Horwitz and Flora travelled separately from NSW to Victoria and stopped variously at the regional towns of Geelong, Wagga Wagga, Albury and then Melbourne's St. Kilda. For Horwitz, the long and meandering train journey held the promise of resurrecting his marriage, a move he seemed surprisingly desperate to achieve, given his promise to take Flora on a lengthy tour of the colonies should they reconcile, and to pay her £1000 should he ever strike her again.

When Horwitz missed the train, however, and Flora continued on ahead, the journey to Melbourne provided her the opportunity to spend long hours in her lover's arms as they sat together in the carriage. To avoid detection, Solomon then left the train at a suburban station near the city. Upon reuniting in Melbourne, Flora and Horwitz "resumed habitation," but on returning to *Levoni House*, Horwitz discovered his wife's perfidy when he hid behind a door to eavesdrop. Evicting Flora immediately from the home (first advising her to "earn her living on the streets"),[71] Horwitz immediately set about initiating divorce proceedings in which he demanded an exorbitant ten thousand pounds in damages from Solomon.[72]

Investigating scandal in Sydney and Cape Town in the first half of the nineteenth century, historian Kirsten McKenzie points out that damages were typically calculated

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[69] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[70] Horwitz employed the manager of his company, one William Nicholls, to act as his go-between and make arrangements with Flora. Nicholls appears to have been a henchman for his employer and was at times required to threaten and coerce. SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[71] "The Divorce Case: Horwitz, Horwitz and Solomon," *Sydney Mail and New South Wales Advertiser,* 22 September 1883, 569.
[72] It also seems likely it was Maggie Maclaren who told Horwitz that Solomon was in the train carriage with her mistress. SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*

according to the social status of those involved.[73] No doubt Horwitz also believed Solomon had enough money to pay such a hefty sum. Hilary Golder remarks that most petitioners who chose to deploy the grounds of adultery were hopeful of obtaining damages to cover their legal costs, but in the current case I believe the wealthy Horwitz desired only revenge and wanted to punish Solomon by savaging his reputation and causing his financial ruin.[74]

A Theatre Specialising in Melodrama: The Facts of the Trial[75]

The Horwitz divorce case was tried in 1883 at Sydney's Darlinghurst Courthouse between September 3 and 14, before Judge William Windeyer and a special jury of twelve men. Although the term "special jury" has several different meanings, in the Australian context it referred specifically to the method of jury selection, a decision the judge made in anticipating a case would require a special "class" of men to serve on the jury. In such circumstances, the judge had access to a list of potential citizens whose eligibility derived from property ownership and social status.[76] While special juries were appointed chiefly in criminal trials that involved property offences, they were also a regular feature of complex divorce cases, in which the judge anticipated—for whatever reason—that proceedings would tax the acumen of the ordinary man in the street if he was asked to serve on a jury.[77]

The brief period to elapse between Flora's departure from the home and her husband's initial petition represents exceptional haste, given the complex legal hurdles a petitioner faced before the judge would declare the documentation satisfactory in a divorce case. That Horwitz harboured vast anger and resentment towards his errant wife is evident in

[73] McKenzie, *Scandal in the Colonies*, 112.
[74] Golder, "'A Sensible Investment,'" 6.
[75] Ibid.
[76] Alana Piper, "Phillips' Brief: The Special Jury in Australia," *Criminal Law Journal* 39, no.4 (2015): 218-219.
[77] Ibid., 219.

that he lodged divorce papers only twenty-three days after evicting Flora. Even the press remarked that affidavits for the divorce were "drawn in a great hurry," which implies such haste was not usual.[78] In this instance, the brief time frame suggests on the part of Horwitz a heightened level of vengeance and a determination to break the marital tie. Such rapidity in initiating a petition is unusual. Furthermore, in most instances a trial or hearing was not scheduled until at least two years after the initial separation, which Judith Allen identifies as the average duration to elapse from when a petition was first lodged, and the case appeared in court.[79]

To answer her husband's petition, Flora lodged a counter suit, as was standard legal response for the person accused. She charged Horwitz with cruelty and condonation (a legal term I will shortly explain), claiming he was guilty of such "wilful neglect and misconduct" as to "conduce" to the adultery with which she was charged.[80] In constructing their defence, respondents frequently turned to claims of "condonation" and "conducing" to account for their actions. As Hilary Golder explains, if lawyers could prove a petitioner guilty of "cruelty, neglect, desertion or any other behaviour conducive to the respondent's adultery," the judge was entitled to dismiss a petition.[81] Proving condonation meant demonstrating beyond doubt that a spouse had knowingly forgiven an "offence." In this instance, the jury had to decide if Horwitz knew Flora had slept with Solomon when he himself "consorted" with her immediately prior to their separation.[82]

[78] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[79] Allen, *Sex & Secrets,* 51.
[80] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[81] Golder, "'A Sensible Investment,'" 262.
[82] "The Divorce Suit, Horwitz v. Horwitz and Solomon," *Sydney Morning Herald*, 19 September 1883, 7.

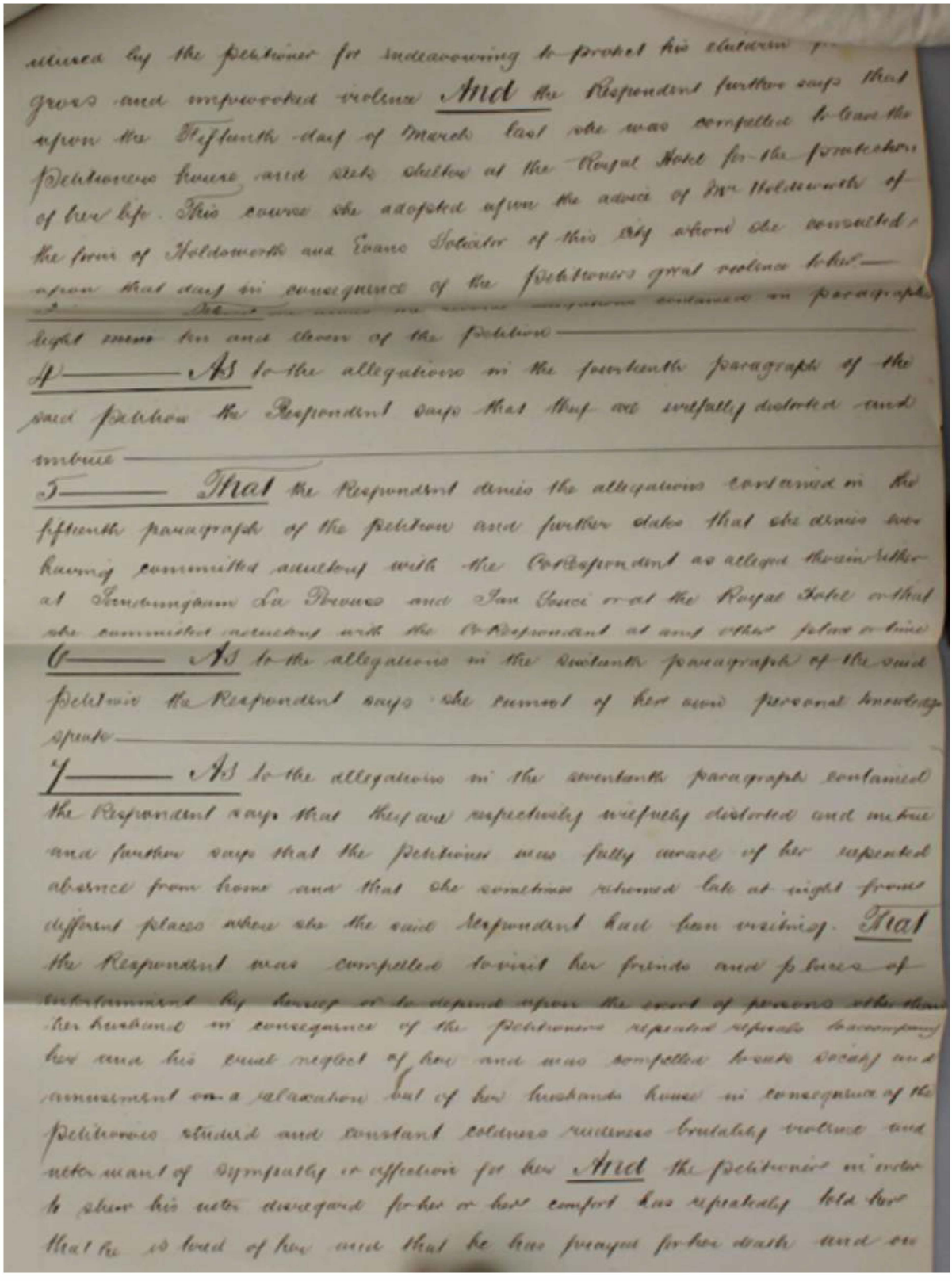

Image 1.6: The second page of Flora's counterclaims made in response to Horwitz's allegations (the document ran to three pages).

SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*

It is an absurd paradox that on the one hand Flora strenuously denied committing adultery, but on the other accused Horwitz of condoning her adulterous conduct. In the nineteenth century and indeed well into the twentieth, however, for a woman to legally admit to an extra-marital sexual relationship had extreme consequences and was to be avoided at all costs.[83] The testimony of one flippant cab-driver that he frequently drove "well-known gents" about the town and "could keep his eyes shut," confirms the ongoing presence of a strong double standard whereby a man's sexual indiscretions were accepted and a woman's most certainly were not.[84]

In view of such considerations, it is only to be expected that the accused lovers continued to proclaim their innocence. To admit to guilt, in these circumstances, would have had dire ramifications.[85] For Flora, to be branded an adulteress would see the loss of her marriage, her social status and, most terrible of all, access to her children. Solomon admitted his livelihood had suffered greatly by the mere fact of proceedings, to the point where he had "no money now," and whereas he once did "a good business as a stockbroker," the case had "ruined" his trade because clients refused to deal with him until the jury delivered its verdict. By this of course he meant until he was pronounced innocent in a court of law.[86]

Armed with what can only be described as a flexible approach to the truth, the colonial legal system was evidently powerless to prevent witnesses from giving false testimony. As one regional newspaper editorial observed, "if the plaintiff in a case swears one thing today, it may certainly be expected that the defendant will swear the other way

[83] See Penny Russell, *A Wish of Distinction: Colonial Gentility and Femininity* (Melbourne: Melbourne University Press, 1994), 114.
[84] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz*; Allen, *Sex & Secrets,* 2.
[85] As American historian Gail Savage observes, the fear of public attention was so great, it acted as a deterrent to many would-be litigants and respondents. Gail Savage, "They Would if They Could: Class, Gender and Popular Representation of English Divorce Litigation, 1858-1908," *Journal of Family History* 36 no. 2, (2011): 175.
[86] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883.

tomorrow."[87] At the trial's conclusion, Sydney's *Evening News* reported that several prosecutions for perjury were expected to follow as a result of proceedings.[88] While no such prosecutions appear to have eventuated, the realities of biased and perjured evidence are irrefutable in this and many other divorce cases. In the current case, servants inadvertently let slip that Horwitz and his lawyers had approached them to "negotiate" their evidence. Some were dependent on receiving a positive reference from their former employer, while others were eager to retain their current position in his employ.

One of the chief witnesses for Flora's side, her children's nursemaid Margaret (Maggie) Maclean, had "a change of heart" during the trial, and from being "a servant sympathising with an injured mistress," turned instead to allege "frequent instances of the very affectionate relations between Horwitz and his wife."[89] (At the time of the trial, Maclean had exchange her position as nursemaid for that of cook in the Horwitz household).[90] Some thirteen current or former servants were called upon to testify, and variously deposed to never seeing "the slightest indication of coldness or cruelty on the part of Mr. Horwitz." Nor had they ever witnessed Mrs. Horwitz "show any sign of unhappiness." On the contrary, one went so far as to contend that the couple's demonstrations of affection were sometimes "so marked, that out of delicacy," she was forced to leave the room.[91] These testimonies were so divergent from Flora's version of events as to be questionable.

The vocabulary that individuals deployed in relation to the issue of conjugal affection is important here, with the words "affection" and "affectionate" used multiple times throughout press reports and legal documents. The cuckolded husband himself vowed he "had never ceased to regard (his wife) with a deep affection, and loved her still, even as a

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[87] "Editorial," *Wagga Wagga Advertiser*, 8 September 1883, 2.
[88] "Brevities," *Evening News*, 19 September 1883, 5.
[89] "The Divorce Case: Horwitz v. Horwitz and Solomon," *Sydney Morning Herald*, 18 September 1883, 5.
[90] "The Divorce Case: Horwitz v. Horwitz and Solomon," *Sydney Mail and New South Wales Advertiser,* 22 September 1883, 569.
[91] "The Divorce Case: Horwitz v. Horwitz and Solomon," *Sydney Mail and New South Wales Advertiser,* 22 September 1883, 569.

father would love a son who had disgraced him," his emotive words lending further weight to Golder's suggestion of the melodramatic nature of court proceedings.[92]

As James Hammerton contends, arguments used to prove claims of cruelty are significant in what they reveal about idealised conceptions of domestic felicity.[93] In contrast to Horwitz's protestations of affection for his wife, Flora made much of his *lack* of affection, remarking that "he was not at all affectionate; he seldom spoke to me." She claimed to have shown him "as much affection as he deserved, but he did not deserve much," and on reflection admitted that she "should have left him the very first day we were married," because she "could see from the very first day that he was a cold, bad man."[94] As a consequence, she observed, they "lived a most unhappy life scarcely ever speaking to each other."[95]

The companionate ideal emerging at this time features closely within the idealised portrayal of conjugal relations at play during proceedings. A "good" husband was expected to be affectionate and loving, while the "good" wife was loving, kind and patient, providing limitless emotional support.[96] As such, what both Harry and Flora Horwitz strove to do was prove to the court how the other party failed to meet the ideal, and demonstrate instead their own fidelity to an idealised version of spousal comportment. Flora's allegations of cruelty focused as much on her husband's want of affection as they did on his physical abuse.

In one of the few scholarly analyses of how the legal concept of matrimonial cruelty changed over time in Australia, legal historian Colin James suggests such cruelty was

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[92] "The Divorce Case: Horwitz v. Horwitz and Solomon," *Sydney Mail and New South Wales Advertiser,* 22 September 1883, 569; Golder, "'A Sensible Investment,'"6.
[93] Hammerton, "Law of Matrimonial Cruelty," 272.
[94] "The Divorce Case: Horwitz v. Horwitz and Solomon," *Sydney Mail and New South Wales Advertiser,* 22 September 1883, 569.
[95] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[96] John Tosh, A Man's Place: Masculinity and the Middle-Class Home in Victorian England (New Haven, CT: Yale University Press, 1999), 27-8; Savage points out that the companionate ideal saw spouses hold "high expectations" of marriage, and that as a result, divorce became "a necessary concomitant" of the inevitable disappointment which followed. Gail Savage, "Divorce and the Law in England and France Prior to the First World War," *Journal of Social History* 21, no.3 (1988): 501.

"pitched" at an impossibly high level, and as a result, very few women were successful in having their charges accepted.[97] While Judge William Windeyer was known to be sympathetic to women,[98] it is significant that he advised the jury to disregard Flora's allegations of cruelty should they have the slightest doubt as to their veracity, which suggests he was not always on the side of those women who appeared in his courtroom.[99]

At the conclusion of ten gruelling days in court, the jury found for Horwitz on all counts. When Harry Solomon immediately appealed, however, on the grounds that his legal team had not been consulted in selecting the jury, his appeal was upheld, and divorce refused. It is significant that *Horwitz v. Horwitz and Solomon* thereafter became a test case for the process of jury selection and is described at length in *New South Wales Law Reports*.[100]

Meet Me at Half-Past Ten...Past the Botany Tollgate[101]

Flora and Solomon had first met in early 1882, when her younger brother Charles brought the neighbouring lodger to the Horwitz home one evening. In court, Flora described a warm and affectionate but platonic relationship with the younger man, her avowal of a non-sexual liaison countering evidence which built piecemeal the story of a romantic attachment enacted covertly in late colonial Sydney. A series of witnesses described the pair enjoying long, romantic lunches and dinners together, walking hand-in-hand on deserted beaches, renting hotels rooms and spending hours confined alone in closed carriages as they traversed the city and its surrounds.[102] Combined with such incriminating evidence, the time which

[97] James, "A History of Cruelty in Australian Divorce," 5.
[98] Golder goes so far as to suggest that Windeyer possessed "feminist credentials." Golder, "'A Sensible Investment,'" 297.
[99] "The Divorce Suit, Horwitz v. Horwitz and Solomon," *Sydney Morning Herald*, 19 September 1883, 7.
[100] "Horwitz v. Horwitz and Solomon," *New South Wales Law Report* 3 (1884): 3-8.
[101] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[102] "New South Wales: The Horwitz Divorce Case," *Daily Telegraph Tasmania*, 7 September 1883, 2.

Flora and her paramour spent together confirms an intense romantic relationship within an intimate emotional realm.

Witness testimony aiming to prove the affair exists today only because colonial inhabitants were so willing to inform on one another. Each of my seven case studies confirms the Foucauldian notion that "in every society, the body was in the grip of very strict powers, which imposed on it constraints, prohibitions or obligations."[103] These powers and constraints in effect counted on individuals to engage in surveillance, confirming the "intervention of a limitless political power in every day relations" which manifested in the spying to which colonial inhabitants were subjected and subjected one another.[104] By taking care to portray their own deportment in a way that confirmed how they adhered to "constraints, prohibitions or obligations," those present in court demonstrated a personal investment in the disciplinary power which produces subjects.[105]

The notion of surveillance emerges repeatedly and with force throughout the thesis. Without the willingness of ordinary individuals to engage in and broadcast the findings of their surveillance, we would not have the many archival descriptions of sexual intimacy and conflict that served to substantiate allegations of "wrong-doing." Consider the artillery gunner stationed at the beachside location of La Perouse, a witness discovered by detectives Horwitz had hired, who deposed to seeing Solomon and Flora at least "half a dozen times," sitting together on a rock near the surf, Solomon's hand on Flora's breast as he kissed her: authorities commissioned an architectural firm to draw the exact layout of the beach showing the various vantage points from which the lovers had been observed.[106] The obvious

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[103] Michel Foucault, "Docile Bodies," in *The Foucault Reader,* ed. Paul Rabinow (London: Penguin Books, 1991), 180.
[104] Michel Foucault, "Lives of Infamous Men," in *Michel Foucault: Power, Truth, Strategy,* eds. Meaghan Morris and Paul Patton (Sydney: Feral Publications, 1979), 86.
[105] Angela King, "The Prisoner of Gender: Foucault and the Disciplining of the Female Body," *Journal of International Women's Studies* 5, no.2 (2004): 29-30.
[106] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5; There is only a single mention of this detective in the case file unfortunately, nor did the issue of detectives arise during the trial.

commitment on the part of numerous individuals to testify as to the intimacies they had seen—usually not by accident, but often in a blatant attempt to "spy" on their fellows—is disquieting, and leads me to ask when the oft-proclaimed Australian sanction against "dobbing" came into being.

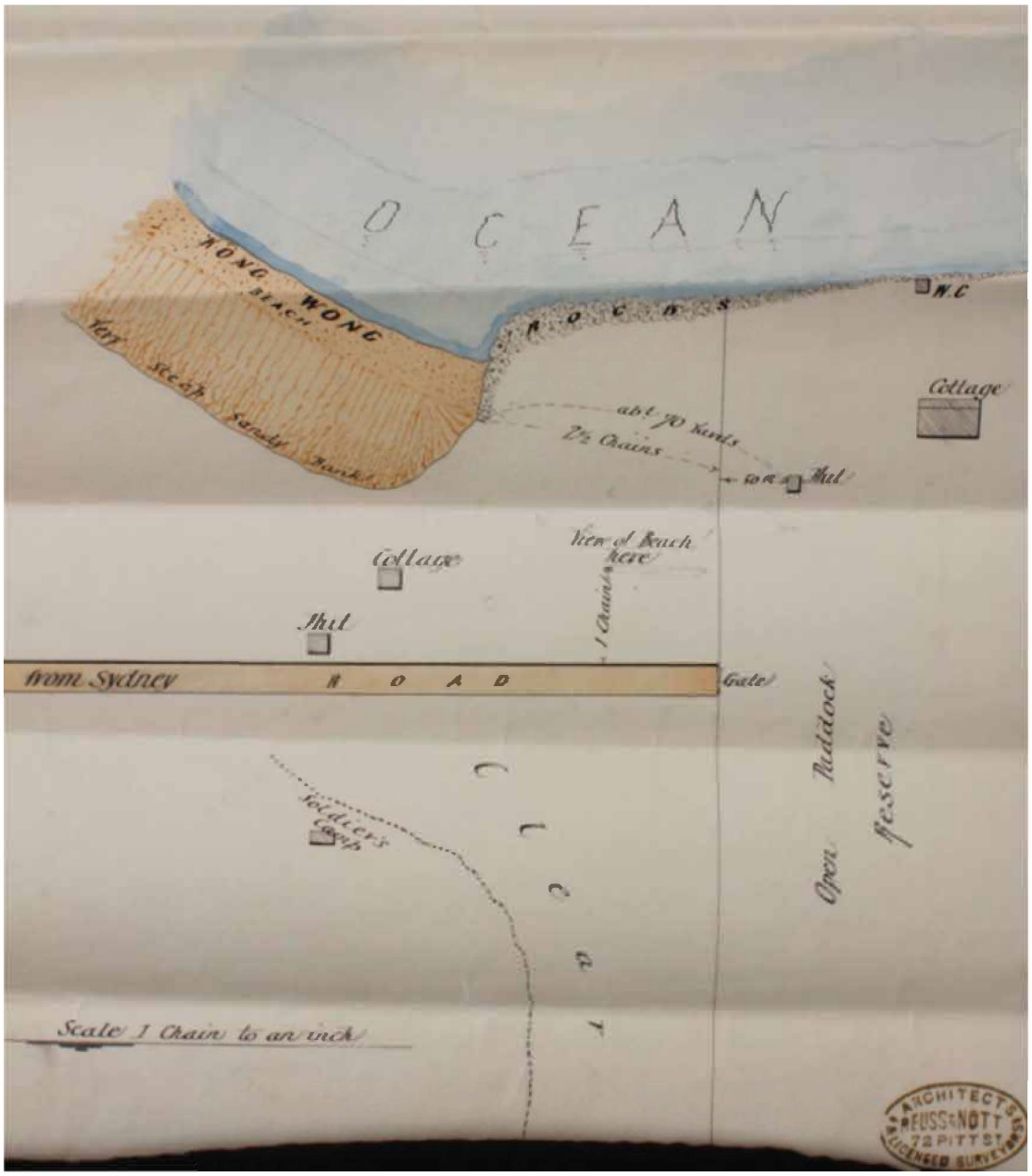

Image 1.7 Hand-drawn plan of Kong Wong Beach, which Horwitz's legal team commissioned a firm of architects to draw.

SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz*

Kirsten McKenzie argues that gossip and scandal were crucial to the policing of societal norms in a society undergoing rapid change.[107] While her research pertains to an earlier time frame than mine, it remains relevant in pointing to the eagerness with which colonial individuals spied on and informed upon those around them. Such enthusiasm was accompanied by a distinct lack of embarrassment or censure in regard to carrying out surveillance activities. If we accept the Foucauldian premise that "the rules governing what can be said" far outweigh in importance what is actually stated, we may recognise that colonial inhabitants had only a limited repertoire from which to draw when it came to giving testimony.[108] Within that repertoire, a willingness to admit surveillance served as a badge of moral honour, by highlighting one's own fidelity to vital norms of moral and sexual conduct.

The details of Flora's affair with Solomon confirm that she was able to enjoy considerable freedom and leisure by orchestrating circumstances to avoid detection. With Horwitz preoccupied with his business affairs, working six days each week and spending most evenings at home engaged in work-related correspondence, Flora could spend long hours alone with her lover. While Horwitz was at his office all day, Solomon came home for lunch, and stopped by to see Flora. Horwitz's dedication to his business affairs provided ample opportunity for the transgressing couple to meet, which they did daily, chatting at the back gate between their respective residences. The pair also conversed constantly from their windows by means of "the deaf and dumb alphabet," and Solomon visited the house whilst Horwitz was at work and it was safe to be with Flora in a locked drawing room.[109]

Flora and Harry's "secret" sign language is intriguing. The pair were proficient in using what several witnesses described as either "sign language," "talking on their fingers," or "the deaf and dumb alphabet," but I have no idea what the language was, or how either

[107] McKenzie, *Scandal in the Colonies*, 8-9.
[108] Cited in Willie Thompson, *Postmodernism and History*, (New York: Palgrave Macmillan, 2004), 75.
[109] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*

party developed the skill to use such an idiosyncratic system of communication. Abraham Marks's great-great-granddaughter Gay Pickering points out that best-selling novelist Bryce Courtenay refers in his novel *The Potato Factory* to "an ancient silent language" which Jewish traders used. Courtenay's novel is based on the life of none other than Ikey Solomon, and he describes in one chapter how Solomon taught the sign language to his two sons. A passage in the novel refers to the "finger and hand actions" to which traders sometimes added "their own unique signs and devices."[110] Such an explanation is entirely plausible, and a wonderfully exotic interpretation of Flora and Harry's private language of love.

As Horwitz explained to the court, Flora went out often at night, "on the pretence" of visiting people with whom she claimed an acquaintance. On one occasion, she returned home by cab at two o'clock in the morning, only to be met at the door by her irate husband. Confirming the popularity of spiritualism as a form of middle-class leisure at this time, Flora accounted for her absence by claiming to have been discovered as a medium, a talent upon which the other "ladies" present (at her fictitious social gathering) had remarked.[111] Given that Solomon had only just leapt from the cab and into the darkness as Horwitz opened the door, there is no doubt the couple spent the evening together.

While Horwitz tried to control his wife's every move, Flora had her own methods of circumventing his authority. Informing the court he "never let" Flora go out "without a servant went with her," (a clearly colonial turn of phrase), Horwitz must have been shocked to discover her deceit.[112] Flora's actions demonstrate that resistance is almost as common a response to disciplinary power as is submission.[113] Although outwardly Flora appeared to

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[110] Kerry Close, personal email communication to the author, 1 December 2019.
Bryce Courtenay, *The Potato Factory* (Port William: William Heinemann Australia, 1995), 579-80. I have been unable to locate any scholarly references to this sign language.
[111] "An Interesting Divorce Case," *Sydney Daily Telegraph*, 4 September 1883, 3; Marlene Tromp, "Spirited Sexuality: Sex, Marriage and Victorian Spiritualism," *Victorian Literature and Culture* 31, no.1 (2004): 67.
[112] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[113] Anthony Giddens, *The Transformation of Intimacy: Sexuality, Love and Eroticism in Modern Societies*, (Cambridge: Polity Press, 1992), 18.

abide by the expectations of restrained deportment, she led a torrid interior life in which her emotional experiences provided the excitement and passion that marriage to a cold and unloving tyrant could not.[114]

The issue of being chaperoned is one I explore further in Chapter Six, which takes place in 1905, but in the current context is also significant. Feminist scholar Greer Litton Fox describes chaperoning as one of three methods by which patriarchal society attempts to control women, comprising confinement, protection and normative restriction.[115] Flora Horwitz was subject to all three methods: unable to travel without supervision, guarded by her husband and servants, and "trained" to comport herself (at least in public) according to normative standards of ladylike conduct. By means of these three modes, Flora—like other women of her social class—became self-policing, internalising prevailing views of behaviour which led ultimately to seeing herself through the eyes of others. At the same time, her love affair provided a liminal context in which Flora could briefly escape policing. One of the most important ramifications of her romantic involvement was thus that it allowed Flora to act as an independent agent, albeit for brief periods only.

The need to be chaperoned inadvertently illustrates the individual woman's capacity for agency and reveals how the middle-class woman could inveigle her servants to help orchestrate an affair. In total, the issue of chaperoning confirms yet again the Foucauldian premise that to expose power relations, we must first examine resistance against such power.[116] Flora always set out from home with a servant plainly in sight, but quickly abandoned them. She first instructed the woman as to where and when they were to meet again, and as a result was able to arrive home irrefutably still accompanied. Her servants

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[114] For an analysis of the disjunction between exterior circumstances and the inner world of a subject, see Sharon Crozier De Rosa, "Popular Fiction and the 'Emotional Turn:' The Case of Women in Late Victorian Britain," *History Compass* 8, no.12 (2010): 1342.
[115] Greer Little Fox, "'Nice Girl:' Social Control of Women Through a Value Construct," *Signs: Journal of Women in Culture and Society* 2, no.4 (1977): 805.
[116] Foucault, "The Subject and Power," 780.

were expected to wander the streets waiting for the cab in which Flora was to return, sometimes waiting for more than an hour after the appointed time.[117] No doubt there were many occasions when such loitering saw the hapless employee endure cold, loneliness and boredom, not to mention danger.

I must Break her into my Ways[118]

The ongoing efforts of husbands to dominate wives—accompanied by a firm belief in their right to do so—may be identified in each of my seven case studies, albeit to differing degrees. Three of the seven marriages I examine reflect domestic abuse of a harrowing nature, and while there is no evidence of violence in the other four cases, they reflect inherently and irrefutably unequal power relations. Although some marital relationships may appear in hindsight to have enjoyed periods of companionate harmony, bonds of intimacy across social class remained predicated on men's power and women's submission.[119] Such asymmetry in gendered power was somewhat inevitable, given the ongoing structural barriers that prevented women from engaging with the public sphere. These barriers perpetuated financial dependence on a male breadwinner, and in many instances, economic dependence served as a foundational springboard to physical violence.[120]

The narrative arc of marital conflict in the Horwitz case comprises Horwitz's physical violence and financial control, both of which suggest he held his wife in contempt and was determined to dominate and oppress her. The case confirms a close link between economic control and physical abuse, whereby Horwitz's tight control of the purse strings maintained

[117] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[118] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[119] Vivienne Elizabeth, "Separating from Violent Male Partners: A Resistant Act in the Midst of Power Relations," *Journal of International Women's Studies* 4, no.3 (2003): 64.
[120] Piper, "Understanding Economic Abuse," 36.

his authority: as in all colonial marriages, he had every right to dictate household spending as he saw fit.[121] Like many Victorian husbands, Horwitz regarded himself as the undisputed head of the household, and its sole source of domestic authority and decision-making. He ruled through fear and constantly enforced the submission of his wife, their children and the servants.[122]

In the introduction, I mentioned Alana Piper's contention that economic abuse is a form of domestic abuse, an assertion the Horwitz case amply reinforces. Piper suggests we recognise how economic control maintains relations of dependence and thereby often prevents a victim from escaping.[123] With the colonial marital contract seen as an exchange in which women provided "domestic and sexual services," and in return received financial support from men, wives were easily regarded as commodities rather than autonomous individuals.[124] Such a view emerges within the current sources, whereby Horwitz referred often to "his" house, "his" children and "his" money, consistently adopting a proprietorial language to stake his claims (and this was evidently a language the court accepted).[125] Lawyers further reinforced the idea of women's financial indebtedness, for example asking the jury to consider Flora's conduct while "she was under the protection of her husband, and her husband was maintaining her," a remark which substantiates a husband's proprietorial sense towards his wife.[126]

Flora made much during proceedings of the financial dispossession to which she was subjected, and finances served as a sore point between the spouses. Asked by the court to describe the state of her husband's financial affairs, Flora could specify to the exact pound

[121] Ibid.: As an affluent businessman, Horwitz had sole control over household coffers. Given her genteel status, it would have been unseemly for Flora to earn money.
[122] Mary Lyndon Shanley, *Feminism, Marriage and the Law in Victorian England,* (Princeton, New Jersey: Princeton University Press, 1989), 5.
[123] Piper, "Understanding Economic Abuse," 36-7.
[124] Ibid., 38-9.
[125] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[126] "The Divorce Case, Horwitz v. Horwitz and Solomon," *Sydney Morning Herald*, 18 September 1883, 5.

his extensive share portfolio, ample fixed deposit and household furniture and effects ("to one thousand pounds at least") but could not independently access a single penny of those assets.[127] Various witnesses confirmed Flora's lack of independent means, and several servants admitted their mistress "never seemed to have any money." In an effort to substantiate her husband's miserliness, Flora described an occasion on which she had asked for a shilling to buy a piece of fruit, whereupon Horwitz had closed the discussion by saying "You don't want fruit."[128] She had to request even "trifling amounts," he specified how much her clothes were to cost, and she was often reduced to borrowing from the servants: Maggie Maclean swore to lending £38 to her impoverished mistress, and at the time of the trial was still waiting for repayment.[129]

Servants equally bemoaned the master's miserly household management. A former cook described how "the petitioner's house was very meanly kept," and she chose to purchase provisions herself "rather than complain." Another woman who worked as cook and laundress observed how strange it was that Mrs. Horwitz "never had control of anything," while Mr. Horwitz doled out "tea, coffee and other necessaries of the kitchen and house" from a locked storeroom for which only he held the keys. (As I discuss further in Chapter Three, in the Victorian era the household keys were of marked significance to the mistress of the house and symbolised her authority). She contended that Horwitz was "master and mistress too" and Mrs. Horwitz "never gave any orders."[130]

Analysing masculinity in the Victorian era, British historian John Tosh contends the importance of the household division whereby authority rested undeniably with a husband,

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[127] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[128] "Horwitz v. Horwitz and Solomon; Mrs. Horwitz's Evidence," *Wagga Wagga Advertiser*, 18 September 1883, 3; "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[129] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz*; "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[130] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.

but household management was expected to be a wife's purview.[131] According to Lancia Roselya, furthermore, a wife was entitled to be the household "priestess," a conception which Horwitz's demeanour does not support.[132] The reversal of domestic authority in the household disconcerted its servants, who expected Flora to oversee the domestic realm while Horwitz confined himself to his business affairs. One employee confessed to leaving "the petitioner's service" because of his "meanness in furnishing the ordinary necessities of life and... meddling and interference in domestic matters," which she believed should have been her mistress's concern. Another complained it was Horwitz rather than Flora who settled her wages, describing to the court how he kept back a few shillings each pay day to ensure she remained in his employ. By interfering in household management, and refusing to allow Flora to control domestic affairs, Horwitz's overturning of gender expectations disturbed those around him.[133]

To prove her husband's cruelty, Flora described many examples of his physical assault. Horwitz's favoured method of abuse was kicking: in the legal case file alone, Flora mentions the words "kick," "kicked" and "kicking" no fewer than twenty-one times. Horwitz kicked her in bed, out of bed, onto the floor and onto furniture. At other times he preferred to slap. He was fully prepared to admit to these incidents in court and recounted the abuse in such a way as to suggest legal acceptance of a husband's physical violence. Horwitz thus admitted striking Flora on the side of the face after observing Harry Solomon making "dumb signs," discovering Flora at the bedroom window in "a state of undress" and "talking on her fingers to the co-respondent."[134]

Horwitz took pains, however, to emphasise he had used only "an open hand," as his fingers were clasped around the sock he was in the act of putting on, and at no time when

[131] Tosh, *A Man's Place*, 62-3.
[132] Roselya, "Jewish Women's Lives," 9.
[133] Saunders, "Domestic Violence in Colonial Queensland," 68.
[134] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*

striking his wife did he close his fist. He stated in a written deposition that "I did raise my hand and struck her on the side of the face but without however closing my fist first for that purpose."[135] To justify his response, Horwitz cited Flora's impudence and insolence, words which convey the expectation his wife obey him without question.[136] When Flora's sister Bertha later spoke to Horwitz regarding his conduct, he explained the need to "break her into my ways," an assertion somehow more pertinent to horse training than communicating with one's wife.[137]

The trial revealed that physical violence was a common occurrence in the Horwitz marriage, and testimonies support Judith Allen's observation that women could be beaten for any reason—or no reason whatsoever.[138] Lending further weight to the idea that Horwitz regarded his wife as a misbehaving child, he recounted one occasion on which Flora "came towards (him) in an impudent manner, and (he) boxed her ears (but) used or threatened no other violence to her."[139] Another vignette reveals it was not only Horwitz who believed a man was entitled to physically "reprimand" his wife. Following yet another marital confrontation, Flora went to take her children, but her solicitor Sydney Want commanded her to leave the house immediately, saying "No, they don't belong to you; go out of the house before your husband strikes you."[140]

Sydney Want's choice of words is significant and refers to how fathers had what feminist historian Heather Radi describes as "superior rights" to their children until 1934. As Radi suggests, many men used their potential custody to maintain a tyrannised wife in a state of fear, lest her children be taken from her.[141] Judith Allen equally contends that women had

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[135] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[136] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[137] "The Late Divorce Suit, Horwitz v. Horwitz and Solomon, Full Account of the Trial," *Sydney Daily Telegraph*, 15 September 1883, 5.
[138] Allen, *Sex & Secrets*, 42.
[139] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[140] "The Divorce Case: Horwitz v. Horwitz and Solomon," *Sydney Mail and New South Wales Advertiser*, 22 September 1883, 569.
[141] Radi, "Whose Child?" 120.

minimal custody rights, and the rights of a father always took precedence.[142] Although men had a persistent common-law right to custody of their children, however, it seems judges often made custody decisions based on their personal assessment of a woman's character, and her guilt or innocence.[143]

Mr. Alberto is Requested to Return to his Wife[144]

Recent scholarship has investigated love letters to extract evidence of romantic love and added such missives to the literary archive.[145] The documentary materials throughout the thesis suggest that legal documents and court transcripts are similarly fruitful sources of romantic discourse. In the current context, eight telegrams sent between the three protagonists highlight overt elements of romantic love in both its transgressive and forbidden forms, rather than the more culturally approved material written that is typically within the contexts of courtship and marriage.

Literary historian and author Hsu-Ming Teo describes love letters as a way for lovers to "manage" their feelings.[146] Much like a love letter, Flora deployed the newspaper advertisement to "produce and manage" her love for Solomon. Writing and publishing these truncated and dramatic messages allowed her a sense of control and autonomy, because through them she could orchestrate meetings with her lover—particularly when the continuance of the affair was under threat—and thereby strive to prevent the affair's demise. The advertisements offered Flora the chance to exercise agency in a situation beyond her

[142] Allen, "Breaking into the Public Sphere," 108.
[143] Golder, "'A Sensible Investment,'" 336.
[144] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[145] Hsu-Ming Teo, "Love Writes: Gender and Romantic Love in Australian Love Letters, 1860-1960," *Australian Feminist Studies* 20, no.48 (2005): 344.
[146] Ibid., 354.

control, against a backdrop in which first her overbearing husband and then her lover's powerful father tried to thwart her romantic desires.

Flora also sent Solomon several overwrought and intense telegrams, the contents of which reveal her passionate and loving nature. The original copies have been lost but are transcribed verbatim in press reports. On March 27, 1883, Flora wrote,

> My darling. Just received your telegram. I am coming to Albury with solicitor to meet H about settling up. Do not stay at the Globe: I shall stay there. Meet Maggie at the station at 5 o'clock Wednesday afternoon, and tell her when and where I can see you. The minutes seem like hours now I know I am to see my poor darling once again. I am almost mad with trouble. Do not let him see you.[147]

These messages convey Flora's panic at the prospect of losing Solomon forever. Whilst conforming to Victorian standards of correspondence, Flora's role in despatching her telegrams was autonomous, active and determined.[148] By composing and sending her dramatically encoded messages, Flora Horwitz became pursuer rather than pursued, momentarily overturning the traditional hierarchy in which men alone are actors and decision-makers.[149] The telegram also provided Flora a conduit through which to exercise a degree of autonomy when communicating with her husband. Consider her response to his suggestion that they reconcile, after she first mooted a separation of several years (a somewhat perverse idea): "Consider, Harry, whether you would far sooner be parted from your wife and children for six months, or be separated from them forever?"[150]

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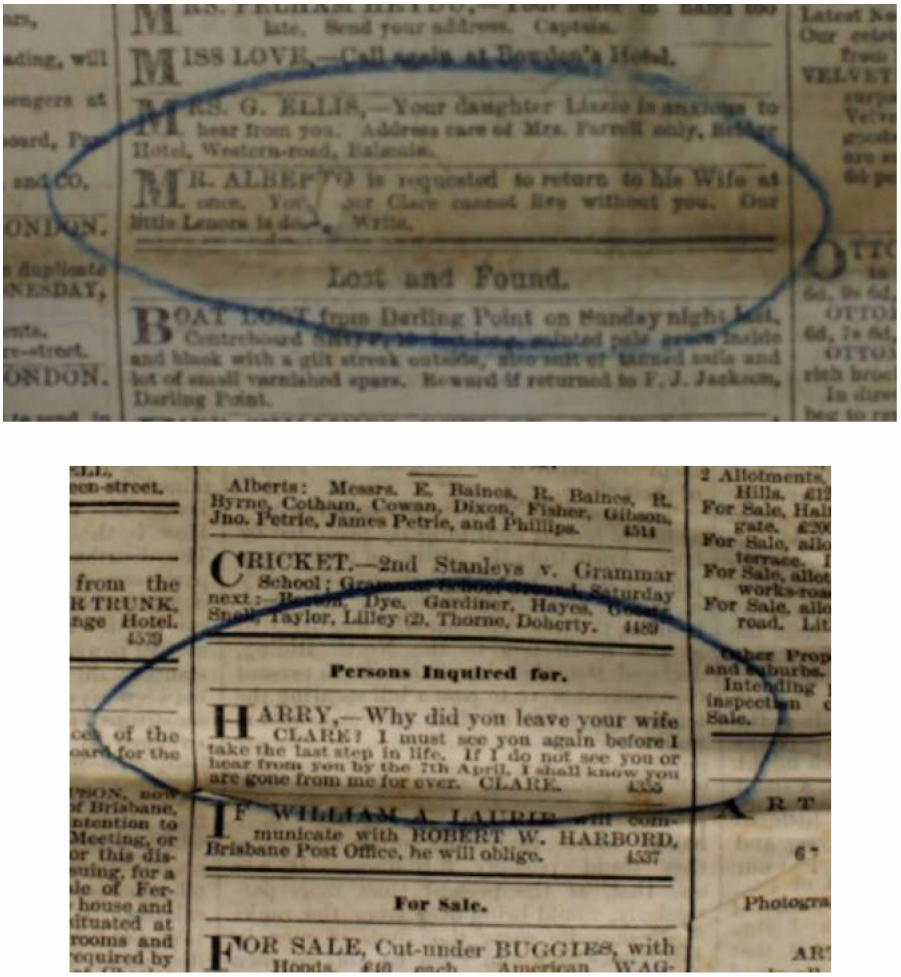
[147] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[148] Investigating love letters which have been used as criminal evidence, New Zealand historian Mark Seymour notes that for women, writing such letters conformed to cultural rules, but the women involved played "active and self-conscious parts" throughout the process. Seymour's characterisation is well-suited to Flora's role in constructing the telegrams. Mark Seymour, "Epistolary Emotions: Exploring Amorous Hinterlands in 1870s Southern Italy," *Social History* 35, no.1 (2010): 152.
[149] Australian historian Deborah Jordan identifies this function of love letters in her analysis of the love letters between prominent Australian writers Vance and Nettie Palmer. Deborah Jordan, "'All That My Love And I/Strive Till After We Die': The Courtship Letters of Vance and Nettie Palmer, 1909-1914," *Journal of the Association for the Study of Australian Literature* 8 (2008): 78-9.
[150] "An Interesting Divorce Case," *Sydney Daily Telegraph*, 4 September 1883, 3.

Flora's tone in this context is imperious and empowered. A similar sense of her agency emerges in several advertisements she ordered a servant to insert—one dozen times each—into the *Sydney Morning Herald,* the Melbourne *Argus, Brisbane Courier* and *Hobart Town Mercury.* These identical advertisements stated simply, "Mr. Alberto is requested to return to his wife as your poor Clare cannot live without you. Our little Lenora is dead." (As she explained to Maggie Maclean, Flora and Solomon addressed one another and introduced themselves to others as Mr. and Mrs. Alberto.)[151] Exercising a strong performative function, these newspaper messages provided Flora with a sense that she could potentially alter circumstances that were otherwise outside of her control.

Most importantly, however, telegrammatic exchanges and newspaper advertisements provided the channel through which Flora could access the assertive persona her husband's oppression denied her. Analysing the relationship between romantic discourse and fiction, American scholar Linda Kauffman notes the performative function of love letters, whereby the letter writer stages "revolt through the act of writing."[152] Rebellion is writ large throughout Flora's epistolary activity. In contrast to her courtroom portrayal of victimhood—which she builds through testimony describing Horwitz's physical and emotional brutality, his lack of affection, miserly financial control and cruelty towards her and their children—the telegrams suggest a rejection of her husband's tyranny, an assertion of her own loving nature and a pronounced expression of her desire to be with Solomon, whom she considered to be her rightful life partner.

[151] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[152] Linda S. Kauffman, *Special Delivery Epistolary Modes in Modern* Fiction, (Chicago and London: U of Chicago Press, 1992), 1. Cited in Jordan, "All That My Love and I," 78.



MISS LOVE,—Call again at Bowden's Hotel.

MRS. G. ELLIS,—Your daughter Lizzie is anxious to hear from you. Address care of Mrs. Farrell only, Bridge Hotel, Western-road, Balmain.

MR. ALBERTO is requested to return to his Wife at once. Your dear Clara cannot live without you. Our little Lenora is dead. Write.

Lost and Found.

BOAT LOST from Darling Point on Sunday night last, Centreboard [illegible] painted pale green inside and black with a gilt streak outside, also suit of varnished sails and lot of small varnished spars. Reward if returned to F. J. Jackson, Darling Point.

Alberts: Messrs. E. Baines, R. Baines, R. Byrne, Cotham, Cowan, Dixon, Fisher, Gibson, Jno. Petrie, James Petrie, and Phillips. 4514

CRICKET.—2nd Stanleys v. Grammar School; Gr[illegible] next:—[illegible] Dye, Gardiner, Hayes, [illegible] Snell, Taylor, Lilley (2), Thorne, Doherty. 4489

Persons Inquired for.

HARRY,—Why did you leave your wife CLARE? I must see you again before I take the last step in life. If I do not see you or hear from you by the 7th April, I shall know you are gone from me for ever. CLARE. 4535

IF WILLIAM A. LAURIE will communicate with ROBERT W. HARBORD, Brisbane Post Office, he will oblige. 4537

For Sale.

FOR SALE, Cut-under BUGGIES, with Hoods, £18 each. American WAG-

Image 1.8 Two of Flora's newspaper advertisements in the Personal columns, which at one stage were her only means of communicating with Solomon. An original copy of each newspaper is included with the case file.

Above: *Sydney Morning Herald*, 2 April 1883, 1.

Below: *The Brisbane Courier*, 10 April 1883, 1.

One Shilling and No More[153]

After deliberating for four hours, the jury found Flora guilty of adultery, and awarded Horwitz five thousand pounds in damages. When Harry Solomon's legal team challenged the verdict on a technicality related to jury selection, the judge saw no alternative but to declare proceedings invalid.[154] Although in February of the following year Solomon obtained a ruling for a new trial, a further legal issue meant the trial did not eventuate. Horwitz eventually settled with Solomon's father out of court, accepting two and a half thousand pounds in damages "on condition that the past is sunk in oblivion."[155] In late May, 1891, at the age of thirty, Harry Solomon died of tuberculosis from which he had been suffering for four years. As was Jewish custom, he was buried in the Hebrew Cemetery at Rookwood on the day after his death.[156]

It is almost unbelievable that after significant legal preparations, a lengthy trial and the jury's unanimous verdict of her guilt, Flora Horwitz remained bound to a husband she despised. With "mutual friends" endeavouring to achieve their reconciliation, the couple resolved their differences in May, 1884, and remained together until Horwitz died in 1916.[157] Within a few years of their reunion, Flora had given birth to two more sons, Karl and Rudolph.[158] In a strange irony, all three Horwitz sons became dentists, two of them eminent Macquarie Street practitioners.[159] Flora's eldest son Claude, whom Maggie Maclean once

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[153] "In Equity," *Sydney Morning Herald*, 19 December 1916, 6.
[154] "The Sydney Divorce Case," *Adelaide Observer,* 22 September 1883, 32.
[155] "The Divorce Case of Horwitz v. Horwitz and Solomon: Husband and Wife Reconciled," *Colac Herald*, 16 May 1884, 4.
[156] NSW Births Deaths and Marriages, Death Registration Transcription [805/1891], *Henry Solomon.*
[157] "The Divorce Case of Horwitz v. Horwitz and Solomon: Husband and Wife Reconciled," *Colac Herald*, 16 May 1884, 4.
[158] NSW Births, Deaths and Marriages, Birth Certificates *Karl M. Horwitz* [8989/1885], *Rudolph Horwitz* [10003/1886].
[159] "Dental Board," *Daily Telegraph*, 28 August 1907, 7; "Advertising," *Sydney Morning Herald*, 7 March 1918, 9; "Moneylenders and Niece," *Sun,* 5 October 1941, 14.

complained was "as mean and selfish as his father," was embroiled in his own dramatic divorce proceedings in 1919 when he sued his terminally-ill wife for adultery, and she died one week after the petition was dismissed.[160] Even the judge denounced as "repugnant" and "reprehensible" Claude Horwitz's decision to proceed with the suit after employing his wife's former lover as a private detective to spy on her.[161]

Flora's appearance in the Equity Court in the year of her husband's death to battle for a fair share of his substantial estate suggests the reunion was not a success. After thirty-eight years of marriage, the wealthy Horwitz bequeathed to his wife, daughter Bertha and son Karl "one shilling and no more."[162] The ailing despot had changed his will shortly before his death, adding a codicil with new miserly terms that deprived Flora and two of his four children of their previous inheritance.[163] The introduction in 1916 of the *Testator's Family Maintenance and Guardianship of Infants Act 1916* (NSW) meant a husband was required to provide in some way for his widow, and Flora was fortunate indeed in the timing of the legislation, which allowed the court to exercise its discretion and override a will that did not provide adequately for the testator's spouse or progeny.[164]

When Horwitz died, his real estate portfolio included seven properties situated in Walker Street, Lavender Bay, and another four substantial homes in North Sydney.[165] Drafting the codicil, Horwitz claimed that "the most serious cause...justifies me as to the stringent course" he was about to undertake. One can only speculate as to the nature of such "serious cause." With the couple's son Karl contending his father believed he was in a house of ill-fame rather than a hospital, Horwitz was perhaps unhinged at the time of amending his

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[160] "Horwitz Suit. Petition Dismissed. The Dying Respondent," *Sun,* 5 December 1919, 6.
[161] "Horwitz Suit. Petition Dismissed. The Dying Respondent," *Sun,* 5 December 1919, 6.
[162] "In Equity," *Sydney Morning Herald*, 20 December 1916, 8.
[163] SRNSW: NRS 13660-7-246-Series 4_74089 *Michael Henry Horwitz*, Date of Death 18/01/1916, Granted 01/06/1916.
[164] Rosalind Atherton, "Feminists and Legal Change in New South Wales, 1890-1916," in *Sex, Power and Justice,* 169-70.
[165] In 1899, Horwitz erected a series of two-storey terraces in Walker Street, from numbers 25 to 37. The terraces still stand. North Sydney Council, Stanton Library, "North Sydney History Walk: Art of Lavender Bay," (2008), 2.

will.[166] Although the court found in her favour, Flora was awarded a mere six pounds per week, from an estate valued at almost fourteen thousand pounds.[167]

Following their father's death, Karl and Rudolph Horwitz anglicised their names to become Keith and Rupert Horwood. These actions support Suzanne Rutland's projection of the inevitable "dilution" of Jewish cultural customs.[168] Family historians also acknowledge that "the Jewishness had died out" in some branches of the family by the late nineteenth century.[169] Flora lived until 1941, at eighty-three surviving Horwitz by twenty-seven years. At the time of her death, she was living at a breath-taking waterfront location in the salubrious Sydney suburb of Rose Bay and had abandoned the name Horwitz in favour of Horwood. She is buried in a Church of England cemetery, confirming that Flora's Jewish heritage featured little in her identity.[170]

The Horwitz divorce case sheds substantial light on the experience of romantic love in the late colonial era, and the imbalance of spousal power often characterising the colonial marriage. The documents reveal what may be recognised as the "hidden emotional life" of a woman in love.[171] Combined with many witness testimonies and a swathe of additional evidence, the details of the case suggest that Flora Horwitz possessed definite feelings of physical and romantic desire, much like those elite women of whom Penny Russell has written. These feelings Flora disguised beneath a carefully cultivated exterior of feminine virtue.[172] Most poignantly, it seems that her relationship with Harry Solomon provided Flora with the warmth and affection her cold and controlling husband withheld from the moment they exchanged vows.

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[166] SRNSW: NRS 13660-7-246-Series 4_74089 *Michael Henry Horwitz*, Date of Death 18/01/1916, Granted 01/06/1916.
[167] SRNSW: NRS 13660-7-246-Series 4_74089 *Michael Henry Horwitz*, Date of Death 18/01/1916, Granted 01/06/1916.
[168] Rutland, *History of the Jews*, 147;
[169] Kerry Close, personal email to author, 24 November 2019.
[170] NSW Births Deaths and Marriages, Death Registration Transcription, [12629/1941], *Flora Horwitz*, known as Flora Horwood. Flora was living at 635 New South Head Road, Rose Bay, when she died.
[171] Seymour, "Epistolary Emotions," 157.
[172] Russell, *A Wish of Distinction*, 119.

The abundant documentation within the Horwitz case confirms that the colonial wife was legally and morally seen as her husband's property. As a middle-class wife, Flora was subject to Harry Horwitz's authority and control, and could not access material resources unless he or another man deigned to provide them. Her domestic existence must be acknowledged as subjected and confined.[173] At this point in the nineteenth century, the prevailing ideology of family life within the middle-class home as a place of tranquillity and sanctuary was for many women largely mythical. On the contrary, the home often served for them as a microcosm of patriarchal power and authority, while the divorce court only replicated this unbalanced scenario.[174] As Judith Allen argues, the limited range of feminine identities available to women in the colonial era was predicated on a relationship of domination and subordination, and the ideal of personal autonomy was accessible only for men.[175]

Flora Horwitz remained firmly ensconced within the colonial era, born into and living much of her life in an undeniably male-dominated and patriarchal society.[176] Throughout proceedings she was corseted and veiled, no doubt to convey the impression of the "modest and ladylike demeanour" so necessary to prove her innocence.[177] In the demands of her deportment—the small step, downcast eyes and veiled modesty—the figure of the colonial woman is suggestive of Foucault's account of how the soldier was "made."[178] In much the same way, from birth and over time, the colonial "lady" was constructed via a series of disciplinary measures which manipulated and controlled her movement and conduct.

In possession of substantial wealth, both earned and inherited, the two principal male actors in the Horwitz case belonged to Sydney's mercantile elite. Despite humble origins,

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[173] Shanley, *Feminism, Marriage and the Law,* 4; Saunders, "Domestic Violence in Colonial Queensland," 68.
[174] Shanley, *Feminism, Marriage and the Law*, 4.
[175] Allen, *Sex & Secrets,* 45.
[176] Meg Arnot, "Writing Women's History: Within or Without the Canon?" *Lilith* 1 (1984): 68.
[177] "The Great Divorce Case, The Evidence Completed," *Evening News*, 15 September 1883, 5.
[178] Foucault, "Docile Bodies," 179.

Flora derived her status from that of her husband, as did all women.[179] As an elite woman subject to the controlling eye of a chaperone, among other dictates of genteel femininity, Flora could negotiate her adulterous affair only through lies and deception. These details reveal how social class intersected with gender to significantly shape a woman's circumstances. Within the sphere of leisure, the genteel woman could sometimes exercise considerable personal agency to resist her oppressive circumstances. By arranging to spend precious hours with her lover, Flora Horwitz thumbed her nose at her chief oppressor—her husband—and resisted dominant ideologies which positioned her as submissive and helpless. Her circumstances confirm that leisure has significant potential as an avenue for resistance.[180] In this way, the agency that Flora could exercise and the manner in which she did so were classed in specific ways.

It is tempting to ask why Flora resumed her marriage to such a cruel and unloving man. Perhaps she had grown accustomed to living in a large house with servants to wait on her. No doubt she enjoyed the considerable reputation and status associated with marriage to a successful businessman. She was doubtless also aware that custody of her two small children would go automatically to Horwitz should he demand it and did not relish the prospect of living as an impoverished and disgraced adulteress. Whatever her reasons, Flora Horwitz had ample time to ponder Judge Windeyer's sage observation at the trial's close, that to marry in haste is to repent at leisure.[181]

[179] McKenzie, *Scandal in the Colonies*, 93.
[180] Carmel Foley, "Women's Leisure? What Leisure? Has It Always Been Like This?" *Annals of Leisure Research* 8, no.4 (2005): 224.
[181] "The Divorce Suit, Horwitz v. Horwitz and Solomon," *Sydney Morning Herald*, 19 September 1883, 7.

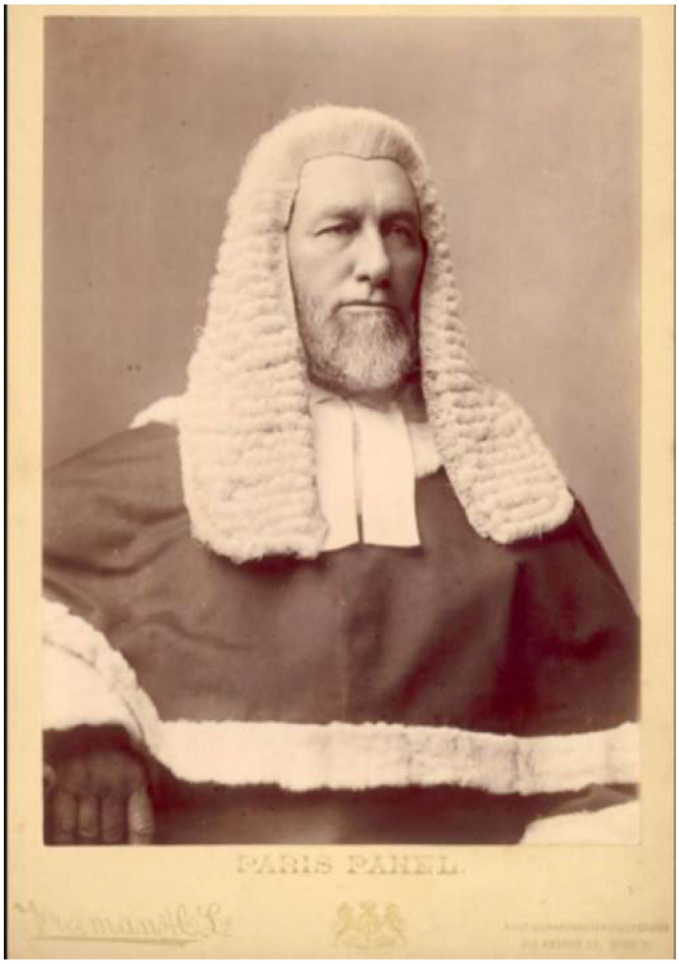

Image 1.9 Portrait of Sir William Charles Windeyer as judge of the Supreme Court of N.S.W. [picture] / Freeman & Co (taken between 1879 and 1897).

National Library of Australia digitised item.

Image 1.10 Below: Horwitz's gravestone at Sydney's Rookwood Cemetery, which omits mention of Flora, Bertha and Karl, two of the couple's four children.

https://billiongraves.com/grave/Michael-Henry-Horwitz/18551330?referrer=myheritage

Chapter 2—Dorn v. Dorn, 1884, 1887: Without the Common Necessities of Life"[1]

Image 2.1 Photograph of Harriet Dorn with her son Ross, c. 1880. The photograph was attached to Dorn's divorce petition of 1887 to confirm Harriet's identity.

SRNSW: NRS 13495 [370/1887], *Dorn v. Dorn.*

[1] State Records NSW: Supreme Court of New South Wales: NRS 13495, Divorce Case Papers 1873-1978, [251/1884], *Harriet Dorn v. Thomas Dorn;* [370/1887] *Thomas Dorn v. Harriet Dorn;* [1902/1895], *Harriet Dorn v. Thomas Dorn* (hereafter SRNSW: NRS 13495, *Dorn v. Dorn* [251/1884], [370/1887], [1902/1895]).

Introduction

Harriet Cayford Dorn was an unskilled working-class woman from England, whose life was shaped by poverty, hardship and domestic violence. Despite her many disadvantages, Harriet engaged on multiple occasions with the law to secure for herself and her two children the financial support to which she felt entitled. In the current discussion, I probe the three major court cases between 1878 and 1895 in which Harriet was involved. These legal actions comprise her suits for breach of promise and judicial separation, and the petition for divorce her husband Thomas Herbert Dorn instituted in 1887.[2] The sources provide ample scope to explore the complexities of gender relations and marital intimacy for a working-class woman, whose sexual relationships were for the most part characterised by conflict and abuse.

From the outset, it must be acknowledged that Thomas Dorn was violent, coercive and sexually exploitative. The Dorn marriage was tormented, and in its toxic dance of co-dependence confirms Kay Saunders's contention that many such marriages were "characterised by extreme violence, psychological terror and...a warped symbio(sis)."[3] Within diverse and abundant legal and press sources, the union offers no evidence of affection or respect. Despite its emotional deficiencies, the marriage withstood two attempts to legalise the couple's estrangement, before a third attempt in 1895 finally ended the relationship. This tenacity must be viewed within the context of a colonial divorce law which upheld the double standard of sexual morality, and a society in which viable economic alternatives to marriage for women were few. And for a working-class woman with no particular talent, skill or ability, such alternatives were even fewer.

In revealing Harriet's abandonment in New Zealand by her feckless lover William Carruthers, her abusive relationship with Thomas Dorn, and her ultimately unfulfilling love

[2] Supreme Court of New Zealand, Otago and Southland District [5130/1878], *Cayford v. Carruthers;* SRNSW: NRS 13495 [251/1884], [370/1887], [1902/1895] *Dorn v. Dorn.*
[3] Saunders, "Domestic Violence in Colonial Queensland," 83.

affair with solicitor Albert Nicholson, the sources indicate that legal process could provide women with a socially sanctioned route by which to confront male misconduct.[4] The multiple contents of the divorce archive of NSW suggest that from the 1880s, increasing numbers of women turned to the law to sever ties to an irresponsible or abusive spouse.[5]

Despite overwhelming evidence of her life-long hardship, I therefore present Harriet Dorn as an energetic social actor, turning to the phenomenological concept of embodiment to gauge how an impoverished and disenfranchised woman could nonetheless exercise and demonstrate an empowered self. To substantiate my contention, I draw on the works of both Michel Foucault and Maurice Merleau-Ponty, whose conceptual frameworks when adopted together allow a feminist analysis of experience that is otherwise difficult to obtain. This conceptual combination allows us to recognise that although power undeniably creates the human subject, *all* experience occurs in the context of embodiment; it is the bodily "I can" which defines existence. While Merleau-Ponty allows insight into the subject *as* a body, Foucault reveals the processes whereby that body is "shaped and inscribed."[6] Armed thus with a dual and complementary lens, it is possible to recognise in the actions of Harriet Dorn her ongoing efforts to negotiate and resist power, and the capacity to exercise agency through her physical being.

The result of this approach is a rich account of Harriet's lived experience, beneath the overarching net of patriarchal control which enmeshed women across social class and cultural circumstance. In Harriet's lengthy voyage to New Zealand from England in 1873, as a twenty-year-old assisted migrant, her frequent travel between New Zealand, NSW and South Australia, in her ongoing engagement with the legal system and the physicality of her

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[4] Magarey, "Notes Towards a Discussion of Sexual Labour," 13.
[5] Hilary Golder observes in particular the increase which occurred immediately following the 1881 amendment. Golder, *Divorce*, 182.
[6] Julia Levin, "Bodies and Subjects in Merleau-Ponty and Foucault: Towards a Phenomenological Poststructuralist Feminist Theory of Embodied Subjectivity," (PhD Thesis, University of Pennsylvania, 2005), 5, 11.

resistance to Dorn's brutality, we may identify those "floating incoherent sensations of rebellion and aspiration" which socialist journalist and activist Henry Hyde Champion once lauded in writer Mona Caird's New Woman novel, *Daughters of Danaus.*[7]

Given that the history of women was for many years written in a way to reinforce the sense that they could not shape their own lives,[8] my investigation of Harriet Dorn's intimate life asks to what extent she orchestrated her own destiny. It considers how the intersection of social class and gender shaped Harriet's life, within the context of an over-arching and iron-willed patriarchy. This conglomerate of factors formed a straitjacket to bind woman across class and circumstance, impeding their access to equal economic opportunity and denying them the autonomy which men took for granted.

It is a commonplace to suggest that where such strictures exist, the individual human subject will invariably strive for a way to circumvent them. Efforts to escape constraints are evident in the manipulations to which the colonial woman could potentially resort when a situation demanded, conducting herself in ways that necessarily verged on the deceitful; obtaining goods on credit and promising a husband would make payment; leaving home with one's chaperone... and within the legal arena, insisting on a falsehood despite undeniable evidence to the contrary.

If it is possible to identify a semblance of narrative cohesion in the Horwitz case, there are numerous obstacles to doing so in *Dorn v. Dorn.* To no small extent, the difficulty derives from a vast and unwieldy collection of legal documents and press reports produced within the context of three separate legal attempts to dissolve the Dorn marriage, two of which Harriet initiated. Unlike the bulk of working-class women, therefore, Harriet Dorn has

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[7] Caird is generally known as a feminist novelist, even though the term "feminist" was not in vogue when she wrote. *Daughters of Danaus* addressed the question of marriage and women's rights in marriage. Linda K. Hughes, "Daughters of Danaus and Daphne: Women Poets and the Marriage Question," *Victorian Literature and Culture* 34 (2006): 481.

[8] Daniel Scott Smith, "Family Limitation, Sexual Control and Domestic Feminism in Victorian America," *Feminist Studies* 1, no.3-4 (1973): 44.

bequeathed to the historian a surprisingly voluminous paper trail, and one which does not arise from criminal activity.[9] On the contrary, her engagement with legal process on at least seven separate occasions related predominantly to Harriet's intimate relationships and financial support of her children.[10] While her repeated willingness to access the law suggests that Harriet believed it could ameliorate her economic woes, these efforts equally reveal a determination to secure legal censure against those men who neglected their familial responsibilities.

In total, the combined efforts of Harriet and Thomas Dorn to end their marriage spawned more than one thousand pages of legal and press documentation, and generated hundreds of pounds in legal fees, none of which was ever paid owing to Dorn's ultimate insolvency. Within the extensive archive, contradictory voices rise in a babble that threatens to overwhelm any consistent sense of character or event, leaving the reader in utter confusion as to "what actually happened."[11] Given the abundance of source material, the task of identifying narrative continuity is more than usually challenging in this case. Any sense of coherent plotline in the undoubtedly complex saga must therefore be extracted and reassembled from numerous competing narratives.[12]

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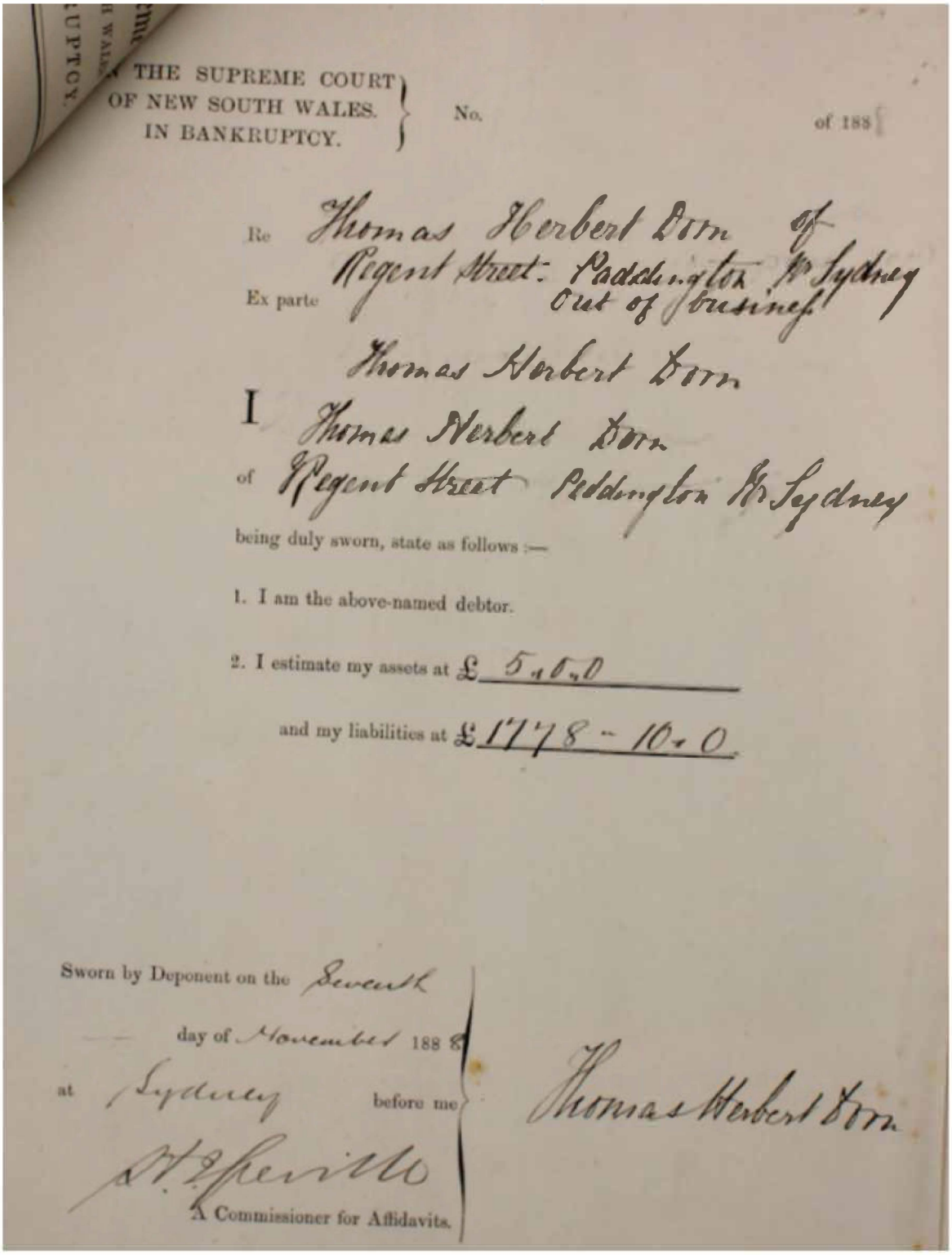
[9] Allen, *Sex & Secrets,* 10; Only one of Harriet's engagements with the law was a criminal matter. She spent some months in Biloela Gaol in 1889. "Water," *Evening News*, 23 May 1889, 3.
[10] As well as her suits for breach of promise (1878), judicial separation (1884) and divorce proceedings (1895), Harriet made several applications for child maintenance against the father of her illegitimate son and her husband.
[11] The well-known English translation of Leopolde Von Ranke's famous dictum that history should try to show "*wie es eigentlich gewesen ist"* is cited in *Is History Fiction?* eds. Ann Curthoys and John Docker (Sydney: NewSouth Publishing, 2010), 58.
[12] Brooks and Gewirtz, *Law's Stories*, 8.



IN THE SUPREME COURT
OF NEW SOUTH WALES.
IN BANKRUPTCY.

No.

of 188

Re Thomas Herbert Dorn of Regent Street Paddington Sydney

Ex parte Out of business

Thomas Herbert Dorn

I Thomas Herbert Dorn

of Regent Street Paddington Sydney

being duly sworn, state as follows :—

1. I am the above-named debtor.

2. I estimate my assets at £ 5.0.0

and my liabilities at £ 1778 - 10.0.

Sworn by Deponent on the Seventh

day of November 188 8

at Sydney before me

A Commissioner for Affidavits.

Thomas Herbert Dorn

Image 2.2 The sorry state of Thomas Dorn's financial affairs in the year following his abortive 1887 divorce action.

State Records NSW: NRS 13655 Bankruptcy Index 1888-1929, [718/1888] Thomas Herbert Dorn.

Given the adversarial nature of divorce trial proceedings and each party's blatant efforts to cast an opponent in a damning light, it is impossible to gauge retrospectively the guilt or innocence of those concerned or take at face value their testimony. This caution is particularly apt for women, who were best assured of a positive outcome in the courtroom if they could convincingly portray the image of a compliant, forgiving and long-suffering wife.[13] But in playing their respective roles on the melodramatic stage of the Divorce Court, petitioners and respondents unwittingly revealed how the ideal husband or wife was expected to behave.[14] Analysing such performances provides an accessible route to identify what idealised gender norms can tell us about marital intimacy during a transformative period.

An English Migrant

Harriet Cayford was born in in January 1852, to Charles and Eliza Cayford, nee Newman.[15] The family lived in Bradford-on-Avon in the English county of Wiltshire, where Charles Cayford was a master farrier who employed at least two men, a detail suggesting working-class prosperity.[16] As a master farrier, Charles was entitled to instruct others in smithing, and three of his sons went on to become farriers, or blacksmiths as they were also known.[17] Harriet was the third youngest in a family of ten children born over the seventeen years of Eliza Cayford's reproductive life.[18] Only the death of Charles Cayford in 1858, at the age of forty-two, prevented the large brood from further expanding.[19]

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[13] Golder, "'A Sensible Investment,'" 19.
[14] Golder, *Divorce*, 7-8, 10.
[15] *Wiltshire, England, Church of England Births and Baptisms, 1838-1916*, [Ancestry database on-line], Wiltshire and Swindon History Centre; Chippenham, Wiltshire, England, Reference number [883/10].
[16] The National Archives of the UK (TNA): Public Record Office 1851, *England and Wales Census*, 1851, H0107/8, 1841/243. *Census Returns of England and Wales 1851*, Kew, Surrey, England.
[17] James A. Hoffman, "Hoffman's Forge: The Blacksmith, A Brief History," http://www.hoffmansforge.com/4-2/the-blacksmith-a-brief-history-2/
[18] *England and Wales Census 1861,* Wiltshire, Bradford-on-Avon, Bradford South Eastern, District 10, Harriet Cayford.
[19] *England and Wales Death Registration*, Index 1837-2007, Vol. 5A/104, Charles Cayford Death.

When Harriet left England in 1873, she had been working in Bradford as a domestic servant for a family with three small children between the ages of one and six.[20] Accompanied by her older sister Edith, who was a seamstress, Harriet made the long journey to New Zealand as an assisted migrant. While many migrants left England to be reunited with friends and relatives,[21] Harriet and Edith were the first members of the Cayford family to leave Wiltshire's Bradford-on-Avon and did so without knowing anyone in New Zealand. Perhaps they were lured by the promise of higher wages in the colonies, or the prospect of finding a husband, given the surplus of men over women in New Zealand and Australia.[22] (And indeed, Edith Cayford went on to marry a man twenty-years her senior and bear eight children).[23] The emigration subsidy may also have provided an incentive.[24] Whatever their reasons, the women required sufficient qualifies of adaptability and initiative to undertake such a bold step. Life in the colonies presented a challenge to even the hardiest traveller and demanded that a migrant be resilient and determined.[25]

Harriet and Edith left eight siblings behind them in England.[26] Sisters Anne and Lydia Cayford also worked as domestic servants, while Harriet's brothers were employed variously as blacksmiths, goldsmiths and carpenters. Several years later, Lydia migrated to South Australia, while in 1876 and 1877 three brothers followed to New Zealand, suggesting that

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[20] The National Archives; Kew, London, England; *1871 England Census;* Class: RG10, Piece 1924, Folio 27, Page 16, GSU roll: 830872.
[21] Margrette Kleinig, "'We Shall Always Bear a Kind Remembrance of Them': The Shipboard Organisation of Single Assisted Female Emigrants from the British Isles to South Australia, 1870s to 1930," *Journal of the Historical Society of South Australia* 37 (2009): 42.
[22] Renate Howe and Shurlee Swain, "Fertile Grounds for Divorce: Sexuality and Reproductive Imperatives," in *Gender Relations in Australia: Domination and Negotiation*, eds. Kay Saunders and Raymond Evans, (Sydney: Harcourt, Brace Jovanovich 1992), 163.
[23] New Zealand Births, Deaths and Marriages Online, Marriage Registration [1876/575] *Edith Cayford and Robert Kidd*; Birth Registrations [1877/11185], [1878/3427], [1880/17785], [1881/9882], [1885/14979], [1891/16429], [1889/11130], [1891/16249].
[24] Robin Haines argues that emigration subsidies were a means to entice the "deserving poor" to leave England. Haines, "'The Idle and the Drunken Won't Do There,'" 1.
[25] Patricia Grimshaw and Graham Willett, "Women's History and Family History: An Exploration of Colonial Family Structure," in *Australian Women: Feminist Perspectives* eds. Norma Grieve and Patricia Grimshaw (Melbourne: OUP, 1981/1983), 136-7.
[26] *Census Returns of England and Wales 1851.* Kew, Surrey, England; The National Archives of the UK (TNA): Public Record Office 1851. Data imaged from the National Archives, London, England.

Harriet and Edith inspired them to make the long journey.[27] The staggered move also confirms the migratory capacity of the English at the time, and the idea of the colonies as a mecca of hope and ambition. With women enticed to emigrate to bolster the nation's population-building capabilities, their reproductive rather than their employment capabilities were in demand.[28] Given that female applicants had to provide character references and undergo a screening process, Edith and Harriet Cayford's selection for assisted passage was in itself an achievement.[29]

A number of scholars have argued that for much of the nineteenth century, white women had few genuine life options other than to marry.[30] With men substantially outnumbering women in the colonies, the pressure was even greater to marry.[31] Although Catherine Bishop has written persuasively of remarkable women who succeeded as entrepreneurs and businesswomen, they appear to represent a minority whose success may well have depended on personal qualities and skills that most women did not possess.[32] In contrast to their brothers, the choices available to Harriet and Edith in New Zealand remained as limited as they were in England, consisting of either poorly paid employment or marriage.

Migratory screening for women functioned as a further means to divide "good" from "bad" women.[33] Such requirements were not imposed upon men, who did not have to endure the moral and physical surveillance to which women—as primarily reproductive vessels—were subjected in an obvious effort to control their bodies and supposedly unbridled sexuality.[34] In this way, women were subjected to a degree of control and supervision which

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[27] Archives New Zealand, Passenger Lists 1839-1973, database with images, *Richard Cayford* 16 December 1876, citing ship *Oamaru, Herbert Cayford* 16 December 1876, citing ship *Oamaru*, *Joel Cayford*, 3 April 1877, citing ship *Northampton.*
[28] Howe and Swain, "Fertile Grounds for Divorce," 161.
[29] Haines, "'The Idle and the Drunken Won't Do There,'" 7.
[30] Allen, *Sex & Secrets*, 4; Kingston, *My Wife, My Daughter and Poor Mary-Anne,* 6; Howe and Swain, "Fertile Grounds for Divorce," 161.
[31] Kingston, *My Wife, My Daughter and Poor Mary-Anne*, 101.
[32] Bishop, *Minding Her Own Business.*
[33] Foucault, "The Subject and Power," 778.
[34] King, "Prisoner of Gender," 31; Kleinig, "'We Shall Always Bear a Kind Remembrance of Them':" 46-7.

focused closely on guarding their moral reputations.[35] Although such control was framed in terms of protection, it bears a disquieting resemblance to Foucault's account of how power is inscribed upon the docile body.[36]

That men vastly outnumbered women in making the life-altering decision to migrate further implies that migration demanded a degree of boldness for a woman.[37] Whatever their reasons for undertaking such a significant step, it is impressive that Harriet and Edith Cayford embarked upon the voyage, leaving what was by all accounts a close family. It is, however, sobering to compare Harriet's experience of migration with that of her three brothers, who followed a few years after she and Edith arrived in New Zealand. The comparison reveals how structural impediments greatly hampered a woman's ability to do any more than just survive financially, if she remained single.

The trajectory of their post-migration lives confirms the Cayford men as able and ambitious, and they prospered in their new surroundings.[38] Armed with trade qualifications and the capacity to engage autonomously in diverse commercial activities, the men could take full advantage of the economic opportunities in New Zealand which the discovery of gold generated. These avenues of prosperity and the community standing they facilitated were closed to Harriet and her sister, simply because they were women. And so, while individual members of the Cayford family shared social class, religion and of course personal history, the lives of its women differed vastly from those of its men.[39]

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[35] Ibid., 47.
[36] Foucault suggests that power is inscribed upon everyone, but in different ways and in a different "scale of control." It is ultimately discipline that renders a body docile. Foucault, "Docile Bodies," 179-187.
[37] Charlotte Macdonald, "Too Many Men and Too Few Women: Gender's "Fatal Impact" in Nineteenth Century Colonies," in *The Gendered Kiwi*, 17.
[38] Harriet's favoured younger brother Herbert succumbed to tuberculosis aged thirty, in the same year that Thomas Dorn lodged his divorce proceedings. New Zealand Births, Deaths and Marriages Online, Death Certificate *Herbert Charles Cayford* [1887/5572]. Press sources are numerous which describe the business activities of Joel and Richard Cayford. Joel Cayford constructed a hotel and began to retail "spiritous liquors of the best brand," while Richard Cayford also opened a "Hotel and Provision Store" on the new diggings at Long Valley, providing accommodation and selling liquor. See "Hawea Lake and Plains By A Recent Visitor," *Cromwell Argus*, 2 February 1879, 6; "Related," *Evening Post,* 29 March 1881, 2.
[39] Allen, *Sex & Secrets*, 1.

***Cayford v. Carruthers*[40]**

By 1877, Harriet had settled in the town of Dunedin on New Zealand's South Island, and turned from domestic service to bar work.[41] Bar work was better paid than domestic service, and widened the small number of employment options available to those women who lacked the skills to either teach or nurse. It remained, however, menial, poorly valued and inadequately remunerated.[42] While Harriet could read and write,[43] she was evidently not sufficiently educated to pursue a genteel occupation such as teaching or nursing. Although working in a bar meant spending long hours on one's feet, it was not as restrictive as domestic service, nor as physically taxing.[44]

Despite some advantages, bar work also had drawbacks, and was associated with immorality amongst the wider community and within the growing temperance movement. The latter promoted the idea that bars and hotels hired attractive "girls" to "lure" men into their establishments, where the men would be encouraged to purchase greater quantities of alcohol. With these perceptions widespread, those who chose to work as barmaids were generally regarded as women of loose morals.[45] To make matters worse, working behind the bar allowed women to interact with men without a respectable supervisor or chaperone on hand. By Victorian standards of propriety, the lack of supervision rendered the occupation distinctly disreputable.[46]

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[40] Supreme Court of New Zealand, Otago and Southland District [5130/1878], *Cayford v. Carruthers.*
[41] SRNSW: NRS 13495, [251/1884], *Dorn v. Dorn.*
[42] Bronwyn Hicks, "'But I Wouldn't Want My Wife To Work There!' A History of Discrimination Against Women in the Hotel Industry," *Australian Feminist Studies* 14 (1991): 70.
[43] SRNSW: NRS 2024, Biloela Gaol Description Book, 1888-1890, *Harriet Dorn.*
[44] Hicks, "'But I Wouldn't Want My Wife To Work There!'" 70.
[45] Clare Wright, *Beyond the Ladies Lounge: Australia's Female Publicans,* (Carlton: Text Publishing, 2003) 158; Diane Kirkby, *Barmaids: A History of Women's Work in Pubs,* (Cambridge, Melbourne: Cambridge University Press, 1997), 93.
[46] Ibid., 62; Diane Kirkby, "Writing the History of Women Working: Photographic Evidence and the 'Disreputable Occupation of Barmaid,'" *Labour History* 61 (November 1991): 16.

The sexual surveillance which began with Harriet's sea voyage thus persisted in her newfound occupation, whereby tarring the barmaid with the brush of immorality acted as a further dividing practice.[47] For Harriet, the stain of bar work as she tended the bar in a Dunedin hotel was compounded by her romantic involvement with one William Ross Carruthers. (Harriet would later swear this attachment was based on a mutual commitment to marry by Christmas of 1877.)[48] When Harriet confirmed her pregnancy in late December, unfortunately, Carruthers resisted her attempts to legitimise the relationship. Assured of a good income in his profession as an engineer, Carruthers could fulfil his sexual needs without committing to marriage, and was reluctant to relinquish his independence.[49] In comparison, Harriet could earn only a limited wage, her sexual transgressions had been made public, and she was desperate for the respectability and financial security that only marriage could provide a woman about to have a baby. Once again, her predicament demonstrates how the bodies of women were subject to significantly greater control and constraint than those of men.[50]

In a state of financial desperation, Harriet lodged breach of promise proceedings in early 1878 at the instigation of her brother Herbert, only a few months before the birth of her child.[51] In a move designed to undermine the plaintiff's integrity and the plausibility of her suit, William Carruthers's solicitor painted Harriet as a conniving woman who "acted with intent to deceive" by showing her lover a fraudulent medical certificate which confirmed the pregnancy. Given that Harriet's pregnancy was a reality, it is unclear why the medical certificate proved so contentious, but it was common to malign a female petitioner and I

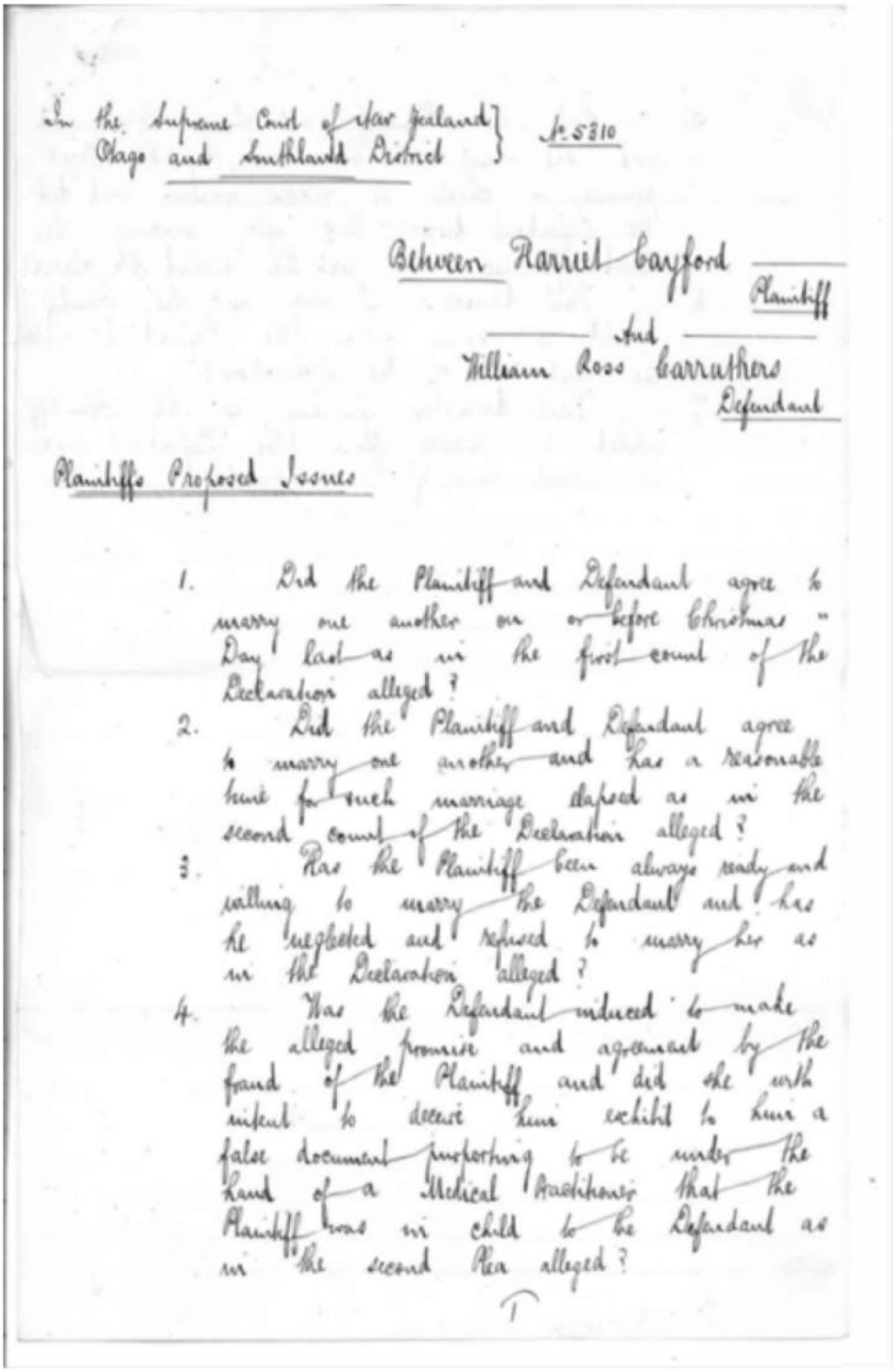
[47] Foucault, "The Subject and Power," 778.
[48] Supreme Court of New Zealand, Otago and Southland District [5130/1878], *Cayford v. Carruthers.*
[49] Howe and Swain go so far as to contend that in a colonial society, "male culture glorified the single state" and many men avoided marrying even if the chance arose. Howe and Swain, "Fertile Grounds for Divorce," 161.
[50] Anne Witz, "Whose Body Matters? Feminist Sociology and the Corporeal Turn in Sociology and Feminism," *Body & Society* 6, no.2 (2000): 14; King, "The Prisoner of Gender," 30.
[51] Harriet's petition was dated April 1878, and baby Ross was born on July 26 of that year. SRNSW: NRS 13495 [251/1884] *Dorn v. Dorn.*

suggest that Carruthers simply seized upon the certificate as a pretext, so that he could withdraw his proposal of marriage.

As Alecia Simmonds points out, the entire "offence" of breach of promise was based on the notion of false pretences.[52] Denouncing a female petitioner was a common tactic and reveals how the wheels of justice turned in accordance with gendered notions of how men and women should conduct themselves.[53] It was, however, most decidedly Harriet's rather than Carruthers's sexual conduct which had been placed under surveillance—scrutinised, gossiped over and condemned—confirming yet again how gender functioned as a tool for social and moral control by providing strict parameters for behaviour.[54]

The vocabulary that Carruthers's legal team deployed in their attack of Harriet as a petitioner is very similar to that which Simmonds uncovers in her analysis of multiple breach of promise cases in Australia.[55] The main task of the lawyers for Carruthers was to discredit Harriet on the grounds that she lacked chastity and modesty, and so Carruthers claimed he "made the alleged promise" (to marry her) "on the (evidently mistaken) faith and under the belief" that she had "always been and then was a chaste and modest woman." He then presented the failure to honour his promise as the inevitable result of his discovery that "she had not always been nor was she then a chaste or modest woman."[56]

[52] Alecia Simmonds, "Gay Lotharios and Innocent Eves: Child Maintenance, Masculinities and the Action for Breach of Promise of Marriage in Colonial Australia," *Law in Context* 34, no.1 (2016): 66.
[53] Alecia Simmonds, "'She Felt Strongly the Injury to Her Affections': Breach of Promise of Marriage and the Medicalisation of Heartbreak in Early Twentieth Century Australia," *The Journal of Legal History* 38 (no.2) (2017): 194; King, "The Prisoner of Gender," 32.
[54] Ibid., 29.
[55] Simmonds, "Gay Lotharios," 59.
[56] Archives New Zealand, Wellington, Supreme Court of New Zealand, Otago and Southland District [5130/1878], *Cayford v. Carruthers.*



In the Supreme Court of New Zealand
Otago and Southlands District } No. 5310

Between Harriet Cayford
Plaintiff

And
William Ross Carruthers
Defendant

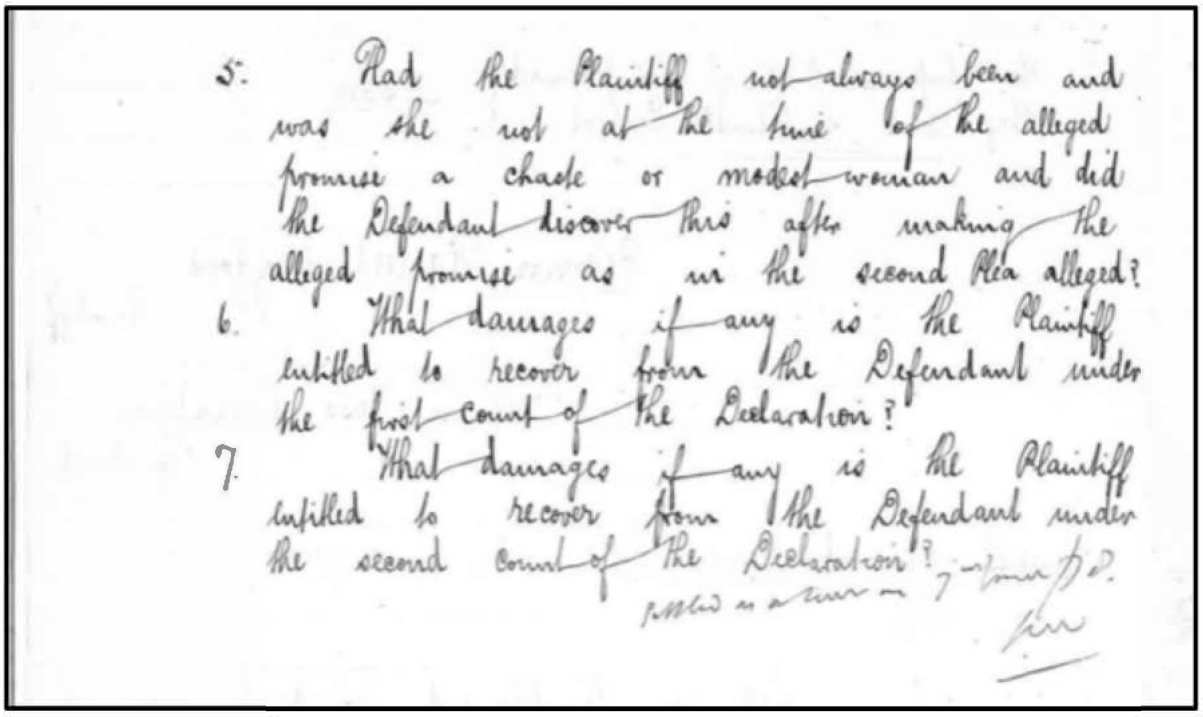
Plaintiffs Proposed Issues

1. Did the Plaintiff and Defendant agree to marry one another on or before Christmas Day last as in the first count of the Declaration alleged?
2. Did the Plaintiff and Defendant agree to marry one another and has a reasonable time for such marriage elapsed as in the second count of the Declaration alleged?
3. Has the Plaintiff been always ready and willing to marry the Defendant and has he neglected and refused to marry her as in the Declaration alleged?
4. Was the Defendant induced to make the alleged promise and agreement by the fraud of the Plaintiff and did she with intent to deceive him exhibit to him a false document purporting to be under the hand of a Medical Practitioner that the Plaintiff was in child to the Defendant as in the second Plea alleged?

1

Image 2.3 The first page of Harriet's breach of promise case, outlining key issues.

Archives New Zealand, Wellington, Supreme Court of New Zealand, Otago and Southland District [5130/1878], *Cayford v. Carruthers*.


5. Had the Plaintiff not always been and was she not at the time of the alleged promise a chaste or modest woman and did the Defendant discover this after making the alleged promise as in the second Plea alleged?

6. What damages if any is the Plaintiff entitled to recover from the Defendant under the first count of the Declaration?

7. What damages if any is the Plaintiff entitled to recover from the Defendant under the second count of the Declaration?

Image 2.4 The second page of her suit.

Archives New Zealand, Wellington, Supreme Court of New Zealand, Otago and Southland District [5130/1878], *Cayford v. Carruthers.*

As legal preparations dragged slowly on, Harriet was within a month of her confinement when she conceded she could not travel to Invercargill for the court case, having received medical advice it would be "unsafe, improper and dangerous" for her to do so.[57] Confirming that powerful and prevalent male homosocial bonds were in play, Harriet's lawyer pointed out to the court that the list of potential jurors was extremely limited in a small town like Invercargill. His client was therefore unlikely to receive a fair hearing, since Carruthers was "on intimate terms" with many of these men, who like him were members of

[57] Archives New Zealand, Wellington, Supreme Court of New Zealand, Otago and Southland District [5130/1878], *Cayford v. Carruthers.*

Invercargill's Fraternity of Masons. Harriet had also been informed that other Invercargill freemasons were "actively interesting themselves" in the case.[58]

The surveillance I described in my first chapter emerges yet again in the current context, with widespread scrutiny and gossip characterising Harriet's ordeal: in a small community like Invercargill, there was little hope of a fair trial for a pregnant barmaid who had deceived one of their own.[59] The men of Invercargill banded together in a close-knit group to exercise considerable power through social and economic networks.[60] Based on a masculine code of honour, shared freemasonry intensified their feelings of loyalty and fraternity.[61] With access to legitimate social organisations, superior economic power and social and political standing, these men were in a markedly advantageous position when compared to an uneducated and almost destitute barmaid.

Although the suit was settled out of court, the damage to Harriet's reputation had been wrought via extensive publicity of her pre-marital pregnancy. As Simmonds points out, engaging in "gossip and 'yarns'" was a common strategy for the wider community, and functioned to assassinate the character of a female petitioner.[62] I am not sure why it took Carruthers so long to settle and why he did not settle from the outset, since the associated publicity posed a serious threat to his reputation. Perhaps Harriet's three brothers exerted pressure on him, physical or otherwise, given that the shame of breach of promise extended well beyond the plaintiff to also contaminate her family.[63] Simmonds suggests that while "chaste and modest" deportment on the part of a female plaintiff was used consistently as the

[58] Archives New Zealand, Wellington, Supreme Court of New Zealand, Otago and Southland District [5130/1878], *Cayford v. Carruthers.*
[59] Megan Simpson, "The Action for Breach of Promise of Marriage in Early Colonial New Zealand: *Fitzgerald v. Clifford (1846)*," *Victoria University of Wellington Law Review* 41, no.3 (2010): 464.
[60] At this time, Invercargill's population was around 5000. *Statistics New Zealand,*
[61] "Freemasons New Zealand: History," https://freemasonsnz.org/history
[62] Simmonds, "Gay Lotharios," 61.
[63] Ibid.

basis of defence for a man, the court could also award so-called "vindictive damages" if it deemed a male defendant unfeeling and uncaring.

A plaintiff was also entitled to claim aggravated damages if she had been seduced, or her virtue maligned.[64] Perhaps this explains why Carruthers so hastily withdrew his initial claims and settled out of court. If he had failed to do so before the case went to trial, he may well have had to forfeit the entire amount of fifteen hundred pounds which Harriet's lawyers were demanding in damages, since both clauses were pertinent to her circumstances. Carruthers's withdrawal is scrawled in pencil as a hasty addendum across several pages of the petition, suggesting his capitulation was impulsive, and the result of legal or personal pressure.

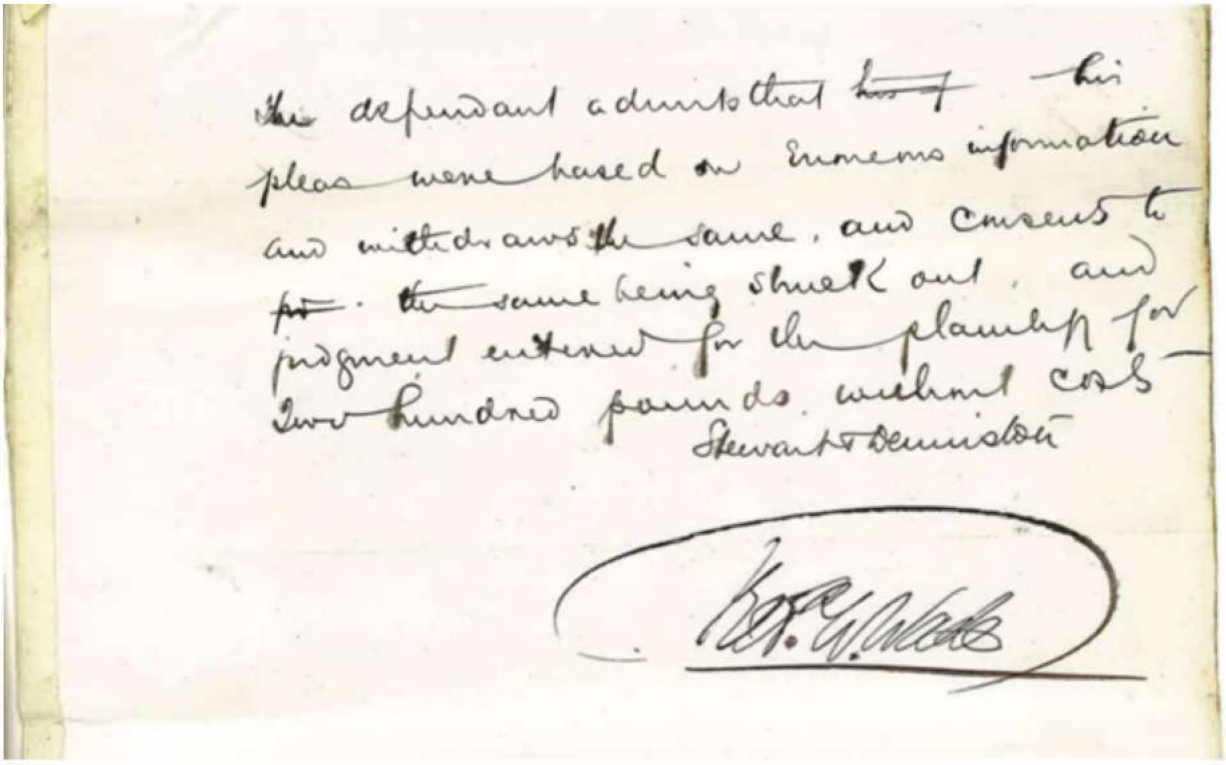

the defendant admits that ~~his~~ his
pleas were based on erroneous information
and withdraws the same, and consents to
~~pay~~ the same being struck out, and
judgment entered for the plaintiff for
two hundred pounds without costs
Stewart & Dennistoun

Image 2.5 The admission that Carruthers's defence was "based on erroneous information" and he was thus willing to pay two hundred pounds, without costs.

Archives New Zealand, Wellington, Supreme Court of New Zealand, Otago and Southland District [5130/1878], *Cayford v. Carruthers.*

[64] Simmonds, "She Felt Strongly," 192.

Harriet did remarkably well in extracting £200 from her unwilling suitor, given that £260 was regarded as a substantial figure in damages even forty years later.[65] The windfall came at no small price, however, since many within the wider community condemned a woman who instigated proceedings, because she countered prevailing ideals of propriety by engaging in this kind of legal action.[66] Although having a child was most typically a shameful secret,[67] press reports had already referred at length to Harriet's condition. For a woman to have her "disgrace" publicised as Harriet had done was traumatic in the extreme.[68] When deciding whether or not to lodge her suit, therefore, Harriet faced a difficult choice between the two equally unappealing alternatives of financial destitution and social disgrace, given the loss of financial and social capital which "a broken promise...and seduction" inevitably heralded.[69]

Disgrace was, unfortunately, not to be avoided in small-town Dunedin, where press reports covering the case made much of the fact that Harriet Cayford was a mere barmaid "dispensing liquor in the bar of a Dunedin hostelry," while William Carruthers was "the son of a well-known engineer, at one time in the service of the government."[70] No doubt the pejorative image of the barmaid also influenced public opinion. The loss of respectability which accompanied gossip and social censure had important repercussions in managing reputation, and such consequences were distinctly gendered. As a resource, reputation determined for women the type of marriage they could hope to make: as damaged goods, Harriet's marriageability had plummeted.[71]

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[65] Ibid.,194; "Direct Telegrams, From Our Own Correspondents," *Lake County Press,* Vol. VIII, Issue 403, 30 January 1879, page unknown.
[66] Rosemary J. Coombe, "'The Most Disgusting and Inequitous Proceedings In Our Law:'" The Action for Breach of Promise in Nineteenth Century Ontario," *The University of Toronto Law Journal* 38, no.1 (1988): 64.
[67] Pat Thane and Tanya Evans, *Sinners? Scroungers? Saints?: Unmarried Motherhood in Twentieth Century England*, (Oxford: Oxford University Press, 2012), 1-2.
[68] Ruth Teale, *Colonial Eve: Sources on Women in Australia, 1788-1914*, (Oxford: Oxford University Press, 1978), 135.
[69] Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth Century Canada*, (Toronto: Women's Press, 1991), 86. Cited in Simmonds, "Gay Lotharios," 60.
[70] "The Carruthers Breach of Promise Case," *Tuapeka Times*, 22 January 1879, 2; "Direct Telegrams Dunedin," *Lake County Press,* 30 January 1879, page unknown.
[71] McKenzie, *Scandal in the Colonies*, 10-11.

Constructed in this context as a woman of suspect morality, Harriet's compromised identity reveals the powerful divide between male sociality and female corporeality, and the gendered manner in which power operates.[72] Viewed in combination, Harriet's out-of-wedlock pregnancy, her lover's abandonment and her public humiliation convey how the bodies of women may serve as disciplinary targets.[73] In the colonial world, gender determined the individual's access to power, wealth and freedom. While white men could theoretically possess these qualities in abundance, they were unachievable for almost all women.

Single mothers in New Zealand faced terrible hardships at this time, as New Zealand historian Bronwyn Dalley confirms in her account of criminal trials involving women who murdered their illegitimate children. Social disapproval was overwhelming, what little childcare existed was often fraught (consider late nineteenth century cases of baby farming, and babies left with negligent carers), and many women chose to abandon their children rather than raise them out of wedlock.[74] That Harriet kept her baby and searched for employment could only have been possible with the support of her family, but the decision also reveals a commitment to maternal responsibility and the capacity to brave social condemnation.

If we consider the bodily "I can" for a young woman of limited means, pregnant and living in an isolated colonial backwater, to pursue legal action as Harriet did only further reinforces the sense of determination and perseverance that her migration conveyed. Confronting masculine authority and withstanding community censure was a bold response to her financial desperation. Harriet's predicament conveys a number of related contradictions which were key to colonial womanhood and revolved around opposing notions of "woman"

[72] Witz, "Whose Body Matters?" 14; King, "The Prisoner of Gender," 30.
[73] Ibid.
[74] Bronwyn Dalley, "Gender and Sexuality in Nineteenth Century New Zealand," in *The Gendered Kiwi*, 63-85.

as "both powerful and powerless, sexual victim and sexual agent."[75] For these and other reasons, the simplistic division of agent versus victim which often characterises historical investigations of women appears both unrealistic and unhelpful, and deserves to be abandoned once and for all.

He Well Knew of her Misfortune[76]

Generous legal compensation may have meant that Harriet was no longer one of "the poor and pregnant,"[77] but it by no means guaranteed her respectability. Propriety was instead a state she attempted to regain by marrying one Thomas Herbert Dorn, who was a fellow passenger on the voyage from England in 1873 and coincidentally happened to be managing the hotel at which Harriet applied for bar work after her son Ross was born. The Dorn marriage is revealed retrospectively through Harriet's detailed and disturbing suit for judicial separation in 1884, and her husband's counter-petition for divorce in 1887. Based as his petition was on her adultery, Dorn's petition also provides the details of Harriet's relationship in the intervening years with her lawyer Albert Nicholson.

Dorn's shipping record states that he worked as a labourer in his native England.[78] His older brother Anthony and younger brother John were also at some stage resident in NSW,[79] again suggesting the propensity of kin to either migrate together, or to encourage one another to migrate. Ten years older than his bride-to-be, Dorn had obviously moved into a more lucrative field by the time the couple met again and married in July of 1880.[80] Eight

[75] Smart, Introduction, *Regulating Womanhood*, 8-9.
[76] SRNSW: NRS 13495 [251/1884] *Dorn v. Dorn.*
[77] Rachel G. Fuchs, *Poor and Pregnant in Paris: Strategies for Survival in the Nineteenth Century* (New Brunswick: Rutgers University Press, 1992), 35.
[78] New Zealand, Archives New Zealand Passenger Lists 1839-1973, database with images, Thomas Dorn 11 March 1874, citing ship Dilharee.
[79] "Coroner's Inquest," *Burrangong Argus,* 21 June 1882, 3. The article details an inquest into the death of John Woolford Dorn, aged 34, who had a seizure and was accidentally strangled. Dorn's brother Anthony gave evidence at the inquest.
[80] 'Marriages," *Otago Daily Times*, 23 July 1880, 2.

months and two days after their wedding, Harriet gave birth to a daughter they named Ivy, the post-wedding gestation period revealing the couple had consummated their relationship before legitimising it.[81] Since many colonial couples from "the lower orders" engaged in pre-marital sex, statisticians contend that between twenty and fifty percent of working-class brides were pregnant at the time of marriage.[82] With Harriet's loss of virginity so publicly broadcast, she and Dorn may have felt it unnecessary to wait until the marriage to sleep together.

Since Ivy was to be the couple's only child, Harriet fails to conform to scholarly estimates of family size, as Flora Horwitz also did.[83] It is perhaps understandable that many adulterous women with whose cases I am familiar had fewer children than the average. Presumably, women with small families had more energy and greater opportunity to engage in an adulterous affair than those burdened with large numbers of offspring. It seems likely also that Harriet was well-versed with contraceptive methods, however primitive these may seem to the contemporary observer. At one point Thomas Dorn accused boarding-house keepers Annie and John Robinson of introducing his errant wife "to some person at Glebe, for the purpose of procuring abortion," but this is unfortunately the only mention of abortion in the entire file.[84] It suggests, however, that abortion was a common and familiar subject.

By the last decades of the nineteenth century, contraception was not uncommon, especially for the working-class. The diaphragm and condom in particular continued to gain in popularity and use.[85] Compared to their middle-class sisters, working-class women possessed superior knowledge of how to avoid pregnancy and effectively use abortifacients,[86]

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[81] "Births," *Press,* 29 March 1881, 2.
[82] Bongiorno, *Sex Lives*, 40.
[83] See for example Bongiorno, *Sex Lives,* 41; Allen, *Sex & Secrets,* 27.
[84] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[85] Teale, *Colonial Eve*, 127; Judith Allen also suggests that the "culture of contraception" at the time was a working-class phenomenon. Allen, *Sex & Secrets,* 43.
[86] Ibid., 27.

and there is no reason to assume this was not the case for Harriet, or that she would willingly have borne more children in a loveless marriage had she been able to prevent doing so.

Moving from New Zealand to NSW in 1882, the Dorns managed a series of successful hotels in Sydney and at one stage even a restaurant, located in inner-city suburbs that included Paddington and Surry Hills.[87] For some time, they enjoyed a level of prosperity. Although Harriet was an essential partner in the business, tending the bar, overseeing guest accommodation, supervising staff and dealing with customers, Dorn was doubtless the superior in their professional and personal relationships. In colonial society, the idea was entrenched that wives led a parasitic existence in which they were dependent upon a host husband.[88]

Notions of a parasitic existence emerge equally in the Horwitz divorce case, and indeed are evident in most other cases of divorce with which I am familiar, unless a wife was in the fortunate position of having an independent income. The overwhelming sense of a wife as a dependent hanger-on emerges often, particularly when a petitioning husband described a wife's means of financial survival; unless she was employed outside of the home, husbands invariably described wives as dependent. There is little evidence within the files of any belief in shared property ownership, and the doctrine of spousal unity governing the spousal legal relationship was in most cases an utter fiction.[89] Petitioning husbands inadvertently vowed that a wife was "not doing anything towards earning a livelihood" and was "maintained by (him)," even though the said wife was managing the home, caring for children and sometimes also working in the family business.

Nor was there any capacity to recognise or acknowledge the substantial non-financial contribution women made to the labour market, a deficiency which stemmed from

[87] "Divorce Court," *Evening News*, 13 September 1887, 6.
[88] Ibid., 4.
[89] Andrew Cowie, "A History of Married Women's Real Property Rights," *Australian Journal of Gender and Law* 6, no.1 (2009): 3.

the prevalent and popular conception of a male income-earner and financially dependent wife. Furthermore, the *Married Women's Property Acts* did little to alter the idea of such complete dependence.[90] Thomas Dorn was no doubt typical of the multitude of men who either failed or else refused to recognise a wife's contribution to the family.[91]

Witness statements in Harriet's petition in 1884 for judicial separation confirm that the marriage soured quickly, which Harriet attributed during proceedings primarily to Dorn's drunken abuse of her and his stepson Ross, her illegitimate child. In contrast, Dorn swore that Harriet's own intemperance and violent conduct had brought about the collapse of the marriage and the decline of the business. In early 1884, having been advised to do so by her lawyer Albert Nicholson, Harriet procured a Protection Order under the *Deserted Wives and Children's Act* to protect her personal property and earnings, until she could initiate proceedings for a judicial separation.[92]

At this time, as I have mentioned, women could not sue for divorce unless a husband had committed adultery. While the amended *Deserted Wives and Children Act* of 1858 was an important step in providing women with an early form of legal separation, it did not provide them with the independent legal status that only judicial separation or divorce could offer.[93] Judicial separation was easier to achieve than divorce, and became a favoured recourse for women rather than men.[94]

For Harriet, judicial separation proffered a more definite means of allowing her to keep her own earnings, but it was decidedly more complicated than a Protection Order and required that she present a petition before a judge, rather than just appear briefly before the magistrate. Most importantly, a legal separation would ensure she was no longer answerable

[90] Piper, 'Understanding Economic Abuse," 37.
[91] Allen, *Sex & Secrets,* 18.
[92] SRNSW: NRS 13495 [251/1884] *Dorn v. Dorn.*
[93] Golder, *Divorce,* 40.
[94] Allwood et al., "Law's Indifference," 100.

to her husband's authority.[95] Although the *Married Woman's Property Act* of 1879 and its 1882 amendment ensured a married woman's property rights, only a judicial separation could guarantee alimony and child maintenance.[96] With two small children, and no close relatives living nearby, it is difficult to understand otherwise how Harriet would have survived financially. And like many women who remained with abusive spouses because they feared losing their children, Harriet admitted to Albert Nicholson that she would have left Dorn "years ago," if she had been able to take her children with her and be assured of (Ivy's) custody.[97]

Unlike Dorn's divorce petition of 1887, which was tried before a special jury of twelve, Harriet's suit for judicial separation proceeded by written affidavit before a judge. This manner of hearing a suit meant evidence was necessarily more contrived and lacked the spontaneity of witness testimony under cross-examination. Harriet's case was predicated on proving her husband's sustained cruelty. She described to the court how Dorn would often beat her son until the child passed out, berating the little boy with such insults as "a bloody young bastard" and other taunts related to his illegitimacy. Dorn also reminded his wife often how he had made "a respectable woman" out of her by marrying her and her "bastard." Dorn's violence and aggression thus targeted Harriet's putative whoredom and her son's bastardry.

Until at least the 1980s, an experience of violence was known to be common for illegitimate children. American social historian Ginger Frost describes violence for the illegitimate as "a distinct possibility," particularly when the circumstances of their birth so easily provided a stepparent with an excuse to resent them. More often than not, it proved a

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[95] Maeve E. Doggett, *Marriage, Wife-Beating and the Law in Victorian England* (South Carolina: University of Southern California Press, 1993), 100.
[96] Golder, "'A Sensible Investment,'" 307.
[97] SRNSW: NRS 13495 [251/1884] *Dorn v. Dorn;* Tanya Evans points out that a lack of custody rights kept many women bound to violent husbands. Evans, "Discovering Violence in the Family," 22.

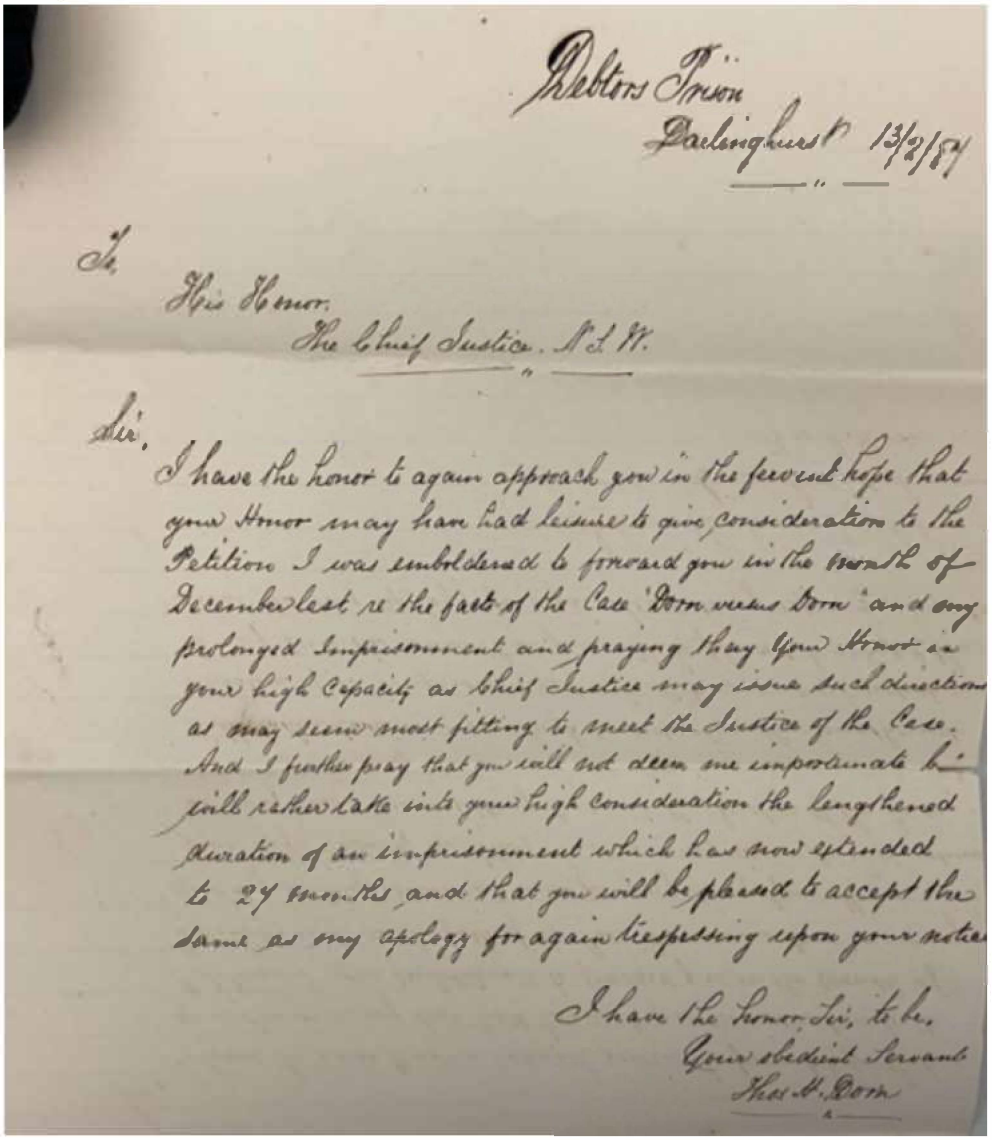
serious social, legal and emotional blight for both mother and child.[98] It is sobering to read Harriet's descriptions of her husband's violence. Harrowing details of Dorn's physical, sexual and emotional abuse reinforce the idea that nineteenth century male oppression took a sexed form, and a wife's submission to a husband's will was a physical one.[99]

Summing up at the conclusion of Harriet's suit for judicial separation, Judge Windeyer remarked that there were men "who love to drag down their wives to their own level," and branded Thomas Dorn a "vexatious and deceitful" liar.[100] The judge ordered the children be delivered to and remain in the custody of Mrs. Dorn, instructing her husband to pay weekly maintenance of one pound and ten shillings each and every Tuesday until further notice, and to pay court costs to Harriet's solicitor within forty-eight hours. Dorn either neglected or refused to make these payments, and as a consequence was confined to Darlinghurst Debtors' Prison for an extraordinary twenty-eight months. Throughout his incarceration, he wrote eloquent letters to men of importance, pleading with them to intervene in his case.[101]

Dorn was finally released at the behest of Sir William Manning, barrister and politician, who had personally involved himself in the prisoner's predicament and considered it a terrible thing "for any man to be kept in gaol... for the non-payment of £13 10s."[102] Dorn's imprisonment for non-payment of legal costs is very similar to the case of *Keller v. Kimmons (1887),* which Alecia Simmonds describes in her analysis of breach of promise. Like Dorn, Keller spent many months in jail because he could not pay damages, and was ultimately released by a public campaign.[103] Incarceration was thus not an uncommon punishment for

[98] Ginger S. Frost, "'The Black Lamb of the Black Sheep:' Illegitimacy in the English Working-Class, 1850-1939," *Journal of Social History* 37, no. 2 (2003): 296, 298, 306.
[99] Allen, *Sex & Secrets,* 3, 45.
[100] SRNSW: NRS 13495 [251/1884], *Dorn v. Dorn.*
[101] State Records New South Wales; NRS 302/NRS 333, Attorney General (and Justice) Special Bundles, 1822-1984, *Case of Dorn v. Dorn, 1885-88.*
[102] "Giving Away Sunday Liquor," *Evening Journal*, 23 March 1887, 3.
[103] Simmonds, "Gay Lotharios," 65.

the hapless debtor but in this particular case Thomas Dorn refused to repay his debts via an instalment plan, an option that court authorities suggested to him, because he wanted to punish his wife.[104]



Debtors Prison
Darlinghurst 13/2/87

To
His Honor.
The Chief Justice. N.S.W.

Sir.

I have the honor to again approach you in the fervent hope that your Honor may have had leisure to give consideration to the Petition I was emboldened to forward you in the month of December last re the facts of the Case 'Dorn versus Dorn' and my prolonged Imprisonment and praying that Your Honor in your high Capacity as Chief Justice may issue such direction as may seem most fitting to meet the Justice of the Case. And I further pray that you will not deem me importunate I will rather take into your high consideration the lengthened duration of an imprisonment which has now extended to 24 months and that you will be pleased to accept the same as my apology for again trespassing upon your notice

I have the honor Sir, to be,
Your obedient Servant
Thos H. Dorn

Image 2.6 One of Thomas Dorn's many letters written from the Debtors' Prison to "men of importance," in this instance Chief Justice Sir Frederick Darley. Considering that Dorn was an uneducated labourer, I hazard a guess that somebody else acted as his scribe.

SRNSW: NRS 302/NRS 333 Attorney General (and Justice) Special Bundles, 1822-1984, *Case of Dorn v. Dorn, 1885-88*.

[104] "Law," *Daily Telegraph*, 17 March 1887, 3.

Cruelties and Ill-Treatment and Indecencies of such a Horrible Character[105]

Kay Saunders may well have had men like Thomas Dorn in mind when she suggested a common psychological profile for the colonial wife-beater. Like his counterpart Harry Horwitz, Thomas Dorn suffered from significant psycho-sexual anxiety, admitting in his petition for divorce that he "did not like other men buzzing around his wife."[106] Dorn often subjected Harriet to his violence—both physical and sexual—while she lay incapacitated.[107] At other times, Dorn's actions approximated the stalking Saunders has described, suggesting he was obsessed with Harriet and determined to control her.[108]

The sexualised nature of Dorn's brutality further indicates the contempt with which he held women in general. In using his superior physical strength to gratify sexual needs, Dorn deployed his penis as a weapon of assault, forcing intercourse upon Harriet when she could not resist his sexual predation either because he had forcibly sedated her (with a mixture of brandy, ginger ale and chlorodyne), or else beaten her severely.[109] Dorn thereby exemplifies the "traditional stereotype" of masculinity in which "men are dominant, independent of women but sexually exploitative of them, and their manliness is expressed through violence."[110]

Dorn's dominance is particularly evident in Harriet's account of his sexual assault as she lay "helpless and unable to resist" after a brutal beating and forced sedation with chlorodyne.[111] The next morning, Dorn gleefully announced that he "**** her twice last

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[105] "The Dorn Divorce Case," *Evening News*, 20 September 1887, 5.
[106] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn;* "Dorn Divorce Case," *Evening News*, 16 September 1887, 6.
[107] Saunders, "Domestic Violence in Colonial Queensland," 81.
[108] Ibid., 74.
[109] In her 1975 analysis of rape, American feminist Susan Brownmiller identifies the "penis as a weapon." Susan Brownmiller, *Against Our Will: Men, Women and Rape*, (NY: Fawcett Columbine, 1975), 11.
[110] D. Hammond and A. Jablow, "Gilgamesh and the Sundance Kid: The Myth of Male Friendship," in *The Making of Masculinities: The New Men's Studies*, ed. Harry Brod (Boston: Allen and Unwin, 1987), 257. Cited in Raymond Evans, "A Gun in the Oven: Masculinism and Gendered Violence," in *Gender Relations in Australia*, 203.
[111] Chlorodyne was a well-known sedative, containing such poisonous elements as morphine and chloroform. In the wrong dosage, it could be fatal. Michael J. Clarke, "Suicides by Opium and Its Derivatives in England and

night," court authorities refusing to write the word Harriet used to describe the incident. At other times, he would simply "insist on having intercourse with her" against Harriet's will.[112] Like other wife-beaters, Dorn deployed his superior physical strength to abuse and oppress, while his legally sanctioned economic might kept his wife and children in abject dependence. At the time, marital rape was an oxymoron in NSW, and would remain so in that state until 1981 when changes to the law finally made it illegal for a man to rape his wife.[113]

American feminist Susan Brownmiller describes rape as an act of violence whereby "all men (keep) all women in a state of fear."[114] Investigating the effects of rape on women during wartime and in the home, philosopher Claudia Card also frames the act as an "instrument of domestication" which "breaks the spirit, humiliates, tames (and) produces a docile, deferential, obedient soul." Most importantly, Card suggests, rape allows men to prove that *they* are in charge of women's bodies, and not women or girls themselves.[115] The act of rape is thus about control and domination, rather than sexual gratification, an interpretation which springs easily to mind when considering Harriet Dorn's experience.

The desire to enforce submission and achieve dominance may be identified in Dorn's actions, but it is equally obvious that Harriet rejected efforts to subdue her. She fought Dorn's aggression in an embodied resistance that sometimes involved hurling objects and destroying property or throwing stones at windows when he locked her out of the house. Amongst the many examples of Harriet's physical responses to Dorn's violence is one incident involving a knife, which she picked up to stab him, before aiming a swift kick "at his

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Wales, 1850-1950," *Psychological Medicine* 15 (1995): 242. Dorn mixed chlorodyne with alcohol and soda water before he poured it down Harriet's throat.

[112] SRNSW: NRS 13495 [251/1884] *Dorn v. Dorn.*

[113] The amendment was the *Crimes (Sexual Assault) Amendment Act* 1981 (NSW) s 61A (4). Other states amended the legislation in different years: the Australian Capital Territory in 1981, the Northern Territory 1983, Queensland in 1989, Victoria in 1985, Tasmania in 1987, Western Australia in 1985 and South Australia the trailblazer in 1976. SA added further reforms in 1992 which overturned the need for married complainants to prove 'aggravating circumstances' as well as rape. Cited in Wendy Larcombe and Mary Heath, "Developing the Common Law and Rewriting the History of Rape in Marriage in Australia: *PGA v. The Queen*," *Sydney Law Review* 34, no.4 (2012): 786.

[114] Brownmiller, *Against Our Will*, 26.

[115] Claudia Card, "Rape as a Weapon of War," *Hypatia* 11, no.4 (1996): 6, 11.

private parts."[116] When Dorn called her "a bloody stinking whore," among other epithets, she threw at him "a basin of cold soup."[117] In the most impressive and dramatic demonstration of her defiance, when Dorn locked her in a room, Harriet leapt from the balcony into the street, falling fortuitously into the arms of a passing police constable. These corporeal performances drew attention to Harriet's resistance and also to her husband's brutality.[118]

Dorn often displayed his callous disregard for Harriet, for example as she lay prostrate after an hysterical fit, when he advised concerned passers-by to "Let the drunken bitch lie there or get a bucket of water and throw it over her."[119] His conduct towards other women working in the hotel similarly suggests a belief that they existed for his personal sexual gratification. On one occasion, for instance, he offered money and trinkets to a servant if she would sleep with him, then locked the door and threw her onto the bed when she refused.[120] Dorn further disparaged three other women he had employed previously, on the grounds that they were variously "leading an immoral life," using "foul and unnatural language," and of "desolute (sic) and unreliable character." These disparagements provide further examples of the "slut-shaming" of which I write in my final case study.[121]

Dorn's actions confirm the feminist notion of male sexuality as the pre-eminent source of women's domination and oppression.[122] He deployed his sexuality as an assault weapon, but at the same time denigrated Harriet and other women for their sexual conduct. While there are parallels between Horwitz and Dorn as abusive and aggressive men, the violence characterising the Dorn marriage was the antithesis of the secretive and hidden

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[116] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[117] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[118] Australian scholar Wendy Parkins argues for the important role that physical protest plays in demonstrating resistance. Parkins, "Protesting Like a Girl."
[119] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.* I write at length about these fits at a later point in the chapter.
[120] This particular servant, Emily Northcotte, told the court that in response to Dorn's threats, she had opened the window and told him that if he did not release her, she would "scream out murder." SRNSW: NRS 13495 [251/1884] *Dorn v. Dorn.*
[121] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[122] Anna Clark, "Sexual Crises, Women's History and the History of Sexuality in Europe," in *Making Women's Histories*, eds. P.S. Nadell and K. Haulman, (New York: New York University Press, 2013), 100.

abuse that Horwitz inflicted on Flora. As scholars like Kay Saunders and other historians of colonial Australia have often remarked, domestic violence is often viewed as largely invisible,[123] but those around the Dorns frequently intervened in their domestic disputes and came to Harriet's aid, revealing their marital conflict to be a public affair.

These squabbles regularly attracted a crowd of onlookers who were only too willing to become involved in the fracas. The interventions that by-standers waged ranged from calling a police constable to sending for a doctor, and even ministering to Harriet as she lay swooning or fitting. Those men who so valiantly came to Harriet's aid were appalled by Dorn's abuse, but witness testimony confirms that it was the other women working with Harriet who were prepared to challenge Dorn, a finding my later case studies further confirm.

The Case of a Besotted Drunkard Guilty of Brutal Cruelty to his Wife[124]

The divorce trial of *Dorn v. Dorn and Nicholson* takes place in 1887. The trial persisted over seven days before a special jury of twelve, with costs substantial owing to such length and complexity. High costs and the particular circumstances of legal proceedings further suggest the falsity of perceiving early divorce as something accessible only to the rich. Golder, for example, cites an estimate from the *Sydney Morning Herald* in 1873 which contends the need for some £300 to end a marriage.[125] While the cost was significant of instituting and sustain legal action, when a petitioner emerged insolvent at the trial's end, there was little hope that lawyers would ever receive payment for their many hours of intellectual labour. The anticipation of using damages to pay for costs also seems to have

[123] For instance, Allwood et al., "Law's Indifference," 86; Saunders, "Domestic Violence in Queensland," 71; Allen, *Sex & Secrets,* 51.
[124] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[125] Golder, *Divorce*, 5; In all, the combined legal efforts of Thomas and Harriet Dorn confirm Gail Savage's contention that "the very determined could still find a way" to succeed in divorce. Savage, "They Would if They Could," 184.

been unrealistic, as a co-respondent had many potential avenues of escape (to another colony, for example) and as my research shows, upon appeal was frequently successful in seeing the verdict overturned. Legal wrangling via court action could then drag on for many more months.

Costs burgeoned, in no small part, because of the extensive legal preparation required for a trial to go ahead. When even the briefest of appointments could only be arranged by post, lengthy organisation was inevitable. The truly destitute could always sue *in forma pauperis* by proving they were "not worth the sum of £25,"[126] but most surprising is the number of cases conducted on credit, with little hope that lawyers would ever receive payment for services rendered. In many petitions, the cost of proceedings led ultimately to insolvency for a male petitioner as he was held responsible for his wife's legal bills.[127]

Golder contends that the most immediate problem confronting a petitioner was how to pay the anticipated legal costs,[128] but when Harriet initiated her suit for judicial separation, Thomas Dorn's straitened financial circumstances did not prevent her from engaging in legal process. And when Dorn immediately lodged his own suit upon his release from Darlinghurst Debtors' Prison, he admitted that he was

> unable to pay the whole or any part of the costs of Harriet Dorn in the several suits for Judicial Separation and Custody of Children, or the arrears of maintenance for children and alimony under the several decrees in the previous suits of Dorn versus Dorn.[129]

As Golder explains, a complex suit involving multiple lawyers and witnesses could see costs mount significantly, but in the Dorn case, court authorities must surely have known Thomas Dorn was in no position to pay his legal bills.[130] That a convicted debtor could initiate what

[126] Golder, "'A Sensible Investment,'" 400.
[127] For example, SRNSW: NRS 13495 [0007/1873] *Anderson v. Anderson.*
[128] Golder, "'A Sensible Investment,'" 237.
[129] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[130] Golder, "'A Sensible Investment,'" 237.

turned out to be a very expensive legal affair suggests prospective costs did not deter someone from lodging a petition.

Dorn's divorce proceeded on the grounds of Harriet's adulterous relationship with Albert Nicholson and relayed a very different account of the marital relationship to the one Harriet presented three years prior. Dorn maligned Harriet as a woman given to intemperate habits, often "perfectly crazy" with drink, and through her drunken violence destroying "his" business.[131] Nineteenth century community and legal perceptions were very different for female as opposed to male drunkenness. For a husband alleging adultery, describing his wife as a drunkard was a further means to discredit her.[132] Feminist historians have written at length about the role of alcohol in fuelling domestic violence, but primarily in terms of a drunken perpetrator rather than his victim.[133] That a wife's drunken excess could incite her husband's aggression reveals a particularly intolerant attitude towards female drunkenness, and indeed the historical record contains many accounts of women who were beaten—and even beaten to death—simply because they were drunk.[134]

While feminist scholars have emphasised the value of an intersectional approach to expose the diversity of women's circumstances, they have been less inclined to consider the value of an intersectional point of view to reveal masculine experience. Recent scholarship emphasises the diversity of masculinit*ies* and their associated ideologies, and suggests that men engage in two distinct "sets of power relations" which involve the exercise of power over women, and over other men.[135] An intersectional approach confirms the vital

[131] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[132] Golder, *Divorce*, 173.
[133] See for example Allwood et al., "Law's Indifference," 86-96, Howard Le Couteur, "Of Intemperance, Class and Gender in Colonial Queensland: A Working-Class Woman's Account of Alcohol Abuse," *History Australia* 8, no.3 (2001): 139-157 and Allen, *Sex & Secrets.*
[134] Ruth McConnell and Steve Mullins, "We Had Both Been Drinking Since Christmas: Battered Wives and Dead Abusive Husbands in Early Colonial Rockhampton," *Journal of Australian Colonial History* 5 (2004): 106.
[135] Jeff Hearn and Michael S. Kimmel, "Changing Studies on Men and Masculinity," in *Handbook of Gender and Women's Studies* 5, eds. Kathy David, Mary Evans and Judith Lorber, (London: Sage Publications, 2006), 55.

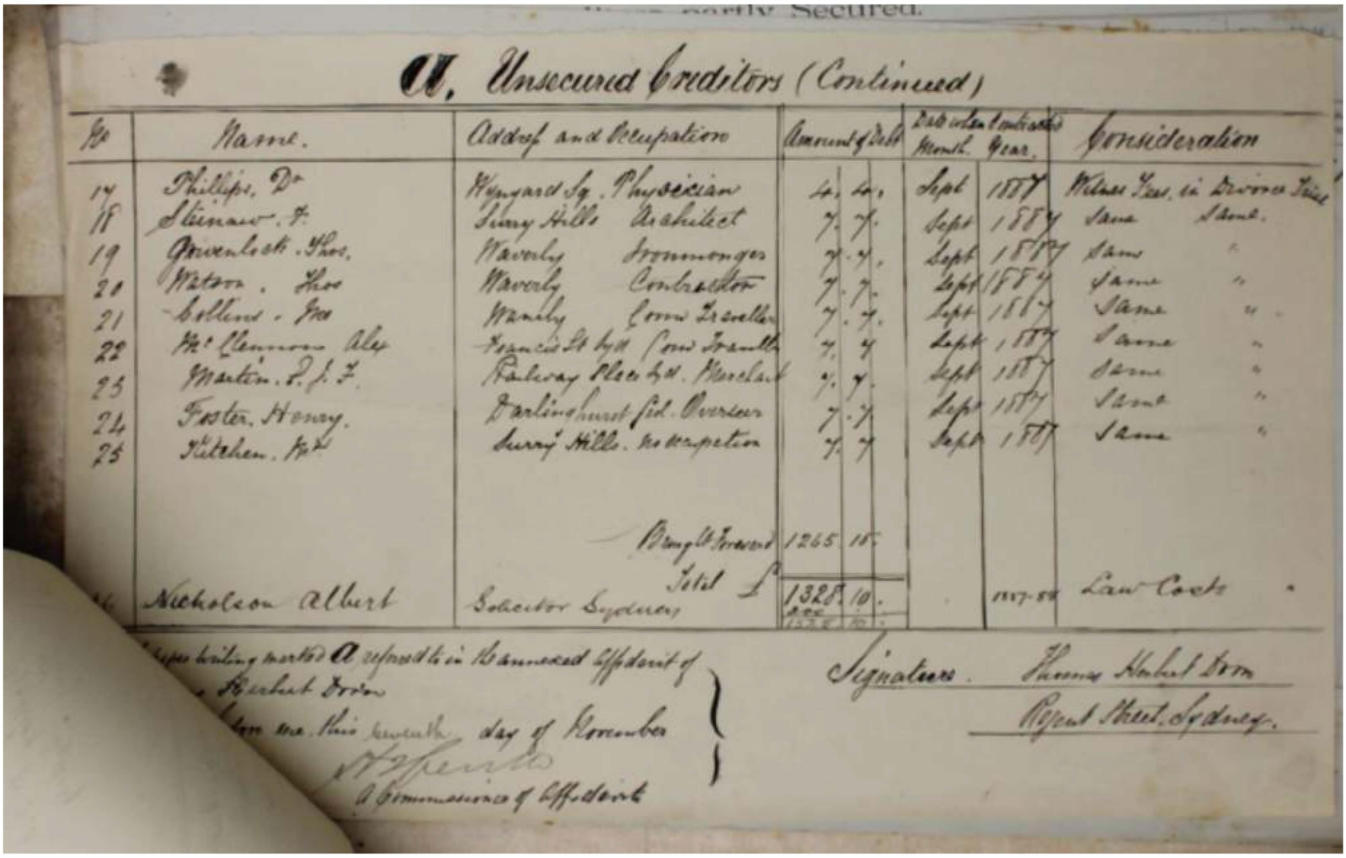
role of social class in determining the nature of those power relations, and the capacity to dominate others. By virtue of his elite status and affluence, Harry Horwitz was in a position of superiority to all women and most other men: as a working-class man with a drinking problem, Thomas Dorn exaggerated his dominance over women, but could not exercise a similar sense of superiority over all other men.

At the close of Dorn's 1887 divorce suit, a number of journalists and the judge himself remarked that perjury was highly evident throughout the case. This comes as no surprise, given that several witnesses told the court Dorn had hosted legal "gatherings" where his cronies were invited to swear an affidavit at his dictation and in return receive one pound, abundant food and drink, and a bed for the night if they desired.[136] I have already suggested that perjury was not uncommon in colonial divorce procedure; in the high-profile Dibbs case of the late 1870s, for example, the trial for perjury that followed the divorce case was almost as scandalous as the divorce trial itself.[137] Investigating the Victorian courtroom, American historian Wendie Ellen Schneider goes so far as to suggest that after mid-century changes to giving evidence, prosecutions for perjury increased so significantly they were almost an expected reality for every trial.[138] With perjury evident in both cases I have so far examined, and emerging also in later chapters, Schneider's assessment seems to be equally apt in the current context.

Although Harriet admitted her infidelity, she defended her conduct on the grounds of Dorn's cruelty, and claimed further that since she and her husband had slept together *during* the trial, he had condoned her actions. While the jury dismissed these counter charges of cruelty and condonation, Albert Nicholson appealed on a technicality, as Henry

[136] At the time, Dorn was financially dependent on his brother Anthony, a prosperous publican (who had been fined £10 for smuggling brandy into prison during Dorn's incarceration.) "Unusual Charge," *Goulburn Evening Penny Post*, 20 November 1884, 4.
[137] SRNSW: NRS 13495 [109/1879] *Dibbs v. Dibbs*; Lorrison, "Adulterous Agency."
[138] Wendie Ellen Schneider, *Engines of Truth: Producing Veracity in the Victorian Courtroom* (Yale: Yale University Press, 2015), 17.

Solomon had done, and divorce was refused. And so, just as in the Horwitz case, the Dorn marriage remained intact at the trial's end.



A. Unsecured Creditors (Continued)

No	Name.	Address and Occupation	Amount of Debt			Date when Contracted Month.	Year.	Consideration
17	Phillips, Dr	Wynyard Sq. Physician	4.	4.		Sept	1887	Witness Fees, in Divorce Trial
18	Steinaw. F.	Surry Hills Architect	7.	7.		Sept	1887	Same Same.
19	Greenlock. Thos.	Waverly Ironmonger	7.	7.		Sept	1887	Same "
20	Watson. Thos	Waverly Contractor	7.	7.		Sept	1887	Same "
21	Collins. Jno	Waverly Comm Traveller	7.	7.		Sept	1887	Same "
22	McClemmon Alex	Francis St Syd Comm Traveller	7.	7		Sept	1887	Same "
23	Martin. P. J. F.	Railway Place Syd. Merchant	7.	7.		Sept	1887	Same "
24	Foster, Henry.	Darlinghurst Rd. Overseer	7.	7.		Sept	1887	Same "
25	Kitchen. Wm	Surry Hills. no occupation	7.	7		Sept	1887	Same "
		Brought Forward	1265	15				
		Total £	1328	10.				
26	Nicholson Albert	Solicitor Sydney	200				1887-88	Law Costs
			1528	10.				

This paper writing marked A referred to in the annexed Affidavit of [illegible] Herbert Dorn

Sworn before me this [illegible] day of November

[illegible]

A Commissioner of Affidavits

Signature. Thomas Herbert Dorn

Regent Street. Sydney.

Image 2.7 Part of Thomas Dorn's Insolvency file showing the fees he owed to witnesses in the trial. A petitioner was responsible for a witness's transport and subsistence costs. (Golder, "'A Sensible Investment,'" 225).

SRNSW: NRS 13655 Bankruptcy Index 1888-1929 [718/1888] *Thomas Herbert Dorn*.

A Wicked-Eyed Little Lawyer[139]

According to Thomas Dorn and several of his associates, Harriet's affair with Nicholson had already begun in July, 1884, when the couple consulted the lawyer on a matter relating to their hotel business.[140] While Dorn languished in prison, Nicholson moved his legal practice from Sydney to Newcastle and assumed the role of Harriet's provider and champion, arranging her lodgings and providing sums of money to support her and the children. Harriet sent the accounts for her board and lodgings to her lover for his payment, and he would often provide her with "a little extra."[141]

Albert Nicholson was short in stature, and "not at all prepossessing," but he could be solicitous and caring, qualities which were notably absent in Harriet's husband.[142] In ongoing testimony to the double standard, Nicholson had an estranged wife and five illegitimate children elsewhere, in addition to an abandoned mistress.[143] Unskilled, and now the sole parent of two small children, uneducated and with no close family living nearby, Harriet depended on male financial support to survive while her husband was in jail for more than two years.

As Susan Magarey argues, despite the emergence of definite alternatives to "the market in sexual labour," women continued to rely upon "the exchange of possessions of their persons for the means of existence."[144] Scholarship proclaiming the expansion of economic opportunities for women has tended to focus on the experiences of the middle-class woman, rather than disadvantaged women of the working-class. Magarey's suggestion that

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[139] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[140] "Law Report: In Divorce, Dorn v. Dorn and Nicholson, Part-Heard," *Sydney Morning Herald,* 14 September 1887, 6.
[141] "Law," *The Daily Telegraph*, 14 September 1887, 3.
[142] "A Christchurch Divorce Case," *Temuka Leader*, 27 September 1887, 2; Nicholson's letters are not included in the case file, but extractions may be found in some press reports, as these were read aloud during proceedings. SRNSW: NRS 13495 [370/1887], *Dorn v. Dorn.*
[143] "Law," *The Daily Telegraph*, 14 September 1887, 3; "Dorn Divorce Case," *Evening News*, 16 September 1887, 6.
[144] Magarey, "Notes Towards a Discussion of Sexual Labour," 22.

marriage was akin to "sexual labour" is amply borne out by Harriet's experience, and that she exchanged her husband as a provider for Nicholson eminently understandable.[145]

Most importantly, Albert Nicholson was possessed of an adequate income via his successful legal practice, and he was therefore in a position to help Harriet fulfil her dream of buying a hotel establishment of her own. Although this detail emerges only once within the sources, it is a poignant indication of the struggles facing women who harboured independent business aspirations. One William Collins, who was a commercial traveller, swore that in September 1885 Harriet told him Nicholson "sees I want for nothing," and was "going to put me in a pub on my own account." When Collins asked Harriet if she should not be less public about her liaison with Nicholson, she retorted that "it doesn't matter a hang. Everybody knows how things stand between him and I. He stays at the Oxford with me."[146]

Collins heard later that Thomas Dorn had written to the Newcastle licensing inspector, and warned him to oppose any application which Harriet Dorn made for a license owing to her immorality with Nicholson.[147] Although there may have been other explanations for Harriet's failure to set out in her own business, this example runs counter to both Diane Kirkby and Clare Wright's assertions that women faced no discrimination in obtaining a license compared with men.[148] At the very least, it is a sad reflection of how one woman's ambition was thwarted by a vengeful spouse, hellbent on punishment.

Nicholson expressed tender and romantic sentiments in letters penned to Harriet, of which certain sections were reprinted in the press. Consider the following extract, which was read aloud in court to much merriment,

> If the eyes are the windows of the soul, you could have looked through mine down into my

[145] Ibid., 18-9.
[146] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[147] SRNSW: NRS 13495 [370/1887] *Dorn v. Dorn.*
[148] Wright, *Beyond the Ladies Lounge*, 72; Kirkby, *Barmaids*, 24-6.

> soul and seen there your own sweet image enthroned and enveloped by a halo of love and esteem (laughter). Send me Mrs. Sheehan's account as soon as you receive it, and should you require anything in the way of clothing for yourself and the children, let me know, pet. I enclose a cheque for £2 10s, as you may require a little extra in money, and now goodbye darling, and may God bless you and preserve you to your own Al.[149]

I quote at length from Nicholson's letter because his solicitude provides such a contrast to her husband's brutality. His capacity to express emotion points to the existence of "multiple Australian masculinities" rather than that "monolithic unproblematic 'masculinity' on which scholars often remark. As colonial historian Clive Moore observes, the diversity of masculinities is significant, and particularly relevant in the current context which involves such a dissimilar petitioner and co-respondent.[150]

Albert Nicholson was as different from Thomas Dorn as is possible, and his intimacy with Harriet equally contrasting. Witnesses observed the pair sitting together often, Harriet on Nicholson's knee, or else breakfasting harmoniously at the hotel where they sometimes stayed. When the relationship eventually soured, however, and on one occasion a doctor was called to treat Harriet in a "very excited state," she told all who would listen that her lover had "taken (her) from (her) home and ruined (her)," and "decoyed" her away from "a good home." She thereby rewrote the story of her conflict-ridden marriage.[151] Harriet's proclamations, however, were possibly intended to shift the blame for her straitened circumstances to Nicholson, rather than a true expression of her feelings.

Some weeks after Dorn's divorce trial of 1887 had concluded, with its outcome hanging in the balance owing to Nicholson's legal appeal, a number of witnesses testified to seeing Harriet on board a steamer bound for Adelaide. With her children accompanying her,

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[149] "Law," *The Daily Telegraph*, 14 September 1887, 3.
[150] Clive Moore, "Guest Editorial, Australian Masculinities," *Journal of Australian Studies* 22, no.56 (1998): 1.
[151] "Law," *The Daily Telegraph*, 14 September 1887, 3.

Harriet claimed to be leaving Sydney "forever" after quarrelling with her "fancy man," and swore "wild horses could not drag her back." She loudly condemned Nicholson as "a bad paymaster," and swore she would take no further action.[152] No doubt she was on her way to her sister Lydia in South Australia to seek reprieve from the stress of her legal order. Having argued with Nicholson over the costs of the action, Harriet then washed her hands of both legal and emotional entanglements.[153]

Powerless and Helpless as she Lay there

In an inspiring account of how British suffragette Mary Leigh used her physicality to protest against patriarchal authority, Australian scholar Wendy Parkins suggests that it is possible to avoid stereotyping women as either passive victims or remarkable heroines, if we focus our attention on how they have used their bodies to enact resistance. In much the same way as militant suffragettes "acted citizenship," we may recognise that Harriet "acted resistance," interspersing such defiance with bouts of hysteria as an escape route from her threatening and overwhelming circumstances.[154] These particular "fits of hysteria" were of a kind deemed "hystero-epilepsy;" much like the epileptic seizure, they took the form of a violent convulsion, and occurred without warning.[155]

In taking to her bed and assuming the role of an invalid, which she did often, Harriet could garner the aid of sympathetic servants who worked in the hotel and enjoy time

[152] "The Dorn Divorce Suit," *Australian Star*, 13 December 1888, 5.
[153] "The Dorn Divorce Suit," *The Age,* 13 December 1888, 5; Nicholson and Thomas Dorn were trying to come to a financial arrangement in which Nicholson would pay £500 to Dorn, and the costs of the suit, on the proviso that Dorn would withdraw the suit altogether "to save disgrace." This did not eventuate. "Law, Supreme Court," *The Daily Telegraph*, 15 September 1887, 3.
[154] Parkins, "Protesting Like a Girl," 152, 156.
[155] Lisa Diedrich, "Illness as Assemblage: The Case of Hystero-Epilepsy," *Body & Society Special Issue: Estranged Bodies* 21, no.3 (2015): 68.

away from her abusive spouse. The assumption of invalidism also relieved her temporarily from work duties in the bar, or supervising servants whilst organising the household and caring for her children. Harriet's hysterical fits allowed her to navigate a brutalising environment and achieve a degree of power that was otherwise impossible to attain.[156] By fainting or becoming hysterical, she demonstrated her feminine fragility in the face of masculine violence, and by emphasising her "emotional womanhood," simultaneously promoted a sense of her "physical victimhood."[157]

In the domestic context, succumbing to hysteria allowed Harriet to escape from the reality of Dorn's physical and verbal abuse. Swooning and fitting also conveyed the intensity of feeling that she experienced in response to such events. As earlier feminist psycho-analytical interpretations argue, hysteria thereby provided "the nuclear example of women's power to protest."[158] In constructing both her defence and her attack of an abusive husband, Harriet's emotional reactions played a performative role.[159] Consider how a former neighbour observed Harriet in hysterics lying in the passageway, with several gentlemen "attending to her." Dorn's advice to "let the bugger lie there," because "she's not ill, it's only her way," reveals how those surrounding the hysteric could choose to see her behaviour as a personal choice rather than a genuine ailment.[160]

In offering my interpretation of Harriet's hysteria, I do not intend to suggest she was a malingerer or falsified the physical manifestations of her intense feeling. Instead, I contend that Harriet enacted her hysteria in response to particular events, and according to a strictly defined pattern. American historian Carroll Smith-Rosenberg's analysis of hysteria

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[156] For a discussion of the empowering role that hysteria could play, see Carroll Smith-Rosenberg, "The Hysterical Woman: Sex Roles and Role Conflict in Nineteenth Century America," *Social Research* 39, no.4 (1974): 654.
[157] Victoria Bates, "'Under Cross-Examination She Fainted:' Sexual Crime and Swooning in the Victorian Courtroom," *Journal of Victorian Culture* 21, no.4 (2016): 469.
[158] Diedrich, "Illness as Assemblage," 79.
[159] For a detailed discussion of how women "used" hysteria in the courtroom context, see Bates, "Under Cross-Examination She Fainted," 456-570.
[160] Smith-Rosenberg, "The Hysterical Woman," 654.

outside of the courtroom context similarly proposes that it allowed women to express their distress or discontent in a socially approved format. It is therefore vital to ask what function or role hysteria played in the life of its sufferer. If, as Smith-Rosenberg suggests, the hysterical condition stemmed from persistently difficult life circumstances, Harriet Dorn was an ideal candidate to suffer its afflictions.[161]

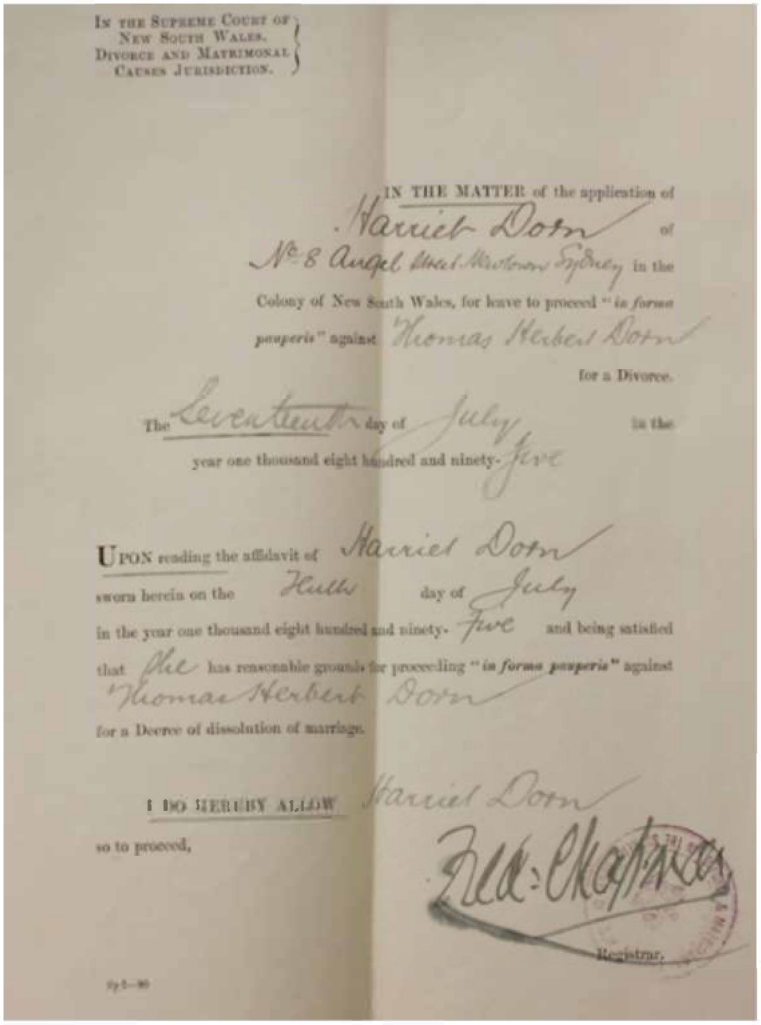
Epilogue

By 1892, Thomas Dorn had finally disappeared from Harriet's life, and three years later she was able to begin divorce proceedings *in forma pauperis*, revealing that she was without means and reliant on the court's generosity.[162] By this time, Harriet survived financially only by means of her children's earnings: as a domestic servant, Ivy earned five shillings per week, while as a law clerk, Ross was paid fifteen shillings per week, revealing that gendered access to economic power had altered little in the intervening years. In a testament to Harriet's ongoing initiative, she lived rent-free in a small cottage in Newtown's Angel Street, in exchange for caretaking nearby cottages.[163] In contrast to her previously tortuous legal ordeals, Harriet's petition of 1895 was virtually a fait accompli. Amendments to the *Divorce Act* meant that desertion was the only mandatory criterion for the dissolution of a marriage.

The Divorce Court had also introduced several bureaucratic reforms aiming to assist women who were in financial straits. These reforms encouraged such women to manage their own cases, and even provided them with the necessary printed forms to do so. Simple paperwork included a basic outline for legal proceedings and permitted women to

[161] Ibid., 663.
[162] SRNSW: NRS 13495 [1902/1895] *Dorn v. Dorn.*
[163] SRNSW: NRS 13495 [1902/1895] *Dorn v. Dorn.*

claim financial need.[164] In implementing such provisions, the court doubtless had women like Harriet in mind. Following a brief appearance before the judge, Harriet's divorce petition was granted, and the relentless saga of the Dorn marriage was finally over.



In the Supreme Court of New South Wales. Divorce and Matrimonial Causes Jurisdiction.

IN THE MATTER of the application of Harriet Dorn of No 8 Angel Street Miltown Sydney in the Colony of New South Wales, for leave to proceed "*in forma pauperis*" against Thomas Herbert Dorn for a Divorce.

The Seventeenth day of July in the year one thousand eight hundred and ninety-five

UPON reading the affidavit of Harriet Dorn sworn herein on the Tenth day of July in the year one thousand eight hundred and ninety-five and being satisfied that She has reasonable grounds for proceeding "*in forma pauperis*" against Thomas Herbert Dorn for a Decree of dissolution of marriage.

I DO HEREBY ALLOW Harriet Dorn so to proceed,

Registrar.

Image 2.8 Harriet was able to take advantage of the printed proforma which allowed women to proceed "in forma pauperis."

SRNSW: NRS 13495 [1902/1895] *Dorn v. Dorn.*

Lying within the voluminous documentation which comprises *Dorn v. Dorn*, the small photograph of a demure and modestly dressed colonial woman which heads this chapter bears little resemblance to the drunken virago whom Dorn and his supporting witnesses described to the court. The image belongs to a very different world from the one in which, at the age of ninety-two, Harriet Dorn died just four months after the end of

[164] Golder, "'A Sensible Investment,'" 401, 417.

World War Two. Her death certificate describes Harriet as a widow at the time of her death. This was obviously the impression Harriet had given to those who cared for her, as the certificate's informant was a representative of the institution in which she had been residing for considerable time.[165]

When Harriet died, she was a resident in the Newington State Hospital and Lunatic Asylum at Lidcombe, a suburb of Western Sydney. The institution was the subject of several large-scale inquiries into the deplorable conditions in which more than six hundred aged and sick women lived, because they had no relatives to care for them.[166] It seems Harriet's final years brought little reprieve from the misery characterising so much of her life. The documents attest to a society which offered few opportunities to women when marriage no longer presented a viable or desirable option, particularly for those who lacked education, skill or ability.[167] More significantly, the sources reveal a disturbing level of male brutality and contempt for women.

In Harriet's persistent efforts to ameliorate her circumstances, her geographical mobility between NSW, New Zealand and South Australia, and her spirited response to dramatic events, we can trace an embodied resistance to render her compliant. Although she endured multiple efforts to ensure her submission, Harriet was nonetheless determined to do with her body what she chose. Most intriguingly, with few alternatives available, she recognised legal process as a way to protect her rights and those of her children.

Harriet's frequent engagement within the law suggests she saw herself as an agent who could initiate and sustain independent legal action, despite an obvious lack of financial means and the serious consequences of such action for her reputation and social

[165] NSW Death Registration Transcription, [1945/14597] *Harriet Dorn.*
[166] "The Hell That Is A State Hospital: Horrors of Newington Wards. Pity the Plight of the Sick Poor Who Die Untended and Live Half-Starved. Lidcombe's Sorry Herd," *Truth,* 27 May 1928, 1; "Women Paupers. Newington Scandal. Women's Protest," *The Labor Daily,* 4 September 1928, 7; "Inquiry on State Hospitals Begins," *The Daily Telegraph*, 20 October 1943, 8.
[167] Evans, "Discovering Violence in the Family," 21.

standing. Even for a working-class woman, these abstractions functioned as crucial acumen in the fraught navigation of propriety and status, on which a woman's marriageability and thereby economic wellbeing depended.[168] Within the rigid boundaries of colonial society, Harriet strove to overcome her impoverished circumstances and make a better life for herself and her children, by attempting to create "spheres of autonomy" through which she exacted punishment, sought financial support and moved independently throughout and between colonies.[169]

Two events reported briefly in the press in the late 1880s convey the emotional turmoil that Harriet suffered after the ordeal of Dorn's divorce petition, and her failed love affair. In May 1889 she was fined for drunkenness and destruction of property, following a drunken rampage at the home of her brother-in-law Anthony Dorn. The news report described "a deeply careworn, well-appearanced and evidently educated married woman" in "a state of painful trepidation" who "bewailed the fact that she had a family of young children to provide for." As "a recent litigant in a well-known divorce suit," she had been "in a despondent state of mind."[170]

Lacking the capacity to pay a fine in excess of eight pounds, Harriet was instead incarcerated for four months in Biloela Prison, a notorious hell hole to which women were mainly sent for such crimes as prostitution, vagrancy and drunkenness.[171] Harriet was no doubt desperate as to what arrangements she could make for her children's care while she was in prison. Following her release from Biloela, Harriet was in the news again, rushed to

[168] McKenzie, *Scandal in the Colonies*, 10.
[169] Kay Saunders and Raymond Evans, Introduction, in *Gender Relations in Australia: Domination and Negotiation*, eds. Saunders and Evans, ix.
[170] "A Smashing Up," *Australian Star,* 22 May 1889, 5.
[171] "Water," *Evening News,* 23 May 1889, 3; John Jeremy, *Cockatoo Island: Sydney's Historic Dockyard* (Sydney: UNSW Press, 1998), 5; State Records New South Wales Gaol Description and Entrance Books 1818-1930, NRS 2027, Gaol Record *Harriet Dorn*.

Sydney Hospital after seriously overdosing on chlorodyne, which she took "to relieve toothache."[172]

Considered with the great advantage of hindsight, the life-long economic struggle in which Harriet engaged reveals the power of nineteenth century gender and class constraints, and the inherent unfairness of the colonial gender system. While a working-class man could take advantage of the many opportunities for advancement that a young colony offered, a woman of the same class faced innumerable obstacles in seeking to rise above the station to which she was born. Marriage was indeed the primary means by which women could escape poverty, because financial hardship was virtually guaranteed by a society structured in ways that limited their opportunities to earn a living.[173] That the colonial streets were not all paved with gold, however, could also be true for men: Thomas Dorn arrived in New Zealand as a labourer, prospered briefly in the hotel industry, and by 1895 "was not worth £25," mainly owing to his fondness for drink and what I have gathered was a vicious temper.[174]

The great spirit of optimism upon which the nineteenth century came to a close did not fulfil its promise for Harriet or others like her. The failure seems to have been particularly marked for those women born mid-century into a society which did not question male authority and dominance, women who for whatever reasons, may have been unable to take advantage of the potential for economic liberation that accelerating modernity theoretically represented.[175] While Harriet Dorn's life conveys an attitude of defiance and the determination to go her own way, she was at last defeated by the combined forces of gender, social class and misogyny. Together, these forces prevented Harriet's escape from the poverty and hardship that characterised her life.

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[172] "Monday's Shipping," *Australian Star*, 2 December 1889, 6.
[173] Allen, *Sex & Secrets,* 18-19.
[174] SRNSW: NRS 13655 Bankruptcy Index 1888-1929, [718/1888] *Thomas Herbert Dorn*.
[175] Grimshaw and Willett, "Women's History and Family History," 134.

Image 2.9 Newington State Hospital and Home for Women.

Courtesy of NSW State Records, Photographs of Public Buildings in New South Wales, NRS 4346-1-[9/5879B]-1-39.

Chapter Three—*Bradley v. Bradley*, 1891, 1892: The Petitioner was a Person of Excitable Temperament[1]

Image 3.1: Walter and Emily Bradley with their fourteen children, c. early 1880s.

(Personal collection of Emily's great-great granddaughter Suzanne Mackay.)

[1] State Records NSW: Supreme Court of New South Wales: NRS 13495, Divorce Case Papers 1873-1978, [722/1891], *Bradley v. Bradley* (hereafter SRNSW: NRS 13495 [722/1891], [836/1892] *Bradley v. Bradley*.

Images 3.2 and 3.3: Walter and Emily Bradley, c. 1880, from the family photograph album which dates from 1885.

Personal collection Suzanne Mackay.

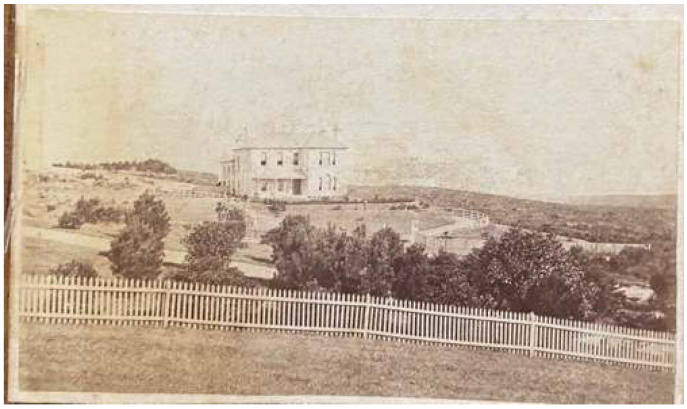

Image 3.4 *Sunnyside*, the Bradley family home in Randwick.

Personal collection Suzanne Mackay.

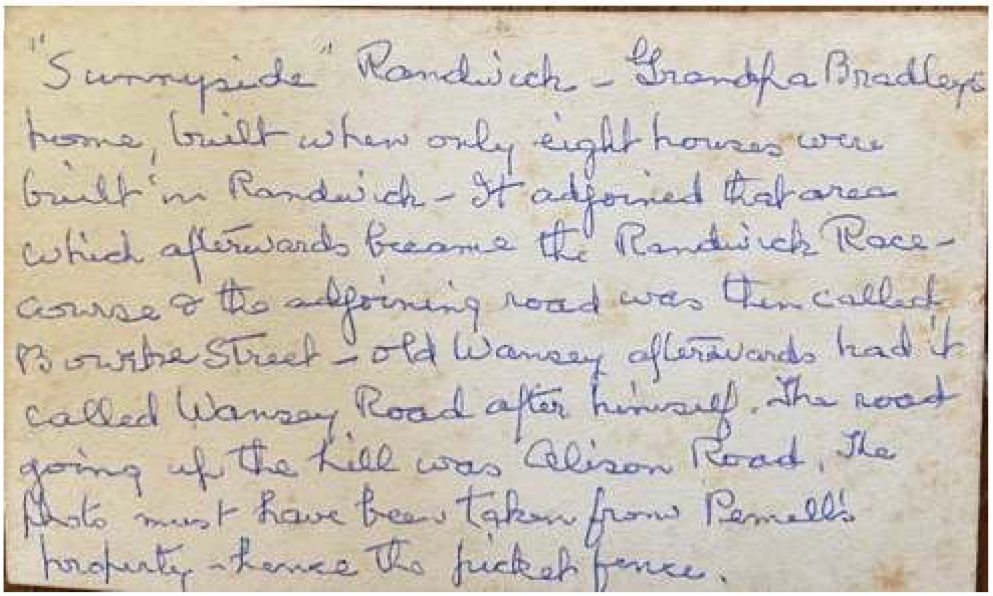

Image 3.5 The reverse of the photograph, which Emily's granddaughter Lilla annotated. Lilla was a keen family historian who compiled scrapbooks of newspaper cuttings relating to Walter's exploits, as well as letters, photographs and other memorabilia such as school reports and even memoranda of school fees. Personal collection Suzanne Mackay.

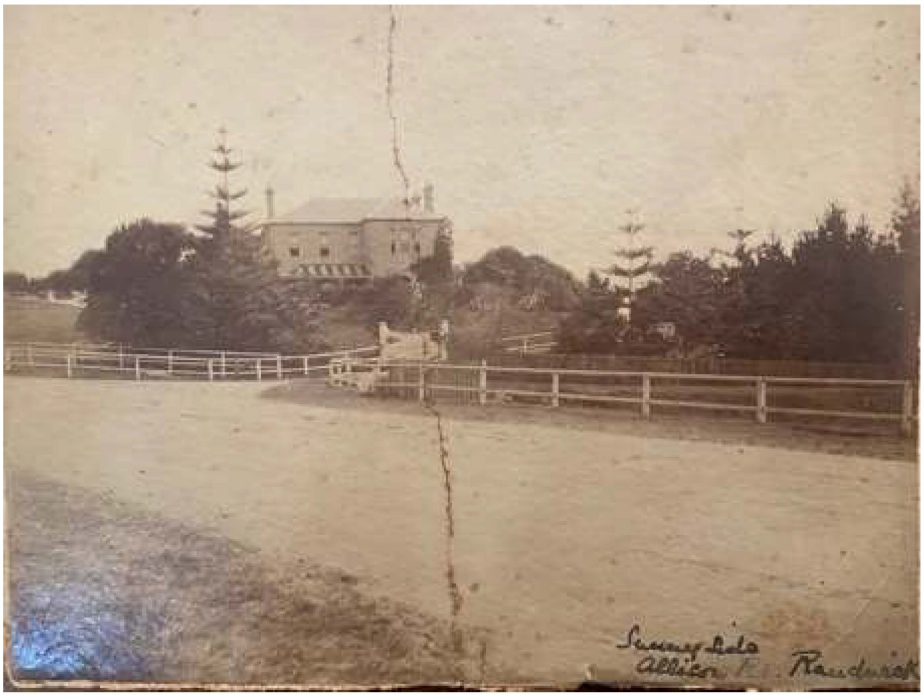

Image 3.6 *Sunnyside* from a different perspective.
Personal collection Suzanne Mackay.

Introduction

In early March of 1892, fifty-one-year-old Emily Bradley appeared in Sydney's Divorce Court to petition for judicial separation from her wealthy husband Walter, citing as grounds his cruelty. As Emily explained, Walter Bradley's excessive drinking and verbal abuse had reduced her to a state of nervous exhaustion and rendered her existence "almost unbearable through want of sleep, worry and dread." She thus felt "compelled" to leave the marital home.[2] Despite a union of more than thirty years, during which she and Walter had produced fourteen surviving children, Emily was determined to break free of the conjugal bonds which now caused her such apparent distress.[3] For Judge Windeyer, the longevity of the Bradley marriage and the sheer number of its progeny rendered the case especially poignant, and at several points during proceedings, he was moved visibly to the point of tears.[4]

The Bradley marriage had been deeply troubled for some time, and over the years, many disagreements saw Emily seek refuge with friends and relatives. The couple admitted, furthermore, that although "cohabitation" had not ceased, they had occupied separate bedrooms for the past four years.[5] Almost as soon as the *Divorce Extension and Amendment Act* was passed on August 6, 1892, and less than five months after her legal separation, Emily Bradley returned to the Divorce Court.[6] By this stage, as I have mentioned, the law had extended those grounds on which women could petition for divorce. Although Emily's previous court action had divided the large Bradley clan, she remained

[2] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[3] "Bradley v. Bradley," *Evening News*, 1 March 1892, 6.
[4] "The Bradley Divorce Case," *Zeehan and Dundas Herald*, 6 March 1892, 4.
[5] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[6] *Divorce Extension and Amendment Act (NSW) 1892.*

intent on severing the union once and for all, and in a new suit, added evidence of Walter's habitual drunkenness to her earlier claims of his cruelty.[7]

So far in this thesis, I have presented two detailed case studies, each presenting a very different account of marital discord and troubled intimacy in the closing decades of the nineteenth century. My research suggests that changes within the wider society, over time, allowed many ordinary women to feel sufficiently emboldened and empowered to assert the right to selfhood denied them. The Bradley case takes place only nine years after the Horwitz trial, once again centring on the wife of an affluent man, but a major difference between the cases is that Emily Bradley persistently challenged her husband's efforts to control her and refused to endure his drunken behaviour. There is little evidence to suggest Flora Horwitz had Emily's capacity for resistance, while Harriet Dorn's primary struggle was to put food on the table for her children. By the 1890s, a strong-minded woman like Emily Bradley was not prepared to accept that the home should be characterised by a husband's authority and a wife's submission.[8]

Rather than attributing such differences to individual character, however, I suggest they arose primarily through the variable of social class. Emily came from an affluent background and owned property jointly with two siblings. Even though she could not access her asset, for several reasons, the knowledge of her property ownership influenced Emily's sense of herself as an independent entity. Perhaps most crucially, because no third party was involved, Walter Bradley could not impugn his wife's virtue or fitness as a mother, and therefore had less leverage with which to constrain her resistance. Unlike Flora, Emily could use her husband's drunkenness and "ill-treatment" as grounds for

[7] SRNSW: NRS 13495 [722/1891], [836/1892] *Bradley v. Bradley*
[8] Shanley, *Feminism, Marriage and the Law*, 5.

divorce, benefitting also from changes to the legal perception of cruelty which now accepted mental or emotional abuse to prove mistreatment, as well as physical assault.[9]

In many ways, the nature of ongoing conflict in the Bradley marriage supports Marilyn Lake's suggestion that the late nineteenth century home "was a battleground, and the issue was masculinist culture."[10] The couple's combat zone was predicated on a range of gendered issues over which they regularly did battle, with little hope of resolution. This chapter will argue that the impetus for Emily's sustained domestic insurrection sprang from a mounting sense of dissatisfaction with her husband's vice-ridden behaviour and his dismissive treatment of her, rather than from her eccentric or hysterical nature, as Walter and most of their children were wont to suggest. While Walter regarded his conduct as a masculine prerogative, Emily saw it as cruel and destructive. Walter Bradley's excessive drinking engendered substantial aggression on his part, while he depicted Emily as a killjoy who "thought it was criminal for anyone to take a glass of anything."[11] Emily, on the other hand, believed Walter's dissolute habits had dire implications for the family, and confessed they caused her indescribable emotional suffering.

The sources for the Bradley case are ample, with both suits involving extensive witness testimony and cross-examination. In addition, press reportage is exceptional both in relation to legal proceedings and Walter Bradley's commendable devotion to public life, particularly his leading role in establishing Sydney's Taronga Zoo and career in local politics. And describing Walter's achievements in the local area, the Randwick and District Historical Society has a significant file of additional documents pertaining to Walter and the Bradley family.

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[9] For the most detailed account of changing legal conceptions of cruelty, see James, "A History of Cruelty in Australian Divorce," 1-30.
[10] Lake, 'Historical Reconsiderations IV," 126.
[11] "The Bradley Case, Suit for Judicial Separation, Conclusion of Respondent's Case," *Daily Telegraph*, 3 March 1892, 3.

Perhaps most importantly, family historians have preserved an illuminating collection of letters between Emily and her children, as well as many family photographs and other memorabilia. This collection has been of significant benefit in allowing me to see beyond the contrived courtroom performances and legalese of official documents, and gain insight into the family dynamics and lifestyle of a large and wealthy clan in late nineteenth century NSW. Given the adversarial nature of proceedings, the greatest surprise in the letters is the care and concern Emily displayed for her drunken and unwell husband, and a tenderness notably absent in legal and press accounts.

The current analysis takes the embattled Bradley union and its opposing depictions to identify how, over time, one woman mounted an accelerating and embodied challenge to her husband to protest the narrow role he allowed her. As I suggested in my introduction, while abundant research has extended our understanding of the suffrage movement and its protagonists, far less is known about how the campaign for women's rights affected the individual woman, as the movement gained momentum. The Bradley case offers a unique opportunity to understand how and why an unremarkable colonial woman went about rejecting the prevailing conditions of marriage. That Emily did so—despite the consequences of legal action for her social standing and maternal relationship—suggests she considered the union untenable.

The details of Emily Bradley's life from cradle to grave suggest yet again the crucial intersection of social class with gender to determine individual circumstance, a point which becomes abundantly clear in comparing her situation with that of Harriet Dorn.[12] There are definite similarities in that both women turned to the law to escape husbands they sought to prove drunken and cruel, and survived into their nineties when such longevity was

[12] See for example, Anna Carastathis, "The Concept of Intersectionality in Feminist Theory," *Philosophy Compass* 9, no.5 (2014): 304-314.

uncommon.[13] Any sense of comparison must end there. Emily was assured of material comfort and security, via generous alimony provisions and the rental income from a property her parents bequeathed her.[14] In contrast to such financial ease, Harriet endured life-long poverty and a peripatetic existence, ending her days in a public institution for the destitute. While both women turned to the law to escape marital misery, their lives could not have been more different.

Emily Hobbs and the Young Auctioneer

Emily Hobbs Bradley was born in Sydney's Hunter Street on the first of April 1841 to Frederick and Harriet Hobbs, a middle-class couple who migrated with several close relatives to NSW in 1834, leaving their home on England's Isle of Wight.[15] As one of four children, from the age of seven Emily attended private schools, including the Misses Butterfield's educational establishment which boasted instruction for "young ladies" based on "advanced educational theories."[16] To select such an institution suggests that Emily's parents held progressive views about girls' education and regarded schooling as more than just a means to enhance their daughter's marriage prospects.

Frederick Hobbs also demonstrated a liberal outlook in settling certain property upon Emily at the time of her marriage. Settling property upon a daughter was a common tactic which functioned to some extent as a measure of insurance against an unsuccessful

[13] Demographers in Britain, for example, have suggested that the average life span for women born in the first half of the nineteenth century was around forty-two years. Adrian Gallop, "Mortality Improvements and Evolution of Life Expectancies," UK Government Actuary's Department (2006), 2.
[14] When Walter Bradley altered his will in 1892, he left Emily the annual sum of £200 along with some £3000 worth of furniture and household goods. Bradley revealed these details under cross-examination during Emily's suit for judicial separation. Emily's mother Harriet died in the same year as the latter proceedings and left her three children an equal share each in property located in Redfern.
[15] "Shipping Intelligence, Arrivals," *The Australian*, 26 August 1834, 2.
[16] Randwick and District Historical Society, "Emily Hobbs and her Marriage to Walter Bradley."; Bishop, *Minding Her Own Business*, 81; "Advertising: Education for Young Ladies," *Sydney Morning Herald*, 1 September 1855, 8.

union.[17] More importantly, it stemmed from a legal situation whereby a married woman was not legally entitled to own property, a circumstance which arose from the ideology of spousal unity and its associated laws. These principles held that upon marriage, a wife bestowed her legal authority on her husband in exchange for his protection. As a result, a married woman bringing property to the union no longer owned those assets, and any financial assets accrued therefore went instead to her spouse. Naturally, such a situation rendered the married woman unable to benefit financially from the property, simply because it no longer belonged to her. In this way, the law prevented a married woman from becoming wealthy in her own right. By extension, it perpetuated her absolute financial dependence on her husband.[18]

Walter Bradley was born in London on November 9, 1836, to George Robert Bradley and Eliza Cave Bradley. George Bradley was an assayer at London's Royal Mint, and the young Walter was educated at private schools in London before departing England at the age of eighteen with only ten pounds to his name, ostensibly because he had "a delicate chest," which the English climate exacerbated.[19] He obtained a position with a Sydney auction house, and rapidly established himself as a successful auctioneer. For a considerable time, Walter's firm of Bradley, Newton and Lamb was one of the city's most prosperous auction businesses.[20]

In contrast to the blatant villainy of either Thomas Dorn and Harry Horwitz, Walter was by all accounts genial and kindly, with a strong sense of civic responsibility. He was held to cut an attractive figure as he rode about the local area on "a handsome black stallion" (at other times a mare), rumoured to have belonged to the bushranger Thunderbolt,

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[17] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley;* Ben Griffin, "Class, Gender and Liberalism in Parliament, 1868-1883: The Case of the Married Women's Property Acts," *The Historical Journal* 46, no.1 (2003): 74.
[18] Cowie, "Married Women's Real Property Rights," 3-5.
[19] Randwick and District Historical Society, "Walter Bradley"; "History of Walter Bradley Snr, of Randwick," by Lilla Bradley (granddaughter), c. late 1950s. Personal collection Suzanne Mackay.
[20] Randwick and District Historical Society, "Walter Bradley."

or staged gentlemanly cockatoo hunts.[21] Keenly interested in birds and animals of every variety, Walter was a renowned breeder and exhibitor of poultry and other domestic birds, as well as the founding president of the Moore Park Zoological and Royal Agricultural Societies.[22]

Located on seventeen acres in Randwick, the Bradley home *Sunnyside* had its own private zoo, housing the colony's first Highland Cattle and, more intriguingly, its first ostriches.[23] Over many years, Bradley donated substantial sums to worthy animal and environmental causes, eventually donating his private collection of birds and animals to the colony's first public zoo in Sydney's Moore Park.[24] Three times the mayor of Randwick, he was also briefly a Member of the Legislative Assembly.[25] With a wide circle of admiring friends and associates, and diverse commercial and civic interests, Walter's was a public life with all the rights and responsibilities that such an existence entailed.

I am unable to state how Walter and Emily first met, but they married at the Congregational Church in the inner-city suburb of Redfern on the day before Emily's eighteenth birthday, and the first of their many children arrived nine months, later almost to the day.[26] Causing considerable mirth to erupt in the courtroom, Walter Bradley admitted the couple generally had "a child a year," and with so many young Bradleys running about the place, he was unable to recall their exact number.[27] While Emily maintained that her maternal relationships had always been deeply affectionate, when questioned in court she admitted that life with her large brood was "a perfect hell." She complained that since

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[21] Randwick and District Historical Society, "Walter Bradley."
[22] "High-Class Poultry, Mr. Walter Bradley's Yards, Randwick," *Sydney Mail and New South Wales Advertiser,* 15 September 1883, 498; "Founder of the Zoo," *Sydney Morning Herald*, 6 July 1933, 5; "Death of Mr. Walter Bradley," *Evening News*, 28 June 1893, 4.
[23] Randwick District and Historical Society, "History of Walter Bradley, 1860-1893."
[24] Randwick District and Historical Society, "History of Walter Bradley, 1860-1893."
[25] "Death of Mr. Walter Bradley," *Australian Star*, 28 June 1893, 3.
[26] "Family Notices," *Empire*, 13 January 1860, 2.
[27] "In Divorce, Bradley v. Bradley. Application for Costs. Permanent Alimony Wanted," *Australian Star*, 15 December 1892, 5.

commencing legal action, her children took little notice of her, and treated her with increasing hostility.[28]

It is impossible to avoid the conclusion that Emily Bradley's adult life had indeed "drained away in a series of pregnancies, miscarriages, births and periods of lactation," as Marilyn Lake once suggested was the reality for many colonial women.[29] The sheer enormity of Emily's child-bearing experience is immediately obvious if we consider that she was pregnant and gave birth in each of the years 1859, 1861, 1863, 1864, 1866, 1867, 1868, 1869, 1871, 1873, 1875, 1877, 1878, 1881 and 1882. Only one of these children died in infancy.[30] By the time of Emily's twenty-first birthday, she was already the mother of three children. The Bradley tribe of twelve daughters and two sons was more than twice the average reproductive rate of Emily's generation, while in an era characterised by high infant mortality and complications during childbirth, to have lost only one child was a considerable achievement.[31]

The Benign Paterfamilias

In providing extensive detail as to family dynamics, the Bradley case lays bare the workings of a large and complex inter-generational family. Walter was known to be a kind and indulgent father who adored his children, engaging in "snowballing" romps when the family holidayed in the Blue Mountains, taking the children boating and, as was not uncommon, supporting his adult offspring financially even after they left home.[32] At times a

[28] "Divorce Court: An Ex-MLA in Trouble, Bradley v. Bradley," *Evening News*, 2 March 1892, 6.
[29] Lake, "Historical Reconsiderations IV," 124.
[30] A search of NSW Births, Deaths and Marriages confirms that the couple's eldest child Edith Emily was born in 1859 and their youngest daughter Dorothy in 1882.
[31] Gordon A. Carmichael, "So Many Children: Colonial and Post-Colonial Demographic Patterns," in *Gender Relations in Australia: Domination and Negotiation,* eds. Kay Saunders and Raymond Evans, 126.
[32] "The Bradley Divorce Suit," *Daily Telegraph*, 21 December 1892, 3; "Bradley v. Bradley, Suit for Judicial Separation, Interesting Evidence by Respondent. Temperance and Auctioneering," *Australian Star*, 2 March 1892, 5.

benign paterfamilias, when under the influence of alcohol, Walter could become a raging despot, determined to have his way. The volatile nature of the Bradley household, which revolved around the demands of its alternately benevolent and autocratic head, amply confirms that family connections are in fact relations of power.[33] The gendered battle for such power characterised the marriage and provided the chief source of Emily's discontent.

Walter tended to downplay his drinking or any ongoing distress it caused his wife and children. He claimed Emily exaggerated how much he drank, because she thought it was "criminal for anybody to take one glass of anything."[34] Just as the *Bulletin* magazine depicted women as the "spoilers of men's pleasures," Walter portrayed Emily as a wowser who tried to prevent him from enjoying himself.[35] Admitting that he "took a fair dose every day," Walter swore his drinking habits were merely a necessary aspect of his occupation, and assured the court that "no temperance man" would ever make a living as an auctioneer.[36] In their ricocheting accusations and denials, the couple's marital conflicts mirrored the accelerating gender battle taking place within the wider society.[37]

Although several of the older Bradley daughters had married and left home, their husbands were incorporated into the close kin relations which characterised the family, a fact which conveys how blood networks assumed critical importance at this time.[38] One of the strongest impressions gained from reading letters between the siblings and others within their family circle is the warmth and affection which characterised these relationships. There is also the sense of the older siblings as an intervening or "intermediate" generation

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[33] Davidoff et al., *The Family Story*, 54.
[34] "Bradley v. Bradley, Suit for Judicial Separation, Interesting Evidence by Respondent. Temperance and Auctioneering," *Australian Star*, 2 March 1892, 5.
[35] *The Bulletin*, (Sydney, NSW: John Haynes and J.F. Archibald, 1880-1984); Lake, "Historical Reconsiderations IV," 116; "Bradley v. Bradley, Suit for Judicial Separation, Interesting Evidence by Respondent. Temperance and Auctioneering," *Australian Star*, 2 March 1892, 5.
[36] "Bradley v. Bradley, Suit for Judicial Separation, Interesting Evidence by Respondent. Temperance and Auctioneering," *Australian Star*, 2 March 1892, 5.
[37] For an extended discussion of this gender conflict, see Lake, "Historical Reconsiderations IV," 116-126.
[38] Leonore Davidoff, "The Legacy of the Nineteenth Century Bourgeois Family and the Wool Merchant's Son," *Transactions of the Royal Historical Society* 14 (2004): 27.

who harboured definite feelings of responsibility for the younger, as Leonore Davidoff contends was common.[39] Demonstrating precisely such a sense of obligation and responsibility, the couple's daughter May wrote to her sister Constance after her father's death of her concern that "the younger family should be so provided for in the will, we have had money spent on us & for my part would not have felt ill-used if left no share at all."[40]

When Emily turned to the law to separate from her husband, the youngest of her offspring was ten years old, and the eldest thirty-two. Such an age gap was not uncommon in a large family, and in describing this form of kinship group as a "long" family, Davidoff rightly suggests that it frequently saw the older children taking over the role of "caretakers and playmates" to the younger.[41] Yet in court, Walter condemned Emily as a neglectful mother, claiming that she was little involved in raising their children, and the older children were forced to take over her duties in caring for the younger.[42] His criticism suggests that it was not necessarily viewed as acceptable for older siblings to be thrust into a position of responsibility for the younger.

As the sole breadwinner in the family, Walter was its ultimate source of authority and decision-making, and yet his daily life also involved an extensive engagement with the wider worlds of business and politics, not to mention his extensive ornithological and zoological activities. For Emily, the household was "both defining and confining," as British historian Julie-Marie Strange suggests was the case for most women.[43] Emily's confinement was rendered even more marked, however, by the sheer number of her offspring and the unpredictability of Walter's demeanour according to whether he had been drinking.

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[39] Ibid., 29.
[40] Letter from May Bradley Kirby to Constance Bradley, September 22, year unknown, personal collection Suzanne Mackay.
[41] Davidoff, "The Legacy of the Nineteenth Century Bourgeois Family," 30.
[42] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[43] Julie-Marie Strange, "Fathers at Home: Life Writing and Late-Victorian and Edwardian Plebeian Domestic Masculinities," in *Gender & History* 27, no.3 (2015): 703.

In late colonial society, women who sought to engage in heightened levels of autonomous activity often risked family censure, and disapproval of their conduct could be extreme.[44] Emily admitted that "all except one daughter and the two little ones" had "turned against her" when they discovered her intention to petition for legal separation.[45] In a poignant exchange with her barrister on the stand, Emily described how her "daughters used to take her by the wrists and shake her when she remonstrated with them. Her son George also behaved shockingly (and) in fact, the place was a perfect hell."[46]

Emily's legal actions destroyed family harmony, creating fissures and divisions between siblings, and between parents and siblings. With sixteen individuals forced to choose sides, family cohesion could not remain intact. As is often the case, spousal conflict led to offspring swearing allegiance to one parent rather than another, and in this particular case, most of the Bradley children allied themselves with Walter rather than Emily.

Details about how Emily and the elder daughters managed the household and Walter's business affairs further support the idea that women who did not engage in paid employment outside the home could easily be dismissed as non-workers.[47] *Sunnyside* was a substantial property to oversee, and family correspondence reveals that servants often resigned at crucial junctures. Australian servants had a reputation for being "hard to get and even harder to keep," particularly from the 1880s, when the numbers of women who were willing to engage in domestic service began to seriously decline.[48] In a letter to her eldest sister Edith in 1881, one of the youngest Bradley girls wrote that "Mamma told me to write and tell you to come as soon as ever you can," because the servants had given notice. She

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[44] Miranda Walker, "A League of Friendship and Understanding: The Friendship Networks of Australian and British First Wave Feminists," *Lilith* 13 (2004): 98.
[45] "Bradley v. Bradley, Suit for Judicial Separation," *Australian Star*, 1 March 1892, 6.
[46] "Bradley v. Bradley," *Evening News*, 2 March 1892, 6.
[47] As Davidoff et al. point out, this practice occurred in England from 1881, when census statisticians began to categorise as unoccupied those many women who worked at home. Davidoff et al., *The Family Story*, 28.
[48] Charlotte Macdonald, "Why Was There No Answer To The 'Servant Problem'? Paid Domestic Work and the Making of a White New Zealand, 1840s – 1950s," *New Zealand Journal of History* 51, no. 1 (2017): 9, 15. Note that in this article, Macdonald also addresses the "servant problem" in the south-eastern regions of Australia.

ended her correspondence with the dark foreboding that "there is misery before us, we are always without servants at Christmas time."[49] This captivating detail reveals that although Walter Bradley was wealthy, his large family and expansive domestic circumstances demanded significant labour to ensure a smooth functioning, and individual members of the family were themselves sometimes forced to provide that labour.

He Admitted he Boxed her Ears[50]

Australian feminist historian Miranda Walker suggests that for women to challenge the "entrenched male dominance" of this time demanded they possess "vast reserves of emotional energy," a claim my research supports.[51] It is small wonder that in the courtroom, Emily recounted at length her emotional exhaustion, and described as distressing the ordeal of standing up to her husband. Unlike the brutal physical violence that Dorn and Horwitz perpetrated upon their ill-fated wives, Walter Bradley's assaults did not involve his fists. Instead, he launched a sustained attack on Emily's sense of propriety, her notions of moral rectitude, and her religious and temperance beliefs. Emily's financial dependence on Walter made her particularly vulnerable to his abuse, while the large size of her family further exacerbated her distress.[52] Upon leaving the family home, she was "entirely without means of her own and...wholly unable to support herself and her children."[53] Much like Flora Horwitz, Emily knew the precise details of her husband's assets, but could not so much as purchase a stamp without his consent.

[49] Letter to Edith Bradley, 1881. Personal collection Suzanne Mackay.
[50] "Divorce Court. An Ex-MLA in Trouble. Bradley v. Bradley," *Evening News*, 2 March 1892, 6.
[51] Walker, "A League of Friendship and Understanding," 102.
[52] Once again, this gendered conflict reflects the key argument that Lake put forward in 1986. Lake, "Historical Reconsiderations IV," 124.
[53] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*

Both husband and wife admitted the marriage had been troubled from its inception, which was similar to many couples who appeared in the Divorce Court (and for six of the seven marriages I investigate in this thesis). Walter claimed that Emily had been talking about a separation "for the last twenty years," and searching for at least ten years for a lawyer to handle the suit, probably because at the time, she had no obvious legal grounds for separation or divorce.[54]

To the contemporary reader, the incident with which Emily began her testimony appears a trivial one over which to do battle but reveals the degree to which colonial husbands felt entitled to pronounce judgment on all aspects of a wife's appearance and deportment. Emily's account suggests yet again a man's belief in his right to physically chastise a wife, confirming Colin James's suggestion that male aggression was widely accepted as a necessary tool to maintain a husband's authority and control within the family.[55]

Emily explained she had been married only three months when Walter ordered her "to her room" to remove "a large crinoline" she was wearing at the dinner table.[56] Under cross-examination, Walter admitted that he "foolishly boxed her ears" on this particular occasion, but immediately regretted his actions and never struck his wife again.[57] His use is noteworthy of the exact term Horwitz used to describe the physical chastisement of an errant wife. According to the *Merriam-Webster Dictionary*, to "box someone's ears" refers to the act of hitting them on the side of the head or the ears, with an open-handed slap.[58] Of note, however, is that this and other sources suggest the phrase was typically deployed in relation to the parental disciplining of a disobedient child.[59] To describe physical violence in

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[54] "Divorce Court. An Ex-MLA in Trouble, Bradley v. Bradley," *Evening News*, 2 March 1892, 6.
[55] James, "A History of Cruelty in Australian Divorce," 1.
[56] A crinoline was a very wide and stiff bell-shaped skirt, which took up considerable room when the wearer moved. https://www.oldtreasurybuilding.org.au/1850s-day-dress/
[57] "The Bradley Case, Suit for Judicial Separation. Conflicting Testimony," *Daily Telegraph*, 2 March 1892, 3.
[58] *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/box%someone's%20ears
[59] *Collins Dictionary*, https://www.collinsdictionary.com/dictionary/english/to-box-someones-ears

such trivialising terms exemplifies the patronising and authoritarian attitudes some autocratic husbands undoubtedly held towards their wives.

Emily's defiance on this occasion was to set the tone for many of the couple's ensuing disagreements. In her determination to escape Walter's dictates, she climbed over an adjoining wall and persuaded her neighbour to take her to her parents. Her gymnastic feat was a definite achievement if one considers the restrictive dress and constrained bodily movement of the genteel colonial woman in 1859. By my calculations, furthermore, Emily was several months pregnant when she scaled the wall to make her getaway. Her conduct on this occasion and others confirms that despite their subjugation, colonial women could and did engage in "many individual acts of rebellion."[60]

In a sustained determination to prioritise her own desires over those of her husband, Emily developed various idiosyncratic strategies to escape her narrow domestic routine. As she had no financial or legal authority, these strategies took the form of physical and verbal tactics which allowed her to temporarily evade maternal and wifely duties. Emily's use of such corporeal measures reveals how the body shaped both her subjugation and her resistance, and confirms Merleau-Ponty's contention that the body persists "as an agent in the world."[61] As such an agent, Emily sat for long hours at the piano, playing and singing rather than attending to her domestic responsibilities.[62] She bandaged the eyes of her younger children so they would sleep longer and remain quiet, while she lay in bed until late in the day.[63] So successful were her diverse avoidance tactics, that Walter complained he often went without breakfast because "his wife would not get up to prepare it, and the

[60] Lake, "Historical Reconsiderations IV," 125.
[61] Jillian Canode, "Thinking the Body: Sexual Difference in Philosophy, An Examination of Maurice Merleau-Ponty's Account of Embodiment in *Phenomenology of Perception*," *McNair Scholars Journal* 6, no.1 (2002): 32.
[62] "Divorce Court. An Ex-MLA in Trouble, Bradley v. Bradley," *Evening News*, 2 March 1892, 6.
[63] "The Bradley Case. Suit for Judicial Separation. Conflicting Testimony," *The Daily Telegraph*, 2 March 1892, 3.

servants slept too long." He further moaned that he "could not obtain his meals properly as his wife indulged in playing the piano rather than attending to her domestic duties."[64]

Emily's resistant and rebellious piano playing, as Walter went unfed and ignored, has striking parallels in Penny Russell's account of Grace Rusden. Rusden was a middle-class woman who in the 1860s mounted a "small and private rebellion...against fraternal authority" in which she sought refuge from her domineering brother by playing the piano. In Russell's suggestion that Grace's piano-playing was "a tentative rebellion" against her controlling sibling, and "a feminist act," we may similarly identify Emily Bradley's gendered fury as she sat at the piano, ignoring her disgruntled husband's dietary and other domestic needs.[65]

Family correspondence, however, reveals that "Pa," as the children called Walter, had the upper hand. Much as George Rusden threatened to sell his sister's piano, Walter became "very fidgety," as the couple's daughter Emily wrote to her sister. Refusing to allow anyone to play either the piano or the organ, Walter ordered one of the instruments to be locked in the milk room, where it remained indefinitely, and forbade anyone to touch the other instruments. As a consequence, young Emily pondered how she could pass her forthcoming piano exam without being able to practice.[66]

By engaging in her embodied domestic rebellions while "Rome burned," Emily could reject the limited role that colonial society allowed her, and convey her anger towards Walter's authority and his attempted control of her circumstances.[67] Leisure provided an ideal context via which she could briefly escape her domestic burdens and carve out for herself an

[64] "Divorce Court. An Ex-MLA in Trouble, Bradley v. Bradley," *Evening News*, 2 March 1892, 6.
[65] Penny Russell, "Quest for Grace: Fraternal Authority and Feminine Resistance in Colonial Australia," *Women's History Review* 2, no.3 (1993): 305, 315.
[66] Letter from Emily Bradley junior to Edith Bradley, 23 October 1888. Personal collection Suzanne McKay.
[67] Just as Penny Russell contends that Grace Rusden's story offers "a superb metaphor for the inarticulate resistance women could pose to patriarchal authority," Emily Bradley's domestic insurrections provide her with a fulfilling means of rebellion. Russell, "Quest for Grace," 307.

autonomous and fulfilling niche.[68] Emily's ongoing defiance suggests how agency may be traced through the bodily "I can," and located in those relationships of oppression with which the historical subject is bound.[69] These relationships of oppression sprang not from Walter's efforts to subdue her—for this he showed himself repeatedly unable to do—but from within a wider society which decreed her role to be primarily reproductive and passive.[70]

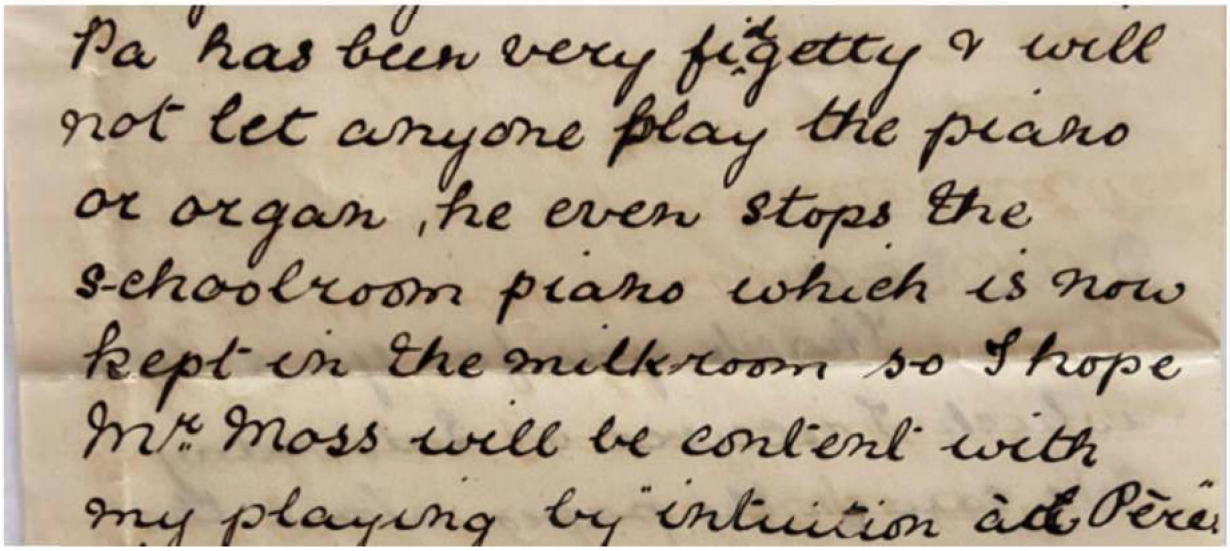
Pa has been very figetty & will not let anyone play the piano or organ, he even stops the schoolroom piano which is now kept in the milkroom so I hope Mr. Moss will be content with my playing by intuition à la Père

Image 3. 7 Letter from Emily Bradley junior to her sister, 1889, about the piano. Personal collection Suzanne Mackay.

Emily's agency and resistance were pronounced in turning to other devious and subtle means to oppose and undermine her husband. The methods to which she resorted may be likened to a form of domestic sabotage, a strategy also evident in my fifth chapter. And so, Emily ordered boiled and eaten the eggs that Walter had ordered be set aside to

[68] For more about leisure as a means of resistance, see Betsy Wearing, "Beyond the Ideology of Motherhood: Leisure as Resistance," *The Australian And New Zealand Journal of Sociology* 26, no.1 (1990): 36.
[69] Terry Lovell, "Resisting with Authority: Historical Specificity, Agency and the Performative Self," *Theory, Culture and Society* 20, no.1 (2003): 1.
[70] Becky Wingard Lewis, "Visualising Women in Popular English Periodicals in the 1890s," (PhD Thesis, University of South Caroline, 1997), 4.

hatch; drowned his pet dog because it was "a nuisance;" sold or destroyed his valuable pigeons, and even added to the household menu his prize breeding hens.[71]

Confirming that speech may serve as a mode of corporeal action, Emily sat sewing in Walter's "sleeping room" and informed him she had no intention of turning in just yet.[72] On another occasion, demonstrating both physical strength and agency, Emily and one of her daughters barricaded furniture against a door to prevent Walter from obtaining the key to "the spirit room" where his barrel of whisky was stored. That her resistance infuriated Walter was evident, while Emily later used his visible frustration at her actions to demonstrate his sustained cruelty and "acts of violence."[73] When Emily locked herself in a room, Walter took an axe with which to break the lock; when she insisted on a change of course for his investment strategies, he informed her that she "needed her neck stretching like Louisa Collins," the last woman to be hanged in NSW; when she tried to keep his whisky from him, Walter informed her that he did not wonder men killed their wives and children—and this, as a sobbing Emily informed the judge, at the time of the so-called Wyndham Tragedy, in which a squatter brutally murdered his wife and three children.[74]

These diverse examples suggest that Emily's resentment of Walter sprang not so much from his excessive drinking habits, but his autocratic control of the household and those who lived under his command. When Walter refused to allow her to engage in his business affairs, Emily sought refuge in her piano playing, which provided not only solace, but a channel through which to express her resentment at the dispossessed status her husband believed she deserved. Emily's small-scale rebellions reflect her ongoing opposition to her husband's authority, rejecting ideas of the feminine body as an obedient

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[71] "Divorce Court. An Ex-MLA in Trouble, Bradley v. Bradley," *Evening News*, 2 March 1892, 6.
[72] "Bradley v. Bradley. Suit for Judicial Separation," *Australian Star*, 1 March 1892, 6.
[73] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[74] "A Suit for Judicial Separation," *Riverine Grazier*, 4 March 1892, 4; A brief description of the Wyndham Tragedy may be found in "Terrible Tragedy Near Inverell," *The Kiama Independent and Shoalhaven Advertiser,* 2 September 1887, 4.

object upon which the masculine will could be imposed, and revealing how despite subjugation, the individual retains the capacity to express his or her discontent.[75]

A Deplorable Case: A Judicial Separation Granted[76]

When applying for a judicial separation, women could theoretically choose whether to proceed on the grounds of adultery, cruelty or desertion. While Emily had no real choice as to which of the three grounds to deploy, since Walter had neither been unfaithful nor abandoned her, cruelty was in any case most commonly used, and few women bothered with adultery provisions.[77] Hilary Golder's statistical analysis of judicial separation cases concludes that women widely under-utilised its provisions, perhaps because many believed a legal separation would offer only an "inadequate" solution to their marital problems, and wanted to avoid the unrewarding shame of divorce.[78] Since most suits for judicial separation were directed at obtaining sufficient alimony, the prime motivation for most women in braving the humiliation of court proceedings was economic, and Emily Bradley was no exception.[79]

Emily filed her suit for judicial separation in late October 1891, having moved from the family home to a bungalow in Hurstville and left most of the children with Walter. The case was heard before Judge Windeyer in early March 1892, without a jury.[8o] The legal file is substantial pertaining to this first case, and contains detailed affidavits from Emily describing her allegations, and from Walter denying them. Several of the adult Bradley children also provided affidavits in support of either their mother or their father, confirming

[75] Canode, "Thinking the Body," 32.
[76] "A Deplorable Case: A Judicial Separation Granted," *Burrowa News*, 11 March 1892, 2.
[77] Golder, "'A Sensible Investment,'" 127, 357.
[78] Ibid., 308.
[79] Ibid., 356-7.
[8o] "Law" *Sydney Morning Herald*, 4 March 1892, 6.

the divided allegiances which testify to the suit's destructive effect upon family cohesion. The couple's eldest daughter Edith, a "qualified children's nurse," even opposed her mother's application for custody of the younger children and announced her intention to "take charge of her younger siblings" under Walter's roof. Most significantly, the file contains sworn statements from four doctors denying that Emily had ever "suffered from mental aberration" or that they had at any time attended her for "hysterics or delirium," an issue I examine at length in a later section of this chapter.[81]

A substantial proportion of the file comprises extensive detail concerning Walter's assets. Emily commissioned official valuators and estate agents to assess these assets, prefacing the couple's battle over alimony payments. The official estimate of her husband's income and property portfolio was significantly larger than Walter would admit, confirming the wide divergence between male and female assessments of family wealth that typically prevailed for obvious reasons: men sought to minimise the alimony they would have to pay, while women aimed to maximise it.[82] Walter owned a large tract of land in the heart of Randwick, upon which various "rent-producing" properties were situated, while *Sunnyside* was located nearby. Several years before, Walter had retired from auctioneering to concentrate on a hefty real estate portfolio valued at more than £28 000.[83] In today's terms, such assets easily rendered Walter Bradley a millionaire, but he explained that most of the properties were heavily encumbered, and further, that paying for his wife's legal proceedings had drained from the estate some £1000. He also contended that the current economic depression had severely diminished the potential value of such assets.[84]

[81] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[82] Golder, "'A Sensible Investment,'" 248.
[83] "East Sydney Election: Mr. Walter Bradley- Anti-Federation Speech by Sir John Robertson," *The Daily Telegraph*, 7 April 1891, 5; SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley;* Emily hired two independent valuation agents to itemise and value Walter's entire property portfolio. The valuation included detailed maps which proved property borders, land sizes and so on.
[84] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*

To prove Walter's cruelty, Emily began her case by describing various incidents of physical and emotional abuse to which she had been subjected "from about three months after marriage up to the present time." She asked the judge for a "Decree for Judicial Separation," and sought sole and permanent custody of the eight children then aged under twenty-one." She further requested that the judge "make enquiry as to a settlement of certain furniture and property made on her on or about the time of her marriage, and direct that such be given into her possession." Finally, she asked that Walter "be directed to pay for support and maintenance of her and her children," for an amount the judge saw fit.[85]

Despite thirty-two years of marriage, Emily retained strong feelings of ownership towards "her" property and demonstrated a sense of entitlement to those assets and a determination to have them restored, as her requests to the judge convey. (As in cases I have previously investigated, the Bradleys had little or no idea of shared property ownership.) Whilst as a married woman she had long been unable to access any potential benefit from her marriage settlement, Emily harboured a sustained sense of grievance at the loss of her property.

Demonstrating an extensive awareness of business matters, and in particular of property values, Emily argued that because he received *her* share of the proceeds when her father died intestate some fifteen years prior, Walter had been able to purchase real estate now worth more than £4000. At this point, she contended, the property by rights belonged to her. According to Walter, however, the money he received from his father-in-law's estate was simply absorbed into household expenses, and these costs were considerable given the number of children he was supporting. Property settlements made on women typically allowed them to access some form of maintenance in the event of separation, but in Emily's

[85] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*

case, her father's endowment was forever lost to her, despite legal advances which aimed to prevent just such a situation from occurring.[86]

Legal reform relating to property ownership is often touted as one of the most significant legislative changes affecting the status and potential autonomy of women in the Victorian era.[87] The *Married Women's Property Act* of 1882 theoretically allowed women to retain property and derive any potential income it generated. Emily's circumstances suggest, however, that the reform did not allow women to benefit from property which had passed many years prior into a husband's hands. With Emily's father settling property upon her in 1859, by 1891 she had well and truly lost control of her asset. If one of her prime aims in pursuing legal separation was to regain control of what she believed was hers, Emily did not succeed.

On the other hand, because Emily was considered a *feme sole* after her judicial separation, she was legally entitled to any potential income from the estate of her mother, who died in the same year that Emily initiated proceedings.[88] As Emily was at pains to explain to the court, unfortunately, she owned the small shop and adjoining home in Redfern with her brother and sister. Like Walter, her siblings cited the depressed state of the property market as reasons for not wanting to sell, and so Emily was "compelled...to wait their pleasure."[89] Under these circumstances, Emily was without means other than the court-ordered alimony of four pounds per week, and an additional pound per week for each of her two daughters under twelve years of age, whose custody was awarded to her during the

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[86] Griffin, "Class, Gender and Liberalism," 74.
[87] Wingard Lewis, "Visualising Women," 4; Lee Holcombe, "Victorian Wives and Property: Reform of the Married Women's Property Law, 1857-1882," in *A Widening Sphere: Changing Roles of Victorian Women*, ed. Martha Vicinus (Bloomington and London: Indiana University Press, 1980), 3.
[88] The term *feme sole* merely indicated that a woman could be treated legally as though she were not married. Martha Vicinus, "The Single Woman: Social Problem or Social Solution?" *Journal of Women's History* 22, no. 2 (2010): 195. In this case, Emily was now entitled to keep her earnings, own property and enter into legal contracts. For an excellent account of the concept of coverture and *femes sole*, see 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, no.1 (2015): 181-200.
[89] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*

case.[90] Following four days of testimony, Judge Windeyer pronounced Walter Bradley guilty "of what the law regarded as cruelty," granted Emily a judicial separation and alimony, and awarded her the custody of her younger children, with Walter to have access twice a week.[91]

In Divorce. Before Mr. Justice Simpson[92]

Coming into effect on August 5, 1892, only six months after the court formalised Emily's separation, the grounds for divorce widened significantly.[93] One month after this date, Emily lodged her petition for divorce, evidently believing, despite her children's hostile response to such a step, that divorce would grant her "greater relief" than judicial separation. According to Walter's lawyers, however, the relief to which Emily alluded was primarily financial, which led them to suggest that her divorce petition was nothing more than a clever manipulation designed "to get more alimony" from her husband.[94] Walter's legal team further alleged that Mrs. Bradley had been endeavouring "to get her husband put into a lunatic asylum and ...get hold of his property," a reversal of the usual nineteenth century trope whereby a villainous husband plots to have his rebellious wife committed.[95]

Much of the detail within the divorce case file is a repetition of Emily's previous suit. In written affidavits, she describes the same incidents with an identical phraseology relating to her "want of sleep, worry and dread," and Walter's role in causing her prolonged mental suffering.[96] This time, however, she also described at length many details which

[90] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[91] "Divorce Court. An Ex-MLA in Court, Bradley v. Bradley," *Evening News*, 3 March 1892, 5.
[92] "Law Report, Supreme Court Tuesday October 11, In Divorce, Before Mr. Justice Simpson," *Sydney Morning Herald*, 12 October 1892, 4.
[93] J.M. Bennett, "The Establishment of Divorce Laws in New South Wales," *Sydney Law Review* 5 (1963): 247.
[94] "The Bradley Divorce Suit," *Daily Telegraph*, 21 December 1892, 3.
[95] "The Bradley Divorce Suit," *Daily Telegraph*, 21 December 1892, 3.
[96] SRNSW: NRS 13495 [836/1892] *Bradley v. Bradley.*

aimed to prove Walter Bradley's habitual drunkenness.[97] As was common, the file includes considerable financial information about property and maintenance. Unfortunately, the case stalled mid-way over the issue of costs, with Walter's barrister contending that Emily could not expect her husband to pay for her divorce proceedings as she was now legally separated, a claim Justice George Bowen Simpson rejected.[98]

In ceasing to be "Mrs. Walter Bradley," Emily's position in society was under threat, and the scandal attached to being involved in a divorce action and becoming a divorced woman meant inevitable social exclusion.[99] Since she does not appear to have desired remarriage, it is tempting to ask why Emily was prepared to risk the social censure which arose from the inevitable "character assassination" that divorce proceedings entailed.[100] I can only conclude that because legal separation offered a mere suspension of the marital tie, Emily sought instead to achieve its complete rupture, and as great a distance from her husband as was possible. It is also quite clear that Emily sought a more generous alimony payment than she had been awarded in her first suit and wanted Walter to settle some of his property on her.

Ultimately, however, such concerns were irrelevant. As they had done for both Harriet Dorn and Flora Horwitz before her, Emily's divorce proceedings came to a halt and then dragged slowly on, this time as the result of extended appeals from Walter's lawyers over the issue of payment for his estranged wife's legal costs.[101] No doubt exhausted by lengthy legal wrangling, and already suffering ill-health, Walter Bradley died of a stroke in late June, 1893, before the matter of his divorce could be concluded. He was fifty-six years old.[102] Although her response seems difficult to comprehend, at this point Emily assumed

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[97] SRNSW: NRS 13495 [836/1892] *Bradley v. Bradley.*
[98] "Bradley v. Bradley, Proceedings in Divorce. The Wife Applying for Costs," *Australian Star*, 25 November 1892, 5.
[99] McKenzie, *Scandal in the Colonies*, 8.
[100] Ibid., 92.
[101] "Law, Bradley v. Bradley," *Daily Telegraph*, 26 November 1892, 10.
[102] "Death of Mr. Walter Bradley," *Australian Star*, 28 June 1893, 3.

the mantle of a grieving widow, and Walter's numerous obituaries made no mention of his recent involvement in divorce proceedings, or of the issue of judicial separation, instead referring only to his bereaved wife and the many children who mourned his loss.

A Highly Excitable Nature[103]

Written almost fifty years ago, Carroll Smith-Rosenberg's analysis of hysteria remains apt in proposing the dominant view of a woman suffering from the complaint to be that of the "child-woman."[104] Joining with Walter in their efforts to weaken Emily's testimony, those members of her family who opposed her legal action—most of her adult daughters, two sons-in-law and one son—deployed the image of an over-emotional and somewhat deranged woman to characterise the errant plaintiff. Then as now, many viewed as unreliable a woman suffering from a nervous condition and easily discredited her.[105] The topic of Emily's "excitable" and "eccentric" nature arose frequently in both her suit for judicial separation, and her divorce proceedings.

The intense interest in hysteria that those around them demonstrated in both the cases of Harriet Dorn and Emily Bradley suggest how hysteria could function as a weapon, that either the afflicted individual or those surrounding her deployed. For Harriet, hysteria was a genuine medical condition and a viable (albeit unconscious) choice of behaviour providing momentary escape from spousal brutality. For Emily, hysteria was a derogatory term that various family members, including Walter, manipulated to denigrate her testimony and by extension, diminish its validity.[106] Five separate affidavits, which either her children

[103] SRNSW: NRS 13495 [836/1892] *Bradley v. Bradley.*
[104] Smith-Rosenberg, "The Hysterical Woman," 677.
[105] Victoria Bates, *Sexual Forensics in Victorian and Edwardian England: Age, Crime and Consent in the Courts* (UK: Palgrave Macmillan, 2016), 146.
[106] As Carroll Smith-Rosenberg points out, however, it is important to remember that such choices are rarely if ever conscious. Smith-Rosenberg, "The Hysterical Woman," 654.

or their spouses had sworn, used almost verbatim phrasing to describe Emily as excitable, eccentric, suffering from mental derangement and not responsible for her actions in instituting the suit.[107] With Emily's adult son and two sons-in-law among these witnesses, their labelling of her actions as hysterical was a way to substantiate their claims that she was utterly "reckless for the welfare and happiness" of Walter and her entire family.[108]

Hysteria has long been viewed as an affliction affecting predominantly women. Smith-Rosenberg rightly contends that for the women of the nineteenth century, society frowned upon and dismissed as inappropriate such "masculine traits" as an independent, questioning and assertive demeanour.[109] By attempting to engage autonomously in Walter's business affairs and striving to legally separate from him, and in eschewing her domestic chores, Emily Bradley acted in a manner those around her saw as deranged because it diverted so markedly from the feminine norm. British historian Carol Dyhouse goes so far as to argue that a woman who intruded into masculine business affairs was "not just breaching convention" but committing an "indecency, a shaming, polluting form of behaviour." Such an extreme conception of transgressing separate spheres[110] helps to explain the vehemence of Walter's response to Emily's efforts to become involved in his business affairs.

An earlier understanding of hysteria in relation to the "hysterical fit" had by this late stage in the nineteenth century shifted to encompass instead the "hysterical personality type," as British historian Victoria Bates explains. Bates contends that the individual's expression of emotional suffering in a courtroom setting was significantly lessened by any suggestion that she (and Bates is indeed referring to "female over-emotionality") had either

[107] SRNSW: NRS 13495 [836/1892] *Bradley v. Bradley.*
[108] SRNSW: NRS 13495 [836/1892] *Bradley v. Bradley.*
[109] Smith-Rosenberg, "The Hysterical Woman," 652, 655.
[110] Carol Dyhouse, "Mothers and Daughters in the Middle-Class Home, c. 1870-1914," in *Labour and Love: Women's Experience of Home and Family, 1850-1940,* ed. Jane Lewis (Oxford: Basil Blackwell, 1986), 31.

received a medical diagnosis of hysteria, or else was of "a generally emotional nature."[111] To convince the court of her husband's cruelty, in the absence of any evidence proving his physical violence, Emily had to give a convincing performance which left no doubt as to the emotional suffering such alleged cruelty had inflicted upon her. With several "medical men" testifying in both trials, it seems likely that Walter Bradley would have been greatly gratified to have his wife pronounced an hysteric, because the diagnosis would cast significant doubts on her allegations of cruelty.

In her suit for judicial separation, Emily denied suffering from hysteria, other than a brief experience some twenty years prior when she suffered milk fever following childbirth.[112] Walter described repeatedly as "hysterical" Emily's emotional responses to his drunkenness, even claiming her hysteria was at times so extreme, one "medical man" had advised him to keep a bucket of water outside her bedroom door. Furthermore, he alleged, she suffered "from excitement... like hysterical mania to such an extent" that he was "advised by two medical men by whom the Petitioner was professionally attended to have her placed under restraint." Painting himself as martyred and patient, Walter claimed he had instead preferred to "keep" Emily at home and "endure the annoyance himself."[113] Emily thus served as the target of Walter's ridicule, and the talented raconteur regaled the courtroom with derisive anecdotes concerning his "total absteemer" of a wife, with frequent outbursts of laughter greeting his lively recountings.[114]

By thrusting the blame for marital conflict onto Emily, and belittling her extreme temperance views, Walter normalised his excessive intake of alcohol. And by speaking of his wife in this manner, he trivialised Emily's concerns and depicted her as infantile and

[111] Bates, *Sexual Forensics,* 147-9.
[112] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[113] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[114] "The Bradley Case, Suit for Judicial Separation, Conclusion of Respondent's Case," *Daily Telegraph,* 3 March 1892, 3.

immature, thereby hoping to weaken her case. Once again confirming the frequent occurrence of perjury in the colonial courtroom, those same medical men who had earlier sworn affidavits as to Emily's lack of hysteria went on in her divorce suit to furnish testimony contradicting their earlier statements. Whereas the doctors formerly denied ever treating Emily for hysteria or "mental aberration," those same men now claimed Mrs. Bradley could not be held responsible for her actions, owing to her "highly excitable nature."[115] Had Judge George Bowen Simpson reviewed the evidence from Emily's previous suit, he would surely have been struck by the extraordinary about-face.

Much of the scholarship pertaining to hysteria has approached the subject from the point of view of its sufferer, but there is little analysis of how others wielded accusations of hysteria to malign a woman. As American scholar Georgianna Oakley Miller contends, however, doctors and others drew on hysteria as a way to try and control women they characterised as aberrant or transgressive.[116] This kind of effort to constrain unwanted behaviour remains evident in contemporary society. Recent verbal attacks on Swedish climate activist Greta Thunberg and Australian Labor Senator Penny Wong as "hysterical" demonstrate how the rhetorical use of the term remains firmly in play to denigrate women who threaten the status quo.[117]

In the current context, Emily's family regarded as a significant threat to family cohesion her maverick actions in seeking to separate from their father. Walter Bradley perceived as improper and unwelcome his wife's interest in his business affairs, and the neglect of her maternal and domestic duties that he believed such an interest represented. As such, by attributing a state of mental deviance to Emily, those around her tried to control her

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[115] SRNSW: NRS 13495 [722/1891], [836/1892] *Bradley v. Bradley*.
[116] Georgiana Oakley Miller, "The Rhetoric of Hysteria in the U.S., 1830-1930: Suffragists, Sirens, Psychoses," (PhD Thesis, The University of Arizona, 2009), 18.
[117] Camilla Nelson and Meg Vertigan, "Misogyny, Male Rage and the Words Men Use to Describe Greta Thunberg," published online 30 September 2019, https://theconversation.com/misogyny-male-rage-and-the-words-men-use-to-describe-greta-thunberg-124347

potentially threatening conduct. By labelling her as a hysterical woman, they strove to silence Emily and render suspect her legal actions.[118]

Performing the Offices of Nature on the Stairs[119]

Conceptions of matrimonial cruelty were altering by the end of the nineteenth century, but many judges continued to base their decisions on a narrow view of cruelty and demanded evidence of danger to life and limb before they would pronounce a husband guilty. It was therefore a matter for the individual judge to reach a subjective decision as to whether or not cruelty had occurred, and in many instances, judges "turned a blind eye" to evidence of abuse.[120] The following discussion of matrimonial cruelty as it emerged within the Bradley case is based on Emily's suit for judicial separation, which contains the bulk of detail concerning Walter's misconduct, and is repeated in her divorce proceedings.

Emily was fortunate in her first suit to find William Windeyer at the bench. Windeyer was a known supporter of women's rights—Judith Allen points out that he was often referred to as "the woman's judge," while Hilary Golder goes so far as to suggest he possessed "feminist credentials"—and his view was liberal concerning matrimonial cruelty.[121] In granting Emily her judicial separation, Windeyer remarked that "fortunately, public opinion had influenced the courts...and the narrow view of cruelty taken...had succumbed to the growth of common feelings of humanity."[122] As a consequence of the widening perception of matrimonial cruelty, a wife was considered justified in withdrawing from the home if her husband's conduct was "of a violent character and...calculated to

[118] As Oakley Miller argues, doctors believed that hysteria affected the brain, which further substantiated their belief that women were not suited to public life. Oakley Miller, "The Rhetoric of Hysteria," 47.
[119] "Bradley v. Bradley, Suit for Judicial Separation," *Australian Star*, 1 March 1892, 6.
[120] James, "A History of Cruelty in Australian Divorce," 22-3.
[121] Allen, *Sex & Secrets*, 54; Golder, "'A Sensible Investment,'" 237.
[122] "Divorce Court, An Ex-MLA in Court, Bradley v. Bradley," *Evening News,* 3 March 1892, 5.

injure her health."[123] Armed with this new and broadened legal perspective, the judge concluded that Walter Bradley's "violence of demeanour and language...had established a genuine state of alarm and terror in the mind of his wife."[124]

It is difficult to deny that Emily's allegations as to her husband's marital misconduct appear relatively mild when compared to the nefarious behaviours of many other men who appear within the divorce archive. Walter drank to the extent that he was "a perfect sot," and used language so "fearful," that Emily could not bring herself to repeat any of it in court, instead requesting paper on which to write "a specimen" for the judge. She further alleged that his personal habits were so "dirty and disgusting" that here too, she could not mention them aloud, other than to contend that at one point in his drunken confusion, Walter had "performed the offices of nature" upon the carpet and stairway.[125]

While Emily attributed the couple's ongoing marital conflict to Walter's excessive drinking, which frequently brought about his eruptions, he countered that marital difficulties arose because she "was always quarrelling and challenging" him.[126] During divorce proceedings, he attributed most of their marital "misunderstandings and quarrels" to Emily's difficult behaviour, and suggested she initiated legal proceedings for the second time as part of an ongoing vendetta to ruin him.[127] Convinced of his masculine right to do so, Walter admitted he drank and used "colourful" language, but denied such behaviours were excessive, or harmful in any way to either himself or anyone else. As cultural practices to which he was demonstrably attached, Walter Bradley's unbridled drinking and swearing were to Emily profoundly disturbing and offensive.[128] With each partner convinced they

[123] "Divorce Court, An Ex-MLA in Court, Bradley v. Bradley," *Evening News*, 3 March 1892, 5.
[124] "A Deplorable Case: A Judicial Separation Granted," *Burrowa News,* 11 March 1892, 2.
[125] "Bradley v. Bradley Suit for Judicial Separation," *Australian Star*, 1 March 1892, 6.
[126] "Bradley v. Bradley, Suit for Judicial Separation, Interesting Evidence by Respondent, Temperance and Auctioneering," *Australian Star*, 2 March 1892, 5.
[127] "Bradley v. Bradley. Application for Costs," *Australian Star*, 20 December 1892, 6.
[128] Lake describes the role of men's "cultural practices" in engendering accelerating conflict between the sexes. Lake, "Historical Reconsiderations IV," 122.

were in the right, the couple transported their gendered conflict into the Divorce Court, where it underwent a painful process of dissection beneath a public spotlight.

Walter's excessive drinking undeniably caused much unhappiness within the family. Writing from the Blue Mountains to her eldest daughter Edith in 1883, Emily begged her to "try and pluck up courage and prevent (her father) taking more than three glasses a day."[129] Some years later, another daughter wrote that although she had been advised "to take porter," she was "not likely to take daily what is the cause of so much misery now in our family."[130] Taking the stand to testify against her father, the junior Emily deposed that her father "used to drink as much as he could." She recounted an occasion on which, holidaying in Lithgow, he went on a drunken rampage, forcing her mother to go to town and "try and get an order to restrain the publicans from selling drinks" to him.[131]

In 1980, Australian historian Anthony Dingle investigated the key role that "strong drink" has played in the nation's history, observing the close relationship in the national culture between masculinity and alcohol consumption.[132] Dingle remarks upon the confounding of high levels of alcohol consumption with strident masculinity, an observation that is similarly borne out in Walter Bradley's courtroom assertion of the connection between his drinking and his career success.[133] For Walter, manliness involved close homo-social relationships with business and sporting peers, and a vigorous philanthropic bent, as evidenced by his contribution to the colony's bird and animal species.

Walter's manliness, however, simultaneously involved a rejection of the feminine. As Marilyn Lake has argued, in the crisis between the sexes which characterised the 1890s, a celebration of masculine freedom equally comprised a rejection of the domestic

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[129] Letter from Emily to Edith Bradley, 29 July 1883, personal collection of Suzanne Mackay.
[130] Letter from May to Edith Bradley, 18 December, year unknown, personal collection of Suzanne Mackay.
[131] "Bradley v. Bradley, Suit for Judicial Separation," *Australian Star*, 1 March 1892, 6.
[132] A.E. Dingle, "'The Truly Magnificent Thirst:' An Historical Survey of Australian Drinking Habits," *Australian Historical Studies* 19, no.75 (1980): 227.
[133] "Bradley v. Bradley, Suit for Judicial Separation. Interesting Evidence by Respondent. Temperance and Auctioneering," *Australian Star*, 2 March 1892, 5.

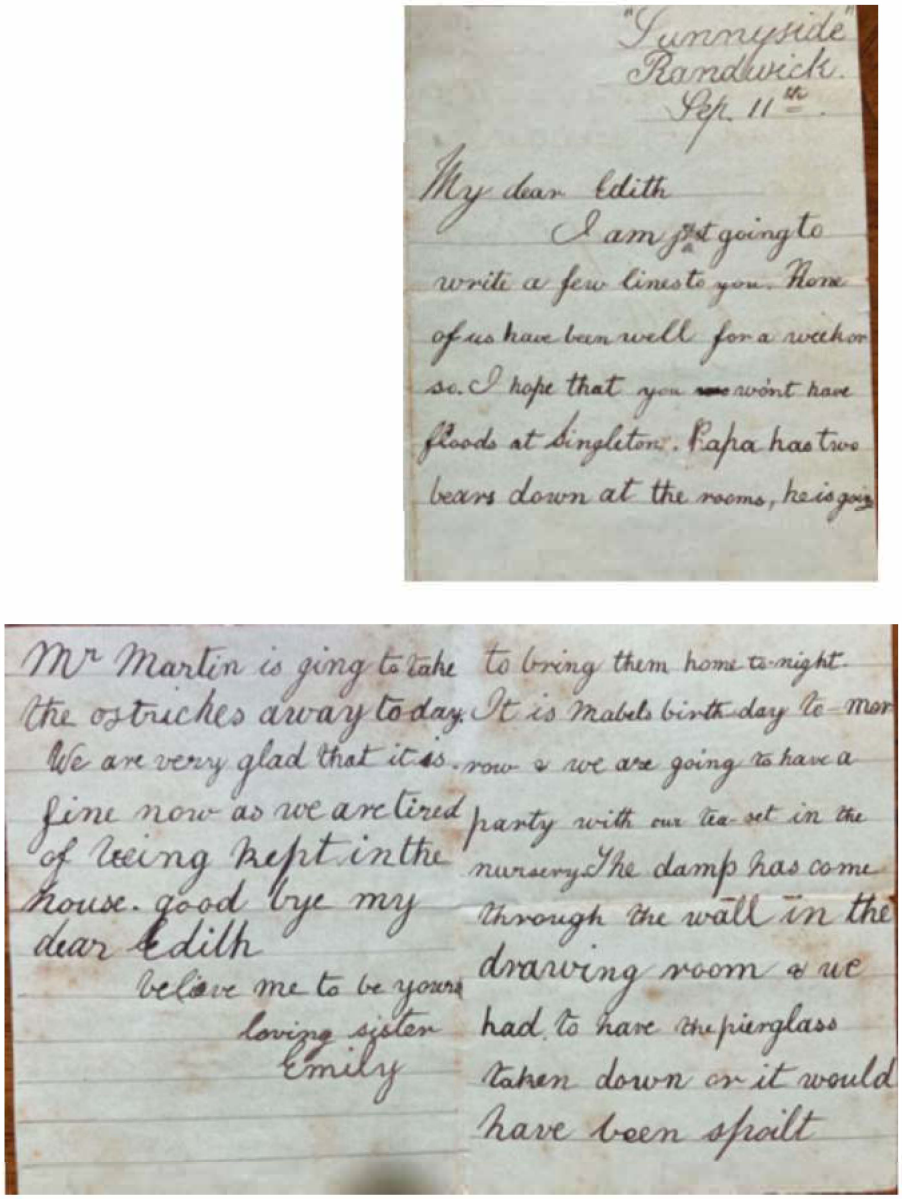
sphere as "emasculating and confining," whereby women became "the enemy."[134] Throughout the documents in the Bradley case(s), Walter's positioning of Emily as "the enemy" is revealed in his ongoing disparagement of her as inept, hysterical and a wowser. In many ways, therefore, Walter Bradley may be identified as an elite version of Russel Ward's Bushman, "masculine, anti-domestic and muscular."[135]

Many scholars have pointed to the role of male vice in inspiring feminine and feminist opposition, and its foundational importance in the suffrage campaign when first wave feminists articulated male privilege and vice as particularly destructive to women and children.[136] Within the sources in the Bradley case, two depictions of the one event encapsulate how male privilege could exist with little thought for others. In making decisions in the context of his extra-curricular activities, Walter displayed little concern for his wife's sensitivities, as the following vignette demonstrates.

Among his many ornithological achievements, Walter Bradley is credited with importing Australia's first ostriches from Durban in South Africa.[137] Having nowhere to house the birds before they were taken to a zoo, he installed them in the gardens at *Sunnyside*, where the ostriches roamed free.[138] As one of the younger Bradley girls wrote to an older sister, the children were confined indoors for days because the new arrivals had taken possession of the garden, the children's usual play area. Consider Emily's state of mind at this turn of events, locked inside her home with a large family of energetic children to entertain and control, while Walter went about his daily affairs and enjoyed his wide-

[134] Marilyn Lake, "Women and Nation in Australia: The Politics of Representation," *Australian Journal of Politics and History* 43, no.1 (1997): 42.
[135] Martin Crotty, "Making the Australian Male: The Construction of Manly Middle-Class Youth in Australia, 1870-1920," (PhD Thesis, University of Melbourne, 1999), Abstract; Russel Ward's *The Australian Legend*, first published in 1958, promoted the ideal of a unique Australian type (male), known as the Bushman. Marilyn Lake deconstructs this masculine stereotype in her denunciation of androcentric Australian historical inquiry. Lake, "Historical Reconsiderations IV," 116-131.
[136] Ibid., 127.
[137] Randwick and District Historical Society, "Walter Bradley."
[138] Letter from May Bradley to Edith Bradley, 1883. Personal collection of Suzanne Mackay.

ranging interests in the stimulating world of public engagement. Is it any wonder she sat at the piano singing, rather than attending to domestic duties?[139]



"Sunnyside"
Randwick.
Sep. 11th.

My dear Edith
I am just going to write a few lines to you. None of us have been well for a week or so. I hope that you ~~are~~ won't have floods at Singleton. Papa has two bears down at the rooms, he is going to bring them home to-night. It is Mabels birth-day to-morrow & we are going to have a party with our tea-set in the nursery. The damp has come through the wall in the drawing room & we had to have the pierglass taken down or it would have been spoilt

Mr Martin is going to take the ostriches away to-day. We are very glad that it is fine now as we are tired of being kept in the house. good bye my dear Edith
believe me to be yours
loving sister
Emily

Image 3.8 Letter from Emily Bradley junior regarding the ostriches, undated. Personal collection Suzanne Mackay.

[139] "Bradley v. Bradley," *Evening News*, 2 March 1892, 6.

Was she not a Good Business Woman?[140]

Alana Piper's recent investigation of domestic violence in colonial society reveals the incendiary nature of financial decision-making in many marriages, based on those relationships already were on foundations of economic inequality.[141] Piper observes that questioning a man's financial management was generally "a dangerous business."[142] While conflict over money within the Bradley union did not lead to physical violence, financial decisions and actions were the main issue over which the couple did battle. Emily's ongoing challenge to Walter's financial control often led to violent outbursts on his part which she experienced as threatening, even though inanimate objects were the chief target of his aggression.

Despite Walter's obvious displeasure at her doing so, Emily was eager to become involved in his commercial affairs. Prevailing norms dictated that most women were content to leave such matters to their husbands, but Catherine Bishop's investigation of married businesswomen some years before the Bradley case suggests that while middle-class women did not typically involve themselves in economic activities, it was not unheard of them to do so.[143] Emily's efforts to increase Walter's assets were frustrated primarily not by ideology or law, but by his unwillingness to acknowledge her as a potential business partner, a wish which was on her part as unrealistic as it was futile.

In a society which remained undeniably dominated by the power and authority of men, Walter viewed as meddlesome and annoying Emily's various efforts to engage with his business (primarily his real estate portfolio) and was quick to override her if he felt she

[140] "Bradley v. Bradley, Suit for Judicial Separation, Evidence by Respondent, Temperance and Auctioneering," *Australian Star*, 2 March 1892, 5.
[141] Piper, "Understanding Economic Abuse," 37.
[142] Ibid., 44-5.
[143] Judith Allen, "The 'Feminisms' of the Early Women's Movements, 1850-1920," *Refractory Girl* (March 1979): 10; Bishop, "When Your Money is Not Your Own," 181-200.

had exceeded her limited authority. His opposition to Emily's involvement was highly evident when she arranged to have built a veranda on one of the properties, to make it habitable. When she began to supervise the renovation, Walter made "a good deal of trouble" and ordered that she desist.[144]

That a genteel wife should attempt to engage with such masculine prerogatives in direct contradiction of her husband's wishes is impressive, given the intensive social conditioning aiming to persuade the elite woman that maternal, wifely and domestic satisfactions should provide her only fulfilment.[145] Despite possessing neither autonomy or empowerment, Emily often acted in an autonomous and empowered manner. Although she asserted the right to be acknowledged as Walter's rightful business partner, however, the incident confirms yet again that it was he who had the final say. While Emily saw such activities as a way to supplement the family coffers, Walter regarded her efforts as interfering. As Piper points out, while women may manage finances, it is men who control those finances, and have the final say as to how household monies should be spent.[146]

The key to understanding Emily's keen interest in Walter's business affairs may have lain in her fear that his excessive drinking posed a threat to the family's financial stability. Walter himself admitted that his wife "was always afraid the money was going," and encouraged him to "plant it in building societies" and the likes, but he would have none of it.[147] Emily explained how she had managed Walter's books for many years, and had an aptitude for such activities. Like those working-class women of whom English historian Elizabeth Roberts writes, Emily was for the most part the family's financial manager, and responsible for allocating household funds.[148] She was typical of many other elite women at

[144] SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[145] Allen, "The 'Feminisms,'" 10.
[146] Piper, "Understanding Economic Abuse," 47.
[147] "The Bradley Case, Suit for Judicial Separation, Conflicting Testimony," *Daily Telegraph*, 2 March 1892, 3.
[148] Elizabeth A.M. Roberts, "Women's Strategies, 1890-1940," in *Labour and Love: Women's Experience of Home and Family, 1850-1940* (New York: Basil Blackwell, 1986), 226.

this time in that, as the mistress of the house, she assumed responsibility for the considerable sums necessary to run the establishment.[149] Walter explained to the court that he gave Emily between eight and fifteen hundred pounds per year for household spending, in addition to lump sums at her request (usually when he was inebriated). His revelation of such a vast amount caused an audible gasp to ripple throughout the courtroom.[150]

The tenuous and indeed illusory nature of Emily's financial power becomes abundantly clear in her admission that Walter wrested the keys to the household from her when he discovered she intended to sue for judicial separation. In this context, the household keys serve as an important metaphor for the gendered nature of power in the late nineteenth century marriage, as I mentioned briefly in the Horwitz case. Considering their symbolic role in Victorian fiction, literary scholar Elizabeth Langland suggests that household keys served as "the symbol of (the middle-class woman's) authority, the tool of her management, and the sign of her regulatory power and control."[151] The symbolism of the keys is immediately evident in Emily's account of how after removing them from her, Walter had handed the keys to their daughter Mabel, who in her newfound sense of empowerment began to treat her mother with hostility. Walter's deceptively simple act reveals that domestic power and authority remained the prerogative of the family patriarch, and were ultimately his to allocate as he saw fit.[152] Among other functions, the keys represented which of the women in the home would be "allowed" to manage household finances and servants.[153] Necessary to open a range of locked store cupboards and rooms, the

[149] Doggett, *Marriage, Wife-Beating and the Law*, 94.
[150] "The Bradley Case, Suit for Judicial Separation, Conclusion of Respondent's Case,"
[151] Elizabeth Langland, "Nobody's Angels: Domestic Ideology and Middle-Class Women in the Victorian Novel," *Publications of the Modern Language Association* 107, no.2 (1992): 299.
[152] As James Hammerton suggests, marital power at this time was "modified, without being abandoned." Hammerton, *Cruelty and Companionship,* 7; Judith Allen similarly contends that men enjoyed an unchallenged authority in the conjugal relationship. Allen, "Invention of the Pathological Family," 7.
[153] Diana Otilia Cordea, "The Victorian Household and Its Mistresses: Social Stereotypes and Responsibilities," *Journal of Humanistic and Social Sciences* 2, no.4 (2011): 12.

keys were an essential element in the maintenance of domestic power. Without them, Emily was belittled, humiliated and disempowered.

Epilogue: The Wife of Walter Bradley

Laid to rest in the ground precisely forty-four years after the sudden death of her husband, Emily Bradley's headstone states in prominent gold lettering that she was the "Wife of Walter Bradley."[154] It appears that Emily rewrote the history of her troubled marriage, and wiped from her memory both lengthy and arduous legal actions she herself had initiated. I cannot explain this sudden about-face other than to conclude that upon the death of her husband, Emily felt considerations of status and social class should outweigh personal motivations.[155] Perhaps her children put pressure on their mother: letters between two of Emily's daughters confirm that her conduct had "won no friends."[156] The stigma was still substantial attached to divorce, and given that the marriage remained intact, Emily may simply have decided to move on as though nothing had taken place to suggest otherwise.

The insurmountable gulf between husband and wife, and the permanent rift that legal machinations wrought within the family emerge tellingly, however, in the burial arrangements made for the couple and several of their offspring. While Emily and two of her unmarried daughters are buried in the Field of Mars Cemetery at Ryde in Sydney, Walter is interred in the family vault at Randwick, alongside the couple's infant son Alfred and eldest daughter Edith.[157] When Emily died in 1937, a geographical distance of twenty-

[154] Field of Mars Cemetery, Plot K/102, Grave of Emily Bradley; Walter Bradley died on 27 June 1893, while Emily died on 29 June 1937.
[155] As Penny Russell contends, these considerations were of inordinate value to the elite women. Russell, "'For Better and For Worse,'" 12.
[156] Letter from May to Constance Bradley, personal collection of Suzanne Mackay.
[157] Edith Bradley died of typhoid fever in 1901 at the age of forty-two. "Family Notices," *Sydney Morning Herald* 30 December 1901, 1.

five kilometres was a considerable obstacle, confirming that Walter and Emily Bradley remained decidedly separated from one another, in death as in life.

Emily's circumstances suggest that the relative freedoms modernity theoretically offered to women were often too late for the older woman to take full advantage of their potential benefits. Most importantly, the case suggests that modernity offered its advantages primarily to the unmarried or childless woman, who answered only to herself. In attempting to create a sphere of influence beyond her narrow domestic circumstances, Emily faced an overwhelming combination of life-long financial dispossession, the demands of upper-class feminine gentility and the needs and demands of her numerous progeny. Together these forces defeated her efforts to forge an independent existence which did not centre on her maternal and marital role.

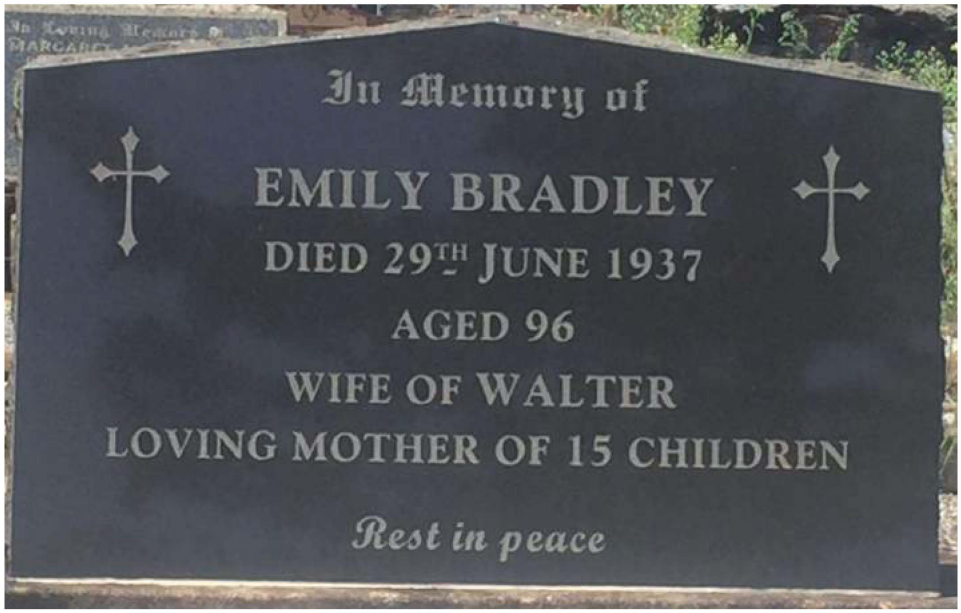
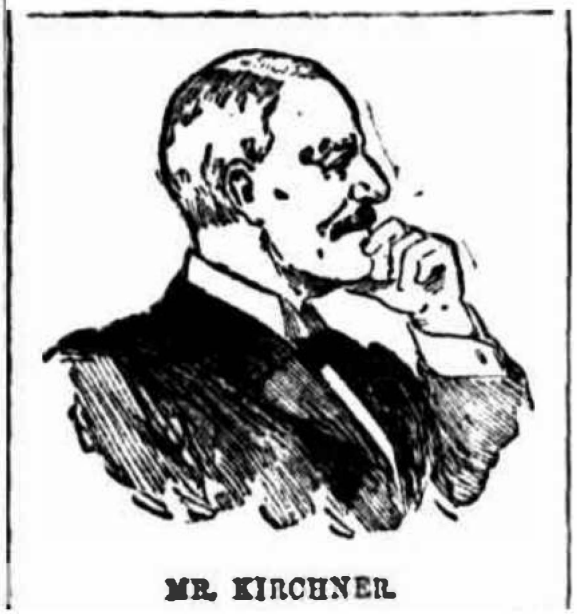


Image 3.9 Emily's grave at Macquarie Park Cemetery and Crematorium. Photograph courtesy of Livia Gerber.

Chapter Four—*Kirchner v. Kirchner* 1898: A Disciple of Madame Blavatsky[1]



Images 4.1, 4.2 and 4.3

Court drawings of the three key actors in *Kirchner v. Kirchner.* (McMaster is written incorrectly). Unfortunately, this is the only image of Catherine I have found.

"Doings in Divorce. Kirchner v. Kirchner. The Blue Ribbon and Palmistry," *Truth*, 25 September 1898, 6.

[1] State Records NSW: Supreme Court of New South Wales, NRS 13495, Divorce Case Papers 1873-1978 [2913/1898], *Kirchner v. Kirchner*) hereafter SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

Image 4.4 Catherine's barrister Alfred Shand and Augustine Betts, her solicitor in Goulburn.

"Doings in Divorce. Kirchner v. Kirchner. The Blue Ribbon and Palmistry. Heavy Damages Claimed." *Truth*, 25 September 1898, 6.

Introduction

Following the funeral in Sydney of her beloved mother Margaret in late April 1893, Catherine Kirchner returned home to the inland town of Goulburn, where her husband William and three young children awaited.[2] She brought with her from the city several recently purchased books concerning theosophy, a philosophical and religious movement gaining popularity across the Anglophone world and boasting such prominent supporters as

[2] According to a brief obituary, "the beloved mother of Mrs. W. Kirchner" died of "senile decay" at Catherine's Goulburn home, but the body was taken to Sydney for burial. On the first anniversary of her death, Catherine inserted a memorial notice grieving the loss of her "beloved mother." "Obituary," *Goulburn Herald*, 6 March 1893, 3; "Family Notices," *Sydney Morning Herald*, 5 March 1894, 1.

British activist Annie Besant, Australian politician Alfred Deakin and even former Divorce Court judge William Windeyer, who features in each of the previous case studies.[3]

Upon arriving home, Catherine admitted to "a deep study of the creed," and informed her husband that she too had become "a disciple of Madame Blavatsky." As a consequence of her newfound direction, she explained to William, "their intimate associations must cease": to do otherwise would deplete her "animal magnetism" and impede her latent capabilities as a seer and reader of the crystal ball.[4] Four years later, living in Sydney and known to all as "Madame Hygeia," an emboldened Catherine wrote to William that although "willing to be friendly," "my own road I shall go."[5]

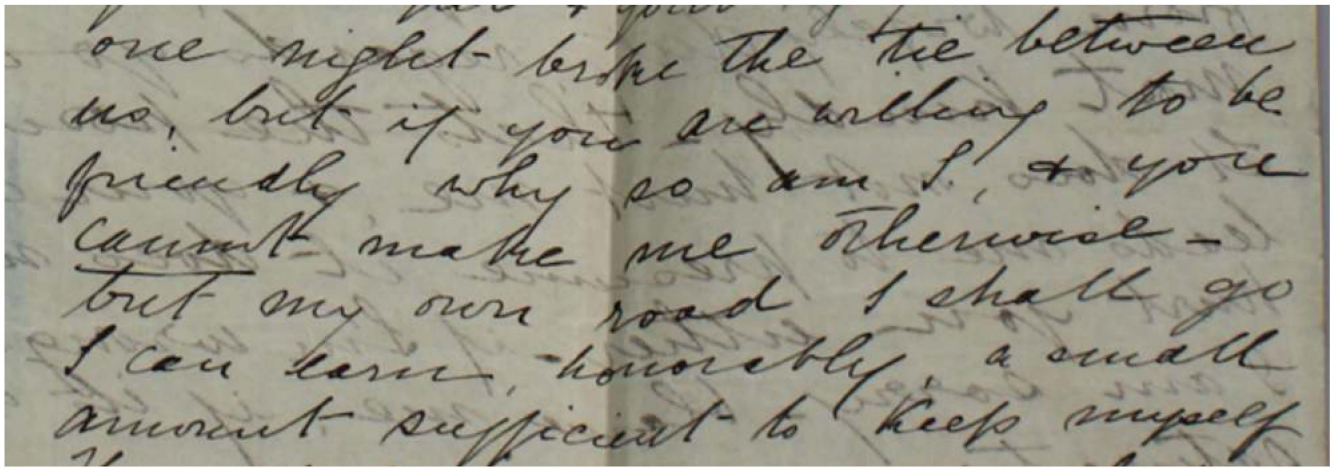

once might break the tie between
us, but if you are willing to be
friendly why so am I, & you
cannot make me otherwise –
but my own road I shall go
I can earn, honorably, a small
amount sufficient to keep myself

Image 4.5 Part of Catherine's five-page letter to William, in which she announces her intention to lead her own life.

Letter from Catherine to William Kirchner, 30 August 1897, SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

[3] "Theosophy and Divorce: Kirchner v. Kirchner, Narrative of the Petitioner," *Australian Star*, 20 September 1898, 7.
[4] "A Victim to Theosophy," *The Argus*, 20 September 1898, 5; According to Australian scholar Jill Roe and others, Helene Blavatsky, Henry Steel Olcott and "fourteen others" founded theosophy in 1875. Jill Roe, *Beyond Belief: Theosophy in Australia, 1879-1939* (Kensington NSW: New South Wales University Press, 1986), 1; SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[5] I can find no explanation of how Catherine arrived at this name, but Hygeia was the Greek goddess of health and for many years between at least 1886 and 1931, the pseudonym of a newspaper columnist who wrote a weekly column about "health, exercise and simple home treatments" in major newspapers throughout the colonies. For example, "Chapters on Health, by Hygeia," *The Age*, 9 October 1886, 13; "The Road to Wellville, Conducted by Hygeia," *Daily Herald*, 2 November 1920, 3; Letter from Catherine to William Kirchner, dated 30 August 1897, SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner*

Revealing an unusually egalitarian marriage *and* adulterous relationship, the archival sources in *Kirchner v. Kirchner* suggest what literary scholar Ann Heilmann describes as "a radically new script for heterosexual relations."[6] In vowing to live independently, Catherine asserted the right to selfhood and autonomy, those decisive features of modern womanhood.[7] In this chapter, I trace the implications for the Kirchner marriage of such a transformational blueprint, and its influence on Catherine's decision to live as self-governing. I chart the obstacles she faced in attempting to do so, and examine her love affair with Oswald McMaster, who in January 1900 became her second husband.[8]

The Kirchner case presents a unique opportunity to investigate the role expansion that spiritualism allowed one woman in colonial NSW. Historical investigations of the psychic realm suggest that mediumship and spiritualism could offer women a sense of liberation from Victorian constraints, although such works pertain predominantly to British and American contexts.[9] Other research within the broad field of occult studies points to the role of *fin de siecle* anxiety in engendering fascination with the unknown, and confirms that the 1890s saw intense public interest in the mystical.[10] With these considerations in mind, I examine the complex role that spiritualism played in developing Catherine's empowered selfhood, and consider how by living "in the guise of a palmist" as Madame Hygiea, she attempted to surmount those gender constraints which continued to stifle the potential for women's autonomy.[11]

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[6] Ann Heilmann, "Feminist Resistance, the Artist, and 'A Room of One's Own' in New Woman Fiction," *Women's Writing* 2, no.3 (1995): 291.
[7] Talia Schaffer, "Nothing But Foolscap and Ink: Inventing the New Woman," in *The New Woman in Fiction and in Fact* eds. Angelique Richardson and Chris Willis (Hampshire: Palgrave, 2001), 39.
[8] Queensland Births, Deaths and Marriages, Marriage Certificate *Catherine Jane Wilson and Oswald McMaster* [1900/C323].
[9] See in particular Alex Owen, *The Darkened Room: Women, Power and Spiritualism in Late Victorian England* (London: Virago Press, 1989) and *The Place of Enchantment: British Occultism and the Culture of the Modern* (Chicago and London: University of Chicago Press, 2004).
[10] Owen, *The Place of Enchantment*, 4, 7.
[11] "Interesting Divorce Suit, Kirchner v. Kirchner, A Disciple of Madame Blavatsky," *Australian Star*, 19 September 1898, 5.

To further examine key issues of feminine empowerment and autonomy, I ask what factors within a rapidly changing society allowed Catherine Kirchner to establish herself in business, to engage independently in diverse legal and commercial activities, and to earn an adequate living. I analyse the complex nature of marital and extra-marital intimacy in Catherine's relationships with her husband and her lover, acknowledging that intimacy may be both oppositional and contradictory. As Leonore Davidoff observes of family ties, while intimacy implies relationships based on close emotional, physical and sexual connections, it may equally involve the exercise of "power and control." In this way, intimacy is potentially fraught with possibilities for coercion and conflict.[12]

Those power relations inherent in intimacy are key to understanding the vexed nature of gender relations in the late nineteenth century, particularly if we acknowledge the 1890s as a time of intense conflict between the sexes in relation to gender roles and rights.[13] In the current context, I investigate the intimacies of the Kirchner marriage and Catherine's extra-marital liaison, to trace how broad societal changes for women effected alterations in that elusive realm of "the personal and the private."[14] My overarching goal remains to extend our understanding of intimacy in a by-gone era.

The Squatters' Daughter and the German Consul's Son

Catherine Jane Wilson was born in late February 1859, the eldest of five surviving children. Her father Samuel migrated in 1840 at the age of twenty-six from Scotland to Australia, where he rapidly established himself in Melbourne and Geelong as a

[12] Davidoff et al., *The Family Story*, 4-5.
[13] Lake, "Historical Reconsiderations IV," 116.
[14] Angela Woollacott, *To Try Her Fortune In London: Australian Women, Colonialism and Modernity* (New York: Oxford University Press, 2001), 184.

successful timber importer, before entering into several substantial squatting agreements.[15] Catherine's Irish mother, Margaret Jane Reid, arrived in the colonies as a ten year old child in 1848, and was more than twenty years her husband's junior, once more reflecting the significant age difference between husband and wife which, as I mentioned in Chapter One, was common.[16] The Wilsons owned a large grazing property in Victoria known as Lima Station, and registered Catherine's birth in nearby Geelong.[17] In 1879, the family also purchased Lake Cowell Station in the Forbes district, where they developed a firm reputation for new and innovative pastural techniques.[18] Their extensive property ownership confirms that the Wilsons belonged to an elite body of colonial landowners, and suggests that within a close-knit community, Catherine's life prior to marriage was privileged and stable.

A similar experience of stability, unfortunately, was not to characterise Catherine's adult life. In late February 1881, the "Reverend Mr. Rodda" married Catherine Jane Wilson and William Gustave George Kirchner at the Wilson family home on Lima Station, according to the rites of the Church of England.[19] There is no record of how the couple met. Born in 1851, Kirchner was the son of a German migrant, Karl Ludwig Wilhelm Kirchner (known as Wilhelm) and native-born Frances "Fanny" Stirling. Although he was born in Sydney, William spent much of his childhood in the Northern Rivers town of Grafton, and was educated at schools there and "on the continent," where his father was heavily invested in German migration to New South Wales and Queensland: Wilhelm Kirchner is generally credited with developing a bounty scheme for German workers to the

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[15] "Death of Mr. Samuel Wilson," *Wagga Wagga Advertiser*, 25 May 1901, 2; When Catherine's brother Samuel junior died in 1935, one of his obituaries referred to "the highest esteem" in which "the clan of Wilson" was held in the district of Lake Cowell. "Passing of Pioneer, Samuel Wilson, Father of Member for Dubbo," *The Dubbo Liberal and Macquarie Advocate*, 28 November 1935, 2.
[16] Kingston, *My Wife, My Daughter and Poor Mary Anne,* 97, cited in Allen, Sex & Secrets, 4.
[17] "Mr. S. Wilson," *Sydney Morning Herald*, 26 November 1935, 16; Victorian Births, Deaths and Marriages, Birth registration] *Catherine Jane Wilson*, [7894/1859].
[18] In 1893, Catherine's brother Samuel was awarded a gold medal in wool production at the Chicago Exhibition in the United States. Some years before, at only seventeen, he had taken over management of the family property. "Mr. S. Wilson," *Sydney Morning Herald*, 26 November 1935, 16.
[19] "Interesting Divorce Suit, Kirchner v. Kirchner, A Disciple of Madame Blavatsky," *Australian Star*, 19 September 1898, 5.

colonies.[20] Serving at one time as Sydney's Consul to Prussia and Hamburg, from the late 1840s the senior Kirchner travelled regularly to and from his homeland, acting as an immigration agent to promote German travel when the end of convict transportation saw a dire shortage of labour in NSW, and migration schemes extended to include those of European origin.[21]

By the 1890s, the German colonial community was diverse and well-established, becoming possibly the first successful group of non-British settlers. Confirming Wilhelm Kirchner's achievements on behalf of his compatriots, many Germans here would later attribute the success of German migration to the colonies almost solely to his efforts.[22] As a further claim to distinction, the elder Kirchner served as patron for the doomed explorer Ludwig Leichhardt, and on behalf of his fellow migrants, mustered considerable financial support for Leichhardt's expeditions.[23] Kirchner's son William thus stemmed from a respectable and well-assimilated migrant body, and a distinguished progenitor.

William and Catherine Kirchner began their married life together at a small and well-known hotel in Sydney's Wynyard Square, before renting "private homes" in Randwick and Waverley, their sole tenancy at this stage suggesting a degree of prosperity.[24] Under a "family arrangement," Catherine was entitled to a one-sixth share of and received a small income from the Lake Cowell property, which later proved invaluable in keeping the bailiff at bay.[25] Although the *Married Women's Property Act* 1879 was limited in its applications, as the case of Emily Bradley reveals, the facts of Catherine's family income suggest that it had

[20] NSW Death Registration Transcription *William George Kirchner* [12092/1935]; SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner*; www.germanaustralia.com/e/kirchner.htm
[21] "German Emigration," *Sydney Morning Herald*, 10 September 1858, 11; www.germanaustralia.com/e/kirchner.htm; State Records NSW "German Migration Stories," www.records.nsw.gov.au/archives/collections-and-research/guides-and-index/stories/german-migration-stories
[22] Stefanie Everke Buchanan, "'I Expected Something Else:' Germans in Melbourne," *Space and Culture* 10, no.3 (2007): 332.
[23] Renee Erdos, "Leichhardt, Friedrich Wilhelm Ludwig (1813–1848)," Australian Dictionary of Biography, National Centre of Biography, Australian National University, http://adb.anu.edu.au/biography/leichhardt-friedrich-wilhelm-ludwig-2347/text3063, published first in hardcopy 1967, accessed online 24 January 2020.
[24] "Pfahlert's Hotel," *Evening News*, 26 October 1886, 3.
[25] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

some benefits if a wife continued to exercise control over her assets, rather than allowing her husband to manage or subsume the property.[26]

The Kirchners had three children. Lucina Dorothy was born in 1882, Margaret (known as Marjorie) in 1886, and William Alex (known as Willie) in 1891.[27] There is no mention within the sources of miscarriage, abortion or stillbirth, but the wide spacing of births and a child-bearing period of only nine years in Catherine's case was below the average of 11.6 years.[28] It is likely that a woman who prided herself on her progressive outlook would practise contraception and resort to abortion when the former failed, with such practices common.[29] In her extraordinary fertility, Emily Bradley thus emerges as distinctly atypical amongst my subjects.

The Kirchner Marriage: A Varied Engagement with Business

Together, William and Catherine undertook many and varied efforts to become prosperous. These efforts reflect the uncertain economic climate of the late nineteenth century, the role of inherited money and property in economic survival, and the lengths to which a middle-class woman was sometimes forced to make ends meet. When viewed in combination, such attempts further confirm Catherine Kirchner as a woman in possession of

[26] Hilary Golder and Diane Kirkby, for example, argue that "economic citizenship" for married women was nowhere near as progressive or liberating as scholars often assume. Hilary Golder and Diane Kirkby, "Married Women's Property and the Question of Women's Economic Freedom in Colonial Australia," in *Citizenship, Women and Social Justice: International Historic Perspectives*, eds. Joy Damousi and Katherine Ellinghaus (Parkville, Vic: Dept. of History, University of Melbourne and Australian Network for Research in Women's History, 1999), 107.
[27] NSW Births, Deaths and Marriages, Birth Certificates *Lucina F.S. Kirchner* [7663/1882]; *Margaret A.S.M. Kirchner* [10446/1886]; *William M.C.H. Kirchner* [25736/1891].
[28] Margaret Anderson, "No Sex Please, We're Demographers: Nineteenth Century Fertility Decline Revised," in *Citizenship, Women and Social Justice: International Historic Perspectives*, eds. Joy Damousi and Katherine Ellinghaus (Parkville, Vic: Dept. of History, University of Melbourne and Australian Network for Research in Women's History, 1999), 254.
[29] Australian scholars Margaret Anderson and Alison Mackinnon suggest that between 1875 and 1900, Australian women practised frequent contraception and abortion. Margaret Anderson and Alison Mackinnon, "Women's Agency in Australia's First Fertility Transition: A Debate Revisited," *The History of the Family* 20, no.1 (2015): 9.

considerable financial initiative, and one who did not shy from hard work. Of equal significance, the couple's investment manoeuvres demonstrate a surprisingly shared sense of emotional and practical investment, and in this regard as in others, the Kirchners were unusual.

William Kirchner's career choices were equally manifold and varied, and before marriage began with operating a general store in the inland NSW town of Wellington. When the store failed, he found employment as a civil servant in the "Money Department," but resigned "a couple of days" after his marriage to establish "a hardware business" with his brother Edward, a move towards which either Catherine's father or brother contributed financially.[30] For several years *E. Kirchner and Co*. thrived, but by 1887 had fallen away to a mere "Bulk Stores" in Charlotte Place, the centre of Sydney.[31]

Following William's venture into hardware, he and Catherine invested together in "a soda-water manufactory at Newcastle." When the "Ice and Aerated Water Company" closed in 1888, their inability to pay £236 for one hundred gross of glass bottles saw the Kirchners sued successfully for the full amount owing.[32] Catherine then obtained a position as a domestic servant in a boarding house. In the following year, "having failed in business in the city owing to the commercial depression," the Kirchners opened their own boarding houses first at Dawes Point, and then in Fort Street.[33] Displaying a distinct lack of male hubris, William admitted to the court that Catherine had managed this venture entirely by herself, and he had "done nothing" to contribute either to its success or its failure.[34]

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[30] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.* The sources differ, with some press reports stating that Catherine's father provided the money, and others suggesting it was her brother.
[31] SRNSW: NRS 13495 [2913/1898], *Kirchner v. Kirchner*; *Sands Directory* 1887, Part 1, 71; Charlotte Place is now known as Grosvenor Street, according to *Hidden Sydney's Little Laneways, Historical Walking Tour* (City of Sydney: September 2011).
[32] "Law, Supreme Court," *The Daily Telegraph*, 2 March 1888, 3; One gross = 144, meaning the Kirchners had ordered but not paid for some 14 400 glass bottles.
[33] "Interesting Divorce Suit, Kirchner v. Kirchner, A Disciple of Madame Blavatsky," *Australian Star*, 19 September 1898, 5; "Theosophy and Divorce, Kirchner v. Kirchner. Narrative of the Petitioner," *Australian Star*, 20 September 1898, 7.
[34] NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

Sydney in 1890 was dotted with more than three hundred identified boarding houses, which ranged in quality from the "skid-row" of sailors' lodgings, to "high-class" establishments in Dawes Point, and reflected a decidedly flooded market.[35] Managing a boarding house was regarded as a respectable occupation for women, and offered them significantly more autonomy than domestic service.[36] The venture was doubtless a shock for the privileged Catherine, and despite its respectability, threatened her previous status as a member of the elite. Investigating colonial businesswomen, Catherine Bishop describes keeping a boarding house as "a last resort" for those women with entrepreneurial ambitions, and "a deliberate exploitation of their femininity."[37] Bishop has discovered many women who opened a boarding house in times of dire need, particularly when a breadwinner was out of work, or else had died or deserted, all of which suggests Catherine's decision was not taken lightly to engage in such pursuits.[38]

Like the other forms of employment in which she engaged, Catherine's boarding house management was part of the "hidden economy" of which feminist historians have written at length.[39] Keeping a boarding house requires those numerous domestic activities which similarly comprise part of daily housewifery, and constitute those "invisible" chores that Australian historian Desley Deacon describes in relation to the under-recognition of women's labour.[40] The "invisible" nature of Catherine's economic functioning extends to the various abortive financial schemes in which husband and wife invested both jointly and separately, and about which we would remain ignorant were it not for their legal activity.

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[35] Graeme Davison, "Sydney and the Bush: An Urban Context for the Australian Legend," *Australian Historical Studies* 18, no.71 (1978): 193, 207.
[36] Coral Chambers Garner, "Educated and White-Collar Women in the 1880s," in *Women, Class and History: Feminist Perspectives on Australia, 1788-1988,* ed. Elizabeth Windshuttle (Melbourne: Montana Collins, 1980), 121; Bishop, *Minding Her Own Business,* 98.
[37] Ibid., 97.
[38] Ibid., 96-101.
[39] Margaret Anderson, "Good Strong Girls: Colonial Women and Work," in *Gender Relations in Australia,* 242.
[40] Desley Deacon, "Political Arithmetic: The Nineteenth Century Census and the Construction of the Dependent Woman," *Signs* 11, no.1 (1985): 45.

In 1890, when William received an inheritance of some seven hundred pounds from his father's German estate, he gave Catherine one hundred and fifty pounds to invest in "a farm." On other occasion, the couple consulted with their solicitor Augustine Betts about investing in a slate quarry.[41] William faced bankruptcy in 1892, but this was only a brief hiatus while he received wages as a Sheriff's Officer in a troubled time of economic depression, drought and industrial and political unrest.[42] An orchard and livery stable also failed that Catherine established independently in 1894 in Goulburn. The venture was yet another instance of poor timing, with industrial unrest in the pastoral industry reaching its pitch at the time, and drought ongoing.[43]

Despite the couple's combined efforts to pursue legitimate avenues of business development, by the mid-1890s nothing of William Kirchner's inheritance remained.[44] The many financial details reflected in press and legal sources are intriguing not only for what they reveal about the Kirchners' successes or failures, but for what they suggest about the balance of marital power, and an unremarkable woman as an independent economic agent. In many other divorce cases, husbands clearly functioned as masters to submissive wives, and occupied a vastly superior economic position.

With William battling to make a living, and Catherine pursuing her own avenues of income-generation, the Kirchner marriage fails to reflect such a power imbalance.[45] Instead, court proceedings indicate a diminished sense of husbandly dominance within the marital relationship for a considerable period. The Kirchners' investment efforts were shared, rather than a masculine prerogative, which presents a marked contrast to many other

[41] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[42] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner*; Mark Hearn, "Struggle Amongst Strangers: 'Anarchist Andrews' in *fin de siecle* Sydney," *Journal of Australian Colonial History* 14 (2012): 155.
[43] Ibid., 161.
[44] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[45] Allen, *Sex & Secrets,* 19.

marriages exposed by and within the legal arena, and particularly to the other six relationships the thesis investigates.

The Feminine Identity is Reborn Via the Spiritualist Persona of Madame Hygeia

Feminist scholarship suggests that late nineteenth century gender debate and conflict saw a persistent questioning of the supposedly intrinsic nature of womanhood, and the influence of the body upon the female psyche.[46] As progressive thinkers and New Woman writers argued, the feminine identity demanded reshaping, and such reshaping involved an emboldened re-envisioning that concentrated on a new role for women as individuals, rather than mere vessels of reproduction. For the first time, feminine fulfillment was seen to lie in the development of the professional and personal, rather than the maternal self.[47] While the status quo kept women restricted to the domestic and maternal sphere, and subject to the authority of fathers and husbands, women *en masse* began to question their limited role, and the idea that men should control it.[48]

Catherine Kirchner's story reveals how the desire for a different life spurred on one woman to break with convention and follow a new direction which involved the primacy of a professional rather than maternal or wifely identity. In prioritising such an identity, Catherine's spiritualist persona provided the foremost means whereby she could legitimately surmount gender constraints. While the popularity of spiritualism at this time developed from a widespread sense of uncertainty—one which characterised the age—it also implied a

[46] Ann Heilmann and Mark Llewellyn, "Gender and Sexuality," in *The Fin De Siecle World*, ed. Michael Saler (London: Routledge, 2018), 510.
[47] Ibid., 506; For an account of the shift in women's subjectivity, see also Alison Mackinnon, *Love and Freedom: Professional Women and the Reshaping of Personal Life* (New York: University of Cambridge Press, 1997) and Magarey, *Passions of the First Wave Feminists.*
[48] For a detailed account of how women increasingly challenged a narrow role in the Australian context, see Audrey Oldfield, *Woman Suffrage in Australia: A Gift or a Struggle?* (Melbourne: Cambridge University Press, 1992).

forward and modern thinking individual practitioner and follower.[49] One of the key means by which Catherine attempted to live as an independent agent was through adopting the spiritualist persona, "Madame Hygeia," who possessed the ability to read palms, the stars and a crystal ball.

On moving to Sydney in 1894, Catherine established a so-called "Ladies Agency." The agency operated within a "palmistry chamber," where one Florence Gordon assisted her, working in the laundry when she was not required for spiritualist support. In the small space created by partitioning her bedroom into two sections, Catherine read the crystal ball and predicted a client's future, before seeing the individual off clutching "the card of fate" upon which Florence Gordon had scribed Madame's portentous prognostications as her mistress dictated them.[50]

Image 4.6 Rough plan of the Elizabeth Street property which Catherine rented, drawn for court purposes. SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

[49] See for example, Judy Oberhausen, "Alice Kipling Fleming, Evelyn Pickering de Morgan and Nineteenth Century Spiritualism," *The British Art Journal* 9, no.3 (2009): 38; Owen, *Place of Enchantment*, 7; Anthony Enns, "The Undead Author: Spiritualism, Technology and Authorship, in *The Ashgate Research Companion to Nineteenth Century Spiritualism and the Occult,* eds. Tatiana Kontou and Sarah Willburn (England: Ashgate, 2012), 61.

[50] SRNSW: NRS 13495 [2913/1898], *Kirchner v. Kirchner*; "Divorce Court, Before Mr. Justice Simpson and a Jury of Twelve, Action for Divorce and Damages. Withholding Evidence from the Public," *Daily Telegraph*, 24 September 1894, 14.

Unfortunately, Florence Gordon's courtroom testimony did little to substantiate Catherine's spiritualist credentials when the laundry worker laughingly admitted to having little understanding of the crystal ball, and in her response to questioning displayed a disrespectful attitude towards her mistress's work.[51] Literary scholar Elana Gomel goes so far as to describe as "spiritualist entrepreneurs" those women who acted as mediums and palmists, a term which implies a degree of charlatanism.[52] It is impossible to gauge the validity of Catherine's occult activities, or to conjecture if she believed fully in her spiritualist self.

The evidence suggests that Catherine genuinely believed in both her own spiritual abilities and the role that Madame Hygeia played in connecting others with the spiritual realm. Confirming Catherine's investment in her visionary capabilities, at one stage she offered unsolicited advice to William, based on her recent readings of his horoscope, and (conveniently) used her "visions" of his future to suggest he may wish to free himself from his marital bonds and find instead a new "legal partner."[53] Spiritualism and theosophy, furthermore, appear to have been more earnest pursuits than the fortune-telling which Alana Piper describes as a popular "fad" in the early twentieth century, and indeed as Piper points out, spiritualists worked hard to distinguish themselves from fortune-tellers.[54]

While Catherine's commercial laundry was listed in the *Sands Directory* under the name of Madame Hygeia rather than her own, this was probably because fortune-telling was a criminal offence, and no doubt she realised this in describing the business under the ambiguous term of a "Ladies Agency."[55] By insisting her employees and even her husband

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[51] "Divorce Court, Before Mr. Justice Simpson and a Jury of Twelve, Action for Divorce and Damages. Withholding Evidence from the Public," *Daily Telegraph*, 24 September 1894, 14.
[52] Elana Gomel, "'Spirits in the Material World:' Spiritualism and Identity in the Fin De Siecle," *Victorian Literature and Culture* 35 (2007): 204.
[53] SRNSW: NRS 13495 [2913/1 898], *Kirchner v. Kirchner*.
[54] Alana Piper, "Women's Work: The Professionalisation and Policing of Fortune-Telling in Australia," *Labour History* 108 (2015): 37.
[55] *Sands' Sydney & Suburban Directory for 1897* (Sydney: John Sands, 374 George Street, 1898), Part 7, 734; Piper, "Women's Work," 37.

and children address her as "Madame Hygeia," Catherine ensured this became her supreme identity. Through the illusion of Madame Hygeia, Catherine asserted her authority, distanced herself from the disempowered feminine and constructed an empowered alternative persona.[56] The various practices constituting spiritualism worked to form and shape identity for its acolytes.[57] It thus appears crucial to recognise Madame Hygeia as "an attempted fashioning of the self" which, for Catherine and others like her, involved the creation of a new subjectivity.[58]

As a somewhat deviant practice, despite the great popularity of spiritualism in Anglophone *fin-de-siècle* societies, spiritualists escaped social censure or exclusion by virtue of the deviant group to which they belonged. This in itself allowed them a degree of exceptionality which was not otherwise acceptable within mainstream society. Through its connection to the immaterial world, the spiritualist self offered significant potential for women to develop a professional identity and earn a related income. Of particular interest here is the notion that so-called "spiritualist women" were seen as "gender transgressors," whereby the medium possessed a male soul trapped within a female body.[59] Safely buffered by the empowered public persona of "Madame," Catherine could conduct herself in personal and professional affairs with a degree of authority that was otherwise difficult to sustain. In this way, Madame Hygeia bestowed upon her the sense of autonomy which the surrounding society sought to withhold from women.[60]

[56] SRNSW: NRS 13495 [2913/1898], *Kirchner v. Kirchner.*
[57] Gomel, "Spirits in the Material World," 199.
[58] Ibid., 190.
[59] Ibid., 190, 199, 201.
[60] For more about how the occult and spiritualism allowed women to escape gender constraints, see Danielle Jean Drew, "Fragile Spectres: How Women of Victorian Britain Used the Occult and Spiritualist Movement to Create Autonomy," (Master's Thesis, Florida Gulf Coast University, 2017).

Tried Before Justice George Bowen Simpson, and a Special Jury of Twelve

After several years of amicable estrangement, William Kirchner lodged divorce proceedings in May 1898, naming Oswald McMaster as co-respondent.[61] With Justice George Bowen Simpson at the bench, and a special jury of twelve, the trial persisted for five days in late September of that same year. At the time, Catherine was living in the remote Queensland town of Eyriewald, located some 1500 kilometres north of Sydney, and working for McMaster as his "amanuensis," a position which mainly involved residing on land he had recently purchased in order to prove residence there.[62] In addition to alleging Catherine's adultery, William demanded from her lover damages of two thousand pounds, which was a substantial amount although nowhere near the exorbitant sum that Harry Horwitz asked for fifteen years earlier.[63]

When the trial began, William was "entirely without means and out of employment." Several months before lodging his petition, he had been suspended and then discharged from his position as a Sheriff's Officer, after being found with his hand in the till, as it were.[64] When the case came to court, he was almost destitute, prompting Catherine's barrister Alexander Shand to accuse the petitioner of "not only seeking a divorce, but to sell his wife."[65] Several witnesses swore to overhearing William admit he was prepared to take less than two thousand pounds in damages, and offering to share his spoils should they testify on his behalf.[66] Once more confirming the prevalence of perjury, a former employee was

[61] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[62] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[63] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner*; SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[64] Typed memorandum from the Public Service Board, 10 May 1898, in SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.* Rather than relating to the maintenance of law and order, a Sheriff's Officer was mainly preoccupied with tracking down errant debt payers and arranging the sale at public auction of various goods and land to repay mortgages and other debts, which is rather an ironic position for William to have undertaken, given his own financial shortcomings.
[65] "Divorce Court, Before Mr. Justice Simpson and a Jury of Twelve. Action for Divorce and Damages, Withholding Evidence From The Public," *Daily Telegraph*, 24 September 1898, 14.
[66] "Divorce Court: Kirchner v. Kirchner," *Goulburn Evening Penny Post,* 20 September 1898, 2.

even reported as telling "a girl named Alice at the laundry" that she would "go on the side...which gave her the most money."[67] Since William had no money to pay his own or Catherine's legal fees, he was counting on damages to meet his anticipated costs, and evidently tried by greasing various palms to ensure that remuneration would be forthcoming.

While the 1892 *Divorce Amendment Act* allowed William to sue for desertion, rather than the more expensive and difficult to prove grounds of adultery, it is noteworthy that he chose the latter. According to Hilary Golder, many male petitioners preferred to cite adultery rather than desertion, for instance, and a mere twenty-five percent of them used the new legislation's alternative grounds. Golder suggests the prospect of obtaining damages from a named co-respondent motivated most petitioners, and there were definite indications that William's primary incentive was financial.[68]

Catherine's response to William's decision to petition on the grounds of adultery reveals the opprobrium then still attached to accusations of a woman's infidelity, as she wrote immediately imploring him to withdraw his "dishonourable writ," and pleaded instead that he "substitute one for desertion." She assured him she would not defend the case if he did so, and would assume sole financial responsibility for their children.[69] Desertion was thus infinitely preferable to adultery, since to defend herself against William's allegations, Catherine was prepared to endure a journey of ten days by coach, train and steamer.[70]

On the question of damages, Justice Simpson asked the jury to consider the petitioner's "habits," and whether he had "offended his wife by drunkenness, bad temper and rough conduct." He further suggested acknowledging "what the husband had suffered by the loss of his wife in the home as a helpmate and the mother of his children." If "a man married a loose woman," Simpson explained, "he could not be said to have lost so much as when the

[67] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[68] Golder, "'A Sensible Investment,'" 418.
[69] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[70] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

wife had been a chaste woman before being enticed to another's embraces," a disturbing confirmation that legal authorities continued to apply a scale of sexual purity to judgments of women.[71] George Simpson's conception of adultery as "the most serious wrong...that could be done to a man," whereby no amount of money "could adequately compensate...for his loss...what he had suffered in his feelings, and...his outraged honour" further confirms an ideology whereby a woman's body remained the property of her husband.[72]

The judge's pronouncements reveal normative attitudes towards the "proper" roles of men and women in marriage, and warrant unpacking. (I have written in previous chapters of the double standard, and do not intend to revisit it at this point other than to confirm its undeniable persistence through legal and press sources in the current case and indeed all others). By identifying behaviours which may "offend" a wife—drunkenness, bad temper and rough conduct (whatever this might have involved)—Justice Simpson was suggesting that a "good" husband must be temperate, even-tempered and refined.

British historian of nineteenth century masculinity, John Tosh, has explored at length the Victorian ideal of "domesticated husbands and supportive wives," and the notion of companionate marriage.[73] His research confirms a view of marriage as a relationship characterised by distinct but complementary roles, in which wives provided emotional support and men guidance and authority (capacities related to their superior education and experience).[74] Analysing the altered meanings of the label "help-meet" (Simpson's version being "help-mate"), Tosh contends that the term changed from one which referred to a wife's economic role, to emphasise instead her "moral functions."[75]

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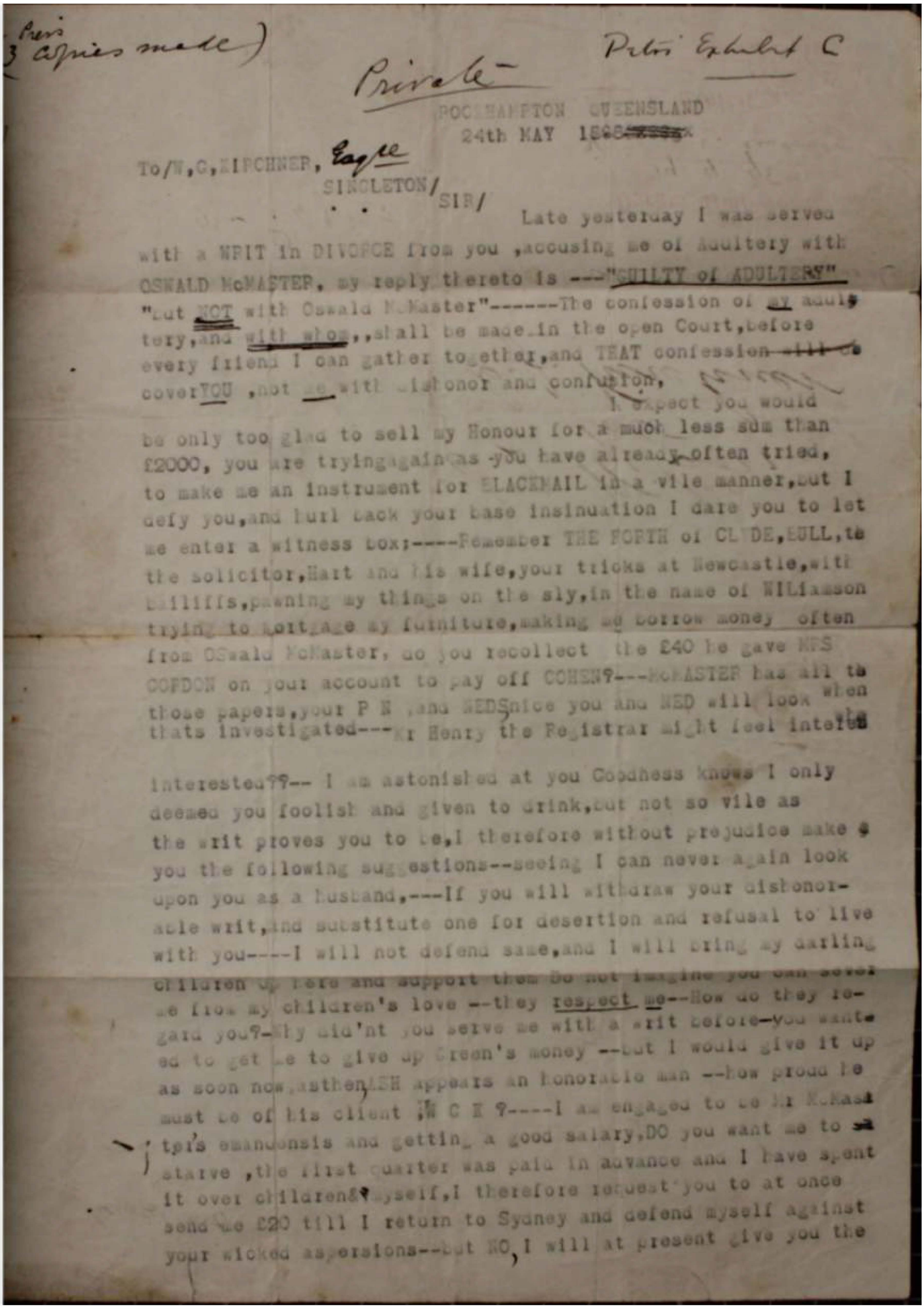
[71] "Kirchner v. Kirchner," *Newcastle Morning Herald and Miners' Advocate*, 24 September 1898, 5.
[72] "Divorce Court, Before Mr. Justice Simpson and a Jury of Twelve. Action for Divorce and Damages. Withholding Evidence from the Public," *Daily Telegraph*, 24 September 1898, 14; Sheridan, "The Woman's Voice," 115.
[73] Tosh, *A Man's Place*, 54
[74] Ibid., 28.
[75] Ibid., 55.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Petrs Exhibit C

Private

ROCKHAMPTON QUEENSLAND
24th MAY 1898

To/W,G,KIRCHNER, Eagle
SINGLETON/
SIR/
Late yesterday I was served
with a WRIT in DIVORCE from you ,accusing me of Adultery with
OSWALD McMASTER, my reply thereto is ---"GUILTY of ADULTERY"
"but NOT with Oswald McMaster"------The confession of my adul-
tery,and with whom,,shall be made in the open Court,before
every friend I can gather together,and THAT confession will co
coverYOU ,not me with dishonor and confusion,
I expect you would
be only too glad to sell my Honour for a much less sum than
£2000, you are trying again as you have already often tried,
to make me an instrument for BLACKMAIL in a vile manner,but I
defy you,and hurl back your base insinuation I dare you to let
me enter a witness box:----Remember THE FORTH of CLYDE,HULL,the
the solicitor,Hart and his wife,your tricks at Newcastle,with
bailiffs,pawning my things on the sly,in the name of WILLiamson
trying to mortgage my furniture,making me borrow money often
from OSwald McMaster, do you recollect the £40 he gave MRS
GORDON on your account to pay off COHEN?---McMASTER has all the
those papers,your P N ,and NEDS,nice you and NED will look when
thats investigated---Mr Henry the Registrar might feel intere

interested??-- I am astonished at you Goodness knows I only
deemed you foolish and given to drink,but not so vile as
the writ proves you to be,I therefore without prejudice make
you the following suggestions--seeing I can never again look
upon you as a husband,---If you will withdraw your dishonor-
able writ,and substitute one for desertion and refusal to live
with you----I will not defend same,and I will bring my darling
children up here and support them Do not imagine you can sever
me from my children's love --they respect me--How do they re-
gard you?-Why did'nt you serve me with a writ before--you want-
ed to get me to give up Green's money --but I would give it up
as soon now,as then,LSH appears an honorable man --how proud he
must be of his client ,W C K ?----I am engaged to be Mr McMast
ter's amanuensis and getting a good salary,DO you want me to
starve ,the first quarter was paid in advance and I have spent
it over children&myself,I therefore request you to at once
send me £20 till I return to Sydney and defend myself against
your wicked aspersions--but NO,I will at present give you the

Image 4.7 The first page of Catherine's letter (no doubt typed on the trusty Remington she carried with her always) to William upon receiving his petition for divorce.

SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

The literature pertaining to Victorian women and their role in marriage confirms the influential stereotype of the "angel in the house," which derives from a poem that English poet Coventry Patmore wrote in 1896. Such literature defines a wife's conduct in moral terms and further suggests that her marital deportment dictated her moral worth. Patmore's idealised woman devoted herself to her husband's every need,[76] a conception which evidently guided George Simpson in his idea of how women should conduct themselves in marriage. The notion of the help-meet/mate further extends the sense that even in 1898, women existed as adjuncts to men, complementary but by no means equal.[77] Viewed in their entirety, George Simpson's remarks confirm the ongoing asymmetry of gender power relations, the role confinement that marriage entailed for women, and the persistent sway of the need to distinguish "loose" from "worthy" women.

With the spotlight still on Catherine's deportment, two crucial facts emerge in relation to her life before and during marriage. Oswald McMaster's barrister raised the first detail when he moved to amend the petition, and Catherine herself revealed the second detail during the trial. I mentioned in the Horwitz case that lawyers for the respondent and co-respondent were entitled to add amendments to the original petition, and the practice was common. In the current case, the proffered amendments are of an unusual nature and entered into proceedings mid-way rather than at the outset, which was also exceptional.

[76] For further analysis of how the concept of the Angel in the House has influenced women, see Elaine Showalter, "Killing the Angel in the House: The Autonomy of Women Writers," *The Antioch Review* 50, no.1-2 (1992): 207-220.
[77] For more about the "helpmeet/helpmate" in the colonial context, see Raewyn Dalziel, "The Colonial Helpmeet: Women's Role and the Vote in Nineteenth Century New Zealand," *The New Zealand Journal of History* 11, no.2 (1977): 112-123 and Marilyn Lake, 'Helpmeet, Slave, Housewife: Women in Rural Families 1870-1930," in *Families in Colonial Australia*, eds. Patricia Grimshaw, Chris McConville and Ellen McEwen (Sydney: Allen and Unwin, 1985), 173-185.

Causing considerable consternation in the courtroom, Oswald McMaster's lawyers alleged that Catherine

> was at Melbourne in Victoria in 1880 married to one Francis James Burgess, and...the said Francis James Burgess was alive when the marriage ceremony between the Petition and the Respondent was performed at Lima Station... in February 1881.[78]

When newspapers published the fact that Catherine was already married at the time of her marriage to William, public interest in the case soared, with more than one hundred articles appearing throughout regional and urban NSW, and as far away as Western Australia.[79] Given George Simpson's advice that Catherine was "not bound to answer any question" as to whether she had "committed bigamy," and her refusal to answer unless compelled, her bigamous status appears confirmed. There is, however, no documentary evidence of a marriage between Catherine and Francis Burgess exists, or of any connection between them whatsoever.

Equally if not more scandalous than bigamy was Catherine's written admission of adultery ("but not with McMaster") in a letter she sent to William in 1898. The adultery involved "a high court official" in the Department of Justice (whom Catherine steadfastly refused to name), a brute who in 1889 had "improper relations with her against her will" when William sent Catherine to see the man about employment prospects for him.[8o] The perpetrator's identity was a matter of persistent speculation and ranged from a minister of the Crown to a lowly official, while the judge was in an obvious moral and legal quandary as to whether he should insist Catherine name the villain.[81] Nor was the man's identity ever

[78] "The Kirchner Divorce. A New Trial Sought," *Evening News*, 15 November 1898, 3: "Memorandum for New Trial, 30 September 1898," SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[79] Search terms used include variously "Kirchner divorce," "Kirchner v. Kirchner."
[8o] "Divorce Court: Kirchner v. Kirchner, Fourth Day," *Evening News*, 22 September 1898, 5.
[81] "Theosophy and Divorce: Kirchner v. Kirchner. Sensational Charge Against an Official," *Australian Star*, 23 September 1898, 6.

revealed, after the judged consulted with Chief Justice and legislator Sir Alfred Stephens and declared that the accused rapist must remain forever anonymous, since he was dead and could not defend himself.[82] These beguiling details must therefore remain confined to the historical unknown.

At the trial's conclusion, the jury found Catherine guilty of adultery, and awarded William the relatively paltry sum in damages of four hundred pounds. As was common, McMaster was ordered to pay both Catherine's and William's legal fees in addition to his own.[83] Although Oswald McMaster was a successful businessman, he was certainly not wealthy, and it is unclear whether he could afford such a considerable sum.

McMaster immediately appealed on the grounds that only nominal charges should be due, since petitioner and respondent were estranged at the time the adultery took place. After all, it could hardly be said that William Kirchner had lost his "helpmate" or companion. When McMaster's appeal stalled, William settled out of court for an undisclosed sum, and the divorce was granted.

Kate and Ossie

Oswald McMaster was a forty-two year old civil engineer with diverse business interests, who in addition to other achievements would later build the railway from Milson's Point to Hornsby.[84] He had been a friend of the Wilson family in Catherine's youth, and in the late 1880s lodged for more than two years with William and Catherine in one of their

[82] "Divorce Court: Kirchner v. Kirchner, Fourth Day," *Evening News*, 22 September 1898, 5.
[83] Since these fees totalled more than £600, in addition to the damages, it is not surprising that McMaster announced immediately his intention to lodge an appeal, finally settling out of court in a private arrangement with William Kirchner for an undisclosed sum. "The Kirchner Divorce. A New Trial Sought," *Evening News*, 15 November 1898, 3.
[84] "Engineer's Death," *Sydney Morning Herald*, 30 August 1922, 10.

boarding houses. Prior to the trial, McMaster employed Catherine in a number of capacities relating to his position as Secretary of Sydney's Cooperative Wool Stores.

Between 1894 and 1898, Oswald McMaster rented office space in the large building of which Catherine was sole lessee at 15-17 Elizabeth Street, in Sydney's centre. He used this space to display samples of the dried meat produced for his Oxford Meat Works company. In contrast to her beleaguered spouse, McMaster was a prosperous and successful member of Sydney's mercantile community, and while Catherine swore the relationship was purely professional, there were many indications otherwise. Perhaps most damning of all was that "Catherine Jane Wilson, spinster," married Oswald McMaster in the small Northern Rivers town of Casino in early January 1900, only a few months after she received her Decree Nisi.[85]

The evidence is striking of a tender and mutual caring between Catherine and Oswald—or Kate and Ossie—as they addressed one another, according to servants and lodgers in Catherine's boarding house. A relationship of apparent equality and intellectual companionship bound the pair, which is an observation their life together confirms following the divorce. While McMaster claimed he rented rooms elsewhere for sleeping, several servants testified that he shared Catherine's bed. As the chapter later reveals, various financial and employment arrangements connected Catherine and McMaster and frequently brought them together.

On the stand, Catherine's servants and former employees were eager to confirm the adulterous relationship. Yet again, these witnesses revealed a disquieting willingness to engage in obsessive scandal-mongering and sexual surveillance.[86] By extension, the surveillance in which those individuals around Catherine and Oswald participated may be

[85] Queensland Births, Deaths and Marriages, Marriage Certificate *Catherine Jane Wilson and Oswald McMaster* [1900/C323].
[86] Carol A. Pollis, "The Apparatus of Sexuality: Reflections on Foucault's Contributions to the Study of Sex in History," *The Journal of Sex Research* 23, no.3 (1987): 404.

recognised as a form of social power, whereby "each gaze" forms "part of the overall functioning of power," and contributes to the work of society in controlling its citizens.[87] My research has exposed overt surveillance in the Horwitz and Dorn cases, and confirms its presence yet again in the Kirchner case. I suggest that surveillance was markedly less for Emily Bradley, because she was not accused of adultery. Instead, the overwhelming nature of her familial responsibilities saw Emily trapped primarily within a web of kin relations, rather than exposed to the prying eyes of non-relatives.

Witness testimonies in the Kirchner case further support the Foucauldian notion that individuals are transformed through a variety of means into subjects eager and willing to carry out disciplinary work for the state.[88] While the building in Elizabeth Street was a rabbit warren of cheaply constructed partitions and temporary walls, rendering surveillance a challenge, its residents ignored such barriers in their efforts to spy on the accused couple. Accordingly, one servant observed McMaster early one morning, dressed only in "grey combinations" and using the lavatory near Catherine's bedroom. Another swore he saw the imprint of McMaster's head and body on Catherine's mattress, while yet another recognised his boots under her bed, and his discarded clothing lying about in her room.[89]

Confirming a shared intimacy between the two accused, Catherine's former employee William McFarlane swore that each Sunday he watched "Madame" as she cut McMaster's toenails, curled his magnificent moustache, and washed his hair in her bedroom washbasin.[90] (With other servants corroborating McFarlane's statement, it appears Catherine had by now renounced her vow of celibacy.) A former lodger, Henry Johnson, heard McMaster's voice in "Madame's" room well before daylight, and was unashamed to admit he

[87] Michel Foucault, "The Means of Correct Training," in *The Foucault Reader*, 189.
[88] Foucault, "The Subject and Power," 777-795.
[89] SRNSW: NRS 134945 [2913/1898] *Kirchner v. Kirchner.*
[90] "Theosophy and Divorce. Claim for £2000 Damages. The American Lodger's Story," *Australian Star*, 21 September 1898, 6.

had his ear close to the door at the time. And Catherine's former "lady's help" told the court how her mistress had asked her to prepare special meals for McMaster, who suffered from a digestive complaint, informing her as she did so that "if you please him, you will please me."[91]

Reading against the grain to interpret courtroom cross-examination, the sources confirm a romantic involvement between the accused couple. At times they attended the theatre together and on occasion Oswald brought Catherine flowers; she also kept his photograph in her stocking.[92] Before Catherine left for Sydney in 1893, McMaster travelled to Goulburn to stay at the Kirchner home in William's absence, which servants claimed their mistress had forbidden them to reveal. When during proceedings a juror asked McMaster if he did not "think it strange for a single man to take such an interest in a married woman's affairs," McMaster explained that he "was dealing with her, not her husband."[93] His remark suggests that it was not considered unusual by this time for a woman to be recognised as a legitimate and independent legal entity.

The Modest Competence She Could Earn

Catherine wrote with pride to William in August 1897 of her ability to "earn honourably a small amount sufficient to keep myself." On this basis, she contended, she was determined to remain apart from him.[94] Her intentions illustrate the remarkable effects of financial autonomy upon feminine subjectivity, and the capacity to earn an independent income emerges as the most significant and dramatic factor to transform relations between

[91] "Theosophy and Divorce. Claim for £2000 Damages. The American Lodger's Story," *Australian Star,* 21 September 1898, 6.
[92] "Divorce Court: Before Mr. Justice Simpson and a Jury of Twelve: Action for Divorce and Damages. Withholding Evidence from the Public," *Daily Telegraph*, 24 September 1898, 14.
[93] "Kirchner v. Kirchner," *Goulburn Penny Post,* 24 September 1898, 4.
[94] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

the sexes. As British historian Gillian Sutherland contends, unless women could become economically independent, they would be forever condemned to the status quo and unable to lead their own lives, particularly where intimate sexual relationships were concerned.[95] Catherine's own documented recognition of the link between the capacity to end her marriage and her potential to earn a living suggests it formed a psychological springboard from which a woman felt it possible to expand her limited horizons.[96]

Catherine's determination to go her "own road" implies the increasing potential of individual women to support themselves adequately, rather than just eke out a living.[97] The money Catherine could earn was an alternative to the board and lodgings which marriage provided women in exchange for their ongoing sexual and domestic services.[98] The *Married Women's Property Act* meant that a deserting or abandoned wife was no longer forced to apply for a Protection Order or Judicial Separation to retain control of her earnings or property.[99] Catherine's capacity to function as an independent legal entity confirms amendments to the Act were of benefit to some women.[100] Nor did Catherine's marital status threaten her ability to find and maintain work, because she was self-employed, in contrast to women working in the Public Service, for example, who until 1966 would be forced upon marrying to renounce their employment.[101] For this particular colonial woman, legislative

[95] Gillian Sutherland, *In Search of the New Woman: Middle Class Woman and Work in Britain 1870-1914*, (Cambridge: Cambridge University Press, 2015), 8.
[96] Ibid.
[97] Letter from Catherine to William Kirchner, 30 August 1897, SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[98] Magarey, "Notes Towards a Discussion of Sexual Labour," 22.
[99] Vines, "Annie Ludford," 160, 175-6; Not everybody believes that the *Married Women's Property Act* allowed women to keep their earnings. Gillian Sutherland, for example, disagrees with those who believe it guaranteed women could keep their earnings. Sutherland, *In Search of the New Woman,* 7.
[100] To support such a contention, the Kirchner legal file contains several legal contracts between the two.
[101] Marian Sawer, "The Long Slow Demise of the 'Marriage Bar," *Inside Story*, 8 December 2016, https://insidestory.org.au/the-long-slow-demise-of-the-marriage-bar/ ; Prue Vines's account of postmistress Annie Ludford describes a woman who was indeed forced to relinquish her much-valued employment position, just because she married.

attempts to improve the legal status of married women had borne fruit, while the feminist goal of marriage reform appeared to be gaining purchase.[102]

To counter such an optimistic assessment, however, it is important to acknowledge that the diverse activities by which Catherine strove to earn an adequate income comprise an extensive list, and earning an income presented an ongoing challenge. On the one hand, Catherine's involvement in work-related activities suggests the degree to which a middle-class woman—albeit one forced to abandon pretensions of gentility—could potentially engage with commerce and the public sphere. On the other hand, the list also confirms the continuing unfairness of the colonial gender order, in which low wages forced Catherine to work several jobs to make ends meet. By 1898, her commercial laundry had failed and was sold to cover its debts.[103] Lodgers regularly reneged on rent, and the *Sands Directory* confirms the presence of many boarding houses in Elizabeth Street and its surrounds, making competition fierce.[104] By 1898, Catherine had abandoned her palmistry business and Madame Hygeia was no more. If it had not been for Oswald McMaster's intervention with an offer of employment in remote Queensland, it is difficult to know what may have lain ahead.

As for those women who wrote for and read Louisa Lawson's feminist journal *The Dawn*, employment offered other rewards in addition to economic autonomy. Of chief value was the strong sense it offered of self-reliance and independence.[105] In Catherine's case, however, it was significant that under a "family arrangement," she owned a one-sixth share of Lake Cowell Station, as well as a property in Sydney's beachside location of Bondi, from which she received a small but regular income. Upon her mother's death, furthermore,

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[102] Mary Lyndon Shanley, "'One Must Ride Behind:' Married Women's Rights and the Divorce Act of 1857," *Victorian Studies* 25, no.3 (1982): 355-6.
[103] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[104] *Sands' Sydney & Suburban Directory for 1898* (Sydney: John Sands, 374 George Street, 1898), Parts 1 and 2.
[105] *The Dawn: A Journal for Australian Women* (Sydney, NSW: 1888-1905); John Docker, *The Nervous Nineties: Australian Cultural Life in the 1890s* (Melbourne: Oxford University Press, 1999), 12.

Catherine inherited a quantity of household furniture which, whilst worth only one hundred pounds, gave her a significant collection of items to pawn in difficult times. Intriguing lists of items and detailed explanations as to when she pawned various objects—which ranged from her children's mugs to a prized telescope—confirm the crucial role of the pawn shop within the family economy.[106]

When Catherine established a laundry and boarding house, she did so by negotiating a loan agreement with McMaster, who furnished the capital which allowed her to purchase the necessary "plant" for such an enterprise. As collateral, McMaster used Catherine's financial interest in the properties for which she was subsidiary owner.[107] When the laundry faltered, Catherine entered into yet another financial agreement, but this time with a certain Mr. Cohen, a private loan-and-pawn broker with whom the Kirchners often dealt. While Catherine was perhaps not the competent businesswoman she believed herself to be, the colonies continued to suffer the effects of a several commercial depression which began in the early 1890 in response to an unregulated banking system with major drought in 1895 further exacerbating the situation.[108] No doubt the man who ran off in 1896 owing Catherine more than two months' rent was not her only defaulting lodger.

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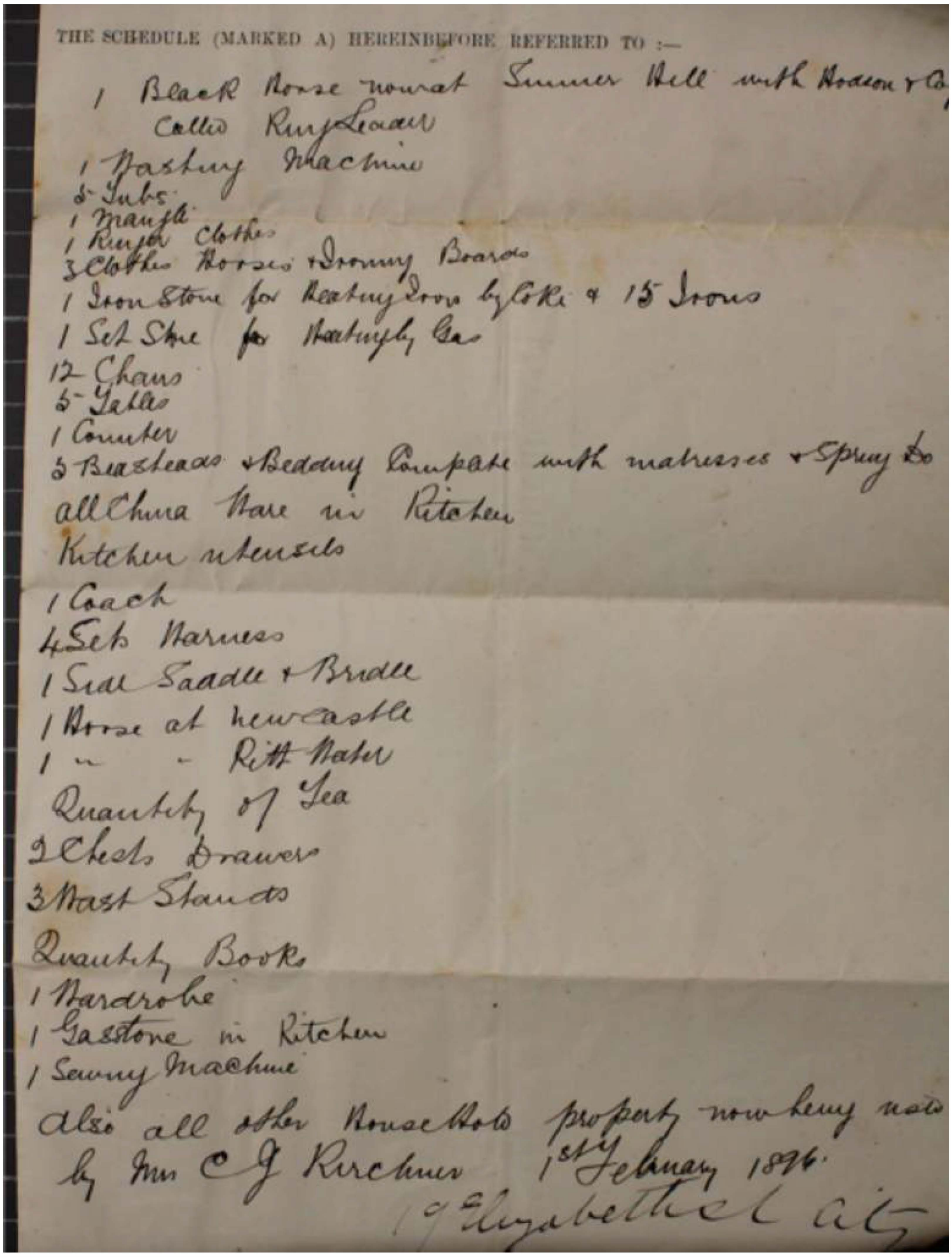
[106] Bruce Scates, "'Knocking Out a Living:' Survival Strategies and Popular Protest in the 1890s Depression," in *Debutante Nation: Feminism Contests the 1890s,* 42.

[107] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

[108] Charles R. Hickson and John D. Turner, "Free Banking Gone Awry: The Australian Banking Crisis of 1893," *Financial History Review* 9 (2002): 148; Bryan Fitz-Gibbon and Marianne Gizycki, "A History of Last-Resort Lending and Other Support for Troubled Financial Institutions in Australia," Research Discussion Paper (2001-07), System Stability Department Reserve Bank of Australia, 21.


THE SCHEDULE (MARKED A) HEREINBEFORE REFERRED TO :—

1 Black Horse now at Summer Hill with Hodson & Co, Called Ringleader
1 Washing Machine
5 Tubs
1 Mangle
1 Ringer Clothes
3 Clothes Horses & Ironing Boards
1 Iron Stove for Heating Irons by Coke & 15 Irons
1 Set Stove for Heating by Gas
12 Chairs
5 Tables
1 Counter
5 Bedsteads & Bedding Complete with matresses & Spring Do
all China Ware in Kitchen
Kitchen utensils
1 Coach
4 Sets Harness
1 Side Saddle & Bridle
1 Horse at Newcastle
1 " " Pitt Water
Quantity of Tea
2 Chests Drawers
3 Wash Stands
Quantity Books
1 Wardrobe
1 Gasstove in Kitchen
1 Sewing Machine
also all other Household property now being used by Mrs C J Kirchner 1st February 1896.
Elizabeth [illegible]

Image 4.8 Catherine's handwritten list of possessions which were to serve as additional collateral in negotiating loan agreements with Oswald McMaster.

SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

As a result of these combined details, Catherine's circumstances are certainly not representative, and do not suggest that other women could potentially have achieved a similar independence.[109] Without inheritances from their respective families, Catherine and William Kirchner could not have engaged in their diverse investment schemes. Most significantly, from the time she left Goulburn and her marriage, Catherine depended on Oswald McMaster for support, and so while we must admire her confidence and verve, her circumstances must not be regarded as typical, nor was she truly autonomous.

Despite these words of caution, there were many indications of Catherine's financial initiative, and her circumstances confirm that exercising such initiative was increasingly possible at this time. Catherine's capacity to engage with diverse business activities suggests she did not face those multiple barriers which impeded economic survival for my previous research subject Jane Dibbs, for instance, or even for Emily Bradley.[110] As a case in point, consider how as sole lessee, Catherine was able to adapt the Elizabeth Street property for multiple purposes, sectioning off a tea room to provide meals for lodgers and the general public. [111] She also catered "luncheons" for workers at the recently opened Cooperative Wool Stores in Dawes Point, and had meals ready by six o'clock each morning. In addition, Catherine worked as a paid caretaker for the Stores' nearby offices in Hunter Street, acting as an employment broker in hiring workers, and sometimes just serving as an on-site presence, possibly to bolster illusions of prosperity.[112] Most impressively, she wrote articles and performed clerical tasks for *The Co-operator Newspaper*, a small monthly trade

[109] As Gillian Sutherland points out, it is almost impossible to reach general conclusions about this capacity for independence amongst women in either Britain or the US at this time. Sutherland, *In Search of the New Woman,* 17.
[110] Lorrison, "Adulterous Agency; SRNSW: NRS 13495 [722/1891] *Bradley v. Bradley.*
[111] *Sands' Sydney & Suburban Directory for 1897* (Sydney: John Sands, 374 George Street, 1897), Part 1, 44; "Divorce Court. Before Mr. Justice Simpson and a Jury of Twelve, Action for Divorce and Damages. Withholding Evidence from the Public," *Daily Telegraph*, 24 September 1898, 14.
[112] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

publication of the Cooperative Wool Stores, for which feminist journalist Ada Kidgell served at one stage as chief editor.[113]

That Catherine and Oswald McMaster blurred the lines between their professional and private lives is irrefutable: McMaster started the Cooperative Wool Company, and at one time owned the newspaper bearing the same name.[114] Most if not all of Catherine's diverse employment activities owed their origins to McMaster, and even her commercial laundry was only possible because he had provided the necessary loan monies. It must be stated, however, that the couple's business arrangements were amply formalised through legal channels, and their professional relationship was separate and distinct from the private. Nor was the fact of McMaster's ownership ever referred to in the trial, which suggests he was no longer connected in these capacities.

At one stage boasting a circulation of more than ten thousand, *The Co-operator Newspaper* aimed to serve as "An Eclectic Cosmopolitan Journal Devoted to the Interests of the People."[115] Providing readers with extensive agricultural information about the thriving wool industry, the paper also featured short stories and poetry written by such stellar literary figures as Kidgell, Agnes Rose-Soley and even Henry Lawson. Stylistically, the paper was chatty and engaging and even included a regular column entitled "Of Interest to Woman" (sic). While that particular section featured frivolous topics like fashion and courtship, it equally explored weightier issues such as suffrage and the benefits of education for girls and women.[116]

The tone and content of *The Co-operator* confirm the relationship between the sexes as a common topic of debate, and suggest that female employment was an accepted fact

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[113] Heather Radi, "Holman, Ada Augusta (1869–1949)," *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, http://adb.anu.edu.au/biography/holman-ada-augusta-6710/text11583, published first in hardcopy 1983, accessed online 15 September 2019.
[114] "Personal," *Northern Star*, 2 September 1922, 4.
[115] *The Co-operator* Vol. 2, no.1, 23 March 1897.
[116] *The Co-operator,* Vol. 1, no.1, 23 February 1897.

of life by the late 1890s.[117] The paper featured regular jokes exploring gender relations (often similarly misogynist to those in the *Bulletin*), and advertised such "modern" phenomena as cycling ("instruction offered"), the Remington typewriter ("your daughters can make a handsome living by using it") and handwriting analysis.[118] Although many of its articles are not credited to a particular author, and there is no way to trace which sections Catherine wrote, the paper was professional and well-written, employing an intelligent and progressive style of writing and reflecting diverse and topical subject-matter.

The Co-operator included material which reflected and encouraged greater autonomy and visibility for women. That Catherine was involved in its production, no matter in how minor a capacity, and despite the fact that her lover may have been instrumental in its operations, lends weight to the idea that the last decade of the century was "a golden age of feminist journalism," as Australian literary and cultural critic John Docker contends.[119]

A Confident New Woman on the Stand

In deciding to leave her husband and announcing her intentions to "go her own road," Catherine unknowingly mirrored those fictional protagonists of so-called "New Woman" novels written in the late 1890s by *fin-de-siècle* feminist writers.[120] These were heroines who broke with convention to search for personal and artistic rather than domestic fulfilment.[121] Catherine differs markedly from those numerous demure and subjected creatures who appeared in the Divorce Court after 1873, either as petitioners or else as respondents to rebut charges of adultery. The difference is particularly evident in her courtroom display of

[117] Docker, *The Nervous Nineties*, 235.
[118] *The Co-operator,* Vol. 1, no.1 (23 February 1897).
[119] Docker, *The Nervous Nineties*, 235.
[120] Letter from Catherine to William Kirchner, 30 August 1897, SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[121] Heilman, "'A Room of One's Own,'" 291.

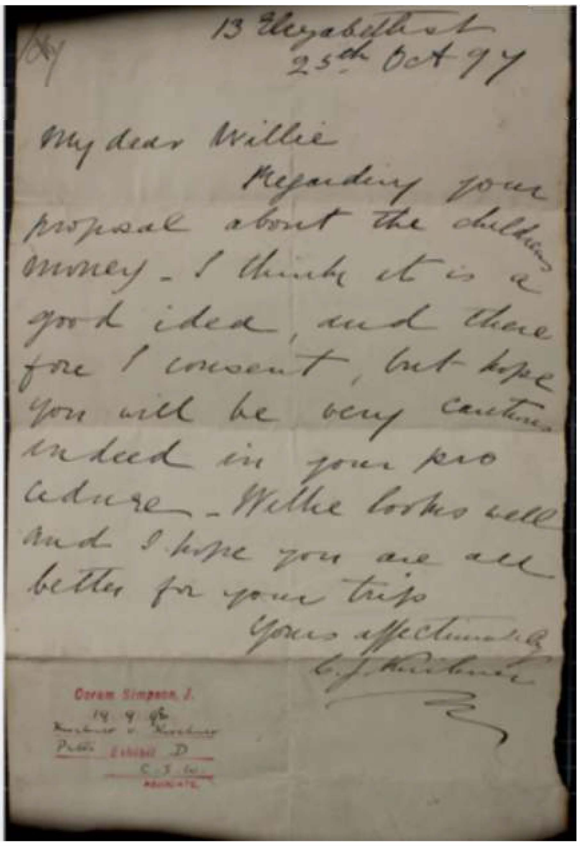
self-possession, and the sources imply her sense of authority within and outside of her marriage. Consider a brief letter to William concerning financial arrangements for the children, in which Catherine conceded, "I think it is a good idea, and therefore I consent." At another time she similarly "consented" to William selling the furniture, clearly adopting a very different vocabulary from one implying her submission.[122] And in the most strident demonstration of her marital dominance, William told the court how Catherine had ignored his explicit direction to refrain from riding hurdles at a nearby Goulburn horse show, whipping him "about the shoulders with her riding crop" when he ordered her to stay at home, then leaving the house to mount her steed.[123]

Catherine's relatively robust demeanour may possibly be attributable to her somewhat "muddied" class status: despite her middle-class origins, the instability of William's employment record forced her to function as a household manager much like those English working-class women whose subjected status Leonore Davidoff analyses. As Davidoff argues, by the end of the nineteenth century, the majority of such wives had assumed chief responsibility for household management and budgeting, which Catherine's circumstances replicate, and her husband's testimony confirms.[124]

Catherine differed in two key respects from these working-class women. Granted, both hers and William's testimony confirm that Catherine was the linchpin of family finances. William acknowledged her as "a good business woman," who for much of their married life managed his investments, savings and general monetary affairs.[125] To a considerable extent, his account of the couple's financial arrangements mirrors those working-class men of whom British historian Stephen Heathorn writes, somewhat "removed

[122] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[123] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[124] Davidoff, "Mastered for Life," 418.
[125] "Theosophy and Divorce: Kirchner v. Kirchner, Narrative of the Petitioner," *Australian Star*, 20 September 1898, 7.

from the household economy," turning over wages to wives, and sacrificing belongings to the pawn-broker when the need arose.[126] These precise details are found within the primary sources here, confirming that Catherine rather than William orchestrated complex financial arrangements to keep economic hardship at bay, and knew which items of value could be sacrificed in times of difficulty. Unlike those women whom Davidoff describes as "mastered for life," however, trapped in a subordinate role, Catherine was abundantly capable of escaping her domestic confines, and did so from an early stage in the marriage until her decisive move away from it in 1894.[127]



13 Elizabeth St
25th Oct 97

My dear Willie
Regarding your proposal about the childrens money - I think it is a good idea, and therefore I consent, but hope you will be very cautious indeed in your procedure - Willie looks well and I hope you are all better for your trip
Yours affectionately
C. J. Kirchner

Coram Simpson, J.
14.9.98
Petr. Exhibit D

Image 4.9 Catherine's decidedly imperious and somewhat detached letter to William.

SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

[126] Stephen Heathorn, "How Stiff Were Their Upper Lips? Research on Late-Victorian and Edwardian Masculinity," *History Compass* 2, no.1 (2004): 2.
[127] Davidoff, "Mastered for Life," 407.

While Catherine took the lead in various business initiatives when William's employment prospects dwindled, husband and wife also spent long periods apart, during which Catherine ran a boarding house but continued to support William emotionally and financially. They maintained a regular correspondence, and Catherine intervened when William had difficulties at his workplace, borrowing money to repay his debts and at one stage even providing him with "a vehicle" to facilitate his employment.[128]

Although Catherine was not a submissive wife, there is also little suggestion that William Kirchner possessed either the financial resources or arrogant male prerogative so evident in the courtroom performances of Messrs. Horwitz, Dorn and Bradley. Nor did he display a similar sense of dominance or tendency to aggression. And in direct contrast to Walter Bradley in particular, William was not against the independent financial manoeuvres to which Catherine turned, but fully in support of them.[129]

The nature of Catherine's business activities, however, lends further weight to Desley Deacon's conception as to the substantial under-recognition of colonial women's contribution to household income, and the level of their engagement outside of the domestic context. Deacon's analysis suggests the crucial role of statistical inaccuracies in engendering ideological perceptions of women as non-workers, perceptions which were to have dire consequences for women as workers, and to affirm the sense of their dependence.[130] Catherine was not dependent, and furthermore, was more than just a contributor. Her financial initiatives, which included opening a boarding house, regular pawning to supplement income, negotiating interest rates for loan and other debt repayments, and maintaining detailed records of these actions, provided the family's main source of income for much of the time.

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[128] "Divorce Court, Before Mr. Justice Simpson and a Jury of Twelve. Action for Divorce and Damages. Withholding Evidence from the Public," *Daily Telegraph*, 24 September 1898, 14.
[129] Interestingly, leisure theorist Betsy Wearing suggests that women are more likely to achieve their goals when they prioritise personal fulfilment above giving in to the dictates of others, an idea that applies very much to Catherine Kirchner's circumstances and behaviour. Wearing, "Beyond the Ideology of Motherhood," 38.
[130] Deacon, "Political Arithmetic," 27-47.

She was thus an "important contributor" as opposed to a "minor economic actor," but within statistical enumerations would not have been acknowledged as such, simply because so much of her work took place within the domestic sphere and was impossible to quantify.[131]

Confronting economic hardship was a constant reality for many people in late nineteenth century society, but for the Kirchners, avoiding marital disharmony presented an equal challenge. William claimed that for many years they lived "very happily all the time," but it is evident that their defunct sexual relationship quickly became an ongoing source of tension for the couple. [132] William admitted that he "frequently asked" for his "marital rights," only to have Catherine refuse his request and inform him that "she did not care" to comply. He described several occasions on which they had quarrelled over the subject of "cohabiting," and despite sleeping together on occasion, they never again occupied the same bedroom after Catherine went to live in Sydney. In what must have seemed the last straw, she banished William to an attic room when he visited her there, and he was forced to sleep beside their children. In response to his complaints, Catherine immediately "engaged a room for him at Miss Noble's in Phillip Street." After this, William admitted, he "never had connection" with his wife again.[133]

In previous research, I acknowledged that the ability to demand a separate sleeping area was a luxury available only to women of a certain class.[134] In the case of Catherine Kirchner, however, the room she located for her husband was meagre indeed, and it was only her determination to establish a separate physical and emotional space which guaranteed her success in orchestrating distance.[135] Given their various inheritances and

[131] Ibid., 35, 44.
[132] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[133] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[134] Lorrison, "To The Beat Of Her Own Drum," 101; "Adulterous Agency," 356.
[135] Ibid., 108.

fluctuating property assets, admittedly, the Kirchners belonged at times to a significantly more affluent economic stratum than their circumstances came to suggest.

There are several possible explanations for Catherine's determination to put an end to marital sexual relations. She claimed theosophy did not dictate sexual abstinence, and denied suggesting otherwise.[136] In a detailed exploration of the movement, however, Jill Roe points out that "the rescue" of the soul and its spiritual recovery did indeed necessitate "a pure life" for those who followed theosophy.[137] Catherine's assertion that she refused to live as William's wife after an act of physical violence on his part was possibly more of an attempt to portray herself as a victim, than to explain honestly to the court why she chose to renounce her wifely duties.[138]

British social and cultural historian Lucy Bland suggests that as early as the late 1880s, women had begun to scrutinise and condemn men's sexual behaviour both within marriage and outside it.[139] The expression of such critical comment is typically found in suffrage material and press editorials, but it is rare to find evidence of how one particular woman felt about engaging in physical intimacy with her husband. When Catherine received William's writ for divorce citing her adultery, she penned an enraged letter in which she expressed her feelings of physical revulsion towards him, writing;

> You know you have sores that won't heal on your breast and elsewhere besides the sickening smell of your breath after drink used to be awful. I could not occupy your room it made me sick (sic).[140]

[136] "Divorce Court. Kirchner v. Kirchner. Third Day," *Evening News*, 21 September 1898, 5.
[137] Roe, Beyond Belief, 4.
[138] "Divorce Court. Kirchner v. Kirchner. Third Day," *Evening News*, 21 September 1898, 5.
[139] Lucy Bland, "Marriage Laid Bare: Middle-Class Women and Marital Sex, 1880s-1914," in *Labour and Love*, 124.
[140] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

Providing a marked contrast to the tenderness with which Catherine and Oswald McMaster negotiated their physical intimacy, this brief reference suggests that Catherine may well have resorted to theosophy as a pretext to avoid "cohabitation" with William. I have no idea what the "sores that won't heal" may have been, but Catherine's sentiments confirm she had no wish to sleep with her husband.

While Catherine attributed her initial move from Goulburn to Sydney to the desire to better her children's education, her attitude to her offspring was practical and expedient, rather than sentimental. The sources suggest that Catherine valued her maternal role, but maternity did not appear to dictate the way she arranged her life or planned her future. For a considerable part of Catherine's time in Sydney, the Kirchner children did not live with their mother. With a demanding business to run, and wearing a number of different occupational "hats," it would not have been possible for Catherine to prioritise her maternal obligations. In 1897 she borrowed yet again from Oswald McMaster to enrol Lucina and Marjorie as boarders at Bondi's Waverley College, and paid their fees six months in advance. Although she does not mention the arrangement explicitly in any of the documents, it seems that young Willie stayed for some time with his father; in one letter to William, Catherine inquired after the "little darling," and confessed that she "missed his shrill voice."[141]

Taking her daughters out of their private school when money became scarce yet again, Marjorie and Willie were sent to live in Sydney's Macquarie Street with Thomas and Elizabeth Chestnut, a childless couple caretaking for the Department of Justice there.[142] Marjorie attended Sydney Girls' High School in the suburb of Ultimo, but while divorce proceedings were underway, young Willie lodged at a farm in Ryde "with a relation of the said Mr. and Mrs. Chestnut."[143] It is not clear whether it was William or Catherine who

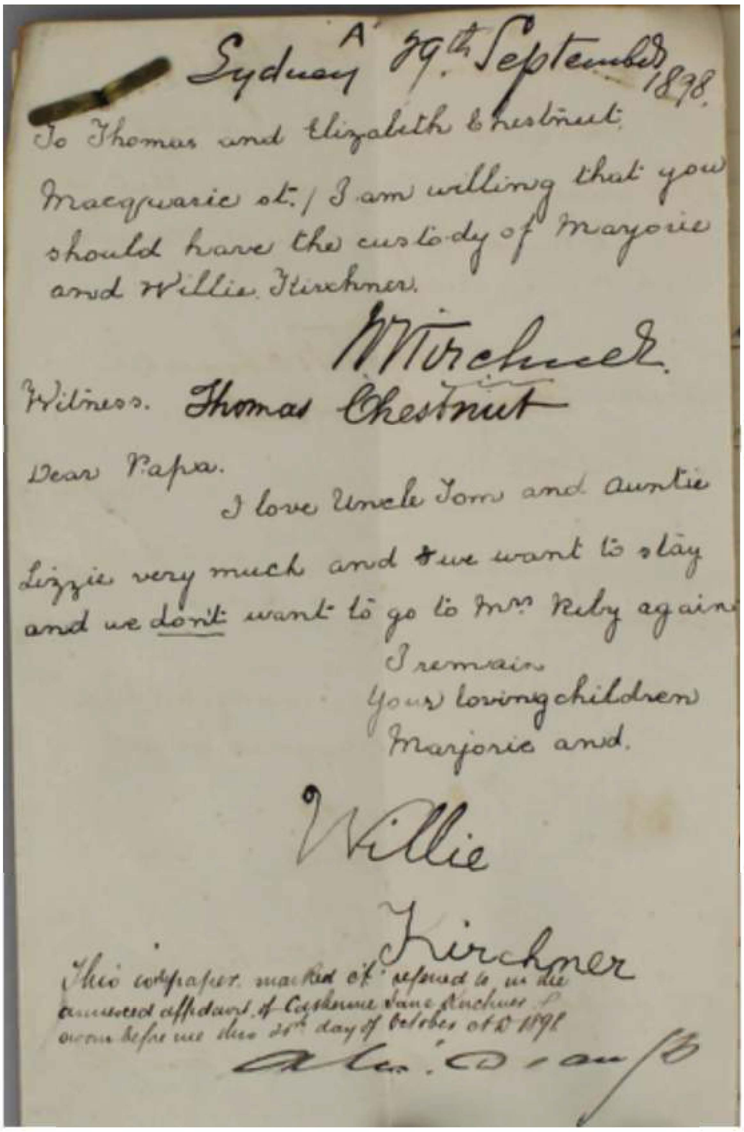
[141] SRNSW: NRS 13495 [2913/1898], *Kirchner v. Kirchner.*
[142] SRNSW: NRS 13495 [2913/1898], *Kirchner v. Kirchner.*
[143] "Sydney Girls High School, About us, History," http://www.sghs.nsw.edu.au/About_Us/History.html accessed 4 November 2018; SRNSW: NRS 13495 [2913/1898], *Kirchner v. Kirchner.*

orchestrated the informal custody arrangement, but what is abundantly clear is how ad hoc and uncertain the arrangements for child custody could be during this period.

At times the children were shuffled from one location to another, on the basis of either verbal agreements between William and the Chestnuts, and at others merely via a brief note which conferred custody according to the preference of one parent or the other. These arrangements William strove following the trial to formalise, by furnishing to the court a brief letter and supplementary note which Marjorie had written with the help of Willie, whose childish signature helped to testify their mutual affection for "Uncle Tom and Auntie Lizzie." Outlining her own plans for their custody, Catherine swore to making arrangements with the Chestnuts so that Marjorie could continue to attend school, while Lucina and Willie were to go with her in her new role as "residential agent" to Eyriewald, where she intended to "educate them and bring them up under her own care."[144]

There is no doubt Catherine Kirchner loved her children, but they occupy a surprisingly minor role in the sources, particularly when compared to the emphasis she and others afforded her professional interests, and of course, the scandalous elements of her personal situation. Shortly before her divorce proceedings, while the commercial laundry was still in operation, sixteen-year-old Lucina Kirchner worked there as a housemaid. The close relationship between Lucina and her mother is evident in that she lived with Catherine and Oswald McMaster after their marriage, and perhaps most surprisingly, later adopted the surname McMaster.[145] There is no indication of what became of Willie or Marjorie, or whether they remained with the Chestnuts.

[144] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[145] The informant on Catherine's Death Certificate was Lucina McMaster. NSW Death Registration Transcription [2759/1907], *Catherine Jane McMaster.*



A

Sydney 29th September 1898.

To Thomas and Elizabeth Chestnut,
Macquarie st. / I am willing that you should have the custody of Marjorie and Willie Kirchner.

W Kirchner.

Witness. Thomas Chestnut

Dear Papa.
I love Uncle Tom and Auntie Lizzie very much and we want to stay and we don't want to go to Mrs Riley again

I remain
Your loving children
Marjorie and
Willie
Kirchner

This is the paper marked "A" referred to in the annexed affidavit of Catherine Jane Kirchner sworn before me this 26th day of October 1898

Image 4.10 William Kirchner's informal custody agreement with the Chestnuts, which Marjorie and Willie have substantiated.

SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*

Woman as Active Agent

The Kirchner divorce case reveals the changing experience of having and being a female body in 1898 when compared to 1883. If, as phenomenology asserts, individual subjectivity "arises from the experience of embodiment in both time and space," it is important to consider how changes to the feminine role wrought modifications in how women could and did deploy their bodies.[146] Alterations within the broader society involved a

[146] Parkins, "Protesting Like A Girl," 62.

steady lessening of those gendered structural constraints which formerly suppressed the potential for female liberty. For Catherine and those like her—progressive women who wanted more from life than the domestic role alone could offer, and eager to take advantage of those freedoms made possible by diverse and proliferating opportunity—a lessening of such constraints was particularly significant with regard to earning an income. To access paid employment demanded a new way of engaging with and relating to the world, one that involved a rejection of subjected and compliant modes of feminine comportment.[147] Had Catherine remained bound by the physical constraints of genteel deportment, she could not have conducted herself as an independent agent: just as the oppression of women takes place "in and through their bodies,"[148] liberation from such oppression occurs equally through the physical form.

The work of feminist scholar Iris Marion Young suggests it is possible to understand how a particular society structures existence for women by examining the typical modes of feminine comportment within that society.[149] Although Young contends that her arguments hold sway only in the contemporary era, they have definite relevance to the colonial era. In this context, consider those diverse activities in which Catherine Kirchner engaged to earn an income. These activities made essential her rejection of the bodily subjugation that characterised women only a decade before: she could not have conducted her diverse business affairs whilst dressed in a crinoline, or laced tightly into a corset.[150] Running up and down stairs to supervise servants doing housework, or performing manual tasks in her commercial laundry, ushering in clients to her "Ladies Agency," typing relentlessly on her

[147] Susan Kingsley Kent, *Gender and Power in Britain, 1640-1990* (London: Routledge, 1999), 232.
[148] Kathy Davis, "Beyond Modernist and Postmodern Readings of the Body," in *Embodied Practices: Feminist Perspectives on the Body,* ed. Kathy Davis, (London, Thousand Oakes, New Delhi: Sage Publications Inc., 1997), 10
[149] Iris Marion Young, *Throwing Like a Girl and Other Essays in Feminist Philosophy and Social Theory* (Bloomington: Indiana University Press, 1990, reprinted 2002), 143.
[150] Like American feminist scholar Kathy Davis, Angela King suggests that feminism identifies bodily subjugation as the chief means by which women are oppressed. King, "Prisoner of Gender," 31.

Remington typewriter (which Catherine carried with her at all times, whilst travelling away from home)[151] to write for *The Co-operator*, or wrapping and addressing multiple copies of the newspaper were all tasks demanding constant movement, and a sense of physical efficacy.

If, as Foucault contends, power operates within society by structuring our choices, decisions and practices, by the late 1890s these had extended markedly for some women, particularly in comparison to only a few years before.[152] Whilst the woman charged with adultery was formerly required to convince judge and jury of how well she conformed to the feminine type, possessing such qualities as chastity, constraint and wifely obedience, in the Kirchner trial these qualities are notably absent, and Catherine's performance on the stand bears no similarity to the paragon of virtue Flora Horwitz worked hard to convey. In contrast to such ideas of "passive and self-sacrificing femininity," Catherine demonstrated instead her independence and determination.[153]

Given that the two following case studies suggest a return of the pendulum to restrictive feminine standards, it is difficult to explain why these standards did not prevail in the Kirchner case. However, Catherine's courtroom demeanour of confidence and vigour is remarkably similar to that of Louisa Moss, the subject of my final chapter. Like Catherine, Louisa was an independent economic agent who conducted herself autonomously in the world of business, characteristics which suggest yet again the vital role of financial autonomy in developing a confident and empowered subjectivity, both in the private realm and in the public forum of the courtroom.

The Horwitz case reveals how the middle-and-upper-class woman was "an exquisite slave," chaperoned in public and compelled by her unwieldy clothing to move in a

[151] SRNSW: NRS 13495 [2913/1898] *Kirchner v. Kirchner.*
[152] Davina Cooper, "Productive, Relational and Everywhere? Conceptualising Power and Resistance Within Foucauldian Feminism," *Sociology* 28, no.2 (1994): 437.
[153] Heilmann, "Feminine Resistance," 300.

constrained and delicate manner.[154] Such a style of movement was rendered compulsory by tightly laced stays which impeded breathing, while heavy skirts and petticoats weighing several kilograms made walking slow and difficult.[155] Catherine had travelled far from her middle-class origins, however, and fashions were changing. A search of Trove for the decade of the 1890s confirms that the Rational Dress movement featured in many thousands of entries, a significant number of which were linked to discussions of women's fashion in England and the United States.[156] A new and free womanhood demanded a different style of dress that in its comfort and simplicity allowed the decisive and capable movement in which the modern woman potentially engaged.

Other aspects of extant press coverage and legal documentation in the Kirchner case confirm that the feminine ideal underwent significant modifying during this period. In the courtroom, such normative re-visioning had definite implications for the gendered performance, but social class further influenced that performance. After all, as Penny Russell demonstrates in her analysis of elite femininity in Melbourne between 1850 and 1880, society expected the middle and upper-class woman to remain disengaged from the public world, whilst accepting that those beneath her were forced to do otherwise.[157] Consider the trial for adultery in 1878 of Jane Dibbs, who to convince the court of her chastity limped into the courtroom on each day of her trial leaning on the arms of two close women friends: shrouded in mourning dress and a double veil, Dibbs fainted on several occasions during cross-examination, and fell into hysterics more than once.[158] A similar performance was much less

[154] Helene Roberts, "The Exquisite Slave: The Role of Clothes in the Making of the Victorian Woman," *Signs* 2, no.3 (1977): 554-569.
[155] Eleanor Flexner, *A Century of Struggle: The Woman's Rights Movement in the United States* (New York: Atheneum, 1973), 83.
[156] In a typical example, one brief article describing "knickerbockers for ladies' wear" claimed that such items were now "much advocated by physicians and hygienic specialists," who argued that "more than half the illnesses from which women suffer would be averted by wearing these garments." "Rational Dress," *Adelaide Observer*, 30 June 1894, 40.
[157] Russell, *A Wish of Distinction*, 167.
[158] "Dibbs Divorce," *Australian Town and Country Journal*, 13 March 1881, 6.

likely in 1898, and for Catherine Kirchner, such contrivances were at odds with the competent and confident business persona she presented.

Catherine Jane Wilson, Spinster

It is important to consider how and why Catherine's circumstances differed so markedly from the other three women this thesis has investigated so far. A key legal element separating the cases is that Catherine did not lodge a counter case to allege her husband's cruelty or violence: in describing the one occasion on which William assaulted her, what stands out most is that it was a single episode, rather than the extensive abuse others described. Allegations of William's cruelty are conspicuous in their absence. This is not to say Catherine's legal team did not strive to paint him as an errant husband, a poor provider and at times nasty or unthinking, but neither did William's lawyers demolish Catherine's character or virtue as lawyers in the Horwitz and Dorn cases had done.

Despite recognising that the late 1890s offered women some move forward from their subjected position, I am not suggesting late nineteenth century colonial life did not remain intensely patriarchal, or that women across social class enjoyed the same access to resources and opportunities that men did. Masculine might remained supreme, and gender and class combined to outweigh merit, even though many women were branching out from a narrow concentration in domestic service and entering the manufacturing and commercial fields, and to a small extent the professions.[159] Accordingly, a significant portion of the credit for Catherine's ability to abandon her marriage lies in two factors stemming directly from her class status.

[159] Ray Markey, "Women and Labour, 1880-1900," in *Women, Class and History*, 84-86.

To begin, Catherine's close relationship with Oswald McMaster provided her with an informal loan broker. McMaster finalised the loan agreement enabling her purchase of the equipment she needed to operate the laundry, negotiated an additional loan to pay boarding school fees for her two daughters, and furnished Catherine with various employment positions, by virtue of his position as manager of the Co-operative Wool Stores. Furthermore, through its inheritance provisions, Catherine's propertied family guaranteed her an ongoing income source which further strengthened her capacity to engage in business, and also provided some leverage in her financial negotiations with McMaster.

When Catherine married Oswald McMaster in January 1900, she had abandoned both her married surname and marital status, signing the marriage certificate as Catherine Jane Wilson, "spinster."[160] The couple moved to Queensland, returning often to Sydney where they lived in the North Shore suburb of Waverton. When Catherine died of "heart failure and exhaustion," and "carcinoma of the uterus," in February 1907, at the relatively young age of forty-eight,[161] the couple had evidently been struggling financially for some time. Already in 1903 Oswald faced a forced sale at public auction of land for which he was unable to pay the mortgage,[162] he suffered bankruptcy only a few months after Catherine's death, and in September of that same year, the Bank of New South Wales was chasing the pair (unaware that Catherine had died) for payment of almost three hundred pounds.[163] McMaster's most significant achievement as "the inventor of several patents," among other activities relating to his career in civil engineering evidently took place well after Catherine's death. Despite the realities of her economic failures, Catherine's death certificate at least

[160] Queensland Births, Deaths and Marriages, Marriage Certificate *Catherine Jane Wilson and Oswald McMaster* [1900/C323].
[161] NSW Death Registration Transcription [2759/1907], *Catherine Jane McMaster.*
[162] "A.F. Rutter v. McMaster, O.," *Government Gazette of the State of New South Wales,* 27 October 1903, 7898;
[163] "In Bankruptcy," *Government Gazette of the State of New South Wales*, 17 April 1907, 2315; "Re Oswald McMaster and Catherine Jane McMaster," *Government Gazette of the State of New South Wales*, 4 September 1907, 5094.

describes her as a "Grazier," in welcome contrast to those innumerable women whose occupation has been encompassed within the desultory and dismissive nomenclature of "Home Duties."[164]

Confirming his ongoing possession of a flexible moral compass, William Kirchner in 1904 was to serve twelve months in Darlinghurst Gaol for embezzlement and obtaining property by false pretences.[165] He had evidently forgotten his experience of incarceration by 1934, when at the invitation of the Clarence River Historical Society, now aged eight-two, William penned an eloquent "Memoir" of his father's arrival in Grafton, and his own childhood.[166]

Catherine Kirchner McMaster's case offers significant insight into the changing balance of power between the sexes as the nineteenth century came to a close, and how the crisis in gender relations affected one particular couple. Of equal if not greater importance is its contribution to the historiography of individual lived experience for an unremarkable but nevertheless unique woman, whose circumstances would be forever lost to posterity were it not for her involvement with the law. Catherine's engagement with a public rather than domestic sphere reveals how some women could potentially escape their former legal and financial dispossession through employment. At the same time, however, it suggests the crucial role that social class played in enabling such liberation.[167] As feminist historians continue to overturn the misperception that women of the past were not actors in their own right, Catherine Kirchner serves as a model of the independent modern woman, and an active historical being who strove to shape her own life.

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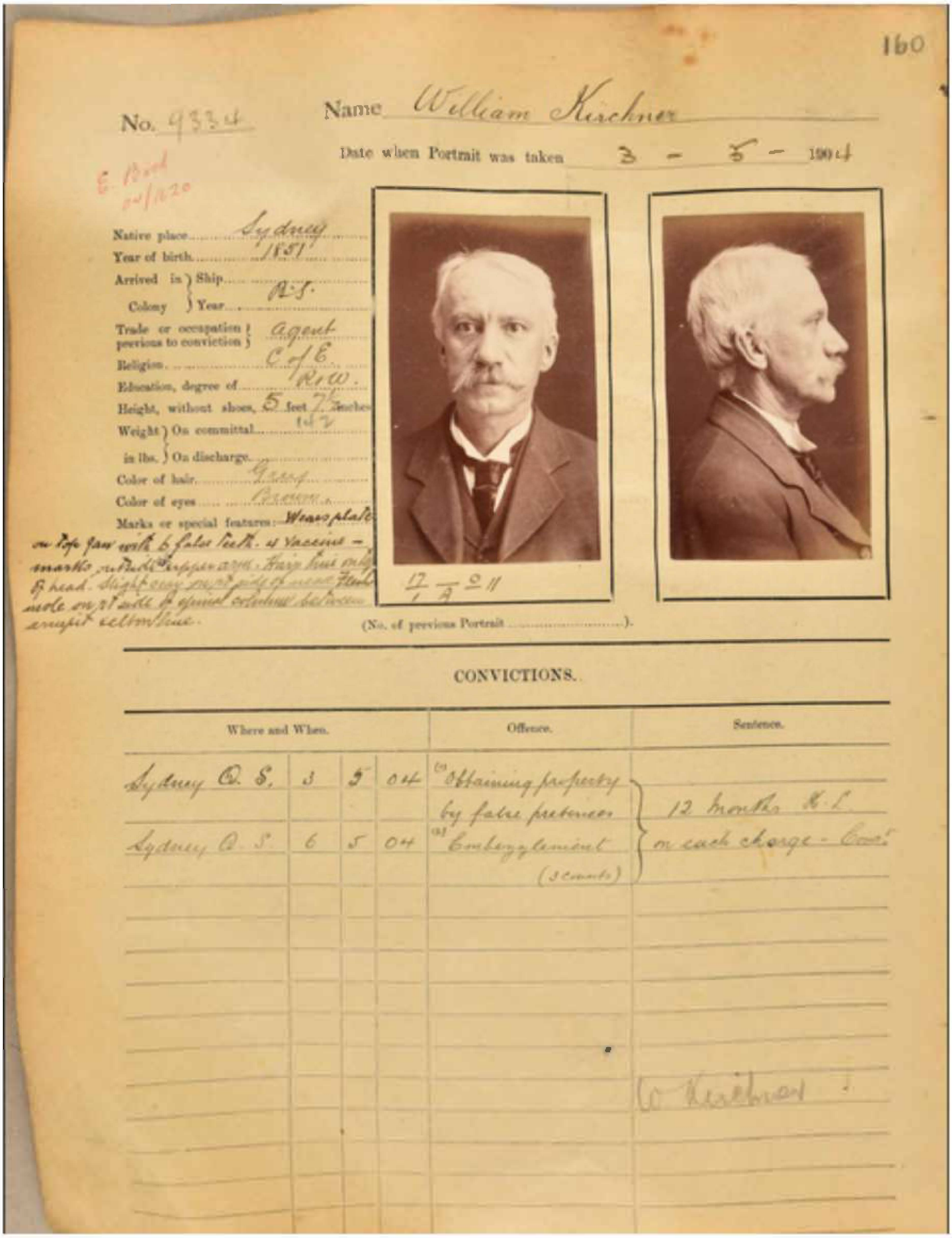
[164] NSW Death Registration Transcription [2759/1907], *Catherine Jane McMaster.*
[165] SRNSW: NRS 2138 Gaol Book Photographs (Darlinghurst Gaol), *William Kirchner* [9334, 3/6069].
[166] "A Memoir of William Kirchner, By His Son Mr. W. Kirchner, Belmont," *Daily Examiner,* 19 February 1934, 8.
[167] Grimshaw and Willett, for example, argue that colonial women had few rights outside of the home, but dominated within the domestic context. Grimshaw and Willett, "Women's History and Family History," in *Australian Women: Feminist Perspectives,* 154.


160

No. 9334 Name William Kirchner

Date when Portrait was taken 3 – 5 – 1904

Native place Sydney
Year of birth 1851
Arrived in Colony } Ship / Year B.S.
Trade or occupation previous to conviction } agent
Religion C of E
Education, degree of R.W.
Height, without shoes, 5 feet 7½ inches
Weight in lbs. } On committal 142 / On discharge
Color of hair Grey
Color of eyes Brown
Marks or special features: Wears plate on top jaw with 6 false teeth. 4 vaccine marks ... upper arm. ... head. ...

12 – 2 – 11

(No. of previous Portrait ....).

CONVICTIONS.

Where and When.				Offence.	Sentence.
Sydney Q. S.	3	5	04	(1) Obtaining property by false pretences	12 months H. L. on each charge – Con.
Sydney Q. S.	6	5	04	(2) Embezzlement (3 counts)	

W. Kirchner

Image 4.11 William Kirchner's gaol photograph and charge sheet, 1904.

SRNSW: NRS 2138 Gaol Inmates 1870-1930, *William Kirchner* [3/6050].

Chapter Five—*Webb v. Webb,* 1901: He Said He Would Treat Her Better[1]

Image 5.1 and 5.2 Court drawings of Hannah and George Webb, from the *Truth* newspaper's trial coverage.

"Doings in Divorce. The Tangled Webbs. Beer and Beatings," *Truth*, 3 November 1901, 5.

Introduction

In June 1901, Hannah Webb petitioned for divorce from her husband George on the grounds of cruelty, and in late October appeared in Sydney's Divorce Court before Judge George Bowen Simpson and no jury.[2] The trial's unfolding revealed an enthralling domestic melodrama, in which an adulterous wife and her abusive husband were bound together in a hellish union. While legal sources and press reports in the case suggest an ongoing and disturbing misogyny in early nationhood, they equally confirm the renewed emphasis upon

[1] State Records NSW: Supreme Court of New South Wales: NRS 13495, Divorce Case Papers 1873-1978 [4022/1901], *Hannah Webb – George Webb* (hereafter SRNSW: NRS 13495 [4022/1901] *Webb v. Webb*); "Today's Divorce. Webb v. Webb. The Maitland Case," *Evening News*, 29 October 1901, 4.
[2] While to date my research has investigated cases tried before a jury, Hilary Golder suggests that a jury was *not* typically engaged in divorce trials. Golder, "'A Sensible Investment,'" 19.

maternal and domestic roles which scholars have remarked, and the slow evaporating of those freedoms which beckoned to women like Catherine Kirchner.[3] The start of a new century arguably saw eroded those hard-fought gains of suffrage campaigners and women who believed in the possibilities of marital equality and independent selfhood.[4]

The harrowing details of Hannah Webb's legal ordeal, the domestic violence she endured, and the ongoing realities of male oppression dash any sense of optimism which Catherine Kirchner's confident demeanour and independent lifestyle may have inspired. It seems that since the Horwitz case, little had altered within the individual marriage to wrest the balance of power from a male breadwinner. George Webb believed he was entitled to physically chastise Hannah for her presumed transgressions, and this he did with vigorous frequency.[5]

In attempting to prove her husband's cruelty, Hannah Webb was held to standards of womanhood as restrictive as those constraining Flora Horwitz almost twenty years before.[6] The moral condemnation Hannah suffered in a legal forum and the wider community are reminiscent of those earlier divorce cases in which the adulteress was damned as a fallen woman.[7] Nor was George Webb any less controlling or abusive than Harry Horwitz. Male dominance and aggression characterised both marriages, and there was similarly little evidence of affection.

At first glance, *Webb v. Webb* appears straightforward, predicated on the age-old parable whereby a woman confesses to her husband that he is not the father of her child. The

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[3] Kay Saunders and Judith Allen in particular uncover over misogyny in ground-breaking works pertaining to domestic violence. Saunders, "Domestic Violence in Colonial Queensland,"; SRNSW: NRS 13495 [4022/1901] *Webb v. Webb*; Australian feminist historian Maya Tucker argues that the pendulum had swing full circle at this point in time, returning to a position where "home and family" were once more "the centre of women's lives." Maya V. Tucker, "The Emergence and Character of Women's Magazines in Australia, 1880-1914," (PhD Thesis, University of Melbourne, 1975), 424.
[4] Magarey, *Passions,* 7.
[5] Judith Allen suggests that this was a common male view. Allen, "Pathological Family," 4.
[6] For more about how social and demographic factors strengthened the trend to return to the restrictive feminine ideal, see Carol Bacchi, "First Wave Feminism: History's Judgment," in *Australian Women,* 164.
[7] Radi, "Whose Child?" 125.

case is distinctive, however, in that it was Hannah rather than George Webb who initiated proceedings, despite her alleged confession. In this chapter, I outline the couple's circumstances prior to and during their ten-year marriage, most of which took place in the small rural township of West Maitland in the NSW Hunter Valley.[8] I briefly describe events leading to the trial, before breaking the discussion into several sections.

Image 5.3 West Maitland, c. 1890s. The photograph above shows its main High Street at the time the Webbs lived there.

Newcastle and Hunter District Historical Society, held at the University of Newcastle, https://livinghistories.newcastle.edu.au/nodes/view/19708

[8] West Maitland merged with East Maitland and Morpeth to become the City of Maitland, as it is today, in 1944. Maitland Visitor Information Centre, https://www.mymaitland.com.au/my-maitland-its-history/ accessed 4 December, 2018.

To begin, my discussion asks how legal authorities framed definitions of matrimonial cruelty in this period. While legal scholars have investigated formal conceptions of marital cruelty, it is rare to be able to identify how a judge approached the issue, or to analyse the role of physical assault within their views. In this context, I examine Justice Simpson's judicial reasoning for rejecting Hannah's allegations of cruelty and ask what his pronouncements suggest about the concept of matrimonial cruelty in general. Its investigation here demands scrutiny of Webb's brutality towards his wife and other women in the household, and of how the wider community responded to violence against women.

The Webb case highlights several key issues pertaining to gender relations at the turn of the century, and the years immediately prior. The balance of marital power, prevailing notions as to "proper" spousal roles and the control of fertility emerge as prominent concerns. With legal and press discourse reflecting a renewed emphasis on maternal fitness and domesticity, I consider how these dual notions influenced perceptions of Hannah Webb as a wife and mother, and ultimately condemned her in both roles when she was proven to be an adulteress. The case is the first I have investigated for which the newly appointed Court Reporter has transcribed proceedings, and its documentation is substantial.[9]

As the sources include extensive detail about Webb's efforts to prevent Hannah from conceiving, I ask how this information adds to our understanding of the global fertility decline, and the role of the individual in lowering the birth rate. Finally, I examine Hannah Webb's small-scale but sustained resistance to her abusive husband. Throughout my discussion, I ask how disciplinary power in diverse contexts focused specifically upon the

[9] The Court Reporting Office began transcribing divorce proceedings from 1899. The transcriptions were typed and bound, with several smaller cases incorporated into one volume or, as was the case in the Webb trial, comprising an entire volume for one case. In this instance, the Court Transcriptions run to 385 pages. Although they purport to describe proceedings verbatim, the questions that lawyers asked of witnesses are not included. State Records NSW, Supreme Court of New South Wales, NRS 2713, Court Reporting Office Transcripts, 1899-1939.

female body,[10] and reinforced male authority through the belief that to ensure a wife's submission, a husband was entitled to physically correct his wife.[11]

He Took her out of a Dirty Low Public House where she Served Chinamen[12]

Born in 1867 in Sydney, Hannah Victoria Browe was the eldest of eight children, five of whom were alive at the time of proceedings. In infancy, her family moved to Melbourne, where between 1869 and 1872, Hannah's mother Letitia gave birth to another three children. By 1874, the family was living in the town of Wagga Wagga in south-eastern NSW and added another four children to its numbers.[13] I know little of Hannah's early life other than these details, and that her parents were hotelkeepers. To supplement their income, Hannah's father William catered food for community events such as race and Council meetings.[14] Hannah did not engage in paid employment before her marriage, although she sometimes tended the bar when William went to the bank.[15] As the eldest child and a daughter, however, Hannah was doubtless required to help with the many domestic duties necessary to operate a busy hotel.

When William Browe died suddenly in 1891, Letitia took over as hotel licensee.[16] Events thereafter appear to have taken a downturn. In 1894, Letitia's thirteen-year-old son Albert struck her with a shovel on the head, and he served three days in Wagga gaol "under

[10] King, "A Prisoner of Gender," 29.
[11] James, "A History of Cruelty in Australian Divorce," 1.
[12] State Records NSW, Supreme Court of New South Wales, NRS 2713, Court Reporting Office Transcripts 1899-1939, 1901 [6/2925] *Webb v. Webb,* 124. (Hereafter, SRNSW: NRS 2714, 1901 [6/2925] *Webb v. Webb*).
[13] Historical birth records indicate that between 1867 and 1879, William and Letitia Browe had eight children, of whom two boys died in infancy and one daughter Letitia died at the age of eighteen. The Victorian births are registered as taking place in Hotham, which was then the name for North Melbourne (according to https://www.victorianplaces.com.au/hotham ; Victorian Public Records Office Birth Certificates *Letitia Browe* [3819/1869], *Violette Jane Browe*, [17999/1872], *William Browe*, [3730/1871], *Hannah Mary Browe* [1867/1869], *Albert Browe* [20465/1874], *Laura Ellen Browe* [20951/1875], *Thomas Frederick Browe* [23422/1878], *Arthur Frederick Browe* [24677/1879].
[14] "Wagga Wagga," *Australian Town and Country Journal*, 27 March 1880, 39.
[15] SRNSW: NRS 2913, [6/2925] *Webb v. Webb,* 064.
[16] "Sudden Death," *Goulburn Herald*, 20 July 1891, 2.

separate treatment."[17] Within a fortnight, young Albert Browe was again in trouble, this time for stealing a diamond ring worth four pounds from his sister Violetta.[18] During a period of significant economic depression, (as both the Bradley and Kirchner cases confirm), Letitia was charged several times with selling liquor during prohibited hours.[19] When the hotel business failed in 1895, Hannah's mother was forced to sell the property and its contents to discharge her debts.[20]

These incidents confirm that William Browe's widow and children experienced considerable hardship following his death, but also suggest that Hannah was no stranger to family violence and discord. In adulthood, however, the Browe siblings maintained close ties, and at one point in proceedings, Justice Simpson cautioned Hannah's brothers for confronting George outside the courtroom, actions which confirm loyalties to their sister. Albert Browe (now recovered from his youthful bout of delinquency and working as a "motor cycle agent") admitted to the judge that while he had once enjoyed a reasonable relationship with his brother-in-law, he now held "no good feelings towards him," and would have liked "to hit him across the jaw."[21] Hannah's sister Violet also testified on her behalf, and evidence suggests the women were friends as well as kin. The strong relationships between the Browe siblings confirm that blood connections in adulthood comprised productive reciprocal bonds across practical and emotional contexts.[22]

Arriving in Wagga Wagga from England in early May 1891, George Webb met Hannah at her home when he came to work in the town as a chemist and doctor's

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[17] "Local and General News," *Wagga Wagga Express*, 20 February 1894, 2.
[18] "Wagga Police Court," *Wagga Wagga Advertiser,* 3 March 1894, 2. Although christened Violetta, the sources consistently refer to Hannah's sister as Violet.
[19] "Local and General News," *Wagga Wagga Express,* 16 February 1893, 2; "Wagga Wagga Police Court, Friday April 3rd," *Wagga Wagga Advertiser,* 6 April 1895, 2; "Newcastle Police Court. Drunkenness." *Newcastle Morning Herald and Miners' Advocate*, 25 November 1898, 3.
[20] "Advertising," *Wagga Wagga Advertiser*, 15 June 1895, 3.
[21] "The Motor Quadracycle," *Wagga Wagga* Express, 10 September 1901, 4; SRNSW: NRS 2713 [6/2925] *Webb v. Webb,* 327-8.
[22] Leonore Davidoff, *Thicker than Water: Siblings and Their Relations, 1780-1920* (Oxford: Oxford University Press, 2012), 136.

apprentice.[23] The couple married at the local Anglican parsonage on August 22, 1891, after a courtship of three months, and embarked on married life in rural locations which included Narranderra, Nowra and finally West Maitland, where they settled in 1892. (Colonial dentists often travelled between towns to consult with patients, renting a chair in a pharmacy or the like, and advertising in advance their impending arrival).[24] Between 1893 and 1900, Hannah gave birth to four children. At the time of proceedings, her sons Cecil, Ernest and Robert were aged nine, seven and four, while baby Nellie Edith was fifteen months old.[25]

According to their marriage certificate, Webb's father was a Liverpool medical practitioner, and his mother the daughter of a "gentleman," suggesting a higher social class than Hannah's (or possibly merely his self-aggrandisement).[26] George Webb's awareness of class and racial differences—the latter a preoccupation that bordered on the obsession in early nationhood—is borne out by the class-and-race based insults he sometimes directed at his wife, including the oft-repeated claim that he had "taken her out of a dirty low public house," where she "served Chinamen," and the constant taunt that Hannah was "just like her mother," presumably referring to a fondness for drink.[27]

For reasons of propriety, Webb also objected to Hannah and Violet's friendship with Bridget Scanlan, the family's only domestic servant. He complained that it was "degrading" to see his wife and her sister engaging in a relationship of equality with an underling, displaying a well-developed awareness of social status.[28] With social interaction between

[23] "Today's Divorce. Webb v. Webb. A Maitland Case," *Evening News*, 28 October 1901, 4; "In Divorce. Webb v. Webb," *Evening News*, 30 October 1901, 6.
[24] "A Maitland Divorce Case. Charges and Counter-Charges. Alleged Cruelty and Misconduct," *Australian Star*, 28 October 1901, 5; See for example, "Dentistry," *Singleton Argus,* 13 January 1898, 2.
[25] NSW Births, Deaths and Marriages, Birth Certificates *Cecil Frederick Webb* [21499/1893], *Ernest Arthur Webb* [24000/1895] *Robert E. Webb* [4512/1897] *Nellie Edith Webb* [23521/1900].
[26] Marriage Certificate, *George and Hannah Webb*, in SRNSW: NRS 13495 [4022/1901] *Webb v. Webb.*
[27] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 124; As Lisa Featherstone argues in her doctoral thesis, ideas about whiteness and race were integral to national identity at this time. It appears that such ideas figured prominently in George Webb's self-conception and in his sense of manliness. Lisa Featherstone, "Breeding and Feeding: A Social History of Mothers and Medicine in Australia, 1880-1925," PhD Thesis, Macquarie University, 2003, 27.
[28] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 153.

employers and servants widely regarded as inappropriate,[29] Webb often warned Hannah against making "a companion of the girl" or sending Bridget out for beer, actions he considered deplorable.[30]

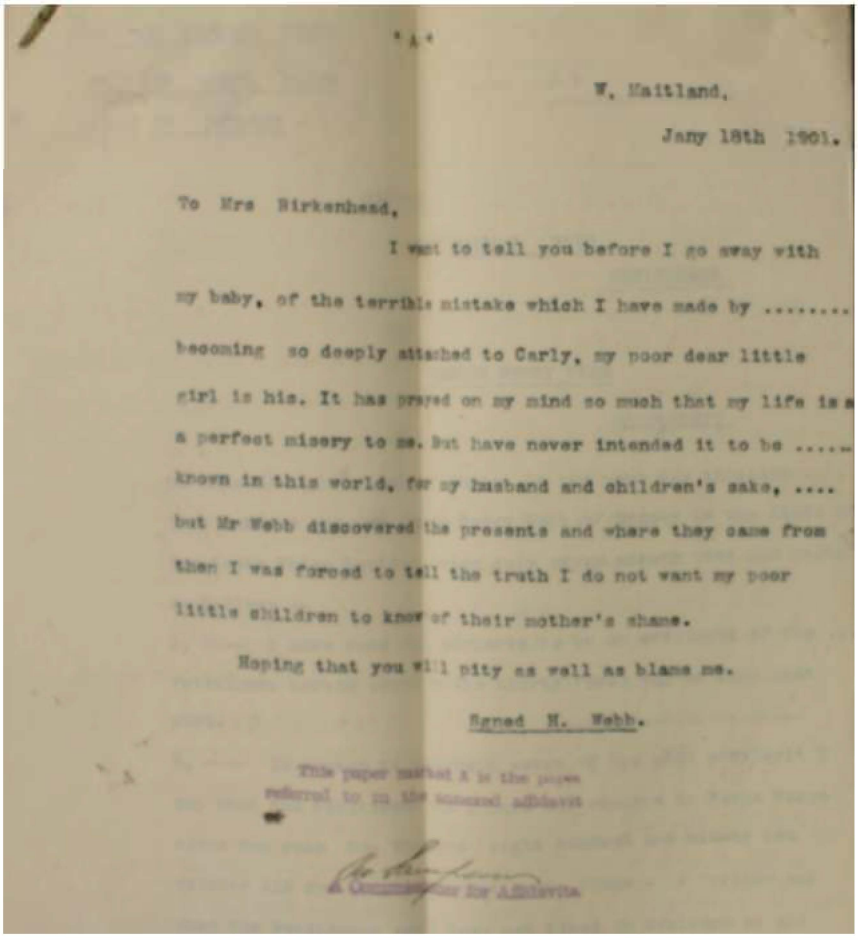
Hannah was thirty-four and her husband twenty-nine when she lodged her petition in late June 1901.[31] I have located only one mention within the sources of the bride being older than her groom, with Hannah's initial petition alleging that George "said he was the same age" when she married him at twenty-four; in reality, he was twenty.[32] During proceedings, however, Hannah admitted to once overhearing George tell their landlady "his wife was too old for him."[33] Although such an age difference between bride and groom may appear unusual, many wives in the Western world have been older than their husbands.[34] Nevertheless, it seems curious that legal authorities did not afford greater prominence during the trial to the age difference between Hannah and George, and that trial documents stated George's age incorrectly.

The Missus said you had Connections with her[35]

When Hannah lodged her petition in 1901 on the grounds of Webb's cruelty and abuse, he responded with counter-charges of her adultery, habitual drunkenness and habitual neglect of household duties.[36] Added to the *Divorce Act* in 1892, these latter grounds in effect allowed judges to exercise considerable subjectivity in assessing evidence.[37] Webb's

[29] Davidoff et al., *The Family Story*, 104.
[30] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 149.
[31] SRNSW: NRS 13495 [4022/1901] *Webb v. Webb.*
[32] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 03.
[33] "A Maitland Divorce Case. Charges and Counter-Charges. Alleged Cruelty and Misconduct," *Australian Star*, 28 October 1901, 5; SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 03.
[34] Peter Laslett, *Family Life and Illicit Love in Earlier Generations* (Cambridge: Cambridge University Press, 1977), 13.
[35] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 252.
[36] SRNSW: NRS 13495 [4022/1901] *Webb v. Webb.*
[37] Golder, "'A Sensible Investment,'" 403.

accusations of infidelity rested on his discovery some months beforehand of a small parcel containing several silver trinkets, hidden in baby Nellie's perambulator. He claimed Hannah admitted the baubles were a gift from his former apprentice, Richard Birkenhead, and she then confessed in writing to a relationship of some eighteen months with Birkenhead, a liaison leading to the birth of baby Nellie. In the Divorce Court some months later, Hannah's brief letter of confession formed the basis of Webb's adultery charges. In late June, however, Hannah claimed to have confessed "under compulsion at her husband's dictation," and vowed her innocence.[38] She then instigated divorce proceedings.



'A'

W. Maitland,

Jany 18th 1901.

To Mrs Birkenhead,

I want to tell you before I go away with my baby, of the terrible mistake which I have made by ..... becoming so deeply attached to Carly, my poor dear little girl is his. It has preyed on my mind so much that my life is a perfect misery to me. But have never intended it to be ..... known in this world, for my husband and children's sake, ... but Mr Webb discovered the presents and where they came from then I was forced to tell the truth I do not want my poor little children to know of their mother's shame.

Hoping that you will pity as well as blame me.

Signed M. Webb.

This paper marked A is the paper referred to in the annexed affidavit

A Commissioner for Affidavits

Image 5.4 Hannah's supposed letter of confession. The file does not contain the handwritten version.

SRNSW: NRS 13495 [4022/1901] *Webb v. Webb.*

[38] "A Maitland Divorce Case. Charges and Counter-Charges. Alleged Cruelty and Misconduct," *Australian Star*, 28 October 1901, 5.

Evidence is limited as to Hannah's affair with Birkenhead. He was not named as co-respondent because Hannah petitioned, but as the judge remarked, Birkenhead had "deserted" her, and because he was at no time served with a subpoena, he was either unable or unwilling to support her in denying their liaison.[39] The trial focused only briefly on the adulterous relationship, with several witnesses asked to recount what they had seen or heard of "improper" conduct between the accused.

One of Webb's employees described how the dentist marched into his workshop "dragging" Hannah along to confront Birkenhead, and informed the latter that "my missus said you had connections with her."[40] Another swore Birkenhead came often to the Webb house on his bicycle in the daytime, and sometimes took one of the children out with him for a ride.[41] A former servant in the household, Sarah Leggat, whom the judge declared to be "a truthful girl," claimed Birkenhead came to the home many times when Webb was absent in England for two months in 1898. Leggat described entering the house via the children's bedroom window because the back door was locked, whereupon she observed Birkenhead standing and reading a book, and Mrs. Webb rocking the baby. Justice Simpson declared this to be "a very extraordinary position for a young man, and for the mother of the baby, to be in just when the girl returned."[42]

As Hilary Golder observes, while the court's brief was to rely on "the facts," judges instead turned to their own character assessments of those involved in proceedings, and were prepared to accept as proof of guilt or innocence both circumstantial evidence and subjective impressions.[43] George Simpson reached his own conclusions on the basis of his belief in what was and was not "proper," stating several times in his written summation that he "could not

[39] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 361.
[40] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 252.
[41] "In Divorce. Before Mr. Justice Simpson. Webb v. Webb," *Sydney Morning Herald*, 6 November 1901, 5.
[42] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 371.
[43] Golder, "'A Sensible Investment,'" 19.

rely upon Mrs. Webb" with any confidence.[44] Although several upstanding citizens confirmed Hannah's version of events, their words failed to sway the judge, indicating that subjective assumptions bore a weight of equal import to concrete evidence when it came to reaching a verdict.

He Struck his Wife, but said it was in Circumstances of Great Provocation[45]

In my analysis of the Bradley divorce case, I suggested that conceptions of marital cruelty were altering so that evidence of physical abuse was no longer mandatory. Unlike Judge William Windeyer, however, who despised men who mistreated their wives, many other judges believed that to control an errant wife, it was sometimes necessary for a husband to use "physical discipline." A judge could also exercise his own discretion in deciding whether or not a man's cruelty was "acceptable" under the circumstances.[46]

That judges exercised such subjectivity is immediately apparent upon reviewing Justice Simpson's decision in the Webb case. The primary basis of Hannah's petition was that George Webb had "repeatedly assaulted and cruelly beaten her," but also "condoned," "connived," and "conduced" to her adulterous affair. According to James Hammerton, as I pointed out in the Horwitz case, condonation referred simply to the "forgiveness of a marital offence." For one partner to explicitly or tacitly forgive cruelty or adultery, or to remain in the marital home, implied they had in some way accepted the offence, and this acceptance diminished the legal impact of their wrongdoing.[47]

As it had been for Harriet Dorn and Flora Horwitz, Hannah's situation was paradoxical. She placed herself in a double bind, on the one hand claiming that her husband

[44] "The Webb Divorce. The Judgment," *Evening News*, 8 November 1901, 4.
[45] "The Webb Divorce Case. Verdict for the Respondent," *Maitland Daily Mercury,* 8 November 1901, 3.
[46] James, "A History of Cruelty in Australian Divorce," 8, 22.
[47] Hammerton, *Cruelty and Companionship*, 119.

"forced" her to sign a false admission of guilt, but at the same time contending his willingness to overlook her infidelity. In either case, the fact of her extra-marital affair is difficult to deny. When Hannah took advantage of her legal right not to answer any further questions regarding the letter of confession, Justice Simpson refused to believe that Webb had coerced her, and instead assumed Hannah's culpability in writing the condemnatory missive, and the veracity of its contents.

Australian legal scholar Colin James observes that the law at this time implicitly enforced the right of a husband to abuse his wife in any way he felt necessary to ensure her submission. One important means through which the judiciary bolstered patriarchal authority was to render the criteria for cruelty impossibly high, and thereby make an accusation of cruelty difficult to prove.[48] In several other cases involving male violence and cruelty of an extraordinary degree, Justice Simpson had refused to support the wife's petition, even announcing at the end of one particularly horrific suit that "marriage should not be dissolved for such trivial causes as exist in this case."[49] The judge's decision to award the divorce to Webb rather than his wife confirms James's suggestion that courts used the legal concept of matrimonial cruelty "to preserve hierarchy in the marriage-based family by... silencing... women...and empowering...men."[50]

The colonial era was officially at an end when Hannah Webb lodged her petition, but divorce laws had not altered since 1892, and William Windeyer was an exception amongst the judiciary. As the law stood, and would remain until 1959, women could not institute divorce proceedings on the grounds of "habitual cruelty" alone. On the contrary, to divorce an abusive husband required a woman to prove he perpetrated "specific acts, such as

[48] James, "A History of Cruelty in Australian Divorce," 4-5.
[49] It is difficult to believe, but the husband in this supposedly "trivial" case "beat and burnt his wife, threatened to strangle her, to shoot her and then himself" before battering their baby. One wonders what the judge would have considered a serious example of cruelty. James, "A History of Cruelty in Australian Divorce," 22.
[50] Ibid., 1.

attempted murder or assault and battery."[51] The situation was further complicated because to allege "assaults and cruel beatings" was "the most difficult and dangerous ground to prove."[52] Hannah was required legally to prove that cruelty took place "one year previously to June 29, 1901," the date she lodged her petition.[53] Unfortunately, witnesses confirmed the most blatant evidence of Webb's cruelty occurred on June 13, 1899, which placed the heinous event outside of the requisite twelve-month period and therefore rendered it inadmissible as proof.

The event in question unfolded as follows. On June 13, 1900, Hannah incurred a particularly savage beating after Webb accused her of rifling through his trouser pockets.[54] When she denied any wrongdoing, he "thumped her all over the body, cut her mouth, tore her nightdress from her...and made her wipe the blood from the floor, before pushing her off the landing." Falling down a flight of stairs, Hannah ran down the next flight and out into the yard, dressed only in her combinations and a short petticoat.[55] There she stood sobbing, barefoot on a cold, wet night, until a young plumber "standing yarning" nearby intervened, and called the local police constable. Webb's cruelty was confirmed in court by an esteemed medical practitioner, the West Maitland Member for the Legislative Assembly, two senior police constables, an accountant and a respectable "ladies nurse."[56]

Hannah tendered many other instances of Webb's brutality. On one occasion, he applied carbolic acid to her face after she complained about her freckles, telling her she was

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[51] Golder, "'A Sensible Investment,'" 406.
[52] Ibid., 420.
[53] SRNSW: NRS 13495 [4022/1901] *Webb v. Webb.*
[54] Moving towards her side of the bed, Hannah had brushed past the said trousers, which were hanging on the bedpost, causing the coins in George's pockets to jingle. "Today's Divorce. Webb v. Webb. The Maitland Case," *Evening News*, 29 October 1901, 4.
[55] Combinations were a one-piece Victorian undergarment. Hannah admitted to wearing "Jaeger" combinations. These were made of fine wool and doctors promoted their health benefits, which explains her claim that a doctor recommended she wear them at all times to protect her "weak chest." Jaeger combinations were particularly popular from the early 1890s, and in 1896 that doyenne of home sewing, Madame Weigel, had introduced a paper pattern for them. As an expert seamstress, it is likely Hannah made her own. Gustave Jaeger, M.D. *Selections from Essays on Health- Culture And The Sanitary Woolen System* (sic), (New York: F.S. & C.B. Bartram, 1886); Veronica Lampkin, "Mining the Archive: An Historical Study of Madame Weigel's Paper Patterns and their Relationship to the Fashion and Clothing Needs of Colonial Australasia During the Period 1877 to 1910," (PhD Thesis, Griffith University, 2013), 89, 283.
[56] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 040-043.

"too ugly to out with," and the acid would eradicate her spots. Her skin began immediately to burn, and was sore for a week.[57] Webb's ongoing aggression manifested in repeated bruising, black eyes and emotional distress, forcing Hannah to go about wearing dark glasses or "coloured goggles" to disguise her battered features.[58] Yet while various members of the local community gossiped about the fact that George Webb beat his wife, even the police officer who witnessed a sobbing and bleeding Hannah on that terrible evening did little other than deposit her back inside the house and extract a promise from Webb not to "interfere" with her "any more tonight."[59]

As if to confirm his acceptance of Webb's assault, Justice Simpson conceded in his summation that Webb had admitted to striking his wife on one occasion, "but said it was in circumstances of great provocation."[60] Reflecting certain evidence in the Horwitz and Dorn cases, and to a lesser extent the Bradley case, the judge's comments imply a tolerance of male violence under particular circumstances, and the view that it was sometimes necessary for a husband to physically "discipline" a wife. To avoid being corrected in such a way, it was therefore incumbent upon a woman to conduct herself with the required level of submission and compliance.[61]

At this time, according to Judith Allen, police rarely pursued official process in cases of violence which did not result in a woman's death, although they sometimes maintained an informal watch over a woman they knew to be in danger from an abusive husband.[62] The question of prosecuting her violent spouse—even though Hannah had been discovered bleeding and distressed—did not appear to arise, although the police constable called to the

[57] SRNSW: NRS 2713, [6/2925], *Webb v. Webb,* 93-4; "Maitland Divorce Case. Webb v. Webb," *Newcastle Morning Herald and Miners' Advocate,* 29 October 1901, 6.
[58] "Divorce Court. Before Judge George Bowen Simpson. Webb v. Webb," *Daily Telegraph*, 2 November 1901, 12.
[59] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 114.
[60] "The Webb Divorce Case. Verdict for the Respondent," *Maitland Daily Mercury,* 8 November 1901, 3.
[61] James, "A History of Cruelty in Australian Divorce," 13.
[62] Allen, "The Invention of the Pathological Family," 9.

scene admitted he often heard "a woman crying and a man talking in a harsh tone of voice" when he passed the Webb house on his regular daily beat.[63]

Nor was the policeman the only local resident who was aware of Webb's brutality. Others admitted they sometimes heard a woman's screams emanating from the house or had seen Mrs. Webb wearing dark glasses in the street. While the local community was evidently reluctant to intervene in a domestic dispute, individuals found their own means to exact punishment, lending support to the idea that informal measures were often undertaken to either monitor or discipline a perpetrator.[64] As such, Hannah's physician Dr. Robert Alcorn admitted visiting her a fortnight after the birth of one of her children, when he saw her blackened eyes, bleeding mouth and copious tears.[65] Although he did not challenge Webb in person, Alcorn thereafter avoided the dentist on the street, and refused to administer anaesthetics to his patients.[66] When Webb applied to join the West Maitland Masonic Lodge, Acorn informed his fellow masons that the dentist beat his wife, whereupon Webb withdrew his application.[67] As she sat in the dentist's chair, one of Webb's older female patients even dared to ask if he beat his wife, which caused him to later complain that "he would have made another thousand pounds if it had not been for Mrs. Webb."[68]

[63] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 114.
[64] Allen, "The Invention of the Pathological Family," 10.
[65] "In Divorce (Before Mr. George Bowen Simpson), Webb v. Webb," *Sydney Morning Herald*, 31 October 1901, 4.
[66] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 339.
[67] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 235.
[68] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 124.

When Mrs. Webb was Sober, she was as Energetic and Hard-Working a little Woman as you could Find[69]

The *Divorce Amendment and Extension Act* 1892 had added habitual drunkenness to grounds for divorce, but as I pointed out in the Dorn case, definitions of drunkenness differed markedly for the sexes, reflecting what Golder describes as "sharply delineated sex roles."[70] Australian historian Anne O'Brien similarly remarks that the 1892 legislation clarified distinct gender roles, whereby women provided their "domestic labour" and men rewarded them with "board and lodging."[71] This is of course the "sexual labour" to which Susan Magarey refers in describing marriage "as a trade" for women[72] and to which I have referred previously. (It arguably remains an implicit contractual arrangement in contemporary society.) Accordingly, a husband who accused his wife of drunkenness was also required to prove she neglected her household duties, while a wife who accused her husband of drunkenness was forced to demonstrate either his habitual cruelty, or that he left her without means of support.[73] These distinct grounds confirm how perceptions of drunkenness varied markedly according to whether the inebriate was male or female.

To confirm her lack of alcoholic tendencies, Hannah swore she had never even consumed alcohol until the birth of her first child when, feeling unwell, she "started to take schnapps" to self-medicate (despite admitting she had never been "advised by a medical man" to do so).[74] However, "Dr. Alcorn advised her to take brandy before the children were born."[75] In several other cases, I have encountered a similar belief in the medical qualities of

[69] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 232.
[70] Golder, "'A Sensible Investment,'" 394-5.
[71] Anne O'Brien, "Left in the Lurch: Deserted Wives in NSW at the Turn of the Century," in *In Pursuit of Justice*, 98.
[72] Magerey, "Notes Towards A Discussion of Sexual Labour," 20.
[73] Golder, "'A Sensible Investment,'" 395, 440.
[74] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 90.
[75] "Today's Proceedings, Sydney, Wednesday," *Maitland Daily Mercury,* 30 October 1901, 3.

spirits such as brandy, whisky and schnapps, suggesting alcohol was taken as a common form of pain relief. (Both Flora Horwitz and Catherine Kirchner admitted drinking whisky to alleviate pain or discomfort).[76] Faith in the medical properties of alcohol is further evidenced in Hannah's account of "suckling" her first child, a "big child," when she asked for "stout and beer to help her."[77] Later, she admitted to regularly enjoying a beer before going to bed for the evening. Both she and George "often sent for Colonial Ale in a jug at night," while Sarah Robinson, a "monthly nurse" who helped Hannah with domestic tasks and childcare, was "allowed a pint of beer a day," and also enjoyed "a glass at lunch."[78]

While past alcohol consumption in Australia has been investigated at length, scholarship has overwhelmingly portrayed as masculine the two separate issues of drinking habits and hotel culture.[79] Women have always been part of the Australian hotel experience, but the belief persists that pubs and drinking were solely male arenas, which has the effect of rendering invisible women's access to hotel culture and their drinking habits.[80] The Webb case refers often to alcohol consumption for the women in the household, and suggests that drinking together provided them an important social outlet, a means to challenge gender oppression and to gain a sense of control over difficult circumstances.[81]

Together, Hannah, her sister Violet, nursemaid Sarah Robinson and servant Bridget Scanlan sat regularly talking in the kitchen over a jug of ale or bottle of wine.[82] Communal drinking allowed the women to enjoy brief shared periods of relaxation, and respite from their relentless domestic chores. It further served to inspire a combined sense of

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[76] SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz;* [2913/1898] *Kirchner v. Kirchner.*
[77] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 147-8.
[78] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 129.
[79] Diane Kirkby, "'Beer, Glorious Beer:' Gender Politics and Australian Popular Culture," *The Journal of Popular Culture* 37, no.2 (2003): 244.
[80] Ibid., 246-7; Clare Wright, "'Doing the Beans:' Women, Drinking and Community in the Ladies' Lounge," *Journal of Australian Studies* 27, no.76 (2003): 7.
[81] Leisure theorist Eileen Green identifies these positive benefits as the potential consequences of female friendship and leisure. Eileen Green, "'Women Doing Friendship:' An Analysis of Women's Leisure as a Site of Identity Construction, Empowerment and Resistance," *Leisure Studies* 17, no.3 (1998): 171.
[82] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 153.

empowerment and resistance.[83] Their interaction reflects Hannah's ambiguous class status, whereby the middle-class proscription against "mingling" with one's servants did not appear to operate, despite being a prominent concern for Hannah's husband.[84] It further implies that such an unwritten rule of social class was waning, and perhaps by the beginning of a new century, social relationships were becoming more egalitarian. Finally, the gathering of women confirms the importance of their social networks, in which despite lacking an "actual physical space of their own," the kitchen table provided a domestic forum where Hannah, her sister and servants could access ongoing moral and emotional support.[85]

Investigating women's friendship groupings as a means of "empowerment and resistance," sociologist Eileen Green contends that in sharing their "snatched" leisure opportunities, women can potentially create a separate space for themselves. In an historical context, these new spaces allowed women to overcome their exclusion from public forms of leisure that men took for granted.[86] Since "respectable" women could not drink at a hotel, the shared space of the kitchen table was somewhere for them to overcome those rigid gender constraints which barred access to a public drinking venue.[87] In taking "time out" at the kitchen table with their drinks, the women circumvented such barriers, and created a private venue to relax and chat away from scrutiny. As "respectable" women, they took turns to transport purchased jugs of beer back to the house. Nor was a jug strictly necessary; an empty honey tin would suffice, while accounts could be settled at a later date.[88]

Within a small rural community, however, comings and goings at the Webb house were tendered as decisive proof of Hannah's drunkenness. Witness testimony and judicial

[83] Green, "'Women Doing Friendship,'" 171.
[84] Teale, *Colonial Eve*, 48.
[85] See Linda Kerber, "Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History," *The Journal of American History* 75, no.1 (1988): 32.
[86] Green, "Women Doing Friendship," 172, 178.
[87] Steve Meacham, "Time Gentlemen: Women Drinkers No Longer Outsiders," *Sydney Morning Herald*, 7 September 2006.
[88] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 201, 249, 268.

summation in the case once more confirm the Foucauldian notion of modern society as a controlling vortex of disciplinary surveillance, a concept of which I have written at length in each of the four proceeding case studies.[89] The overt and unashamed "spying" of one citizen against another is evident in witness testimony after testimony, and again the main target of surveillance was my female rather than male subject.

To confirm Hannah's frequent consumption of alcohol, mainly beer, witnesses recounted specific dates and events on which they had observed her transgressions. Neighbours and acquaintances demonstrated precise recall as to the hotels from which Violet and the servants purchased their supplies, one individual even suggesting that on some occasions, Hannah had sent her eldest child to buy beer. Once again confirming the prevalence of perjury, these witnesses were exposed as having their own reasons to destroy Hannah's reputation. A dismissed and disgruntled servant, Florrie Poole, had been accused of stealing from the Webbs, while another local man was in trouble with the police about "a matter...called righteous behaviour."[90] Conduct which would have remained unremarked in a man was manufactured as ammunition for George Webb's case against his wife. And although Justice Simpson refused to brand Hannah Webb a drunkard, he pointed out at the trial's conclusion that she was indeed in the habit of "sending out often for beer."[91]

She Broke the Back Wheel of his Bike with an Axe[92]

Towards the end of the nineteenth century, new modes of transport such as the bicycle combined with a growing tendency towards more practical clothing, to allow women a

[89] Pollis, "Apparatus of Sexuality," 404.
[90] "The Webb Divorce Case," *Maitland Daily Mercury,* 5 November 1901, 3.
[91] "The Webb Divorce Case. Verdict for the Respondent," *Maitland Daily Mercury,* 8 November 1901, 3.
[92] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 104.

greater mobility. As a result, public space now featured them in growing numbers.[93] Hannah was undeniably able to engage more fully with public space than women in previous generations. Running errands for George, or carrying out her domestic duties, she was often out and about in the small rural community that was then West Maitland. The Webbs owned several different vehicles, including a sulky, phaeton[94] and buggy, and Hannah told the court with evident pride that she could "drive." On Sundays, "her husband took her out in the buggy," but at other times she took the children out driving, while Webb stayed close by on his bicycle, stopping now and then to take photographs of the family.[95] On returning in 1898 from England, Webb had also given Hannah a bicycle, which she rode through local streets.[96]

Museum curator Fiona Kinsey suggests that by engaging in activities such as cycling and buggy driving, women "mapped" public outdoor areas as "social space," and declared their right to be there. In doing so, they not only demonstrated an assertive engagement with the modern world and its technology, they expressed a new sense of gender equality.[97] Although Hannah was not compelled to travel with a chaperone, as Flora Horwitz was, and enjoyed significantly greater independence in accessing her community, the prying eyes of those around her were as invested in moral judgment and surveillance as they had been in the Horwitz case. And given her heavy domestic workload, Hannah's moments of personal freedom were fleeting.

The shared female culture that emerges in drinking together was also evident on occasions when women in the household united to confront the abusive tyrant.[98] Those women who resided or worked in the household sometimes intervened when Webb assaulted

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[93] Claire Tanner, "Modernity's 'New Women:' Visual Culture and Gender Play in 1890s Australia," *Hecate: An Interdisciplinary Journal of Women's Liberation* 37, no.2 (2011): 4, 11.
[94] A phaeton was a light open carriage, drawn by one or two horses.
[95] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 65.
[96] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 65-7.
[97] Fiona Kinsey, "Reading Photographic Portraits of Australian Women Cyclists in the 1890s: From Costume and Cycle Choices to Constructions of Feminine Identity," *The International Journal of the History of Sport* 28, no. 8-9 (2011): 1129-1130.
[98] Davidoff et al. go so far as to describe such unity as "an oppositional female culture," a description which is amply confirmed in the Webb case. Davidoff et al., *The Family Story*, 27.

Hannah, either attempting to hold him back, or demanding he desist.[99] After one particularly brutal beating, Bridget Scanlan went so far as to take Violet, Hannah and the children to her own mother's house for safety. (Providing accommodation to an abused woman was a common community response to domestic violence and formed an "indirect means" of controlling marital abuse.)[100] The women's courage was in contrast to those men who knew of or witnessed Webb's assaults. When Webb hit Hannah on her mouth with his shut fist, for example, his apprentice Harry Tuck ran into the street and screamed, "Don't touch her!" as he fled the scene.[101]

As with my previous subjects, the almost underground resistance some women engaged in counters surface impressions of their capitulation to male control and tyranny. In one of his most influential essays, Foucault contends that relations of power "will always involve some element of rebellion and resistance."[102] That women did resist is undeniable, overturning the sense of passivity or victimhood which swiftly develops in the context of such pronounced evidence of male violence as emerges here. In one particularly illuminating vignette, Webb claimed to have overheard Violet Browe remark her preference for "Chinamen," who were "not such humbugs as white men." Enraged by his sister-in-law's "immoral" comment, Webb ordered Violet to leave the house within five minutes, whereupon Hannah struck him, Violet called him "vile names," and Webb left the house instead.[103] In combination, the women's defence had temporarily subdued George Webb's violent intentions.

Nor was Hannah willing to endure without end her husband's abuse. Striving to emphasise her wilful neglect of domestic responsibilities, Webb furnished to the court many

[99] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 122-3.
[100] Nancy Tomes, "A 'Torrent of Abuse:' Crimes of Violence Between Working-Class Men and Women in London, 1840-1875," *Journal of Social History* 11, no.3 (1978): 336.
[101] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 044, 059.
[102] Foucault, "The Subject and Power," 794.
[103] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 208.

examples of her wifely and maternal transgressions. Hannah's intransigent behaviour included mainly "property crimes," whereby in her evident frustration and anger, she destroyed objects.[104] Confined mainly to the home, with few friends outside of the family, Hannah had only "a very narrow repertoire" through which to vent her anger. Her outbursts confirm how women could depart temporarily from normative standards of feminine compliance and submission when stress mounted to an unbearable degree.[105]

Consider, for example, Hannah's destruction of kitchen crockery after Webb called her "a ---" in front of one of their children.[106] And when she picked up "an egg cup and all" and threw them at him, after the tea he first threw at her went onto the baby she held at the time.[107] Or when she threw a cup of cocoa at him, after he struck her because "his tea wasn't ready."[108] Hammerton suggests it was not uncommon for women to become violent, sometimes by throwing objects or attacking a husband, even after first accusing him of cruelty.[109] George Webb persisted as the "domestic ruler" men had been for centuries, treating his wife more like a misbehaving underling than an equal, striking her when she "answered back" or gave him "cheek," and permitting her to remain in the home only "if she would behave herself."[110]

Although Hannah described being beaten often on such pretexts, she also admitted answering back if she believed resistance warranted. When Webb accused her of not caring properly for the children, she retorted that "if he were not satisfied with her way of looking after them, he could do it himself."[111] Hannah admitted "she would let him talk for a long time

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[104] Richard A. Cloward and Frances Fox Piven, "Hidden Protest: The Channelling of Female Innovation and Resistance," *Signs: Journal of Women in Culture and Society* 4, no.4 (1979): 658.
[105] Ibid., 660, 661, 665.
[106] "In Divorce. Webb v. Webb," *Evening News*, 30 October 1901, 6. According to the Court Reporter's transcriptions, Webb called Hannah "a dirty drunken whore." SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 74.
[107] "A Maitland Divorce Case. Charges and Counter-Charges. Alleged Cruelty and Misconduct," *Australian Star*, 28 October 1901, 5.
[108] "In Divorce. Webb v. Webb," *Evening News*, 30 October 1901, 6.
[109] Hammerton, "The Law of Matrimonial Cruelty," 277.
[110] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 007, 013; "Divorce Court. Before Mr. Justice Simpson, Judge in Divorce. Webb v. Webb," *Sydney Morning Herald,* 29 October 1901, 8.
[111] "In Divorce. Before Mr. Justice Simpson. Webb v. Webb," *Sydney Morning Herald,* 2 November 1901, 6.

and then tell him to shut up," after which he hit her.[112] Explicating the connection between her own conduct and Webb's abuse, Hannah further confessed to secreting two large bottles of Colonial beer into a drawer "to annoy Mr. Webb because he beat her."[113]

Possessing a definite limit to their acceptance of "unreasonable behaviour," many wives tolerated only so much abuse before they gave in to frustration.[114] When Webb took baby Nellie to an unknown location, to punish Hannah, she took an axe and broke the spokes in his bicycle wheel. Her response to Justice Simpson's query as to why she had done so was simply, "because Mr. Webb had gone away and taken my baby."[115] When Webb threatened to shoot Hannah, she inserted a nail into his pea rifle, rendering the rifle useless.[116] These combined examples of Hannah's resistance confirm her refusal to tolerate behaviour she regarded as unreasonable or tyrannical.

There are definite parallels in the apparent psychological makeup of George Webb, Thomas Dorn and Harry Horwitz, including that element of "severe psycho-sexual anxiety" which Kay Saunders identifies as common in male abusers and which I have previously mentioned in my analyses of the Dorn and Horwitz cases.[117] Webb's obsessive jealousy emerges in several incidents Hannah recounted in court. Returning home from an errand after a longer than anticipated absence, Webb "asked her in filthy language" if she had been away "with the woman's husband."[118] Following the birth of each child, he would claim it was not his, repeating his allegations over several months.[119] When Hannah returned from a medical

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[112] "Doings in Divorce. The Tangled Webbs. Beers and Beatings," *Truth*, 3 November 1901, 5.
[113] SRNSW: NRS 2713, 1901 [6/2925], *Webb v. Webb*, 68. Sources suggest that Colonial beer was the identifier for beer which was locally brewed, rather than being imported from England, and that this beer was regarded as inferior to the foreign product. See for example John Gunn, "The Colonial Beer Drinker," *Sydney Open Journals Online* (1990): 42. David Hughes further confirms that colonial beer was cheaper and of an inferior standard to imported beer. David Lloyd Hughes, "Brewing in Early Australia," (PhD Thesis, The Australian National University, 1998), 201.
[114] Hammerton, "The Law of Matrimonial Cruelty," 278-9.
[115] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 104.
[116] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 108.
[117] Saunders, "Domestic Violence in Colonial Queensland," 69.
[118] "A Maitland Divorce Case. Charges and Counter-Charges. Alleged Cruelty and Misconduct," *Australian Star*, 28 October 1901, 5.
[119] "Today's Divorce. Webb v. Webb. The Maitland Case," *Evening News*, 29 October 1901, 4.

appointment in Sydney for her youngest son, Webb accused her of "knocking about with some fellow" there.[120] Just as Horwitz branded Flora "a prostitute," when Webb without Hannah's knowledge installed the three boys at a Richmond convent, and she vowed to move there and earn her own living, he asked sarcastically if she would be earning it on her back.[121]

Framing as an act of resistance the act of separating from a violent male partner, feminist sociologist Vivienne Elizabeth identifies access to child custody as a focal point in which abusive partners can potentially exercise power.[122] For Webb, removing his children without his wife's knowledge served to punish her, and to demonstrate his authority. Despite changes to custody laws, he was entitled to move his children as he saw fit, by virtue of his "absolute authority over the household."[123] In court, he presented such a move as for the benefit of the children because of their mother's drunken and slovenly ways, and explained how he had warned Hannah he would have no choice but "to send the children away to a convent" if her domestic neglect persisted.[124]

It would Kill me to be Parted from them[125]

The emphasis in the Divorce Court at this time upon the domestic and the maternal allowed legal authorities to judge a woman according to criteria which differed little from previous decades. Many men had little interest in allowing women to escape their limited circumstances.[126] George Webb's brutal misogyny confirms that while the feminine role had

[120] "In Divorce. Webb v. Webb," *Evening News*, 30 October 1901, 6.
[121] SRNSW: NRS 2713, [6/2925], *Webb v. Webb*, 68; "The Divorce Case. Horwitz, Horwitz and Solomon," *Sydney Mail and New South Wales Advertiser,* 22 September 1883, 569.
[122] Elizabeth, "Separating from Violent Male Partners," 71.
[123] Radi, "Whose Child?" 119.
[124] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 201.
[125] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 197.
[126] A. R. Cunningham, "The 'New Woman Fiction" of the 1890s," *Victorian Studies* 17, no.2 (1973): 179.

undergone a distinct revolution, men remained attached to notions of their superiority in the domestic context.[127]

Australian feminist scholar Kerreen Reiger contends that late nineteenth and early twentieth century gender norms were shaped according to a view in which masculinity constituted "power and agency," whilst as its binary opposition, femininity was construed as passivity, and inseparable from the pre-determined realm of nature and reproduction.[128] As the logical end point of such a conception, masculine activities are afforded greater attention and kudos than the feminine. Despite an early twentieth century shift towards elevating domesticity to a "science," as Reiger observes, maternal and wifely roles remained subordinate to the breadwinner ideal.[129] As the family's sole income earner, George Webb maintained his firm hold on household economic power and supremacy.

Legal process further confirmed and legitimated Webb's prerogative to subjugate his wife, given a widespread belief that the family required a head, while the innate superiority of men ensured their fitness for the role.[130] Although legal reforms pertaining to child custody, property ownership and divorce strove to achieve greater gender equality, they did little to eradicate the patriarchal bent which persisted within general public opinion and legal attitudes.[131] The belief persisted that men were superior to women, and women should submit to husbands in marriage. [132]

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[127] Jane Lewis (ed.), Introduction, in *Labour and Love: Women's Experience of Home and Family, 1850-1940* (Oxford: Basil Blackwell, 1986), 1.
[128] Kerreen Reiger, *The Disenchantment of the Home: Modernising the Australian Family, 1880-1940*, (Melbourne: Oxford University Press, 1985), 6.
[129] Reiger's treatise analyses the development of this scientific shift, and the ongoing attempts to recast the home and women's work in the context of a growing domestic science movement, and the need to bolster the white population. Reiger, *Disenchantment of the Home*; Feminist anthropologist Michelle Zimbalist Rosaldo points out that male activities have been (and continue to be) prioritised over those of female throughout the world. Michelle Zimbalist Rosaldo, "Women, Culture and Society: A Theoretical Overview," in *Woman, Culture and Society* eds. Michelle Zimbalist Rosaldo and Louise Lamphere (California: Stanford University Press, 1974), 19.
[130] James, "A History of Cruelty in Australian Divorce," 1.
[131] Ibid., 17; Hammerton, "Law of Matrimonial Cruelty," 270.
[132] Ibid., 272.

Webb's empowered position confirms an understanding of the family as a conceptual category based on complex and enduring relations of power and control, rather than a unified entity.[133] A myriad of details within the sources confirm that individual members of the Webb household had grossly unequal access to wealth and power, while the experience of family life differed markedly according to gender. If we hold these considerations in mind—"complex and enduring relations of power and control"—it becomes clear that the relationship between the Webbs revolved specifically around an unequal battle for gendered power.[134]

The marital relationship is widely reputed to have changed towards the end of the nineteenth and the beginning of the twentieth centuries, reflecting a growing emphasis on love in popular conceptions of marriage.[135] According to such a view, stronger emotional ties characterised the nuclear family following the Industrial Revolution, while progressive changes for women served as a necessary basis for the development of companionate emotional relations between the spouses.[136] On the contrary, as James Hammerton concludes from his detailed analysis of marital conflict, the institution remained intensely patriarchal, despite widespread public criticisms of men's behaviour.[137]

Somewhat perplexingly, the sources suggest that Hannah sought love and affection above all in her conjugal relationship. Despite Webb's abuse, Hannah often expressed her desire that he display some form of physical affection towards her and allow her to do the same in response. When he returned home from England in 1898, she "insisted on kissing him on the station," but he objected because "there was somebody looking."[138] Hannah told

[133] Davidoff et al., *The Family Story*, 13, 34.
[134] Ibid., 11, 13, 34, 108.
[135] See for example Rayna Rapp, Ellen Ross and Renate Bridenthal, "Examining Family History," in *Sex & Class in Women's History*, eds. Judith L. Newton, Mary P. Ryan and Judith R. Walkowitz (London: Routledge and Kegan Paul, 1983), 244.
[136] Davidoff et al., *The Family Story,* 17, 44.
[137] Hammerton, *Cruelty and Companionship*, 2.
[138] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 036-7.

the judge she "was in the habit of kissing him when he came home to dinner, if he would let me," and claimed she "always wanted to kiss him," because she had "retained an affection" for her husband, "notwithstanding his treatment" of her.[139] Hannah's claim that she was "fond" of her husband is difficult to fathom, and possibly aimed to convey the impression that the lack of marital affection characterising the marriage was his fault rather than hers.

(T)he Home Was Neglected, My Food Was Neglected and The House Untidy[140]

Although the Webb trial takes place only three years after *Kirchner v. Kirchner*, idealised gender roles emerge so differently as to indicate another era entirely. In 1901, a "masculinist culture" defining women in terms of their domestic and reproductive functions suggests that a return to separate and distinct gender roles was in full swing, based on notions of idealised gender responsibilities.[141] The composite ideal of breadwinner/ homemaker ensured power remained with husbands, and the law afforded them full judicial support to dominate their wives.[142] The wage system further bolstered gender inequality through a system of setting wages which demanded men earn more than women, because of their presumed need to provide for a family.[143] Enmeshed within a pro-natalist ideology in which female worth derived from bearing children to bolster the white race, the home became once more a space preventing women from a confident engagement with public life.[144]

[139] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 071.
[140] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 153.
[141] Howe and Swain, "Fertile Grounds for Divorce," 158-9.
[142] Ibid., 161; James, "A History of Cruelty in Australian Divorce," 9.
[143] Sue Richardson, Joshua Healey and Megan Moskos, "From 'Gentle Invaders' to 'Breadwinners:' Australian Women's Increasing Employment and Earnings Shares," NILS Working Paper Series no. 210 (September 2014), *National Institute of Labour Studies*, 4,
[144] Howe and Swain, "Fertile Grounds for Divorce," 163-4, 173; For more about pro-natalist ideology, see Diana C. Parry "Leisure as Resistance to Pro-Natalist Ideology," *Journal of Leisure Research* 37, no.2 (2005): 133-151.

The Webb case confirms that in 1901, these prevalent conceptions of distinct sex roles continued to reduce women to their reproductive capacities.[145] Although more than sixty years had passed since the 1840s, when the "Cult of True Womanhood" emerged, the idealised feminine role remained one of subservience in a domestic and reproductive context.[146] As Canadian historian of sexuality Angus McLaren observes, by the turn of the twentieth century, male power had not only been revived, it was now "buttressed by biologism."[147]

Although it is widely accepted that by 1901, domestic proficiency marked an appropriately wifely demeanour, scholarly analyses have typically investigated major thematic trends rather than named individual women.[148] *Webb v. Webb* is therefore significant in helping to gauge what Kerreen Reiger has called the "piecemeal but coherent reforming effort" to transform family life, and in particular how wifely and maternal roles figured within that revisioning. From the end of the Victorian era and well into the Edwardian, as Reiger explains, the home was widely idealised as a sanctuary.[149] Hannah's circumstances (and those of my other case studies), however, confirm that this tranquil place of repose was available primarily to men and not to women.[150] Spending the first three years of married life with no servants, home for Hannah was anything but "a haven," and instead served as "her entire life's work," and far beyond her control, as Kay Saunders suggests characterised the domestic context for most women.[151] With Webb's dentistry workshop located downstairs, and the remaining two floors of the building used as living space, Hannah was fully occupied

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[145] Sharon Crozier-de Rosa, "'A Wet Blanket of Intolerable Routine and Deadly Domesticity:' The Feelings, Freedoms and Frustrations of Hilda Lessways, Arnold Bennett's 'Ordinary' New Woman," *The Latchkey: Journal of New Woman Studies* 2, no.1 (2010): 3.
[146] Susan Cruea, "Changing Ideals of Womanhood During the Nineteenth Century Woman Movement," *General Studies Writing Faculty Publications* 1 (2005): 188.
[147] Angus McLaren, *The Trials of Masculinity: Policing Sexual Boundaries, 1870-1930* (Chicago: Chicago University Press, 1997), 1.
[148] The best known of these analyses is Kerreen Reiger's *Disenchantment of the Home.*
[149] Reiger, *Disenchantment of the Home*, 1, 8, 38.
[150] Raymond Evans and Kay Saunders, "No Place Like Home: The Evolution of the Australian Housewife," in *Gender Relations in Australia,* 180.
[151] Saunders, "Domestic Violence in Colonial Queensland," 68.

running errands, helping him in the workshop and carrying out heavy household cleaning and laundry chores, not to mention sewing to make all the family's clothing.[152]

Examining how the concept of the "housewife" has developed over time, Australian historians Raymond Evans and Kay Saunders describe household labour in this period as "physically exhausting and emotionally enervating,"[153] a depiction which Hannah's testimony substantiates. With few labour-saving devices, household washing was a gruelling ordeal which took an entire day. With the copper located in the yard behind the house, laundering involved first boiling water and stirring the clothes, before loading water-logged and heavy items from the copper into the mangle.[154] On one occasion, overcome by heat and exhaustion, Hannah over-balanced, scalding her face after grabbing the copper and sending boiling water flying.[155] Laundry work was a particular bone of marital contention, and Webb often promised to "get her a washerwoman," but at no point honoured his pledge.[156]

Many examples which Webb furnished in court to illustrate Hannah's domestic inadequacies suggest that the husband "forced" to carry out housework believed his efforts to be a sign of wifely negligence, because such activities were a solely feminine responsibility. Striving to portray Hannah's inadequacies, Webb complained how he was sometimes compelled to give the children their meals and clean up the house, at other times going without meals because Hannah was too drunk or slovenly to prepare them, assertions she naturally denied.[157] He moaned that meals were "given to me anyhow, I had the same thing for breakfast, dinner and tea. I had eggs for breakfast and eggs for dinner."[158] Given the duty of a "good" wife and mother to provide regular and wholesome meals to nourish her

[152] Webb used his workshop to manufacture dentures from vulcanite and gold. Many people required dentures because they had lost teeth, and preventative dentistry was not yet a reality.
[153] Evans and Saunders, "No Place Like Home," 180.
[154] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 90.
[155] SRNSW: NRS 2713 [6/2925] *Webb v. Webb*, 274.
[156] "Today's Divorce. Webb v. Webb. The Maitland Case," *Evening News*, 29 October 1901, 4.
[157] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 179-80.
[158] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 160.

family,[159] Webb aimed to prove the many ways in which the neglectful Hannah failed to honour her obligations.

While Hannah framed Webb's dissatisfaction with her culinary efforts in terms of his abusive conduct, he emphasised her neglect of his needs. Each spouse tried to demonstrate how the other had failed to honour the "implicitly contractual arrangements of caring and financial reciprocity" which Davidoff et al. identify as the basis of all familial relationships.[160] Describing how he had reproached Hannah for drinking beer in the kitchen with Violet and Bridget Scanlan, George complained that drinking in the kitchen was "degrading, the home was neglected, my food was neglected and the house untidy."[161] He further despaired over the many occasions when his "meals were not ready," and he "had to get food elsewhere."[162] Webb's complaints derived from his firm belief that he deserved to be well-fed, and confirm the meal table as "the site for masculine privilege," as British social historian Julie-Marie Strange suggests was common for men in the Victorian era.[163] It seems that by 1901, this sense of privilege remained cogent for some men.

Similarly investigating a widespread sense of male entitlement, Davidoff et al. describe how many an "irate exhausted husband" upon returning home from work threw his food onto the fire as "a grand gesture of disgust and masculine prerogative."[164] Webb meted out his physical punishments in a manner suggesting precisely such grand gestures. These occasions demonstrated his fury when Hannah's maternal responsibilities interfered with her ability to provide his meals, such as when he beat her with a broken razor strop because his

[159] Reiger describes the many ways that women were held responsible for the health of their husbands and children and feeding them adequately was one way in which they were supposed to achieve such health. Reiger, *Disenchantment of the Home,* 74-80.
[160] Davidoff et al., *The Family Story*, 4.
[161] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 153.
[162] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 155.
[163] Strange, "Fathers at Home," 706.
[164] Davidoff et al., *The Family Story*, 120.

eggs were not cooked to his satisfaction. On this occasion once again, she was struggling to cook and hold the baby at the same time.[165]

American historian Nancy Tomes also confirms that meals served as a frequent bone of contention for the English working-classes; not having a meal ready for a husband could easily spur him on to beat his wife.[166] Demonstrating just such a response, Webb threw onto the grate the dish of brains Hannah had prepared for dinner because "he was sick of them," vowing to "make her clean it up," and hurled into the cesspit the oysters she was about to open, before spitting in her face.[167] In fact, Webb's rage knew no bounds when his "tea" was not ready: he "cursed at (Hannah)...threatened to shoot her, struck her and thumped her with his fist."[168]

To further discredit Hannah, Webb condemned her neglected appearance, while courtroom "policing" supported his criticisms of her clothing and hairstyle. The compliant wife was expected to dress in an appropriate manner, but several witnesses for Webb instead described Hannah's hair "hanging down her back, untidy," and claimed she often wore only "a wrapper."[169] One local witness contended that Hannah sometimes wore a wrapper for the entire day, whereupon George Webb's barrister made much of Hannah's state of undress, and questioned other witnesses as to precisely how long this state of affairs had persisted.[170] Worst of all was Webb's allegation that Hannah went "about the house in a nude state in the presence of the children."[171]

Much as Hannah's state of dress or nudity was taken as evidence of her moral laxity and maternal (un)fitness, what her children wore was of equal importance. Webb complained

[165] SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 09.
[166] Tomes, "'A Torrent of Abuse,'" 331.
[167] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 46; "In Divorce. Webb v. Webb," *Evening News*, 30 October 1901, 6.
[168] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 48.
[169] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 113; Accusations of wearing "a wrapper" emerge in four of my seven case studies, beginning with Catherine Kirchner and ending in Chapter 7 with Louisa Moss. To be found wearing "a wrapper" evidently suggested a woman was immoral in outlook and conduct.
[170]SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 030.
[171] SRNSW: NRS 13495 [4022/1901] *Webb v. Webb.*

how their three sons were "allowed to go about in their pyjamas with no boots on until dinner time," and on Sundays, were "in that state all day... getting their food any way and anywhere" they could.[172] To indicate the dire effects of such maternal neglect, Webb claimed that instead of using the toilet, the children were "doing it about the yard," and "in pots on the back veranda and in the bathroom."[173]

A newly impassioned faith in women's domestic responsibilities made certain that Hannah rather than George would be the main object of the Divorce Court's probing gaze. In turn, the reform gender ideal significantly influenced Hannah's conduct on the stand, and the chief image she ought to convey was that of the dedicated wife and mother. To refute Webb's allegations, Hannah swore she was utterly devoted to her children. She strove to demonstrate her maternal devotion by explaining how she made by hand all the children's clothes, and even produced in court her sewing patterns and a photograph of her offspring to show how well-cared-for the young Webbs were. Several reputable witnesses substantiated her testimony.[174]

The Webb case confirms a gendered view of parenting responsibilities for mothers and fathers.[175] Revealing that it was incumbent upon a mother to provide adequate religious guidance for her children, George Webb claimed that Hannah refused to teach the children their prayers, before they went to bed.[176] As the so-called "Angel in the house," the fate of a child's "soul" depended on how well a mother fulfilled her religious responsibility:[177] by contending Hannah's neglect in this area, Webb cast doubt on her maternal fitness in general. Contrasting his own paternal dedication, Webb swore he had "on many occasions taken them out of bed and taught them their prayers."[178]

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[172] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 166.
[173] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 171.
[174] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 349.
[175] Davidoff et al., *The Family Story*, 108.
[176] SRNSW: NRS 13495, [4022/1901] *Webb v. Webb.*
[177] Eileen Yeo, "Constructing and Contesting Motherhood, 1750-1950," *Hecate* 31, no.2 (2005): 6.
[178] SRNSW: NRS 13495, [4022/1901] *Webb v. Webb.*

The 1878 child custody trial of British socialist Annie Besant confirms the vital role of adequate religious training in parental responsibility. Court authorities considered the neglect of religious instruction to call into question a parent's suitability to maintain the custody of a child or children.[179] Literary historian Claudia Nelson similarly suggests that religious training in Victorian England was "an important part of the ideal mother's role among all classes."[180] Both Hannah and George Webb swore rigorous attention to "teaching" the children their prayers, suggesting that religion similarly formed a crucial component of morality in early twentieth century Australia, and further, that little had changed in outlook since Annie Besant's courtroom ordeal.

The Clinical Gaze in the Courtroom

The final page of Court Transcriptions includes the testimony of Hannah's doctor, who delved at length into matters of her gynaecological health. The doctor's evidence is yet another example of how the bodies of women may be placed beneath a scrutinising male gaze to be probed and dissected.[181] Dr. Alcorn described to the court how Hannah had suffered for many years from endometriosis, and he pondered aloud whether "Mrs. Webb" experienced a "muco-purulent discharge" which may or may not have "smelled like pus."[182] Alcorn went on to describe a "cradle or rest," which was "an internal supporting instrument" Hannah sometimes wore, and concluded his account by admitting that Hannah's condition was mild, and did not prevent her from conceiving.[183]

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[179] Nancy Fix Anderson, "'Not a Fit or Proper Person:' Annie Besant's Struggle for Child Custody, 1878-9," in *Maternal Instincts: Visions of Motherhood and Sexuality in Britain, 1875-1925* eds. Claudia Nelson and Ann Sumner Holmes (London: Macmillan Press, 1997), 19-20.
[180] Claudia Nelson, *Family Ties in Victorian England* (Westport, Connecticut and London: Praeger, 1997), 53.
[181] See King, "The Prisoner of Gender," 31.
[182] According to common contemporary medical parlance, "muco-purulent" would be translated in lay terms as "slimy and pus-filled." Personal conversation with Dr. Claudia Gschwind, 19 January 2019.
[183] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 338, 356.

Since the Webbs had reconciled briefly in January 1901, Alcorn's testimony aimed to prove that Hannah Webb was physically capable of engaging in sexual intercourse. Hannah's lawyers strove to confirm her capacity for intercourse because Webb had sworn that no "resumption of cohabitation" took place, even though he and Hannah lived together in various lodgings which at one stage included a hotel room furnished with only a single bed.[184] In legal terms, the resumption of sexual relations formed a crucial element within Hannah's claims of condonation.

Alcorn's disembodying discussion renders Hannah almost irrelevant or invisible, a "womb on legs," while the courtroom focus on her reproductive organs divests her of humanity and personhood.[185] Most alarming of all, by metaphorically splaying Hannah open to the "clinical gaze" of the male authority figures assembled in court, it violates Hannah's bodily integrity, while the nature of that male gaze confirms the persistent pathologizing of women's reproductive organs.[186] As Alecia Simmonds suggests in analysing the advertising industry within Australia's developing deodorant culture, "women's bodies appeared as sites of contamination." The "newly authoritative language of science and medicine" thereby acts as gatekeeper to the feminine entity.[187]

Dr. Robert Alcorn's anatomical dissection of Hannah's intimate core places her in that "sexualised, gendered position of passivity, fear and weakness" which legal scholar Holly Henderson argues takes place in rape.[188] By using words like as "muco-purulent" and "pus," and alluding to the odour of her vaginal discharge, the doctor reduces Hannah Webb to a body, but a body corrupted and diseased. By extension, Alcorn depicts the female

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[184] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 197. This single bed was at Pfahlert's Hotel, a small private hotel where the Kirchners had briefly lodged when they first married.
[185] See Lynda Birke, *Feminism and the Biological Body* (Edinburgh: Edinburgh University Press, 1999), 12; Holly Henderson, "Feminism, Foucault and Rape: A Theory and Politics of Rape Prevention," *Berkeley Journal of Gender, Law and Justice* 22, no.1 (2007): 229, 232.
[186] Jeanne M. Lorentzen, "'I Know My Own Body:' Power and Resistance in Women's Experiences of Medical Interactions," *Body & Society* 14, no.3 (2008): 51.
[187] Alecia Simmonds, "Sex Smells: Olfaction, Modernity and the Regulation of Women's Bodies 1880-1940 (Or How Women Came to Fear Their Own Smells)," *Australian Feminist Studies* 34, no.100 (2019): 232-234.
[188] Henderson, "Feminism, Foucault and Rape," 229, 232.

reproductive system as genetically or intrinsically in a state of ill-health.[189] As Julie-Marie Strange declares, the individual woman "dissolve(s) into one enormous, universal uterus."[190]

Feminist political theorist Lois McNay explains how representing the female body as "thoroughly saturated with sexuality and inherently pathological" functions as a means to discipline and control women.[191] The inscription of disciplinary power on Hannah Webb's "sexed" body renders her significantly more passive and compliant than those guarded male bodies surrounding her. Through the medium of gynaecology, her "docile body" is "retooled," while the metaphorical internal examination to which she is subjected confirms her weakness: in distinct contrast, those men present in court retain a sense of their inviolable bodily integrity.[192] This disturbing vignette illustrates how the mechanisms of disciplinary power render the female body more pliable and acquiescent than the male, inserting a symbolic speculum into Hannah and perpetuating in the public forum of the courtroom that "scrutiny and intrusion" which is the gynaecological examination.[193]

I am not suggesting Hannah was a passive victim during proceedings. After all, it was *her* barrister rather than Webb's who posed questions about her reproductive health. With proceedings structured according to how the legal teams planned their unfolding, Hannah's lawyers briefed her in advance as to the questions her barrister planned to ask.[194] Faced with a choice between the ordeal of an intimate legal examination, and the possibility that her divorce would not be granted, Hannah chose the lesser of the two evils.

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[189] Mary Wilson Carpenter, *Health, Medicine and Society in Victorian England* (London: Praeger, 2010), 157.
[190] Julie-Marie Strange, "Menstrual Fictions: Languages of Medicine and Menstruation, c. 1850-1930," *Women's History Review* 9, no.3 (2000): 610.
[191] Lois McNay, *Foucault and Feminism: Power, Gender and the Self,* (Cambridge: Polity Press, 1992), 42.
[192] Henderson, "Feminism, Foucault and Rape," 230-38.
[193] Ibid., 231; Margaret Sandelowski, "'This Most Dangerous Instrument:' Propriety, Power and the Vaginal Speculum," *Journal of Obstetric, Gynecologic and Neonatal Nursing* 29, no.1 (2000): 73.
[194] After all, a legal historians Peter Brooks and Paul Gewirtz contend, "stories" in the courtroom are "told and heard in distinctive ways and with distinctive stakes," while "judges, lawyers and litigants...construct, shape and use stories" in a particular way. Brooks and Gewirtz, Introduction, *Law's Stories*, 2-3.

If I Went to a Doctor and had a Certain Operation Performed[195]

No definitive explanation yet prevails as to why fertility declined so markedly in developed nations across the globe from the late nineteenth century.[196] Judith Allen explains that by 1900, the average family of seven children in 1870 had fallen to four, which represents an extraordinary decrease.[197] Many scholarly attempts to account for the declining birth rate have focused on data analysis, which denies or ignores human involvement and initiative in decreasing family size. The reliance on data analysis is predominantly due to the scarcity of available source material describing human involvement, particularly in its gendered variations.

Considerable detail emerges about fertility control within the Webb and the following case study, confirming that contraception and family limitation were facts of life at this time.[198] The Webb case exposes sharply contrasting attitudes between the spouses towards birth control, which the following chapter further suggests. The sources include detailed evidence of individual contraceptive practice, and confirm that birth control devices such as abortifacients were readily available and "French preventatives" were being imported into Australia.[199] Since much of the scholarship focuses on women's role in limiting family size, it is intriguing to find that husband rather than wife was the prime mover to prevent conception, pregnancy and childbirth in this and case that follows.

Scholars have also tried to identify women's agency in family limitation, and so overturn any sense that they contributed little to social change, a perception towards which

[195] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 033.
[196] Simon Szreter, Robert A. Nye and Frans van Poppel, "Fertility and Contraception During the Demographic Transition: Qualitative and Quantitative Approaches," *Journal of Interdisciplinary History* 34 (2003): 141.
[197] Allen, *Sex & Secrets*, 67.
[198] Anderson, "'No Sex Please,'" 260.
[199] Hugh Jackson, "Fertility Decline in New South Wales: The Mackeller Royal Commission Reconsidered," *Australian Historical Studies* 23, no.92 (1989): 260, 262.

historical demographers have contributed in their statistical approaches.[200] Striving to right such historical wrongs, Alison Mackinnon and Margaret Anderson argue that "women's growing agency" played a significant role in preventing pregnancy."[201] Their argument suggests that women rather than men strove to limit conception, but in the Webb case it was George rather than Hannah who possessed detailed knowledge of preventing or ending a pregnancy, and tried (unsuccessfully) to make sure she would not have any more children.[202]

Webb was determined to prevent Hannah from conceiving. When it was too late for this, he tried to bring about a miscarriage. When Hannah was only just pregnant with her first child, he informed her that he did not want children, and "if she drank some stuff he'd get her," it would be alright. When he handed her the small vial, Hannah "threw it into the back yard," after which he beat her.[203] When Hannah fell pregnant for the second time in 1895, Webb took her on a lengthy sea voyage to New Zealand, explaining that the constant seasickness she suffered would ensure "the child would not be born."[204] Hannah later alleged Webb "made her go on the trip so she would lose the baby."[205] When she was only a few weeks pregnant with her third child, Webb informed her that "if (she) was not a fool of a woman, and was like other women, (she) would not have children." He went on to explain that if she "went to a doctor and had a certain operation performed," she could avoid further pregnancies.[206] In response, Hannah retorted that he could "have the operation performed" himself: she refused to see a doctor.[207]

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[200] Angelique Janssens, Introduction to "Gendering the Fertility Decline in the Western World," in *Gendering the Fertility Decline in the Western World,* edited by Angelique Janssens, (Bern: Peter Lang, Population, Family and Society Studies, 2007), 2-4.
[201] Margaret Anderson and Alison Mackinnon, "Women's Agency in Australia's First Fertility Transition: A Debate Revisited," *The History of the Family* 20, no.1 (2015): 10.
[202] In the highly publicised divorce trial concerning Webb's second marriage to one Maggie Maude Cheesbrough in 1903, Webb was accused of driving her to the home of "Nurse---- in Paddington's Glenmore Road, to have an illegal operation performed." "The Webb Case. Alleged False Statement. Henry Montgomery Charged," *Evening News*, 20 January 1904, 3.
[203] "Today's Divorce. Webb v. Webb. A Maitland Case," *Evening News*, 28 October 1901, 4.
[204] "A Maitland Divorce Case. Charges and Counter-Charges. Alleged Cruelty and Misconduct," *Australian Star*, 28 October 1901, 5.
[205] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 010.
[206] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 034.
[207] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 033.

Held only two years after the Webb case, the NSW Royal Commission into declining family size would identify the "selfishness" of women as the primary cause of a steadily lowering birth rate, but in this instance it was most decidedly the "selfishness" of George rather than Hannah Webb which was at work in limiting the size of the couple's family.[208] In contrast to Webb's own portrayal of devoted fatherhood, Hannah described how he became incensed after each birth, when "the child claimed her attention."[209] If the baby cried, he complained that it was a nuisance, and said that if he had his way, he would put it "down the backyard when it cried."[210]

With Webb's resentment particularly evident when faced with a new mouth to feed, he was often violent in the months after each birth, and Hannah recounted "frequent beatings and revilings...owing to the birth of her children."[211] Webb's accelerating mistreatment during and in relation to Hannah's pregnancies stemmed possibly from his frustration in contemplating the loss of her assistance in his dentistry practice.[212] Whatever his motivation, Webb's behaviour is reminiscent of Judith Allen's disturbing account of the man who used a rubber catheter to induce his wife's miscarriage.[213] Each scenario conveys a chilling disregard for and contempt towards the reproductive capacities that women possess.

One of the most intriguing details about contraception to emerge in the Webb case relates to the incident of June 13, 1899, when Webb locked Hannah outside in the rain. Court Transcriptions include important additional details which press reports and the legal case file do not necessarily include. In the current instance, such details suggest a widespread familiarity amongst men with so-called "French preventatives." According to the young men

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[208] Magarey, "The Politics of Passion," 40.
[209] "Divorce Court. Before Mr. Justice Simpson, Judge in Divorce. Webb v. Webb," *Sydney Morning Herald*, 29 October 1901, 8.
[210] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 010.
[211] "A Maitland Divorce Case. Charges and Counter-Charges. Alleged Cruelty and Misconduct," *Australian Star*, 28 October 1901, 5.
[212] James Hammerton suggests that "persecution" of wives in pregnancy was not uncommon. Hammerton, *Cruelty and Companionship*, 44.
[213] Allen, "The Invention of the Pathological Family," 18.

who witnessed Hannah's distress on that particular evening, upon hearing her "screaming and sobbing bitterly" in the cold, one of them placed a mackintosh around her shoulders "for warmth," whereupon Webb later discovered in one of the coat's pockets "a box containing French preventatives."[214]

The owner of the mackintosh was one James Normoyle, who admitted to ordering the items by post and confirmed he "knew what the things were by the instructions." He had kept them in his pocket "just for novelty," bringing them out "just to show a friend who wanted to see them, out of curiosity." Normoyle also showed the condoms to two other friends, and even gave "one or two" to "a gentleman friend" who suggested "he would like to have a look at them."[215] Normoyle's detailed account of a seemingly innocuous event indicates a keen male interest in contraceptive devices, and suggests further how the men of a small rural community disseminated contraceptive information and expertise amongst themselves.

Comparing the contraceptive practices of husbands versus wives in English and Australian communities between 1890 and 1970, New Zealand historian Hera Cook concludes that Australian women had a significantly higher use of contraceptive devices such as diaphragms, over which they rather than their spouses had control. Cook cites the difficulties in Australia of obtaining condoms and suggests her findings of a pro-active approach to birth control on the part of Australian women counter the entrenched notion of "a culture of unprecedented male domination."[216] Cook's conclusions provide an interesting reflection on the male role in lowering fertility. More importantly, they prompt me to ask why Webb did not appear to take the initiative or control his own sexual behaviour to prevent pregnancy, other than providing Hannah with abortifacients or trying to induce a miscarriage

[214] A mackintosh is a full-length waterproof raincoat. SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 111.
[215] SRNSW: NRS 2713, [6/2925] *Webb v. Webb,* 318.
[216] Hera Cook, "Unseemly and Unwomanly Behaviour: Comparing Women's Control of their Fertility in Australia and England from 1890 to 1970," *Journal of Population Research* 17, no.2 (2000): 125, 128, 131.

in other ways.[217] While condoms were available from the 1850s in Australia, albeit not in their present-day form, (they were made of vulcanized rubber),[218] Normoyle's testimony suggests that "French preventatives" were still uncommon in rural locations in 1901. Given the high failure rate of withdrawal methods of contraception,[219] it may be that Webb had unsuccessfully attempted and then abandoned other forms of family limitation.

Beloved Wife of George Henry Webb

Playing the lead role in several other court cases before and after his (first) divorce proceedings, the considerable documentary trial which George Webb has left to posterity confirms Hannah's accusations of his cruelty. Charged and convicted variously of slander, assault, fraudulent business practices and seduction, press and legal sources attest to Webb's distinctly dubious sense of morality.[220] Descriptions of his behaviour during the trial further strengthen such a negative impression. At one stage the judge was forced to reprimand Webb for making "sneering signs" at his wife as she gave evidence. His conduct caused her significant emotional distress to the point where Hannah was "accommodated with a chair in the box," and later also "conducted from the court by a nurse in attendance."[221] Further

[217] It is more likely, in my opinion, that Australian women tended to use female-directed forms of contraception because they did not believe their husbands could be relied upon to take the initiative or demonstrate a sustained commitment to the use of male-directed forms.
[218] Stephen Garton, *Histories of Sexuality: Antiquity to Sexual Revolution* (London: Equinox, 2004), 107.
[219] Ibid.
[220] In the early 1890s, Webb was twice sued for fraud when he provided patients with defective dentures that either broke or did not fit properly; in the late 1890s, he was sued for slander after maligning the character and reputation of another dentist who had at one stage employed him; in 1901, he was convicted of assault on Hannah's lover Richard Birkenhead after "horse-whipping" him as he walked behind Birkenhead along Sydney's Macquarie Street, and in 1903, Webb failed to prove that his second wife Maggie Maud Cheesbrough had "coerced" him into marrying her after it revealed that he had engaged in a sexual relationship with her, forced her to have an abortion and then physically assaulted her. "A Set of Teeth," *Newcastle Morning Herald and Miners' Advocate*, 6 August 1895, 7; "A Maitland Slander Case. Hamilton v. Webb. Verdict for Plaintiff with Damages," *Newcastle Morning Herald and Miners' Advocate* 22 September 1893, 5; "In Divorce. The Webb Case. Fifth Day," *Evening News*, 2 November 1901, 6; "The Alleged Forced Marriage. The Husband's Evidence," *Evening Journal*, 8 October 1903, 2; "A Husband With A Horsewhip: Makes Richard Smart. Serious Charges and Painful Reprisals," *Truth*, 26 May 1901, 5;
[221] At this time, witnesses stood rather than sat in the witness box. If they were overcome by emotion or heat, as was sometimes the case, a witness could be given a chair to sit on as a concession to their vulnerable state; "Today's Divorce," *Evening News*, 29 October 1901, 4.

suggesting that Webb had fabricated claims of Hannah's drunkenness and maternal neglect, the judge rejected those allegations, and declared that while she may have "sent out very often for beer," Hannah Webb was obviously devoted to her children.[222] It is thus difficult to see Webb's accusations as anything other than an attempt to destroy his wife's reputation, a process which began with his decision to base counter-charges on her adultery rather than drunkenness, despite knowing these grounds would be significantly more distressing to his children.[223]

The Webb case reveals once more the classed nature of those constraints which gender imposed upon women. With limited means, no independent property and little occupational experience other than brief interludes standing behind a hotel bar, Hannah was in no position to branch out as an independent economic agent, to pursue higher education or seek entry into the professions. Her economic prospects depended on what alimony or maintenance her husband would or could provide when the marriage was over. With four small children, she would not have managed financially had Webb not deigned to give her the woefully inadequate one pound per week he so "generously" proffered after the couple separated.[224]

Webb v. Webb exposes a marriage characterised by the presence of competing and oppositional strands of power and dominance, submission and resistance, tyranny and violence.[225] It confirms that family relationships are relations of power, in this instance maintained by gender stereotypes which aimed to justify masculine domination and the

[222] "The Webb Divorce Case. Verdict for the Respondent," *Maitland Daily Mercury*, 8 November 1901, 3; When Hannah lodged her petition, George's solicitor had immediately moved to add that the petition had "during three years and upwards been an habitual drunkard, has habitually neglected her domestic duties, and has habitually rendered herself unfit to discharge those duties." SRNSW: NRS 13495 [4022/1901], *Webb v. Webb.*
[223] Justice Simpson pointed out to Webb that it would have resulted in "significantly less distress" for the Webb children to learn their mother was a drunkard, than for them to know she was an adulteress. SRNSW: NRS 2713, [6/2925] *Webb v. Webb*, 233.
[224] SRNSW: NRS 13495 [4022/1901] *Webb v. Webb.*
[225] Davidoff et al., *The Family Story*, 5, 8.

dependence of those under the same roof as a male breadwinner.[226] By 1901, the relationship between the sexes was restored to one of power and domination, and the home was once more a man's rather than a woman's kingdom.[227]

In conveying the circumstances of a disempowered young wife and mother, the Webb case challenges any sense that progress for women had continued without disruption into the new century. Nor is there any suggestion that citizenship would have provided Hannah with greater personal autonomy. The case reveals further how gender played a prominent disciplinary function in shaping legal and societal judgments of women.[228] In choosing to ignore irrefutable evidence of Webb's sadistic cruelty, and award the Decree Nisi to him rather than Hannah, George Simpson publicly punished Hannah for her adultery.[229] Even though Webb's abuse was horrific, for this particular judge, adultery plainly "trumped" cruelty. The abolition of the double standard in 1892 had seen little alteration in the law's tendency to hold women to a distinctly higher standard of morality than men.

George Webb continued his propensity for litigation, becoming embroiled in further scandal in 1903 when he claimed to have been "met by two men, assaulted, bustled into a cab, locked up all night, dosed, and married against his will the next day at a matrimonial agency."[230] Webb petitioned for divorce, but the case was dismissed owing to his lack of means. He petitioned again in 1904, but once more abandoned the suit when he found himself "pressed financially."[231] Having recovered from his financial woes, Webb finally divorced his

[226] Ibid., 31.
[227] Tosh, *A Man's Place*, 1.
[228] King, "A Prisoner of Gender," 29.
[229] Although the outcome of the trial meant that Hannah was still granted a divorce, the decision to award the decree to her husband instead of her publicly invalidated her claims of George Webb's cruelty, and significantly increased her shame. As divorce continued to have dire consequences particularly for women at this time, it would have been a significant blow. Hannah thereby became the wrong doer in the case, rather than its victim.
[230] "Webb in a Webb," *Warialda Standard and Northern Districts' Advertiser*, 29 September 1903, 3.
[231] "A Dentist's Marriage. The Webb Case Revived," *The Star*, 24 March 1910, 4.

ersatz wife in 1910, remarried in 1915, and died of acute pneumonia in 1916 at the age of forty-four.[232]

Three months after the trial, Hannah Webb died from heart failure and double pneumonia, her death the tragic coda to a ferocious courtroom ordeal that told a tale of marital brutality which fell on deaf ears.[233] Hannah's death notice described her as the "beloved wife of George Henry Webb," before listing Webb's dentistry qualifications and the fact that he was a Justice of the Peace.[234] Ever a narcissist, Webb eradicated all traces of the couple's courtroom nightmare, much as Emily Bradley sought to do in becoming a grieving widow rather than a Divorce Court litigant. With Hannah dying only four months after the trial ended, neither party had applied for the final decree, and the marriage remained intact. Thus, in a final irony, the nefarious Webb continued to dictate the details of his wife's existence after her death, much as he had done in her sad and troubled life.

[232] State Records NSW: Supreme Court of New South Wales, NRS 13495, Divorce Case Papers 1873-1978, [4832/1903], [4943/1904], [7038/1909], [7309/1910] *George Henry Webb-Maggie Maud Webb* Divorce; NSW Births, Deaths and Marriages, [11615/1915] Marriage Certificate *George Henry Webb- Maud Cubiss;* NSW Death Registration Transcription [2223/1916], *George Henry Webb.*
[233] NSW Death Transcription *Hannah Victoria Browe Webb* [2027/1902].
[234] "Family Notices," *Sydney Morning Herald*, 18 February 1902, 1.

Chapter Six—The Good Fortune To Have Considerable Means: *Dalley v. Dalley*, 1905[1]

Image 6.1: William Bede Dalley as a boy, undated.

State Library New South Wales, William Bede Dalley, the Younger, Pictorial Material ca. 1888-1912.

Image 6.2: William Bede Dalley photographic portrait by May Moore, 1927.

National Library of Australia digitised item, http://nla.gov.au/nla.obj-134698598

Image 6.3: Pauline Dalley and John Bede Dalley, undated.

State Library New South Wales, William Bede Dalley, the Younger, Pictorial Material ca. 1888-1912.

Although I have been unable to definitively identify the figures as John and Pauline, they resemble artist Lionel Lindsay's press drawings.

National Archives of Australia, WW1 Service Records, B2455, Dalley, W.B.

[1] "Dalley v. Dalley," *Evening News*, 8 November 1905, 5.

Introduction

In early December 1905, Pauline Dalley emerged from a twenty-day courtroom ordeal in which her husband had accused her of adultery with his younger brother John, and claimed her six-year-old daughter Yolande was "the child of some man unknown."[2] When jury members could reach consensus only as to Will Dalley's own liaison with a London "shop girl," Justice Gregory Walker had no choice but to discharge them. With proceedings now aborted, Pauline was legally "entitled...to be considered innocent." Extended legal tribulations, however, had laid bare her intimate life, exposing a marriage that soured within a few years of its inception in 1895 and saw the couple's eldest daughter Eileen removed from her mother's custody to avoid the contaminating influence of Pauline's "bastard child," as Will Dalley referred to Yolande.[3] Although the upper-class Pauline had travelled in style throughout the British Isles and the Continent, within an unusual marital unravelling, she also endured a traumatic abortion, the humiliating presence of her husband's mistress, and considerable financial hardship.

In the myriad details of family relations and against a backdrop of extensive international travel, *Dalley v. Dalley* reveals important aspects of social class, marital power and the supreme homo-sociality of the elite white male. In the "layered" gender conflict which trial proceedings revealed, we may recognise those "layered cultural meanings" embedded within notions of imperial and national identities.[4] Alongside Pauline and Will

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[2] State Records NSW, Supreme Court of New South Wales, NRS 2713, Court Reporting Office Transcripts 1899-1939, 1906 [6/3094], *William Dalley-Pauline Dalley* (Hereafter SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 471; State Records NSW, Supreme Court of New South Wales, Divorce Case Papers, NRS 13495, [5056/1904], *William Dalley-Pauline Dalley* (hereafter, SRNSW: NRS 13495 [5056/1904] *Dalley v. Dalley).*

[3] This descriptor is repeated consistently throughout Dalley's 1906 Suit for Custody of Eileen, which he pursued through the British Court of Chancery. Copies of these legal documents are in his papers at the State Library of New South Wales. State Library of New South Wales (SLNSW) William Bede Dalley, the younger, papers 1888-1912, MLMSS 135.

[4] Kate Darian-Smith, "Images of Empire: Gender and Nationhood in Australia at the Time of Federation," in *Britishness Abroad: Transnational Movements and Imperial Cultures,* eds. Kate Darian-Smith, Patricia Grimshaw and Stuart Macintyre (Carlton: Melbourne University Press, 2007), 157.

Dalley's movement between London and Sydney, the case thus unfolds within "the wider geographical framework of empire," rather than the context of nation.[5]

Limited scholarship exists in relation to the unremarkable elite woman in early nationhood. I have already remarked how research has investigated women who were prominent in the public realm, and probed such abstractions as the changing construction of motherhood and the growing importance of domestic ideology.[6] To these investigations must be added numerous studies of middle-class feminist activism and women's altering workforce participation.[7] Far less is known of the unexceptional and anonymous woman who has left little trace of her engagement with the public sphere.[8] Perhaps the absence of pertinent source material has compounded lack of scholarly interest in the elite woman per se, but to a significant degree, the main study of upper-class femininity remains Penny Russell's investigation of genteel women in nineteenth century Melbourne.[9] While Russell's achievements are impressive, it is not necessarily accurate to transplant her conclusions to another century.

With this deficit in mind, the Dalley case offers an opportunity to examine the life experiences of an upper-class woman for whom marital identity was all-encompassing. Leading a leisured existence in dramatic contrast to my previous subjects, Pauline Dalley's circumstances reinforce the necessity of an intersectional approach to expose feminine diversity.[10] In Foucauldian terms, her brief "collision" with the law reveals the "fleeting trajectory" of a simultaneously unremarkable and yet exceptional life, and allows further

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[5] Wendy Webster, "Transnational Journeys and Domestic Histories," *Journal of Social History* 39, no.3 (2006): 654.
[6] Noteworthy biographies of prominent women include Judith Allen, *Rose Scott: Vision and Revision in Feminism* (Melbourne: OUP, 1994); Jan Roberts, *Maybanke Anderson: Sex, Suffrage & Social Reform* (Sydney, NSW: Hale & Iremonger, 1993); Janette M. Bomford, *That Dangerous and Persuasive Woman* (Melbourne; Melbourne University Press, 1990); The most significant investigation of domestic ideology in the Australian context is Reiger's *The Disenchantment of the Home.*
[7] Biographical accounts of prominent women, such as those mentioned in the previous footnote, focus primarily on their activist achievements.
[8] Judith Allen, "The 'Feminisms' of the Early Women's Movements 1850-1920," *Refractory Girl* 17 (1979): 10.
[9] Russell, *A Wish of Distinction.*
[10] Allen, *Sex & Secrets*, 5.

understanding of important themes this thesis has addressed.[11] Of particular note are individual agency in negotiating fertility, the role of leisure in constructing personal identity, the balance of marital power and the putative expansion of opportunities for women outside of marriage.

In the following analysis, I begin by acknowledging that once again, distillation of "the facts" is difficult, perhaps more so in this case than any other. The sources are voluminous and include Will Dalley's papers (held at the State Library of NSW), extensive press reportage of the trial and several affiliated legal suits, including Dalley's abandoned divorce case of 1902 which was conducted in England.[12] With such overwhelming documentation at hand, identifying a coherent timeline of events has posed a greater challenge than usual.

The process of constructing a timeline of events is also difficult because the three principals sometimes referred to events with inaccurate or contradictory dates, or no date at all, and transcribed testimony extends to thirteen-hundred pages. With witnesses recounting the deterioration of a marital relationship over ten years, it is difficult to establish a definitive chronology, forcing me to rely at times on a general sense of events unfolding.

Images 6.4 The single volume of Court Reporting Office Transcriptions devoted to the Dalley trial.

SRNSW: NRS 2713, [6/3094], *Dalley v. Dalley*.

[11] Michel Foucault, "The Lives of Infamous Men," in *The Essential Foucault: Selections from the Essential Works of Foucault, 1954-1984*, eds. P. Rabinow and N. Rose, (New York, London: The New Press, 1994), 282.
[12] The National Archives of the United Kingdom, Divorce Court File 3221, Appellant William Bede Dalley, Respondent Pauline Lamonerie Dalley.

As James Hammerton points out, however, the unending "charges and counter-charges" that protagonists hurled at one another during divorce proceedings facilitate a retrospective examination of domestic strife.[13] Unlike the villainous George Webb, who ruled with his fists, Will Dalley's dominance derived from his capacity to bestow or withdraw emotional and monetary resources, and the sources further substantiate the key role of financial control in perpetuating male domination.[14] While Pauline's proclamations of innocence and portrayal of submissive femininity make it an investigative challenge to perceive her as an active social agent, her courtroom passivity must be recognised as a necessary response to the gendered demands of the courtroom performance.[15]

As historian of emotions Katie Barclay explains, court process demanded that witnesses construct a unique narrative within a set of cultural, legal and social conventions which significantly constrained their "story."[16] Pauline Dalley was trying to convince a specific audience—in a very particular way—of her innocence. Her performance was an integral element in asserting an elite status and distancing herself from the hovering taint of the fallen woman, a dividing practice still in play.[17] If Pauline had in any way departed from the passivity that typically defined women of her class, she risked "unsexing" herself, and forfeiting her claims to innocence.[18]

In a previous publication, I suggested that by depicting men as the dominant historical actors, the historiography renders it easy to deny that women were energetic social beings, who strove purposefully to satisfy their own needs and desires: that it is essential to do so

[13] Hammerton, "Law of Matrimonial Cruelty," 276.
[14] The exceptional detail within the Court Reporting Office Transcriptions in this case was a rarity even at a time when, as Claire Sellwood contends, the public was engaging increasingly with the Divorce Court as a means of entertainment. Sellwood, "'A Series of Piteous Tales,'" 97.
[15] For more about how the courtroom imposed gendered demands upon those who appeared in it, see Barclay, *Men on Trial*.
[16] Katie Barclay, "Narrative, Law and Emotion: Husband Killers in Early Nineteenth-Century Ireland," *The Journal of Legal History* 38, no.2 (2017): 203.
[17] Penny Summerfield, "Concluding Thoughts: Performance, the Self and Women's History," *Women's History Review* 22, no.2 (2013): 346; Russell, "For Better and For Worse," 11; Foucault, "The Subject and Power," 777.
[18] Ann Heilmann, "Masquerade, Sisterhood and the Dilemma of the Feminist as Artist and Woman in Late Nineteenth-Century Women's Writing," *Journal of Gender Studies* 3, no.2 (1994): 155.

must be reiterated.[19] To identify Pauline in this way, despite her oppressive and disempowering circumstances, I return again to the theoretical insights of Maurice Merleau-Ponty. Highlighting the corporeal, Merleau-Ponty's conception of the lived and intentional body exposes agency, proposing the body as "an experiencing, agentic subject."[20] As such, I consider how Pauline Dalley aimed to fulfil her needs by navigating complex social interactions with individuals she judged to be of importance: unable to build financial capital, she sought instead to amass social capital.[21] In the context of such analyses, my research confirms the symbiotic nature of gender and power, but above all, the persistence of patriarchal power in the early twentieth century.[22]

The Facts of the Trial

Before going on to examine in detail the trial and prior events, it is important to acknowledge the exceptional nature of proceedings in the Dalley case. To begin with, Dalley's legal bills amounted to some £8000, by far the most costly I have encountered.[23] Today this equates to at least $1.1 million, and in 1906 could have purchased an office building in the centre of Sydney, or paid Pauline's subsequent court-ordered maintenance for an incredible fifty-three years.[24] Several of the trial's distinctive features rendered such exorbitant outlay inevitable.

First, trial preparation period extended to eighteen months, while lawyers typically required only three or four months to gather and prepare evidence. The interval in the current

[19] Lorrison, "Adulterous Agency," 349-364; Rosaldo and Lamphere, *Woman, Culture and Society*, 9.
[20] Levin, "Bodies and Subjects," 192; Parkins, "Protesting Like a Girl," 152.
[21] Luna Dolezal, *The Body and Shame: Phenomenology, Feminism and the Socially Shaped Body*, (London: Lexington Books, 2015), 7, 9, 10.
[22] McLaren, *The Trials of Masculinity*, 1.
[23] The sum comprises £6000 for Dalley's proceedings in Australia, £1400 for Pauline's costs, and several hundred pounds to pay private detectives. "The Dalley Divorce. Maintenance Application. Mrs. Dalley to get £3 a Week," *Evening News*, 25 July 1906, 5.
[24] In 1906, the court set Pauline's maintenance at £150 per annum. £8000 divided by 150 is 53.5; "The Dalley Divorce. Maintenance Application. Mrs. Dalley to get £3 a Week," *Evening News*, 25 July 1906, 5.

case was so lengthy because at its outset, the judge ordered a commission to go to England and France to interview witnesses there.[25] Commissions were by no means rare, but I have located little scholarship concerning their use and this is the first case I have found in which authorities left the country. When circumstances demanded a lengthy sea voyage for lawyers, and employed translators, shorthand writers and a transcription clerk, a commission involved substantial cost. This fell to the (male) petitioner.[26]

The trial itself was exceptionally long and lasted for twenty days.[27] By comparison, the high-profile Coningham case of 1901, involving Australian cricketer Arthur Coningham, lasted fifteen days. The Coningham case is my previous benchmark for proceedings which attracted an equally intense public interest, and I am familiar with the case only through Claire Sellwood's research, rather than my own.[28] The vast many pages of the Dalley Court Transcriptions reveal that unrelenting legal challenge and debate brought about the trial's exceptional duration. Featuring three consummate legal teams, including the redoubtable George Houston Reid as Will Dalley's barrister, endless legal "nit-picking" led to a tedious level of detail. At one point, a beleaguered Justice Walker bemoaned that if each of "an immense number of contradictions" was "pursued to the end," he did not know when the case would ever finish.[29]

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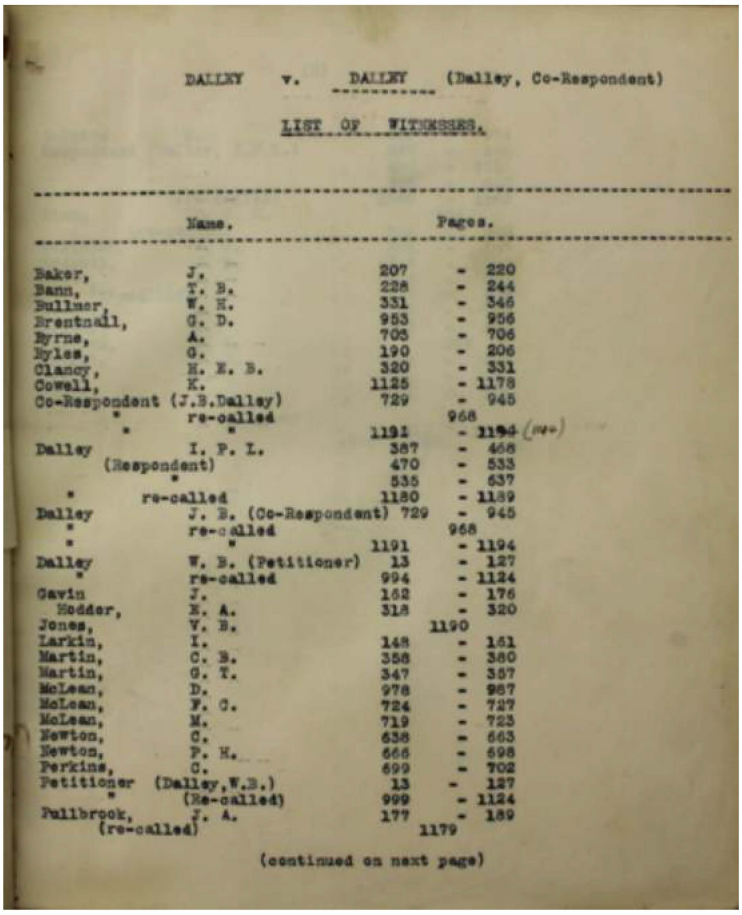
[25] "The Dalley Divorce Case. The Commission Proceeds," *The Newsletter: An Australian Paper for Australian People,* 18 March 1905, 6. The Commission left Sydney in March, and results were anticipated by August.
[26] The issue of male payment was not always enforced, and in cases where a wife had an independent income, husbands were not expected to pay for proceedings. Certainly, Pauline was not asked to pay her legal costs and in any case would not have been able to. The idea persisted that costs would be recouped from the co-respondent, and in this case, Will Dalley sought £5000 damages from his brother, stating his intention to settle the money on Eileen. SRNSW: NRS 13495 [5056/1904] *Dalley v. Dalley.*
[27] Although there is no statistical evidence as to the average trial duration, no trial I have investigated to date has endured beyond eight days and a trial length of twenty days is exceptional in the extreme.
[28] "The Coningham Case. Dr. O'Haran Completely Vindicated," *Freeman's Journal*, 6 April 1901, 18; Arthur Coningham accused his wife of adultery with the private secretary to Sydney's Roman Catholic Archbishop, Dr. Francis O'Haran; Sellwood, "A Series of Unfortunate Events." Sellwood analyses the case in detail throughout her thesis.
[29] W. G. McMinn, "Reid, Sir George Houstoun (1845–1918)," *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, http://adb.anu.edu.au/biography/reid-sir-george-houstoun-8173/text14289, published first in hardcopy 1988, accessed online 11 July 2019.

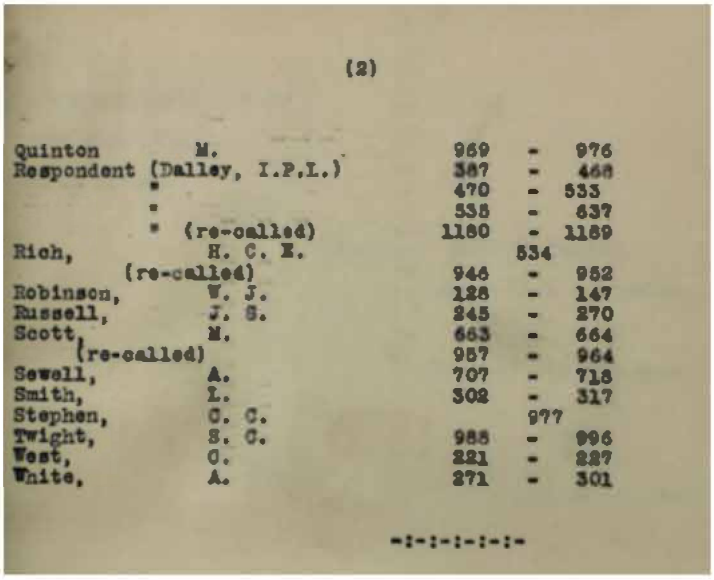


DALLEY v. DALLEY (Dalley, Co-Respondent)

LIST OF WITNESSES.

Name.		Pages.		
Baker,	J.	207	-	220
Bann,	T. B.	228	-	244
Bullmer,	W. H.	331	-	346
Brentnall,	G. D.	953	-	956
Byrne,	A.	705	-	706
Byles,	G.	190	-	206
Clancy,	H. E. B.	320	-	331
Cowell,	K.	1125	-	1178
Co-Respondent (J.B.Dalley)		729	-	945
" re-called		968		
" "		1191	-	1194
Dalley	I. P. L.	387	-	468
(Respondent)		470	-	533
"		535	-	637
" re-called		1180	-	1189
Dalley	J. B. (Co-Respondent)	729	-	945
" re-called		968		
" "		1191	-	1194
Dalley	W. B. (Petitioner)	13	-	127
" re-called		994	-	1124
Gavin	J.	162	-	176
Hodder,	E. A.	318	-	320
Jones,	V. B.	1190		
Larkin,	I.	148	-	161
Martin,	C. B.	358	-	380
Martin,	G. T.	347	-	357
McLean,	D.	978	-	987
McLean,	F. C.	724	-	727
McLean,	M.	719	-	723
Newton,	C.	638	-	663
Newton,	F. H.	666	-	698
Perkins,	C.	699	-	702
Petitioner (Dalley, W.B.)		13	-	127
" (Re-called)		999	-	1124
Pullbrook,	J. A.	177	-	189
(re-called)		1179		

(continued on next page)



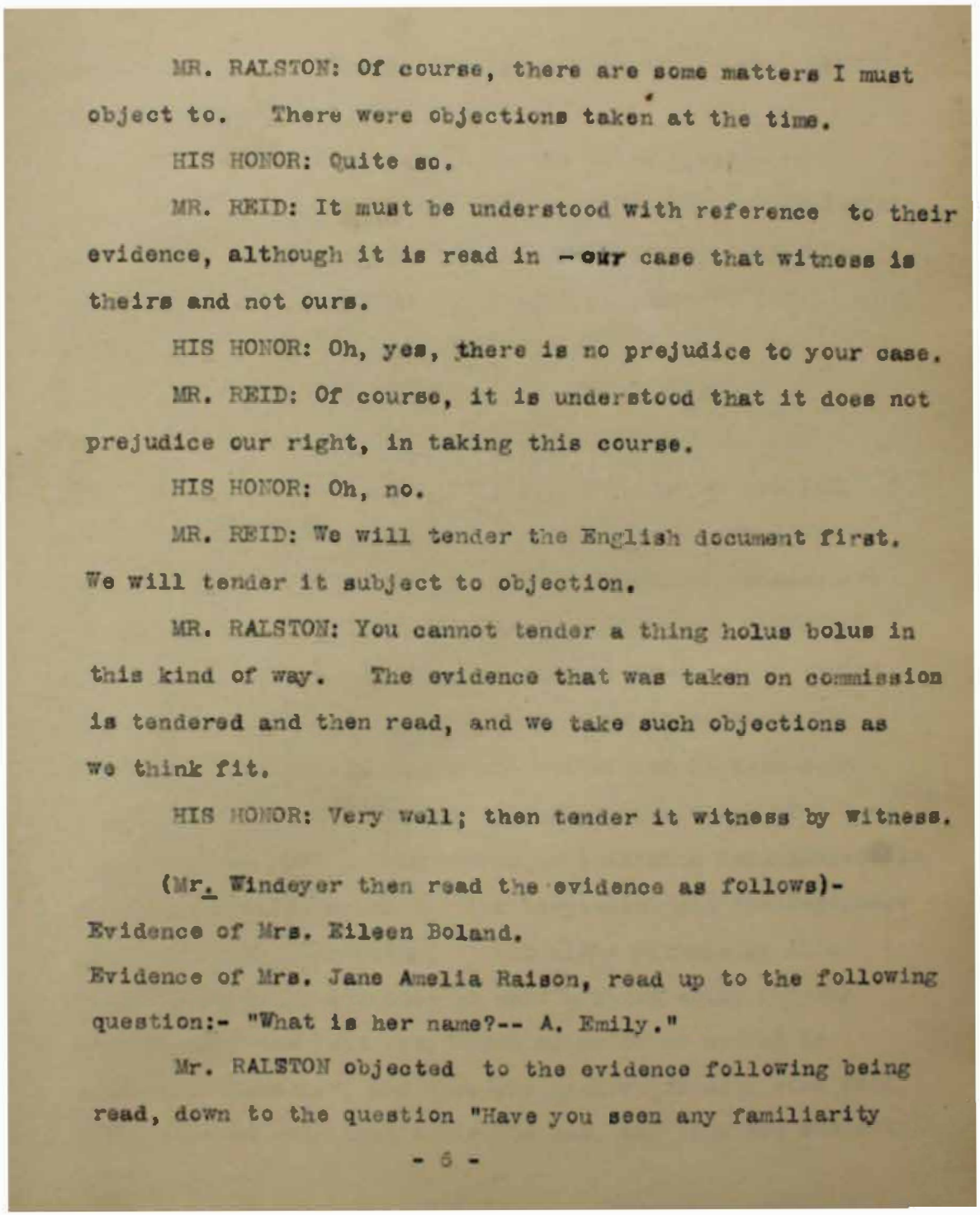
Quinton	M.	969	-	976
Respondent (Dalley, I.P.L.)		387	-	468
"		470	-	533
"		535	-	637
" (re-called)		1180	-	1189
Rich,	H. C. E.	534		
(re-called)		946	-	952
Robinson,	W. J.	128	-	147
Russell,	J. S.	245	-	270
Scott,	M.	663	-	664
(re-called)		957	-	964
Sewell,	A.	707	-	718
Smith,	L.	302	-	317
Stephen,	C. C.	977		
Twight,	S. C.	988	-	996
West,	C.	221	-	227
White,	A.	271	-	301

-:-:-:-:-:-

Image 6.5 List of trial witnesses. SRNSW: NRS 2713 [6/3094] *Dalley v. Dalley,* 1-2.

Image 6.6 Portrait of Will Dalley's barrister, the Right Hon. G.H. Reid, P.C. K.C. 18.8.04-5.6.05 [picture]/Swiss Studios.

National Library of Australia Digitised Item, accessed online at https://catalogue.nla.gov.au/Record/2542800



MR. RALSTON: Of course, there are some matters I must object to. There were objections taken at the time.

HIS HONOR: Quite so.

MR. REID: It must be understood with reference to their evidence, although it is read in our case that witness is theirs and not ours.

HIS HONOR: Oh, yes, there is no prejudice to your case.

MR. REID: Of course, it is understood that it does not prejudice our right, in taking this course.

HIS HONOR: Oh, no.

MR. REID: We will tender the English document first. We will tender it subject to objection.

MR. RALSTON: You cannot tender a thing holus bolus in this kind of way. The evidence that was taken on commission is tendered and then read, and we take such objections as we think fit.

HIS HONOR: Very well; then tender it witness by witness.

(Mr. Windeyer then read the evidence as follows)-

Evidence of Mrs. Eileen Boland.

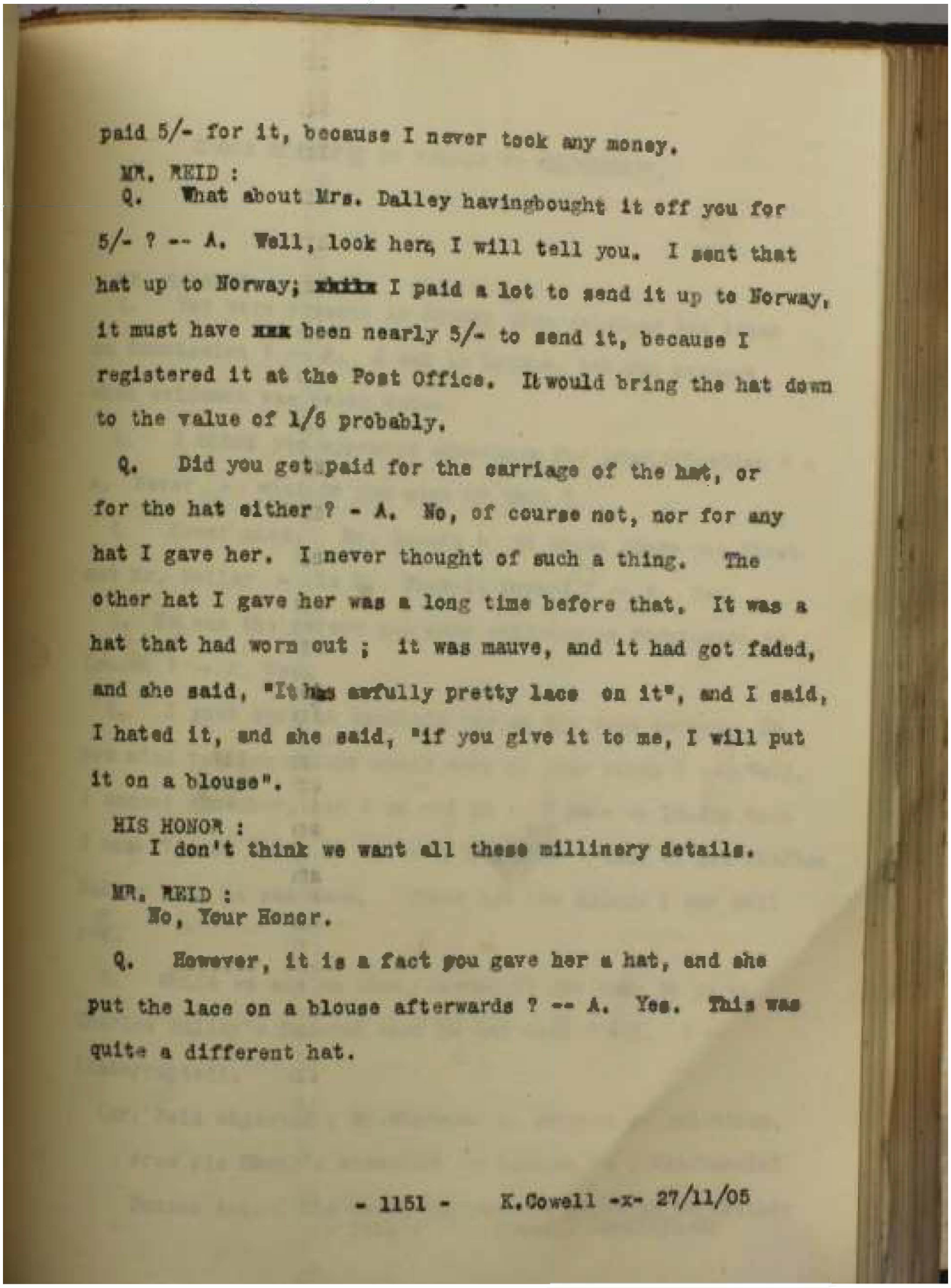
Evidence of Mrs. Jane Amelia Raison, read up to the following question:- "What is her name?-- A. Emily."

Mr. RALSTON objected to the evidence following being read, down to the question "Have you seen any familiarity

- 6 -

Image 6.7 The first days of the trial focused on establishing process and were very slow-moving.

SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 6.



paid 5/- for it, because I never took any money.

MR. REID :
Q. What about Mrs. Dalley havingbought it off you for 5/- ? -- A. Well, look here, I will tell you. I sent that hat up to Norway; ~~xhikx~~ I paid a lot to send it up to Norway, it must have ~~xxx~~ been nearly 5/- to send it, because I registered it at the Post Office. It would bring the hat down to the value of 1/6 probably.

Q. Did you get paid for the carriage of the ~~hat~~, or for the hat either ? - A. No, of course not, nor for any hat I gave her. I never thought of such a thing. The other hat I gave her was a long time before that. It was a hat that had worn out ; it was mauve, and it had got faded, and she said, "It ~~has~~ awfully pretty lace on it", and I said, I hated it, and she said, "if you give it to me, I will put it on a blouse".

HIS HONOR :
I don't think we want all these millinery details.

MR. REID :
No, Your Honor.

Q. However, it is a fact you gave her a hat, and she put the lace on a blouse afterwards ? -- A. Yes. This was quite a different hat.

- 1151 - K.Cowell -x- 27/11/05

Image 6.8 George Reid's cross-examination of Kitty Cowell concerned chiefly with what the judge deemed somewhat trivial matters regarding a hat she had given Pauline.

SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 1151.

Confirming a definite shift in legal perceptions of cruelty since *Webb v. Webb*, Pauline's allegations of cruelty referred only to emotional abuse. She claimed Dalley "injured her health and destroyed her happiness" by using threatening and abusive language (and) forcing his mistresses upon her attention." She further charged him with "making false charges against her and calling her foul and offensive names" and being persistently harsh and unkind.[30] Whilst I do not wish to downplay Pauline's emotional suffering, such accusations seem minor when compared to the vicious and protracted brutality that Flora Horwitz, Harriet Dorn and Harriet Webb endured. While trial proceedings dealt at length with the subject of Dalley's mistresses, they paid limited attention to abusive language or name-calling, and the jury could not agree that it took place.

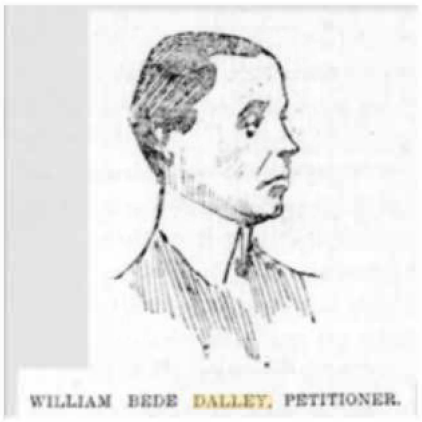
Despite the jury's prevarication, Pauline's accusations confirm James Hammerton's assertion that increasing numbers of middle-class wives were prepared to allege cruelty which did not involve physical assault.[31] More importantly, her allegations reflect a class-based depiction of cruelty, whereby as an elite exemplar of "pure womanhood," Pauline was assumed to possess a "delicate prudery" which rendered more traumatic for her than a woman of lower social status such moral insults as the constant presence of a husband's mistress.[32] Whilst multiple colliding voices characterise the Dalley trial more than any case to date, the chief actors portrayed idealised versions of gendered behaviour that allow significant insight into how men and women of their class were expected to behave.[33]

These gendered portrayals linked closely to the narratives that lawyers constructed piecemeal, via presentations constructed specifically to paint a client in a favourable light. They drew also on stock characters: for Will Dalley, the cuckolded husband and his faithless

[30] SRNSW: NRS 13495 [5056/1904] *Dalley v. Dalley.*
[31] Hammerton, "Law of Matrimonial Cruelty," 283.
[32] Russell, "For Better and For Worse," 12, 19.
[33] Hayley Brown, "'We Both Agreed You Were A Sexual Maniac:' Contestations of Sex and Marriage in New Zealand Divorce Cases, 1898-1947," *Melbourne Historical Journal* Issue 1 (2009): 21.

wife; for Pauline, the maligned and spurned wife, and for John, the honourable young bachelor caught in the cross-fire of his brother's momentary insanity.[34] The stock characters and the stories in which they were enmeshed took the form of domestic melodrama, a concept which highlights the performative aspects of delivering testimony in a divorce case.[35] Like melodrama, this form of depiction pertained to marital strife, and demanded that the heroine reveal at length her emotional suffering.[36]


MRS. W. B. DALLEY, RESPONDENT, and who makes counter-charges against her husband.


WILLIAM BEDE DALLEY, PETITIONER.


JOHN BEDE DALLEY, CO-RESPONDENT.

Images 6.8, 6.9, 6.10 Lionel Lindsay's drawings of trial protagonists.

"Dalley Divorce Suit. This Afternoon's Proceedings. Mr. Reid's Preliminary Address to the Jury," *Evening News*, 6 November 1905, 5.

[34] In their analysis of the relationship between narrative and the law, Paul Brooks and Peter Gewirtz discus at length how lawyers constructed a positive or negative narrative concerning plaintiff and defendant. Brooks and Gewirtz, *Laws Stories*, 9.
[35] Sellwood, "'A Series of Piteous Tales,'" 61.
[36] Ibid., 13.

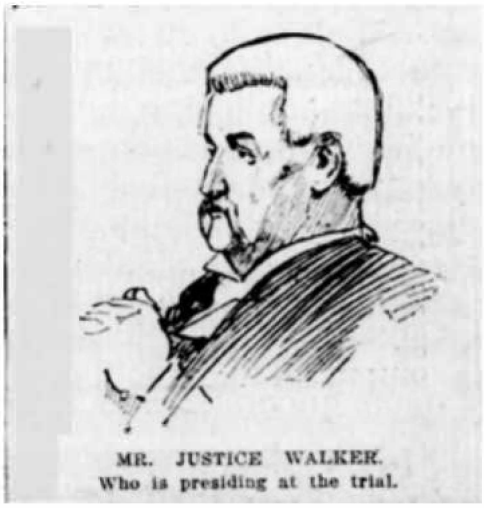

MR. JUSTICE WALKER.
Who is presiding at the trial.

Image 6.11 Justice Gregory Walker, from the same press report


MR. REID, K.C., COUNSEL FOR THE PETITIONER.

Right: Image 6.12 George Reid, as above. Reid's bulk was frequently caricatured.

"Dalley Divorce Suit. This Afternoon's Proceedings. Mr. Reid's Preliminary Address to the Jury," *Evening News*, 6 November 1905, 5.

Everybody Calls Me Baby[37]

The eldest of two daughters, Ianthe Pauline Lammonerie Fattorini Dalley was born in 1874 to Pauline Henrietta Cooper Fattorini and Eugene Fattorini.[38] Despite her multiple monikers, Pauline was always known and referred to herself as "Baby," an infantile sobriquet which persisted possibly to distinguish her from her mother.[39] The matter of her first name is confusing, however, since on documents of law she signed herself *I. Pauline Dalley*, while

[37] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 460.
[38] "Family Notices," *Sydney Morning Herald*, 3 April 1874, 1; Pauline's sister Genevieve was younger by two years.
[39] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 460; So pervasive was the use of Pauline's nickname, that even the notice of her engagement in the social pages referred to "Miss (Baby) L.D. Fattorini." "A New Arena," *Illustrated Sydney News*, 17 June 1893, 2.

later press reports refer to her as Ianthe. Legal authorities consistently referred to her as Pauline, and I have also chosen to refer to her as such.

Pauline's maternal grandfather, Francis Cooper, was "a squatter of ample means," while her maternal uncle Sir Pope Alexander Cooper served as Queensland's Attorney-General and chief judge of its Supreme Court.[40] The wealthy and well-connected Cooper family stood in contrast to Pauline's father, who was insolvent, eccentric and volatile. Fattorini claimed to be a direct descendent of Napoleon Bonaparte and deployed this putative relationship to excuse his poor behaviour.[41] Scandalous divorce proceedings ensued in 1878 when Pauline Fattorini refused to comply with her violent husband's petition for the Restitution of Conjugal Rights.[42] Although granted a judicial separation in 1879, Pauline Fattorini divorced only in 1885, after travelling to Victoria where the court acknowledged as sufficient grounds to do so her violent spouse's "cruelty and immoralities."[43] In the interim, she battled for custody of her children in the Victorian court system.[44] By the time of her daughter's own divorce proceedings, Pauline Fattorini had long remarried and lived in somewhat straitened circumstances as Mrs. Christopher Newton, in the beachside suburb of Narrabeen.[45]

Born one year before Pauline, almost to the day, William Dalley was generally known as Will.[46] John was born in 1876.[47] Like Pauline, the brothers had limited experience of

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[40] J.C.H. Gill, "Cooper, Sir Pope Alexander (1846-1923), *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, published first in hardcopy 1981, accessed online 21 April 2019; "Sir Pope Cooper. Death Yesterday. Great Jurist Gone," *The Brisbane Courier,* 31 August 1923, 5.
[41] J.C. H. Gill, "Jean Baptiste Charles Lammonerie Dit Fattorini, Late of Port Macquarie, NSW," (1971) accessed online, 8 December 2018.
[42] State Records of NSW, Divorce Case Papers, [87/1878], *Eugene Fattorini- Pauline Henrietta Fattorini.*
[43] Victorian Public Record Office, Divorce Case Files Melbourne, VPRS 283, POOO/49, *Pauline Fattorini v. Eugene Fattorini*; "Fattorini Divorce Case. By Telegraph From Our Correspondent," *Australian Town and Country Journal*, 20 June 1885, 13.
[44] Victorian Public Record Office, Series in Custody, VPRS 267, POOO/7, *Pauline Henrietta Fattorini v. Eugene Lammonerie Fattorini.*
[45] Victorian Public Record Office, [236/1889], Marriage Certificate *Pauline Fattorini-Christopher Newton.*
[46] Although called Bill at a later stage, various witnesses including Dalley's first cousins George and Charles Martin referred to him as Will, as did Pauline, who also addressed her husband as Will in her letters to him. SRNSW: NRS 2713, 1906, [6/3094], *Dalley v. Dalley*, 355, 364, 537.
[47] Pauline's date of birth was April 2, 1874, Will's was March 23, 1873, and John's October 5, 1876. "Family Notices, Births," *Sydney Morning Herald*, 3 April 1875, 1; State Library of New South Wales (SLNSW) William Bede Dalley, the younger, papers 1888-1912, MLMSS 135, Birth Certificate *William Bede Dalley*, 23

stability in their formative years, with their mother Eleanor's early death in 1881, when Will was eight and John five, followed in 1888 by that of their father William Bede Dalley, pre-eminent statesman and politician.[48] A substantial inheritance left the five Dalley siblings wealthy orphans, and well-connected through both parents. (Eleanor Dalley's sisters Selina and Isabella similarly married men of exceptional prominence in public life).[49] For reasons unknown, John Dalley's guardian sent him at the age of twelve to Beaumont College, a Jesuit boarding school in England, and John later studied at Oxford.[50] He was somewhat isolated from the four siblings remaining in Australia, although Will swore he and John were "particularly attached to each other."[51]

Image 6.13 William Bede Dalley senior.

State Library of New South Wales William Bede Dalley, the younger, papers 1888-1912, MLMSS 135.

March 1873, [986/1874]; Clement Semmler, 'Dalley, John Bede (1876–1935)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, http://adb.anu.edu.au/biography/dalley-john-bede-5869/text9983, published first in hardcopy 1981, accessed online 19 January 2020.

[48] "Dalley, Eleanor Jane (1842-1881)," *Obituaries Australia*, National Centre of Biography, Australian National University, accessed 19 January 2020; *Who's Who in Australia, 1921-1950,* John Bede and William Bede Dalley, 1922.

[49] Martha Rutledge and Bede Nairn, "Dalley, William Bede (1831-1888), *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, published first in hardcopy 1972, accessed online 13 March 2019; Eleanor was the daughter of William Long, an exceptionally prosperous wholesale wine and spirit merchant, while her sister Isabella married Sir James Martin, Chief Justice of New South Wales. (According to Hilary Golder, however, the marriage ended in the 1880s and the couple maintained separate establishments. Golder, "'A Sensible Investment,'" 242); Eleanor Long's sister Selina married a nephew of Alfred Cheeke, Supreme Court judge. Their sons also rose to prominence in the law and politics. "Long, William (1797-1876), *Obituaries Australia*, National Centre of Biography, Australian National University, accessed 19 January 2020.

[50] "John Bede Dalley. Drowning, Feared Missing Since Friday," *The Mercury,* 11 September 1935, 5; The Dalleys were Roman Catholic, but this did not disqualify them from public life, nor did their religion appear to be a significant issue for others.

[51] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 94.

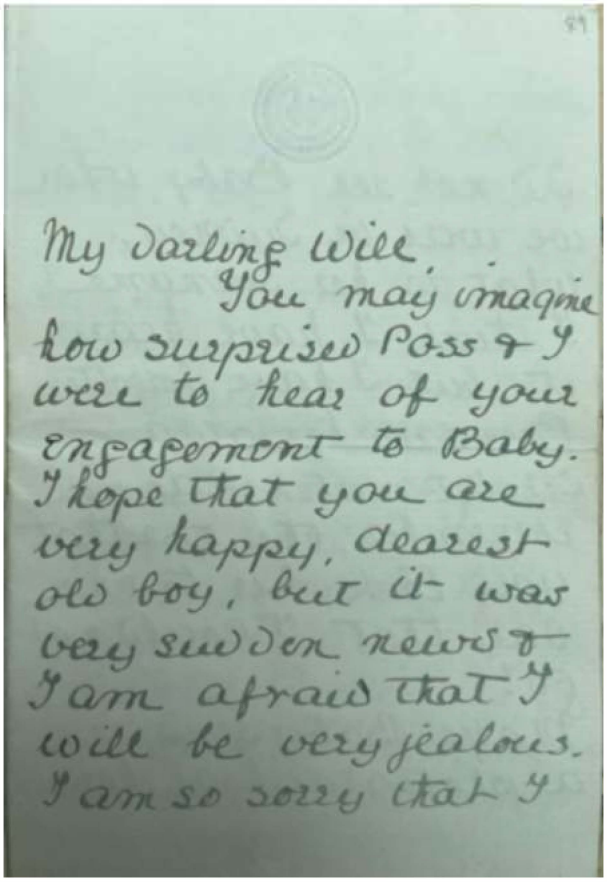
Image 6.14 Bronze statue of William Bede Dalley in Sydney's Hyde Park.

Available online at Monument Australia.

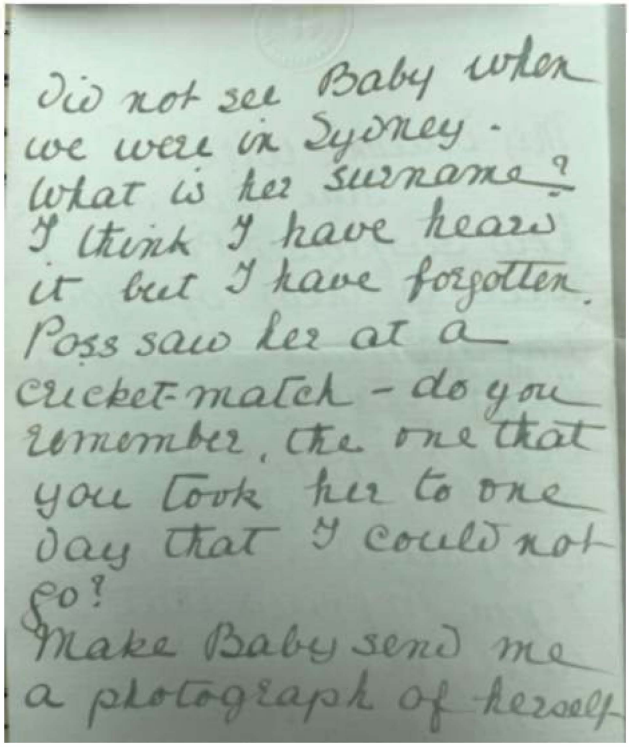
There is no record of how Pauline and William Dalley met. No doubt many in elite circles regarded Dalley as something of a catch, given his wealth and family name. The couple evidently decided somewhat hastily to marry, with Will's two younger sisters Mary and Eleanor writing to request more information about the new bride.[52] Dalley claimed he and Pauline were "engaged for three or four years," but personal correspondence from close friends and relatives suggests the marriage was a great shock to most, and few people in Will's immediate circle knew anything about his new wife (including her surname) or had met her before the ceremony.[53] Surprisingly, the documents abound with such contradictions and inconsistencies, typified by Pauline's statement towards the start of proceedings that "I

[52] SLNSW, William Bede Dalley, the younger, papers 1888-1912, MLMSS 135.
[53] Letters from Mary and Eleanor Dalley to Will confirm this, with both asking what "Baby's other name is," and requesting a photograph of his fiancée. SLNSW, William Bede Dalley, the younger, papers 1888-1912, MLMSS 135.

was very young when I was first married...I was eighteen I think."[54] In reality, a marriage date of August 20 1895 confirms that she was twenty-one, and her husband twenty-two.[55]



My darling Will.
You may imagine how surprised Poss & I were to hear of your engagement to Baby. I hope that you are very happy, dearest old boy, but it was very sudden news & I am afraid that I will be very jealous. I am so sorry that I did not see Baby when we were in Sydney. What is her surname? I think I have heard it but I have forgotten. Poss saw her at a cricket-match - do you remember, the one that you took her to one day that I could not go?
Make Baby send me a photograph of herself or you send one - I am very anxious to see what she is like & you cannot gather much from the name. Have you consulted our relations about it yet, or Mr Austin? I wonder what grandmama will say - she is sure to be sympathetic.
Do write to me soon - you cannot imagine how much we enjoy



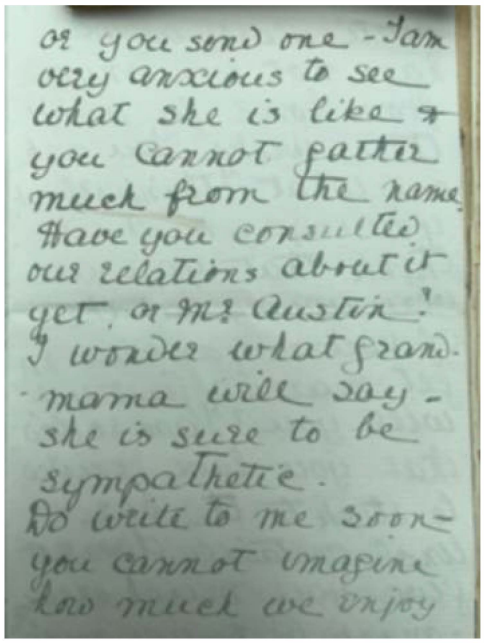


Image 6.15 Letter from Eleanor Dalley to Will, c. 1895.

SLNSW: William Bede Dalley the younger, Papers 1888-1912, MLMSS 135.

[54] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 387.
[55] SRNSW: NRS 13495 [4022/1906] *Dalley v. Dalley.*

Revealing limited knowledge of the other party, Will and Pauline Dalley each stated in court a number of inaccuracies concerning their respective ages and the circumstances of their marriage. Pauline swore her husband was eighteen months her senior, but their birthdays were actually one year and one week apart.[56] Displaying an equal ignorance, Dalley vowed his wife was nine months younger than he.[57] Before precise record-keeping, such confusion was not exceptional amongst the uneducated, and I have encountered several cases where one spouse admitted not knowing how old the other was. When asked to state the age of his mistress of more than six years, Dalley similarly professed to being "unable to tell them off-hand" how old she was, but "he'd say twenty-four, possibly twenty-five." In fact Kitty Cowell was twenty-eight, although she could not recall her date of birth either, and claimed she could "never remember dates or figures."[58] Witnesses sometimes also struggled to provide a definitive answer when asked their age, but it seems curious here given the affluence and literacy of those concerned. At the very least, such ignorance suggests birthdays were not celebrated with particular enthusiasm, even amongst the elite.

At the time of proceedings, both Dalley men had been admitted to the Bar, John in 1898 and Will in 1900, but while John had established a practice in Sydney, Will strove to earn a living as a journalist writing articles about fishing.[59] Describing himself as a "Gentleman of Independent Means," at this stage his journalism appears to have been more of a hobby than a serious pasttime.[60] A third Dalley brother, Charles, is also of brief but vital importance here, since by dying intestate he set in chain a series of events which were to have significant implications for his brothers and sister-in-law.

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[56] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 387; See Footnote 47 in this chapter.
[57] "Dalley v. Dalley," *Evening News*, 8 November 1905, 5.
[58] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 1152, 1157. Dalley's involvement with Kitty began when she was nineteen, making his confusion doubly strange.
[59] "The Dalley v. Dalley Case. Again in the Divorce Court. Cross Applications by the Parties. William Bede Dalley's Financial Position," *Australian Star*, 25 July 1906, 5; Will Dalley went on to become a successful journalist, writing for *The Bulletin* and *Smith's Weekly;* Email communication from Philip Selth, former head of the NSW Bar Association, June 6 2019.
[60] "Dalley Divorce Case Revived, Wife Obtains Maintenance. The Question of the Other Woman," *Express and Telegraph*, 26 July 1906, 3.

When Charles Dalley died in a hunting accident in November 1899, family members could not locate Will Dalley, who read of the tragedy in the papers. On the day of the inquest, Will brought Kitty Cowell with him to view his brother's body.[61] At the time of his death, "Charlie," as intimates called him, had just turned twenty-one and inherited a considerable fortune from their mother.[62] When neither John or Will wanted their brother's money, John settled it on Pauline, ostensibly for her children's use. Will later claimed such a move confirmed his brother's romantic involvement with Pauline, for whom the inheritance provided £137 per annum, and later provided her only source of dependable income.

The couple's first child Eileen was born in August 1897, but as was customary amongst the well-to-do, a nursemaid provided her primary care and only brought the baby in each morning to briefly visit her mother. Although elite families were increasingly child-centred, "specialist staff" typically cared for young children, who were separated from the rest of the household.[63] The baby's arrival did not appear to impede in any way her parents' ongoing zest for an itinerant lifestyle, and at a time when most households were assumed to focus intently on their children's needs,[64] little Eileen Dalley was almost an irrelevance, a state of affairs which only intensified as she grew older.

Shortly after Yolande's birth in 1899, Pauline and Will sent Eileen to Australia with Pauline's sister Genevieve, and the little girl remained there for many months in the care of her maternal grandmother. At another time, a Norwegian nurse maid "with limited English" cared for the child. In 1903, she lived for several months in France, with her father and Kitty Cowell.[65] In a revealing admission, Will Dalley explained that his eldest daughter "never had a mother (and so)...got into the habit of calling every woman she is much with 'Mummy.'"[66]

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[61] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 750.
[62] "The Late Vincent Dalley," *Evening News*, 7 November 1899, 6. Charles's full name was Charles Vincent Bede Patrick Dalley. As an indication of the Dalley wealth, his body was returned to Australia for burial.
[63] Tosh, *A Man's Place*, 88.
[64] Ibid., 28.
[65] "Dalley Divorce Suit, Sydney, Nov. 23," *Observer,* 2 December 1905, 43.
[66] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 1075.

At the time of proceedings, aged nine, Eileen Bede Dalley attended boarding school in England, and in the following year became a Chancery Ward.[67] Despite its material comfort, significant and undeniable emotional neglect undeniably characterised her childhood.

To refute such an impression, Pauline worked hard to convince the court of her maternal dedication, claiming it was "a wicked lie" that she "was not fond of her older child:" indeed, "for a time" Eileen went wherever she did.[68] She complained she had not seen her daughter since 1899, when Will's sister Mary took Eileen to the Continent for a month that somehow extended into years. When Pauline sent her toys, they were returned, and when she made enquiries as to the little girl's whereabouts, her solicitors received insulting letters in reply.[69]

Will Dalley admitted in court that the only time he could ever recall his wife crying was "the night that Eileen went away" to Australia, to avoid the scandal of Yolande's birth.[70] But extensive personal correspondence and the story of Eileen's life following the divorce suggests Will Dalley did not want his daughter either. Prior to divorce proceedings in Sydney, he strove through legal means to prevent Eileen from seeing her mother, but admitted his primary desire was to prevent her "contact with...the bastard child Yolande."[71] Dalley's zealous efforts to protect his daughter suggest illegitimacy was considered a contaminant which could threaten others through contact, and be passed on through the generations.[72]

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[67] John Tosh explains that the Chancery Court handled issues of custody and guardianship. Tosh, *A Man's Place,* 95*;* A Chancery Ward was in effect a ward of the state, a legal decision resulting from the Court's difficulty in deciding matters of custody. In 1906, Pauline and Will Dalley would be engaged in a protracted custody battle over Pauline's access to her eldest child.
[68] "Dalley Divorce Suit. Respondent's Case Opened. Mrs. Dalley in the Witness Box. Allegations of Adultery Denied," *Daily Telegraph*, 16 November 1905, 8.
[69] "Dalley Divorce Suit. Wife in the Witness-Box. 'One Under the Ear' for Reid," *Australian Star*, 17 November 1905, 6.
[70] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 1004.
[71] SLNSW, William Bede Dalley, the Younger, Papers 1888-1912, MLMSS135.
[72] Deborah Cohen, *Family Secrets: Shame and Privacy in Modern Britain* (Oxford: Oxford University Press, 2013), 124-5.

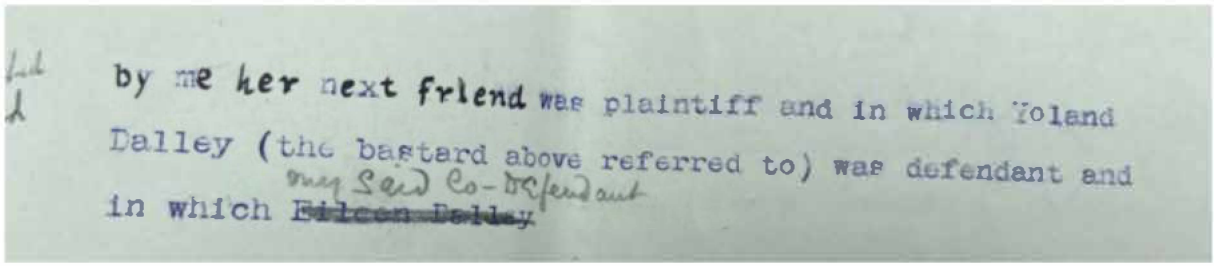

by me her next friend was plaintiff and in which Yoland
Dalley (the bastard above referred to) was defendant and
in which ~~Eileen Dalley~~ my said Co-Defendant

Image 6.16 Extract from Will Dalley's suit for custody of Eileen, following the divorce. He and Pauline settled out of court.

State Library of New South Wales William Bede Dalley, the younger, papers 1888-1912, MLMSS 135.

Image 6.17 Although the photographs are not annotated in the collection housed at the State Library of NSW, and the Pictures Librarian was unable to identify the individuals they feature, it seems likely that the picture on the left is Pauline Dalley c. late 1890s, as neither Mary Degen (Will and John's sister) or Kitty Cowell went hunting.

State Library New South Wales, William Bede Dalley, the Younger, Pictorial Material ca. 1888-1912.

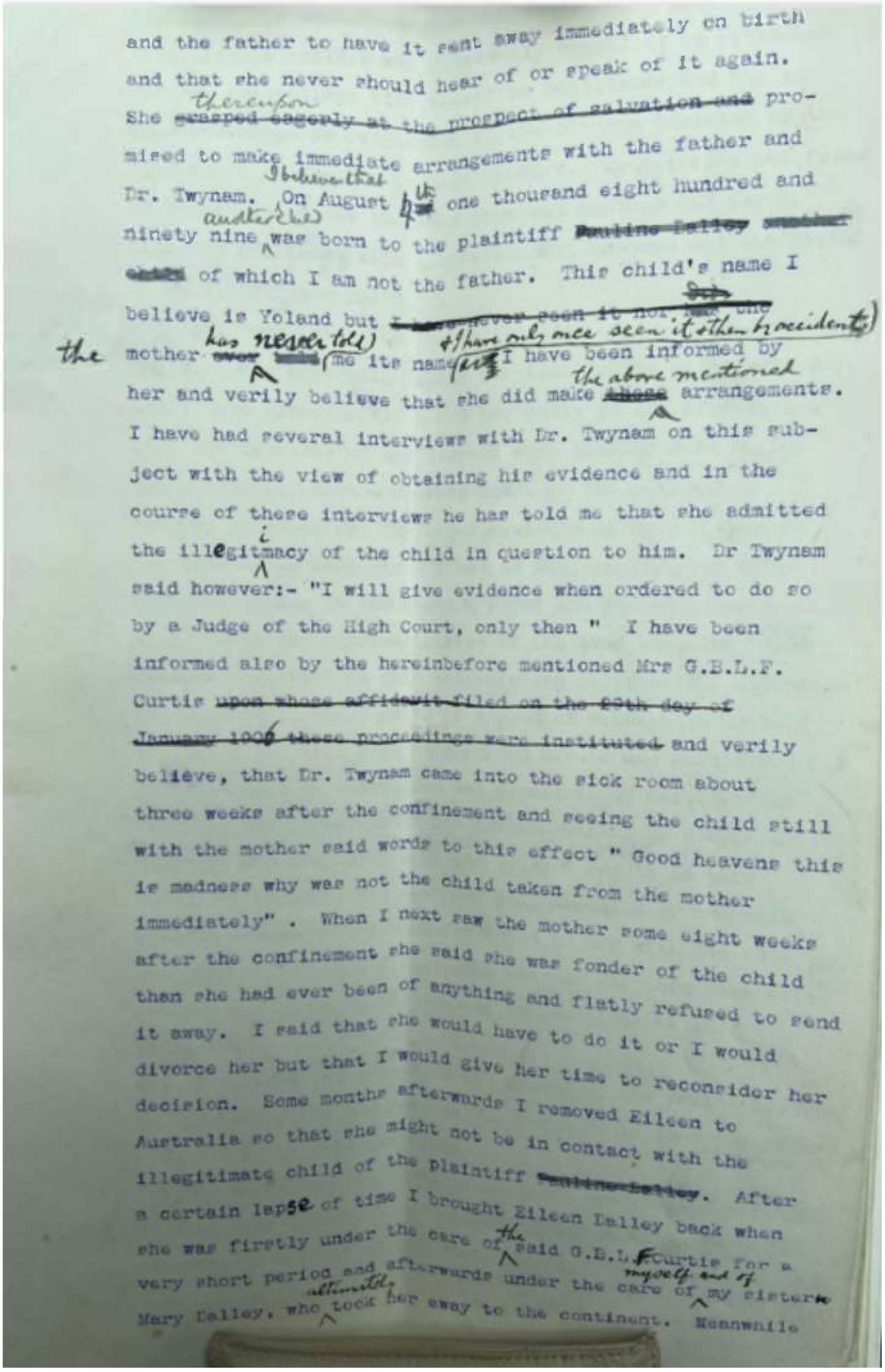
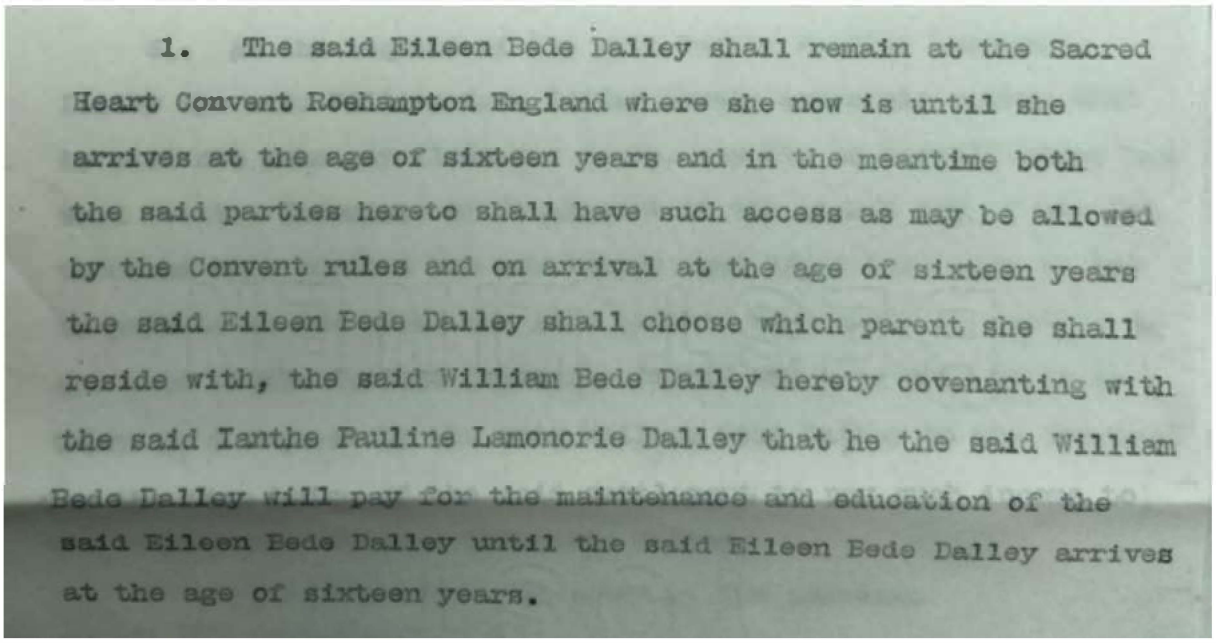

and the father to have it sent away immediately on birth and that she never should hear of or speak of it again. She ~~grasped eagerly at the prospect of salvation and~~ thereupon promised to make immediate arrangements with the father and Dr. Twynam. I believe that On August 4th one thousand eight hundred and ninety nine and thereafter was born to the plaintiff ~~Pauline Dalley another child~~ of which I am not the father. This child's name I believe is Yoland but ~~I have never seen it nor has the~~ (& I have only once seen it & then by accident) the mother ~~ever told~~ has never told me its name ~~(as)~~ I have been informed by her and verily believe that she did make ~~these~~ the above mentioned arrangements. I have had several interviews with Dr. Twynam on this subject with the view of obtaining his evidence and in the course of these interviews he has told me that she admitted the illegitimacy of the child in question to him. Dr Twynam said however:- "I will give evidence when ordered to do so by a Judge of the High Court, only then " I have been informed also by the hereinbefore mentioned Mrs G.B.L.F. Curtis ~~upon whose affidavit filed on the 29th day of January 1906 these proceedings were instituted~~ and verily believe, that Dr. Twynam came into the sick room about three weeks after the confinement and seeing the child still with the mother said words to this effect " Good heavens this is madness why was not the child taken from the mother immediately" . When I next saw the mother some eight weeks after the confinement she said she was fonder of the child than she had ever been of anything and flatly refused to send it away. I said that she would have to do it or I would divorce her but that I would give her time to reconsider her decision. Some months afterwards I removed Eileen to Australia so that she might not be in contact with the illegitimate child of the plaintiff ~~Pauline Dalley~~. After a certain lapse of time I brought Eileen Dalley back when she was firstly under the care of the said G.B.L.F. Curtis for a very short period and afterwards under the care of myself and of my sister Mary Dalley, who ultimately took her away to the continent. Meanwhile

Image 6.18: A later section of Dalley's suit for custody in which he provides his version of events leading to Yolande's birth. Written depositions were extremely contrived and as a trained barrister and a writer, Dalley knew how to manipulate language for his own purposes.

State Library of New South Wales William Bede Dalley, the younger, papers 1888-1912, MLMSS 135.



1. The said Eileen Bede Dalley shall remain at the Sacred Heart Convent Roehampton England where she now is until she arrives at the age of sixteen years and in the meantime both the said parties hereto shall have such access as may be allowed by the Convent rules and on arrival at the age of sixteen years the said Eileen Bede Dalley shall choose which parent she shall reside with, the said William Bede Dalley hereby covenanting with the said Ianthe Pauline Lamonorie Dalley that he the said William Bede Dalley will pay for the maintenance and education of the said Eileen Bede Dalley until the said Eileen Bede Dalley arrives at the age of sixteen years.

Image 6.19: Extract from the draft agreement the Dalleys negotiated in 1906 following divorce proceedings. The agreement granted Pauline "such access as may be allowed," but she does not appear to have had any contact with her eldest child from this time on.

SLNSW, William Bede Dalley the Younger, Papers 1888-1912, MLMSS 135.

What minimal attention court authorities paid to Pauline Dalley's maternal role is in distinct contrast to the interest lawyers displayed in Hannah Webb's proficiency as a mother. I can only assume the law did not expect the upper-class Pauline to involve herself in the day-to-day caring tasks that mothering typically involves. The law persisted in regarding the rights of a father as legally superior to those of a mother: when Pauline complained Eileen had been taken from her, and George Reid pointed out this matter had not been made the subject of cruelty charges, the judge responded that he "must not suggest it is an act of cruelty that the father took control of his own child."[73]

[73] "Dalley Divorce Suit, Sydney November 16," *Observer*, 25 November 1905, 41.

A Transnational Mobility for a Transnational Family

The wider public engaged intensely with the Dalley case because the petitioner and co-respondent were brothers, but also because Will and John Dalley had a definite celebrity status as the two eldest sons of a pre-eminent colonial figure: the press had previously reported on their various pursuits.[74] As was customary even for those antipodeans who had never visited Britain, the Dalleys referred to England as "Home," and "the Mother Country."[75] Demonstrating a decidedly transnational mobility, members of the immediate and extended family maintained close connections across national borders, with distance, time and expense proving little impediment.[76] The Dalley case thus allows a glimpse into the experience of wealthy Australians abroad in the early twentieth century.

John and Will Dalley may be recognised as transnational citizens.[77] Much like those colonial subjects of whom British historian Bill Schwartz writes, the brothers adopted useful "codes of Britishness" which provided them access to elite white privilege, and which their affluence facilitated.[78] Living in *fin-de-siècle* London, they were only a few of thousands of other Australians drawn to the metropole, but unlike those many compatriots who condemned the city for its "anachronistic class structure" and objectionable system of "social deference," the brothers embraced such class distinctions.[79] Both peppered their testimony with the names of elite London streets and suburbs, and John Dalley's repeated references to his club, Covent

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[74] News reports sometimes updated the wider public concerning such achievements as the brothers' education and travel experiences. See for example, "William Bede Dalley," *Australian Star*, 17 December 1897, 7; "William Bede Dalley," *Freeman's Journal*, 12 March 1898, 4.
[75] Woollacott suggests this was common. Woollacott, *To Try Her Fortune,* 4; See for example SRNSW: NRS 2713, [6/3094], *Dalley v. Dalley*, 15.
[76] Webster, "Transnational Journeys," 652.
[77] Transnational citizens may be said to possess a transnational subjectivity, a notion I attribute to Janine Dahinden. Dahinden suggests that being transnational involves social relationships across nations, as well as ways of "thinking, feeling and belonging." Janine Dahinden, "Are We All Transnationals Now? Network Transnationalism and Transnational Subjectivity: The Different Impacts of Globalization on the Inhabitants of a Small Swiss City," *Ethnic and Racial Studies* 32, no.8 (2009): 1367.
[78] Bill Schwartz, "'Shivering in the Noonday Sun:'The British World and the Dynamics of 'Nativisation,'" in *Transnationalism,* eds. Darian-Smith et al., 25.
[79] Angela Woollacott, "The Metropole as Antipodes: Australian Women in London and Constructing National Identity," in *Imagined Londons*, ed. Pamela E. Gilbert (Albany: State University of New York Press, 2002), 87.

Garden performances and such glamorous locales as the Savoy Hotel confirm his ease with the accoutrements of upper-class manhood.[80]

When compared to Pauline's evidence, the testimonies of John and Will Dalley confirm how an investment in imperial ideologies and connections differed for the sexes.[81] For men with elite social connections, an attachment to imperial codes of manhood and an imperial "home" offered the opportunity to escape lowly colonial origins and forge a new identity, based on a modern sense of Britishness. "Being British" was thereby "not a thing, but a set of relations," as Bill Schwartz observes in investigating the transnational turn.[82] Studies of the imperial experience for women often depict it as liberating, and allowing women to forge a new identity from multiple opportunities within the metropole.[83] When her husband decided to remain in England for another three years, however, Pauline despaired at being "away from her mother so long, and ...complained about being kept away from her own country."[84]

Dismayed at leaving behind "all that is dear," Pauline Dalley's response to crossing the national border and barred from return confirms what Nina Yuval Davis and Marcel Stoetzler describe as the "deeply ambivalent attitudes" women may hold towards such a move, attitudes often engendered by their exclusion from the active public world.[85] And it is important to remember that in England, where much of the action in this case takes place, Pauline was as politically dis-abled as her mother and grandmother before her, with another two decades to pass before women would be allowed to vote.[86]

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[80] The Savoy Hotel is a five-star luxury hotel located on the River Thames in London, frequented then and now by the rich and famous. https://www.thesavoylondon.com/about-us/
[81] Darian-Smith, "Images of Empire," 156.
[82] Schwartz, "'Shivering in the Noonday Sun,'" 23, 25.
[83] See for instance Angela Woollacott, "The Colonial Flaneuse: Australian Women Negotiating Turn-of-the-Century London," *Signs: Journal of Women in Culture and Society* 25, no.3 (Spring 2000): 762.
[84] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 25.
[85] Nira Yuval Davis and Marcel Stoetzler, "Imagined Boundaries and Borders: A Gendered Gaze," *The European Journal of Women's Studies* 9, no.3 (2002): 340.
[86] English women would not receive the same voting rights that men had until 1928. Nelson, *Family Ties*, 9.

When Pauline and Will sailed for England in 1896, they began traveling the British Isles and Europe with no intention of remaining long.[87] Upon their arrival, John Dalley (already resident there) advised his brother to study for the Bar, "instead of living an idle life of pleasure," a remark which confirms the prevalent belief that work provided men with the path to personal and moral fulfilment.[88] Taking John's advice, a journey of several months extended into several years, while Will attended to his studies at Gray's Inn, one of the four Inns of Court permitted to call men to the English Bar.[89] The documents speak mainly of leisure rather than labour, however, because the intellectually-gifted Dalley completed his studies in only five months, rather than the three years typically required.[90] The remainder of his time in England was spent engaging in sporting pursuits.

Will Dalley achieved a devotion to his studies at the definitive expense of marital harmony. He based his existence on relationships with similarly powerful men and a series of other women, rather than his wife. Pauline described how Will was out with his peers almost every evening, after a long day of studying at home. Such behaviour ran counter to domestic ideologies which held that a wife was entitled to her husband's full attention at the day's end.[91] If not out with his friends, Dalley would go "to see some woman," later informing Pauline that "improper relations had taken place."[92]

Under George Reid's probing cross-examination, Pauline swore her husband "never kept...hidden" from her those women he "had wrong relations with."[93] Alone for many hours, and far from home, Pauline began to berate her errant spouse. As Carol O'Donnell and Jan

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[87] "Dalley Divorce Suit. The Petitioner in the Box. His Wife and the Young Ship's Officer," *Australian Star*, 8 November 1905, 6.
[88] "The Dalley Divorce Case. Brothers in Court. Charges and Cross Charges," *Evening News*, 6 November 1905, 4; John Tosh, "What Should Historians Do With Masculinity? Reflections on Nineteenth-Century Britain," *History Workshop Journal* 38 (1994): 183.
[89] "The Inn. Making Our Mark," online at https://www.graysinn.org.uk/the-inn
[90] "William Bede Dalley," *Australian Star*, 17 December 1897, 7.
[91] Tosh, *A Man's Place*, 123.
[92] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 398; As Canadian historian Stephen Heathorn points out, this "flight from domesticity" is well-documented. Stephen Heathorn, "How Stiff Were Their Upper Lips? Research on Late-Victorian and Edwardian Masculinity," *History Compass* 2 (2004): 1; SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 398.
[93] SRNSW: NRS 2713, [6/3094], *Dalley v. Dalley,* 517.

Craney suggest, "while the powerful go ahead and act," the powerless have only such strategies as verbal haranguing with which to retaliate.[94] In the last weeks of her pregnancy, Pauline was decidedly vulnerable, alone in a foreign country and away from her beloved mother. With little capacity to challenge her disempowerment, she could only endure.[95]

The Masculine Identity: "Marriage without Conviction"[96]

Many scholars have suggested that ideas of marriage and domesticity changed in the late nineteenth and early twentieth century, involving a re-envisioning of the male role as one involving a commitment to marriage and family life—not because men themselves rejected patriarchal authority, but because legislators and social reformers engaged in ongoing and widespread efforts to achieve change.[97] Despite, or perhaps because of those latter efforts, the sexes differed in what they wanted from marriage, or experienced within it.[98] Will Dalley stands in pronounced opposition to such notions of attitudinal change. In revealing how the Dalley men conducted themselves in their personal lives, the sources ameliorate an historical over-emphasis on masculine achievement in a public rather than private sphere.[99] The case confirms the synthesis of social class and imperial sensitivities within the elite masculine identity.[100] In providing extensive detail about the brothers' lives, it works to correct a scholarly obsession with that "rugged" form of Australian manhood which works like Russell Ward's *The Australian Legend* promulgate.[101]

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[94] Carol O'Donnell and Jan Craney (eds)., *Family Violence in Australia* (Melbourne: Longman Cheshire, 1982), ix.
[95] Cloward and Piven, "Hidden Protest," 662; Wearing, "Beyond the Ideology of Motherhood, 38.
[96] Tosh, *A Man's Place,* 178.
[97] See for example Robert Griswold, "Law, Sex, Cruelty and Divorce in Victorian America, 1840-1900," *American Quarterly* 38 no.5 (1986): 722; Hammerton, "Law of Matrimonial Cruelty," 292.
[98] Hammerton, Cruelty and Companionship, 2.
[99] Amy Milne-Smith, "Club Talk: Gossip, Masculinity and Oral Communities in Late Nineteenth-Century London," *Gender & History* 21, no.1 (2009): 88.
[100] James Epstein, "Taking Class Notes on Empire," in *At Home With The Empire: Metropolitan Culture and the Imperial World,* eds. Catherine Hall and Sonya Rose, (Cambridge: Cambridge University Press, 2011), 251, 253.
[101] Crotty, "Making the Australian Male," 4-5.

If, as John Tosh proposes, the manly identity was predicated on the ability "to make one's own way in the world and be one's own master," Will and John Dalley were supremely comfortable in their masculine identities.[102] Much as in the Webb case, *Dalley v. Dalley* suggests that men developed an accelerating attachment to their patriarchal ways in responding to changes in the feminine role.[103] Although the concept of patriarchy is variously defined, I proceed here according to feminist theorist Chris Weedon's idea of "a system of power relations," which subordinates the interests of women to those of men.[104] Such a conception may appear simple, but it highlights how gender relations in the past remained based on male authority, despite illusions of an accelerating female autonomy.

Australian historian of masculinities Martin Crotty suggests that notions of manliness in early Federation Australia depended on an increasing distance from a feminine "Other," an observation that Will Dalley's conduct supports. Dalley's enthusiastic and public pursuit of Kitty Cowell, and dedication to shooting, hunting and fishing combine to suggest the rejection of the domestic realm which I mentioned earlier, a description even more relevant to his brother John.[105] Accepted to the English Bar after a Cambridge education, John Dalley was unfettered by wife or child, and enjoyed the extensive freedoms allowed a young bachelor of independent means. Assured of dominance over the weaker sex, the brothers simultaneously exercised superiority over those many men beneath them on the social scale.[106]

As Will explained, he had "developed a very strong instinct for sport," and further testimony suggests that this instinct took precedence over any sense of responsibility to

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[102] John Tosh, "Masculinities in an Industrialising Society: Britain, 1800-1914," *Journal of British Studies* 44, no.2 (2005): 335.
[103] Crotty, "Making the Australian Male," 1.
[104] Chris Weedon, *Feminist Practice and Poststructuralist Theory* (Oxford: Blackwell, 1987), 2. Cited in Crotty, "Making the Australian Male," 3.
[105] Heathorn, "How Stiff Were Their Upper Lips?" 1.
[106] For more about this relationship, see Jeff Hearn and Michael S. Kimmel, "Changing Studies on Men and Masculinity," in *Handbook of Gender and Women's Studies*, eds. Kathy David, Mary Evans and Judith Lorber (London: Sage Publications, 2006), 53-70.

Pauline. Dalley's participation in field sports allowed him to demonstrate an elite masculine identity which involved a complex process of acquisition.[107] John also came "shooting at different places in the world" and together the brothers enjoyed such shared manly endeavours as fox hunting, shooting and fishing.[108] In an impressive itinerary that involved the pursuit of whichever hapless species was most abundant at the time, the brothers rented large homes in Normandy for trout fishing, in Scotland to shoot grouse, and in England's Clay's Hill, where they went after foxes.[109] The men belonged to an international hunting community, arranging with elite peers—many no doubt their public-school fellows—to engage together in such activities.[110] Hunting was a shared experience in which the men could display their masculine prowess and imperial superiority.[111] And of equal importance, hunting provided an avenue through which to reject the demands and constraints of domesticity.[112]

Sport occupied a central role in early twentieth century conceptions of manhood, and "being a man" was linked closely to the physical sporting performance.[113] Involving considerable expense, hunting conveyed masculinity and wealth, but also offered a viable means for the newly wealthy to enter and confirm their membership of an elite group.[114] As the grandsons of two convicts, the Dalley brothers could not demonstrate a respectable lineage, but in acquiring the characteristics of elite manly identity through sporting activities,

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[107] For more about the elements involved in such a process, see Paul R. Deslandes, "Competitive Examinations and the Culture of Masculinity in Oxbridge Undergraduate Life, 1850-1920," *History of Education Quarterly* 42, no.4 (2002):544-578.
[108] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 94; "The Dalley v. Dalley Case. Again in the Divorce Court. Cross-applications by the Parties. William Bede Dalley's Financial Position," *Australian Star*, 25 July 1906, 5.
[109] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 748, 1022, 1139.
[110] Callum McKenzie suggests that "the Edwardian hunting community" was formed chiefly by men from the same elite public schools. Callum McKenzie, "'Sadly Neglected'—Hunting and Gendered Identities: A Study in Gender Construction," *The International Journal of the History of Sport* 22, no.4 (July 2005): 546.
[111] Deslandes, "Competitive Examinations and the Culture of Masculinity," 567.
[112] Tosh, *A Man's Place,* 183.
[113] Wendy Seymour, "Strong Men, Straw Men and Body-less Bodies: Revisiting Australian Manhood," *Journal of Australian Studies* 25, no.71 (2001): 68.
[114] Gregory Kosc, "Performing Masculinity and Reconciling Class in the American West: British Gentlemen Hunters and Their Travel Accounts, 1865-1914," (PhD Thesis, University of Texas at Arlington, 2010), iv, 14-15, 36, 47.

they confirmed that it was possible to enter the masculine upper-classes through one's own conduct rather than through birth.[115]

Image 6.20: Dalley liked to photograph his spoils, later mounting and labelling the photographs.

State Library New South Wales, William Bede Dalley, the Younger, Pictorial Material ca. 1888-1912.

Although Pauline did not shoot or hunt, she was "a good angler...ready to go out a considerable distance in an open boat for the sake of fishing," which was apparently unusual for a woman.[116] Expressing the belief that women should be excluded from hunting activities, however, Will Dalley explained how he, John, Pauline and Kitty Cowell rented a stone lodge in the inhospitable locale of Uist in the Outer Hebrides for the men to shoot grouse, and admitted that "(o)f course, the shooting up there is much too rough for the ladies to go about

[115] William Bede Dalley senior was the son of John Dalley and Catherine Spillane, both former convicts who made good in opening a store in Sydney. Rutledge and Nairn, "Dalley, William Bede"; Deslandes, "Competitive Examinations and the Culture of Masculinity," 559.
[116] "Dalley Divorce Suit," *Daily Telegraph*, 10 November 1905, 8.

it."[117] While the men "used to work hard...starting first thing and stopping last thing at night," and "not even stopping for a lunch break...the two ladies were home by themselves all day, with no other society, in a very bleak, desolate place."[118] By engaging in the all-male pursuit of hunting, the Dalley men and their peers proved their stoicism and perseverance.[119] At the same time, they confirmed the need to protect women from exposure to such unfeminine pastimes, and reinforced as natural and inevitable their own domination over the weaker sex.[120] Perhaps most significantly, by referring to their sporting pursuits as "work," the men justified a life of leisure.

I Never Thought of it being an Uncivilised State of Affairs to Occupy the Same Bed as my Wife

As part of its educative and moral purpose, the Divorce Court exposed intimate suffering in a manner which conformed to strict gender ideals.[121] For women, a vital element of the courtroom performance involved revealing the emotional suffering a husband's transgressions had caused them.[122] For men, the task involved illustrating the damage a wife's unchaste conduct wrought to masculine honour. Much of the evidence presented aimed to demonstrate the other spouse's failure to comply with prevailing gender norms and emphasise his or her marital shortcomings. Testimonies exposed an ongoing and intense gendered conflict over sexual behaviours and attitudes—that "simmering, gendered tension," which Claire Sellwood remarks and is so apt in conveying the tinderbox of emotions erupting in the divorce trial.[123]

[117] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 1028.
[118] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 1029.
[119] Tosh, "What Should Historians Do With Masculinity?" 185.
[120] McKenzie, "Sadly Neglected," 547, 551.
[121] Sellwood, "'A Series of Piteous Tales,'" Abstract.
[122] Ibid., 13.
[123] Ibid., 92.

Will Dalley's barrister George Reid opened proceedings for his client with a brief vignette aiming to expose Pauline's "frivolous and unwifely disposition," striving to discredit her virtue and paint her as a disobedient wife.[124] As Katie Barclay contends, character was a key element in judging the innocence or guilt of an individual, and determining "the truth." While Barclay refers to Irish men during the eighteenth century, it has continued application and relevance here.[125]

In response, Pauline's barrister Alexander Ralston (none other than William Windeyer's son-in-law)[126] mirrored Reid's efforts at character assassination, and portrayed Dalley as a neglectful and uncaring husband. The Dalley marriage was decidedly atypical. From its outset, the couple occupied separate bedrooms, because Will "could not sleep with another person in the room."[127] Separate bedrooms for the spouses were not uncommon for those who could afford the space, and spatial divisions sometimes worked to encourage abstinence,[128] but Dalley admitted he and Pauline "still cohabited" despite their singular sleeping arrangements. What *is* exceptional, however, is that it was Will rather than Pauline who demanded separate quarters, countering the idea that it was always women who aimed to distance themselves from a husband's sexual demands.[129]

Realising this state of affairs appeared unusual to those listening, Dalley explained that "I never thought of it being an uncivilised state of affairs to occupy the same bed as my wife, we simply just did not, that is all."[130] He saw no reason to abandon the lifestyle of a single man simply because he was now married, and in essence engaged in "marriage without

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[124] "The Dalley Divorce Case. Brothers in Court. Charges and Cross-Charges," *Evening News,* 6 November 1905, 4.
[125] Barclay, *Men On Trial*, 206.
[126] "Alexander Gerard Ralston," Sydney's Aldermen, https://www.sydneyaldermen.com.au/alderman/alexander-ralston/
[127] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 1042.
[128] Nancy Christie and Michael Gauvreau, *Bodies, Love and Faith in the First World War: Dardanella and Peter* (Canada: Palgrave Macmillan, 2018), 259.
[129] See for example Hayley Brown, "Loosening the Marriage Bonds," 210; Marilyn Lake also suggests that the practice of separate bedrooms served to relieve sexual tension and help prevent pregnancy. Marilyn Lake, "Historical Homes," *Australian Historical Studies* 24, no.96 (1991): 49.
[130] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 68.

conviction," as John Tosh describes such an attitude on the part of some men.[131] Pauline revealed the marital relationship to be distanced and detached in other ways, particularly in regard to what she described as her husband's "wrong relations" with other women.[132]

Providing an example of such behaviour, Pauline explained how Dalley saw "a small girl walking along the road," and ran after her, only one week after they married. She "remonstrated with him," and when some days later he told her it was impossible for any man to exist with one woman, she "told him he was talking nonsense, and it was ridiculous to say anything like that."[133] The incident encapsulates that "battle between the sexes" of which Marilyn Lake has written, and reveals the extent to which the unremarkable woman felt entitled to rail against male excess, an issue which pre-occupied many First Wave Feminists.[134] In much the same way, Pauline demonstrated her unwillingness to accept as natural her husband's assertion of male sexual license.[135] Her indignant response confirms once again how women would defy a husband if they believed his conduct was unreasonable.[136] Perhaps most significantly, in "the morality play" of the divorce trial, Pauline sought to confirm her own propriety and paint her husband in a negative light.[137]

To a considerable extent, the singularity of the Dalley marriage arose because those responsibilities which typified existence for others of their sex did not burden either husband or wife. As Pauline's barrister Alexander Ralston remarked, Will Dalley had "the good

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[131] Tosh, *A Man's Place*, 178.
[132] SRNSW: NRS 2713, , [6/3094] *Dalley v. Dalley,* 517.
[133] The various press accounts describing this particular event consistently describe the woman as a "small" or "young girl," which in today's climate has the unfortunate effect of suggesting that William Dalley had a predilection for children. While clearly, they are referring to a young woman, I am unable to account for the choice of words. For example, "The Dalley Divorce Suit. Petitioner's Case Closed. Case for the Wife," *Australian Star*, 15 November 1905, 5; "Dalley Divorce Suit. Respondent's Case Opened. Mrs. Dalley in the Witness Box. Allegations of Adultery Denied," *Daily Telegraph*, 16 November 1905, 8.
[134] Susan Magarey, Sue Rowley and Susan Sheridan, "Introduction," in *Debutante Nation,* xviii; Barbara Brookes, "A Weakness for Strong Subjects: The Woman's Movement and Sexuality," *New Zealand Journal of History* 27, no.2 (1993): 142.
[135] Ibid., 143.
[136] Hammerton, *Cruelty and Companionship*, 84.
[137] New Zealand historian Bronwyn Dalley suggests that such a modus operandi was common in trials based on issues relating to sexuality. Bronwyn Dalley, "Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth Century New Zealand," in *The Gendered Kiwi,* 68.

fortune" to be in possession of considerable means, which freed him of the necessity to earn a living.[138] Although societal norms increasingly defined the male role in terms of breadwinning, and the female in terms of motherhood, this was not the case for the Dalleys because the couple had no permanent home. With many regarding the home as central to conceptions of gender roles and family life, the Dalleys' situation was decidedly atypical.[139]

Will Dalley drew his authority not from the status of breadwinner or gruelling hours of employment, but from substantial income-earning investments he owned in Sydney.[140] Nor is there any evidence that Pauline engaged in the relentless domestic labour which burdened Hannah Webb and most other women. Most significantly, and in distinct contrast to most other women, motherhood did not form the basis of Pauline's identity.[141] With domesticity and maternal nurturing seen as a woman's primary purpose, such a situation was a pronounced anomaly.[142] Perhaps Pauline found the constant presence of a nursemaid to be a barrier to a deeper maternal attachment to Eileen, although she professed to "being fonder" of Yolande "than she had ever been of anything," and she also employed a nursemaid at all times for her second child.[143] The evidence suggests, however, that Pauline Dalley was a supremely social creature, and elite social connections took precedence. Rubbing shoulders with the likes of "Mrs. Bernard Wise" and "Mrs. Frank Fox of the *Bulletin,*" as she later recounted in court, her dedication to the social world suggests that Pauline searched there for

[138] "Dalley v. Dalley," *Evening News*, 8 November 1905, 5.
[139] Lake, "Historical Reconsiderations IV," 10; See in particular Anna Davin, "Imperialism and Motherhood," *History Workshop* 5 (1978): 9-65 and Reiger, *Disenchantment of the Home* for a detailed account of how a strong sense of maternal duty developed for women.
[140] This is very different from most men, who did indeed draw their authority from breadwinning and labour. Tosh, "Masculinities in an Industrialising Society," 331.
[141] Mackinnon, *Love and Freedom*, 39.
[142] Carol Bacchi, "Evolution, Eugenics and Women: The Impact of Scientific Theories on Attitudes Towards Women, 1870-1920," in *Women, Class and History*, 132.
[143] Tosh suggests that a nursemaid could impede fathers from becoming closer to their offspring. Tosh, *A Man's Place*, 88; SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 44.

the sense of personal empowerment she could not derive from employment or financial activity.[144]

Much as it did for Hannah Webb, shared leisure with her women friends allowed Pauline to escape her marital strife and develop an independent identity. In the social realm, she could exercise the personal power denied her in marriage and resist the ongoing insult of marital abandonment. Amongst the elite women of London and Sydney's Eastern Suburbs, Pauline constructed a sense of herself as an empowered individual, confirming once again how women's leisure may provide a crucial route to feminine identity.[145] Pauline's lavish social engagements were in many ways equivalent to Harriet Dorn's drinking binges, Emily Bradley's piano playing, and Hannah Webb's kitchen-table beer drinking sessions.

A Medical Man

The case of Hannah Webb in the previous chapter reveals the use of "French preventatives" and abortifacients, shrouded within a disturbing sense of male contempt for women's reproductive capacities. The current case offers an equally rich opportunity to explore the role that individual agency played in demographic change, and to further our understanding of how gender influenced attitudes towards decreasing the size of one's

[144] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 458; J. A. Ryan, "Wise, Bernhard Ringrose (1858–1916)," *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, http://adb.anu.edu.au/biography/wise-bernhard-ringrose-9161/text16175, published first in hardcopy 1990, accessed online 19 January 2020; Sir Frank Ignatius Fox was a well-known journalist, editor and novelist. Martha Rutledge, "Fox, Sir Frank Ignatius (1874–1960)," Australian Dictionary of Biography, National Centre of Biography, Australian National University, http://adb.anu.edu.au/biography/fox-sir-frank-ignatius-6229/text10717, published first in hardcopy 1981, accessed online 19 January 2020; The garnering of personal power from the social realm is also at play in Penny Russell's investigation of elite women in nineteenth century Australia. Penny Russell, "In Search of Woman's Place: An Historical Survey of Gender and Space in Nineteenth Century Australia," *Australian Historical Archaeology* 11 (1993): 28.
[145] Green, "Women Doing Friendship," 171-3.

family.[146] Historically, abortion is perceived as an act which does not involve men, although examinations of divorce and sexual crimes expose husbands who either tried to coerce a partner into having an abortion, or to induce it through violent means.[147] In the current context, lawyers for both sides focused at length on a traumatic abortion in which Pauline almost died at the hands of Sydney doctor Anthony Brownless, who in 1910 and 1911 would be tried on separate murder charges (for which he was acquitted) when two women died after surgical abortions he performed upon them.[148]

Within opposing accounts, is impossible to identify the truth of what took place, but the extensive and varied source material which Pauline's abortion generated allows us to examine gendered attitudes towards abortion as a means of contraception. With both spouses striving to depict as above reproach their respective conduct, Pauline's abortion encapsulates the nature of reproduction as "a social process (where) power differentials...and sex-related ideologies come into play," as Dutch historical demographer Angelique Janssens contends.[149] In this context, Pauline's abortion serves as a valuable microcosm of such power differentials and gendered ideologies, as I will discuss shortly after first recounting the main details of the event.

Prior to Eileen's birth, Will Dalley had sent Pauline "to a woman's doctor... to see whether something couldn't be done to get rid of the child."[150] (Carroll Smith-Rosenberg

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[146] As Janssens remarks, it is important to pose explicit questions concerning how the sexes differ in their attitudes towards family size and conception. Janssens, *Gendering the Fertility Decline in the Western World*, 2-4.

[147] Hilary Golder, for example, cites the case of one woman who accused her husband of "trying to induce an abortion" because he "objected to children." Golder, "'A Sensible Investment,'" 351; See for example Brown, "Loosening the Marriage Bonds," and Hammerton, *Cruelty and Companionship.*

[148] "A School Teacher's Death," *Evening News*, 20 October 1910, 7; "A Woman's Death," *The West Australian*, 6 January 1911, 5. Brownless was acquitted in both cases, despite damning evidence that he brought about the women's deaths through his gross medical ineptitude, the Coroner condemning his "reckless indifference to human life," and the Government Pathologist stating that "no doctor would inflict such injuries...unless he was drunk."; "Dr. Brownless Committed," *The Dubbo Liberal and Macquarie Advocate*, 7 January 1911, 4; "Dr. Brownless Committed," *The Bathurst Times*, 6 January 1911, 2; Lisa Featherstone mentions "Dr. Anthony B" in her doctoral thesis, and describes how he performed the curette "so carefully" on one of his victims that "parts of the skull of the foetus were embedded" in the vaginal wall. Featherstone, "Breeding and Feeding," 242.

[149] Janssens, *Gendering the Fertility Decline*, 3.

[150] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 65.

suggests that the term "women's doctor" actually referred to an abortionist).[151] Like George Webb, Will Dalley often denied paternity of his first-born.[152] After learning in England of Pauline's second pregnancy, when the couple arrived in Sydney for brief visit in 1898, Dalley began immediately to "insist" his wife have an abortion.[153] (His response to her announcement of her pregnancy confirms that abortion was often the next step when contraception failed.)[154] When Pauline Newton protested at the prospect of her daughter undergoing such an "illegal and dangerous procedure," Dalley threatened to return immediately to England and leave his expanding family with Pauline Newton. As Pauline later explained, she felt she had no recourse but "to submit." "In those days," she contended, "I simply did what my husband told me to do... I never questioned it, or anything else."[155] Her statement may have been an attempt to convince the court of her wifely obedience, but also implies Pauline had reached a stage where she no longer felt compelled to comply with Dalley's wishes.

Denying Pauline's version of events, Will Dalley attributed the culpability for the incident entirely to Pauline Newton, alleging that upon the family's arrival in Sydney, his mother-in-law "seemed very upset... at... her daughter having to go through the nine months of inconvenience... pregnancy involved." Together, he contended, the two women decided that "an abortion should be performed."[156] Dalley may well have been taking advantage of widely publicised claims of women's selfishness in limiting fertility, but legal scrutiny of his bank account and cheque butts confirms it was he who paid the doctors involved.[157]

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[151] Carroll Smith-Rosenberg, "The Abortion Movement," in *Disorderly Conduct: Visions of Gender in Victorian America*, ed. Carroll Smith-Rosenberg, (New York: Oxford University Press, 1985), 217, 233.
[152] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 606.
[153] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 409.
[154] Patricia Sumerling, "The Darker Side of Motherhood: Abortion and Infanticide in South Australia 1870-1910," *Journal of the Historical Society of South Australia* 13 (1985): 111.
[155] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 605.
[156] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 30-31.
[157] Magarey, "The Politics of Passion," 39; SRNSW: NRS 2713, [6/3094], *Dalley v. Dalley,* 75.

Analysing archival medical sources from 1820s England, professor of obstetrics and gynaecology James Drife concludes that it was common for British obstetricians to conduct abortions. The Dalley case confirms that a number of prestigious "medical men" in Sydney similarly carried out the procedure for those who could afford their services.[158] Drife suggests further that the law did not punish a registered doctor to the same degree as someone without medical qualifications, and Anthony Brownless's acquittal despite overwhelming evidence of his medical negligence supports this contention.[159]

Reading against the grain, common sense must prevail in the difficult task of identifying whose version of events is most plausible in the current circumstances. Extensive scholarly investigation of the maternal instinct suggests it unlikely a mother would compel her daughter (who was married, with ample means, and had only one child) to undergo a dangerous and illegal medical procedure because she herself regarded pregnancy as an inconvenience and wanted to be rid of a prospective grandchild.[160] A more convincing explanation, and one which Pauline's barrister put to the court, was that Dalley did not want his mistress to know he was still sleeping with his wife.[161]

Courtroom transcriptions do not depict Will Dalley as a caring husband. Prior to Pauline's abortion, he "took her some of the way... dropped her at the corner and she walked by herself." Following the procedure, she "walked and took the tram back home" alone.[162] When Pauline became extremely ill, Dalley informed her distraught mother that "he did not think it necessary" to call a doctor. With the cash-strapped Pauline Newton sending immediately for her own medical practitioner, the latter "at once ordered Mrs. Dalley's

[158] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 41, 74.
[159] James Drife, "Historical Perspective on Induced Abortion through the Ages and its Links with Maternal Mortality," *Best Practice and Research Clinical Obstetrics and Gynaecology* 24 (2010): 431, 435.
[160] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 30.
[161] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 806.
[162] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 609, 611.

removal to... Nurse Bonnor's at Manly."[163] In somewhat confronting testimony, Dalley described how they "waited for the feature" to arrive, referring to the expulsion of the foetus.[164] His account suggests the abortion did not occur immediately, but involved a two-stage process whereby the doctor administered an abortifacient at his rooms and miscarriage occurred elsewhere. However, Dalley informed the court that Dr. Brownless "performed an operation... instructed her... to wait for the signs of fever... then call in a regular medical practitioner who would be entitled to perform the other half of the operation," and so I cannot state with certainty what the medical procedure entailed.[165]

When Alexander Ralston asked Dalley if his wife had been "very ill at Manly," he suggested "very ill is a big term. I am not a doctor and could not tell you whether she was dangerously ill. I was told she was dangerously ill."[166] Such circumlocution was typical of Will Dalley's responses, whereby he evaded pertinent questions and denied personal responsibility or wrong-doing. He admitted, however, that the doctor at Nurse Bonnor's Home had refused to sign the death certificate if Pauline died, and threatened to report the matter to police.[167]

Dalley's control of finances, his bullying conduct and coercive demeanour convey how he deployed his superior power and material status to fulfil his own desires at the expense of others. Pauline's abortion occurred within a locus of power relations based on her husband's financial might and his capacity to withhold monetary support. The event illustrates how the exercise of power may shape and determine individual choice and action, confirming that agency occurs within contexts both culturally and economically

[163] "Dalley Divorce Suit. The Respondent's Case Continued. The Petitioner and his Mother-in-law. Corespondent in the Box," *Daily Telegraph*, 21 November 1905, 8.
[164] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 34-5.
[165] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 31.
[166] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 73.
[167] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley,* 70, 74.

determined.[168] It also exposes the variables of power and related material inequalities in determining gender difference in contraceptive practices.[169] While she initially resisted Dalley's coercion, Pauline was ultimately compelled to capitulate because of his threatened abandonment and consequent poverty, her experience confirming the Foucauldian hypothesis that "as a central bearer of power relations... sexuality serves as a primary vehicle for oppression."[170]

In the year after her abortion, having returned to England, Pauline was again "ill," and as the "result of an interview" between husband and wife, Dalley "consulted a medical man," who informed him his wife was pregnant for the third time.[171] Once again accounts differ, with Dalley swearing his wife "burst out crying," and "refused to name the father."[172] Since he claimed that "cohabitation ceased" more than one year before the baby's birth, and he "always took precautions at dangerous times," Dalley was willing to swear baby Yolande was not his child.[173] Pauline's abortion and Dalley's strong-arm tactics lend substance to Carroll Smith-Rosenberg's contention that "to talk of abortion is to speak of power."[174] Much like George Webb, Will Dalley went to great lengths to ensure Pauline did not fall pregnant again.

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[168] Holly Wardlow, *Wayward Women: Sexuality and Agency in a New Guinea Society* (Berkeley/Los Angeles/ London: University of California Press, 2006), 11.
[169] Janssens, "Introduction," 3.
[170] Pollis, "The Apparatus of Sexuality," 402, 405.
[171] "Dalley Divorce Suit. This Afternoon's Proceedings. Mr. Reid's Preliminary Address to the Jury," *Evening News*, 6 November 1905, 5.
[172] "Dalley Divorce Suit. This Afternoon's Proceedings. Mr. Reid's Preliminary Address to the Jury," *Evening News*, 6 November 1905, 5.
[173] England and Wales, Civil Divorce Records 1858-1916 [3221/1902], *Dalley v. Dalley*; *England & Wales Civil Registration Birth Index 1837-1915* [database online], *Yolande Bede Dalley* 1899; Eileen Bede Dalley was born in 1897, two years before Yolande; "Dalley Divorce Case," *Clarence River Advocate*, 10 November 1905, 4.
[174] Smith-Rosenberg, "The Abortion Movement," 217.

Connivance, Collusion and Condonation: Dalley's Affair with Kitty Cowell

At some stage during 1898, Will Dalley had met Katherine "Kitty" Cowell, who those in court touted as a shop assistant and store model for Jay's, a London millinery and fashion house famed for its attractive female employees. Kitty was in fact a dress designer, and translated customer inquiries from French to English, but for trial purposes the respective legal teams preferred to emphasise her menial status rather than her talents. "(T)he beauteous Kitty" had taken her sketches for advice to Francis Howard, a well-known English portrait painter and friend of the Dalleys, who at one time painted Pauline's portrait.[175]

Dalley was smitten from the moment of meeting Kitty. His love affair served as the catalyst for separating from Pauline in 1899, but Kitty had already been accompanying the Dalleys on their travels for more than a year. In a bizarre development, after 1899 husband and wife continued to correspond and even travelled together—with Kitty accompanying them—while a nursemaid cared elsewhere for baby Yolande, so Will did not have to set eyes on Pauline's "bastard child."[176] Dalley continued visiting Pauline at her flat to "take her out" until at least June 1900, an irregularity which George Reid put down to the couple's noble efforts to "keep their domestic tragedies to themselves."[177] Such a perverse state of affairs suggests that what was clearly a sham marriage had become an equally counterfeit separation.

Impatient to be openly with his beloved, a sentiment which Kitty's own letters to Will echo, in 1902 Dalley lodged divorce proceedings in the English High Court of Justice.[178] He

[175] "Dalley Divorce Suit. 16th Day. Mr. Gannon's Address to the Jury," *Evening News*, 28 November 1905, 4; SRNSW: NRS 2713 [6/3094], *Dalley v. Dalley*, 1126; In 1948 as Chairman of the UK National Portrait Society, Howard also donated to the State Library of NSW the many photographs and papers which now form the collected papers of "William Bede Dalley, the Younger." Dalley left the materials with Howard many years previously. SLNSW, catalogue entry for William Bede Dalley, the Younger, Papers 1888-1912, MLMSS 135.
[176] SLNSW, William Bede Dalley, the Younger, Papers 1888-1912, MLMSS 135.
[177] "Divorce Suit. This Afternoon's Proceedings. Mr. Reid's Preliminary Address to the Jury," *Evening News*, 6 November 1905, 5.
[178] England and Wales, Civil Divorce Records 1858-1916 [3221/1902] *Dalley v. Dalley.*

was forced to abandon his suit when lawyers advised it was doomed to fail, because Dalley's allegation of Yolande's illegitimacy was the only pointer to adultery on Pauline's part.[179] Yolande was then two and a half years old, and the couple had led separate lives since her birth. The lengthy duration between Yolande's birth and Dalley's petition suggests he alleged her illegitimacy because he had no legitimate grounds on which to proceed. At this time, as Family Law scholar Stephen Cretney contends, the courts were extremely reluctant to declare a child a bastard, while the common law tended to assume that any child born during a marriage was the child of the husband.[180]

Cretney points out that "in the interests of public decency," British law did not allow testifying husbands and wives to provide explicit information about intercourse.[181] This stands in contrast to the Dalley trial, where Will cited exact dates on which "cohabitation last took place" and referred to his personal contraceptive habits. George Reid also referred to such explicit details as "the absence of acts of intercourse between the husband and wife," suggesting a more relaxed attitude towards intimate subjects within the Australian Divorce Court.[182] These details, however, were at loggerheads with Justice Gregory Walker's instructions to the press not to publish "the evidence where morals were concerned," a somewhat ambiguous edict given that, as one pithy journalist commented, "very little if anything came out which, with slight deleting, might not have been published."[183]

Admitting to his illicit liaison, Will Dalley's initial petition accused Pauline of conniving at his affair, a term which, as the judge informed the jury, meant "she "winked" at her husband's adultery."[184] When NSW introduced divorce legislation in 1873, it was

[179] "Dalley v. Dalley. Opinion of Mr. W.T. Barnard on Settling Draft Deed of Separation," 4 May 1903, English High Court of Justice," SLNSW: William Bede Dalley the Younger, Papers 1888-1912, MLMSS 135.
[180] Stephen Cretney, *Family Law in the Twentieth Century: A History* (Oxford: Oxford University Press, 2003), 533.
[181] Ibid., 174.
[182] "Sydney Divorce Case. Dalley v. Dalley. Petitioner's Brother the Co-respondent," *The Advertiser,* 7 November 1905, 5.
[183] "Divorce Suit. Dalley v. Dalley," *Newcastle Morning Herald and Miners' Advocate*, 8 November 1895, 5; "The Dalley Divorce Case," *The Newsletter: An Australian Paper for Australian People,* 18 November 1905, 5.
[184] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 43.

mandatory that petitioners file an affidavit denying connivance or collusion, but these legal concepts are relatively unexplored within the literature.[185] In a statement indicating how morally damning connivance was considered, George Reid claimed that if Pauline "threw this girl at her husband's head to leave her free to carry on an intrigue with the Co-respondent," she would be "the basest of the base, and the vilest of the vile," strong words indeed.[186]

Hilary Golder points out that "mutually agreed separations were suspect," and divorce process demanded a battle between a stereotypically innocent petitioner and guilty respondent.[187] Claire Sellwood similarly observes that legal authorities were on close guard against the twin evils of collusion and contrivance, and that increasing concern over rising divorce rates and the relative "ease" of marital dissolution only intensified their vigilance.[188] The court was eager to prevent divorce from becoming too simple an affair, and considered it a misuse of the law for spouses to end their relationship without genuine recourse to the limited grounds provided.[189] As a sacred institution, marriage was not to be taken lightly or hastily dismantled.[190]

In cases which involved collusion, the partners agreed upon the grounds beforehand, and then allocated the necessary roles of innocent and guilty parties.[191] Collusion was difficult to expose and for this reason I cannot state with certainty that it occurred in the Dalley case. Collusion would mean that Will and Pauline arranged beforehand for Will to lodge the petition, upon which Pauline would plead her innocence, exposing Will's adultery and ensuring the divorce. A second explanation is that this was Will's plan from the outset, but Pauline was unaware of his intentions.

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[185] *Matrimonial Causes Act 1873 (NSW).*
[186] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 43.
[187] Golder, "'A Sensible Investment,'" 265.
[188] Sellwood, "'A Series of Piteous Investments,'" 181.
[189] Ibid., 164.
[190] Ibid., 333.
[191] Cohen, *Family Secrets*, 48.

It is also possible that Will Dalley orchestrated a situation which allowed him to initiate proceedings, even without legitimate grounds on which to do so. Pauline admitted he "frequently asked her to allow him to divorce her in an undefended suit," but she refused. While Pauline was willing to forge ahead with her own divorce petition "for how he had treated her," Will's sister Mary Degen and brother John "implored her not to bring a scandal into the family."[192] Pauline's testimony suggests that the shame and disgrace attached to divorce had diminished little since its introduction more than thirty years before.[193]

A third possible explanation is that Pauline did indeed encourage Will's liaison with Kitty to free herself of him, and this legally termed "connivance" was what Dalley's lawyers set out to prove, unsuccessfully. I am not suggesting Pauline wanted to pursue a romantic involvement with John, as there is little indication the relationship was anything but affectionate and platonic. There may have been some truth, however, in Will's claim that Pauline encouraged his relationship with Kitty, after first informing him "she was sick of living with me: we did not seem to get on together. She would prefer if I gave her £12 (per month) ... to go and live by herself."[194]

While Dalley claimed that Pauline persistently threw him together with Kitty, he also admitted he was "a blackguard" who had seduced the then-nineteen year old.[195] The issue of connivance arose from the two contrasting depictions of his relationship with Kitty: on the one hand, Will swore Pauline had encouraged the liaison, and even cultivated her own friendship with the younger woman. While this was mainly to rid herself of him, he also claimed that she sought to obtain dress fabrics cheaply via Kitty, and to gain entrée to exclusive dressmakers. Pauline was always "awfully well-dressed," and often complained

[192] "Dalley Divorce Suit. The Wife's Evidence," *Newcastle Morning Herald and Miners' Advocate*, 16 November 1905, 5.
[193] Cohen, *Family Secrets*, 9.
[194] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 47.
[195] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 44.

that her husband did not provide her money to buy clothes. She defended herself against accusations that "(p)eople may say my clothes were expensive, but they were not," because she "used to get a woman in to do the sewing." Pauline strove in this instance to disprove her husband's efforts to demonstrate her superficiality and excessive spending.[196]

Pauline's rejection of her husband's allegations, however, does not ring true. She claimed to have "thought nothing" of the fact that on the journey home in June 1898, Will made clear "he was so infatuated with Miss Cowell that he could not live without her." When George Reid asked sarcastically if she had "implicit confidence" in Kitty as "a safe, respectable lady," Pauline agreed that she had indeed. When she swore that at no time had she suspected her husband of living in adultery with Kitty in Paris, despite observing Kitty's clothes in his flat, Pauline admitted that "many people... laughed at her and told her she was a fool."[197] She asked the court to accept that despite living with Kitty for more than two years, spending more on her than he did his wife, and lavishing her with gifts, she believed in Dalley's claims of innocence because "his words and his morals are different affairs."[198]

Pauline clearly condoned Dalley's affair, but the situation remains difficult to fathom. She defended her actions on the grounds that she

> struggled against it as long as I could; I protested to my husband, I had scenes with him, violent scenes with him, in which I protested against his conduct; I did what I could to prevent this girl coming; it was against my will that she came, and it was only at the last, finding that my endeavours to wean my husband from this infatuation were hopeless, and finding he had persisted in having her in the house, I finally yielded for the sake of peace.[199]

In this manner, Pauline presented herself as the long-suffering and beleaguered wife no longer able to resist her husband's immoral conduct, giving in only "for the sake of peace."

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[196] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 1012, 1134, 466, 506.
[197] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 502-3.
[198] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 522, 527, 501.
[199] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 54.

Pauline's defence bore little resemblance to the complex realities of the Dalley marriage but formed an integral part of her portrayal of innocence and naivety.

The Accusations: John and Pauline's Alleged Affair

In August 1903, Pauline sailed from Australia to England to contest Dalley's first attempt to divorce her and scraped together from various sources the necessary funds for the passage. When Will abandoned his suit, Pauline signed an official deed of separation in which she agreed to relinquish custody of Eileen and make no financial claims for Yolande.[200] She then returned to Australia to live once more with her mother and step-father in a decaying rented bungalow near Narrabeen Beach. With Dalley paying alimony only intermittently, and John renting a weekend cottage nearby, Pauline turned to him for companionship and financial support. Despite fervent efforts, Will Dalley's legal team failed to uncover any definitive evidence of "misconduct" between his wife and brother.

Moving to Australia in 1901 to commence his career at the Bar, John Dalley resided in the city on weekdays and on weekends made the considerable journey to Narrabeen. There he enjoyed an energetic beachside culture engaging in extensive outdoor leisure, often with only Pauline and "the little girl" Yolande for company, and at other times entertaining groups of visitors for house parties.[201] In the difficult years between 1901 and 1904 when she faced ongoing financial difficulties, John became Pauline's main source of support, stepping in to lend money or business advice and facilitating her ongoing connection with the elite social world.

In the previous chapter, I referred to the growing capacity of women to travel without supervision, and to walk and cycle independently. The Dalley case contradicts the idea that

[200] SLNSW, William Bede Dalley the Younger, Papers 1888-1912, MLMSS 135.
[201] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 970, 974, 979.

elite women were privy to such freedoms, with both Pauline and Kitty describing how at times, societal norms forced them to travel with a chaperone to ensure their respectability. I can only infer that Pauline's social class somehow dictated the need for a chaperone and that restrictive practices bound the elite woman for longer than those of a lower status. In Chapter One, I referred to Litton Fox's analysis of the methods used to restrict women, comprising confining, protecting and controlling through normative restriction. Much as Flora Horwitz more than twenty years before her, two of these fundamental methods applied to Pauline. She internalised the ideal of ladylike conduct (normative restriction) which rewarded her passivity and submission and only travelled in morally dubious situations with a chaperone (protection).[202]

As community attitudes typically regarded male relatives as suitable protectors, John Dalley was an acceptable choice to a degree, but his age and bachelorhood tempered such acceptance.[203] If Pauline had not conformed to prevailing restrictive practices, she would have sacrificed her claims to being a lady, and despite her upper-class origins and prestigious marriage, the pressure was relentless to conform to the ladylike ideal.[204]

Lawyers paid extensive attention to Pauline's clothing, and posed ongoing questions regarding her habit of bathing in mixed company, confirming how strict normative requirements persisted in relation to women's behaviour.[205] As for Catherine Kirchner and Hannah Webb, lawyers raised the thorny question of a "wrapper" during proceedings. They debated whether Pauline was in the habit of "going about all day dressed in a wrapper," and if she was ever in John's room "in her wrapper." To this Pauline retorted that she was not "a woman to prefer wrappers," and whilst there was "nothing wrong in wearing wrappers," she

[202] Litton Fox, "'Nice Girl,'" 805, 809.
[203] Ibid.
[204] Litton Fox points out that being a lady is an ongoing process which at no stage achieves final or perpetual confirmation. Litton Fox, "'Nice Girl,'" 809.
[205] King, "A Prisoner of Gender," 31.

"did not like that sort of thing to be said" about her and was convinced that such an impression was "getting about."[206] To be accused of such unladylike conduct caused her visible distress, a necessary element within the courtroom performance of an upper-class woman.

Various individuals within the small and tight-knit beachside community of Narrabeen witnessed Pauline and John together fishing, shooting, ocean swimming, driving and walking, all of which the undeveloped location offered in abundance. Yet again, witness testimony suggests an intense community surveillance. Lawyers asked the citizens of Sydney and Narrabeen to dredge up their recollections of the supposedly illicit relationship between 1901 and 1904. The trial's many witnesses included the maintenance man on the Narrabeen roads, an orchardist living on a bush track, the lift attendant at the Hotel Australia (where Pauline stayed when visiting her lawyer), the rental manager at The Mansions, where she took partly furnished rooms, and even the butcher who supplied John with meat and bread in Narrabeen.[207] They also called upon the man whom John paid to take the couple fishing at 5 o'clock in the morning, and asked if he had noticed any "female garments" lying about at John Dalley's house.[208]

Jurors enquired of these witnesses whether both bedrooms in John Dalley's weekend cottage contained furniture, and if the beds were single or double. One juror even asked the cook at the Narrabeen Hotel if he remembered "any pillow" amongst the picnic items Pauline and John took with them shooting or fishing.[209] Lawyers queried as to why John had paid for the removal of Pauline's furniture when she went to stay at The Mansions, to the grand total of ten pounds (and this from a man who easily paid twenty pounds for his shirts and socks

[206] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 430, 434, 565.
[207] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 150, 159, 170, 177, 190.
[208] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 211, 222.
[209] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 329.

alone).[210] The jury even visited The Mansions "to see for themselves the condition of the rooms."[211] And five years after a three-week sojourn at an Italian hotel, Pauline was asked to draw a plan of its passageway, for the jury to decide if John could see into her room.[212] Even Justice Walker questioned whether "this excessive minuteness" was necessary.[213]

The Dalley case is the first I have encountered which features private investigators, although as I mentioned the Horwitz case mentions a detective, but without further explanation. While investigators first appeared in Australia during the 1880s, by the early twentieth century they were common for divorce cases.[214] Admitting she had been watched "practically all her life by detectives," Pauline professed to being unfazed by the constant presence of Annie White, a "lady detective" who took her assignment so seriously she was prepared to scramble onto the rooftops at The Mansions and pad about in her stockinged feet peering into windows.[215]

Nor was Annie White the only detective involved in the case. One man who took up detective work "when the joinery business (was) slack" admitted to "lurking about the Mansions for nine days." He observed Pauline and John leaving Her Majesty's Theatre, in Sydney's centre, "not talking in the ordinary way (but) arm in arm, giving a hop and a skip now and then as they went along."[216] In her abandoned behaviour and embodied exuberance, Pauline drew attention to herself, and demonstrated her rejection of those oppressive gender norms which dictated demure and constrained deportment for the genteel woman. If we acknowledge that norms of culture and society are actually "expressions of power," as Dutch

[210] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 246, 864.
[211] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 382.
[212] SRNSW: NRS 2713, [6/3094], *Dalley v. Dalley*, 575.
[213] SRNSW: NRS 2713, [6/3094], *Dalley v. Dalley*, 588-90.
[214] Troy Whitford, "'A Necessary But Dangerous Class:' Early Private Investigators in Australia," *Salus Journal* 3, no.3 (2014): 14-15.
[215] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 808, 292.
[216] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 321, 324, 326.

philosopher Maren Wehrle suggests,[217] we are forced to recognise that for a brief moment, as she hopped and skipped along a prominent city street, Pauline Dalley rejected those normative standards which constricted and controlled her.

Image 6.22 Narrabeen Beach and the adjoining Narrabeen Lake, where John and Pauline enjoyed fishing and bathing.

http://www.pittwateronlinenews.com/Glimpses-Into-Narrabeens-Past-Beauties-Spring-2016.php

In doing so, unfortunately, Pauline endured a definite surveillance, a scrutiny which exposes contemporaneous attitudes towards such issues as the contentious subject of mixed bathing. In early twentieth-century Sydney, it was illegal to bathe in the sea, and many people found the sight of a bathing body offensive.[218] John and Pauline often enjoyed the surf together, and witnesses were later asked what state of dress the pair were in whilst walking to, on and from the beach and particularly what Pauline wore at the time. George Reid asked Pauline if she "bathed in this way on the Continent," and had walked down past the hotel in "a very abbreviated dress," to which she angrily replied that "it was a gown" she could have

[217] Wehrle remarks that "for norms to be effective...they must be experienced and embodied." Maren Wehrle, "Normative Embodiment: The Role of the Body in Foucault's Genealogy. A Phenomenological Re-Reading," *The Journal of the British Society for Phenomenology* 47, no.1 (2016): 56.
[218] Caroline Ford, *Sydney Beaches: A History* (Sydney: New South Publishing, 2014), 49.

"walked down George Street with."[219] Reid admitted he had heard of mixed bathing in America, and on the Continent, and while there was no harm in it (he maintained),

> if anybody told him that any married woman, with a deliberate regard for her character and decency, and living apart from her husband, would go bathing with her husband's brother—well, he would not believe it.[220]

Reid's address to the jury reveals the opprobrium to which mixed bathing was subject.

The strategies which Pauline employed throughout this period to survive financially are intriguing. Placing her actions within a corporeal framework renders her resistance to oppression both bodily and linguistic, but as British philosopher Terry Lovell explains, "(p)ure acts of resistance are as rare as unequivocal acts of submission:" it is important to search beneath the veil of apparent compliance or submission those kernels of rebellion which lie hidden.[221] While Pauline did not leap from balconies like Harriet Dorn or commit acts of domestic sabotage like Hannah Webb, she overcame male financial authority and control in other ways. By refusing to give her husband the divorce he wanted, she suffered "the squalid ignominy of the Divorce Court;" in engaging with legal process over a considerable period, she demonstrated her perseverance; and in refusing to give up for the sake of propriety her second daughter, proved her resistance pronounced and sustained.[222]

Through careful budgeting and negotiation, Pauline allowed significant hotel bills to mount at the salubrious Hotel Australia, where her mother had suggested she stay because she "was getting despondent and required brightening up."[223] (She later repaid these bills in

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[219] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 459.
[220] "Dalley Divorce Suit. Mr. G.H. Reid's Address. Mixed Bathing," *Australian Star*, 1 December 1905, 6.
[221] Terry Lovell, "Resisting with Authority: Historical Specificity, Agency and the Performative Self," *Theory, Culture & Society* 20, no.1 (2003): 4, 12.
[222] "Dalley Divorce Suit. Case for the Petitioner. Allegations of Adultery. Two Brothers Concerned," *Daily Telegraph*, 7 November 1905, 10.
[223] "Dalley Divorce Suit, Sydney November 16," *Observer,* 25 November 1905, 41.

full). Pauline was determined to satisfy her own needs and wants and reject those of her coercive and domineering husband. In various adjunct activities designed to overcome her penury, Pauline supplemented Dalley's sporadic alimony payments with frequent borrowings from friends and relatives. Persuading others to place bets at the races for her (it would have been unseemly for her to do so herself), she won several small sums at the racecourse, and used these to pay ongoing expenses. As a crucial last-resort, she made frequent visits to the pawn shop, at one point receiving twenty-nine pounds for a ring her mother had given her, and subsisting for several months on this sum.[224] These manoeuvres confirm Pauline's determination to meet the considerable monetary demands of a life based on the pursuit of leisure.

Despite her financial struggles, Pauline always employed a nursemaid and a maid, or at her lowest point, nursemaid and charwoman. When she left her mother's home in Narrabeen, her accommodation consisted of two rooms in a luxurious establishment which she rented for months at a time. On another occasion, Pauline rented a room for eleven days at the Hotel Australia (Sydney's most expensive hotel) "to go to the races."[225] Several times, she entertained guests in the dining room there, despite its exorbitant cost, because "it was the only way" she could "repay people's kindness."[226] In a lengthy examination, George Reid grilled Pauline about these outgoings, evidently having two purposes in doing so. His foremost aim was to suggest Pauline was John Dalley's mistress, and he was paying Pauline's bills. Just as significantly, Reid disparaged as contrived and disingenous Pauline's portrayal of impoverishment, thereby casting doubt on her claims to virtue and integrity.

[224] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 601.
[225] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 614.
[226] SRNSW: NRS 2713, [6/3094] *Dalley v. Dalley*, 623-4.

Endings

One month after the trial was over, Pauline lodged proceedings in the English Court of Chancery to obtain custody of Eileen and returned to the Divorce Court of NSW in July 1906 to seek permanent maintenance from Will Dalley. After considerable legal wrangling, the court granted her the sum of one hundred and fifty pounds per annum, but Pauline withdrew her suit less than one week later after coming to "an arrangement."[227] In November 1907, Pauline married John Lewis Chester, an impecunious accountant nine years her junior (she was thirty-three and Chester twenty-four).[228] The marriage ended after seven years, when Chester refused to comply with Pauline's suit for the Restitution of Conjugal Rights and she then sued for divorce.[229]

In the same year, now aged forty, Pauline married twenty-seven year old solicitor Arthur Chambers Baxter-Bruce, who came from a very well-to-do family.[230] Until 1928, the pair lived in Rabaul, New Guinea, where Baxter-Bruce practised law.[231] After returning to Sydney from Rabaul, Pauline appeared regularly in the society pages as Mrs. Ianthe Baxter-Bruce, attending various social engagements alongside other women married to notable men.[232] Her third marriage proved Pauline's most enduring and lasted until Baxter-Bruce died in 1948, well before Pauline's own death in 1961.[233]

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[227] "Dalley v. Dalley, An Equity Motion," *Daily Telegraph*, 10 March 1906, 16; "Divorce Court (Before Mr. Justice Simpson), Dalley v. Dalley," *Sydney Morning Herald*, 26 July 1906, 4.
[228] John Chester's WW1 Service Record states his date of birth as August 9, 1884. NAA B2455/17237 Chester, J.L.
[229] "Mrs. Chester's Petition. Failed to Return," *Sun,* 25 September 1914, 6; "Divorce Court," *Sydney Morning Herald*, 20 June 1914, 8.
[230] Arthur's father left an estate valued at more than fifteen thousand pounds when he died in 1912. "Solicitor's Estate. Late Mr. Baxter-Bruce," *Sydney Morning Herald*, 6 November 1913, 5; Australia, Marriage Index 1788-1950, [4505/1915], *Arthur C. B. Bruce and Ianthe P. Chester.*
[231] "Mother Tells of Poor Countess," *Daily Telegraph*, 13 January 1937, 2.
[232] "For Women, English-Speaking Union, Farewell to Mrs. Lawton," *Sydney Morning Herald*, 10 August 1929, 9; "Late Mrs. W.G. Conley," *Sydney Morning Herald*, 12 March 1930, 16.
[233] NSW Registry of Births, Deaths & Marriages, Death Registration [15386/1948], *Arthur Chambers Baxter Bruce*; The Ryerson Index, *Ianthe Pauline Baxter-Bruce*, Date of death 1 October 1961.

Will Dalley married Kitty Cowell immediately his Decree Absolute was granted, and the couple returned to England to live, but they divorced in Sydney in 1920.[234] Dalley was living alone in a small rented apartment when he died in 1945, on the verge of bankruptcy and facing debts of more than one thousand pounds.[235] John Dalley married in 1913, divorced and remarried in 1925, by which time he was a well-known novelist and associate-editor of the *Bulletin*, having joined the paper in 1907.[236] He disappeared in 1935 while rock fishing in Avalon, and was declared legally dead some months later.[237] When John died, he and Will had been estranged for some years.[238] In contrast to his impoverished older brother, John Dalley left an estate worth almost nine thousand pounds.[239]

At the age of twenty, Eileen Bede Dalley married a count from an old titled French family, gave birth to a son she abandoned when he was four, divorced and spent many years living in poverty in England. Following an extensive search, the Perpetual Trustee Company found Eileen in 1937 "serving drinks in a milk bar from 10 a.m. to midnight in Hammersmith, England," with the news that under her late uncle's will, she was to receive one hundred and fifty pounds per year in perpetuity.[240] This sum was the inheritance John Dalley had settled on his brother's children so many years before. Press reports of Eileen's windfall included an interview with Pauline, who admitted she had not seen her daughter for

[234] State Records New South Wales, Supreme Court of New South Wales, Divorce Case Papers 1873-1978, [507/1919], *W.B. Dalley – Katherine Durrant Dalley,*
[235] SRNSW: NRS 131660 Probate Packets, [21-4999-Series 4_275294] *William Bede Dalley*, Date of Death 01/02/1942, Granted 05/01/1943.
[236] Clement Semmler, "Dalley, John Bede (1876–1935)," *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, published first in hardcopy 1981, accessed online 20 January 2020.
[237] "John Bede Dalley, Drowning Feared Missing Since Friday," *The Mercury,* 11 September 1935, 5; "Mrs. John B. Dalley. Declared Officially Dead," *National Advocate*, 6 May 1936, 1.
[238] SRNSW: NRS 131660 Probate Packets, [16-2650-Series 4_214527] *John Bede Dalley*, Date of Death 06/09/1935, Granted 06/08/1935.
[239] SRNSW: NRS 131660 Probate Packets, [16-2650-Series 4_214527] *John Bede Dalley*, Date of Death 06/09/1935, Granted 06/08/1935.
[240] "Countess Found," *Nambucca and Bellinger News*, 15 January 1937, 5; "Woman's Amazing Life Drama. From Height of Riches She Tumbled to Dire Poverty. Fortune Smiles Again," *Australian Women's Weekly* 23 January 1937, 11.

more than twenty years but felt greatly relieved Eileen's hardship was at an imminent end.[241] I have not discovered if mother and daughter ever reunited.

Yolande Bede Dalley married "one of Australia's most noted airmen," the "flying ace" and writer Captain (later to be Sir) Patrick Gordon Taylor, but the marriage ended in divorce in 1937 when he had an affair with one of her closest friends. In an eerie reflection of her mother's singular marital experience, the Taylors lived for some five years under the same roof, while Patrick ate his main meals elsewhere in the company of his paramour.[242] Biographical and other documents pertaining to Yolande consistently refer to her as Will Dalley's daughter, and as far as I am aware, the question of her paternity was never resolved.

The Life of a Socialite

The Dalley divorce case suggests that few opportunities existed for middle and upper-class women in the early twentieth century other than marriage. The case equally indicates that elite women did not necessarily seek alternatives outside of the domestic role. It is difficult to avoid concluding that Pauline Dalley was unprepared to sacrifice a lifestyle which we can only describe as indulgent. Her return to the life of an Eastern Suburbs socialite in later years indicates that Pauline's primary identity lay in being the wife of a prominent man. Unlike her elite colonial counterpart, however, for whom the merest association with divorce had serious consequences, Pauline's circumstances suggest that the dissolution of a marriage gradually lost its cataclysmic stigma. Despite several legal ordeals pertaining to her intimate

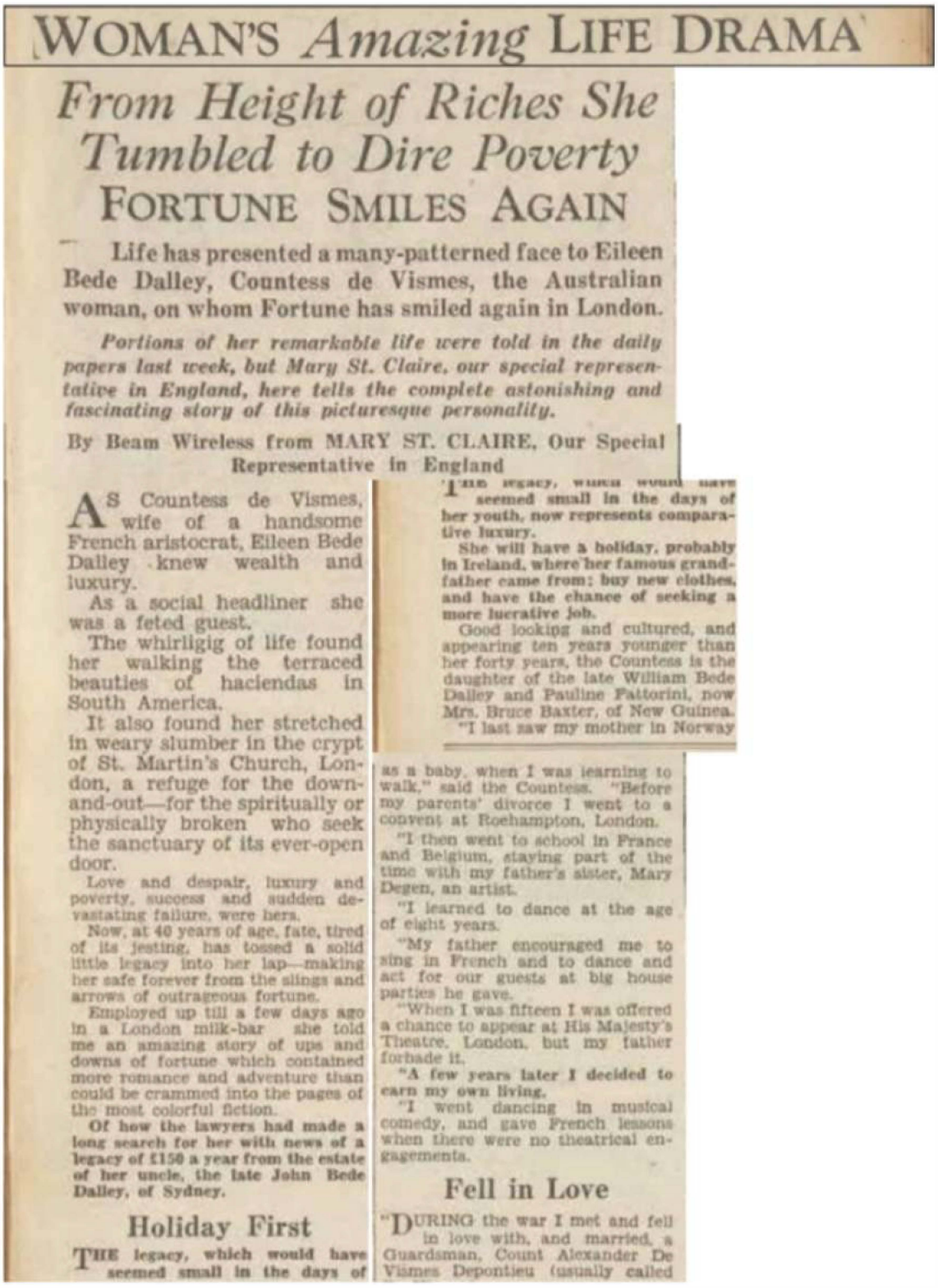
[241] "Mother Tells of Poor Countess," *Daily Telegraph*, 13 January 1937, 2.
[242] "Flying Ace and Other Woman. Wife Says that He liked Someone Else," *Truth*, 29 August 1937, 13; Keith Isaacs, "Taylor, Sir Patrick Gordon (1896–1966)," *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, http://adb.anu.edu.au/biography/taylor-sir-patrick-gordon-8763/text15357, published first in hardcopy 1990, accessed online 7 December 2019.

life and sexuality, Pauline's reputation remained intact, and she did not face the social exclusion which threatened Flora Horwitz during her legal ordeal.[243]

For the multitude of ordinary women who lacked material assets, education or employment skills, financial dependence upon and subjection to a husband remained a persistent reality, whether they stemmed from the working or upper classes. While exposing the pivotal role of social class and white privilege in determining access to material and social capital, the Dalley case confirms that the intersection of gender with social class further restricted that access. When Will Dalley withheld alimony payments, Pauline relied on financial support from others and her own shrewd monetary manipulations, which included gambling, betting and pawning objects of value. Again, such activities were only possible because of her elite class affiliations. The origins of Pauline's protracted subordination, however, lay in a wider society in which patriarchal authority persisted.

Dalley v. Dalley reveals the ongoing disempowerment and dispossession of the elite woman without means. As this thesis has argued, scholars have persistently characterised the late nineteenth and early twentieth centuries as a time of significant revision for marriage and gender relations. Yet against those who claim that marriage was no longer a relationship evincing masculine authority and feminine submission, the Dalley case confirms that such a power imbalance remained a reality.[244] Just as it had for the tragic Hannah Webb, the persistence of male domination within a marriage constitutes the over-arching and unifying theme throughout the twists and turns of this most unhappy marital union.

[243] Russell, "For Better and for Worse," 24; SRNSW: NRS 13495 [200/1883] *Horwitz v. Horwitz.*
[244] Shanley, *Feminism, Marriage and the Law in Victorian England*, 5.



WOMAN'S *Amazing* LIFE DRAMA

From Height of Riches She Tumbled to Dire Poverty

FORTUNE SMILES AGAIN

Life has presented a many-patterned face to Eileen Bede Dalley, Countess de Vismes, the Australian woman, on whom Fortune has smiled again in London.

Portions of her remarkable life were told in the daily papers last week, but Mary St. Claire, our special representative in England, here tells the complete astonishing and fascinating story of this picturesque personality.

By Beam Wireless from MARY ST. CLAIRE, Our Special Representative in England

AS Countess de Vismes, wife of a handsome French aristocrat, Eileen Bede Dalley knew wealth and luxury.

As a social headliner she was a feted guest.

The whirligig of life found her walking the terraced beauties of haciendas in South America.

It also found her stretched in weary slumber in the crypt of St. Martin's Church, London, a refuge for the down-and-out—for the spiritually or physically broken who seek the sanctuary of its ever-open door.

Love and despair, luxury and poverty, success and sudden devastating failure, were hers.

Now, at 40 years of age, fate, tired of its jesting, has tossed a solid little legacy into her lap—making her safe forever from the slings and arrows of outrageous fortune.

Employed up till a few days ago in a London milk-bar she told me an amazing story of ups and downs of fortune which contained more romance and adventure than could be crammed into the pages of the most colorful fiction.

Of how the lawyers had made a long search for her with news of a legacy of £150 a year from the estate of her uncle, the late John Bede Dalley, of Sydney.

Holiday First

THE legacy, which would have seemed small in the days of her youth, now represents comparative luxury.

She will have a holiday, probably in Ireland, where her famous grandfather came from: buy new clothes, and have the chance of seeking a more lucrative job.

Good looking and cultured, and appearing ten years younger than her forty years, the Countess is the daughter of the late William Bede Dalley and Pauline Fattorini, now Mrs. Bruce Baxter, of New Guinea.

"I last saw my mother in Norway as a baby, when I was learning to walk," said the Countess. "Before my parents' divorce I went to a convent at Roehampton, London.

"I then went to school in France and Belgium, staying part of the time with my father's sister, Mary Degen, an artist.

"I learned to dance at the age of eight years.

"My father encouraged me to sing in French and to dance and act for our guests at big house parties he gave.

"When I was fifteen I was offered a chance to appear at His Majesty's Theatre, London, but my father forbade it.

"A few years later I decided to earn my own living.

"I went dancing in musical comedy, and gave French lessons when there were no theatrical engagements.

Fell in Love

"DURING the war I met and fell in love with, and married, a Guardsman, Count Alexander De Vismes Depontieu (usually called

Images 6.23, 6.24 and 6.25 The *Australian Women's Weekly* article about Eileen's inheritance.
I include the article in full because it demonstrates the many ways that dysfunctional intimacy can continue to wreak ongoing havoc for those it has affected in the past.

Australian Women's Weekly, 23 January 1937, 11.

Vismes Depontieu (usually called De Vismes).

"After the war we went to South America, where my husband worked for a nitrate firm.

"We lived in Santiago, a glamorous life of parties at the various Consulates, with visits to rich Chileans at their magnificent haciendas.

"We took trips to Havana and Europe.

"My son Valery, who is aged 19, was born in England.

"In the south of France I lived in a lovely chateau.

"While there I met a man with whom I fell violently in love. I told my husband, but he refused to allow me a divorce.

"I ran away with my lover, and my husband petitioned the French courts for a divorce. The proceedings dragged on for two weary years and then my lover died.

"Broken-hearted, I returned to London.

"I then went to Africa and lived in Sierra Leone against a background of palms, sheiks, natives, and desert.

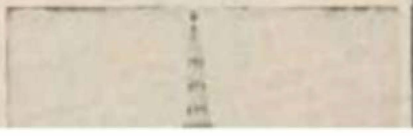
"I returned to Europe, sold my jewels and lived on the proceeds for some time. After that I faced a life of hardships.

"I worked as a chambermaid in a men's club, sold pianos on time payment, went from hotel to hotel selling ties, and made an occasional few shillings addressing envelopes.

"Sometimes I slept in the 'ever-open door,' the crypt of St. Martin's Church in Trafalgar Square, where down-and-

DREAMS are intangible things, and the turn of fortune found her at St. Martin's, Trafalgar Square, the "Mercy" Church of London, where she slept on a bench in the crypt, during the days of her direst poverty.

DREAMS of "Castles in Spain" became a reality for Australian Eileen Bede Dalley, but—



THE COUNTESS DE VISMES. "Despite her forty years, she looks ten years younger," says Mary St. Claire, who interviewed her in London.

outs are allowed to sleep on the benches."

While working as a chambermaid the Countess refused a proposal of marriage from the pantryman, not because he was a pantryman, but because he was bad tempered.

"I then went to Ostend as a dance hostess at one of the big hotels," she said.

"My money was stolen, and I was arrested by the Belgian police for being without financial support.

"When they learned the facts they treated me like Royalty.

"Last summer I worked in the Kent hopfields. The weather was so damp that my boots were covered with mildew.

"I slept on straw in a tin shed with mice everywhere.

"Recently I went to see Mr. Hugh McIntosh, who was a friend of my father and uncle.

"He gave me a job at a Hammersmith milk-bar serving behind the counter. I found there lots of kind people in all walks of life, just as there were lots of tough ones, even in the highest stations."

Chapter Seven: A Marvellous *Sangfroid* Throughout Proceedings, *Moss v. Moss*, 1911

Image 7.1 Drawings of Louisa and Edward Moss and their daughter Nedda, aged eighteen, which accompanied the *Truth* newspaper's extensive coverage of the Moss hearing.

"Moss' Marital Misery: Wife Petitions for a Divorce. Astounding Allegations Made: Portion of Evidence Heard with Closed Doors," *Truth,* 21 April 1912, 4.

Image 7.2 Louisa and Eric c. 1906.

Image 7.3 Nedda in adulthood.

I have been unable to trace the owner of either photograph despite contacting those who host the website on which they are featured.

Accessed online at www.thetreeofus.net

Introduction

Louisa Moss petitioned for divorce in 1911, a full five years after leaving her husband Edward in July 1906.[1] Since Edward had at no time been adulterous, physically violent or alcoholic, Louisa based her petition on a perverse legal concept known as constructive desertion.[2] Constructive desertion referred to situations where a wife abandoned her husband but sued *him* for desertion, and then claimed his conduct gave her no choice but to leave the marriage.[3] Louisa's lawyers were thus required to prove their client "was compelled" to end her marriage because of Edward Moss's behaviour. Thereafter, she was "kept away by that same conduct."[4]

As the judge explained to the jury, "the party who intends bringing the cohabitation to an end, and whose conduct in reality causes its termination, commits the act of desertion."[5] Accordingly, even though Louisa had long moved out of the couple's rented Woollahra premises and was now living in Mosman, she claimed her husband "without just cause or excuse wilfully deserted" her, and "left her continually so deserted during three years and up."[6]

The Moss divorce case presents yet another marital battleground upon which gender roles and responsibilities formed the main grist of spousal conflict. Edward and Louisa Moss

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[1] SRNSW: NRS 13495 [7862/1911] *Moss v. Moss*.
[2] SRNSW: NRS 13495 [7862/1911] *Moss v. Moss*; The four primary "offences" on which women petitioned were adultery, drunkenness, assault and desertion. Although I have never encountered a case based on constructive desertion, it was evidently very common, and according to Hilary Golder, became "a central valve in the divorce machinery" after the law was amended in 1892. Golder also suggests that the main reason the Australian divorce rate did not rocket as it did in the United States was because judges were wary of acknowledging constructive desertion. Golder, "'A Sensible Investment,'" 8, 441.
[3] Ibid., 108; James, "A History of Cruelty in Australian Divorce," 21.
[4] State Records New South Wales, Supreme Court of New South Wales: NRS 2713, Court Reporting Office: Transcriptions, 1912, [6/2734], *Louisa Moss- Edward Moss* (Hereafter SRNSW: NRS 2713 [6/2734] *Moss v. Moss*), 146.
[5] SRNSW: NRS 2713 [6/2734], *Moss v. Moss*, 146; This perception of desertion harked back to an amendment made to the 1840 NSW *Maintenance of Deserted Wives and Children Act*, when in 1858 Attorney-General James Martin (Will Dalley's uncle) added a clause which specified that a woman who had been "compelled to leave her husband's residence under reasonable apprehension of danger to her person" was as much a deserted wife as one whose husband had abandoned her. Golder, "'A Sensible Investment,'" 108.
[6] SRNSW: NRS 13495 [7862/1911] *Moss v. Moss*.

ran a small clothing manufactory in Sydney's centre, where they employed some fifty "girls" and produced for the larger department stores ready-made garments which Louisa also designed.[7] Attached to the factory was a shop where she processed retail orders and handled customer inquiries. Much to Edward's chagrin, he was neither his wife's equal or even subordinate partner, functioning more as her lackey; Louisa dominated both business and marital relationships.[8] And as testimony revealed, she rarely let a moment pass without reminding Edward of the gulf between their respective positions.

The brief preceding outline confirms Judith Allen's contention that it is "the character and consequences" of women's "sexual economic relationships with men" which shaped feminine discontent, in the current case reversing the typical order of male economic power and female sexual dependency.[9] As Louisa's solicitor observed, Edward Moss was "the second man in the family," a perception the hearing would further confirm.[10] In contrast to those women who searched for fulfilment within maternity and marriage, the self-possessed Louisa Moss accessed significant autonomy within financial and business spheres, negotiating contracts with leading warehouse and department store merchants, and managing large monetary sums in the process. Her assertive courtroom demeanour and the "marvellous *sangfroid*" she preserved throughout the hearing convey little if any sense of victimhood, which is surprising given that divorce procedure virtually demanded women do so whether as petitioner or respondent.[11] On the contrary, Louisa was forthright, assertive and self-

[7] Other sources pertaining to women who worked in clothing manufacture also refer to them as "girls," which suggests that the paternalistic form of address was common in the industry. Throughout the sources in the Moss case, Louisa refers to "girls" and "her girls." For example, see Raelene Frances, who cites the labour magazine *Labor Call*, which wrote of the "comfort of the girls" working in the factories. Raelene Frances, "Gender, Working Life and Federation," in *Working the Nation: Working Life and Federation, 1890-1914*, eds. Mark Hearn and Greg Patmore (Annandale: Pluto Press Australia, 2001), 33.
[8] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 14, 24.
[9] Allen contends further that these relations of "power and dependency framed" men's historical abuse of women. While she makes this remark in relation to women in nineteenth century Australia, my research suggests that little if anything had changed in the early twentieth century to alter the causal nature of the relationship. Allen, *Sex & Secrets*, 45, 19, 43.
[10] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 135.
[11] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 155; "Moss' Marital Misery. Wife Petitions for a Divorce. Astounding Allegations Made: Portion of Evidence Heard with Closed Doors," *Truth*, 21 April 1912, 4.

possessed, which may have been a factor in persuading the judge not to accept her claims of constructive desertion.

Although NSW Divorce Law was certainly progressive in allowing women equal divorce rights to men after 1892, such changes did not necessarily mean that wives could end a marriage with the same ease as husbands. The persistence of male physical and economic power continued to restrict their options.[12] The issue of costs continued to be the major factor influencing women, but Louisa Moss was fortunate in being able to afford the hefty fees involved in initiating a divorce action.

In this chapter, I begin by addressing the main facts of proceedings and explore the concept of constructive desertion and its implications. I then outline biographical details for the couple, after which I analyse the primary bones of marital contention which emerged during the hearing. While the case is of particular value for what it reveals about a female small-business entrepreneur, of equal significance are those issues which stem directly from the reasons Louisa gave for leaving the marriage. These claims related to her husband's outward expressions of extreme sexual jealousy, and supposed predilection for "unnatural" sexual practices, which formed Louisa's efforts to prove a direct causal link between Edward's behaviour and her own "forced" departure from the marital home.

Louisa Moss claimed that Edward repeatedly pressed her "to have connection with him in an unnatural way (and) to yield to and take part in unnatural practices," allegations which were naturally framed in euphemism as custom and propriety demanded.[13] Proceedings suggest, however, that when it came to inciting conflict, Louisa's persistent belittling of Edward was of equal significance to his supposed sexual aberration. Throughout my discussion, I ask what *Moss v. Moss* suggests about marital power and gendered intimacy in

[12] Golder, "'A Sensible Investment,'" 339-340.
[13] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 149; While this era saw matters of sexuality discussed increasingly, the tendency remained firm to use euphemistic language when doing so. Featherstone, *Let's Talk About Sex,* 23.

early twentieth century Sydney, predicated as the case was upon sexual conduct and misconduct.

The Hearing

When Louisa lodged her petition, she had been separated for five years, a considerable increase in the two-year average I mentioned in Chapter One.[14] When measured from first to final step, divorce process was painstakingly slow. In the Webb case, I pointed out that most cases proceeded via a hearing and jury trials were relatively rare.[15] The latter tended to last longer and attract greater press interest than hearings, and as my main goal was to locate abundant and diverse source material, my subjects tend to feature in trials. While this may imply my cases are doubly exceptional, I discounted similarly well-documented files if they did not meet the necessary criteria, and the divorce archive is filled with numerous accounts of marital disharmony as extraordinary as those the thesis investigates.

The Moss case proceeded by means of a hearing and did not involve a jury. After reviewing a petition, the judge alone decided if a case would proceed by trial or hearing.[16] If he favoured a hearing, the judge was also the sole determinant of its outcome, for which he relied on witness testimony, his own conclusions regarding evidence, and his estimations of character. A hearing thus involved considerable additional responsibility for the judge, and the burden could not be shared. Following a marked increase in the divorce rate following the law's amendment in 1892, a new format for petitions meant hearings were easily streamlined, and tended to be brief, as Harriet Dorn's suit of 1895 illustrates.[17] While the divorce rate

[14] Allen, *Sex & Secrets*, 51.
[15] Golder, "'A Sensible Investment,'" 11.
[16] From 1873, Divorce Court regulations stipulated that a judge could decide whether a case should be tried by jury or via affidavits and witness interviews in his chambers, or in a public courtroom. I can only assume this remained so after the law was amended in 1892. "Regulations for the Divorce Court," *Sydney Morning Herald*, 11 July 1873, 2.
[17] Golder, "'A Sensible Investment,'" 434; SRNSW: NRS 13495 [1902/1895] *Dorn v. Dorn.*

declined slightly in the early years of the new century, the manner of hearing and its economical format had no doubt become entrenched.[18] In the current context, Justice Alexander Gordon evidently believed the Moss case would not require the collective deliberation of a jury. His initial presumptions were well-founded, because the hearing lasted only three days, a mere fraction of the Dalley saga.

As was customary, Edward's solicitor immediately lodged counterclaims in response to Louisa's disturbing allegations. He began with considering whether "the Petitioner" had committed adultery with "one Osborne," and "some man or men whose name/names are unknown."[19] Deploying the same legal terminology to signify desertion as Louisa did, a further issue gauged whether she "without just cause or excuse wilfully deserted the Respondent and... left him continuously so deserted during three years and upwards."[20] Since on the second day of the hearing Edward's solicitor successfully advised him to withdraw his adultery charges, it seems no evidentiary basis existed for the allegations.[21] No doubt realising the dearth of evidence (or at least with his lawyer encouraging him to do so), Edward had no alternative but to abandon his claims.

On the afternoon of the hearing's second day, Justice Gordon allowed Louisa to deliver her evidence *in camera,* a legal term meaning simply "in the privacy of a judge's chambers."[22] As a method of deposition, *in camera* testifying often took place if evidence was believed to be particularly salacious or shocking, and meant that witnesses deposed only before the judge and lawyers rather than a public gallery. Naturally such a process also barred journalists from attending the court as witnesses gave evidence.

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[18] Golder, "'A Sensible Investment,'" 451.
[19] Alfred Osborne was a departmental manager for the Singer Sewing Machine Company, and one of the five men that Edward Moss named as potential adulterers. Louisa had frequent business dealings with Alfred and his wife Helen was "a very great friend" of hers. At one stage both Osbornes were good friends of the Mosses. SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 23.
[20] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 115.
[21] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 115.
[22] *Collins Dictionary*, accessed online at https://www.collinsdictionary.com/dictionary/english/in-camera

According to Claire Sellwood, any case before 1913 which involved so-called "unnatural offences" was typically heard *in camera,* to protect the public from "indelicate... and morally questionable information." After 1913, however, an English ruling overturned the tendency to protect the wider community and determined that the Divorce Court was not empowered to prevent the public from being exposed to controversial or scandalous material. From this point on, a ruling against *in camera* testifying also operated in the Australian legal context.[23]

Although Court Transcriptions give no indication of exactly how it was arranged Louisa should give evidence away from the prying eyes and ears in the crowded courtroom, one particularly detailed press report in the newspaper *Truth* fills the lacuna.[24] While it is easy to dismiss *Truth* as a mere scandal-sheet, Sellwood suggests the paper's reports were "predominantly factual" and served as the main source of information about the Divorce Court.[25] My comparison of Court Transcription with *Truth* reportage confirms that the paper's accounts of proceedings often included identical factual content to legal sources.

In the current instance, *Truth* described how Louisa's barrister Andrew Watt informed the court of "certain revolting details which would have to come out in evidence." (To prove constructive desertion, Louisa's lawyers would have ensured she paint her husband in consistently negative terms).[26] Justice Gordon agreed to clear the court, and it was arranged "that the evidence of what the Respondent repeatedly said to his wife, and the awful acts he requested her to permit him to commit, should be given at 2 pm."[27] Watt thereby presented his client as vulnerable, and Edward's "revolting" conduct as threatening. At the same time,

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[23] Sellwood, "'A Series of Piteous Tales,'" 182, 218.
[24] "Moss' Marital Misery. Wife Petitions for a Divorce. Astounding Allegations Made: Portion of Evidence Heard with Closed Doors," *Truth*, 21 April 1912, 4.
[25] Sellwood, "'A Series of Piteous Tales,'" 96-7.
[26] Golder and Kirkby suggest that in cases of constructive desertion, the respondent was cast into the role of "the villain." Hilary Golder and Diane Kirkby, "Marriage and Divorce Law Before the Family Law Act 1975," in *Sex, Power and Justice*, 161.
[27] "Moss' Marital Misery. Wife Petitions for a Divorce. Astounding Allegations Made: Portion of Evidence Heard with Closed Doors," *Truth*, 21 April 1912, 4.

he conveyed the sense of an innocent woman forced to endure the terrible actions of a wicked spouse. A woman's lawyers often presented her case in terms of such embattled innocence, as Claire Sellwood remarks, and the ploy drew on the familiar trope of an "aggressive male villain" who caused "emotional suffering" to his female victim.[28]

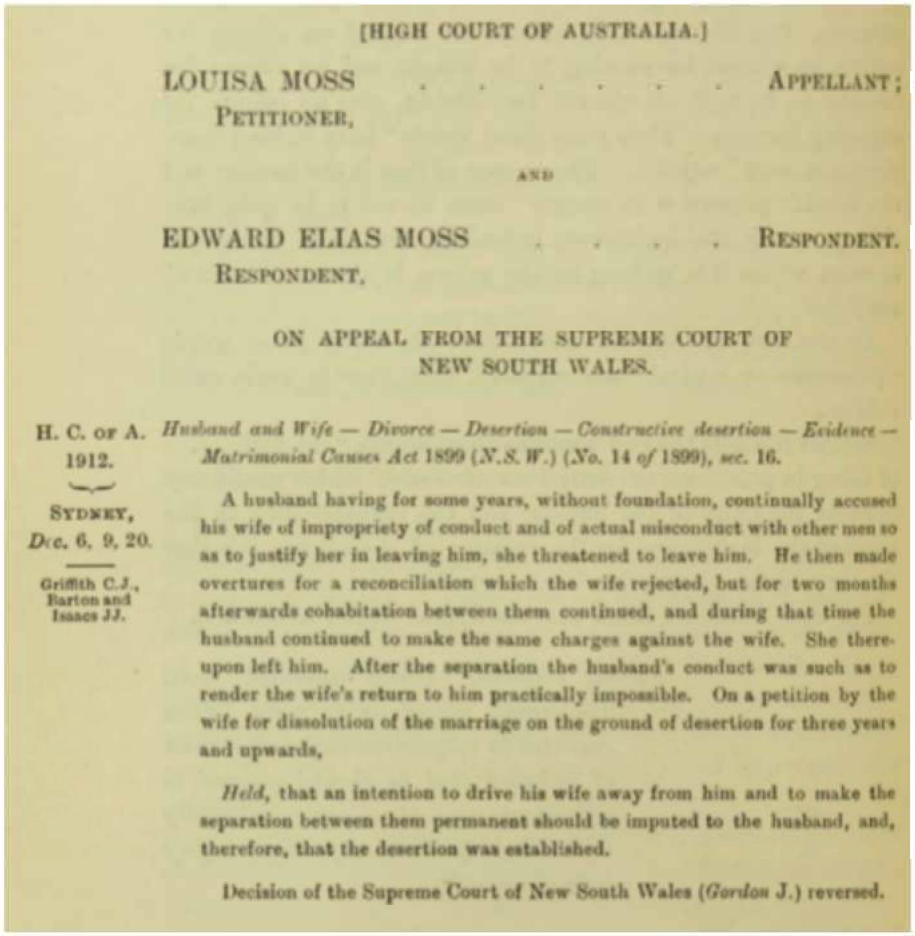
In reviewing the key facts of the case, Justice Gordon did not accept that it was Edward Moss's wish his wife should leave him, and proposed instead that by rejecting her husband's frequent efforts to heal their marital rift, Louisa Moss "refused to entertain any idea of reconciliation," and had "shown by her conduct that she was... putting herself in direct antagonism to her husband... and... acting in anything but a conciliatory manner."[29] Much as in the Webb case, Gordon's judicial summation confirms that in the interests of marital harmony, a wife was expected to tolerate a certain level of "misconduct" on her husband's part.[30] The judge thus determined that although Mrs. Moss was entitled to a judicial separation, she was *not* entitled to a divorce.

Image 7.4: Mr. Justice Alexander Gordon (later Sir).

"The Supreme Court Bench of N.S.W.," *Sydney Mail*, 20 November 1912, 14.

[28] Sellwood, "'A Series of Piteous Tales,'" 228.
[29] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 155-8.
[30] James, "A History of Cruelty in Australian Divorce," 30.

Hilary Golder and Diane Kirkby argue that divorce "was more accessible to the self-supporting woman," an observation which Louisa's circumstances substantiate.[31] Unlike many of the women denied the opportunity to dissolve their marriages, Louisa had the financial means to lodge an immediate appeal to the High Court of Australia upon receiving the unfavourable verdict, and the three High Court judges on the appeal Bench accepted her claims of constructive desertion.[32] The successful appeal rendered *Moss v. Moss* a benchmark for future cases of constructive desertion and confirmed the High Court's potential to either accept or reject petitions based on the concept.[33]



[HIGH COURT OF AUSTRALIA.]

LOUISA MOSS . . . . . APPELLANT;
PETITIONER,

AND

EDWARD ELIAS MOSS . . . . RESPONDENT.
RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1912.

SYDNEY, Dec. 6, 9, 20.

Griffith C.J., Barton and Isaacs JJ.

Husband and Wife — Divorce — Desertion — Constructive desertion — Evidence — Matrimonial Causes Act 1899 (*N.S.W.*) (*No.* 14 *of* 1899), *sec.* 16.

A husband having for some years, without foundation, continually accused his wife of impropriety of conduct and of actual misconduct with other men so as to justify her in leaving him, she threatened to leave him. He then made overtures for a reconciliation which the wife rejected, but for two months afterwards cohabitation between them continued, and during that time the husband continued to make the same charges against the wife. She thereupon left him. After the separation the husband's conduct was such as to render the wife's return to him practically impossible. On a petition by the wife for dissolution of the marriage on the ground of desertion for three years and upwards,

Held, that an intention to drive his wife away from him and to make the separation between them permanent should be imputed to the husband, and, therefore, that the desertion was established.

Decision of the Supreme Court of New South Wales (*Gordon* J.) reversed.

Image 7.4 *Moss v. Moss* (1912), 15 Commonwealth Law Report (CLR) 538-544.

[31] Golder and Kirkby, "Marriage and Divorce Law Before the Family Law Act 1975," 161.
[32] Gail Savage points out that self-supporting women 'enjoyed greater latitude of action' in ending a marriage. Savage, "They Would if They Could," 176.
[33] *Moss v Moss* (1912) 15 Commonwealth Law Report (CLR) 538-544.

The French Polisher and the Gentleman's Daughter

Louisa's father James Collis married his first wife Charlotte in England in 1845, and the couple migrated to the colonies in 1855.[34] Two years after arriving in Victoria, the now widowed James married Louisa's mother Hannah Early in Ballarat only a few months after Charlotte's death.[35] While James's assisted migration record describes him as an agricultural labourer, other sources suggest that Louisa's father was a bricklayer.[36] Birth records confirm Louisa's birth on March 22, 1871, in Ballarat Victoria, one of four surviving children for James and Hannah; two other siblings did not survive infancy.[37]

The family's religion is unclear, but there is no indication that they were Jewish like Edward was. As I pointed out in the Horwitz case, the predominance of Jewish men over women led inevitably to many mixed marriages in the colonies.[38] Collis is not an overly common surname, but I have been unable to discover what became of Louisa's siblings after their births. Louisa stated on her marriage certificate that she was a "lady" and her father a "contractor,"[39] descriptors which possibly reflected wishful thinking rather than reality.

Edward Elias Moss was born Edward Moses in Bungendore NSW, on December 16, 1863, the fourth child of eleven sons and five daughters born to Ephraim Moses and Amelia

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[34] Victorian Public Record Office (VPRO), *Collis, James* Ship: Epaminondas: Arrival Year 1855, Series: Assisted British Immigration Index; *James Callis* (sic) and *Charlotte Jones*, England, Select Marriages, 1853-1973.
[35] VPRO Marriage Certificate *James Collins* (sic) and *Hannah Early*, [2406/1857].
[36] ames Colleys, *Census Returns of England and Wales, 1851.* Kew, Surrey, England: The National Archives of the UK (TNA): Public Record Office (PRO), 1851
[37] Births, Deaths and Marriages Victoria, Birth Certificate *Hannah Jane Collis* [2222/1860], *Alice Collis* [6498/1866], *Louisa Colliss* (sic), [6986/1871], *William Henry Collins* (sic) [21018/1868]; Death Certificate *Benjamin Collis* [7295/1866]; *Bethal Alexander Collis* [279/1874]; James Colleys, *Census Returns of England and Wales, 1851.* Kew, Surrey, England: The National Archives of the UK (TNA): Public Record Office (PRO), 1851; Finding documentary evidence for the existence of Louisa's siblings has proven a challenge as the family name is spelled variously as Collins, Colleys and Collis. Louisa's mother Hannah Early has served as the main identifier in locating family members. Online family tree details suggest Louisa's parents had eight children, but I have not been able to confirm their births in archival sources.
[38] Rutland, *The Jews in Australia*, 13.
[39] Births, Deaths and Marriages Victoria, Marriage Certificate *Edward Elias Moss and Louisa Collis Moss* [1605/1892].

(Millie) Solomon Moses.[40] Ephraim and Millie were English Jews who, like Louisa's father, migrated in 1855 shortly after their marriage, along with thousands of others making the gruelling sea voyage from London to Australia in search of gold.[41] This period saw the first of several waves of Jewish migration to Australia,[42] and the couple were among a significant number who bolstered the Jewish communities of Victoria and NSW.

Ephraim opened a cigar-making business in Bungendore and most of the Moses children were born there. In a small community he struggled to make a living, and battled insolvency before the family moved to Sydney in 1865, where he became a commercial traveller.[43] According to family historians, Moses became Moss in 1868, and the rest of Edward's siblings followed suit at around the same time.[44] Although there is little historical documentation concerning the Moses/Moss family in Edward's early years, it is significant that he was only able to "write a little... but not very well."[45] Theirs was a working-class family, large even by contemporaneous standards, and educating such a large brood was understandably difficult on Ephraim's limited and unsteady income.

Moses is a common Jewish name, and its transformation to Moss not unusual.[46] Although abundant scholarship describes Jewish name-changing in the American context and particularly after the Second World War, there is little investigation in Australia as to why Jews anglicised their surnames. No doubt Moses was considered too Jewish.[47] Despite little

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[40] The notice of Amelia Moss's death in 1901 referred to her as the "beloved mother of eleven sons and five daughters" and "a colonist of 46 years." "Family Notices," *The Age,* 31 July 1902, 1.
[41] Ancestors of Ephraim Moss, online at http://www.thetreeofus.net/251305.htm This website contains valuable information about the Moss family, but its creator could not furnish me with further details or identify the origins of those details featured.
[42] Rutland, *The Jews in Australia*, 22-3.
[43] "In Insolvency," *New South Wales Government Gazette*, 1 September 1865, 1976; "Insolvency," *Freeman's Journal*, 10 June 1865, 366.
[44] Ancestors of Ephraim Moss, online at http://www.thetreeofus.net/251305.htm
[45] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 115.
[46] Rutland's history of the Jews in Australia also refers to one Mordecai Moses, a Jewish convict in Sydney during the 1830s, whose son George abandoned the surname Moses and became George Moss. Rutland, *The Jews in Australia*, 17.
[47] Referring to the experience of American Jews, Kirsten Fermaglich argues that most Jewish surnames were "too long, too foreign and too Jewish." Kirsten Fermaglich, "'Too Long, Too Foreign...Too Jewish:' Jews, Name Changing and Family Mobility in New York City, 1917-1942," *Journal of American Ethnic History* 34, no.3 (2015): 34-57.

evidence of religious observance, this does not mean Judaism was not important to Edward, and his later registration as Jewish upon enlisting for military service in 1914 suggests it was indeed significant.

In 1892, Louisa Collis married Edward Moss in a service conducted by the unordained and self-styled "Reverend" Nathanial Kinsman of the so-called Victorian Free Church, a breakaway sect of the Church of England.[48] Known to all as "the marrying parson," Kinsman was by trade an auctioneer rather than a minister, and performed the marriage rites for anyone who appeared at his door. By the time of his death in 1898, he had done so for more than ten thousand couples. Kinsman's marriage ceremony was streamlined and over within minutes, the exchange of vows taking place with the couple "seating themselves on his well-worn sofa."[49] Kinsman's obituary confirms that "the celebration of marriage was purely a matter of business; the charges were regulated to "suit the times" and pockets of the parties, and all possible facilities were offered."[50] Considering such a mercenary approach, it is difficult not to regard as hasty and unplanned Louisa and Edward's decision to marry.

Louisa gave birth to three children and also had two miscarriages, of which we would be unaware if Edward's barrister had not queried her reproductive history.[51] The couple's eldest child Nedda Stella was born in 1893, followed in 1899 by Edward Lenard Alexander, who died aged fourteen months.[52] A third son, Eric Eilsson (who for reasons unknown later changed Moss to Mors) was born in the same year that his older brother died.[53] Once again, the case confirms the dramatic limitation of family size and the spacing of births that earlier chapters reveal.

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[48] "The Rev. Nathanial Kinsman," *Geelong Advertiser*, 20 March 1890, 4.
[49] "Our Illustrations. Celebrated Nearly 10 000 Marriages. Nathanial Kinsman," *Weekly Times*, 5 March 1898, 13.
[50] "Obituary," *Melbourne Leader*, 5 March 1898, 5.
[51] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 12. The subject of Louisa's gynaecological health and experience was the focus of considerable cross-examination during the hearing, a point I take up at length later in this chapter.
[52] NSW Death Transcription, Partial Transcription, [3392/1900] *Edward Lenard Alexander Moss*.
[53] National Archives of Australia: A6770, Service Cards for Petty Officers and Men, 1911-1970, *Eric Moss* Service Number 4727 Date of Birth 10 Oct 1900.

Louisa claimed to have been living with her parents and unemployed at the time of her marriage.[54] On the contrary, Edward vowed that both he and Louisa were employed as singers in an American burlesque troupe, Rice's Evangeline Company, for which she received wages, and furthermore, that they travelled together in the troupe for nine to twelve months prior to marrying.[55] Since trial transcripts typically do not record the questions asked of a witness, it is difficult to gauge the specific context in which individuals provided their testimony.[56] When Louisa repeated "I did not" several times in describing her early relationship with Edward, making a number of consecutive statements of this nature to his lawyer Ernest Abigail, I am forced to conclude she is contradicting a statement or question put to her.[57] Rejecting Edward's account of their initial courtship and pre-marital relationship, she swore that she "did not go away traveling with him for fifteen or eighteen months on a honeymoon, he "was not singing for Rice's Evangeline Company," and she "did not travel with him continuously" at this time. Nor did she "go into New South Wales with him," "(get) any money from the company, or "travel with him in the company" before marriage.[58]

Louisa's sequential refutations possibly strove to paint Edward as a liar and affirm her own innocence. With Court Transcriptions presented as a monologic narrative, rather than the dialogic conversation taking place, it is impossible to know what occurred at this point.[59] By contradicting her husband's version of events after first tarring him with the brush of sexual perversion, she may have sought to ensure that her account of marital conflict gained

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[54] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 105.
[55] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 104-5, 120-121.
[56] Schneider, *Engines of Truth*, 48.
[57] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 39; Abigail was also George Webb's solicitor. One of his obituaries in 1931 contended that Abigail had "been connected with practically every famous criminal case in this state for the past 30 years," but he also represented many men (either as petitioners or respondents) in divorce cases. Abigail was on the wrong side of the law several times, as when charged with blackmailing a witness in the Coningham divorce case, and on another occasion with attempting to obtain perjured testimony from witnesses. It is difficult not to conclude that there was something decidedly shady about Edward's lawyer. "Ernie Abigail. Death in Sydney," *Mudgee Guardian and North-Western Representative,* 28 September 1931, 1; "Ernest Robert Abigail, Well-known Solicitor Dead, Monday," *The Riverine Grazier*, 29 September 1931, 3; "Coningham Divorce Case, Abigail Committed for Trial," *The Southern Cross Times,* 1 December 1900, 3.
[58] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 39.
[59] Robertson, "What's Law Got to Do with It?" 169.

precedence over Edward's competing narrative.[60] If we try to "see through the smoke"[61] of her negative responses, it is likely Louisa aimed to whitewash away any evidence of her engagement in premarital intercourse.

It appears likely that Louisa indeed worked for a burlesque company prior to her marriage but did not want the fact known. With petitioning wives desperate to ensure that the experiences they recounted to the court did not transgress feminine normative stereotypes, it is to be expected that at times during proceedings Louisa felt compelled to either bend or deny the truth.[62] As my research has exposed frequent allusions in proceedings to perjury, the NSW Divorce Court was apparently as much "a playground of perjurers" as its English counterpart.[63]

The Second Man in the Family

Scholarship investigating late nineteenth and early twentieth century employment for women has focused predominantly on women as wage-earners rather than as employers. While major works emphasise the poor working conditions and low wages that most women endured,[64] such a perspective reflects reality to a definite extent but is also the result of limited evidence to facilitate a more complex depiction.[65] Prior to Catherine Bishop's investigation of colonial businesswomen (which unfortunately examines a time frame outside of my purview), many scholars believed women were barred from engaging in business. As

[60] This was a common tactic. Sellwood, "'A Series of Piteous Tales,'" 13, 24.
[61] Social scientist Anol Bhattacherjee uses this phrase to describe those "hidden or biased agendas" which confront the researcher, and it conveys Louisa's obfuscatory efforts at this point in proceedings. Bhattacherjee, *Social Science Research*, 105.
[62] As Hilary Golder observes, it is important to view with suspicion the "actual testimony of divorce petitioners," particularly for petitioning wives, who were forced "to distort their experiences to conform to prevailing stereotypes of femininity." Golder, "'A Sensible Investment,'" 11.
[63] Schneider, *Engines of Truth*, 43.
[64] Classic investigations of women's employment include Kingston's *My Wife, My Daughter and Poor Mary Ann*, and Edna Ryan and Ann Conlon's *Gentle Invaders: Australian Women at Work* (Ringwood Victoria: Penguin, 1989).
[65] Anderson, "Good Strong Girls," 227.

Bishop's research shows, a failure to search for women in the business realm has resulted in either ignoring or denying their existence there.[66] Much of the research which describes women's working lives conveys a strong sense of hardship and exploitation, and whilst contributing to our knowledge of widescale changes in the sphere of employment, sheds little light on the individual woman's experience of working life or her motivation in seeking work. With Louisa Moss supporting both her family and her spouse, the details the sources provide of her working life extend our understanding of the autonomous and self-driven woman when such creatures were an anomaly.[67]

At a time when the belief prevailed that a husband rather than wife should govern the family, the Mosses were unusual, but certainly not unique. The sources suggest, however, that dominance was not something Louisa desired or even tolerated.[68] Although Edward claimed he "always worked hard," *L. Moss* was not a shared venture. Louisa claimed on the contrary that he "contributed very little," while she "worked continually to keep him and keep myself."[69] Although she operated the business under her name only, Louisa vowed she *let* Edward take the shop in *his* name because she "never let the world think she had got (him) down in any way." Even so, *she* paid the rent, because "the business was always mine."[70]

Louisa's testimony includes many details about managing a small clothing business within an industry about to alter significantly through technological innovation. Naming various stakeholders with whom she had forged successful business relationships—Anthony Hordern & Sons, Henry Bull & Co., and Sargood Brothers—her account is a veritable

[66] A typical example of this former denial that women existed in business is J. Hagan, "An Incident at the Dawn," *Labour History* 8 (1965): 19-21.
[67] Catherine Bishop confirms that many such women existed in the market economy of late nineteenth century Sydney and were often forced to support a family because their husbands could not. Bishop, *Minding Her Own Business*, 10.
[68] As Coral Chambers Garner suggests, this belief gained acceptance and became firmly positioned from the 1880s on, and while the female breadwinner was not common, statistical approaches to examining the subject have resulted in an underestimation of their numbers. Chambers Garner, "Educated and White-Collar Women in the 1880s," 117.
[69] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 40, 106.
[70] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 40, 15-16.

"Who's Who" of the Sydney retail and wholesale scene, at a time of pronounced boom for department stores.[71] Clothing manufacture occupied a major role in the boom, with ready-made items of clothing gradually replacing hand-sewn garments.[72] As a female-dominated industry, however, remuneration for the small-scale company was not substantial, and while Louisa supported the family adequately, the Mosses failed to achieve any great affluence.[73]

Like many from a working (Edward) or ambiguous (Louisa) class status who harboured aspirations to improve their lot in life, the couple experienced considerable instability in initial efforts to make ends meet. Their marriage certificate states that Edward was a French polisher, but there is no evidence he ever worked as such and indeed Louisa complained that "he did not like his trade (because) it was too hard work."[74] In early marriage, Edward sang professionally in J.C. Williamson's chorus, which operated a comic opera company in Melbourne in the 1890s.[75] The couple then lived in Melbourne "for five or six years," after which Edward travelled to Sydney. According to Louisa, he joined a theatrical company there which his brother "Alexander Simon Moss" managed.[76] Louisa claimed that when Edward's theatrical engagement ended, and he "did not do anything," she resorted to making capes for Sargood's warehouse to earn an income, and then opened a business in her name in the inner-city suburb of Newtown.[77]

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[71] Ellen McArthur, "Towards a Theory of Retail Evolution," (PhD Thesis, University of Technology, 2005), 55, 136.
[72] Ibid., 72, 136.
[73] Beverly Kingston contends that the ratio of female to male workers in the clothing industry was 15:1. Kingston, *My Wife, My Daughter and Poor Mary Anne*, 62.
[74] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 14; From what I know of French polishing, this seems a strange comment to make. The trade does not involve hard physical labour but is instead more a skilled craft which requires considerable dexterity and patience. Terry Waters, French Polishing Ltd., "What is French Polishing, and What Can a French Polisher Do for You?" accessed online at https://www.twfp.co.uk/2013/02/what-is-french-polishing-and-what-can-a-french-polisher-do-for-you/
[75] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 13; National Library of Australia, J.C. Williamson Collection, accessed online at https://www.nla.gov.au/selected-library-collections/williamson-collection
[76] Edward's brother was in fact called Simeon Alexander Moss, which suggests either that Louisa was not overly familiar with her husband's relatives, or that the Court Reporter noted the details incorrectly. Simeon Moss was connected to the Theatre Royal and in 1893 tried to produce the comic opera *Falka* for a Sydney audience. His efforts were unsuccessful, and he accrued significant debt in the process, eventually being declared insolvent. "Failure of 'Falka.' Simeon Moss in Bankruptcy. Interesting Revelations," *Australian Star*, 19 July 1893, 6.
[77] "Strange Divorce Case. Husband Issues a Circular. Public Meeting about His Wife," *Evening News*, 19 April 1912, 7.

Confirming the belief that a worthy husband provided a stable home and income to support those who depended on him, Louisa complained that the "Respondent did not have a home for me; we lived in rooms in Darlinghurst, in several places," when she arrived in Sydney. [78] She also alleged Edward was an insolvent when they married, "but of course she did not know that at the time."[79] Suffering from ill-health when she moved from Melbourne to Sydney (this appears to have been of a gynaecological nature, as I later discuss), the Mosses could not pay their way and were forced frequently to relocate.[80] Louisa claimed that Edward worked "at times, but very little," instead borrowing often from friends and even going so far as to pawn her wedding ring rather than seek employment.[81] After marriage, "she discovered her husband couldn't keep her, and she had to turn to and work."[82] Evidently in possession of superior dressmaking skills, Louisa began "in business in a retail shop (and) making up for Sargood's in Melbourne."[83]

In this and many other ways, Louisa's testimony overturned dominant notions of gender identity and role, beginning with those in which men were the sole economic actors and women passive economic bystanders.[84] Louisa's courtroom deportment juxtaposes her forceful and confident demeanour against Edward's passivity and weakness, reversing what most people assumed to be the typical qualities of masculine and feminine. Her testimony aimed primarily to cast doubts on Edward's manliness by denigrating his willingness or capacity to provide, rather than to describe her working life or proclaim her talents in

[78] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 13.
[79] "Moss' Marital Misery. Wife Petitions for a Divorce. Astounding Allegations Made: Portion of Evidence Heard with Closed Doors," *Truth*, 21 April 1912, 4.
[80] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 12; Louisa did not explain the nature of her illness, but it was probably the "recurrent abscess of the womb" from which she suffered for a considerable period and received treatment. ". Wife Petitions for a Divorce. Astounding Allegations Made: Portion of Evidence Heard with Closed Doors," *Truth*, 21 April 1912, 4.
[81] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 12; Louisa contradicted herself in regard to her wedding ring, later stating that she herself had pawned her wedding "rings" in Melbourne, "a good many years" before coming to Sydney. Edward's barrister failed to notice the discrepancy. SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 52.
[82] "Strange Divorce Case. Husband Issues a Circular. Public Meeting about His Wife," *Evening News*, 19 April 1912, 7.
[83] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 14.
[84] Reiger, *Disenchantment of the Home*, 6.

business (although this she did often) but. In casting such aspersions on Edward, Louisa took advantage of the prevailing idea that a husband who failed as a breadwinner also failed as a man.[85] And most importantly, Louisa's ongoing account of Edward's economic inadequacies buttressed her allegations of his aberrant sexual urges, combining to convey the sense of his disordered and flawed manhood.[86]

In total, Louisa unknowingly revealed the importance of economic gender roles via proprietorial language, a repeated denigration of Edward's business capabilities and ongoing efforts to proclaim her own work ethic whilst at the same time portraying him as a shirker.[87] Louisa explained how she designed everything she made, completing this stage of the manufacturing process at night.[88] Her daily routine was gruelling, and she "worked all week in the city, (while) Saturday afternoon and evening (she) was in the shop attending to the shop trade." By comparison, Edward "mostly went out on Saturday night," sat around smoking while the shop went unattended, and was generally lazy.[89]

Louisa's account of her own diligent approach to work is in pronounced contrast to Edward's presumably torpid attitude towards employment. When setting out in business, she would "make up samples, take them around before the season, and get orders from wholesale and retail people" before completing the garments. Demonstrating considerable initiative, she made up samples "on the floor in (her) room," then rented premises in Sydney's Elizabeth Street. At the time, small factories and even sweatshops provided the less expensive merchandise required to satisfy the department store boom.[90] When business prospered, she took out bank loans (in her husband's name) to purchase sewing machines (an affordable

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[85] Tosh, *A Man's Place*, 14.
[86] Sellwood points out that men who could not control their sexuality were widely seen as dysfunctional. Sellwood, "'A Series of Piteous Tales,'" 187.
[87] It is significant to note, as James Hammerton suggests, that women who were engaged in earning an income were generally "more combative" than those who were dependent. He suggests further that for a wife to earn her own money was "the best defence against a husband," observations that my research amply supports. Hammerton, *Cruelty and Companionship*, 108.
[88] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 22.
[89] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 14, 20.
[90] Kingston, *My Wife, My Daughter and Poor Mary Anne*, 96.

initial outlay) and hired skilled women to follow her instructions for assembling the various garments.[91]

Louisa's testimony reveals her definite talents in operating the business, abilities which are remarkable for a woman claiming to have no prior experience of employment. She explained how "the pressing and cutting was rather too much," and so she "persuaded the Respondent to come in" with her, and "kept that place going" until one month before the birth of her second child.[92] At times, she had no alternative but to leave Edward "to control the business," which she evidently did unwillingly.[93] In later prosperity, she employed a so-called nurse maid, who was in essence the family factotum.

Louisa's references to the heavy work of pressing and cutting demand a brief outline of the tailoring process at this point. With many layers of cloth to be cut simultaneously, cutting was heavy and difficult work. Raelene Frances's account of the Victorian Clothing industry confirms the skill required when cutting out a garment to navigate pattern layouts and the idiosyncrasies of varying fabrics. Pressing was also a manual task and involved lifting hot irons of substantial weight.[94] Louisa worked throughout her pregnancies, and pressing was onerous at the best of times, let alone when heavily pregnant. With no prior experience in tailoring, the French-polishing, opera-singing Edward depended heavily on his wife's superior expertise. By acknowledging the heavy nature of the task, Louisa perpetuated notions of feminine weakness and vulnerability,[95] but also demonstrated that her work ethic was vastly superior to Edward's.

Although legislative changes theoretically allowed women to operate as independent legal entities, Louisa's testimony suggests that business stakeholders sometimes withheld

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[91] Ray Markey, "Women and Labour, 1880-1900," in *Women, Class and History*, 86.
[92] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 14.
[93] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 15.
[94] Raelene Frances, "'No More Amazons:' Gender and Work Process in the Victorian Clothing Trades, 1880-1939," *Labour History* 50 (May 1986): 99.
[95] Frances contends that male cutters themselves resorted to "ideological constructions of femininity" to maintain their monopoly over the industry. Ibid.

their imprimatur unless a man served as signatory in official negotiations. It is difficult to keep pace with Louisa's explanations as to which arrangement regarding rents, insurance policies and the like was in her name, and which in Edward's. It is significant, however, that at times she could not cement a legal agreement without his signature. When the business was situated in Sydney's York Street and had "grown to large proportions...employing some forty or fifty girls," Edward took the lease in his name.[96] On one particular occasion, facing a bill of sale over the business, "they would not give the bill of sale over unless the Respondent signed it," even though the said bill was in joint names.[97]

The example just outlined suggests that legal changes purporting to give women equal rights in property to men had not necessarily succeeded, and many in the business world continued to regarded as superior the authority of a husband compared to that of a wife.[98] While the principle of legal equality was mandated, in reality its conception lacked rigour.[99] Equally telling, while Louisa went in person to open "every account...among commercial men," she confessed that her invoices, monthly statements and receipts "may have come in under the name of Mr. L. Moss." She denied that the business community was under any misapprehension "L. Moss" was a man, because she dealt in person with all "commercial men."[100]

Louisa emphasised her resentment at being in a position of economic dominance, rather than challenging normative strictures as to women's "rightful place," and complained that Edward "never had a banking account the whole time" she lived with him: she gave *him* money, rather than vice versa.[101] If they caught the tram together, Edward paid his own fare

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[96] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 55.
[97] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 54.
[98] Legal scholar Andrew Buck goes so far as to suggest that the nineteenth century actually witnessed the legal status of married women take a step backwards, and to contend otherwise is false. Buck, "'A Blot on the Certificate' 89.
[99] Atherton, "Feminists and Legal Change in New South Wales, 1890-1916," 169-70.
[100] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 70.
[101] Australian feminist historian Alison Mackinnon suggests that increasing numbers of women at this time confidently challenged such constraints, branching out into new fields of employment. Mackinnon, *Love and Freedom*, xii; SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 21.

and Louisa paid hers.[102] In a pronounced reversal of economic gender relations, she "kept him in clothes and paid his tailors' bills," so that "he was never without his sovereign case and sovereigns in his purse. As he required it (she) would give him what he asked for."[103] Louisa thereby tapped into the notion of the good provider, condemning Edward for his failure to fulfil his masculine role and in bemoaning their atypical economic arrangement, emasculating him in the process. If, as Julie-Marie Strange contends, providing for his family was "an act of devotion" on the part of fathers, casting doubt on a man's capacity to put food on the table was to question his worth as a husband and a father.[104]

Unnatural Practices of a Revolting Nature

Louisa's attempts to prove constructive desertion are of value in exposing contemporaneous attitudes towards the heterosexual practices of sodomy and fellatio. Most judges expected a female petitioner to demonstrate such horrendous conduct on her husband's part as to have driven her in terror and distress from the marital home, in fear or her life or sanity or even, as in the current case, for her sexual integrity and reputation.[105] Accordingly, Louisa painted Edward as a sexual deviant, beginning with the allegation that he "made an indecent proposition, he wanted to have connection... in an improper manner, and also to take a certain thing belonging to him in (her) mouth."[106]

Nor was this an isolated incident. Edward had "hinted at these things shortly after marriage," and repeatedly tried "to compel her to have connection with him in an unnatural way (and) to yield to and take part in unnatural practices."[107] Responding under cross-

[102] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 22.
[103] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 41.
[104] Julie-Marie Strange, "Fatherhood, Providing and Attachment in Late Victorian and Edwardian Working-Class Families," *The Historical Journal* 55, no.44 (2012): 1007.
[105] Golder and Kirkby, "Marriage and Divorce Law Before the Family Law Act 1975," 161.
[106] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 43.
[107] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 147.

examination to Louisa's allegations, Edward was surprisingly tight-lipped, stating only that "not a word of that sort of thing passed between us during the whole of our married life."[108] Although most of her evidence regarding these "indecent acts" was given *in camera*, in the open courtroom Louisa also alluded in euphemistic and circuitous ways to her husband's alleged sexual proclivities. As Frank Bongiorno argues, "the clock of the law" allowed deponents to legitimately discuss matters which were otherwise considered unacceptable for public airing.[109] At the same time, to discuss such matters using explicit language would jeopardise a woman's sexual reputation.[110]

Referring to the distress which Edward's behaviour caused her, Louisa complained that "this misconduct... was grossly harrowing to (her) feelings."[111] On one occasion, when he "tried to put it in the back," she "got out of bed and sat up all night and cried."[112] She maintained that Edward constantly "made indecent overtures" and used sexual threats to intimidate her, at one point even holding her head down and trying "to put his person" in her mouth.[113] Even worse, she suggested, was his repeated claim that "all women did it who loved their husbands," and so he swore she "did not love him: he said (she) was too d---- decent, too d---- proper for him." These experiences "affected (her) very much," to the point where "I lost my voice, I could not eat or drink; I cried myself to sleep night after night."[114]

Acknowledging the serious nature of her accusations, Louisa admitted now knowing "this is about the lowest thing that could be alleged against a man," but said she "did not know it at the time."[115] Leaving aside the question of whether Louisa's accusations were founded in truth, they suggest an ongoing concern with the idea of male sexual desire as

[108] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 107.
[109] Bongiorno, *Sex Lives*, 49;
[110] Clark, "Twilight Moments," 151. Although Anna Clark is referring in this context to Victorian England, my research suggests that such restrictions remained firmly in play and influenced the way that individuals gave evidence in early twentieth century NSW.
[111] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 149.
[112] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 45.
[113] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 44.
[114] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 45.
[115] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 45.

threatening.[116] By framing her allegations in terms of Edward's predatory conduct, Louisa established a firm sense of her own victimhood, which stemmed from gendered notions of feminine vulnerability and masculine aggression.[117] By revealing what went on in the marital bedchamber, she confirmed the ongoing pertinence of "the marriage bed as a site of struggle," which Susan Magarey so cogently describes as an integral feature of gender relations in this period.[118] It seems that for Louisa Moss, the struggle was as real as it was metaphorical.

Juxtaposing her wounded purity against Edward's contaminating deviance was yet another way for Louisa to cement her depiction of an innocence embattled by corruption, a format which divorce process virtually demanded.[119] Maintaining the sense of such moral opposites formed an integral part of Louisa's courtroom performance and drew on prevalent tropes of sexual perversion and gendered powerlessness. Her allegations of attempted buggery and forced fellatio reveal a definite limit to the belief that a husband was at all times entitled to the sexual access of his wife's body, and also suggest that conjugal rights did not easily extend outside of heteronormative intercourse and its conventional missionary position.[120] Such a view overturns the widespread assumption that a wife granted "lifelong consent" to her husband's sexual demands, an outlook which harks back to the pronouncement of British jurist Sir Matthew Hale in 1736 as to the legal impossibility of marital rape and a husband's exemption from rape charges.[121] By depicting Edward as a perpetrator, however, and revealing her own distress at his unrequited efforts, Louisa also

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[116] Lisa Featherstone goes so far as to describe perceptions of male sexuality at this time as "bestial." Featherstone, *Let's Talk About Sex,*

[117] Carolyn Strange argues that "the gendered construction of culpability and victimhood" is in fact an integral component of trial process. Strange, "A Case for Legal Records," 146.

[118] Susan Magarey, "Sexual Labour: Australia 1880-1910," in *Debutante Nation*, 91.

[119] Hilary Golder suggests that because it involved an adversarial format, divorce process assigned to the sexes the separate roles of innocent versus guilty. Golder, "'A Sensible Investment,'" 211.

[120] The persistence of laws denying the possibility of marital rape confirm such an entitlement. Joanna Bourke, "Sexual Violence, Marital Guidance and Victorian Bodies: An Aesthesiology," *Victorian Studies* 50, no.3 (2008): 421.

[121] Ibid.; Wendy Larcombe and Mary Heath, "Case Note. Developing the Common Law and Rewriting the History of Rape in Marriage in Australia: *PGA v The Queen,*" *Sydney Law Review* 34 (2012): 785-6.

implied her own sexual languor at the hands of an unfeeling husband, perpetuating the notion of sexuality as "something men did to women."[122]

Using the repeated language of "unnatural practices" to confirm that no "respectable" woman could have tolerated Edward Moss's conduct, Justice Gordon's response equally suggests a wider community which shared Louisa's feelings of revulsion towards so-called sexual perversion.[123] In a time of sexual crisis, which saw highly politicised the issues of gender and sexuality, Louisa's portrayal of outraged modesty contrasted with her husband's aberrant desires and actions.[124] More importantly, in recounting her own distressed response to Edward's singular advances, Louisa's portrayal of vulnerability carried out significant emotional "work" in the courtroom, which as Sellwood suggests, worked "as a potent form of agency."[125]

Louisa's accusations dealt a powerful blow to Edward's reputation, sabotaging his efforts to defend himself and further substantiating her courtroom denunciation of his failure to provide. Since any association with so-called "dirty ideas" tended to leave a grubby stain upon individual character, [126] Edward faced a distinct disadvantage in trying to persuade the court his marriage should remain intact. Disparaging her husband as a poor provider and sexual deviant ensured he would be found considerably lacking. Louisa's legal team sought such an outcome within legal proceedings which, as I have consistently pointed out in the thesis, in essence explored how well petitioner and respondent conformed to gender stereotypes, and relied on gross exaggerations to do so.[127] With societal attitudes commonly

[122] Allen, *Sex & Secrets*, 43.
[123] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 149.
[124] Anna Clark, "Sexual Crises, Women's History and the History of Sexuality in Europe, in *Making Women's Histories*, eds. P.S. Nadell and K. Haulman, (New York: NYU Press, 2013), 91.
[125] Sellwood, "'A Series of Piteous Tales,'" 77.
[126] Featherstone, *Let's Talk About Sex,* 41.
[127] Hammerton*, Cruelty and Companionship*, 46.

regarding sexual excess as a sign of "moral insanity," Louisa's accusations in combination cast significant doubt on her husband's manliness.[128]

The idea of "a weakened male population" at this time greatly troubled the wider populace, particularly with the new nation already in despair over its dwindling white birth rate.[129] By portraying Edward as weak and aberrant, Louisa's testimony reflected widespread fears of sexual dysfunction. In introducing into a public arena such intimate details of her husband's supposed "sex problems," she cleverly tapped into a wider community concern with male sexual pathology and dysfunction, and the general querying of men's domestic comportment.[130] Doctors afforded considerable attention to male sexual disorders, which somehow rendered the "impaired" man pathetic and pitiable.[131] In the current context, Edward's implied weakness contrasted significantly with Louisa's forceful persona. And with individual health linked closely to societal well-being, deviant behaviour posed a threat to the wider community.[132] Since marriage was held to be primarily about reproducing, the spilling of seed through anti-procreational behaviours like sodomy could be identified as wasteful and against the national best interest.[133] Furthermore, anyone engaging in sexual activity outside the imperative of procreation could be pronounced defective.[134] When confronted by Edward's "unnatural" sexual demands, Louisa's professed revulsion may also be understood in view of the prevailing conception of sexual behaviour. Against an intellectual backdrop which witnessed the ascending combination of psychiatry and sexology, Louisa's horror at

[128] Joanna Bourke contends that men who abandoned themselves to sexual emotion were not seen as manly, but instead as morally dubious. Bourke, "Sexual Violence," 429.
[129] David Walker, "Continence for a Nation. Seminal Loss and National Vigour," *Labour History* 48 (1985): 13.
[130] Sellwood, "'A Series of Piteous Tales,'" 78, 187; Hammerton, *Cruelty and Companionship*, 50.
[131] Walker, "Continence for a Nation," 14.
[132] H.G. Cocks and Matt Houlbrook (eds)., *Palgrave Advances in the Modern History of Sexuality,* (Hampshire and NY: Palgrave MacMillan, 2006), 45.
[133] Timothy Verhoeven, "Pathologizing Male Desire: Satyriasis, Masculinity, and Modern Civilization at the Fin De Siecle," *Journal of the History of Sexuality* 24, no.1 (2015): 27; Featherstone, "Rethinking Female Pleasure," 720.
[134] Cocks and Houlbrook, *History of Sexuality*, 45.

the thought of having "connection in an unnatural way" was possibly her only possible response, not to mention to her legal advantage.[135]

Continuing with the theme of sexual dysfunction, Edward's older brother Simeon was connected somewhat curiously to the case. According to Louisa, after she and Edward had been married for five or six years, her husband departed Melbourne for Sydney and travelled "with Williamson's Opera Company as a chorus singer... to join a company his brother... had started after the fire at the Theatre Royal." (Press reports confirm that Simeon Moss tried to produce the comic opera *Falka* but "losses in theatrical speculations" bankrupted him).[136] More significantly, Simeon Moss featured often in the press in relation to various misdemeanours, and other crimes less minor. The nature of his criminality suggests a coincidental connection with Louisa's allegations of Edward's "unnatural practices."[137]

On multiple occasions, Edward's brother faced charges of indecent assault, and at least one buggery charge, for which in 1899 he served time in Goulburn Gaol.[138] In a police report pertaining to the sodomy trial, Senior Constable Charles Noble noted that in Bowral, where the defendant lived, he was "known by the soubriquet of Cocky Moss and Moss the "poofter." It was further "a matter of notoriety that he has been concerned in sodomitical

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[135] New Zealand symbolic interactionist Chris Brickell phrases this perfectly in suggesting that "the lens we bring to a situation shapes what we 'see' about sexuality." While Brickell is describing the historian's reaction to archival evidence, his conception of the limiting function of our point of view is more than apt in considering Louisa's reaction. Chris Brickell, "A Symbolic Interactionist History of Sexuality?" *Rethinking History* 10, no.3 (2006): 415.

[136] Sydney's Theatre Royal was dogged by fire on a number of occasions in the late nineteenth century. In this instance, Simeon's wife Victoria Lazar Moss was the actual lessee of the theatre, but Simeon had sub-leased it. "Failure of 'Falka,' Simson Moss in Bankruptcy. Interesting Revelations," *Australian Star*, 29 July 1893, 6.

[137] In addition to being charged with indecent assault on numerous occasions, Simeon Moss was tried and convicted of stealing a bicycle, for which he was sentenced to twelve months of hard labour, and "articles of military clothing, the property of the New South Wales Government." In light of his wife Victoria's material wealth (her father was a prominent theatrical agent and manager and part of the colony's "theatrical royalty"), it is difficult to perceive Moss's illegal activities as criminal and tempting instead to see them as part of his eccentric behaviour. The sentence seems decidedly extreme of twelve months' hard labour for stealing a bicycle. "Simeon Alexander Moss. A Bowral 'Blood.' After Many Brushes with the Law, Moss 'Goes up' at Last. Scorches to 'Quod' on a Stolen 'Jigger.' Sentenced to 12 Months 'Hard.' Severe Comments by Judge Fitzhardinge, Who Characterises Moss' Conduct In Most Scathing Terms," *Bowral Free Press and Berrima District Intelligencer,* 26 September 1900, 6; "Bowral Police Court," *Bowral Free Press and Berrima District Intelligencer,* 5 September 1900, 2.

[138] "Unfit for Publication. NSW Supreme Court, Quarter Sessions and Police Court, Bestiality, Buggery, Sodomy and Other Offences Trials, 1727-1930: 1899, Simeon Alexander Moss, accessed online at http://www.unfitforpublication.org.au/trials/1800s/665-1899-simeon-alexander-moss

practices for a number of years past." Several police reports within the collection of documents relating to Simeon Moss contained witness accounts from young men, each alleging that Moss had either fondled his penis or offered to perform fellatio.[139] The press also recounted charges against Moss of indecent assault and buggery, including one notable occasion on which he was pronounced innocent in a jury trial, only to be re-arrested on a similar charge upon leaving the court.[140] I am forced to ask if Louisa was somehow inspired to formulate her accusations of Edward's perversions after first learning of his brother's criminal charges, or else if Edward and Simeon shared a desire for sodomy and fellatio. Although such retrospective conjecture is doomed, the coinciding existence of "unnatural desires" within Edward's immediate family is significant and deserves mention.

Explaining why he felt compelled to reject Louisa's allegations of "unnatural practices," Justice Gordon pointed out that she had given "no hint of the grave charges" to her doctor, nor had she shared with anyone else "this unnatural conduct on the part of her husband." Most damning of all, at no stage had Louisa left either her husband's bedroom or his bed, and when the relationship soured, it was Edward who carried a single bed into the marital bedroom so that he did not have to sleep with his wife. On these facts alone, the judge declared it would be unsafe for him "to say that the Petitioner has proved the case sufficiently clearly" to substantiate her charges as to "the misconduct of unnatural practices."[141] Such judicial rejection was not uncommon, and most judges demanded proof that was extensive and often difficult to obtain before they were prepared to accept a sodomy charge.[142]

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[139] "Unfit for Publication. NSW Supreme Court, Quarter Sessions and Police Court, Bestiality, Buggery, Sodomy and Other Offences Trials, 1727-1930: 1899, Simeon Alexander Moss."
[140] "Alleged Indecent Assault," *Bowral Free Press and Berrima District Intelligencer*, 16 September 1899, 2; "Goulburn Circuit Court," *Crookwell Gazette*, 17 October 1899, 3.
[141] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 151.
[142] Morris B. Kaplan, "Did 'My Lord Gomorrah' Smile?: Homosexuality, Class and Prostitution in the Cleveland Street Affair," in *Disorder in the Court: Trials and Sexual Conflict at the Turn of the Century*, eds. George Robb and Nancy Erber (New York: New York University Press, 1999), 83-4.

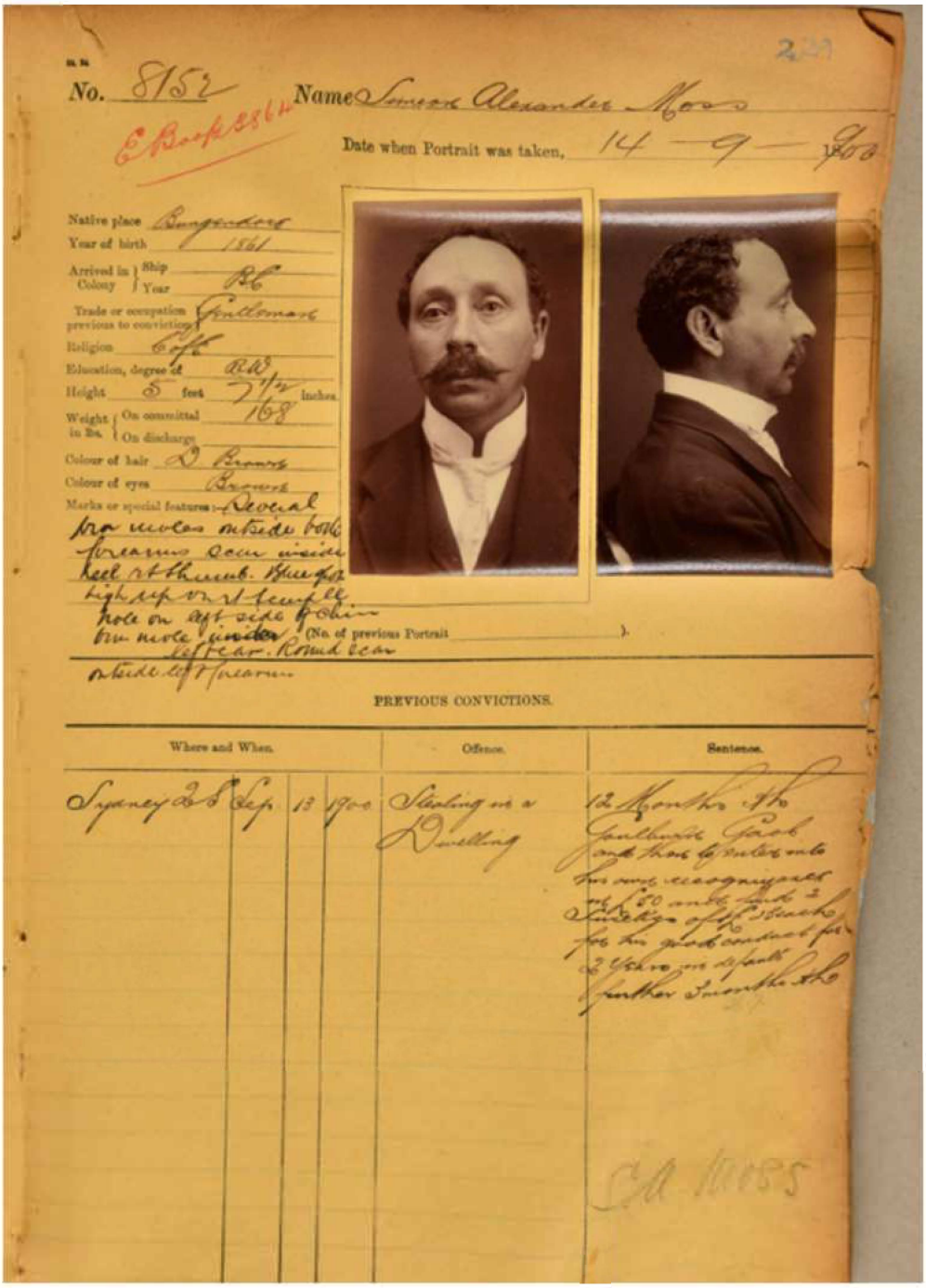

Image 7.5 Simeon Moss's gaol photograph.

State Records NSW, Darlinghurst Gaol Photographic Books, NRS 2138 [3/6065] *Simeon Alexander Moss*.

Scholars of sexuality have investigated community attitudes towards anal intercourse and the laws which govern the practice, but in the historical context, little of their research pertains to heterosexual anal sex. Instead, such analyses view sodomy as an exclusively

same-sex practice, and synonymous with homosexuality. In Australia, researchers have studied anal intercourse predominantly within the context of male homo-sociality and under the general umbrella of sodomy, with extensive focus on the effects of the convict and frontier environs in engendering male same-sex attachments. Bongiorno's investigation of the sex lives of white Australians, for example, analyses sodomy only in relation to homosexual practice and identity, suggesting that the "practice of sleeping in close proximity to one another could lead to trouble."[143] He is not alone in approaching sodomy exclusively as a same-sex practice.[144]

The academic challenge of investigating practices which are almost entirely hidden, other than when exposed in a court of law or doctor's surgery, helps to explain scholarly neglect of heterosexual sodomy. While scholars can articulate how sexuality once manifested in its visible adumbrations, the same cannot be said about intimate sexual conduct in and out of marriage.[145] The notion of aberrant sexual practices which the Moss case reveals is an important step in identifying individual attitudes to such behaviours, particularly when activities like sodomy and fellatio did not belong in the heterosexual repertoire. And in Louisa's revelations of her husband's "misconduct" within the public forum of the Divorce Court, where intimate transgressions were exposed and judged, the historian may gauge how the wider community viewed such practices.[146]

When divorce legislation first appeared in 1873, sodomy was one of the deviant acts which petitioning wives could cite to supplement evidence of a husband's adultery.[147] Its co-location alongside such unsavoury misdemeanours as bestiality and incest indicates the seriousness with which sodomy was then regarded. Confirming how rare a sodomy

[143] Bongiorno, *Sex Lives*, 8.
[144] Lisa Featherstone's sexual treatise takes a similar approach. Featherstone, *Let's Talk About Sex.*
[145] Mendus and Rendall, *Sexuality and Subordination*, 56.
[146] Sellwood, "'A Series of Piteous Tales,'" 30.
[147] Golder, *Divorce*, 8.

accusation was in a heterosexual context, Claire Sellwood's research uncovers only one case between 1900 and 1930 which involved a female petitioner suing for divorce on these grounds.[148] Hilary Golder's investigation of divorce between 1873 and 1901 discusses the offence only in relation to the law and does not examine specific instances when a woman used sodomy as a so-called aggravating offence to proceed with her petition.[149]

To a marked extent, research is limited concerning heterosexual anal intercourse because the bulk of the population rejected such sexual practices, an outlook which also characterised attitudes to oral sex.[150] British historians of sexuality Harry Cocks and Matt Houlbrook contend that these particular sexual acts were largely excluded from "the opposite-sex sexual repertoire" until at least the middle of the twentieth century.[151] The Moss case suggests that attitudes towards oral and anal sex were extremely negative, and most people regarded both practices as deviant. In NSW, furthermore, sodomy was a capital offence until 1883, although before this time it was one of a category of "unnatural offences" that included "buggery of a woman."[152] *Moss v. Moss* suggests that attitudes towards sodomy had not softened between the introduction of divorce law and the early twentieth century.

A Jaundiced Jealous Jew and the Fancy Woman of York Street

Much like those divorcing couples in nineteenth century Germany of whom Scottish historian Lynn Abrams writes, the Moss case reveals "the dysfunctional marriage turned-upside-down."[153] Ongoing spousal conflict in the Moss marriage revolved around the very

[148] Sellwood, "'A Series of Piteous Tales,'" 65.
[149] Golder, '" A Sensible Investment,'" and *Divorce.*
[150] Hera Cook, *The Long Sexual Revolution: English Women, Sex and Contraception, 1800-1975* (USA: Oxford University Press, 2004), 128.
[151] Cocks and Houlbrook, *History of Sexuality*, 24.
[152] Bongiorno, *Sex Lives*, 35.
[153] Lynn Abrams, "Whores, Whore-Chasers and Swine: The Regulation of Sexuality and the Restoration of Order in the Nineteenth-Century German Divorce Court," *Journal of Family History* 21, no.3 (1996):

issue of gender role reversal, the couple clashing over sexual conduct and normative gendered power. For Edward, such contestations involved the use of foul and insulting sexualised language, while for Louisa they took the form of emasculating put-downs and derision.[154]

The Moss case reveals the fraught nature of sexual power and negotiation, suggesting that the marriage itself was characterised by ongoing debate in relation to power and control.[155] Although he did not beat his wife, Edward Moss shared with domestic abusers the common psychological features of low self-esteem and a palpable sense of embattled masculinity, deficits he sought in various ways to redress.[156] Disempowered, emasculated and belittled, he transposed his overwhelming sense of masculine failure onto wild and unfounded allegations of Louisa's infidelity.

If Edward's preoccupation with "unnatural practices" contributed significantly to his wife's unhappiness, his continual taunts as to her putative whoredom were of equal import in bringing about Louisa's general marital dissatisfaction. Her allegations of Edward's obsessive jealousy thereby formed the second issue by which Louisa endeavoured to prove constructive desertion. She explained that Edward had repeatedly deployed sexual insults to taunt her, exhibiting a pathological jealousy towards her interaction with other men. He claimed that she would "go with any man" who caught her eye: these alleged Lotharios ranged from her daughter's twenty-one year old piano teacher to "an elderly gentleman" trying to engage her attention on the tram.[157] To anyone who would listen, Edward lamented that he could no longer satisfy his wife sexually, "he was getting too old" to do so, she was "a

[154] Lynn Abrams contends that those couples who appeared in the German Divorce Court were consistently contesting issues that related to "the sexual balance of power and proper gender role division," an issue which is remarkably relevant to the NSW Divorce Court more than fifty years on from her time frame. Abrams, "Whores," 267.
[155] As Judith Allen contends, elements of sexual power and negotiation form the underlying thematic basis of those "crimes" in which women have been involved throughout the ages. Allen, *Sex & Secrets,* 12.
[156] Saunders, "Domestic Violence in Colonial Queensland," 73.
[157] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 17.

very amorous woman," and he was "not as good" as he had once been. He claimed that "no one man" could satisfy her, and she was constantly "after other men."[158]

It is tempting to ask if Edward Moss displayed onto accusations of Louisa's voracious sexual appetite his own sense of failure as a breadwinner, and consequent feelings of sexual inadequacy. As American historian Carol Groneman argues, perceptions of women who have a heightened interest in sex somehow convey a sense of the "aggressively sexual female who both terrifies and titillates men."[159] There is no evidence to support Edward's allegations of Louisa's sexual voracity and indeed her work schedule left little room for such diversions, but clearly Edward perceived as threatening—whether consciously or unconsciously—his wife's successful engagement with the male world of business and negotiation. Lacking the capacity to articulate his resentment in a productive manner, he resorted to the time-worn masculine propensity to use sexualised insult as a form of abuse.

One particular incident confirms a close link between Edward's sense of masculine failure and his unfounded accusations of Louisa's infidelity. With the reversal of gender roles threatening his marital authority, sexualised verbal abuse was a frustrated and futile attempt to control his wife, and so he tended to hurl "the same expressions (of insult and abuse)... every time (she) brought an order home of any consequence... mostly at the beginning of the season."[160] Edward's evidently seasonal jealousy demonstrates an obvious link between his feelings and business success or failure. Harking back to the inception of Edward's jealous conduct from "the start of 1902," Louisa explained how when she "sent the Respondent round with the samples" she mocked up to show prospective clients, "he did not get any trade."

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[158] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 93-4, 45.
[159] Carol Groneman, "Nymphomania: The Historical Construction of Female Sexuality," *Signs: Journal of Women in Culture and Society* 19, no.2 (1994): 337.
[160] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 16.

Displaying the same merchandise to would-be purchasers, Louisa promptly secured an order worth some three hundred pounds. When she later relayed her success to Edward, he claimed that "it was because (she) was a d---- fine woman, (and) could sell (her)self to any man for an order."[161] Analysing verbal sexual abuse between German couples who divorced between 1814 and 1871, Lynn Abrams suggests that many men used verbal insults in response to wives who challenged their authority and the gendered status quo. In using sexualised insults like "whore" and "slut," these men were trying to reassert their own authority when their wives behaved in a way which threatened male power.[162] The parallel is immediately obvious in Edward's sexualised abuse.

Researchers have paid significant attention to jealousy, particularly in relation to its role in engendering sexual violence of a kind that ranges from intimidation and verbal abuse, to rape, assault and murder.[163] The obvious link between jealousy and violence in both the Horwitz and Dorn cases demonstrates the controlling behaviour to which men could resort in response to their feelings of sexual jealousy, in some twisted link to a blighted sense of honour. Such controlling behaviour is typically associated with feelings of jealousy.[164] Jealousy is often perceived as a gendered emotion, and something which men rather than women experience.[165] The connection was obvious between Edward's resentment of Louisa's financial success and his outward expression of sexual jealousy. As Justice Gordon remarked in summing up, Edward Moss had,

[161] "Moss' Marital Misery. Wife Petitions for a Divorce. Astounding Allegations Made. Portion of Evidence Heard with Closed Doors," *Truth*, 21 April 1912, 4.
[162] Abrams, "Whores," 268.
[163] Three excellent examples of research which investigates jealousy and violence are Mark Seymour's investigation of murder in Italy. Mark Seymour, "Epistolary Emotions: Exploring Amorous Hinterlands in 1870s Southern Italy," *Social History* 35, no.2 (2010): 148-164 and "Emotional Arenas: From Provincial Circus to National Courtroom in Late Nineteenth Century Italy," *Rethinking History* 16, no.2 (2012): 177-197; Niamh Cullen, *Love, Honour and Jealousy: An Intimate History of the Italian Economic Miracle* (Oxford Scholarship Online, June 2019).
[164] Cullen, *Love, Honour and Jealousy*, 129.
[165] Ibid.

> whenever irritated, whenever there were matters of dispute arising between him and his wife, accused her without rhyme or reason, without foundation in point of fact, of infidelity and of gross impropriety of conduct with regard to other men.[166]

Edward's expressions of jealousy sprang from his threatened sense of masculine honour and exposed his anxiety about the loss of gendered control he was suffering.[167] In labelling his wife a "fancy woman" and telling anyone who would listen of her insatiable desires, Edward demonstrated his investment in those contrasting stereotypes of "damned whores" and "God's Police," which Australian feminist Anne Summers so famously formulated in 1975. As Summers argued, such stereotypes are inevitable in a society in which the gender hierarchy determines how individuals will be categorised.[168] In Edward's sexualised insults, it is all too easy to recognise the contemporary phenomenon of "slut-shaming," whereby "the word "slut" is tossed around any time a woman does something another person does not like."[169] Edward Moss may not have used the word "slut," but his implications were the same.

Determined to See him in the Gutter and Dancing to an Organ in Front of the House

The economic disparity between Louisa and Edward increased further after their immediate separation in July 1906, with Louisa expanding what was now a sole business until it turned over "£4000 a year," while Edward battled insolvency and chronic unemployment. His impoverished state, however, stemmed chiefly from Louisa's concerted efforts to ensure his ongoing dispossession, and it is difficult not to accept Edward's contention that Louisa was determined "to see him in the gutter and dancing to an organ in

[166] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 155.
[167] Cullen suggests that men's jealousy is often an expression of slighted or besieged masculine honour. Cullen, *Love, Honour and Jealousy*, 15.
[168] Summers, *Damned Whores,* 68.
[169] Emily Poole, "Hey Girls, Did You Know? Slut-Shaming on the Internet Needs to Stop," *University of San Francisco Law Review* 48, no.1 (2013): 232.

front of the house."[170] Struggling to make a living, Edward then obtained a position in a music store, but was soon dismissed when some of Louisa's business associates informed his employer Mr. Crabtree that "the Respondent had a bad name (and) his name stank in York Street." Even worse, they refused to deal with Crabtree if he employed Edward.[171] Although Louisa denied any involvement with such underhanded manoeuvres, she admitted speaking to one party after seeing the Respondent "interviewing (her) girls night after night and persuading them to leave (her)."[172]

Confirming his tendency for obsession, Edward arranged for the printing of several hundred circulars which hinted at his claim that Louisa had formed "a conspiracy with four or five Fancy men." This was a charge Edward had previously levelled in a letter to Louisa in 1907, when he used their daughter Nedda (then aged thirteen) as an epistolary accomplice to aid in the assassination of her mother's character and reputation. In the official-looking circular, Edward alleged that not one but five prominent businessmen had "robbed" him of his home and business. He then sent out "hundreds" of the malignant document to "all of the leading men of Sydney, and everybody with whom the Petitioner did business...to members of Parliament (and)... one to the premier of the State."[173] He called a public meeting at the Pitt Street Protestant Hall, but too few members of the ordinary citizenry appeared for him "to publish" his charges.[174] One last copy of his disturbing publication remains in the case file, a testament to Edward's confessed determination to wound his wife for taking the business away from him when she left the marriage, and to show everyone that it was *he* who had "made the business," and not her.[175]

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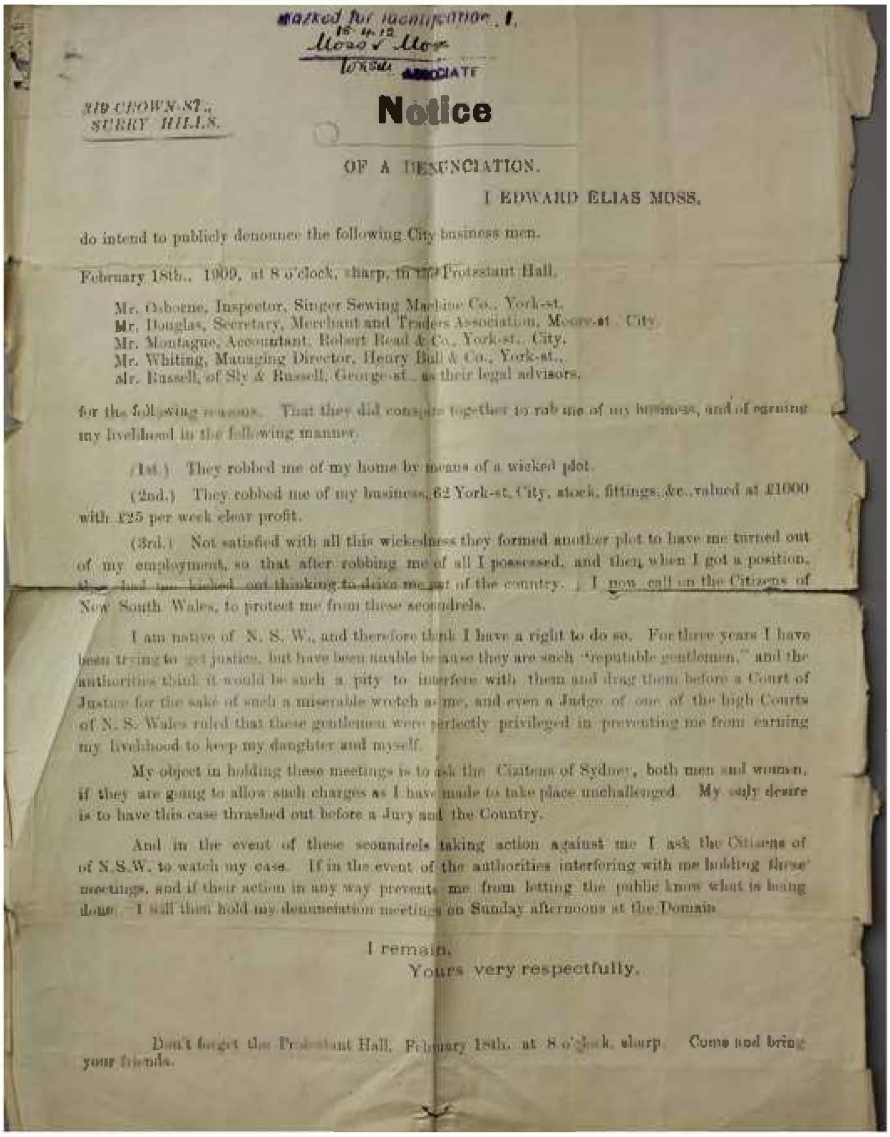
[170] "Moss Divorce Suit. The Night Watchman's Story. Locking a Wife in. Misconduct Charge Abandoned," *The Sun*, 19 April 1912, 7.
[171] SRNSW: NRS 2713 [6/2734] *Moss v. Moss,* 125.
[172] SRNSW: NRS 2713 [6/2734] *Moss v. Moss,* 71.
[173] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 152, 160, 119.
[174] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 118.
[175] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 117, 119, 124.

In contemporary terms, we may suggest that “the gloves were off” after the marital opponents went their separate ways, and husband and wife abandoned all sense of decorum in negotiating their hostilities.[176] Perhaps Edward felt he had nothing to lose by airing his resentment and attacking Louisa’s character. But clearly, he had long harboured a sense of bitterness over his wife’s business success and was determined not to remain silent over the issue. While Edward nurtured his grievances, Louisa continued to prosper, which doubtless increased his anger further.



Marked for identification. 1.
15.4.12
Moss v Moss
ASSOCIATE

319 CROWN ST.,
SURRY HILLS.

Notice

OF A DENUNCIATION.

I EDWARD ELIAS MOSS,

do intend to publicly denounce the following City business men.

February 18th., 1909, at 8 o'clock, sharp, in the Protestant Hall.

Mr. Osborne, Inspector, Singer Sewing Machine Co., York-st.
Mr. Douglas, Secretary, Merchant and Traders Association, Moore-st., City.
Mr. Montague, Accountant, Robert Read & Co., York-st., City.
Mr. Whiting, Managing Director, Henry Bull & Co., York-st.,
Mr. Russell, of Sly & Russell, George-st., as their legal advisors.

for the following reasons. That they did conspire together to rob me of my business, and of earning my livelihood in the following manner.

(1st.) They robbed me of my home by means of a wicked plot.

(2nd.) They robbed me of my business, 62 York-st. City, stock, fittings, &c., valued at £1000 with £25 per week clear profit.

(3rd.) Not satisfied with all this wickedness they formed another plot to have me turned out of my employment, so that after robbing me of all I possessed, and then, when I got a position, they had me kicked out thinking to drive me out of the country. I now call on the Citizens of New South Wales, to protect me from these scoundrels.

I am native of N. S. W., and therefore think I have a right to do so. For three years I have been trying to get justice, but have been unable because they are such “reputable gentlemen,” and the authorities think it would be such a pity to interfere with them and drag them before a Court of Justice for the sake of such a miserable wretch as me, and even a Judge of one of the high Courts of N. S. Wales ruled that these gentlemen were perfectly privileged in preventing me from earning my livelihood to keep my daughter and myself.

My object in holding these meetings is to ask the Citizens of Sydney, both men and women, if they are going to allow such charges as I have made to take place unchallenged. My only desire is to have this case thrashed out before a Jury and the Country.

And in the event of these scoundrels taking action against me I ask the Citizens of of N.S.W. to watch my case. If in the event of the authorities interfering with me holding these meetings, and if their action in any way prevents me from letting the public know what is being done. I will then hold my denunciation meetings on Sunday afternoons at the Domain.

I remain,
Yours very respectfully.

Don't forget the Protestant Hall, February 18th. at 8 o'clock, sharp. Come and bring your friends.

Image 7.6 Edward’s “circular.”

SRNSW: NRS 13495 [7862/1911], *Moss v. Moss.*

[176] *Collins Dictionary*, online at https://www.collinsdictionary.com/dictionary/english/the-gloves-are-off

Gynaecology—Again

On the second day of the hearing, Louisa's doctor Gustave Hall Bohrsmann testified on her behalf and provided compelling evidence that Edward Moss's obsessive jealousy had rendered his patient "a nervous and physical wreck, constantly coming up for treatment and taking more medicine than food."[177] These symptoms, Dr. Bohrsmann explained to the court, indicated that Louisa had suffered "a complete bodily and nervous breakdown" before leaving her husband, and endured a considerable period of ill-health before returning to "the healthy woman she is now," when "her nervous trouble (was) a thing of the past."[178]

With medical practitioners increasingly regarded as experts in relation to women's emotional and mental as well as physical health, Bohrsmann was an authoritative witness, and ideally positioned to represent Louisa's account of her protracted suffering.[179] By attributing the deterioration of her health directly to psychological rather than physical causes, the medical man sought to connect the drastic effects of Edward's conduct to Louisa's "forced" departure from the home, adopting—evidently with his patient's consent—the common and gendered medical power technique of searching for the physical within the psychological.[180]

Bohrmann's description of how Louisa's emotional suffering manifested in bodily symptoms is similar to Alecia Simmonds's account of those "bodily articulations of suffering" which the court required breach of promise plaintiffs to prove. In attempting to identify those types of evidence which "make private suffering intelligible to a public court,"

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[177] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 1; Gustave Bohrsmann practised in Newtown and was known for being "in particular demand among theatrical and vaudeville artists," further suggesting a link between the Mosses and the world of the theatre. "Obituary. Death of Dr. Gus Bohrsmann," *Daily Examiner*, 2 December 1929, 4.
[178] SRNSW: NRS 2713 [6/2734] *Moss v. Moss,* 7-8.
[179] See for example, Lisa Featherstone, "Breeding and Feeding: A Social History of Mothers and Medicine in Australia, 1880-1925," (PhD Thesis, Macquarie University, 2003); Ornella Moscucci, *The Science of Woman: Gynaecology and Gender in England, 1800-1929* (Cambridge: Cambridge University Press, 1990).
[180] Lorentzen, "I Know My Own Body," 68.

Simmonds raises an important point in describing how women strove to convince a court that a man's misconduct caused them significant emotional hardship.[181] In the current context, Louisa's doctor aimed to bestow a necessary legitimacy to the claim that Edward's behaviour directly engendered her physical suffering.

After the doctor described Louisa's symptoms, her barrister Andrew Watt asked him if he had "examined her physically and privately?" before adding quickly, "You know what I mean?" The nature of his questioning was more suggestive of a man selling obscene postcards than a successful Sydney barrister-at-law.[182] In the minds of those present in the courtroom, Watt's question left no doubt he referred to a gynaecological examination, an impression he then reinforced by asking the doctor if this examination had allowed him "to form an opinion... as to whether she was a woman of great excitement or not?"[183]

At this point, the distinctly contrived nature of courtroom testimony must be reiterated.[184] Witnesses provided only the answers that solicitors planned to extract from them, and just as in the case of Hannah Webb, the good doctor did not inform Louisa's barrister of anything they would not have discussed well beforehand. Nonetheless, Bohrsmann's response to this extraordinary question sheds important light on early twentieth-century medical conceptions of female sexuality. In turn, his remarks reveal the process by which women's bodies were controlled and subjugated.

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[181] Simmonds, "She Felt Strongly the Injury to her Affections," 179-181.
[182] American historian Lisa Sigel analyses the craze in pornographic postcards which occurred between the 1890s and 1919 and saw a flourishing trade in so-called "under the counter" postcards of a highly sexualised nature. Lisa Sigel, "Filth in the Wrong People's Hands: Postcards and the Expansion of Pornography in Britain and the Atlantic World, 1880-1914," *Journal of Social History* 33, no.4 (2000): 859-885; Andrew R.J. Watt spent time as a District Court Judge and became active in matters of industrial relations law. "Another Acting Judge," *Sydney Morning Herald*, 4 November 1916, 13.
[183] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 6; The exchange is repeated in "Moss' Marital Misery. Wife Petitions for a Divorce. Astounding Allegations Made. Portion of Evidence Heard with Closed Doors," *Truth*, 21 April 1912, 4. While the questions a barrister asked are not included in the Court Transcriptions, in this instance they were included in the press reports.
[184] Victoria Bates, "'Under Cross-Examination She Fainted:' Sexual Crime and Swooning in the Victorian Courtroom," *Journal of Victorian Culture* 21, no.4 (2016): 465.

Consider the following exchange between the doctor and Louisa's lawyer:

> I... examined her physically... examined her privately. I think a medical man can generally form an opinion with regard to the responsiveness or otherwise of a woman to sexual excitement, particularly if he makes an examination. I made such an examination of petitioner, I came to the conclusion she was a cold and responsive woman from a sexual point of view.[185]

And further:

> Watt: You say that she is a cold and irresponsive woman? Of course, that is only your opinion?
> Bohrsmann: Certainly.
> Watt: A woman could easily deceive one in that?
> Bohrsmann: yes.
> Watt: Even there may be the other extreme, and if she so desired, she could deceive a medical man?
> Bohrsmann: Well, it would be rather a hard matter. A medical man could form a pretty good opinion as to the sexual appetite of a patient.
> Watt: You say that it is difficult for a woman to deceive a medical man as to her sexual capacity?
> Bohrsmann: Yes.
> Watt: Can you direct us to any works upon the matter—any authorities?
> Bohrsmann: I can't remember the names of the work I read, but there is a German doctor who has been never found to fail in his conclusions, and who is regarded as being exceptionally clever. He says so.

Was Bohrsmann really suggesting that a "sexually responsive" and "warm" woman would respond to his "private" examination in a way that indicated her sexual arousal? Leaving aside his arrogance in making such assertions, the doctor's comments had a performative aim in that they worked to disprove Edward Moss's claims about his wife's "amorous" nature. By asserting his superior knowledge ("it would be a hard thing for a woman to deceive a medical

[185] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 6.

man"), the doctor revealed in a public forum his intimate association with Louisa Moss's body, and as medical expert, laid claim to it.

Much as Dr. Robert Alcorn had done for Hannah Webb, Gustave Bohrsmann splayed open his patient before those in the courtroom. In their minds, he placed her on her back with her legs apart. There she lay pinned beneath his control, probed by the "educated finger" during a "private" examination, and thereafter as equally probed and dissected by his authoritative assessment of her sexual appetite.[186] Throughout the process, Louisa served willingly as an object for Bohrsmann's demonstration of his superior medical knowledge and masculine dominance.[187] His patronising assessment of her sexuality thus encapsulates the asymmetrical and hierarchical power relations in which male doctors and female patients are enmeshed, replicating those legal power relations in which Louisa was already suspended.[188]

The practice of manipulating the bodies of women for the scientific gratification of those who observed them—in a way that disembodied and de-humanised women—was well-established by 1911 when the Newtown doctor took the stand. Historical investigations of nineteenth century gynaecological practices highlight women's long subjection to invasive procedures carried out before male onlookers.[189] Descriptions of French neurologist Jean-Martin Charcot's "feminine inferno" of the Salpêtrière Hospital for women confirm female patients brought into a crowded lecture theatre, stripped naked and manipulated like

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[186] American nursing academic Margaret Sandelowski describes at length the protracted debate between doctors over the use of the speculum: the term "the educated finger" refers to digital examination and the information a practitioner could infer by means of using only a finger rather than the speculum. Margaret Sandelowski, "'This Most Dangerous Instrument:' Propriety, Power and the Vaginal Speculum," *Journal of Obstetric, Gynaecologic and Neonatal Nursing* 29, no.1 (2000): 77.

[187] Dawn Currie and Valerie Raoul argue that women are often made "objects for the sexual and social display of men." Dawn H. Currie and Valerie Raoul (eds.) *The Anatomy of Gender: Women's Struggle for the Body* (Ottawa Canada: Carleton University Press, 1992), 69.

[188] That such asymmetry lies at the core of feminist understandings of power is well known when it comes to feminist revisions of Foucault's concept of power relations. See for example Margaret McLaren, *Feminism, Foucault and Embodied Subjectivity* (New York: State University of New York Press, 2002); Michelle M. Lazar, "Politicizing Gender in Discourse: Feminist Critical Discourse Analysis as Political Perspective and Praxis," in *Feminist Critical Discourse Analysis: Gender, Power and Ideology in Discourse*, ed. Michelle M. Lazar (Hampshire: Palgrave Macmillan, 2005); McNay, *Foucault and Feminism.*

[189] Sandelowski describes "crowds of medical students" watching women undergo speculum examinations in the nineteenth century. Sandelowski, "This Most Dangerous Instrument," 76.

performing dummies.[190] The so-called "father of gynaecology," J. Marion Sims, similarly conducted many operations on disadvantaged women while his male colleagues looked on.[191]

As a medical man, Bohrsmann had license to discuss in a public arena his patient's sexuality, tacitly exempted from strictures ordinarily governing the subject.[192] Such license is all the more questionable since the doctor admitted he had failed to cure Louisa's chronic gynaecological complaints (which was, unfortunately, quite understandable, in light of the primitive state of gynaecological treatment at the time).[193] Given that the doctor appeared on Louisa's rather than Edward's behalf, and her barrister rather than his raised the issue of Louisa's "sexual responsiveness," the only possible explanation for Bohrsmann's intrusive pontification is that he intended thereby to discount Edward's allegations of Louisa's promiscuous nature. Potential frigidity or coldness would mean that Louisa could not have been a "sexually responsive woman," and thereby nullified Edward's contentions of her "amorous nature." As such, Louisa was undeniably complicit in what can only be described as a voyeuristic courtroom examination of her sexual being.

American cultural historian Mary Poovey observes that medical men in the mid-nineteenth century widely perceived the virtuous woman as a creature of limited sexual responsiveness.[194] It is difficult to avoid recognising such a causal link in the current context. By defining Louisa as "cold and irresponsive," Bohrsmann not only negated Edward's claims of her alleged infidelities, he confirmed her virtue. If, as Bongiorno argues, sex "was at the

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[190] The process is described in detail in Georges Didi-Humberman, *Invention of Hysteria: Charcot and the Photographic Iconography of the Salpêtrière (Cambridge, Massachusetts, London, England: The MIT Press, 1982), trans. Alisa Hartz, 2003, xi.*

[191] Mary Daley, *Gyn/Ecology* (Boston: Beacon Press, 1978), 225.

[192] Australian social historian Janet McCalman suggests that doctors had free rein to contemplate sexuality in an open manner, which was a benefit denied to non-medical people. Janet McCalman, *Sex and Suffering: Women's Health and a Women's Hospital* (Maryland: John Hopkins University Press, 1998), 35.

[193] Carroll Smith-Rosenberg describes the medical understanding of gynaecology at this time as very limited, suggesting that male obstetricians, for example, "offered few specialized skills with which to justify their invasion of the female body or female birth mysteries." Gustave Bohrsmann evidently felt no need to justify his "invasion." Smith-Rosenberg, *Disorderly Conduct*, 231.

[194] Mary Poovey, *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (London: Virago Press, 1989), 15.

core of character,"[195] Louisa's legal team had obvious reasons for wanting to portray their client as a woman for whom restraint and propriety were paramount, a woman whose "nature" included little sexual warmth or ardour.

At one stage, Edward's lawyer Ernest Abigail asked Bohrsmann if "frequent mishaps at childbirth" would have affected Louisa, and if she had ever had an abortion, to which she responded firmly that she "never had an abortion."[196] Was the question about an abortion delivered in a climate of widespread and increasing concern over a declining birth rate, or did Abigail use the word interchangeably with a miscarriage?[197] By suggesting she had aborted a pregnancy, was Abigail simply trying to cast Louisa as selfish and uncaring? Was this because she had only two healthy children, and the belief was common that abortion was a frequent recourse for those who successfully limited the size of their family?[198] At the very least, the lawyer's line of questioning suggests yet again that abortion was commonplace, and conveys a clear connection between the presumed selfishness of women and their avoidance of maternal responsibility. With the 1904 Royal Commission into declining Australian fertility rates explicitly articulating such a link,[199] it no doubt lay at the forefront of community consciousness.

Have not Favour among Thy Children

Investigating the diversity and complexity of "the family" over time, Davidoff et al. suggest the impossibility of "unravel(ing) (its) dense tangle of love, hate, pity, care, duty, loyalty, calculation, self-interest, patronage, power (and) dependency."[200] The rich depiction

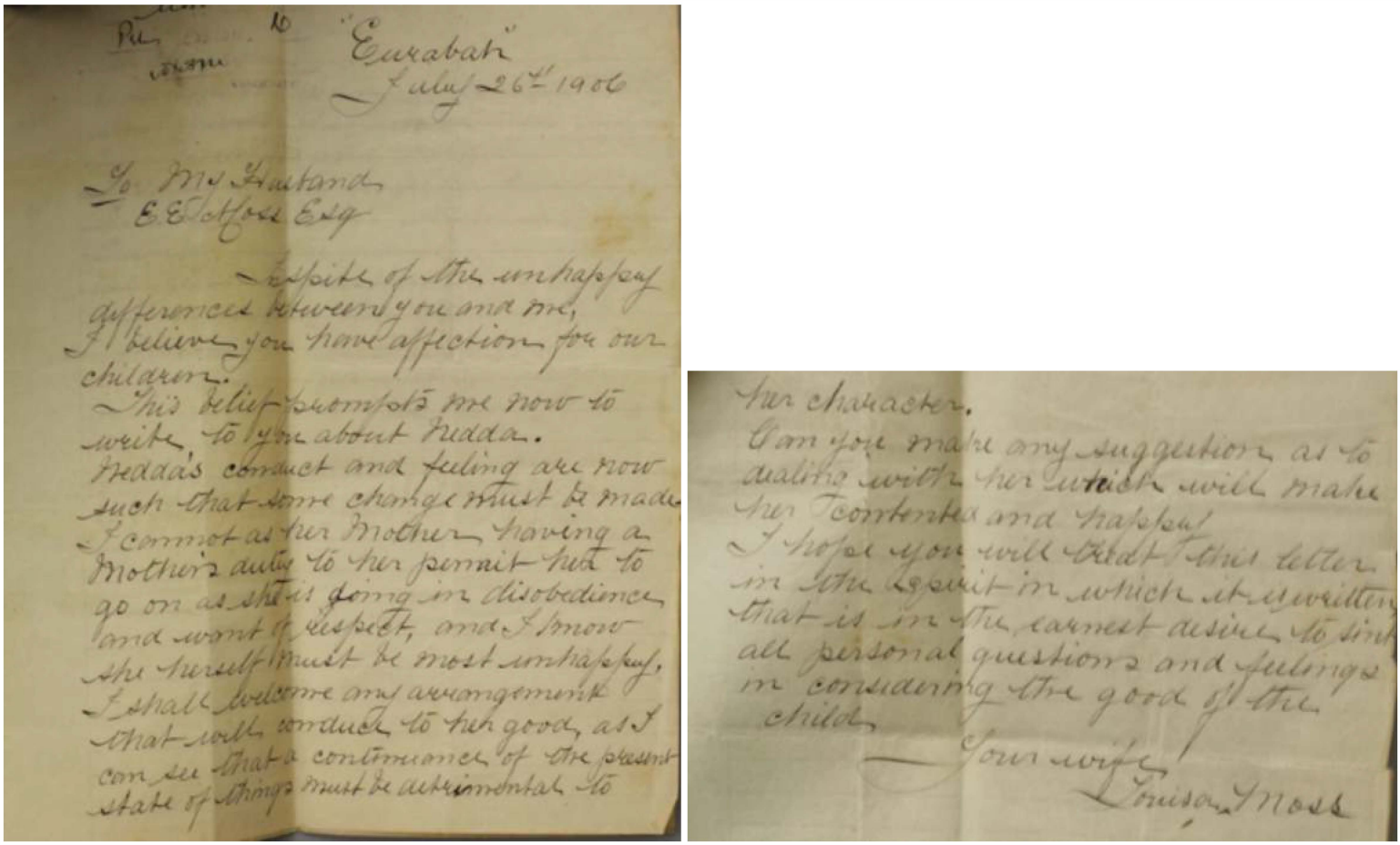
[195] Bongiorno, *Sex Lives*, 61.
[196] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 8, 13; "Moss' Marital Misery. Wife Petitions for a Divorce. Astounding Allegations Made. Portion of Evidence Heard with Closed Doors," *Truth*, 21 April 1912, 4.
[197] Carroll Smith-Rosenberg suggests that the word abortion was used in place of miscarriage in late nineteenth century America, while "criminal abortion" referred to "artificial termination." Smith-Rosenberg, "The Abortion Movement," in *Disorderly Conduct,* 219.
[198] Barbara Brookes, *Abortion in England 1900-1967* (London and New York: Routledge, 1988), 2.
[199] Jackson, "Fertility Decline in New South Wales," 260.
[200] Davidoff et al., *The Family Story*, 7.

of an emotional quagmire characterised by opposing forces is particularly apt for the fraught Moss family, where conflict often reigned. The case provides extensive detail about the bond between parents and child and deepens an understanding of what historians of emotion Peter and Carol Stearns describe as "the emotional tenor" of such kinship links.[201]

As they did in other aspects of their relationship, Louisa and Edward overturned idealised gender roles for parenting. The sources suggest a stark difference between the emotional practices which each parent deployed in relation to his or her offspring. Louisa behaved in a harsh and dictatorial manner (to Nedda, if not to young Eric), frequently administering "a thrashing" to the girl.[202] Edward on the other hand practised ongoing patience and gentleness and enjoyed a close relationship with his daughter. As Nedda explained in court, "Father was rather kinder to me than mother."[203] At the time of proceedings, Nedda Moss was almost eighteen years old and "assisting" her father in business. She testified on his behalf, describing Louisa's harshness towards her and claiming "her mother treated her unkindly, but treated her brother well."[204] Seeking to convey her resentment at such differential treatment, Nedda copied an excerpt from the scriptures and pinned the note to her mother's pillow.[205] A letter from Louisa to Edward some time later reveals, however, that Louisa was greatly concerned about her daughter's rebellious and

[201] Peter N. and Carol Z. Stearns, "Emotionology: Clarifying the History of Emotions and Emotional Standards," *The American Historical Review* 90, no.4 (1985), 819.
[202] American-German historical and cultural anthropologist Monique Scheer uses the term "emotional practices" as a way for historians to investigate the actions that generate emotions and thus analyse past feelings. Monique Scheer, "Are Emotions a Kind of Practice (and is This What Makes Them Have a History?): A Bourdieuian Approach to Understanding Emotion," *History and Theory* 51 (2012): 193; An unrelated issue illustrates the difference between mother and father, albeit in an entirely different context. In October 1904, a brief item appeared in the press in relation to an incident whereby one of the Moss employees, Frieda Catts, was charged with stealing from Louisa. The news report declared that "a taste for dress" had led Frieda to steal from her workplace a quantity of silk, ribbon and lace to the value of twenty shillings. While Edward "expressed a desire not to prosecute the girl," as "the prosecutrix," Louisa insisted the case go to court and her employee face the consequences of her actions. "Stealing Ribbons. Girl's Sad Predicament," *Evening News*, 20 October 1904, 5.
[203] SRNSW: NRS 2713 [7862/1911], *Moss v. Moss,* 131.
[204] Victorian Public Records Office Birth Certificate *Nedda Stella* Moss [27957/1893]; SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 128.
[205] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 129; I have been unable to locate this Bible verse and Nedda may well have made it up.

disobedient nature, and in the letter's measured tone suggests a definite sense of maternal concern and care.



"Eurabah"
July 26th 1906

To My Husband
E. E. Moss Esq

Despite of the unhappy differences between you and me, I believe you have affection for our children.
This belief prompts me now to write to you about Nadda.
Nadda's conduct and feeling are now such that some change must be made. I cannot as her Mother having a Mother's duty to her permit her to go on as she is doing in disobedience and want of respect, and I know the result must be most unhappy. I shall welcome any arrangement that will conduct to her good, as I can see that a continuance of the present state of things must be detrimental to her character.
Can you make any suggestion as to duties with her which will make her contented and happy?
I hope you will treat this letter in the spirit in which it is written that is in the earnest desire to sink all personal questions and feelings in considering the good of the child.

Your wife
Louisa Moss

Image 7.7 Letter from Louisa to Edward Moss, July 26, 1906.
SRNSW: NRS 13495 [7862/1911] *Moss v. Moss.*

Much like an elite woman, Louisa employed others to carry out many of her maternal duties, hiring a nurse and servants when she could afford them. Unlike her elite counterpart, however, who used the liberation from maternal responsibility to indulge her social obligations or leisure,[206] Louisa relied on the labour of "nurse" Agnes Sutton to earn an income. As my previous case studies also confirm, servants functioned as important

[206] Davidoff et al., *The Family Story*, 168.

witnesses for legal proceedings. Agnes Sutton lived with the Moss family, and later met Edward at the park most afternoons so that he could see his children. She was privy to the most intimate of family squabbles and goings-on and occupied a blurred status between public and private.[207] Agnes admitted the headstrong and defiant Nedda "was a hard girl in every way to manage," and she "did not always get on with her." The nursemaid could not "remember the respondent standing all day outside, waiting to see the children come home from school," nor could she recall them "being kept in so that he could not see them."[208] Such refutations suggest these incidents did in fact take place, and Louisa strove to alienate her children from their father.

Despite dominant assumptions that mothers rather than fathers stood at the heart of family life,[209] Louisa and Edward shared parenting tasks. Edward was equally dedicated to caring for their children, confirming how men too could have a deep emotional connection to their offspring (as Walter Bradley had done).[210] Edward Moss was a loving father, devoted to his children, particularly attached to Nedda and distressed at losing his son when Louisa prevented him from seeing the boy.[211]

Contemporaneous perceptions of parenting derived closely from notions of separate spheres, whereby fathers were held to be preoccupied with providing, and mothers with daily domestic care.[212] As Julie-Marie Strange contends, historical emphasis on men in the context of the family has concentrated almost exclusively on their role as providers.[213] Other scholars have highlighted the power that the breadwinner role bestows upon the patriarch: from early childhood, for example, many daughters learned that the needs of a father came first in the

[207] Ibid., 171; American historian Brian McCuskey calls Victorian servants "the kitchen police," an apt descriptor which reveals that middle-class employers were in effect "under constant surveillance," as my research certainly confirms. Brian McCuskey, "The Kitchen Police: Servant Surveillance and Middle-Class Transgression," *Victorian Literature and Culture* 28, no.2 (2002): 359-375.
[208] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 89.
[209] Davidoff et al., *The Family Story*, 11.
[210] Strange, "Fathers at Home," 704.
[211] SRNSW: NRS 2713 [6/2734] *Moss v. Moss*, 168.
[212] Strange, "Fatherhood, Providing, and Attachment," 1008.
[213] Ibid., 1007.

household.[214] Edward and Louisa Moss, however, were akin to a modern-day working couple, both spouses preoccupied with work and squeezing family life into the spaces left after first meeting their income-earning priorities. Louisa's financial control allowed her to access the empowerment which fell typically to a male breadwinner.

Given the vital importance of motherhood as a social institution, it is surprising that the court did not focus a closer spotlight on Louisa's maternal deportment, especially since her primary allegiance clearly lay with working life rather than domesticity. In Chapter Five, I explored the relentless legal probing of Hannah Webb's maternal fitness, and Hannah's desperate efforts to demonstrate her maternal worth. In Chapter Six, Pauline Dalley similarly proclaimed her maternal devotion, if unconvincingly so. The thesis has argued an intense and ongoing societal scrutiny and judgment of mothers, but evidence of Louisa's maternal detachment did not appear to concern the judge.[215] Indeed, lawyers paid little attention to her maternal capacities during proceedings, and even ignored the death of her infant son, at a time when infant mortality was often attributed to maternal neglect and irresponsible behaviour.[216]

Aftermath

One year after receiving her divorce decree, Louisa Moss married Cecil Arthur Thomas Hurley at St. Stephens Church in Sydney's Phillip Street.[217] The marriage certificate acknowledged Louisa's divorced status, but explicitly stated that she was the petitioner

[214] Dyhouse, "Mothers and Daughters in the Middle-Class Home," 30.
[215] Ongoing scrutiny and critique towards mothers has been studied at length within the combined contexts of an emphasis on population building, the "white race" and the breadwinner role, all of which coincided in Australia in the early twentieth century with nationhood. See for example Reiger, *Disenchantment of the Home*.
[216] Davin, "Imperialism and Motherhood," 13; As Lisa Featherstone argues in her doctoral thesis, an intensifying focus on the child became evident during this period, because as potential citizens, children were of vital importance to the population as a whole. Featherstone, "Breeding and Feeding," 14.
[217] NSW Births, Deaths and Marriages, Marriage Registration *Cecil Arthur Thomas Hurley and Louisa Moss*, [12519/1913].

("Divorced – petitioner"), a curious move which doubtless aimed to shift the blame elsewhere for the shameful fact of divorce. Hurley was a NSW Parliamentary officer, filling various positions of significance during a long and illustrious career.[218] I mention this detail because it indicates prestige and abundant remuneration, but in mid-December of 1914, Louisa officially registered a new business name. "L. Moss, Ladies' Tailor & Costumiere," operated from premises on Military Road in the lower North Shore suburb of Mosman.[219] I have no further information about her business venture, but others (mainly women) who advertised similar concerns tended to emphasise such features as their exclusivity, and capacity to recreate the latest Parisian fashions.[220] Perhaps the life of quiet domesticity for which Louisa had expressed a longing was less appealing than she anticipated, and she longed once again to apply her superior dress-making skills.

It is unclear where or when Louisa met Cecil Hurley, but the marriage ran into difficulties, and in 1924 Louisa petitioned unsuccessfully for judicial separation.[221] The file pertaining to the suit is scant indeed and cites only grounds of "Cruelty." Louisa signed an affidavit alleging Hurley's cruelty but provided no substantiating details, Hurley signed another statement in response denying her allegations, and the file otherwise includes only a marriage certificate and proof of service. Nor did the press report on the case. The couple reconciled and remained together until Hurley's death at the age of sixty in 1934.[222] The press announcement of Hurley's funeral details nevertheless described him as Louisa's "beloved husband," suggesting the marriage perhaps recovered from its difficulties or as is more likely, that the desire remained paramount to disguise marital unhappiness.[223] Louisa Hurley died in

[218] "Funeral of Late Mr. C.T. Hurley," *Daily Telegraph*, 28 June 1934, 5.
[219] State Records NSW: NRS 12961, Index to Business and Company Records 1903-1922 [25365]. *L. Moss & Co.*
[220] For example, "Costumiere," *Prahan Chronicle*, 5 September 1914, 2.
[221] State Records NSW: Supreme Court of New South Wales: NRS 13495, Divorce Case Papers 1873-1978, [1510/1924], *Louisa Hurley- Cecil Hurley.*
[222] NSW Births, Deaths and Marriages Birth Registration *Cecil Hurley* [1484/1874]; Death Registration *Cecil Hurley* [8507/1934].
[223] "Family Notices," *Sydney Morning Herald*, 27 June 1934, 11.

1946 at the age of seventy-five, having reconciled with Nedda at some point since Hurley's death notice refers to "a widow and step-daughter (Mrs. R.T.J. Dawes)" but not to Louisa's son Eric.[224]

Working as a "Commercial Traveller" and aged fifty-two when war broke out in August 1914, Edward Moss lowered his age by six years in order to enlist. Unlike Louisa, he lied about his marital status and described himself as a widower. On September 9, 1915, now twenty-two years old, Nedda Moss Dawes received a telegram from the Australian Military Forces of the Commonwealth stating that her father had been wounded, but "not... seriously," and promising to keep her informed of his progress. Sadly, Edward Moss was already dead by the time Nedda learned of his injury, having suffered a gunshot wound to the abdomen at Anzac Cove. He died aboard the hospital ship *H.S. Dunluce Castle* on August 8, 1915.[225]

In 1924, engaged in a protracted documentary wrangle with her brother and the Commonwealth War Department, Nedda admitted she had been estranged from her mother and brother since the fateful divorce hearing. The siblings were contesting who should receive Edward's military medals: Eric was entitled to them as the eldest son, even though he had not seen his father since 1905. In a further irony, it seems that Louisa Hurley received Edward's small war pension until it was cancelled in 1918.[226]

Moss v. Moss reveals the capacity of women to be self-determining in early twentieth century Sydney but confirms that only through economic independence could a wife potentially develop her autonomy. Unlike those many women with little choice but to remain in an unhappy marriage—an issue which greatly concerned important feminist campaigners like Rose Scott—Louisa's income-earning capabilities allowed her to abandon the union and

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[224] "Mr. C.T. Hurley," *Sydney Morning Herald*, 28 June 1934, 6.
[225] National Archives of Australia, B2455 *Moss, Edward Elias*, First Australian Imperial Force Personnel Dossiers 1914-1924; Nedda was not informed in a timely manner of her father's injury and death because authorities had the wrong spelling for her married surname and had erroneously addressed correspondence to a Mrs. Dalmes rather than Dawes. (Nedda married Sydney solicitor Reuben Dawes in 1913. NSW Births, Deaths and Marriages, Marriage Registration *Reuben Dawes and Nedda Stella Moss* [13049/1913].
[226] NAA B2455, *Moss, Edward Elias*, First Australian Imperial Force Personnel Dossiers, 1914-1920.

petition for divorce.[227] But if economic independence was essential in transforming the gendered imbalance of power within marriage, [228] the Moss case also suggests that autonomy could be destructive to marital harmony and render a relationship untenable should a husband not equal his wife.

The Moss marriage and its brutal disintegration reveal an ongoing battle for control whereby each spouse sought recognition for his or her contributions to the family coffer. It also suggests definite limits to the idea a man was entitled to his wife's body at all times and confirms the limited sexual repertoire in which most of the population engaged. At the very least, the case contributes to the history of intimacy two complex and flawed human subjects, to enrich our limited understanding of how marital conflict manifested in emotional suffering for an ordinary wife and husband in early twentieth century NSW.

[227] Judith Allen, "'Our Deeply Degraded Sex and the Animal in Man:' Rose Scott, Feminism and Sexuality, 1890-1925," *Australian Feminist Studies* 3, no.7-8 (1988): 70.
[228] Mackinnon, *Love and Freedom*, 13.

Conclusions: The More Things Change, The More They Stay the Same

One of the main aims of this thesis has been to humanise an historiography focused overly on the prominent and exceptional. Accordingly, my research contributes to the literature a diverse collection of unremarkable individuals, whose marital differences were exposed within a court of law and dissected by a relentless press machine. Mindful that ordinary women across social class feature little in our understanding of the past, my research has worked to uncover intimate confrontation and negotiation between the sexes. In doing so, it confirms women as agentic and engaged, rather than passive victims, recognising that even the most disempowered individual has the capacity for agency.[1] Above all, I have extended an understanding of sexual and emotional intimacy for named individuals, across a time of significant societal upheaval and change.

The thesis set out to investigate marital intimacy and conflict during a formative period in which gender relations came under increasing scrutiny.[2] My research began with the assumption that legislative amendments and attitudinal changes between 1880 and 1914 saw a steady revision of women's limited rights. Such optimistic projections contend that the position of women slowly but surely altered from one of abject subjugation and witnessed instead the accelerating expansion of personal freedoms. I anticipated that gender relations would gradually reflect greater equality, and see marriage shift from the entrenched asymmetry of a dominant male and his subjected wife. Accordingly, I expected to find in legal and judicial arguments a new conception of marital equality, and evidence of that companionate ideal of which scholars have written at length. With this hypothesis in mind, I hoped to uncover a steady arc of growing personal empowerment for women within that most fundamental of relationships, the marital union.

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[1] Curthoys, "Three Views on *Creating a Nation*," 199.
[2] Magarey, *Passions of the First Wave Feminists*, 48.

In this final chapter, I review my main findings at the conclusion of extensive research involving the analysis of comprehensive legal case files produced by the Supreme Court of NSW, Matrimonial Causes division, in addition to abundant press reportage and genealogical information. I suggest overall that little change is apparent in the gross asymmetry of gendered power relations, an assertion I base on a number of inter-related findings. My research confirms that despite the diversity of those marriages I investigated, the causes of each marital unravelling lay in ongoing spousal conflict as to idealised roles, rights and responsibilities for men and women. The marital battleground comprised a struggle over gender issues, and husbands and wives locked horns over what they believed appropriate conduct for the sexes. My research thus abundantly confirms Marilyn Lake's conception of the 1890s as a decade which saw a battle between men and women but suggests that her metaphor is equally relevant to those decades before and after the last years of the nineteenth century.[3]

At this point, I acknowledge that my findings are restricted to white people of predominantly Anglo-Saxon origin, other than those few Jewish individuals who feature in the research. Racial homogeneity characterises my case studies because I was not able to locate divorce files which met the necessary criteria *and* involved individuals from different cultural backgrounds. Although diverse ethnic and cultural groups appear widely in the divorce archive, they do not feature in cases which received extensive press coverage or involved detailed legal negotiation.

By adopting a case study approach to examine the intimate experiences of named historical subjects, my research has complicated scholarly understandings of major historical questions concerning sexual intimacy. These questions relate to significant issues within the broader category of gender relations, in particular power, sexuality, domestic violence and

[3] Lake, "Historical Reconsiderations IV," 116.

fertility control. Using a qualitative approach, my research has exposed those institutions through which patriarchal power operates, and also revealed their effects on individual lives.[4] It suggests that the ongoing exclusion from the adequate means to earn a living was foremost in maintaining women's disempowerment.

My research further confirms that the judiciary perpetuated the idea of an inviolable family unit predicated on the power of a male breadwinner, and thereby further contributed to the disadvantage of women. As George Bowen Simpson's questionable judicial decisions reveal, violence towards women was tolerated and even seen as necessary at times. With judges relying on idealised and limited sex role perceptions, petitioners and respondents necessarily worked to convince judge and jury how they satisfied normative criteria for gendered conduct.

My research has uncovered extensive incidental detail about a wide range of subjects that enrich our understanding of existence in the past. These subjects include dietary choices, leisure activities, modes of transport, drinking habits for women and men, and the relationship between servants and their employers. Such diverse topics have provided a fertile backdrop against which to contextualise my findings and build a strong sense of the culture in which individuals played out their sexual intimacies and gendered confrontations.

Despite the limitations of qualitative research and my small sample size, I contend that the thesis reveals a number of surprising and important historical findings. Most significantly, I have failed to uncover meaningful change in the blatant asymmetry of gender relations, as those relations were deconstructed in the legal arena. My research has exposed the widespread prevalence of domestic violence and suggests that few structured tactics existed to address or ameliorate such abuse. Most significantly, I contend that men's

[4] Bennett, "Feminism and History," 263.

persistent financial control rendered almost inevitable the gross and ongoing imbalance of marital power.

If we consider, as legal scholars Peter Brooks and Paul Gewirtz suggest, how courtroom protagonists in effect "construct, shape and use stories," my case studies reveal that such "stories" remained based on a marital ideal characterised by male dominance and female subordination.[5] My work thus confirms the arguments put forward by scholars including Judith Allen, Susan Magarey and, more recently, Melissa Bellanta and Alana Piper, who view with scepticism the oft-presumed narrative of linear progress for women and gender relations across the time frame in question.[6] In its entirety, my research contradicts the notion that legislative and other changes necessarily saw a decline in gender inequity or facilitated growing personal autonomy for women.

I make these observations while at the same acknowledging that NSW divorce law was extremely progressive, particularly when compared to England, which did not equalise the grounds for divorce between the sexes until 1926. At the same time, I recognise the disadvantages that men sometimes faced in confronting some aspects of the law, despite their patriarchal authority. Such disadvantages relate primarily to custody and child visitation rights. Several of my male subjects—Thomas Dorn, Walter Bradley, William Kirchner and Edward Moss—lost access to their children when attitudes towards custody shifted to hold paramount the maternal/child tie, even though the law remained based on paternal rights. These men experienced emotional distress at the loss but could do little to alter their circumstances.

Of the seven cases I investigated, only the Kirchner and Moss marriages reveal a wife with any degree of equality or personal empowerment. In both instances, these characteristics

[5] Brooks and Gewirtz, *Law's Stories*, 3.
[6] Allen, "Breaking Into the Public Sphere," 115; Magarey, "Sexual Labour,"; Bellanta and Piper, "Looking Flash," 73-5.

related directly to a woman's capacity to earn an independent income. Five of my seven female subjects had little if any alternative to marriage as a means to financial survival, which implies that efforts had failed on the part of suffrage campaigners to secure a role for women which lay outside of the family.[7] On the contrary, even Louisa Moss's courtroom performance demonstrates a resentment at being "forced" to assume the role of breadwinner.

When a husband was the family's sole income earner, he expected to be the unchallenged head of the household, the source of its authority and something of a supreme ruler to his wife and children: consider Harry Horwitz, George Webb, Will Dalley and even the relatively benign Walter Bradley. My findings suggest that the wife without access to an independent income was forced into a position of subjection, particularly when her husband was emotionally or physically abusive. Male financial control was the foundation on which rested women's subjection and men's domination. With few alternatives available to the economic support her husband would provide, the financially dependent wife had limited choice other than to endure an untenable marriage.

The realities of a breadwinning husband's sole and sometimes despotic financial control indicate that the *Married Women's Property Acts* provided little benefit to women who had no independent property or the capacity to earn an income, or, like Emily Bradley, had many years previously lost control over any assets they brought to the marriage. The notion persisted of a dependent wife and her magnanimous husband. Those of my female subjects who did not earn an independent income had no access to money and were forced to rely upon the beneficence of others. The need to do so engendered a state of childlike dependence where money was concerned. In turn, this dependence increased a husband's feelings of power and control and contributed to a woman's sense of resentment at her dispossession and disempowerment.

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[7] Ellen DuBois, "The Radicalism of the Woman Suffrage Movement: Notes Towards the Reconstruction of Nineteenth Century Feminism," *Feminist Studies* 3, no.1-2 (1975): 68.

Such resentment, further, manifested across different social classes, and does not seem to have diminished across the time frame under investigation. In 1883, the middle-class Flora Horwitz borrowed from servants and relations, and relied otherwise on generous handouts from her lover; in the late 1880s and 1890s, the working-class Harriet Dorn depended equally on her paramour to support her and her children when Thomas Dorn was jailed; in the 1890s, Walter Bradley easily withdrew from his wife the necessary wherewithal for her management of the household; in the early twentieth century, Hannah Webb turned to relatives for financial aid and five years later, despite her husband's significant wealth, Pauline Dalley was forced to pawn personal items, surviving on borrowings and small earnings from the racetrack. Only Catherine Kirchner and Louisa Moss had a bank account of their own, but their financial machinations also reveal an exhausting saga of ongoing loan negotiations and sheer hard labour.

My findings also suggest that the constraints of feminine deportment restricted the elite woman more significantly and for a longer period than they did the woman below her on the social scale. For Pauline, the necessity to travel with supervision persisted longer than for the contemporaneous women of the working-classes, who could conduct themselves with a more robust demeanour. And despite the passage of more than twenty years, I struggle to identify how Pauline Dalley was in any way less dependent or confined than Flora Horwitz. To meet their emotional and financial needs, both women were forced to manipulate and deceive, remaining subject to normative means of control.

For the older elite woman like Emily Bradley, the relative freedoms that modernity offered appeared too late to take advantage of any potential benefit for enhanced independence. Most importantly, the Bradley case suggests that the opportunities which modernity offered women were available primarily to the unmarried or childless woman, who answered only to herself. In attempting to create a sphere of influence beyond her narrow

domestic circumstances, Emily faced an overwhelming combination of life-long financial dispossession, the demands of upper-class feminine gentility and of course, the needs and objections of her numerous offspring. Together, these forces defeated her efforts to forge an independent existence outside of maternal and marital obligations.

My research suggests further that financial dependence could potentially create a master-slave relationship between the spouses, whereby all authority and power within the family was vested in the male partner. As part of the marital bargain, financial control enhanced a man's capacity to force his wife to do his bidding. Consider George Webb's churlish demands as to how he should be fed, and his expectation that Hannah should minister to his every requirement, despite her many domestic responsibilities and the need to care for young children. Given the asymmetry which characterised those marriages in which a wife was financially dependent, some husbands became convinced of their god-like right to exert authority. The situation was particularly marked in early nationhood, which saw a return to the domestic ideal and breadwinner/home maker model.

When combined with a particular character bent such as extreme sexual jealousy, and a man's belief in his own natural superiority, the potential was rife for economic control to translate into domestic abuse.[8] It is no coincidence that of seven cases I selected—according to criteria which did *not* include domestic violence—three involved significant physical aggression and two emotional cruelty. In selecting case studies, I consciously rejected divorce files in which women petitioned for divorce on grounds of physical violence. I did so because in reviewing diverse and multiple cases based on violence, the stories were harrowing in their similarity and the extent of abuse and led ultimately to an overwhelming sense of female victimhood. Yet the propensity for male cruelty and violence emerges as

[8] I have referred repeatedly to the law's insistence on a husband's superiority in the marriage, but James Hammerton goes further and argues that the law consistently promoted the idea of male superiority overall. Hammerton, "Law of Matrimonial Cruelty," 272; Piper, 'Understanding Economic Abuse," 44.

significant within the cases I have investigated. In reviewing the details of domestic violence in those three cases where abuse features most prominently, its most striking characteristic is that these men appeared to despise their wives and indeed all women. It would not be exaggerating to suggest that Harry Horwitz, Thomas Dorn and George Webb loathed to the point of hatred their abused spouses.

It is also significant that judges rejected as illegitimate the extensive violence that Flora Horwitz and Hannah Webb described to the court, further implying the judiciary's willingness to reinforce notions of male superiority and dominance within marriage. Such beliefs also confirm, as Colin James has argued, that many within the judiciary were invested in preserving marriage at all costs.[9] Equally disturbing is the implication that the legal system supported and reinforced the gross imbalance of marital power. In interpreting so narrowly the provisions for divorce, particularly matrimonial cruelty, and continuing to rely on gendered character assessments and subjective assumptions, the law promoted an ongoing acceptance of unequal power dynamics in the marital relationship. By extension, these considerations suggest that while the extension of divorce laws allowed greater numbers of women to end their marriages, it did little overall to change men's behaviour.

Various references within the sources to domestic abuse as a response to great provocation—"boxing" her ears, and "striking" "only" with an open hand—reveal the legal and community acceptance of physical "correction" when a wife went against prevailing ideas of acceptable conduct. In using a similar phrasing to describe men's chastisement of women, the Horwitz, Bradley and Webb cases confirm its acceptance. The Webb case is to my mind the most tragic of those presented here, and George Webb's venomous aggression—for which he was never punished—casts a poor reflection upon the patriarchal legal system. The case confirms the power of misogynistic judges like George Bowen

[9] James, "A History of Cruelty in Australian Divorce," 1-2.

Simpson, who exercised their discretion to the detriment of those women appearing before them. The Webb case further reveals the absence of any concerted legal or social remedy for male violence, and a widespread and tacit acceptance of abuse. It is commendable that members of the local West Maitland community turned to idiosyncratic methods to discipline or expose a perpetrator, but a sad indictment of the police and justice system that no structured response was formulated to punish offenders and prevent further aggression.

Comprising more than twenty thousand cases of divorce between 1873 and 1923, the years included in the first part of the NSW Divorce Index, the divorce archive has significant potential to further reveal the nature and prevalence of domestic abuse across a lengthy duration, as well as judicial responses to violence and misogyny and how these did or did not change over time. Many thousands of case files also exist for the period from 1923 to 1976. Given the ongoing prevalence of domestic violence and the failure of contemporary efforts to address its magnitude, I agree with feminist researcher Zora Simic that the time is more than ripe for a broadscale history of domestic violence in Australia.[10] Providing extensive if confronting detail about domestic violence, across a time span of one hundred and three years, the divorce case files are a significant potential source for such an investigation.

Mindful of the need to eschew those narratives of female victimhood which are too easily apparent when faced with such overwhelming evidence of misogyny and cruelty, the thesis has also shown how even the most disempowered of women could try to circumvent her subjection and achieve some degree of autonomy. Escape was possible through an embodied response to her circumstances. For Flora Horwitz, autonomy lay in her lover's arms, where she could momentarily forget her domestic trials and the reality of an unfeeling husband. In the private realm of her love affair, she could enjoy extensive leisure and a sense of freedom. For Harriet Dorn, a sense of personal autonomy is evident in her spirited and

[10] Simic, "Historicising a 'National Disgrace,'"4.

embodied response to Thomas Dorn's abuse, her momentary escape through the hysterical fit, and her persistent engagement with the law to obtain financial support.

These examples suggest that women could potentially choose to express their discontents in an embodied form, even though most other avenues of rebellion were closed to them.[11] Despite legislative changes extending access to divorce, and enhancing the capacity to retain property, financial autonomy remained elusive for most women because of low wages, limited access to employment, and male control of bank accounts and household finances. An embodied domestic insurrection proffered the chief means whereby women could counter male authority. This was particularly the case for the older woman.

Consider Emily Bradley's long hours at the piano while her husband went about unfed and neglected, and her determination to sever the marital tie in the face of united family opposition. Or Hannah Webb's domestic sabotage, whereby she tolerated Webb's cruelty only to a point before wreaking havoc on his possessions. Such examples suggest the futility of the victim/agent dichotomy, the complexities of human intimacy and the fraught nature of power.

My contact with family historians was of inestimable value in the Horwitz and Bradley cases, and has convinced me of the benefits of collaboration between academic and family historians. I now recognise that such collaboration can markedly deepen and extend the historian's insight into individuals and events. Upon reading the official sources in the Bradley case, I struggled to sympathise with Emily, and formed an image of her which resembled Walter Bradley's courtroom depiction of the narrow-minded wowser. After reading Emily's letters to her children, I formed a very different impression, and could recognise her maternal devotion and the difficulties she faced in coping with Walter's excessive drinking. I realised that my first impressions had not extended past the contrived

[11] Parkins, "Protesting Like a Girl," 59-78.

carapace of the legal portrayal. Armed with the intimate sources that perhaps only a family historian would believe to be of value, I was able to develop a more complex and realistic understanding of my subject as an individual rather than a character type.

My research has also uncovered surprising evidence of the human agency that inspired the late nineteenth and early twentieth century fertility decline, confirming that smaller rather than larger families became the norm as the result of individual efforts in limiting family size. Uncovering human agency and individual investment in family limitation is an important antidote to the predominantly statistical approach which scholars have taken to investigate the diminishing birth rate in developed nations. Emily Bradley's fertility appears as decidedly exceptional among my subjects, while the Webb and Dalley cases also reveal surprising detail about contraception and abortion. Yet again, it is too great a coincidence that two of seven husbands were vehemently opposed to the birth of more children, and both men attempted to either force the consumption of abortifacients or else coerce a wife to have an abortion. Considering the overt misogyny my research has exposed, an aversion to women's reproductive capacities is perhaps not surprising.

These findings are particularly valuable given the lack of scholarly understanding about the role of individual agency in the declining birth rate, and the ongoing perception that contraception and family limitation were the result of women's rather than men's choices and actions. That abortion emerges as an important subject in four out of seven cases suggests it was a common occurrence. As such, there is significant scope within the divorce archive to use the case files to further investigate aspects of family limitation, and particularly gendered attitudes towards reproduction and contraception.

My findings also suggest the diversity of masculinities and masculine experience, revealing that emotional intimacy posed a significant challenge for some men. While Will Dalley was not physically abusive, he was as unfeeling as Harry Horwitz. Both men were

emotionally bankrupt and ill-suited to marital intimacy, more devoted to their business affairs or leisure pursuits than to their wives and children. Walter Bradley and Edward Moss, on the other hand, are equally noteworthy in the close emotional attachments they developed to their children, adding nuance to our understandings of fatherhood across social class.

Amongst the men who feature in my case studies, including those who figure in extra-marital infidelities, Oswald McMaster and Henry Solomon are distinctive in their visible lack of the male arrogance which characterised my other male subjects. Both McMaster and Solomon were capable of feeling and expressing considerable tenderness towards the women they loved. The marked difference between men like McMaster and Solomon, compared to the likes of Horwitz and Dorn, for example, confirms a recent finding that men with rigid and sexist ideas about male superiority are more prone to violence, while those who possess a sense of women's equality are more likely to treat them with respect.[12] With the case files allowing considerable insight into diverse masculinities, there is ample scope within the archive to investigate further the changing nature of masculinity across class and over time. This would also help to complicate the inevitable sense of male villainy which is all too easily gleaned from the tales of marital discord I have offered in the current context.

The thesis has contributed towards our understanding of marital sexual practices, and suggests that heterosexual sex was constrained by limited ideas as to what was and was not considered appropriate sexual behaviour. With a corpus of significant size, and the crucial role of sexuality within marital intimacy, the case files also offer scope for further investigation of sexual dysfunction. In the detail it provides as to "unnatural practices of a revolting nature," the Moss case confirms Claire Sellwood's finding that many of the divorce files include abundant detail about sexual dysfunction, and certainly the latter is another

[12] Michael Flood, "Forceful and Dominance: Men with Sexist Ideas of Masculinity are more Likely to Abuse Women," *The Conversation* (9 December 2019), online at https://theconversation.com/forceful-and-dominant-men-with-sexist-ideas-of-masculinity-are-more-likely-to-abuse-women-125873

important potential topic for future research.[13] In particular, suits based on non-consummation of marriage include extensive information about the failed mechanics of sexual intercourse and medical/social attitudes towards sexual difficulties for both men and women.

While it is impossible to be sure that Louisa Moss's allegations were true as to her husband's predilections, there is no doubt as to how the court and wider public viewed her claims. These subjects expose prevailing attitudes sexual behaviour which fell outside of the rigid confines of heterosexual "missionary" intercourse. Further to this point, the earlier case files in which women provided evidence of an aggravating circumstance, like sodomy or incest, could also potentially extend our understanding of sexual behaviours which were perceived as aberrant at a particular point in time. With most if not all of the evidence pertaining to sodomy deriving from studies of homosexuality, examples of heterosexual sodomy and other atypical sexual practices would provide a much-needed antidote to the limited paradigm of heterosexual sex in the past.

Despite the prevalent idea that employment opportunities for women were expanding at this time, manifesting in such stereotypes as the "blue stocking" and "New Woman," social class clearly dictated a woman's capacity to engage with opportunity unless she possessed exceptional talent or ability. The law and wider society continued to promote the idea that marriage was a woman's ultimate destiny, and without emotional and financial support from close relatives, escaping one's class origins through independent labour and professional advancement was an impossibility.

Catherine Kirchner's case suggests the role of personal character in determining a woman's circumstances. That Catherine was forced to engage in so many different forms of employment to make ends meet suggests the ongoing unfairness of the colonial gender order, whereby women were barred from accessing the stable career path men usually took for

[13] Sellwood, "'A Series of Piteous Tales,'" 182-231.

granted. Nor could Catherine have learned a trade, other than poorly paid female alternatives like dressmaking. Instead, the means whereby Catherine sought to make a living—her commercial laundry, palmistry salon, boarding house and writing for *The Co-operator* newspaper—reflect an exhausting combination of unskilled activities which related primarily to her domestic abilities. Despite her independence and autonomy, Catherine was engaged in an ongoing physical and financial struggle. That she did so in the context of an adulterous relationship with the man who at one time owned the newspaper and provided her employment suggests that her involvement with Oswald McMaster was one between equals

My research has also uncovered surprising evidence of perjury, most overtly in Thomas Dorn's "affidavit parties," but also in press reports and judicial remarks, suggesting that perjury was indeed common in divorce cases, and the law and its subjects possessed a very different conception of "the truth" to that which is now in play. The prevalence of perjury in divorce cases confirms Schneider's claims of a general "indifference to perjury" at the time.[14] In each of the case studies, witnesses either contradicted testimony they provided earlier, or else revealed they had abundant reasons to lie. Consider Margaret McLean, former nursemaid for the Horwitz family, whose employment during proceedings as Horwitz's cook prevented her from testifying truthfully against him. Those eminent medical men testifying in the Bradley case are as blatant as Thomas Dorn, denying Emily's hysterical bent in her petition for judicial separation and in divorce proceedings confirming it. Such an extraordinary about-face must surely indicate perjured testimony.

It seems that for most women, the sense of hopeful optimism did not come to fruition where their disempowerments were concerned. This was particularly so for those women born mid-century into a society unprepared to challenge men's dominance.[15] Such women may have been unable to take advantage of the potential for economic liberation that

[14] Schneider, *Engines of Truth*, 2.
[15] Grimshaw and Willett, "Women's History and Family History," 134.

modernity theoretically offered them. Again, however, I reiterate that one of the main reasons for continuing gender inequality appears to have lain in the reluctance of men to relinquish their authority, set against a backdrop in which the wider society also remained undiminished in its patriarchal bent.

Despite the seeming promise of empowerment for assertive women like Emily Bradley and Catherine Kirchner, the pendulum had evidently swung full circle when Louisa Moss went to court. For women, the courtroom performance was dictated by a rigidly defined gender role, predicated on the maternal and the domestic. If in reality an individual woman diverged from that role, on the stand she took considerable care to suggest otherwise.

In concluding my master's thesis, I noted that the divorce archive is a rich source of detail relating to thousands of individual lives. As a unique repository, the archive has unlimited potential to extend our knowledge of a great many topics of social and cultural historical importance, particularly in relation to the undiscovered and neglected lives of women. I have engaged in several years of intensive research exploring the case files, and yet my work has contributed to the literature only eleven specific instances of marital conflict, while diverse other accounts remain unexplored. I am by no means finished with this treasure trove of rich social and cultural historical detail, which deserves to be further investigated and analysed.

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