

# “ASSUREDLY THERE NEVER WAS MURDER MORE FOUL AND MORE UNNATURAL”? POISONING, WOMEN AND MURDER IN 19TH CENTURY AUSTRALIA

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## ABSTRACT

*This article examines crimes committed by women involving the use of poison, notably upon their husbands, in 19th century colonial Australia. It draws on the extensive press archives of the period to determine if the historical and British perceptions and experiences of female poisoners of the 19th century were translated to 19th century Australia. The notion of the supposedly devoted wife stealthily poisoning her unsuspecting husband aroused particular revulsion and was viewed as a threat to social order and as the ultimate betrayal of the female role. Women accused of poisoning their husbands might therefore expect an uphill task within the male dominated criminal justice system of the period in escaping conviction and, if convicted, were unlikely to be regarded with sympathy and as worthy of a grant of mercy. However, this article suggests that the reality in colonial Australia was subtler and more complex than the hostile and often exaggerated perception of female poisoners might indicate. Women accused of capital crimes (including murder) involving poison upon their husbands had every expectation of acquittal and, even if convicted, such offenders were still often regarded with sympathy and might even be spared the “last extremity of the law”.*

## I. INTRODUCTION

The enormity of the crime is very great. For a wife ... to deliberately administer poison to her husband day by day till he sank into death before her eyes, while all the time she professed affection for him, is the refinement of horror. Against an enemy ... such a means of death would be sufficiently horrible; but hiding the fiendish

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purpose behind the sanctity of wedlock, and dealing out slow and torturing agonies to one who believes the hand that is giving him poison is trying to preserve his life, belongs to a species of crime for which death punishment hardly seems retribution enough. Such crimes strike at the root of our social system. If a man's life is not safe in the hands of one who has sworn to love and cherish him, where shall there be safety? Crimes of the kind are not easily discovered. Suspicion does not readily rest upon a wife for the murder of her husband ... The sacredness of the marriage tie disarms suspicions.<sup>1</sup>

These comments were offered in 1888 by the editor of the *Sydney Morning Herald* following the conviction of Louisa Collins at an unprecedented third trial for the murder of her second husband, by arsenic poisoning.<sup>2</sup> Such comments reflect the strong views long held about the use of poison by women to murder. Though such views about the “gentle art of poisoning” date back to antiquity,<sup>3</sup> it was in the 19th century that these fears re-emerged as a source of major and recurring concern in both Britain and Australia. The notion of the supposedly devoted wife fatally poisoning her unsuspecting husband constituted a “species of crime” of stealth and betrayal that attracted particular revulsion. Viewed as a threat to social order and the ultimate betrayal of the female role, it struck a deep chord in 19th century society.<sup>4</sup>

- 1 “The Botany Murder” *The Sydney Morning Herald* (Sydney, 10 December 1888) at 11.
- 2 See further Carol Baxter *Black Widow: the True Story of Australia's First Female Serial Killer* (Allen & Unwin, Sydney, 2015); Nancy Cushing “Woman as Murderer: The Defence of Louisa Collins” (1996) 1 *Journal of Interdisciplinary Gender Studies* 147; Wendy Kukulies-Smith and Susan Priest “No Hope of Mercy for the Borgia of Botany Bay, Louisa May Collins, the Last Woman Executed in NSW, 1889” (2010) 10 *Canb LR* 144; Caroline Overington *Last Woman Hanged* (HarperCollins, New York, 2014).
- 3 “The Female Poisoners” *The Freeman's Journal* (Sydney, 9 May 1885) at 13; and “The Gentle Art of Poisoning” *The Daily News* (Perth, Australia, 31 December 1898) at 8. As early as 311 BC, a large number of Roman women were said to have conspired to poison their husbands and 170 were executed. See “Poisoning Manias” *The Maitland Mercury* (Australia, 27 December 1887) at 3.
- 4 See, for example, “The Poisonings” *The Sydney Morning Herald* (Sydney, 10 December 1849) at 3. “Poisoning is one of the crimes of the more serious kind to which women are particularly prone. It may be said, indeed, that poisoning is the favourite female murderer's homicidal method. Poisoning is subtle, sly, secret. It does not require physical strength and brute courage to administer poison. It may be done in the performance of the ordinary domestic duties. Poisoning may be made difficult of detection, if skilfully used. It is clean in operation. There is no shedding of blood about it ... poisoning is a characteristically feminine criminal method ... It is not a comforting reflection for those who are fond of boasting about the blessedness of modern civilisation, and who believe in the inherent softness and goodness of woman!”: “Poisoners in Petticoats” *The Australian Star* (Sydney, 22 October 1894) at 3. See also “Women who have been Executed: Female Poisoners: an English Martha Needle” *Weekly Times* (Melbourne, 20 October 1894) at 12.

As one columnist declared of such crimes: “assuredly there never was murder more foul and more unnatural”.<sup>5</sup>

Poisoning by women in Britain in the 1800s has been the subject of much academic study,<sup>6</sup> but the topic has largely escaped academic scrutiny with respect to colonial Australia. This article seeks to redress this deficit by drawing on the extensive press archives of the period to examine if, and to what extent, the historical British perceptions and experiences of female poisoners were translated to 19th century colonial Australia. It might be thought that women accused of poisoning their husbands could expect an uphill task within the male dominated criminal justice system of the period in escaping conviction and, if convicted, unlikely to be regarded with sympathy and as worthy of the grant of mercy. However, it appears that the reality in colonial Australia, as in Britain, was more nuanced than the hostile and often exaggerated perception of female poisoners might indicate. Women accused of capital crimes involving poison upon their husbands had every expectation of acquittal and, even if convicted,<sup>7</sup> such offenders were still often regarded with sympathy and as deserving of mercy.

## II. “THE GENTLE ART OF POISONING”: POISONING IN HISTORY

Of all of the many means of murder, “every age and every country has, at some time or another, been plagued with the secret poisoner”.<sup>8</sup> Fear of the poisoner dates back to antiquity.<sup>9</sup> This fear portrays poison as “the meanest and cruellest weapon which can possibly be applied to the nefarious purpose

5 “The Late Execution” *The Freeman’s Journal* (Sydney, 12 January 1889) at 3. See also GBB, “Sex and Crime: the Great Oyer of Poisoning” *Evening News* (Sydney, 12 October 1895) at 3.

6 See, for example, Helen Barrell *Poison Panic: Arsenic Deaths in 1840s Essex* (Pen and Sword, Barnsley, UK, 2016); Judith Flanders *The Invention of Murder: How the Victorians Revealed in Death and Detection and Created Modern Crime* (HarperPress, New York, 2011) at 223–319; Randa Helfield, “Female Poisoners of the Nineteenth Century: A Study of Gender Bias in the Application of the Law” (1990) 28(1) *Osgoode Hall LJ* 53; Victoria Nagy “Narratives in the Courtroom: Female Poisoners in Mid-nineteenth Century England” (2014) 11 *European Journal of Criminology* 213; Victoria Nagy *Nineteenth-Century Female Poisoners: Three English Women Who Used Arsenic to Kill* (Palgrave Macmillan, London, 2015); George Robb “Crime in Crinoline: Domestic Poisonings in Victorian England” (1997) 22 *Journal of Family History* 176; Linda Strattmann *The Secret Poisoner: a Century of Poison* (Yale University Press, New Haven, USA, 2016); and Katherine Watson *Poisoned Lives: English Poisoners and Their Victims* (Hambledon, London, 2007).

7 It is often far from easy to determine the reliability of these guilty verdicts due to a lack of rigorous modern medical or scientific evidence as to the cause of death. See John Archer “Mysterious and Suspicious Deaths: Missing Homicides in NW England (1850–1900)” (2008) 12 *Crime and History in Societies* 45.

8 “Some Female Poisoners” *The Advertiser* (Adelaide, 24 September 1889) at 7.

9 One of the most notorious poisoners of antiquity was Locusta, the murderess of the Roman Emperor Claudius and Britannicus. See “The Gentle Art of Poisoning” *The Daily News* (Perth, Australia, 31 December 1898) at 8.

of murder”.<sup>10</sup> The noted English jurists, Hale and Blackstone, regarded poisoning as particularly wicked because it carried “internal evidence of cool and deliberate malice”.<sup>11</sup> Usually a premeditated crime, it was very rare for a poisoner to be reprieved.<sup>12</sup> Even when provoked and unplanned, poisoning would still be regarded as malice aforethought and as an “act of deliberation odious in law”<sup>13</sup> mitigation ordinarily would not be permitted.

There was attached to poisoning the taint of biblical and social repugnance to killings by stealth and dishonour. Dishonour killings concerned acts of deliberate cruelty, particularly where there was disparity of strength or advantage between the killer and the victim. The efficacy of poisoning as a weapon, and the reason why it was so abhorrent, was that it could not be discerned until too late, if at all. Poisoning was therefore constructed as a crime of stealth that lent the poisoner an advantage over their unsuspecting victim. Coke, in particular, dwelled on this aspect of the crime:<sup>14</sup>

Poyson ... is ... the most detestable of all, because it is most horrible, and fearfull to the nature of man, and of all others can be least prevented, either by manhood, or providence ...

Drawing upon earlier legal authorities such as Fleta and Bracton, Coke notes that for some time poisoning was regarded as high treason and “the offender would be boyled to death in hot water”.<sup>15</sup> Coke’s focus upon the myriad ways of poisoning is also notable for the dearth of case authority where these methods were actually used.<sup>16</sup> This reflects the abhorrence felt about the crime and also the difficulties in identifying the cause of death as

10 “Execution of Mrs Needle” *South Australian Register* (Adelaide, 23 October 1894) at 4.

11 William Blackstone *Commentaries on the Laws of England. Book the Fourth* (Clarendon Press, Oxford, 1769) ch 14, at 193; Matthew Hale *Pleas of the Crown in Two Parts. Part I: A Methodical Summary of the Principal Matters Relating to that Subject* (Printer E Rider, London, 1716) 455.

12 “Poisoning was considered a particularly evil crime as it is totally premeditated and thus it was extremely rare for a poisoner to be reprieved whereas it was not unusual for females to be reprieved for other types of murder, such as infanticide”. Richard Clark “Sarah Dazley: a Victorian Poisoner” Capital Punishment UK <[www.capitalpunishmentuk.org](http://www.capitalpunishmentuk.org)>.

13 Matthew Hale, above n 11.

14 Edward Coke *The Third Part of the Institutes* (Printed for E and R Brooke, Bell-Yard near Temple-Bar, London, 1660) 48 cap 7, cited by William Blackstone, *Commentaries on the Laws of England. Book the Fourth* (Clarendon Press, Oxford, 1769) ch 14, at 196.

15 At 48 cap 7.

16 At 52 cap 7.

due to the effects of poison, and in identifying and proving the guilt of any perpetrator.<sup>17</sup> This was to prove a recurring theme in the 19th century.

### III. POISONING BY WOMEN

In *Doubly Deviant, Doubly Damned*,<sup>18</sup> Ann Lloyd proposes that women who committed violent crimes were doubly deviant, because they offended against both the law and gender stereotypes, particularly that of the “honest woman” in whom “maternity, piety, and weakness” were desirable qualities.<sup>19</sup> Historically, these gender roles were enshrined at law. A husband and wife were considered one person in law, and that person was the husband.<sup>20</sup> Until 1789, a woman who killed her husband was guilty not just of murder, but the aggravated offence of *petit treason*.<sup>21</sup> As Palk notes, the relationship of husband and wife embodied “obligations of duty, subordination and allegiance like the feudal obligation of a man to his sovereign”.<sup>22</sup> A wife’s betrayal of these obligations was an especially heinous crime and constituted a form of treason.<sup>23</sup>

Mother, nurturer and caregiver are the most prominent and enduring stereotypes of women.<sup>24</sup> Women who used poison not only acted against, but were often perceived to *use* their gender roles, to kill. They introduced poison into food and drink apparently lovingly served to husbands and children. The apparent rash of 19th century cases of women who killed with poison came at a time when the idea of female offenders first received criminological

17 Given the primitive means available to detect the effects of poison until the mid-1800s and the high rate of mortality due to such diseases as cholera, it was very difficult to establish murder by poison. See further, Sandra Hempel *The Inheritor’s Powder: a Tale of Arsenic, Murder and the New Forensic Science* (WW Norton & Co, New York, 2013).

18 Ann Lloyd *Doubly Deviant, Doubly Damned: Society’s Treatment of Violent Women* (Penguin, London, 1995).

19 Cited in Tim Newburn *Criminology* (Willan Publishing, Milton, UK, 2007) at 302.

20 The doctrine of coverture and the associated defence of marital coercion have been abolished in most Australian jurisdictions. See Stephen Yeo “Coercing Wives into Crime” (1992) 6 *AJFL* 214.

21 William Blackstone *Commentaries on the Laws of England* (Clarendon Press, Oxford, 1793–1795) volume 2, 156. See further Shelley Gavigan “Petit Treason in Eighteenth Century England: Women’s Inequality before the Law” (1989–1990) 3 *Can J Women and L* 335.

22 Dierdre Palk *Gender, Crime and Judicial Discretion, 1780–1830* (Royal Historical Society/Boydell Press, Woodbridge, Suffolk, 2006) at 33.

23 See Palk, above n 22; Gavigan, above n 21 at 345–349; and David Plater and Sue Milne “All That’s Good and Virtuous or Depraved and Abandoned in the Extreme? Capital Punishment and Mercy for Female Offenders in Colonial Australia, 1824 to 1865” (2014) 33 *U Tas LR* 83 at 106–117.

24 Amy Lind and Stephanie Brzuzy *Battleground: Women, Gender, and Sexuality* (Greenwood, Westport, USA, 2008).

attention.<sup>25</sup> Lombroso and Ferrero introduced the concept of the “female born criminal” who, although far fewer in number than their male criminal counterpart, was distinguished by both the variety and cruelty of their crimes.<sup>26</sup> Consistent with Lloyd’s thesis of female offenders as doubly deviant, Lombroso and Ferrero proposed that the “female born criminal is so to speak doubly exceptional, first, as a woman and then as a criminal ... As a double exception then, the criminal woman is a true monster”.<sup>27</sup>

The recognition of female offenders generated a fear in 19th century society that women committed more crimes than the law was cognizant of – that they were the dark figure of crime.<sup>28</sup> It was, and remains, feared that women’s wicked behaviour went beyond the criminal law – either because the boundaries of the criminal law were incorrectly drawn (demonstrated by the failure of the wife to be held responsible for her disobedience) or because of women’s inherent deceit and cunning and thus capacity to evade the reach of the law.<sup>29</sup> This was exacerbated with the use of poison. As Mr O’Malley declared in England in 1843 in his spirited but ultimately unsuccessful defence address at the trial of Sarah Dazley for the murder of her husband through the use of arsenic:<sup>30</sup>

There was not an instance of greater guilt than that with which she was charged. Murder was the highest offence, with the exception of treason, but this was the murder of one to whom she had avowed obedience and affection; ... murder by poison administered in the helplessness of sickness and disease at the very moment he is leaning on her bosom for comfort and support.

Judges and juries focused their strictest scrutiny and harshest penalties on women who violated important gender based behavioural expectations.

25 Carol Smart *Women, Crime and Criminology: a Feminist Critique* (Routledge & Kegan Paul, Abingdon, 1977); Helfield, above n 6.

26 Newburn, above n 19.

27 Lombroso and Ferrero cited in Newburn, above n 19.

28 See Otto Pollak *The Criminality of Women* (University of Pennsylvania Press, Philadelphia, 1950). Murders committed or inspired by women “have the maximum power of attracting public attention”: “The Richmond Murder” *The Advertiser* (Adelaide, 29 September 1894) at 4. However, the majority of acts of poisoning in the 19th century, despite the perception to the contrary, were in fact committed by men. See Watson, above n 6, at xiii. Even during the English poisoning panic of the 1840s, there was near parity between the male and female poisoners brought for trial. See Robb, above n 6, at 177.

29 Mark Jackson *New Born Child Murder: Women, Illegitimacy and the Courts in the 18th Century* (Manchester University Press, Manchester, 1996); Nicola Lacey *Women, Crime and Character: From Moll Flanders to Tess of the D’Urbervilles* (Clarendon, Oxford, 2008).

30 *Bedfordshire Mercury and Huntingdon Express* (Bedford, UK, 29 July 1843). Despite O’Malley’s eloquence, the jury took just half an hour to find Dazley guilty of murder for which she received sentence of death without hope of mercy from any “earthly tribunal”.

Women who killed their husband to be with their lover or “paramour” further offended against gender obligations of duty, allegiance and subordination.<sup>31</sup> The concept of the “Fallen Woman” emerged within Victorian Britain (and colonial Australia) and highlighted the social scrutiny and moral judgments placed upon individuals not complying with the gendered expectations of female sexuality. This scrutiny was applied particularly to prostitutes, unmarried mothers or women entering into pre-marital or extra-marital sexual relations.<sup>32</sup> The condemnation of sexual “immorality” or “depravity” in relation to 19th century female offenders was stark and acquired particular virulence in relation to those wives who had used poison to get rid of an inconvenient husband in this context.<sup>33</sup> As Sir Edward Coke observed: “poison and adultery go together”.<sup>34</sup>

Yet despite this condemnation and fear of female poisoners, it was far from inevitable that a wife accused in the 19th century of a crime involving poisoning (even the murder of a husband) would be found guilty. Nor, if found guilty, that such an offender would be refused the grant of mercy and receive “the last extremity of the law”.<sup>35</sup> One explanation for the prospect of acquittal relates to the difficulties for the prosecution in this period in establishing that the accused had actually poisoned the victim, and that the victim had not imbibed the poison in some other way.<sup>36</sup> In the 1800s, poisons such as arsenic were ubiquitous, relatively innocuous looking powders, tasteless and odourless, and bore a passing resemblance to flour and sugar.<sup>37</sup> Arsenic, known as the “popular poison”<sup>38</sup> was widely used throughout the 19th century as a medicine, a cosmetic and a rodent poison. It was present in many everyday products including green dyes, wallpaper, confectionaries,

31 See, for example, Judith Walkowitz *Victorian Society: Women, Class and the State* (Cambridge University Press, Cambridge, 1999) 39; and “Execution of Mary Emily Cage at Ipswich – English Morality” *The Freeman’s Journal* (Sydney, 25 December 1851) at 5.

32 Helen Self *Prostitution, Women and Misuse of the Law: The Fallen Daughters of Eve* (Frank Cass, Abingdon-on-Thames, 2003).

33 Robb, above n 6, at 176, 180–185; Carolyn Ramsay “Domestic Violence and State Intervention in the American West and Australia, 1860–1930” (2011) 86 *Ind LJ* 185, at 248–249; David Plater, Joanna Duncan and Sue Milne “‘Innocent Victim of Circumstance’ or ‘a Very Devil Incarnate’? The Trial and Execution of Elizabeth Woolcock in South Australia in 1873” (2013) 15 *Flinders Law Journal* 315 at 373–378.

34 GBB, above n 5. “Nothing was more damning to an accused poisoner than evidence of adultery or a ‘light’ character”: Robb, above n 6, at 183. See also at 178.

35 “The Female Poisoners”, above n 3.

36 See, for example, Hempel, above n 17; “A Female Poisoner” *South Australian Advertiser* (Adelaide, 12 February 1886) at 5; Michael Hughes and others “Arsenic Exposure and Toxicology: A Historical Perspective” (2011) 123 *Toxicological Sciences* 303, at 308; James Worton *The Arsenic Century: How Victorian Britain Was Poisoned at Home, Work and Play* (Oxford University Press, Oxford, 2010).

37 Hempel, above n 17, at 27.

38 “Female Poisoners” *The Brisbane Courier* (Brisbane, 10 October 1889) at 7. See also “Name Your Poison” *The Sunday Times* (London, 24 March 1901) at 2.

beer and even as an aphrodisiac.<sup>39</sup> “Victorian society was awash in poison.”<sup>40</sup> Even if the prosecution could prove that a victim had died due to the effects of poison and not natural causes (itself a developing and inexact science),<sup>41</sup> it was still difficult to prove intentional poisoning by an accused.

Another explanation for acquittal rates or a reprieve of sentence, was the so-called “chivalry thesis”, the reluctance to convict a woman of a capital crime.<sup>42</sup> This was referred to by media at the time<sup>43</sup> and continues to have resonance in contemporary criminology.<sup>44</sup> Within the wider context of the patriarchal criminal justice system of the 1800s, there was a particular reluctance to convict and punish women, particularly those who, despite their crime, still conformed to prevailing expectations of the feminine role.<sup>45</sup>

#### IV. POISONING IN 19TH CENTURY BRITAIN

In 1846, *Lucretia, or the Children of the Night* was published in England. This novel featured a female poisoner<sup>46</sup> and appeared at a time when colonial Australia, and especially England, were suffering the outbreak of a poison

39 See Worton, above n 36; Peter Bartrip “A ‘Pennruth of Arsenic for Rat Poison’, *The Arsenic Act*, 1851, and the Prevention of Secret Poisoning” (1992) 36 *Medical History* 53 at 54–55. “So extensive were the uses to which arsenic was put that ‘it was hard to escape exposure ... in life or in death.’”

40 Robb, above n 6, at 182.

41 See further Part VII below.

42 See Kathy Laster “Arbitrary Chivalry, Women and Capital Punishment in Victoria, Australia, 1842–1967” (1996) 6 *Women and Criminal Justice* 67, at 67–68; Carolyn Strange “Masculinities, Intimate Femicide and the Death Penalty in Australia, 1890–1920” (2003) 8 *Brit J Criminol* 310; and Victor Streib “Death Penalty for Female Offenders” (1990) 58 *U Cin L Rev* 845.

43 See, for example, “The Execution of Mrs Needle” *South Australian Register* (Adelaide, 23 October 189) at 4.

44 See, for example, Randra Embry and Phillip Lyons “Sex-Based Sentencing: Sentencing Discrepancies Between Male and Female Sex Offenders” (2012) 7(2) *Feminist Criminology* 146–162; Timothy Griffin and John Wooldredge “Sex-based Disparities in Felony Dispositions Before Versus After Sentencing Reform in Ohio” (2006) 44(4) *Criminol* 893–923; Candace Kruttschnitt and Jukka Savolainen “Ages of Chivalry, Places of Paternalism, Gender and Criminal Sentencing in Finland” (2009) 6(3) *JC* 226; and Andrea Shapiro “Unequal Before the Law: Men, Women and the Death Penalty” (2000) 8 *Am UJ Gender Soc Pol’y & L* 427 at 456–457.

45 See, for example, *R v Ferres*, *The Colonial Times* (Hobart, 23 April 1852) at 4; *The Courier* (Hobart, 24 April 1852) at 3; *Cornwall Chronicle* (Launceston, Australia, 28 April 1852) at 267–268; see also “Louisa Ferres”, *The Courier* (Hobart, 1 May 1852) at 2; “Bathurst” *The Empire* (Sydney, 5 January 1853) at 3; and “The Murder on the Castlereagh River” *The Maitland Mercury* (Maitland, Australia, 22 January 1853) at 4. See further, Plater, Duncan and Milne, above n 33, at 359–362; and Aisha Gill, Carolyn Strange and Karl Roberts (eds) “Honour” *Killing and Violence: Theory, Policy and Practice* (Palgrave Macmillan, New York, 2014).

46 See Hempel, above n 17, at vii; Robb, above n 6, at 177.



panic.<sup>47</sup> There was a strong perception that “England at mid-century was in the clutches of a ‘poisoning mania’”.<sup>48</sup>

In a period where poisons were so readily available, not only was murder by poison a crime “of a very atrocious description [but] one that is exceedingly difficult of detection”.<sup>49</sup> It was, apparently, a “notorious fact that scores of murder are committed annually in England which are never known of”.<sup>50</sup> Murder by poison was viewed as “the crime of the age”.<sup>51</sup> Fears aroused by the secret poisoner who might escape the law completely emerged as a subject of universal concern.<sup>52</sup> It was particularly feared that women might invert their role as nurturer and caregiver to easily evade the law. The act of mixing and giving poison would, by deception and inversion, look the same as the innocent act of preparing and serving food.<sup>53</sup>

A total of 23 women were hanged in England and Wales during the poisoning panic in the period between 1843 and 1852.<sup>54</sup> Seventeen cases involved the use of poison (though only some of these involved the murder

47 See, for example, “Public Crime” *Britannia* (11 August 1849) quoted by *The Courier* (Hobart, Australia, 16 January 1850) at 4; Sandra Hempel “James Marsh and the Poison Panic” (2013) 381 (No 9885) *The Lancet* 2247; Nagy *Nineteenth-Century Female Poisoners*, above n 6, at 59–76; Robb, above n 6; and Strattmann, above n 6.

48 Ian Burney “A Poisoning of No Substance: the Trial of Medico-Legal Proof in Mid-Victorian England” (1999) 38 *Journal of British Studies* 58 at 67, citing “Poisoning in England” *The Saturday Review* (London, 22 December 1855) at 134–135. See also “The Increase of Poisoning” *The Cornwall Chronicle* (Launceston, Australia, 26 December 1850) at 942–943.

49 *Walleroo Times* (Walleroo, Australia, 20 December 1873) at 2. One English medical expert, a Dr Taylor, at an 1862 trial asserted that eight deaths attributed to cholera were in fact the result of arsenic poisoning. See *The Empire* (Sydney, 29 December 1862) at 4.

50 *Walleroo Times* (Walleroo, Australia, 20 December 1873) at 2.

51 “The Crime of the Age” *Illustrated Times* (London, 2 February 1856) at 2.

52 In Hungary in 1900, 18 married women were tried for murdering their husbands and children with arsenic. Nine were acquitted, with the remainder found guilty and sentenced to long terms of imprisonment. See “Wholesale Husband Murder” *Riverine Herald* (Echuca, Australia, 6 July 1899) at 3.

53 Fears over the apparent spate of secret poisonings led to the Arsenic Act 1851 (UK) to restrict the sale of arsenic. The Bill was at one stage confined to women (see Judith Knelman “The Amendment of the Sale of Arsenic Bill” (1991) 17 *Victoria Review* 1) but this aspect was dropped “owing to the indignant remonstrances of ladies”: Bartrig, above n 39, at 65.

54 This includes one woman, Mary Ann Milner, who hanged herself the night before her execution.

of a husband).<sup>55</sup> Although there was little judicial discretion to mitigate the capital sentence for murder, a reprieve from hanging rested principally within the discretionary power of the Executive to grant a pardon. Rather than a full reprieve from the consequences of a conviction, a pardon more commonly resulted in a reduced sentence that could include life imprisonment or even transportation to the colonies (although transportation was often still regarded as severe as hanging).<sup>56</sup> Given the concerns attributable to the spate of poisonings purportedly carried out by women in the 1840s,<sup>57</sup> it was observed at the time that rather than a reprieve, “the more effectual expedient would be to make poisoning a crime inevitably punished by public execution”.<sup>58</sup>

## V. POISONING IN COLONIAL AUSTRALIA

The fears that arose in Britain during the 19th century about the use of poison as a ready means of murder, especially by wives, also arose in colonial Australia<sup>59</sup> though perhaps not to the same extent as in Britain. One colonial report noted that “murder by poisoning was much more common than was generally believed”.<sup>60</sup> Mary Thornton, Elizabeth Woolcock, Louisa Collins and Martha Needle were all convicted and hanged in Australia in the 1800s

- 55 See Richard Clark “Arsenic Poisoning” Capital Punishment UK <[www.capitalpunishmentuk.org](http://www.capitalpunishmentuk.org)>. The 17 capital cases involving poison are: Betty Eccles (murder of stepson) (hanged 6 May 1843); Sarah Dazley (murder of husband and former husband) (hanged 5 August 1843); Sarah Westwood (murder of husband) (hanged 13 January 1844); Eliza Joyce (murder of stepson) (hanged 2 August 1844); Mary Gallop (murder of father) (hanged 28 December 1844); Mary Sheming (murder of infant grandson) (hanged 11 January 1845); Sarah Freeman (murder of brother, husband and other relatives) (hanged 23 April 1845); Catherine Foster (murder of husband) (hanged 17 April 1847); Mary Ann Milner (murder of mother in law, sister in law and niece) (hanged 30 July 1847); Mary May (murder of brother) (hanged 14 August 1848); Mary Ball (murder of husband) (hanged 9 August 1849); Mary Ann Geering (murder of husband and two sons) (hanged 21 August 1849); Rebecca Smith (murder of infant son) (hanged 23 August 1849); Mary Reeder (murder of sister to take up with her husband) (hanged 13 April 1850); Sarah Chesham (attempted murder of husband) (hanged 25 March 1851); Mary Cage (murder of husband) (hanged 19 August 1851); and Sarah Ann French (murder of husband) (hanged 10 April 1852).
- 56 Quote from Earl Bathurst, Secretary of State for the Colonies, in Alex Castles *An Australian Legal History* (Law Book Co, Sydney, 1982) at 128.
- 57 See Robb, above n 6.
- 58 “Public Crime” *Britannia* (11 August 1849) quoted by *The Courier* (Hobart, Australia, 16 January 1850) at 4.
- 59 See, for example, “Public Executions” *Melbourne Daily News* (Melbourne, 20 August 1851) at 4; *The Empire* (Sydney, 29 December 1862) at 4; *The Empire* (Sydney, 1 January 1863) at 4; “Female Poisoners” *Cornwall Chronicle* (Launceston, Australia, 9 May 1873) at 3; Editorial *Wallaroo Times and Mining Journal* (Port Wallaroo, Australia, 20 December 1873) at 2; “The Female Poisoners”, above n 3; and “Poisoning Manias” *The Maitland Mercury*, (Maitland, Australia, 27 December 1887) at 3.
- 60 See *The Empire* (Sydney, 29 December 1862) at 4.

for the actual or presumed murder of their husbands involving the use of poison.<sup>61</sup>

### A. Mary Thornton

Mary Thornton in New South Wales in 1844 stood in an unenviable position. Not only was she a convict (therefore convicted of an offence in England and sentenced to transportation), but there had been “improper intimacy”<sup>62</sup> between her and a man called Vale, an employee of her husband. Mary was alleged to have murdered her husband in league with Vale through the administration of strychnine.<sup>63</sup> At their trial,<sup>64</sup> the Attorney-General dwelt on the aggravating features of the case, principally that of Mary as “the [traitress] wife of the unfortunate man who had been poisoned, ... who at the altar of God had sworn fidelity and love to her husband”.<sup>65</sup> Thornton had died suddenly of strychnine poisoning in suspicious circumstances.<sup>66</sup> Vale had purchased strychnine under a pretext it was to poison native dogs. There was ample evidence of motive. Mary’s infidelity was known to the deceased and Thornton had threatened to revoke her ticket of leave (a temporary and partial remission of sentence of imprisonment that usually resulted in an assignment of labour that, in Mary’s instance, was to her husband) and return her to the Factory, as the female prisons were known at the time.<sup>67</sup>

Both defendants were legally unrepresented at the trial and pleaded not

61 Mrs Needle was strictly only tried and sentenced to death for the murder of her fiancé’s brother, but she was effectively tried, sentenced to death and ultimately hanged for the murder of her husband and children and attempted murder of another brother of the fiancé as well. See below n 110.

62 “Country News”, *The Australian* (Sydney, 13 February 1844) at 1S.

63 See “A Woman Suspected of Poisoning her Husband” *The Maitland Mercury* (Maitland, Australia, 27 January 1844) at 2; “The Murder at Mulberry Creek” *The Maitland Mercury* (Maitland, Australia, 3 February 1844) at 2; “A Woman Suspected of Poisoning her Husband” *Morning Chronicle* (Sydney, 3 February 1844) at 4; and *The Sydney Morning Herald* (Sydney, 21 March 1844) at 4.

64 See *R v Thornton and Vale*, *The Maitland Mercury* (Maitland, Australia, 19 March 1844) at 2; and *The Sydney Morning Herald* (Sydney, 21 March 1844) at 4.

65 *The Sydney Morning Herald* (Sydney, 21 March 1844) at 4. The convention of prosecutorial restraint arising from the prosecutor’s role as a “minister of justice” rather than as a partisan advocate had firmly emerged in England by the 1820s but it was unevenly applied in colonial Australia until the 1850s, especially in relation to defendants who were perceived as a “threat to society”. See David Plater and Sangeetha Royan “The Development and Application in Nineteenth Century Australia of the Prosecutor’s Role as a Minister of Justice: Rhetoric or Reality?” (2012) 31 U Tas LR 78–130.

66 *Maitland Mercury* (Maitland, Australia, 19 March 1844) at 2.

67 See Joy Damousi *Depraved and Disorderly: Female Convicts, Sexuality and Gender in Colonial Australia* (Cambridge University Press, Cambridge, 1997).

guilty.<sup>68</sup> The Chief Justice acknowledged that the prosecution case was purely circumstantial. The jury would first have to be satisfied that Thornton had died through the administration of poison and not by natural causes. Next, the jury would have to be satisfied by whose hand the poison had been administered; and finally had either of the accused acted alone or had they acted together. Both defendants were convicted after only a few minutes of deliberation. The Chief Justice passed sentence of death, noting his:<sup>69</sup>

... painful duty to pass the sentence of death upon a wife and her guilty paramour ... in which they had conspired to dip their hands in the blood of the husband [and] he could hold out no hope to them on this side of the grave.

Although a trial judge held no discretion to abstain from imposing the death sentence for murder, the judge and/or jury might recommend that the Governor grant mercy in the exercise of the prerogative power that was shared with, or partially devolved from, the British Crown. All convictions for capital offences that resulted in sentence of death were reported to the Executive Council, acting in an advisory capacity to the Governor, in whom the decision ultimately resided.<sup>70</sup> At least this was the position until the development from the 1850s of responsible “ministerial” government in the Australian colonies, when the Governor became accountable to the colonial, rather than the British ministry in domestic matters that were thought to include the exercise of the prerogative of mercy.<sup>71</sup>

The Chief Justice and at least some columnists opposed the grant of mercy to Mary Thornton. Similarly, they rejected the appropriateness of paying

68 The lack of representation was not unusual in the period, even in capital cases. In the 1840s, for example, in the Black Country of England only 25 per cent of defendants were legally represented. In serious criminal cases this figure only rose to 49 per cent. See David Taylor *Crime, Policing and Punishment in England 1750–1914* (St Martin’s Press, New York, 1998) at 114.

69 *R v Thornton and Vale*, above n 64.

70 The Governor acted on the advice of the Executive Council but, until responsible government, the decision to grant mercy rested with the Governor. In 1843, for example, the Tasmanian Governor over the objections of the other members of the Executive Council, decided to reprieve a notorious bushranger, Laurence Kavanagh. See Tasmania *Executive Council Minutes* (21 October 1843); “Midland Agricultural Association” *The Courier* (Hobart, Australia, 13 October 1843) at 2–3; and “Midland Agricultural Association” *Colonial Times* (Hobart, Australia, 17 October 1843) at 3.

71 With responsible government there was a demarcation sometimes drawn between the “dual responsibilities” of the colonial governors [see, for example, the dissenting opinion of Hickinbotham CJ in *Toy v Musgrove* (1888) 14 VLR 349], who were thought to be accountable to the responsible colonial government on domestic matters; and to the British Government on Imperial matters. See Hessel Duncan Hall *The British Commonwealth of Nations* (Methuen, London, 1920) at 25, quoted in HV Evatt *The King and his Dominion Governors* (2nd ed, Taylor & Francis, Abingdon-on-Thames, 1967) at 15–16.

regard to chivalrous notions of femininity, with one writer labelling it a “false and detestable sensibility”.<sup>72</sup> Mercy was refused.<sup>73</sup> Both Vale and Mary Thornton were hanged, suitably repentant after making full confessions of their guilt.<sup>74</sup>

### *B. Elizabeth Woolcock*

Elizabeth Woolcock met a similar fate in South Australia in 1873 after conviction for the murder of her husband, Thomas Woolcock, by gradual mercury poisoning.<sup>75</sup> Her motive was said to be her unhappy and abusive marriage and her purported “criminal commerce”<sup>76</sup> with a man called Pascoe.<sup>77</sup> Hostile rumours within the close knit local mining community in which the Woolcocks lived, and the seemingly compelling circumstantial case presented by the prosecution, dispelled any reasonable doubt as to her guilt.<sup>78</sup>

Mrs Woolcock was branded by even her own lawyer as “a very devil incarnate, a being without the slightest humanity or natural feeling”.<sup>79</sup> In the face of Elizabeth’s “diabolical” crime,<sup>80</sup> there was wide support for both the

72 “Not Yorick”, Letter to Editor, “Capital Punishments” *The Australian* (Sydney, 29 March 1844) at 3. Compare SHH “Punishment of Death” *The Australian* (Sydney, 26 March 1844) at 3.

73 “The Condemned Criminals; Vale and Thornton” *The Maitland Mercury* (Maitland, Australia, 13 April 1844) at 2.

74 See “The Maitland Poisoning Case” *The Sydney Morning Herald* (Sydney, 19 April 1844) at 3; “Execution of Vale and Mary Thornton” *The Maitland Mercury* (Maitland, Australia, 20 April 1844) at 4.

75 See “The Yelta Poisoning Case” *South Australian Register* (Adelaide, 8 September 1873) at 6; “Coroner’s Inquest Suspicious Death at Yelta” *South Australian Advertiser* (Adelaide, 8 September 1873) at 3; “Suspicious Death at Yelta” *South Australian Chronicle and Weekly Mail* (Adelaide, 13 September 1873) at 6; See generally Plater, Duncan and Milne, above n 33, at 315–380; Allan Peters *No Monument of Stone* (Allan Peters, 1992); and Allan Peters, *Dead Woman Walking: Was an Innocent Woman Hanged* (Bas Publishing, Melbourne, Australia, 2008).

76 *The Border Watch* (Mt Gambier, Australia, 7 January 1874) at 3.

77 The exact nature of the relationship between Pascoe and Elizabeth was never made entirely clear. See “Confession of Mrs Woolcock” *South Australian Register* (Adelaide, 2 January 1874) at 3.

78 See *R v Woolcock* (*South Australian Register* (Adelaide, 3 December 1873) at 3; *South Australian Register* (Adelaide, 4 December 1873) at 4; *South Australian Register* (Adelaide, 5 December 1873) at 2–3; *South Australian Weekly Chronicle and Weekly Mail* (Adelaide, 6 December 1873) at 13–14, 10).

79 *South Australian Register* (Adelaide, 5 December 1873) at 3. Though this comment was offered for the prosecution’s case, Mrs Woolcock’s defence was not assisted by the inept handling of her case at trial by her lawyer. See Plater, Duncan and Milne, above n 33, at 327, footnotes 63–64.

80 Our Own Correspondent “Our Adelaide Letter” *The Border Watch* (Mt Gambier, Australia, 10 December 1873) at 3. See also “Pseudo-Philanthropy” *The Bunyip* (Gawler, Australia, 12 December 1873) at 3.

guilty verdict and sentence of death.<sup>81</sup> However it is significant that both the verdict and sentence of death proved contentious.<sup>82</sup> So too were the disparate views on the relevance of the application of mercy.<sup>83</sup> The Governor and Executive Council, however, resolved not to interfere with the course of the law.<sup>84</sup> Elizabeth was hanged, with emphasis on her “great penitence”,<sup>85</sup> after making a final lengthy if incoherent confession of guilt.<sup>86</sup> Her final confession was seen to vindicate both the jury’s guilty verdict and the refusal to extend mercy.<sup>87</sup>

### C. Louisa Collins

Louisa Collins was accused in 1888 of the murder of her first husband, Charles Andrews, and her second husband, Peter Collins. Arsenic was said to have been the means of both murders. To aggravate her already grim position,

- 81 See, for example, *South Australian Advertiser* (Adelaide, 20 December 1873) at 2; “The Prisoners under Sentence of Death” *South Australian Chronicle and Weekly Mail* (Adelaide, 20 December 1873) at 8; Editorial *Walleroo Times and Mining Journal* (Port Wallaroo, Australia, 20 December 1873) at 2; *Northern Argus* (Clare, Australia, 26 December 1873) at 2; Our Own Correspondent “Our Adelaide Letter” *The Border Watch* (Mt Gambier, Australia, 3 January 1874) at 3; “City Correspondence” *The Kapunda Herald* (Kapunda, Australia, 6 January 1874) at 3; Our Own Correspondent “Our Adelaide Letter” *The Border Watch* (Mt Gambier, Australia, 7 January 1874) at 3; “Recommended to Mercy” *South Australian Chronicle and Weekly Mail* (Adelaide, Australia, 10 January 1874) at 11–12; and “Recommended to Mercy” *South Australian Advertiser* (Adelaide, Australia, 31 January 1874) at 6.
- 82 The evidence adduced against Mrs Woolcock on close scrutiny was less than conclusive. See Plater, Duncan and Milne, above n 33, at 337–339, 352. The circumstances and reliability of Elizabeth’s conviction are unsatisfactory. See at 339–351; Peters, *Dead Woman Walking*, above n 75; at 275–299; “Justice” *Southern Argus* (Port Elliot, Australia, 12 December 1873) at 3; *Yorke Peninsular Advertiser* (Kadina, Australia, 12 December 1873) at 2.
- 83 *South Australian Advertiser* (Adelaide, Australia, 20 December 1873) at 2; “The Prisoners under Sentence of Death” *South Australian Chronicle and Weekly Mail* (Adelaide, 20 December 1873) at 8; and Editorial *Walleroo Times and Mining Journal* (Port Wallaroo, Australia, 20 December 1873) at 2.
- 84 South Australia *Executive Council Minutes* (19 December 1873) at 556–557.
- 85 Our Own Correspondent “Our Adelaide Letter” *The Border Watch* (Mt Gambier, Australia, 3 January 1874) at 3. See also “Execution of Elizabeth Woolcock” *South Australian Advertiser* (Adelaide, Australia, 31 December 1873) at 2.
- 86 See “Confession of Elizabeth Woolcock” *South Australian Register* (Adelaide, Australia, 2 January 1874) at 5. Elizabeth’s “confession” is reproduced in full. The reliability of her confession is debatable: see Plater, Duncan and Milne, above n 33, at 355–356; Peters, *Dead Woman Walking*, above n 75, at 272; and “Recommended to Mercy” *South Australian Advertiser* (Adelaide, Australia, 31 January 1874) at 6.
- 87 See Our Own Correspondent “Our Adelaide Letter” *The Border Watch* (Mt Gambier, Australia, 3 January 1874) at 3; “Recommended to Mercy” *South Australian Advertiser* (Adelaide, 31 January 1874) at 6; and “Recommended to Mercy” *South Australian Chronicle and Weekly Mail* (Adelaide, Australia, 10 January 1874) at 11–12.

Louisa’s perceived “immoral” lifestyle and character was emphasised.<sup>88</sup> Her motive for Andrews’ murder was said to have been her affair with Collins (who was lodging with the Andrews family), who she promptly married after Andrews’ death.<sup>89</sup> She “had conceived a passion for a younger man, and that in order to gratify that passion she found it necessary to remove her husband”.<sup>90</sup> Sentenced to death (after four trials) for the murder of her second husband, Louisa Collins was the last woman to be judicially hanged in New South Wales.

The case was the subject of intense public and political debate and remains of scholarly interest today.<sup>91</sup> The first<sup>92</sup> and second<sup>93</sup> trials for Louisa for the murder of her second husband both resulted in hung juries. Undeterred, the prosecution proceeded to a third trial, this time for the alleged murder of her first husband, the motive asserted to be an affair with Collins who she later married.<sup>94</sup> Again, the jury was unable to reach a verdict. The prosecution then proceeded with an “extraordinary”<sup>95</sup> third trial for the murder of her second husband and relied upon as “similar fact evidence” the circumstances of Andrews’ (the first husband) death. On this occasion, Louisa Collins was found guilty and sentenced to death without hope of mercy, the Chief Justice declaring her crime as “one of peculiar atrocity”.<sup>96</sup>

88 There was emphasis on Louisa’s Collins’ perceived drunken and “immoral” lifestyle and her brazen affair with Collins when married to Andrews. See Cushing, above n 2, at 149, 152; “The Botany Murder” *Reporter and Illawarra Journal* (Kiama, Australia, 12 January 1889) at 4; “The Botany Murder Case” *Evening News* (Sydney, 8 January 1889) at 3. However, other reports highlighted the “feminine” aspects of her character such as her devotion for her children, thus accounting for the divided public perception of Louisa and contributing to the heated debate as to her fate. See Cushing above n 2, at 152, 155.

89 *The Sydney Morning Herald* (Sydney, 22 November 1888) at 6. See also Cushing above n 2, at 152.

90 *The Sydney Morning Herald* (Sydney, 22 November 1888) at 6. When Louisa’s alleged adultery with Collins was raised at the third trial, Louisa’s counsel, Mr Lusk, told the jury that the trial was not about her “social and moral character”. “While this might have been his aspiration, it was not the case ... Louisa Collins’ conduct and morality were central to her experience of the legal system”: Cushing, above n 2, at 152.

91 See, generally, Baxter, above n 2; Cushing, above n 2; and Kukulies-Smith and Priest, above n 2; Overington, above n 2.

92 See *R v Collins (No 1) The Sydney Morning Herald* (Sydney, 7 August 1888 at 9; 8 August 1888 at 4; 9 August 1888 at 3; and 10 August 1888 at 7).

93 See *R v Collins (No 2) The Sydney Morning Herald* (Sydney, 6 November 1888) at 11. Also 7 November 1888 at 6; 8 November 1885 at 5–6; 9 November 1888 at 4–5.

94 See *R v Collins (No 3) The Sydney Morning Herald* (Sydney, 20 November 1888) at 3. (Also 21 November 1888 at 13; 22 November 1888 at 6). See also Cushing, above n 2, at 152.

95 *Portland Guardian* (Portland, Australia, 7 December 1888) at 3. The prosecution’s insistence on a third trial disregarded the convention that it should not proceed with a third trial for an alleged crime after two hung juries. See Kukulies-Smith and Priest, above n 2, at 152–153. See also below n 150.

96 *The Sydney Morning Herald* (Sydney, 10 December 1888) at 11.

Louisa's fate proved highly contentious.<sup>97</sup> The many calls for mercy on her behalf were ultimately dismissed; the verdict and sentence of death having attracted wide support.<sup>98</sup> Louisa Collins was branded a "fiend in human shape"<sup>99</sup> and the "Botany Lucretia Borgia".<sup>100</sup>

It was claimed that over two thirds of the population and almost all women favoured her execution.<sup>101</sup> Unsurprisingly then, arguments that her sex should be a mitigating factor in a plea for mercy were a consistent theme.<sup>102</sup> There was a concern that to grant Louisa Collins a reprieve would effectively rule out any future use of the death penalty against a woman, as no other woman was likely to commit a more heinous crime.<sup>103</sup> The Premier, Sir Henry Parkes, opposed a reprieve for Louisa on grounds of her sex and argued that the criminal law should make no distinction in this regard.<sup>104</sup> As one columnist declared:<sup>105</sup>

97 Kukulies-Smith and Priest, above n 2, 154–155; Overington, above n 2, at ch 12 and ch 15.

98 See, for example, *The Sydney Morning Herald* (Sydney, 10 December 1888) at 4; "The Case of Louisa Collins" *Newcastle Mining Herald* (Sydney, 22 December 1888) at 4–5; "Louisa Collins" *Evening News* (Sydney, 24 December 1888) at 3; Amicus Curie "The Case of Louisa Collins" *The Sydney Morning Herald* (Sydney, 24 December 1888) at 5; Junior Junius "The Case of Louisa Collins" *The Sydney Morning Herald* (Sydney, 24 December 1888) at 5; David Buchanan "A Just and Firm Executive" *The Sydney Morning Herald* (Sydney, 27 December 1888) at 3; Frederick Tayler "The Case of Louisa Collins" *The Sydney Morning Herald* (Sydney, 28 December 1884) at 4; Editorial *The Sydney Morning Herald* (Sydney, 29 December 1888) at 7; Onlooker, Letter to Editor *The Sydney Morning Herald* (Sydney, 29 December 1888) at 8; JS Downing "The Case of Louisa Collins" *The Sydney Morning Herald* (Sydney, 29 December 1888) at 8; John Kelly "The Case of Louisa Collins" *The Sydney Morning Herald* (Sydney, 31 December 1888) at 9; *The Brisbane Courier* (Brisbane, 2 January 1889) at 4; *The Sydney Morning Herald* (Sydney, 4 January 1889) at 4; "A Wife and Mother" Letter to Editor *The Sydney Morning Herald* (Sydney, 4 January 1889) at 3; DY, Letter to Editor *The Sydney Morning Herald* (Sydney, 5 January 1889) at 8; "The Case of Louisa Collins" *South Australian Register* (Adelaide, 9 January 1889) at 4; "Louisa Collins" *The Bunyip* (Gawler, Australia, 11 January 1889) at 2; "The Late Execution" *The Freeman's Journal* (Sydney, 12 January 1889) at 13; "The Botany Tragedy" *Australian Town and Country Journal* (Sydney, 12 January 1889) at 10; and "Hanging a Woman" *The Western Mail* (Perth, Australia, 2 February 1889) at 27–28.

99 "Louisa Collins" *The Bunyip* (Gawler, Australia, 11 January 1889) at 2.

100 "Louisa Collins" *Molong Express and Western District Advertiser*, 5 January 1889; "The Botany Murder Case" *Evening News* (Sydney, 8 January 1889) at 3. It was almost inevitable that any 19th century female poisoner such as Mrs Collins (or later Martha Needle) would be likened to Lucretia Borgia, the notorious reputed female poisoner of Renaissance Italy.

101 *Bathurst Free Press* (Bathurst, Australia, 3 January 1889) at 3.

102 "Execution of Louisa Collins" *Morwell Advertiser* (Morwell, Australia, 12 January 1889) at 3; and Junior Junius "The Case of Louisa Collins" *The Sydney Morning Herald* (Sydney, 24 December 1888) at 5.

103 Cushing, above n 2, at 155.

104 Kukulies-Smith and Priest, above n 2, at 157.

105 Junior Junius "The Case of Louisa Collins" *The Sydney Morning Herald* (Sydney, 24 December 1888) at 5.



This case is a clear one, and one of the most revolting ever perpetrated in Australia. Why should those seeking her reprieve plead sex? I think they should not, for when a woman sinks to such a state of iniquity that she will poison her husband, I say that woman has lost all the noble, gentle characteristics that are natural to her sex.

The Governor, acting on the advice of the Government,<sup>106</sup> and in the face of strong pressure, refused to grant a reprieve. Louisa Collins was hanged, her bungled execution only adding to the controversy surrounding the case.<sup>107</sup>

#### *D. Martha Needle*

Martha Needle was hanged in Victoria in 1894 following her conviction for the murder of Louis Juncken through arsenic poisoning, after he had objected to his brother, Otto's betrothal to her. Mrs Needle accorded with the very worst popular perception of the female poisoner of the period.<sup>108</sup>

A litany of suspicious events surrounded Martha Needle. Another brother, Herman Juncken, after also objecting to his brother's proposed marriage, was diagnosed by a vigilant medical practitioner with arsenic poisoning when he fell ill after eating meals cooked by Mrs Needle. The police were alerted and Mrs Needle was caught red-handed giving a cup of tea to Herman with enough arsenic to kill five men.<sup>109</sup> There was strong evidence that Martha had also killed her husband, Henry Needle and their three young children with

106 New South Wales *Parliamentary Debates*, Legislative Assembly, 19 December 1888, 1335 (Henry Parkes, Premier).

107 Overington, above n 2, ch 18. The execution was a gruesome affair. See “The Execution of Louisa Collins” *The Sydney Morning Herald* (Sydney, 9 January 1889); George Rignold “Letter to Editor” *The Sydney Morning Herald* (Sydney, 10 January 1889) at 8; “Louisa Collins’ Execution: a Horrible Bungle” *Horsham Times* (Horsham, Australia, 11 January 1889) at 4; and *South Australian Advertiser* (Adelaide, 16 January 1889) at 4. For the contrary report of the Sheriff, see “The Recent Execution at Darlinghurst” *The Sydney Morning Herald* (Sydney, 11 January 1889) at 3.

108 See, for example, “Martha Needle’s Career” *The Advertiser* (Adelaide, Australia, 23 October 1894) at 5; and “Martha Needle’s Career” *South Australian Chronicle* (Adelaide, 27 October 1894) at 6.

109 “The Richmond Poisoning Case” *The Argus* (Melbourne, 30 June 1894) at 7. See also “A Sensational Poisoning Story” *The Argus* (Melbourne, 14 June 1894) at 5; and “The Richmond Poisoning Case: a Sensational Development” *The Argus* (Melbourne, 15 June 1894) at 5.

arsenic.<sup>110</sup> The case attracted intense and often hostile press coverage. Martha Needle was branded a “veritable fiend in human guise”<sup>111</sup> and compared to Louisa Collins,<sup>112</sup> the notorious serial killer, Frederick Deeming,<sup>113</sup> and (with a lack of originality) Lucretia Borgia.<sup>114</sup> Despite suggestions of insanity and calls for a reprieve<sup>115</sup> (including two petitions), mercy was refused<sup>116</sup> and Martha Needle was hanged, still maintaining her innocence.<sup>117</sup>

### *E. The Reprieve Dimension*

Despite public condemnation and vilification of the four female poisoners described above who committed murder, and even approbation for the “last fatal and irremediable scene of the tragedy”<sup>118</sup> of their execution, there was also evidence of sympathy and calls for mercy. This evidence challenges the often exaggerated portrayal of poisoning as an irredeemable female crime.

Where the plea for mercy fell within the court’s jurisdiction, for example, where a judgment of “death recorded” in place of a capital sentence was available to the judge, the rationale for extending mercy through the grant of a more lenient sentence was usually available on public record via the court’s

- 110 See, for example, “Martha Needle’s Career” *The Advertiser* (Adelaide, Australia, 23 October 1894) at 5; “Martha Needle’s Career” *South Australian Chronicle* (Adelaide, Australia, 27 October 1894) at 6. This damning background was adduced by the prosecution at her trial for the murder of Louis (see *R v Needle* (*The Argus* (Melbourne, 25 September 1894) at 5; 26 September 1894 at 7; 27 September 1894 at 7; and 28 September 1894 at 6) as “part of the corpus of evidence upon which she was convicted” (*The Sydney Morning Herald* (Sydney, 6 October 1894) at 8) or, as is now more commonly known, similar fact evidence, to rebut any suggestion of accident or coincidence (see *The Argus* (Melbourne, 29 September 1894) at 6).
- 111 “Execution of Mrs Needle” *South Australian Register* (Adelaide, South Australia, 23 October 1894) at 4.
- 112 See, for example, *The Sydney Morning Herald* (Sydney, 6 October 1894) at 8.
- 113 See, for example, “Martha Needle’s Career” *The Advertiser* (Adelaide, Australia, 23 October 1894) at 5; “Martha Needle’s Career” *South Australian Chronicle* (Adelaide, Australia, 27 October 1894) at 6. Deeming was a notorious serial killer who was hanged in Melbourne. He was even suspected of being Jack the Ripper.
- 114 “Execution of Mrs Needle” *Cootamundra Herald* (Cootamundra, Australia, 24 October 1894) at 8; and “Execution of Martha Needle” *Burrowa News* (Burrowa, Australia, 26 October 1894) at 2.
- 115 See, for example, “Capital Punishment” *The Herald* (Melbourne, 15 October 1894) at 2; and “The Execution of Martha Needle” *The Inquirer and Commercial News* (Perth, Australia, 26 October 1894) at 6.
- 116 See “The Execution of Martha Needle” *Daily News* (Perth, Australia, 23 October 1894) at 3.
- 117 See, for example, “The Richmond Poisoning Cases: The Execution of Martha Needle” *The Argus* (Melbourne, 23 October 1894) at 5; “Execution of Mrs Needle” *South Australian Chronicle* (Adelaide, 27 October 1894) at 6; and “Another Account of the Tragedy” *South Australian Chronicle* (Adelaide, 27 October 1894) at 6. It was noted that Mrs Needle was “as inscrutable as the Sphinx”: “Martha Needle’s Career” *South Australian Chronicle* (Adelaide, 27 October 1894) at 7. Her sanity must be questioned.
- 118 SPH “Punishment by Death” *The Australian* (Sydney, 26 March 1844) at 3.

reasons.<sup>119</sup> However, where the court refused or was unable to mitigate the sentence, and any challenge to the conviction was unsuccessful,<sup>120</sup> the only remaining avenue for an extension of mercy lay within the discretionary power of the Governor and Executive Council. Contrary to the judicial function, the decision-making process of the Executive was not made public,<sup>121</sup> and was also beyond review by the courts.<sup>122</sup> This lack of transparency makes the examination of the influences upon the grant or otherwise of mercy often a matter of conjecture.

There are numerous, and sometimes conflicted, accounts of the role of the prerogative of mercy within the administration of criminal justice.<sup>123</sup> Its characterisation as a “freestanding virtue”,<sup>124</sup> where the “work of mercy”<sup>125</sup> is likened to an individual “act of grace” that is twice blessed, bestowing grace upon those that give and those that receive mercy,<sup>126</sup> gives it religious overtones. Yet this dimension of mercy is only one account. The positivist views mercy as an act representative of the power and authority of the State;<sup>127</sup> or else

119 Bridget Mitchell, for example, was convicted in 1844 of the murder of her new-born son and, unusually, the court passed sentence of death recorded, later commuted to three years imprisonment, a relatively lenient disposal for the period. See Plater and Milne, above n 23, at 122.

120 It should be recalled that there was no formal right to appeal against conviction in the period.

121 James Barnett, “The Grounds of Pardon in the Courts” (1910) 20 *Yale LJ* 131.

122 Criticism of this lack of transparency remains evident today. See, for example, South Australia, *Parliamentary Debates* House of Assembly, 7 February 2013, 4315 (Hon John Rau, Attorney-General); David Caruso and Nicholas Crawford “The Executive Institution of Mercy in Australia: The Case and Model for Reform” (2014) 37(1) *University of NSW Law Journal* 312.

123 See, for example, Steven Tudor “Modes of Mercy” (2003) 28 *Australian Journal of Legal Philosophy* 79. It is sometimes asserted that the exercise of the prerogative of mercy was an arbitrary process, “hanged men and women drew short straws in a lottery”: Rob Turrell “It’s a Mystery: the Royal Prerogative of Mercy in England, Canada and South Africa” (2000) 4 *Crime, Histories and Society* 83 at 88–89. See further Carolyn Strange “The Lottery of Death, Capital Punishment 1867–1976” (1996) 23 *Manitoba LJ* 594–619. However, the preferable view is that the exercise of the prerogative of mercy in the 19th century was a careful and considered process. “Great care was taken in the choice of those to be saved”: John Hirst, *Convict Society and Its Enemies: A History of Early New South Wales* (Allen and Unwin, Sydney, 1983) at 114. See further Turrell, above n 123, at 86–88; Plater and Milne, above n 23, at 117–121; Plater, Duncan and Milne, above n 33, at 319–322; and Martin Weiner, “Convicted Murderers and the Victorian Press: Condemnation vs Sympathy” (2007) 1(2) *Crimes and Misdemeanours: Deviance and the Law in Historical Perspective* 110.

124 Mary Sigler “Equity, Not Mercy” in Flanders and Hoskins (eds) *The New Philosophy of Criminal Law* (eBook ed, SSRN, 2016). Available at SSRN <ssrn.com>.

125 Coke, above n 14, at 233 cap 105.

126 Portia’s eloquent plea for mercy suggests that mercy “blesseth him that gives, and him that takes”. William Shakespeare, *The Merchant of Venice*, Act IV, scene i.

127 See, for example, Douglas Hay and others *Albion’s Fatal Tree: Crime and Society in Eighteenth Century England* (Allen Lane, London, 1975) at 47; and GD Woods *A History of Criminal Law in New South Wales: the Colonial Period, 1788–1900* (Federation Press, Annandale, NSW, 2002).

as a genuine attempt to alleviate the harshness of the criminal law.<sup>128</sup> This resonates particularly within much of the 19th century, when many crimes attracted the death penalty, and rules of criminal procedure and appeal (there was no formal right of appeal until the early 1900s) were in a relatively embryonic state.<sup>129</sup>

Given such broad and diffuse understandings of the role of mercy, it is unsurprising that pleas for mercy rested upon grounds that were just as wide-ranging. Petitions seeking a reprieve often focused upon the strength of the prosecution case and doubts as to the safety of the conviction.<sup>130</sup> Instead of a legal basis, a plea for mercy on character grounds was also evident on occasion.<sup>131</sup>

Even the four women hanged in Australia in the 19th century for the murder of their husbands by means of poison did not lack for sympathy.<sup>132</sup> In these cases, attention was drawn to the strength of the evidence presented by the prosecution, where the role of mercy as the “last hope of a reprieve” was

128 See, for example, Carla Johnson “Entitled to Mercy: Clemency in the Criminal Law” (1991) 10 *Law and Philosophy* 109 at 113. Mercy plays an important role in sentencing to this day. See Eric Mueller “The Virtue of Mercy in Criminal Law” (1993) 24 *Seton Hall LRev* 288 at 330–338.

129 See, for example, the case of Elizabeth Hyde in Part VI below. See also, generally, ATH Smith “The Prerogative of Mercy, the Power of Pardon and Criminal Justice” [1983] PL 398.

130 For example, Sarah McGregor and Ann Maloney in 1834, both convicts, were convicted of the murder of their master and sentenced to death without hope of mercy but their sentences were commuted to three years imprisonment on account of their positive character and especially doubts as to their guilt. See Plater and Milne, above n 23, at 130–133. The cases of Anne Miniver Davis, Burton and Keep, and Elizabeth Hyde illustrate how doubts as to the safety of the conviction, although not strong enough to affect the outcome of criminal proceedings, might be perceived to have influenced the decision to grant a reprieve from hanging. See further Part VI below.

131 “The ‘youth’ of Elizabeth Woolcock was a factor in the jury’s recommendation for mercy upon her conviction for murder. See *South Australian Register* (Adelaide, 5 December 1873) at 3. For example, Sarah McGregor and Ann Maloney in 1834 were reprieved after lobbying highlighted their positive character. Maloney’s “courage”, “firmness” and “superior mind” were noted; “she was not a common woman”. McGregor was noted of a “soft feminine mind, easily affected by kindness ... [she] is what English women in respectable and virtuous life generally are, feminine and amiable”. See “A Correspondent” “Behaviour of Sarah McGregor and Mary Maloney after Conviction” *Sydney Monitor* (Sydney, 28 February 1834) at 2; and Plater and Milne, above n 23, at 130–133.

132 See also case of Mary Byrne (or Nevin) in 1860. The general respect and sympathy that Mrs Byrne enjoyed in her local community (see “Attempted Poisoning of a Husband by his Wife” *Maitland Mercury* (Maitland, Australia, 30 August 1860) at 3) was acknowledged even by the local Magistrates and other “respectable inhabitants” (see *Bathurst Free Press* (Bathurst, Australia, 26 September 1860) at 2; and “Kings Plains” *Empire* (Sydney, 29 September 1860) at 3, as grounds for petitioning the trial judge for mitigation of her four year prison sentence following her conviction in 1860 in New South Wales for attempting to murder her husband by poison (see *R v Mary Byrne* (*Bathurst Free Press* (Bathurst, Australia, 22 September 1860) at 2); *The Sydney Morning Herald* (Sydney, 25 September 1860) at 4; and *Empire* (Sydney, 25 September 1860) at 8.

often juxtaposed with the consequences of conviction for a capital offence, as a means of petitioning for the abolition of the death penalty.<sup>133</sup> One letter to *The Australian* in 1840, for example, declared that the “entirely circumstantial” nature of the prosecution’s case that led to the conviction of Mary Thornton called loudly for strenuous opposition to “[death] punishment ...”.<sup>134</sup>

Elizabeth Woolcock’s situation proved contentious in terms of both the verdict and sentence of death.<sup>135</sup> The medical evidence as to the precise cause of Woolcock’s death was questioned, with good reason,<sup>136</sup> as were the jury deliberations, said by one reporter to have reduced the venerable institution of trial by jury “into something very akin to a farce”.<sup>137</sup> Despite the odium that Elizabeth’s crime attracted, there were calls for mercy,<sup>138</sup> and it was considered surprising that Elizabeth was not reprieved.<sup>139</sup>

Even for female poisoners such as Louisa Collins and Martha Needle who, on any view, conformed to the polarised perception of the worst female poisoner of the period, there was considerable sympathy.

The agitation in favour of Louisa Collins was “great and persistent”,<sup>140</sup> including public meetings, repeated letters, petitions (including from Louisa

133 See “The Needle Poisoning Cases” *Bendigo Advertiser* (Bendigo, Australia, 16 October 1894) at 3; “Abolition of Capital Punishment” *South Australian Chronicle* (South Australia, 20 October 1894) at 10; and “Abolition of Capital Punishment” *The Advertiser* (Adelaide, South Australia, 16 October 1894) at 5.

134 SPH, “Punishment by Death” *The Australian* (Sydney, 26 March 1844) at 3.

135 Plater, Duncan and Milne, above n 33, at 337–339, 352–357. One contemporary commentator was unconvinced of the strength of the prosecution case, noting “the whole case rests upon the gossiping suspicions of a few Cornish women”: “City Correspondence” *Kapunda Herald* (Kapunda, Australia, 8 December 1873) at 2.

136 Plater, Duncan and Milne, above n 33, at 341–351; Peters *Dead Woman Walking*, above n 75, at 254.

137 “City Correspondence” *Kapunda Herald* (Kapunda, Australia, 9 December 1873) at 2. It was alleged the jurors had “shaken the hat” to arrive at the verdict. See further Plater, Duncan and Milne, above n 33, at 338–339.

138 *Yorke Peninsular Advertiser* (Kadina, Australia, 12 December 1873) at 3.

139 *Kapunda Herald* (Kapunda, Australia, 23 December 1873) at 3.

140 “Louisa Collins” *The Bunyip* (Gawler, Australia, 11 January 1889) at 2.

herself) and successive deputations to visit the Governor.<sup>141</sup> Though an appeal against Louisa's conviction was unsuccessful,<sup>142</sup> there were many calls for mercy on her behalf.<sup>143</sup> It was asserted that the medical evidence as to Collins' cause of death by arsenic was flimsy<sup>144</sup> and reasonable doubt existed as to Louisa Collins' guilt.<sup>145</sup> Her mental state was also raised. It was noted that no execution of a woman had taken place in New South Wales since 1860 and imprisonment would act as a greater deterrent than execution.<sup>146</sup> It was argued that the case of *Keep and Burton*, arguably more heinous,<sup>147</sup> acted as a precedent and Louisa should also be spared.<sup>148</sup> It was asserted that it was impossible to see how Louisa's guilt had been resolved beyond reasonable

141 Cushing, above n 2, at 153–154; Kukulies-Smith and Priest, above n 2, at 155–156; and Overington, above n 2, ch 12, ch 15. See, for example, “The Case of Louisa Collins” *The Sydney Morning Herald* (Sydney, 27 December 1888) at 3; *South Australian Advertiser* (Adelaide, 5 January 1889) at 4; *The Sydney Morning Herald* (Sydney, 4 January 1889) at 4; “The Case of Louisa Collins, Public Meeting at Town Hall” *The Sydney Morning Herald* (Sydney, 4 January 1889) at 3; “The Case of Louisa Collins” *The Sydney Morning Herald* (Sydney, 8 January 1889) at 5; “The Botany Murderess” *Evening News* (Sydney, 8 January 1889) at 6; and “The Botany Tragedy” *Australasian Town and Country Journal* (Sydney, 12 January 1889) at 10. Even Louisa's children sought to meet the Governor in a desperate effort to ask him to extend mercy. “The Case of Louisa Collins” *The Sydney Morning Herald* (Sydney, 8 January 1889) at 5; and “The Botany Murderess” *Evening News* (Sydney, 8 January 1889) at 6. The case clearly had a profound effect on all. “Lord Carrington felt himself unequal to the task of receiving the children, who were therefore interviewed by His Excellency's private secretary, who told the little ones that he was sorry they had come, and that it cost him a very severe struggle to have to tell them that nothing could be done on behalf of their unfortunate mother. The little ones left Government House sobbing as if their little hearts would break”: “The Botany Murderess” *Evening News* (Sydney, 8 January 1889) at 6.

142 See “*R v Collins*” *Sydney Morning Herald* (Sydney, 29 December 1888) at 8. See also Kukulies-Smith and Priest, above n 2, at 154–155; Overington, above n 2, ch 13.

143 See, for example, Enmore “The Case of Louisa Collins” *The Sydney Morning Herald* (Sydney, 24 December 1888) at 5; and Timothy Fogarty, *The Sydney Morning Herald* (Sydney, 27 December 1888) at 6; An Anxious Mother “Louisa Collins” *Evening News* (Sydney, 18 December 1888) at 5; Chanina “Letter to Editor” *The Sydney Morning Herald* (Sydney, 28 December 1888) at 4; “The Botany Murderess” *Evening News* (Sydney, 1 January 1889) at 8; G Penly “Letter to Editor” *The Sydney Morning Herald* (Sydney, 4 January 1889) at 3; A True Woman “Letter to Editor” *The Sydney Morning Herald* (Sydney, 5 January 1889) at 8; and MGF “Letter to Editor” *The Sydney Morning Herald* (Sydney, 5 January 1889) at 8.

144 Timothy Fogarty “The Botany Poisoning Case” *Evening News* (Sydney, 27 December 1888) at 6.

145 See, for example, “The Botany Murderess” *Evening News* (Sydney, 2 January 1889) at 2; J Pottie “Louisa Collins” *The Sydney Morning Herald* (Sydney, 3 January 1889) at 5; “The Case of Louisa Collins: Public Meeting at the Town Hall” *The Sydney Morning Herald* (Sydney, 4 January 1889) at 3; MGF “Letter to Editor” *The Sydney Morning Herald* (Sydney, 5 January 1889) at 8; and Pharmacist “Letter to Editor” *The Sydney Morning Herald* (Sydney, 5 January 1889) at 8.

146 “Case of Louisa Collins” *Kiama Independent* (Kiama, Australia, 1 January 1889) at 4.

147 See Part VI below.

148 See, for example, “Botany Murder” *Evening News* (Sydney, 5 January 1889) at 5.

doubt given that three juries had not been convinced.<sup>149</sup> A member of the NSW Legislative Assembly called for mercy and argued for abolition of the death penalty. He also emphasised the fact that Louisa Collins had faced an unprecedented four trials and challenged the Minister of Justice to give a parallel case in the colony’s history.<sup>150</sup>

However, the Executive Council resolved that a reprieve was inappropriate.<sup>151</sup> The Governor noted that it was his duty, in accordance with the now accepted constitutional convention, to follow the advice of the elected Ministers but admitted that, in hindsight, had he been more aware of these duties expected of him, “no power on earth” would have induced him to come to Sydney to take up the role of Governor.<sup>152</sup>

Even in respect of an offender seemingly beyond the pale such as Martha Needle, the exercise of the death penalty attracted objection and there were calls for the exercise of mercy.<sup>153</sup> Mrs Needle’s sanity and responsibility for her actions were widely questioned. The Howard Society for Penal Reform presented two petitions for mercy to the Governor imploring for her “inscrutable psychological” state to be examined.<sup>154</sup> However, the issue of

149 See, for example, Frederick Lee “Letter to the Editor” *Evening News* (Sydney, 20 December 1888) at 5; and “The Case of Louisa Collins: Public Meeting at the Town Hall” *The Sydney Morning Herald* (Sydney, 4 January 1889) at 3. A subsequent report asserted that “try, try and try again was the prosecution’s motto” and this determination had led Louisa Collins “to the grave”: “So determined was the New South Wales Government to hang Louisa Collins that it spent the second half of the year 1888 hunting for juries who would convict the lady of killing one or other of her husbands. Plainly the Crown case lacked conviction; but the Crown was determined, and, doubtless hoping for better luck with its next jury, it stood Mrs. Collins up for yet another trial”: “Try, Try and Try Again” *World News* (Sydney, Australia, 15 January 1936) at 6.

150 *The Sydney Morning Herald* (Sydney, 20 December 1888) at 5; Frederick Lee “Letter to the Editor” *Evening News* (Sydney, 20 December 1888) at 5; and “The Case of Louisa Collins: Public Meeting at the Town Hall” *The Sydney Morning Herald* (Sydney, 4 January 1889) at 3.

151 “News of the Day” *The Sydney Morning Herald* (Sydney, 5 January 1889) at 11.

152 “The Case of Louisa Collins” *The Sydney Morning Herald* (Sydney, 5 January 1889) at 8.

153 “The Execution of Martha Needle” *The Inquirer and Commercial News* (Perth, Australia, 26 October 1894) at 6; and “Criminal Responsibility” *The Advertiser* (Adelaide, Australia, 23 October 1894) at 3.

154 “Execution of Martha Needle” *Clarence and Richmond Examiner* (Grafton, Australia, 23 October 1894) at 5. See also “The Needle Poisoning Case” *Bendigo Advertiser* (Bendigo, Australia, 5 October 1894) at 2; *Maitland Daily Mercury* (Maitland, Australia, 24 October 1894) at 10; “The Execution of Martha Needle” *The Inquirer and Commercial News* (Perth, Australia, 26 October 1894) at 6; “Mrs Needle’s Mental Condition” *South Australian Register* (Adelaide, 8 October 1894) at 6; “Richmond Poisoning Case” *The Advertiser* (Adelaide, Australia, 5 October 1894) at 5; TCH “Martha Needle” *Bendigo Advertiser* (Bendigo, Australia, 15 October 1894) at 4; and Wilton Block “Crime and Its Cure” *South Australian Register* (Adelaide, 2 January 1895) at 7. The view that Martha Needle was insane is shared by modern authors. See, Michael Cannon, “Martha Needle: How We Hanged an Innocent Woman” in *The Woman as Murderer: Five Who Paid With Their Lives* (Today’s Australia Pub Co, Mornington, Australia, 1994) at 94–126.

insanity had not been raised at trial<sup>155</sup> and the petition itself did not provide factual support of the claim.<sup>156</sup> Cabinet refused to intervene.<sup>157</sup> Yet there was also admiration for the “extraordinary calmness”<sup>158</sup> and “wonderful fortitude”<sup>159</sup> and “great courage”<sup>160</sup> Martha Needle displayed at both her trial and execution.<sup>161</sup>

## VI. NOT BEYOND HOPE OF REPRIEVE

Despite the revulsion commonly felt towards female poisoners it is notable that a significant number of women convicted of murder by poisoning their husband were reprieved.<sup>162</sup> Weiner notes that in England during the period

155 See *The Capricornian* (Rockhampton, Australia, 13 October 1894) at 24; “Richmond Poisoning Case” *The Brisbane Courier* (Brisbane, Australia, 9 October 1894) at 5; and *The Argus* (Melbourne, 9 October 1894) at 5.

156 See, for example, “Richmond Poisoning Case” *South Australian Chronicle* (Adelaide, Australia, 13 October 1894) at 11; and *Maryborough Chronicle* (Maryborough, Australia, 11 October 1894) at 2.

157 “The Richmond Poisoning Case” *The Argus* (Melbourne, 10 October 1894) at 5.

158 “Richmond Poisoning Case” *The Western Mail* (Perth, Australia, 5 October 1894) at 28.

159 “The Richmond Poisoning Case” *South Australian Register* (Adelaide, 23 October 1894) at 5.

160 *Daily News* (Sydney, 13 October 1894) at 3.

161 “Execution of Mrs Needle” *South Australian Register* (Adelaide, 23 October 1894) at 4. See also “Richmond Poisoning Case” *The Argus* (Melbourne, 22 October 1894) at 5; “Mrs Needle Asserts Her Innocence” *The Advertiser* (Adelaide, Australia, 23 October 1894) at 5; “Victorian News” *The Western Mail* (Perth, Australia, 27 October 1894) at 29–30; “Execution of Mrs Needle” *South Australian Chronicle* (Adelaide, Australia, 27 October 1894) at 6; and “Another Account of the Tragedy” *South Australian Chronicle* (Adelaide, Australia, 27 October 1894) at 6.

162 See, for example, Charlotte Harris, who was respited and eventually reprieved after it was discovered she was pregnant. See “Punishment of Death” *Colonial Times* (Hobart, Australia, 8 February 1850) at 3; Weiner (2007), above n 123, at 114–115. Anne Merritt was reprieved in 1850 despite having been convicted of the murder of her husband by poison: at 115. Sarah Barber was convicted of the murder of her older husband (her “paramour” was acquitted) by concealing arsenic in his gruel; the husband died in “great agony”. Despite the nature of her crime and her “most indecorous” conduct, her sentence was commuted to transportation for life to Tasmania. See “Murder by Poisoning” *Colonial Times* (Hobart, Australia, 3 August 1852) at 4. Florence Maybrick was controversially reprieved in 1889 for the murder of her husband by poison, despite the nature of her crime and her sexual “immorality”: Weiner (2007), above n 123, at 116–117; see also “London Table Talk” *The Advertiser* (Adelaide, Australia, 8 October 1889) at 5; Kate Colquhoun *Did She Kill Him?: a Victorian Tale of Deception, Adultery and Arsenic* (Little Brown, London, 2014); and Mary Hartman *Victorian Murderesses: a True History of Thirteen Respectable French and English Women Accused of Unspeakable Crimes* (Schocken, New York, 1977) ch 6.



1840–1900, whilst all 13 men convicted of murder by means of poison were hanged, only six out of the 18 women similarly convicted were hanged.<sup>163</sup>

A similar picture emerges during the same period in colonial Australia.<sup>164</sup> Women convicted of crimes involving the administration of poison were the subject of mercy.<sup>165</sup> Anne Miniver Davis, for example, was convicted in 1872 in Melbourne of the attempted murder by the use of poison of her husband.<sup>166</sup> Although her appeal against conviction was dismissed,<sup>167</sup> the Executive Council decided to commute her sentence to life imprisonment.<sup>168</sup> This was despite the presence of all the elements that would paint Mrs Davis as one of the worst of the female offenders of the period: accused of attempting to kill her husband through the systematic introduction of small amounts of strychnine to his food,<sup>169</sup> in order to take up with her lover, a man called Henry Street.<sup>170</sup> However, there was concern over the safety of the verdict,

163 Weiner (2007), above n 123, at 118; and Martin Weiner “Alice Arden to Bill Sikes: Changing Nightmares of Intimate Violence in England, 1558–1869” (2001) *Journal of British Studies* 184 at 199. In Britain in the period 1829–1899, 231 women were sentenced to death. Of these 101 were hanged; 97 for murder, one for attempted murder, one for conspiracy to murder and two for arson. A total of 56.3 per cent of the 219 offenders were reprieved. In the period 1861–1899, 119 women were sentenced to death but only 28 were hanged, all for murder (leaving a reprieve rate of 73.5 per cent). In colonial Australia in the period 1824–1865, only 11 out of the 55 women convicted of a capital offence were executed. See Plater and Milne, above n 23, at 137–140.

164 The present article, though not a complete search, has found only four cases in Australia in the period 1824 to 1900 in which women convicted of a capital offence relating to the use of poison were executed but eight cases in which the sentence was commuted.

165 See also the case of Louisa Garrett in Western Australia who was convicted of the attempted murder of her husband in league with a man called Woolley but received sentence of death recorded. See “*R v Charles Woolley and Louisa Garrett*” *Perth Gazette* (Perth, Australia, 5 April 1861) at 3; *The Inquirer and Commercial News* (Perth, Australia, 10 April 1861) at 3–4. See also the case of Maria Thompson who was convicted of attempting to murder a child with poison (though the poison had been intended for a male friend). See “*R v Maria Thompson*” *The Courier* (Hobart, Australia, 30 July 1858) at 3; *Hobart Town Daily Mercury* (Hobart, Australia, 30 July 1858) at 2; “The Poisoning Case” *Tasmanian Daily News* (Hobart, Australia, 17 April 1858) at 3; and Tasmania *Executive Council Minutes* 6 August 1858 and 20 December 1858.

166 See “*R v Davis*” *The Argus* (Melbourne, 23 April 1872) at 6; 24 April 1872 at 6; and 18 July 1872 at 3.

167 See “*R v Davis*” *The Argus* (Melbourne, 5 July 1872) at 6; and 15 July 1872 at 6.

168 *The Argus* (Melbourne, 24 July 1872) at 4.

169 “Escape of a Would Be Murderess” *Newcastle Morning Herald* (Newcastle, Australia, 6 November 1880) at 2.

170 See *The Argus* (Melbourne, 27 March 1872) at 6; and *Empire* (Sydney, 2 April 1872) at 3. For an overview of the case see “Poisoning by Women: Another Female Poisoner in Victoria” *Oakleigh Leader* (North Brighton, Australia, 3 November 1894) at 3; and “Female Poisoners in Victoria: The Story of the First, a Romance of Crime” *Western Champion and General Advertiser* (Barcardine, Australia, 6 November 1894) at 12.

notably as to the role of Street,<sup>171</sup> who was originally a co-defendant, but the prosecution had dropped proceedings against him.<sup>172</sup>

The grant of mercy in such cases was not confined to attempted murder but extended to murder. Ann O'Brien was accused in 1892 of the murder by arsenic of her de facto husband, a farmer called Cornwall, in order to take up with a servant called Prato,<sup>173</sup> who O'Brien "was said to be on terms of great intimacy with".<sup>174</sup> There were pointed references to Ann O'Brien's previous misconduct.<sup>175</sup> The Victorian Cabinet<sup>176</sup> "having considered all the particulars ... decided not to enforce the full penalty of the law ... Ministers considered the hanging of a woman would not fit in with modern ideas of civilisation" and the sentence was commuted to life imprisonment with hard labour, an effective sentence of 20 years.<sup>177</sup> It was noted had the offender been a man, there was not the "slightest doubt" that the sentence of death would have been carried out.<sup>178</sup>

O'Brien was not unique. Mary Ann Burton and her stepdaughter, Sarah Keep, were reprieved in New South Wales in 1885 after conviction for the murder of Sarah's husband by the use of poison.<sup>179</sup> Keep had died in Newcastle in November 1883 "in very suspicious circumstances after terrible physical and mental suffering".<sup>180</sup> The defence feared that the depth of press and public feeling in the Maitland district against the two defendants would render the chance of a fair and impartial jury unlikely and unsuccessfully petitioned the Supreme Court to move the venue of the trial to Sydney.<sup>181</sup>

171 See, for example, "Brighton Poisoning Case" *Bendigo Advertiser* (Bendigo, Australia, 23 July 1872) at 2; *Bathurst Free Press* (Bathurst, Australia, 24 July 1872) at 3; and *Geelong Advertiser* (Geelong, Australia, 24 July 1872) at 3.

172 *The Argus* (Melbourne, 17 July 1872) at 2S.

173 It was noted that Prato was a "coloured man" who had worked on Cornwall's farm. See "The Beulah Mystery" *The Age* (Melbourne, 24 June 1892) at 6.

174 "The Beluah Murder Trial" *The Age* (Melbourne, 24 August 1892) at 6.

175 See "The Beulah Murder" *The Herald* (Melbourne, 8 September 1892) at 1; and "The Beulah Murder: Death Sentence Commuted" *Weekly Times* (Melbourne, 10 September 1892) at 22. O'Brien had abandoned her husband and five children in South Australia to take up with Cornwall and her children had ended up in an industrial school. It was also said she had poisoned to death another man she had previously lived with in South Australia.

176 It was noted in accordance with changes in convention, this decision no longer rested with the Governor and Cabinet's decision went to the Governor in Executive Council for his "approval". See "The Belulah Murder: Death Sentence Commuted" *Weekly Times* (Melbourne, 10 September 1892) at 22.

177 "The Beulah Murder" *The Herald* (Melbourne, 8 September 1892) at 1.

178 At 1. Prato was ultimately acquitted. See "*R v Prato*" *Horsham Times* (Horsham, Australia, 7 October 1892) at 3.

179 "The Maitland Poisoning Case" *Maitland Mercury* (Maitland, Australia, 28 May 1885; *Evening News* (Sydney, 23 April 1885) at 5.

180 "The Maitland Poisoning Case" *Maitland Mercury*, 6 April 1886) at 4; and "The Maitland Poisoning Case" *Maitland Mercury* (Maitland, Australia, 28 May 1885) at 4.

181 "The Suspected Poisoning Case" *Maitland Mercury* (Maitland, Australia, 26 February 1884) at 2.

There was no dispute that Keep had died from strychnine poisoning. At issue at trial was whether the two women had jointly poisoned Keep or he had taken his own life.<sup>182</sup> The circumstantial evidence against the two women was strong. Two factors were to prove especially telling against Sarah.<sup>183</sup> First, the absence of grief shown by Sarah, married for only a few months,<sup>184</sup> that was manifest in her refusal to attend his funeral, and hearsay that she was keen to re-marry.<sup>185</sup> Second, Sarah was found in possession of a book that had been carefully marked by her as to the effects of deadly poisons, especially strychnine.<sup>186</sup>

The first jury in April 1884 proved unable to reach a verdict. Both women, unusually in a capital case of murder and over the prosecution's strong objections, were granted bail.<sup>187</sup> But, at the second trial, both women were found guilty and sentenced by Windeyer J to death without hope of mercy.<sup>188</sup> The general sentiment, reflecting that expressed by the trial judge, was that there was no hope of a reprieve.<sup>189</sup>

However, somewhat paradoxically, there appears to have been little demand or expectation that the sentence would be carried into effect.<sup>190</sup> A petition for mercy on behalf of the two women had a twofold basis.<sup>191</sup> First, the general repugnance to carrying out the death sentence on women and, second, the

182 See *R v Burton and Keep (No 1)* (*Maitland Mercury* (Maitland, Australia, 22 April 1884) at 4–5; 24 April 1884, at 6–7; 26 April 1884 at 15S; and *Newcastle Mining Herald* (Newcastle, Australia, 22 April 1884) at 2–3; and 24 April 1884 at 2).

183 See “Two Women Sentenced to Death for Poisoning” *Freeman's Journal* (Sydney, Australia, 25 April 1885) at 9.

184 *Maitland Mercury* (Maitland, Australia, 21 April 1885) at 4. See also *Maitland Mercury* (Maitland, Australia, 22 April 1884) at 4.

185 *Maitland Mercury* (Maitland, Australia, 24 April 1884) at 6. The claim (see “NSW” *The Brisbane Courier*, 7 December 1883) at 5, that Sarah had often spoken of her hatred for her husband and her professed love for another man seems exaggerated.

186 “Two Women Sentenced to Death for Poisoning” *The Freeman's Journal* (Sydney, 25 April 1885) at 9.

187 See *Maitland Mercury* (Maitland, Australia, 26 April 1884) at 15S.

188 *Maitland Mercury* (Maitland, Australia, 26 April 1884) at 15S. At the retrial, Windeyer J claimed that the jury had split 11 to 1 in favour of convicting (see *The Sydney Morning Herald* (Sydney, 2 September 1885) at 3) but this was disputed, one report asserting that the jury had in fact split 7 to 5 in favour of convicting. See “The Keep Poisoning Case” *Evening News* (Sydney, 5 May 1885) at 5; *Maitland Mercury* (Maitland, Australia, 23 April 1885) at 4; and “Maitland Poisoning Case” *Maitland Mercury* (Maitland, Australia, 6 April 1886) at 4.

189 *The Sydney Morning Herald* (Sydney, 27 April 1885) at 4. See also *Maitland Mercury* (Maitland, Australia, 23 April 1885) at 4; *Evening News* (Sydney, 23 April 1885) at 5; “The Maitland Poisoning Case” *Goulburn Herald* (Goulburn, Australia, 28 April 1885) at 4; and “The Maitland Poison Case”, *Clarence and Richmond Examiner* (Grafton, Australia, 2 May 1885) at 3.

190 “The Condemned Women: Burton and Keep” *Newcastle Mining Herald* (Newcastle, Australia, 29 April 1885) at 3. See also for example, “The Maitland Poisoning Case” *Goulburn Herald* (Goulburn, Australia, 28 April 1885) at 4.

191 “The Maitland Poisoning Case” *Maitland Mercury* (Maitland, Australia, 14 May 1885) at 4. See also “The Burton-Keep Case” *Maitland Mercury* (Maitland, Australia, 2 May 1885) at 4.

assertion that the evidence upon which the two women had been convicted was entirely circumstantial.<sup>192</sup> Chivalry and lingering doubt as to their guilt resulted in the commutation of their sentences to life imprisonment.<sup>193</sup>

Similar reasoning can be seen in the case of Elizabeth Hyde in Queensland in 1890. Elizabeth was charged with the murder of her husband, Albert Hyde, through poisoning him with strychnine concealed in a scone.<sup>194</sup> It was not disputed that Hyde had died from poisoning. At trial,<sup>195</sup> the prosecution's circumstantial case appeared damning. The married life of Elizabeth and her husband was unhappy. Elizabeth Hyde was surrounded "by persons who looked with suspicion upon her".<sup>196</sup> The defence case was that Hyde had been in poor health and had killed himself but this was undermined by experts who testified that the deceased's purported letter to this effect was, in fact, in Elizabeth's handwriting.

The jury after lengthy deliberation (that included being locked up overnight) and two less than enlightening further directions from the trial judge, Mein J, to encourage them to reach a verdict,<sup>197</sup> returned a verdict of guilty "with a strong recommendation of mercy on account of her two little children".<sup>198</sup> Sentence of death was passed by Mein J, who effectively denounced Elizabeth's crime as one of *petit treason*, noting she had "deliberately poisoned

192 "Petition for Commutation of Death Penalty" *Clarence and Richmond Examiner* (Grafton, Australia, 9 May 1885) at 4. This turned out to be a significant point. After the Executive Council reprieved both women, Burton made a full confession on 1 September 1885 assuming sole responsibility for the crime and absolving Sarah Keep of any involvement. See *The Sydney Morning Herald* (Sydney, 2 September 1885,) at 3, 9; and "The Maitland Poisoning Case: Death of Prisoner Sarah Keep – the Inquest" *The Sydney Morning Herald* (Sydney, 22 September 1885) at 4. The confession was sent to Windeyer J for his consideration, but fate intervened. See "The Keep Poisoning Case" *Evening News* (Sydney, 5 May 1885) at 6.

193 It was reported the Executive Council considered the case for several hours. See *The Sydney Morning Herald* (Sydney, 2 September 1885) at 3. As a final postscript, both Sarah and Burton did not live long to appreciate their "reprieve". Sarah gave birth to a premature stillborn child in September and died shortly afterwards of complications. Burton died of natural causes in April 1886.

194 See "Charge of Husband Poisoning" *The Brisbane Courier* (Brisbane, Australia, 26 September 1889) at 3; and "The Alleged Boonah Poisoning Case" *Queensland Times* (Brisbane, 26 September 1889) at 3.

195 See "*R v Hyde*" *The Brisbane Courier* (Brisbane, Australia, 27 February 1890) at 2; 28 February 1890, 2; *Queensland Times* (Brisbane, 27 February 1890) at 3; and *The Queenslander* (Brisbane, 8 March 1890) at 459–460. The circumstantial nature of the evidence bore more than a passing similarity to that of Elizabeth Woolcock.

196 *The Brisbane Courier* (Brisbane, Australia, 27 February 1890) at 2. This was relied upon by the Crown as evidence of motive along with selling the family's property after Hyde's death. See *Queensland Times* (Brisbane, 27 February 1890) at 3.

197 See *The Brisbane Courier* (Brisbane, Australia, 28 February 1890) at 2. These directions would be unlikely to withstand an appeal against conviction to a modern Court of Criminal Appeal.

198 At 2.

your husband, one whom it was your duty, owing to close relationship, to faithfully preserve”.<sup>199</sup>

Again, however, there was public sympathy for Elizabeth, to be observed even at the scene of the trial.<sup>200</sup> A petition for mercy was circulated in Ipswich.<sup>201</sup> Misgivings were expressed about the safety of the verdict.<sup>202</sup> Despite Elizabeth being reported as having admitted her guilt subsequent to her sentence to a clergyman,<sup>203</sup> the Executive Council granted a reprieve and her sentence was commuted to one of life imprisonment.<sup>204</sup>

The decision to reprieve Elizabeth Hyde received a mixed response. Like in Burton and Keep the crime of murder by poisoning was universally condemned and, similarly, chivalrous notions that a woman should not be hanged, scorned.<sup>205</sup> But also under public scrutiny was the “useless, brutal and degrading” means of punishment that was death by hanging.<sup>206</sup> In this context, it was argued that any doubt about the safety of the conviction should be a matter of judicial ruling and not left to the secretive and discretionary determination of the Executive.<sup>207</sup>

She [Mrs Hyde] should have had the benefit of the doubt, not in the shape of mercy, or a recommendation to mercy, but in the shape of justice, which since a verdict of “Not proven” was not permissible, demanded that a verdict of “Not guilty” should be returned. Murder by poison is not, we submit, a fit subject for mercy; and any doubt existing as to its commission must be met in a different fashion.<sup>208</sup>

199 *Queensland Times* (Brisbane, Australia, 1 March 1890) at 4. Mein J noted that “her removal from this world might perhaps be better for” her two young children: *The Brisbane Courier* (Brisbane, Australia, 28 February 1890) at 2.

200 *The Brisbane Courier* (Brisbane, Australia, 28 February 1890) at 2.

201 “Ipswich” *The Brisbane Courier* (Brisbane, Australia, 20 March 1890) at 5.

202 Editorial *The Brisbane Courier* (Brisbane, Australia, 20 March 1890) at 2.

203 See *The Brisbane Courier* (Brisbane, Australia, 22 March 1890) at 5; *The Queenslander* (Brisbane, 29 March 1890) at 624.

204 *The Brisbane Courier* (Brisbane, Australia, 20 March 1890) at 4. It was noted Mrs Hyde received news of her reprieve “without the slightest trace of emotion”: *The Brisbane Courier* (Brisbane, Australia, 22 March 1890) at 5.

205 See, for example, Editorial *The Northern Miner* (Charters Towers, Australia, 31 March 1890) at 3.

206 Editorial *The Northern Miner* (Charters Towers, Australia, 31 March 1890) at 3; “Mrs Hyde’s Reprieve” *The Telegraph* (Brisbane, Australia, 22 March 1890) at 4.

207 Editorial, *The Northern Miner* (Charters Towers, Australia, 31 March 1890) at 3; and Editorial, *The Brisbane Courier* (Brisbane, Australia, 21 March 1890) at 4.

208 *The Brisbane Courier* (Brisbane, Australia, 1 March 1890) at 4. See also *The Queenslander* (Brisbane, 8 March 1890) at 459–460; and *The Telegraph* (Brisbane, Australia, 22 March 1890) at 4.

It can be seen from the above examples that despite the odium such crimes aroused in 19th century society, a wife convicted of the attempted murder,<sup>209</sup> or murder<sup>210</sup> of her husband, even if accompanied by the use of poison and the presence of sexual immorality, was not exempt from the grant of mercy.

## VII. NOT GUILTY

The revulsion widely held in the 19th century against crimes of poisoning, especially when perpetrated by women, did not diminish the gravity and deliberation with which the guilt of an accused was determined. Equally, a case might well never reach a jury. Many if not most suspicious deaths during this period did not result in prosecution.<sup>211</sup> In a period of inexact science, high disease and mortality, the difficulties in establishing that death had resulted from poison and (noting the widespread usage of poisons in everyday 19th century life) that the poison had been deliberately administered with sinister intent were notable.<sup>212</sup> As prosecution counsel declared in one Australian poisoning trial in 1886: “Of all crimes, murder by poisoning was the most difficult to prove. Consider how difficult it was to prove secret poisoning.”<sup>213</sup>

The ubiquitous fear of poisoning did not prevent 19th century courts from carefully scrutinising cases involving its alleged use. Even if criminal proceedings were brought, the prosecution might collapse for lack of evidence

209 See also “*R v Louisa Garrett*” *Perth Gazette* (Perth, Australia, 5 April 1861) at 3; and *Inquirer and Commercial News* (Perth, Australia, 10 April 1861) at 3–4.

210 See, for example, “Murder of a Husband” *Australian Town and Country Journal* (Sydney, 18 April 1896) at 44. Elizabeth Miller in 1896 was sentenced to death for murdering her husband by administering strychnine and “told to prepare to meet her God, and not to rely upon any earthly hope”; see also “The Ukabably Poisoning Case” *The Sydney Morning Herald* (Sydney, 11 April 1896) at 10; and “Coonabarabran Poisoning Case” *Evening News* (Sydney, 11 April 1896) at 5. However, she was reprieved owing to questions over her mental state. See “Cast for the Gallows” *Armidale Express* (Armidale, Australia, 21 April 1896) at 2; and “The Coonabarabran Murder” *Evening News* (Sydney, 23 May 1896) at 3.

211 See “A Female Poisoner” above n 36.

212 See, for example, Hempel, “James Marsh and the Poison Panic”, above n 47, at 2247–2248; and Robb, above n 6, at 185–186. See also Alfred Sykes “Letter to Editor: ‘Poison’” *The Sydney Morning Herald* (Sydney, 17 September 1857) at 2; and “The Poetry of Poison” *Empire* (Sydney, Australia, 25 October 1860) at 5.

213 See, for example, the 1886 case in Sydney of Thomas Kent and Caroline Roberts. Kent and Roberts, a servant, were accused of the murder by poison of Roberts’ wife but were acquitted to applause after doubts were powerfully raised at trial that any fatal dose of poison (which itself was unclear) had been administered by the defendants. See “*R v Thomas Kent and Caroline Roberts*” *The Sydney Morning Herald* (Sydney, 4 September 1886) at 10. There was said to have been “undue familiarity” between Kent and Roberts: “The Redfern Poisoning Case” *The Argus* (Melbourne, 18 August 1888) at 6. See also the case of Mrs Spann who was acquitted in 1888 of the financially motivated murder of her lodger by poison. See *The Argus* (Melbourne, 4 July 1888) at 7; and “Gillet Poisoning Case” *The Age* (Melbourne, 4 July 1888) at 11.

and result in the Attorney-General declining to file or proceed with an indictment<sup>214</sup> or the discharge of the accused at committal.<sup>215</sup>

Matilda Padbury was charged with attempting to murder her husband, Mark Padbury, with strychnine in 1873 in Western Australia.<sup>216</sup> After hearing a day of testimony and the submission of defence counsel, the court found that there was insufficient evidence to even justify committing Matilda for trial. The case was noteworthy in two respects: first, the public criticism of the entire manner in which the police prepared and presented the case, bringing forward “all kinds of irrelevant and desultory evidence”.<sup>217</sup> Second, the strong public feeling shown in Matilda’s favour,<sup>218</sup> who was characterised as a “good

214 See, for example, Juliana MacLeod, in 1857, where the decision to commit her for trial for the alleged murder of her husband by poison prompted strong protest in the local community (even from the jurors at the Inquest) and the Attorney-General’s decision to not file an indictment was praised (see “Mrs M’Leod’s Case” *Ovens and Murray Advertiser* (Beechworth, Australia, 26 September 1857) at 2; and “The Beechworth Coroner and Police Magistrate”, *Ovens and Murray Advertiser* (Beechworth, Australia, 5 October 1857) at 3). See also Eliza Smith in 1856 (“Poisoning” *The Argus* (Melbourne, 5 February 1857) at 6) and Ruth Robinson for the alleged murder of their husbands by poison (for reports of the Inquest, see *The Brisbane Courier* (Brisbane, Australia, 11 February 1886) at 5; and 25 February 1886 at 6; 1 March 1886 at 2; and for the Attorney-General’s failure to prefer an indictment, see *The Brisbane Courier* (Brisbane, Australia, 5 March 1886) at 4; and Kate Blake for the alleged murder of her sister by poison (see *The Sydney Morning Herald* (Sydney, 4 October 1887) at 7). Maria Kinder and her married lover, Henry Bertrand, were accused of the 1865 Sydney murder by poisoning and then shooting of Henry Kinder, Maria’s inconvenient husband. The case and the “immorality” of the defendants attracted intense and hostile press coverage: “a case more atrocious, more unreal, and more disgusting in its horrible details than any before recorded in the annals of crime”: “The Kinder Tragedy” *Illustrated Sydney News* (Sydney, 16 December 1865) at 3. Despite this coverage and Bertrand’s conviction for murder, the prosecution owing to a lack of “hard” evidence withdrew proceedings against Mrs Kinder: *The Empire* (Sydney, 26 February 1866) at 5.

215 See, for example, the 1856 case against Mary O’Byan for causing a man’s death by poison was dismissed (see “The Recent Poisoning Case” *The Argus* (Melbourne, 2 May 1856) at 4; and “The Poisoning Case” *The Argus* (Melbourne, 2 May 1856) at 5); the 1872 case of Mary Donnelly for the attempted murder of her husband, by poison was dismissed, the court commenting that “the very unsatisfactory nature” of the testimony of the victim “did not warrant her detention for five minutes longer” (see “*R v Mary Donnelly*” *Goulburn Herald and Chronicle* (Goulburn, Australia, 23 October 1872) at 2–3; and *Maitland Mercury* (Maitland, Australia, 2 November 1872) at 3); the 1880 case of Isabella Wilson for attempted murder of her estranged husband by poison was dismissed (see “*R v Isabella Wilson*” *Bendigo Advertiser* (Bendigo, Australia, 4 March 1880) at 3; 11 March 1880 at 2; and *The Argus* (Melbourne, 13 March 1880) at 8).

216 See “Extraordinary Attempt to Murder by Strychnine” *Inquirer and Commercial News* (Perth, Australia, 8 January 1873) at 3; and *Perth Gazette* (Perth, Australia, 10 January 1873) at 3.

217 “Country News (Bunbury)” *The Herald* (Freemantle, Australia, 4 January 1873) at 3.

218 “Extraordinary Attempt to Murder by Strychnine” *Inquirer and Commercial News* (Perth, Australia, 8 January 1873) at 3; and “Country News (Bunbury)” *The Herald* (Freemantle, Australia, 4 January 1873) at 3.

and affectionate wife”,<sup>219</sup> and in whom her family and even her erstwhile victim, demonstrated relief at the decision not to continue to trial.<sup>220</sup>

The reluctance, if not unwillingness, was often observed of 19th century juries<sup>221</sup> to return a guilty verdict, even in the face of seemingly overwhelming evidence, for an offence that carried upon conviction the death penalty.<sup>222</sup> As one 1866 report observed, “[j]uries will often hesitate in the face of conclusive proof of guilt, to append the fatal words to their verdict”.<sup>223</sup>

There was a particular reluctance, whether out of a sense of chivalry or otherwise, to return a guilty verdict in the case of women accused of a capital offence.<sup>224</sup> As one columnist observed in 1894, “to hang a woman is perhaps the most painful of all the duties with which society burdens the officers of the law”.<sup>225</sup> This reluctance was especially manifest in relation to those cases that conformed to the idealised perception of the female role in the 19th century which sharply distinguished the “virtuous” from the “wicked”.<sup>226</sup> Juries, for example, were extremely reluctant to return a guilty verdict for

219 *Perth Gazette* (Perth, Australia, 10 January 1873) at 3. Defence counsel’s address was reported as “one of the most able speeches that has ever been delivered in Bunbury” and upon its closing, the crowded court burst into applause. See “Extraordinary Attempt to Murder by Strychnine” *Inquirer and Commercial News* (Perth, Australia, 8 January 1873) at 3.

220 *Perth Gazette* (Perth, Australia, 10 January 1873) at 3. It was noted that the “victim” of Mrs Padbury’s alleged offence, her husband, intended to bring an action of false imprisonment against those concerned in his wife’s arrest. See “Country News (Bunbury)” *The Herald* (Freemantle, Australia, 4 January 1873) at 3.

221 One leading English barrister remarked: “I know that juries that have acquitted men, clearly, and, beyond all doubt, guilty of murder, and some of the very worst murders that have ever been committed in this country, and have done so simply because the punishment is the punishment of death: they would have convicted if the punishment had been punishment for life or any punishment short of talking the life of the man, and they have seized hold of any excuses rather than been agents in putting capital punishment into operation”: (21 April 1868) 191 GBPD HC 1038.

222 See, for example, “Verdicts” *Northern Argus* (Clare, Australia, 28 October 1881 (noting that in one English county near London there had not been a murder conviction for over 30 years even in the face of the most powerful evidence); “Launceston and the North” *The Mercury* (Hobart, Australia, 21 June 1890) at S1; and *The Tasmanian* (Hobart, Australia, 21 June 1890) at 17.

223 Editorial, *Mercury* (Hobart, Australia, 1 August 1866) at 3.

224 See above n 42.

225 “The Execution of Mrs Needle”, above n 43. See also “Maitland Poisoning Case” *Maitland Mercury* (Maitland, Australia, 28 May 1885).

226 *Colonial Times* (Hobart, Australia, 23 April 1830) at 3; Nagy (2014), above n 6, at 225–226; Plater, Duncan and Milne, above n 33, at 357–362; Plater and Milne, above n 23, at 89–92, 100–117; and Robb, above n 6, at 178, 183–185.



mothers accused of the murder of their newborn children.<sup>227</sup> So-called “honour killings” were similarly perceived with sympathy.<sup>228</sup>

Judges and juries were not indifferent to their role and were not bound to return a guilty verdict, even in respect of women accused of the murder of their husband, a crime that in the 19th century was still perceived as *petit treason*.<sup>229</sup> This is evident in the case of Charlotte Dunn and her “paramour”, John Hanabus, who faced trial in New South Wales in 1825 for the murder of Charlotte’s husband and Hanabus’s employer, Stephen Dunn, who had died from drowning in suspicious circumstances.<sup>230</sup> There was said to be a “considerable degree of criminal intimacy” between Charlotte and Hanabus.<sup>231</sup> The Chief Justice in summing up to the jury noted the powerful evidence of motive, branding Charlotte a “faithless wife”, in complement with the “strong circumstances of suspicion attended the two prisoners”.<sup>232</sup> The Chief Justice also highlighted weaknesses in the prosecution case including the unreliability of two important prosecution witnesses. After the jury found both defendants not guilty, the Chief Justice concluded with his advice that the defendants break off their “criminal intimacy ... so ... that suspicion of ... murder should not again fall on them”.<sup>233</sup>

227 See Constance Backhouse “Desperate Women and Compassionate Courts: Infanticide in Nineteenth Century Canada” (1984) 34 *UTLJ* 447; Flanders, above n 6, at 223–226; Ann Higginbotham “‘Sin of the Age’: Infanticide and Illegitimacy in Victorian London’ (1989) 32 *Victorian Studies* 319; Plater and Milne, above n 23, at 122. In the rare event a guilty verdict was returned on the capital count, the usual practice, especially after 1846, was to exercise mercy. See Plater and Milne, above n 23, at 122; and “The Case of Johanna Sullivan” *South Australian Register* (Adelaide, 28 August 187) at 7.

228 See above n 45.

229 See, for example, Mary Minter who was acquitted of murder and petit treason in respect of the murder of her husband, Michael Minter. See “*R v Mary Minto*” *The Sydney Gazette and New South Wales Advertiser* (Sydney, 2 September 1824) at 3. It was alleged that she had incited two convict servants to commit “so terrible an act” and she was on terms of “obvious familiarity” with one of them: at 3.

230 See “*R v Dunn and Hanabus*” *The Australian* (Sydney, 22 September 1825) at 3–4; and *The Sydney Gazette and New South Wales Advertiser* (Sydney, 22 September 1825) at 3.

231 *The Sydney Gazette and New South Wales Advertiser* (Sydney, 22 September 1825) at 3.

232 At 3.

233 At 3.

The reluctance of both British<sup>234</sup> and Australian<sup>235</sup> juries in the 19th century to return a guilty verdict in respect of women facing a capital charge of poisoning was notable. Uncertainty in the prosecution case could lead to an acquittal for even the most apparently heartless murder by poison.<sup>236</sup> In Victoria in 1886, Harriet Stevenson evaded conviction on multiple allegations of murder, including one with respect to a man called Plum, whom it was alleged Harriet not only poisoned with arsenic but also robbed and then set fire to his house to conceal the evidence of her crime.<sup>237</sup> There were suggestions that Harriet had already killed one husband by poison and had tried to poison another.<sup>238</sup> However at Harriet's trial the Chief Justice cautioned the jury that the "very strong suspicions" against her was not enough to prove murder.<sup>239</sup> The jury returned a verdict of not guilty. Elizabeth O'Neill was accused in 1900 of the attempted murder by poison of her violent and abusive

234 "Palliation of Murder" *South Australian* (Adelaide, 6 June 1845) at 4 (though compare Robb, above n 6, 183). See, for example, the case of Margaret Lennox who was acquitted of the murder of her husband by poison ((1847) 20 *The Spectator* (London, 7 August 1847) at 752). Scottish juries similarly refused to convict Christina Gilmour in 1844 and Janet Campbell in 1846 for the murder of their husbands with arsenic, despite the apparent strength of the prosecution cases. See *HM Advocate v Gilmour* (1844) 11 Broun 23; and *HM Advocate v Campbell (or McLellan)* (1846) Arkley 137, 169. See also Ann Fisher (see also below n 241 and n 251) who was acquitted by an English jury in 1848 in just ten minutes despite the "powerful evidence against her" for the murder by poison for financial gain of her older newly married husband in order to take up with her younger lover: Weiner (2001), above n 163, 199; see also above n 39, at 197; "Western Circuit" *The Times* (London, 27 March 1848) at 7; and *Western Times* (Exeter, United Kingdom, 1 April 1848). Sarah Chesham was even acquitted, despite much suspicion and local feeling, of the murder of three children by poison in three successive trials in March 1847. She was subsequently accused of the murder by poison of her husband in May 1850 and this time was convicted and hanged. See Nagy (2014), above n 6, at 215–219; Nagy (2015), above n 6, at 77–113; and Flanders, above n 6, at 239–245.

235 See, for example, Sarah Rolff, aged 16, who was accused in 1893 of the attempted murder by poison of her "uncle", a man called Bryon she had known on an "intimate" basis since she was 14. The prosecution likened the case to the Biblical tale of Sampson and Delilah but the defence attacked Bryon as a "drunken good-for-nothing scoundrel" and highlighted the weaknesses in the prosecution case and the jury returned a not guilty verdict in just five minutes. See 'The Emmaville Poisoning Case' *Armidale Express* (Armidale, New South Wales, 21 April 1893) 4. See also the 1871 case of Ellen Ryan, a servant, who was accused of the attempted murder by poison of her employer. The trial judge noted that she easily could have killed the employer and his entire family. The jury convicted Ellen of the lesser non-capital count of administering poison with intent to endanger life. See "*R v Ellen Ryan*" *Kiama Independent* (Kiama, Australia, 2 November 1871) at 4.

236 *The Argus* (Melbourne, 15 July 1876) at 4. See also below n 241 and n 242.

237 *The Australasian* (Melbourne, 17 July 1886) at 26.

238 See, for example, "A Female Poisoner" above n 36; "A Female Poisoner" *North Australian* (Darwin, Australia, 2 April 1886) at 4. For reports of the Inquest see "The Mysterious Fire at Wangaratta" *The Argus* (Melbourne, 12 February 1886) at 6; "The Wangaratta Tragedy" *The Argus* (Melbourne, 13 February 1886) at 12; "The Suspected Murderess" *The Australasian* (Melbourne, 20 February 1886) at 15; and "The Wangaratta Tragedy" *The Australasian* (Melbourne, 27 February 1886) at 28–29.

239 See "*R v Stevenson*" *The Argus* (Melbourne, 13 July 1876) at 7; 14 July 1876 at 7; and *The Australasian* (Melbourne, 17 July 1886) at 31.

de facto husband, Stanfield. Not only did the jury return a not guilty verdict without troubling to retire before the trial was complete, they even took up a collection between them to donate to the accused.<sup>240</sup>

There is every indication (cases such as Elizabeth Woolcock aside), that both British<sup>241</sup> and colonial Australian<sup>242</sup> juries would carefully look at the

240 “Without Leaving the Box: a Kind Hearted Jury” *Evening News* (Sydney, 13 October 1900) at 6.

241 See, for example, Hannah Southgate, accused of murdering her first husband by arsenic in order to take up with her lover, whom she promptly married after her husband’s suspicious death. Despite the prosecution’s “strong” case, she was found not guilty by an Essex jury in 1848. See Nagy (2014), above n 6, at 222–225; Worton, above n 36, ch 2, footnotes 25–26; Flanders, above n 6, at 243–244. See also the similar case of Ann Fisher (see also above n 234, below n 251) who was acquitted in 1848 by the jury in just ten minutes despite the “powerful evidence against her” for the murder by poison for financial gain of her older newly married husband in order to take up with her younger lover: Weiner (2001), above n 163, 199; see also at 197, n 39; “Western Circuit” *The Times* (London, 27 March 1848) at 7; *Western Times* (Exeter, United Kingdom, 1 April 1848). See also the refusal of a Scottish jury to convict Madeleine Smith for poisoning her “sweetheart” despite the fact that “there was not a shadow of doubt as to the prisoner’s guilt”: “Sympathy for Criminals” *Empire* (Sydney, Australia, 28 March 1866) at 3; see also Flanders, above n 6, at 281–288. Catherine Mullarkey was acquitted amidst applause by an Irish jury without even troubling to retire of the murder of her older husband. This finding was despite the apparent strength of the prosecution case and Catherine’s attachment to her husband’s nephew. See “Extraordinary Trial for Murder” *Freeman’s Journal* (Sydney, Australia, 1 June 1878) at 7. Adelaide Bartlett was acquitted in 1886 by an English jury to “rapturous applause” (Michael Farrell, “Adelaide Bartlett and the Pimlico Mystery” (1994) 309 *British Medical Journal* 1720 at 1722) of the murder by chloroform of her husband despite her “immorality” amidst doubts as to how the poison had been administered; see at 1720–1723; and Flanders, above n 6, at 311–319.

242 See, for example, Ellen Woods who in 1864 in Queensland was acquitted “in just three minutes” of the murder of her husband, Griffiths, despite the alleged use of poison and her motivation for the crime (she had very shortly afterwards taken up with and married a man called Woods), after the trial judge had highlighted the weaknesses in the prosecution case (see *R v Ellen Woods* (*Toowoomba Chronicle*, 21 January 1864), 2–3; *The Brisbane Courier*, (Brisbane, Australia, 19 January 1864) at 2). See also Mary Bestwick who was accused in Tasmania in 1890 of the murder by poisoning of her five-year-old daughter soon after allegedly poisoning her abusive husband. Mrs Bestwick’s “familiarity” with a man called Thornton was highlighted. The prosecution emphasised “as strong evidence of motive ... [for] this horrible crime of poisoning her husband and child” her “lack of wifely feeling” for her dying husband and the “evident relations” and “improper conduct” between Mrs Bestwick and Thornton: *R v Bestwick*, *The Mercury* (Hobart), 14 June 1890, 1; see also *Daily Telegraph* (Launceston, Australia, 14 June 1890) at 5; and *The Colonist* (Launceston, Australia, 21 June 1890) at 21. Mrs Bestwick was acquitted of her daughter’s murder after a “masterly” and “eloquent” address by her lawyer and the prosecution withdrew the charge of murdering the husband: “Supreme Court” *The Colonist* (Launceston, Australia, 21 June 1890) at 21. “General surprise” was expressed in the local community at the jury’s finding: ‘Launceston’ *The Mercury* (Hobart, Australia, 16 June 1890) at 3; see also “Launceston and the North” *The Mercury* (Hobart, Australia, 21 June 1890) at 1. See also Christina Gregg who was tried in 1859 in New Zealand, for the murder by poisoning of her husband, but was acquitted despite claims of an affair with a servant as motive and “though the evidence was very black against her”: *Moreton Bay Courier* (Brisbane, Australia, 19 January 1860) at 2. See also Jeremy Finn and Charlotte Wilson, “‘Not having Fear of God Before their Eyes’: Enforcement of the Criminal Law in the Supreme Court in Canterbury 1852–1872” (2005) 11 *Cantab LR* 250, Part IV.

evidence and may well prove unwilling to return a guilty verdict against a wife accused of the murder of her husband by poison even if accompanied by “immoral” conduct by the female accused or in the face of an apparent powerful prosecution case. This is manifest as early as 1824 in New South Wales in the case of Mary Ann Bradney, a convict accused of murdering her husband, another convict, by lacing his food with arsenic in order to take up with her lover.<sup>243</sup>

The Attorney-General in opening highlighted “the peculiar heinousness of this crime”.<sup>244</sup> Yet the prosecution struggled to establish its case at trial as the motivation for the alleged crime, “an illicit intercourse maintained between the prisoner and one James Duff”, was not supported.<sup>245</sup> It further proved far from clear that the cause of Bradney’s death was arsenic poisoning,<sup>246</sup> or if any arsenic had ever been administered to the deceased by Mary Bradney, let alone with any sinister intent on her part.<sup>247</sup> The problems in the evidence led the jury after 45 minutes to return a verdict of not guilty.

*Bradney* was not a unique case in 19th century Australia. Indeed, a particular difficulty throughout the 19th century, even after the scientific advances of the 1830s in detecting the presence of poisons, was the continuing reluctance of juries to return a guilty verdict in cases of alleged murder by poisoning. One report in 1860 highlighted that in such cases it was common for poisoners to “rely upon scientific mystification and learned advocacy for

243 *The Sydney Gazette and New South Wales Advertiser* (Sydney, 29 April 1824) at 2.

244 *The Sydney Gazette and New South Wales Advertiser* (Sydney, 12 August 1824) at 2.

245 *R v Bradney, The Sydney Gazette and New South Wales Advertiser* (Sydney, 12 August 1824) at 2–3.

246 It was very difficult for the prosecution to establish murder due to the effects of poison until reliable tests emerged from 1836 to detect the presence of poisons such as arsenic. See further Katherine Watson, “Criminal Poisoning in England and the Origins of the Marsh Test for Arsenic” in Jose Bertomeu-Sánchez and Agusti Nieto-Galan (eds) *Chemistry, Medicine, and Crime: Mateu JB Orfila (1787–1853) and His Times* (Science History Publications, Sagamore Beach, MA, 2006) 183–206. In 1834, for example, Penelope Bickle was acquitted of the murder of her husband by poison after the prosecution’s scientific evidence was attacked as “very unsatisfactory” and the jury declared they were not satisfied that the husband’s death was due to poison. See, Robb, above n 6, at 180; and Worton, above n 36, at ch 4.

247 Bradney had used arsenic as part of his occupation as a brazier and a tinman. Witnesses also testified at the trial that Bradney had been “subject to occasional fits of insanity, in two of which he attempted to destroy himself”: *The Sydney Gazette and New South Wales Advertiser* (Sydney, 12 August 1824) at 3.

their escape”.<sup>248</sup> The report noted that acquittal was the almost inevitable result of conflicting medical evidence as to the cause of death:<sup>249</sup>

It is hardly possible to get two [medical] men to depose to the same facts.<sup>250</sup> One man will swear that the deceased died with every symptom of having been poisoned, while another will as positively affirm that the death might fairly be attributed to natural causes.

Even where the medical evidence was stronger as to the cause of death and the wife’s apparent guilt, it was anything but a foregone conclusion that a jury would be satisfied of the guilt of a wife accused of the murdering of her husband through poison.<sup>251</sup>

Elizabeth Lancefield and her employer and “paramour”, Thomas Bonney, were accused in 1876 in Queensland of the murder, by means of strychnine, of Elizabeth’s husband, William Lancefield.<sup>252</sup> One press report noted that Bonney “is said to have good connections in Tasmania” and predicted that as the case was not very strong, Bonney would be acquitted.<sup>253</sup> The same report similarly predicted an acquittal for Elizabeth given the weakness of the case against her combined with the fact of being a woman.<sup>254</sup>

248 *South Australian Weekly Chronicle* (Adelaide, 14 January 1860) at 1S.

249 Frederick Lee, Letter to the Editor *Evening News* (Sydney, 20 December 1888) at 5. The Marsh test for detecting arsenic (introduced in 1836) “was far from foolproof” and problems and differences of opinion between experts (as in the trial of *Lafarge*) remained. See Bartrig, above n 39, at 57–58. Thomas Smethurst who was convicted of the murder by poison of a woman whom he had bigamously married, was given a free pardon, largely as a result of the confusion surrounding the medical and chemical evidence in the case. See Flanders, above n 6, at 273–280; and Watson, above n 6, at 19.

250 This was not an isolated problem. At the famous trial of Madame Lafarge in France for poisoning her husband, the experts wholly disagreed as to the presence of arsenic. See “Female Poisoners” above n 38.

251 Ann Fisher (see also above n 234, n 241) was swiftly acquitted at her trial at Exeter in 1848 for poisoning her older wealthy husband three months after their marriage, despite the testimony of a fellow prisoner that she had confessed the deed to her and the confident testimony of a medical witness to the presence of a lethal amount of arsenic in the deceased. See Weiner (2001), above n 163, at 197 and n 39, at 199; “Western Circuit” *The Times* (London, 27 March 1848) at 7; and *Western Times* (Exeter, United Kingdom, 1 April 1848).

252 For reports of the committal, see *The Brisbane Courier* (Brisbane, Australia, 10 June 1876) at 5; 13 June 1876 at 3; and 14 June 1876 at 3; and *The Queenslander* (Brisbane, Australia, 17 June 1876) at 6–7.

253 *Western Star and Roma Advertiser* (Toowoomba, Australia, 24 June 1876) at 3.

254 At 3. Bonney was said to have “lost his reason” and become a “lunatic” whilst on remand: *Rockhampton Bulletin* (Rockhampton, Australia, 25 August 1876) at 2.

The case attracted strong public interest.<sup>255</sup> Elizabeth was tried with her lover, Bonney. The evidence presented at her first trial<sup>256</sup> appeared damning and belied the press's unfounded optimism. There was no dispute that the cause of Lancefield's death was strychnine poisoning, the defence case being that Lancefield had self-administered the poison concealed in potatoes, whether by accident or design. It was also found that the family's dog had died of strychnine poisoning having consumed the same batch of potatoes as the deceased.<sup>257</sup> Though witnesses testified to Elizabeth and her husband's affectionate relationship,<sup>258</sup> it emerged that the marriage had been strained by a history of violence committed upon Elizabeth by the deceased.<sup>259</sup> Both Elizabeth and Bonney had had access to strychnine and strychnine was found in Bonney's possession.<sup>260</sup> There was ample evidence of motive. There were intimacies, although not entirely incriminating in themselves, known to be shared by the two defendants. Bonney had provided Elizabeth with money. There was evidence of violence by the deceased towards Elizabeth and her expressed wish to poison him if he tried it again.<sup>261</sup> Only one of three persons could have administered the poison; Mrs Lancefield, the deceased or their five-year-old child, who was discounted as a suspect, leaving only Mrs Lancefield and her late husband as the culprit.

Despite the nature and gravity of the alleged crime, the apparent strength of the prosecution case and the judge's unsympathetic summing up, the jury proved unable to reach a verdict.<sup>262</sup> In the course of terse legal argument between the parties,<sup>263</sup> the defence asked the Full Court<sup>264</sup> for a "special jury" to be convened for the retrial.<sup>265</sup> Over the Attorney-General's objections, the Full Court granted the application on "special grounds" that they unhelpfully

255 "The Lancefield Murder Case" *Darling Downs Gazette* (Toowoomba, Australia, 23 September 1876) at 2S.

256 "*R v Lancefield (No 1)*" (*The Brisbane Courier* (Brisbane, Australia, 29 August 1876) at 3; 30 August 1876 at 5, 31 August 1876 at 3; 1 September 1876 at 3; and *The Queenslander* (Brisbane, Australia, 2 September 1876) at 18; and 9 September 1876 at 21).

257 *The Brisbane Courier* (Brisbane, Australia, 29 August 1876) at 3.

258 *The Brisbane Courier* (Brisbane, Australia, 30 August 1876) at 5.

259 See *The Queenslander* (Brisbane, Australia, 2 September 1876) at 18–19.

260 *The Brisbane Courier* (Brisbane, Australia, 31 August 1876) at 3.

261 *The Brisbane Courier* (Brisbane, Australia, 30 August 1876) at 5. See also *The Queenslander* (Brisbane, 2 September 1876) at 19.

262 *The Queenslander* (Brisbane, Australia, 9 September 1876) at 21.

263 See *The Brisbane Courier* (Brisbane, Australia, 8 September 1876) at 3. This terse exchange even prompted defence counsel to write to the press complaining of the conduct of the Attorney-General. See Alfred Godfrey, Letter to Editor "Mrs Lancefield's Case" *The Brisbane Courier* (Brisbane, Australia, 11 September 1876) at 3.

264 Comprising Cockle CJ and Lutwyche and Lilley JJ. See "*R v Lancefield*" *Darling Downs Gazette* (Toowoomba, Australia, 9 September 1876) at 3.

265 A special jury was an unusual power conferred by s 26 of the then Jury Act (Qld) which enabled a special jury "in cases presenting great difficulty, and requiring some special scientific or other knowledge in order to try it properly": *The Brisbane Courier* (Brisbane, Australia, 8 September 1876) at 3.

declined to explain, emphasising that the decision was to be regarded in no way as a precedent.<sup>266</sup>

The case proceeded to a retrial before a specially convened jury,<sup>267</sup> who notwithstanding the trial judge’s renewed unsympathetic summing up,<sup>268</sup> returned a verdict of not guilty, (perhaps vindicating the trust placed in them by the defence to ignore the extensive publicity).<sup>269</sup> The verdict does not appear to have caused any great surprise and Elizabeth even attracted praise for her dignity and demeanour in the proceedings.<sup>270</sup>

Elizabeth Lancefield’s acquittal of the murder of her husband by poison in such circumstances was not unique in colonial Australia in this period. Catherine Dunlop was charged with the murder of her husband, Ebenezer Dunlop, described as “a well to do settler”,<sup>271</sup> near Yass in New South Wales in 1881. An inquest into the suspicious circumstances of Dunlop’s death found that he had died from strychnine poisoning and that such poison was administered by his wife, Catherine Dunlop.<sup>272</sup>

Mrs Dunlop was committed for trial.<sup>273</sup> The first trial at Yass had to be adjourned and transferred to Goulburn after failing to convene a jury.<sup>274</sup> Mrs Dunlop’s defence was a lack of motive, having lived happily with her husband for 23 years. The only recent discord between the couple concerned, apparently, the man whom their 17-year-old adoptive daughter Rosa Ann Wales, intended to marry. At trial, the defence case was that Dunlop had committed suicide but Rosa proved a less than friendly witness to her adoptive

266 *The Brisbane Courier* (Brisbane, Australia, 8 September 1876) at 3.

267 “*R v Lancefield*” *Queensland Times* (Brisbane, Australia, 21 September 1876) at 3; *The Brisbane Courier* (Brisbane, Australia 19 September 1876) at 3; 20 September 1876 at 3; and 21 September 1876 at 3.

268 Lutwyche J volunteered his view that the notion that the husband had committed suicide was “most improbable” on the evidence and “his own language and conduct showed that he had not the slightest intention of doing so”: *The Brisbane Courier* (Brisbane, Australia, 21 September 1876) at 3.

269 The press noted the circumstantial nature of the prosecution case (*The Sydney Morning Herald* (Sydney, 1 September 1876) at 3) and that the jury had been unconvinced that the deceased had not committed suicide (*Darling Downs Gazette* (Toowoomba, Australia, 11 October 1876) at 1S). The case against Bonney was abandoned by the prosecution after the jury’s finding. See *Queensland Times* (Brisbane, Australia, 21 September 1876) at 3.

270 “The Lancefield Murder Case” *Darling Downs Gazette* (Toowoomba, Australia, 23 September 1876) at 2S; and *Rockhampton Bulletin*, (Rockhampton, Australia, 2 October 1876) at 2.

271 “The Poisoning Case at Yass” *Goulburn Herald* (Goulburn, Australia, 12 January 1881) at 2.

272 “Alleged Murder of a Husband” *The Argus* (Melbourne, 14 January 1881) at 7; and “The Poison Case at Yass” *Goulburn Herald* (Goulburn, Australia, 12 January 1881) at 2. See also “Husband Poisoning: Verdict of Wilful Murder” *Burrowa News* (Burrowa, Australia, 14 January 1881) at 3; and “Charge of Poisoning a Husband” *Maitland Mercury* (Maitland, Australia, 15 January 1881) at 7S.

273 “The Poison Case at Yass” *Goulburn Herald* (Goulburn, Australia, 12 January 1881) at 2.

274 See *Burrowa News* (Burrowa, Australia, 8 April 1881) at 2; and *Gundagai Times* (Gundagai, Australia, 8 April 1881) at 2.

mother.<sup>275</sup> Rosa described the deceased's last words to her were that he had been poisoned by his wife. She also gave evidence of incriminating behaviour and comments made by Mrs Dunlop. Other witnesses supported at least parts of Rosa's account.

However Catherine Dunlop had the good fortune (unlike Elizabeth Woolcock) to be represented by counsel of ability, a Mr Want. The defence portrayed Rosa as a "bad girl who told lies".<sup>276</sup> One report noted that Mr Want's "most eloquent appeal" in closing so deeply affected both the accused and the audience that some ladies in the public gallery had to use cambric on more than one occasion to maintain their composure.<sup>277</sup> The jury proved unable to reach a verdict. It was reported that 11 jurors had been in favour of acquittal and only one in favour of a guilty verdict.<sup>278</sup>

The prosecution's failure to convince the jury is perhaps unsurprising. Despite the gravity of the alleged crime and the adoptive daughter's damning testimony, the motive for Catherine Dunlop's crime was never made clear. The will in Mrs Dunlop's favour in itself was not conclusive. Witnesses at the trial including the Mayor of Yass, volunteered that despite any rumours to the contrary, Dunlop and his wife had always presented themselves as an affectionate and devoted couple who were very much attached.<sup>279</sup> Though Mrs Dunlop married a well-known local man called Nash whilst awaiting her retrial,<sup>280</sup> there were no suggestions in the proceedings or even the voluminous local press accounts of the case that her "improper intimacy" with another man (unlike such cases such as Mary Thornton, Elizabeth Woolcock and Louisa Collins) had motivated her alleged crime.

In such circumstances, the prosecution elected at the last minute not to proceed with a retrial and, as Mrs Dunlop had been before the court three

275 "R v Dunlop" (*Goulburn Evening Penny Post* (Goulburn, Australia, 12 April 1881) at 4; *Goulburn Herald* (Goulburn, Australia, 13 April 1872, 2); "Charge of Poisoning a Husband" *The Sydney Morning Herald*, (Sydney, 15 January 1881) at 8; and *Goulburn Evening Post* (Goulburn, Australia, 12 April 1881) at 4.

276 *Goulburn Herald* (Goulburn, Australia, 13 April 1872) at 2.

277 "Catherine Dunlop" *Goulburn Evening Penny Post* (Goulburn, Australia, 12 April 1881) at 2. See also *Goulburn Evening Penny Post* (Goulburn, Australia, 12 April 1881) at 4.

278 "Catherine Dunlop" *Goulburn Evening Penny Post* (Goulburn, Australia, 12 April 1881) at 2

279 *Goulburn Herald* (Goulburn, Australia, 13 April 1881) at 2. See also *Goulburn Evening Penny Post* (Goulburn, Australia, 12 April 1881) at 4.

280 See "Marriage of Mrs Dunlop" *Southern Argus* (Goulburn, Australia, 5 August 1881) at 2; and "The Kitty Creek Poisoning Case" *Goulburn Herald* (Goulburn, Australia, 6 August 1881) at 3.



times, consented to her release upon her new husband’s recognisance to appear when called upon.<sup>281</sup>

## VIII. CONCLUSION

Fear of the female poisoner dates back to antiquity. The rash of 19th century cases of women who killed with poison came at a time when the idea of female offenders first received serious criminological attention. The recognition of female offenders generated an exaggerated fear. In a period where poisons were so readily available, not only was murder by poison a crime so reviled, it was also a crime difficult to detect and establish guilt. Fears aroused by the female secret poisoner who, through inversion of their traditional gender role as nurturer and caregiver, used this role to introduce poison into food and drink apparently lovingly prepared for their husbands and children, to evade the law through deception, emerged as a subject of universal concern.

Yet despite the fear of female poisoners it was by no means inevitable that a wife accused of the murder of a husband by poison would be found guilty in this period. Cases such as those of Matilda Padbury, Mary Ann Bradney, Ellen Woods, Elizabeth Lancefield, Catherine Dunlop and Elizabeth O’Neill highlight that the courts and juries of the period took their roles seriously and did not allow the gravity of the alleged offence to dictate their verdicts. Similarly, even if found guilty, it was far from inevitable that such offenders would be put to death. Despite the revulsion commonly felt towards female poisoners it is notable that a significant number of the women convicted in this period of the attempted murder or murder of a husband though the use of poison were regarded as worthy of the grant of mercy and were reprieved. These included Anne Davis, Louisa Garrett, Elizabeth Miller, Anne O’Brien, Mary Anne Burton, Sarah Keep and Elizabeth Hyde.

Even the four women hanged in Australia in the 19th century for the murder of their husbands by means of poison, namely Mary Thornton, Elizabeth Woolcock, Louisa Collins and Martha Needle, did not lack for sympathy and calls for mercy (especially in respect of Louisa Collins). In these cases attention was drawn to the strength of the evidence presented by the prosecution where the role of mercy as the “last hope of a reprieve” was

281 *Goulburn Evening Penny Post* (Goulburn, Australia, 6 October 1881) at 2; and *Goulburn Herald* (Goulburn, Australia, 6 October 1881) at 3. The evident ill will between Mrs Dunlop and Rosa continued. Mrs Dunlop brought a civil action to recover a horse from Rosa that Rosa claimed her late adoptive father had given her as a “present”. See “*Nash v Wales*” *Southern Argus* (Goulburn, Australia, 21 October 1881) at 2. Interestingly, Nash and Dunlop do not appear to have “lived happily ever after”. Nash was charged in 1884 with assaulting his wife during a drunken row at Kitty’s Creek (see “*Yass News*” *Southern Argus* (Goulburn, Australia, 12 July 1884) at 2) and Catherine was fined for drunkenness the following year (see “*Yass News*” *Southern Argus* (Goulburn, Australia, 4 June 1885) at 2).

often juxtaposed with the consequences of conviction for a capital offence, as a means of petitioning for the abolition of the death penalty. The popular notion of the 19th century wife murdering her husband by poison as a “fiend incarnate”<sup>282</sup> is simplistic. The reality in colonial Australia (as indeed in Britain) is subtler and more complex than the hostile and often exaggerated popular perception of female poisoners of the period might indicate.

282 “Women Who Have Been Executed: Female Poisoners. An English Martha Needle” *Weekly Times* (Melbourne, Australia, 20 October 1894) at 12.