

FEMALE CRIMINALITY IN YORK AND HULL 1830-1870

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A BSTRACT

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Legal, literary and cultural discourses reflect a confusion of attitudes towards female criminality. Nineteenth-century women were both seen as more evil than offending men but paradoxically were also viewed as incapable of criminal action. Using a methodology which brings together both linguistic and discursive analyses of legal and literary representations and empirical research this study examines female criminality in York and Hull in the forty-year period from 1830 to 1870.

In particular the thesis focuses upon the quarter session offences, the vast majority of which were thefts. It also contextualises those crimes within the framework of assize and petty session crime. An important objective is to redress the imbalance created by many previous studies which have highlighted the sexually-related offences of women and to establish the participation of women in less overtly gendered crime. York has been analysed in depth, but regional differences in the justice system and its treatment of women have been uncovered by comparison with the borough of Hull. The analysis shows that the proportion of female quarter session crime was higher than in the late nineteenth and early twentieth-centuries, but that such crime progressively decreases over the period examined. This is partially, but not wholly attributable to administrative shifts. Constraints created by the image of woman as incapable of crime may have assisted in this decline.

Previous studies have neglected to examine statute and common law in its relation to nineteenth-century female offenders. The period clearly saw a masculinization of the law and of the justice system. Initially the study of the common law understanding of 'feme covert' suggests a chivalric approach to women. However, ultimately it merely serves to emphasise that such devices arose where women were regarded as 'nonperson' and denied of their own legal status. The masculinization was not an uncontested shift but it became the dominant one. Confusion over the criminal culpability of women resulted in a stasis in justice system policy that has existed to the present day.

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INTRODUCTION

“I looked at her with astonishment. ‘Good God!’ thought I, ‘can this be a woman? A pretty, soft looking woman too-and a mere girl! What a heart she must have!’ I felt equally tempted to tell her she was a devil, and that I would have nothing to do with such a horrible piece of business; but she looked so handsome, that somehow or another I yielded to the temptation. . . .”¹

This purported reaction of a nineteenth-century male offender to a meeting with his female conspirator, Grace Marks, encapsulates the ambiguities of the approaches to female offenders in the nineteenth century. In particular the question ‘Can this be a woman’, amongst a multiplicity of other meanings, emphasises the reluctance to see women as capable of serious crime. Yet the desire to equate her with a devil reminds the reader that Victorian criminal women were often seen as more evil than men and frequently strongly linked with the fall of Eve. Furthermore this male offender used the description of his alleged temptation in his own defence against a murder charge. Yet he was to be hanged and she only incarcerated. There are many features of this account that are not immediately relevant to this study: this was perhaps a highly fictitious, certainly a very heavily mediated, account; it took place in Canada and not the Yorkshire region that is to be the basis of this thesis; the crime in question was murder and not the minor theft which will be the staple diet of this study. Yet it captures the tension that is at the heart of this study and indeed that still prevents our own society from facing the emotional and intellectual conflicts that confront us when women commit crime.

Not only can the salient features outlined above be found today but it must be said that many similar elements were present long before the nineteenth-century. Indeed they are in a sense a feature of a Christian culture.² This thesis will attempt to tease out the nineteenth-century context of such beliefs and their effect within the justice system of the period. In order to do this I will focus on the perceptions of the general population about criminal women in two nineteenth-century Yorkshire cities, York and Hull. These will be contextualised within opinions reflected in sources of a more national nature. Particularly

¹ Susanna Moodie, *Life in the Clearings* (Toronto, 1959), p. 160. First edition published in England 1853.

² See, for example, Lène Dresen-Coenders (ed.), *Saints and She Devils: Images of Women in the Fifteenth and Sixteenth Centuries* (London, 1987). This study focusses on the Low Countries but emphasises the contribution of Thomas Aquinas and other Christian models for the ideal and deviant woman.

relevant to female criminality is the problematical notion of 'separate spheres.' This will be referred to in the second chapter.

I will ask questions about aspects of the cultural climate in which notions of criminality were fostered and re-constructed. In order to analyse the nexus between public opinion and nineteenth-century female offenders this thesis will examine approximately five hundred women who committed crimes in nineteenth-century York and fifteen hundred female criminals from nearby Hull. The study considers the York cohort in greater depth and the Hull sample will serve more as a control. These offenders constitute the total number of women documented in the quarter sessions records of York and Hull between 1830 and 1870. The study outlines the types of crimes with which these females were charged and their treatment within the justice system. The vast majority of the offences were felonies and thefts. The thesis includes discussion of the socio-economic circumstances of the women and selective biographical details, for example, mobility or familial and criminal networks, which might be said to have impinged on their criminal activities.

The first chapter will analyse some of the inequalities found within statute and common law in the nineteenth century. On numerous occasions the law, and indeed the justice system, appears to have been lenient towards women. However, we will see that such apparent chivalry could be a result of earlier denials of women's legal 'personhood.' But what the discursive analysis of law also demonstrates is a masculinization of the law and of the justice system in the nineteenth century. As the latter became more centralised, and as the law became more coherent, women were often omitted from policy creation and subsumed into definitions based upon notions of masculine behaviour. This chapter provides an account of the legal framework within which the offenders of York and Hull existed.

James A. Sharpe, one of the foremost contributors to the history of crime, recently summarised the historiography of crime as comprising of three, sometimes competing, sometimes complementary, approaches. In an appraisal of the field, which he describes as roughly twenty years old, he suggests that there has been three main methodologies. The first has centred on statistical inroads into the history of crime. The second has focussed on investigations into the meaning of crime within communities. The third has related to definitional problems of crime and in particular to the social meaning of deviant

acts.³ For scholars interested in the history of crime in the nineteenth century these are useful categories with which to summarise the historiography.⁴

Early work in the history of nineteenth-century crime did indeed revolve around arguments about counting. J. J. Tobias rejected the “pseudo science” of statistics whilst Gatrell and Hadden demonstrated the immense contribution careful statistical study could make.⁵ But the earlier contributions to this controversy have been well documented elsewhere and need not be repeated here.⁶ In his recent summary of this debate John C. Weaver, in his study of crime in a nineteenth-century Canadian city, is probably correct in stating that the arguments over the analysis of crime rates, both of the long and the short term trends, have not sustained any proposition about social pathology.⁷ Furthermore, he concludes, they have not proven that the new power of the state in the late nineteenth century held crime down.

Weaver also stresses a feature unmentioned in most other summaries of criminal history; that of the different approaches to the history of crime rates in Britain, America and France. He demonstrates, for example, how the American debate over crime rates has focussed particularly on the detrimental effects of urbanisation and industrialisation. Weaver contrasts this approach with the emphasis of V. A. C. Gatrell, who has, he says, written “with more sophistication” and dealt with topics that have concerned British historians far more than American ones; namely class, state and power.⁸ If this summary is a tenable one then it can be seen that women might not only have been low on the

³ Sharpe, J. A., ‘The History of Crime in England, 1550-1914,’ *ReFresh* 20, 1995 p. 5; For an earlier but more detailed literature review see J. A. Sharpe, ‘The History of Crime in England c.1300-1914: An Overview of Recent Publications,’ *British Journal of Criminology*, vol. 28, no. 2, (Spring, 1988).

⁴ For the purposes of this study ‘criminal history’ is taken as a wide ranging term which might include studies of the personal histories of offenders; histories of criminology or jurisprudence; studies of social control features, including informal mechanisms; studies of formal systems of control such as courts, police and prison systems; historical analyses of criminal law and studies of cultural sources relating to perceptions of crime in historical contexts.

⁵ J. J. Tobias, *Crime and Industrial Society in the Nineteenth Century* (London, 1967). This was a pioneering study despite the fact that many of its assumptions have been challenged; V. A. C. Gatrell and T. B. Hadden, ‘Criminal Statistics and their Interpretation,’ in E. A. Wrigley, *Nineteenth-century Society: Essays in the Use of Quantitative Methods for the Study of Social Data* (Cambridge, 1972).

⁶ See, for example, David Jones, *Crime, Protest, Community and Police in Nineteenth-Century Britain* (London, 1982), pp. 1-3; Clive Emsley, *Crime and Society in England 1750-1900* (second edition, London, 1996); Particularly helpful is *Historical Social Research*, vol. 15, no. 4 (1990), ‘Special Issue’ dedicated to ‘Quantification and Criminal Justice History in International Perspective.’

⁷ John C. Weaver, *Crimes, Constables, and Courts: Order and transgression in a Canadian City, 1816-1970* (Montreal, 1995), p. 223.

⁸ Weaver, *Crimes, Constables, and Courts*, p. 193.

agenda of British criminal historians because of the smaller numbers of female offenders. Women have not traditionally been seen as major players in debates about power and the state, and only in the last ten years or so have they figured significantly in debates about class. There was, it could be argued, no incentive to include women in studies of crime if their immediate contribution to arguments revolving around issues of state and power was not obvious.

Currently the only study of note of long-term trends of female crime is Feeley and Little's consideration of the decline of women in the criminal process between 1687 and 1912. Their conclusions are indeed tenable but by their own admission they pose more questions than answers and appeal for "additional sustained" study.⁹ The short-term local trends which are analysed in my study of York and Hull concur at one level with Gatrell's notion of criminogenic pressures: "the anonymity of urban life; mobility of the population; the abundance of stealable property; alienation; and rising but unfulfilled material expectations that cannot be met."¹⁰ But a closer look at these short-term trends (and at other qualitative differences between crime) in the two relatively nearby boroughs demonstrates the complexity of such categories and indeed reflects precisely what Gatrell would perceive to be the "local idiosyncrasies" of short-term trends. For example, in this study local control measures (both formal and informal) appear to result in higher crime rates in the moderately sized city of York, with only a middling increase in population, than those found in Hull, which demonstrates more obvious patterns of urbanisation and much faster population growth. This in turn might support those who wish to emphasise the relationship of crime with arguments of class, state and power rather than simply with urbanisation, industrialisation or even modernisation. What is clear, however, in the contentious arguments over long versus short-term criminal trends is that a study of short-term and local "idiosyncrasies" will shed light on the nexus between the public and the criminal justice system, an area which, John Weaver maintains, needs investigation.

Weaver's own study of Hamilton, Ontario, convincingly demonstrates, (as does Gatrell's *Hanging Tree*) the move of recent studies away from an over-reliance on quantitative analysis of the long term trends - an approach once seen as more reliable by Gatrell and others - and towards the integration of more qualitative material. Weaver's

⁹ Malcolm M. Feeley and Deborah L. Little, 'The Vanishing Female: The Decline of Women in the Criminal Process, 1687-192,' *Law and Society Review*, vol. 25, no. 4, (1991).

¹⁰ Weaver, *Crimes, Constables and Courts*, p. 197.

argument that the counting controversy demonstrates the importance of understanding the nexus between the public and the criminal justice system is clearly true.¹¹ This thesis will, as I have already said, be concerned to explore some aspects of the connections where the public and female offenders are concerned. Therefore, despite the on-going arguments over the usefulness of criminal statistics, this author defends the necessity for some limited and careful use of quantitative analysis of reported crime whilst stressing the need for their integration with multi-variate sources.

Sharpe's second category of criminal history might be reflected in work by David Philips, David Jones, Clive Emsley, Carolyn Conley and others who have powerfully combined the use of statistics with investigation into the meaning of crime in local communities.¹² This work has also, of course, long enmeshed with work questioning class structures and political protest.¹³ Although some of this work was concerned to establish crime as a feature of protest socially acceptable to large numbers of the community, in general criminal historians tend to see the notion of 'social crime' as of limited use in certain situations only.¹⁴

One of the earlier problems arising from quantitative studies of crime may have related to the fact that it was necessary to carry out groundwork in creating a general overview of crime in the nineteenth century. This sometimes meant that an important distinction was omitted. Perhaps because of inherent problems within source material, historians have sometimes found it difficult to distinguish between the essentially different

¹¹ Ibid., p. 222.

¹² David Philips, *Crime and Authority in Victorian England: The Black Country 1835-60* (London, 1977); David J. V. Jones, *Crime, Protest, Community and Police in Nineteenth-Century Britain* (London, 1982). In this, Jones made one of the earlier appeals for the study of female crime, stressing women's high rate of participation in larceny offences. p. 94 and p. 96. In his *Crime in Nineteenth-Century Wales* (Cardiff, 1992) he has explored gender aspects more fully; Audrey Philpin, an M.Phil. student of Jones, has completed an interesting empirical study, 'Women and Crime in Nineteenth-Century Pembrokeshire, M.Phil., (Swansea, 1991) but the study slips away disappointingly in a superficial assessment of crimes as of "greed" or "need", p. 317; Emsley, *Crime and Society in England* is the most useful introduction to nineteenth-century law and order and a useful synthesis of approaches; see also Carolyn A Conley, *The Unwritten Law: Criminal Justice in Victorian Kent* (Oxford, 1991).

¹³ E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London, 1975); For a recent summary see J. Briggs, C. Harrison, A. Mc Innes and D. Vincent, *Crime and Punishment in England: An Introductory History* (London, 1996), particularly chapter eight, 'The Ordering of Society'; See also J. A. Sharpe, 'Crime, Order and Historical Change' in John Muncie and Eugene Mc Laughlin (eds.), *The Problem of Crime* (London, 1996) p. 107.

¹⁴ Whilst limited use of the notion of 'social crime' might be acceptable in certain contexts such as smuggling and poaching it is clear from papers published by radical groups such as *Cleave's Weekly Police Gazette* and the *People's Police Gazette* that these groups saw crime as conventional and unacceptable law breaking in many instances, although admittedly, acts of public disorder might also be seen in these journals as legitimate tools of protest.

nature and distinct features of diverse types of crime. Indeed this is still perceived by some as a problem for those involved in research into twentieth-century crime.¹⁵ Gatrell and Hadden take care to issue caveats and definitions in this respect and yet recent work, for example on rape, has highlighted still further the extreme difference between sexually violent crimes and, for example, violent behaviour that might have resulted in the course of a highway robbery.¹⁶ Despite the caveats such differences may have been all too easily subsumed in long-term quantitative analysis of nineteenth-century crimes of violence. However, as the field develops new work on different types of crime has begun to distinguish more clearly between varieties of offences. For example, John Archer has usefully contributed to the history of rural crime where previous studies had tended to see such crimes in the light of rural protest.¹⁷

A consideration of work by authors who have made this move also shifts us into Sharpe's third category of criminal history. Geoffrey Pearson and Robert Sindall are prime examples of those who have usefully used sociological methodology as a tool for analysing "the social meaning of deviant acts" in the nineteenth-century context.¹⁸ They provided a major contribution to the debate over the nature of moral panics in their outlines of street crime, and of 'garrotting' in particular. We will see, however, that Sindall's description of public reaction to the "Criminal Question" is not necessarily completely applicable to the two main boroughs that are the focus of this study.¹⁹ Nonetheless, one of the significances of Pearson and Sindall's work in the history of crime was the analysis of newspaper and periodical material and of the role played by such literature in the creation of public opinion. It is clearly the degree of the interplay between those involved in policy creation, at local and governmental level, and those who read

¹⁵ *Prison Service Journal*, December 1995, The editor appeals for more effort in distinguishing between crime types.

¹⁶ Sharon Morgan, 'Women and Violent Crime in London, 1800-1830,' M.Litt.(Cambridge, 1993). This thesis disappoints on a number of levels, not least in the fact that it failed to engage with the two most relevant works (that of Lucia Zedner and Rachel Short) both available by the date of this thesis. However its major strength is that it did deal with woman as both victim and offender as had been rarely done. Morgan also demonstrates well the different characteristics of crimes of violence in London 1800-1830.

¹⁷ John E. Archer, 'By A Flash and a Scare'. *Arson, Animal Maiming and Poaching in East Anglia 1815-1879* (Oxford, 1990); J. P. D. Dunbabin, *Rural Discontent in Nineteenth-Century Britain* (New York, 1974).

¹⁸ Geoffrey Pearson, *Hooligan: A History of Respectable Fears* (London, 1983); Rob Sindall, *Street Violence in the Nineteenth Century* (Leicester, 1990).

¹⁹ Sindall, *Street Violence*, pp. 130-131.

about, and enter into correspondence regarding, crime that is a central and new feature of this period.

The development of more complex approaches to the history of crime has also come with the move towards a use of a wider range of source material. V. A. C. Gatrell has (amongst his other major contributions) continued the analysis of the relationship between printed matter and crime in his use of broadsheets and other ephemera to discuss the issue of hanging in the nineteenth century.²⁰ Martin Wiener has extended the consideration of the interaction between law and culture in his impressive *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914*.²¹ This thesis will attempt to continue such methodologies by considering data in the context called for by Jennifer Davis; that is “in relation to the institutional and behavioural contexts within which they were generated.”²² Ultimately this cannot be done by simply relying on official documents generated within the justice system. It calls for the widest use of sources available which means accessing the attitudes of contemporaries through whatever remnants might reflect opinions of the time; from popular songs to theatre or opera, to fiction, and from broadsheets to newspapers.

The embryonic format of this thesis was in part a result of the literary background of its author. The point of its conception related to the historical context of George Eliot’s *Adam Bede* and to the facts relating to the transportation and mitigation of sentence of Hetty Sorrell. A number of literary scholars have set about prioritising studies of the linguistic and cultural contexts of crime within nineteenth-century fiction and this research has applied some of their techniques to, for example, the analysis of law and of popular street literature.²³ However, much of the work on Victorian fiction has also

²⁰ V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford, 1994).

²¹ Martin J. Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914* (Cambridge, 1990).

²² As quoted in Weaver, *Crimes, Constables and Courts*, p. 189.

²³ Perhaps most notably, and for its work on broadsheets, Richard D. Altick, *Victorian Studies in Scarlet; Murder and Manners in the Age of Victoria* (London, 1972). Other useful background texts have included: Marie-Christine Leps, *Apprehending the Criminal: The Production of Deviance in Nineteenth-Century Discourse* (London, 1992); Helen Birch (ed.), *Moving Targets: Women, Murder and Representation* (London, 1993); Virginia B. Morris, *Double Jeopardy: Women Who Kill in Victorian Fiction* (Lexington, 1990); John Kucich, *The Power of Lies: Transgression in Victorian Fiction* (London, 1994); Ian A. Bell, *Literature and Crime in Augustan England* (London, 1991); L. Faller, *Turned to Account: The Form and Functions of Criminal Biography in Late Seventeenth and Early Eighteenth Century England* (Cambridge, 1987); Nina Auerbach, *Woman and the Demon: the Life of a Victorian Myth* (Cambridge, Mass. 1982).

echoed the pattern outlined earlier: that of concern with the sensational. Scholars of English Literature have shown just how many other images of women those who lived in nineteenth-century Britain (and indeed elsewhere) were actually exposed to and the 'angel in the house' was not necessarily the dominant icon. In literature women were portrayed, amongst other things, as powerful classical goddesses eager to bring justice or even revenge: as female vampires: as heroine wanderers and as criminals. This study has attempted to juxtapose such material with that which related to the everyday local and petty offender and to analyse the mechanisms whereby notions of female offenders were, (and indeed are today), based upon stereotypes of a minority of serious 'convicts' rather than upon the reality of the majority small time offender.

This disjuncture between the picture of female offenders created in literature of all kinds and the actuality of ordinary offending women has perhaps been understated. In turn this distortion has, I will argue, presented problems for policy makers. One of the neglected areas of the history of crime has been a study of such cultural contexts and modes of transmission of information. James A. Sharpe, V. A. C. Gatrell and others have made inroads into the area but major historical studies into the cultural discourses of nineteenth-century crime have been lacking.²⁴ It is only in local studies of such material that we will be presented with pictures of community values and local anxieties. The process of centralisation within the justice system, one of the more unique features of this period in criminal history, took place in the context of tension and negotiation between central and local government. Traditional nineteenth-century criminal histories have not always accommodated non-official local public opinion.

All this said, however, one of the most significant features of this period is, of course, the centralisation of specific institutions of the justice system and the mass of public documents spawned by these. Courts shifted from pub rooms to purpose-built court buildings, police were transposed from amateurs to professionals and a system of local 'lock-ups' and vastly differing prisons metamorphosed into a centralised prison service by 1877. Each of these areas has its own historiography which, because of constraints on time and word length in a thesis of this type, must remain tangential to this study. Clive Emsley, Robert Storch, Carolyn Steedman, David Taylor and a number of

²⁴ James A. Sharpe, *Crime and The Law and English Satirical Prints 1600-1832* (Cambridge, 1986); "'Last Dying Speeches": Religion, Ideology and Public Execution in Seventeenth-Century England,' *Past and Present* 107, (May, 1985); Gatrell, *The Hanging Tree*; Rachel Short, 'Female Criminality, 1780-1830,' M.Litt. (Oxford, 1989) made some analysis of newspaper coverage.

others have contributed significantly to the history of policing in the period and this study has been enriched by the recent Ph.D thesis on Hull's police by David Welsh.²⁵ Michael Lobban, David Sugarman and Gerry Rubin continue to expand the work on nineteenth-century legal history and jurisprudence.²⁶ Rather less has been written specifically on nineteenth-century court practices and scholars are driven to much of the work on the eighteenth century for information.²⁷ These studies of the criminal justice system reflect a general shift from an interest in criminality to research which focusses on control.

One field upon which some comment must be made, however, is that of prison history. This task is essential because it demonstrates most clearly the gendering of an area of the history of crime rather than because of its direct relevance to the narrative of this thesis. It is within the history of the prison that the split between empirical and theoretical approaches have been most marked in criminal history. Sir Leon Radzinowicz and Roger Hood have outlined the reforms of the nineteenth century in 'whiggish' fashion but with seemingly exhaustive use of sources.²⁸ Their text remains essential for any analysis of the justice system. In contrast Michel Foucault's outline of the development of the Western system of prisons analyses the far-reaching intellectual and practical implications of the carceral. His concern was not simply with the prison as a physical location but with the way in which mechanisms of power and control were introduced in the nineteenth century and both "inculcated docility and produced delinquency."²⁹

²⁵ Clive Emsley, *The English Police: A Political and Social History* (Cambridge, 1986, second edition, London, 1996); Carolyn Steedman, *Policing the Victorian Community* (London, 1984). A number of studies have a northern focus: R D Storch, 'The Plague of Blue Locusts. Police Reform and Popular Resistance in Northern England, 1840-57,' *International Review of Social History*, xx, (1975); 'The Policeman as Domestic Missionary: Urban Discipline and Popular Culture in Northern England 1850-80,' *Journal of Social History*, 9, (1976); Roger Swift, *Police Reform in Early Victorian York, 1835-1856* Borthwick Paper, no. 73. (York, 1988).

²⁶ Michael Lobban, *The Common Law and English Jurisprudence 1760-1850* (Oxford, 1991). And more recently, 'Was there a Nineteenth-Century 'English School of Jurisprudence'?' *Legal History*, vol. 16, no. 1, (April, 1995); G. R. Rubin and David Sugarman (eds.), *Law, Economy and Society, 1750-1914: Essays in the History of English Law* (Abingdon, 1984); John Hostettler, *The Politics of Criminal Law Reform in the Nineteenth Century* (Chichester, 1992). All of which demonstrate, amongst other things, just how profoundly male-centered such areas were, and indeed remain.

²⁷ J. M. Beattie, *Crime and the Courts in England 1660-1800* (Oxford, 1986); J. S. Cockburn, *A History of English Assizes 1558-1714* (Cambridge, 1972); Jennifer Davis, 'Prosecutions and their Context. The Use of the Criminal Law in late Nineteenth-Century London,' in Douglas Hay and Francis Snyder (eds.), *Policing and Prosecutions in Britain 1750-1850* (Oxford, 1989).

²⁸ L. Radzinowicz and R. Hood, *The Emergence of Penal Policy in Victorian and Edwardian England*, (vol. 5) *A History of the English Criminal Law and its Administration from 1750* (Oxford, 1990).

²⁹ Foucault, *Discipline and Punish*, p. 300.

Foucault's *Discipline and Punish*, first published in English in 1977 (and which perhaps lost something in translation from its original French title *Surveiller et Punir: Naissance de la Prison*) indicated the shift of emphasis from the physical punishment of the body, in the nineteenth century, towards the incarceration of the law breaker. But the work also illustrated the move towards greater surveillance of society in general. And as we will see shortly Foucault's work has caused particular controversy amongst feminist scholars.

The traditional, empirical studies simply gave scant attention to women who were seen as unimportant since in numerical terms they were a minority. Lucia Zedner's excellent study redressed the balance somewhat and placed women firmly on the agenda.³⁰ She showed that not only was there an interest in female offenders in the nineteenth century but that women were imprisoned in larger proportions than they are today. There is no need to repeat her analysis of recent prison historiography here but in it she mapped out the contributions of David Rothman, Michael Ignatieff and Patricia O'Brien with clarity.³¹ Zedner concluded that it was only in the work of the latter that gender was adequately dealt with.

Zedner also charted an excellent summary of Victorian views of normal and deviant women and of nineteenth-century explanations of female crime. Any reader interested in ecological, moral, economic, biological or psychological theories of the period which related to women and offending behaviour must turn to Zedner's outline. However, within the context of criminality Zedner's own work has been accused of neglecting the topic of 'gender,' (as opposed to women).³² Margaret Arnot claims to develop this gendered approach more fully in her extremely challenging thesis on infanticide.³³ She also skilfully demonstrates the way in which Foucault's understanding

³⁰ Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford, 1991).

³¹ David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Toronto, 1971); *Conscience and Convenience: the Asylum and its Alternatives in Progressive America* (Toronto, 1980); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850* (London, 1978); Patricia O'Brien, *The Promise of Punishment: Prisons in Nineteenth-Century France* (Princeton, 1982); See also Norval Morris, David J Rothman (eds.), *The Oxford History of the Prison: The Practice of Punishment in Western Society* (Oxford, 1995).

³² Margaret L Arnot, 'Gender in Focus: Infanticide in England 1840-1880,' Ph.D.(Essex, 1994), p. xv; For a recent summary of the gender vs. women's history debate see Joy Parr, 'Gender History and Historical Practice' in *The Canadian Historical Review*, vol. 76, no. 3, (September, 1995).

³³ Arnot does not, I feel, intend to denigrate Zedner here. Arnot considers the role of men and the relationships between men and women; Zedner looks only at women's prisons. However, I feel it is important to state a personal position here with respect to this thesis and its similar focus on women. There is still a need to recover the history of women whether as a first step to a fuller gender history or whether, for those who wish it, 'simply' to discover

of power could be integrated with feminism. Arnot claims a debt to Foucault in helping her to see 'woman' as a constructed category "with particular focus on the construction of gender norms within legal institutional practices."³⁴ She challenges successfully the central feminist criticism that in Foucault's approach the 'subject' disappears. Yet Arnot is not unaware of the problems posed for feminists by Foucault's work.³⁵

When this thesis was conceived David Philips' view represented the 'state of the art' in the criminal history of women. "Why there is this marked difference in male and female crime rates at all is 'one of the unsolved mysteries of criminology' and very little has been written which seriously approached this topic."³⁶ That Philips even posed the question was forward thinking in many respects, although David Jones was also to point out the need for more studies on women and crime.³⁷ A gender blindness lulled other criminal historians into ignoring laws and policies which affected women. For example, in chapter one I will discuss Rudé's lack of acknowledgement of the legislation regarding the whipping of the cohort of females in *Criminal and Victim*.³⁸

Such has been the shift in perceptions in the last ten years that Beatrix Campbell wrote in 1993, "It is now no longer possible to contemplate crime without contemplating gender."³⁹ One mark of burgeoning interest in this field is the presence of the topic of the

more about women. The danger with a decision to look at both men and women in criminal history is that the women will still remain under-researched and be seen simply as part of a 'male' criminal world. It is surely not desirable to assume that 'women's history' can simply evolve into 'gender history'- or even that the latter can be assumed to be superior simply because of its appropriation of theory. Gender history does not necessarily mark a 'whiggish' evolution from 'women's history' as is, ironically, sometimes taken rather for granted. There remains a place for projects concerned to recover and fill the gaps in the history of women since in many areas the simple question 'Where were the women?' remains to be addressed. That there is an essential distinction between the terms 'women' and 'gender' is clear but my position is that the polarising of debates into extreme camps (for example as in the Joan Hoff articles mentioned later in this introduction) has become reductive and sterile.

³⁴ Arnot, 'Gender in Focus', p. xxi.

³⁵ Ibid., p. xx. Another example of a work which acknowledges the difficulties of Foucault for feminists, whilst still suggesting points of convergence is Lois Mc Nay, *Foucault and Feminism: Power, Gender and the Self* (Cambridge, 1992). Arnot gives other titles.

³⁶ Philips, *Crime and Authority*, p. 148.

³⁷ Jones, *Crime, Protest, Community*, Jones points out that "special attention" has been paid to females. although interestingly his footnote then only refers to Beattie's "pioneering" study. His bibliography contains little on women, not even the existing work by Walkowitz and Finnegan - despite the fact that his work discusses prostitution. Jones concludes that "women had fewer opportunities to commit offences and those that did often received preferential treatment at every stage of the legal process". p. 7. Despite this, Jones' work proved inspirational to this author.

³⁸ George Rudé, *Criminal and Victim: Crime and Society in Early Nineteenth-Century England* (Oxford, 1985), p. 62.

³⁹ Beatrix Campbell, *Goliath: Britain's Dangerous Places* (London, 1993), p. 211.

'female offender' in recent bibliographies of women's history.⁴⁰ In any search on the topic of women and crime ten years ago the material would have invariably focussed on woman as victim. Feminists had been responsible for this necessary ground work which concentrated on women who were on the receiving end of male criminal action. The feminist agenda was, understandably, not at that stage concerned with highlighting women's criminal actions for, of course, women as victims of crime had also been neglected. As in twentieth-century criminology, the last few years have seen a burgeoning of historical research on offences committed against women, such as rape and domestic violence.⁴¹ I do not wish to detract from the importance of such work. Carolyn Conley's *The Unwritten Law* was one of the earlier texts on nineteenth-century crime specifically to include a chapter on women and crime. However, this work serves as an illustration of the point I have just made, that the phrase 'women and crime' was synonymous with women as victims of crime. Conley has much to say in this chapter on domestic violence and rape but rather less on women in brawls and very little on theft which was actually the staple diet of the quarter sessions in York and Hull. Whilst she does mention the legal state of 'feme covert,' her summary of the practice of it, in Kent, is cursory and reveals none of the tensions which I hope to demonstrate in chapter one of this thesis.⁴² Whilst such work on rape, abuse and domestic violence has added to the overall history of crime (and for many women should remain the priority) such fields will remain outside the brief of this thesis.

Twentieth-century feminist criminologists such as Carol Smart, Frances Heidensohn, Pat Carlen, Sylvia Walklate, and others, began investigation into the patriarchal elements of the criminal justice system and women as both victims and

⁴⁰ June Hannam, Ann Hughes and Pauline Stafford (eds.), *British Women's History: A Bibliographical Guide* (Manchester, 1996); E. M. Palmegiano, *Crime in Victorian Britain: An Annotated Bibliography from Nineteenth-Century British Magazines* (Westport, 1993) demonstrates how prolific nineteenth-century writers on crime were.

⁴¹ Shani D'Cruze, *Sex, Violence and Working Women in Victorian England* (London, forthcoming Summer, 1998); Anna Clarke, *Women's Silence, Men's Violence: Sexual Assault in England 1770-1845* (London, 1987); M. Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-century London,' *Gender and History*, 4, (1992), pp. 10-33; E. Ross, 'Fierce Questions and Taunts: Married Life in Working-Class London 1870-1914,' *Feminist Studies*, 8, (1982), pp. 575-602; N. Tomes, "'A Torrent of Abuse": Crimes of Violence Between Working-Class Men and Women in London 1840-1875,' *Journal of Social History*, 11, (1978), pp. 283-345. The latter articles went some way to establishing the agency and not stressing the victim status of many nineteenth-century wives.

⁴² Conley, *The Unwritten Law*, p. 69.

offenders within that system.⁴³ Furthermore, historians and others have seen the need to establish woman's agency within her past.⁴⁴ Ann Jones' *Women Who Kill* might be seen as one of the first works on female offenders to do this. In her introduction to the English edition (written some eleven years after the original American publication) Beatrix Campbell wrote, "It therefore challenges what has perhaps been a shortcoming of feminism over the last two decades . . . What *Women Who Kill* achieves, crucially, is the rehabilitation of woman's agency, the authorship of her own acts."⁴⁵ An inevitable continuation of such work has been the increased investigation of women who commit crimes.

In historical research, however, there has still been a marked bias in the way in which woman offenders have been perceived. There has been a concentration of research by scholars on 'female' crimes into offences such as witchcraft, prostitution,⁴⁶ infanticide and abortion. Such work is important and necessary.⁴⁷ It can indeed present an alternative but tenable view of female criminality. However, in terms of traditional criminal history, and in terms of deviant acts which our society currently perceives as crimes, (problematical and fragmented though that view may be) an over emphasis on these features (at academic conferences, for example) has skewed the picture of the nature of women's offences in the nineteenth century. Furthermore it is possible that such a

⁴³ Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (London, 1976). This text was an inspiration in the early days of this study but I also questioned the implicit suggestion that early interest in female offenders began with studies such as Lombroso at the end of the nineteenth century. p. 27. Smart's more recent works have remained influential and have powerfully illustrated law as a site of struggle not simply as a tool of reform. See, for example, *Law, Crime and Sexuality: Essays in Feminism* (London, 1995); Frances Heidensohn, *Women and Crime* (second edition, London, 1996); Sandra Walklate, *Gender and Crime: An Introduction* (London, 1995) contains a useful discussion on 'Women and Crime or Gender and Crime?' p. 188.

⁴⁴ Ann Jones, *Women Who Kill* (London, 1991); Alex Kirsta, *Deadlier than the Male* (London, 1994); Anne Campbell, *Out of Control: Men, Women and Aggression* (London, 1993).

⁴⁵ Jones, *Women Who Kill*, p. xiii.

⁴⁶ I have chosen to continue to use the term 'prostitution' here rather than a twentieth century term such as 'sex-worker' since this study of these women's lives is not detailed enough to investigate the exploitation/agency implied in some of the alternative labels and debated by feminists today. In the nineteenth century these women were also labelled with loaded nomenclature. The term prostitute is therefore the least value-laden term available in the context.

⁴⁷ As, for example, in the excellent thesis of Arnot, 'Gender in Focus'; The classic works on nineteenth-century prostitution might include P.McHugh, *Prostitution and Victorian Social Reform* (Beckenham, 1980); F.Finnegan, *Poverty and Prostitution: A Study of Prostitution in York* (Cambridge, 1979); J. Walkowitz, *Prostitution and Victorian Society* (Cambridge, 1980). These two texts are summarised as representing two paradigms, 'the double standard model' and the 'oppression' model, by Linda Mahood in *The Magdalenes: Prostitution in the Nineteenth Century* (London, 1990). She claims that her own 'problematization' model, "informed by discourse theory," avoids portraying the women either as agents or victims of their time. pp. 3-15.

pattern of research has emerged either because of some salacious interest in the more sensational and sexually linked crimes;⁴⁸ some hidden political agenda to see women as oppressed in patriarchal society; or simply because of the apparent availability of sources. The majority of female offenders probably did not commit such 'female-specific' crimes but like men were charged with drunkenness or theft.⁴⁹

Despite some of the limitations of research into female offences that have been outlined it is in the work by feminists that we have seen the adoption of rather more radical methodologies for the study of crime. Feminist literary criticism, feminist legal theory and post-structuralist applications of gender history have all been brought to bear on the question of women and crime. Much, though not all, of this work has been of non-British origin.

The Australian contribution has clearly been extremely strong in the debate over convict women's history. Deborah Oxley's work *Convict Maids* is the most recent volume to contribute to the ongoing debate based around the dichotomies of convict women's lifestyles and motives for crime.⁵⁰ This debate was precipitated in the 1970s with work such as Ann Summer's *Damned Whores and God's Police* which situated women as repressed victims of patriarchy.⁵¹ Portia Robinson challenged the lack of agency in the convict women's lives and attempted to establish them as rather more respectable women than had once been perceived.⁵² Oxley continues the picture with her assertion that the female transportees were 'talented and skilful workers.' There are problems with polarising the debate over criminality in such culturally specific ways. And my thesis can be challenged in precisely the same way. For Oxley this is reflected by the inadequate use of sources relating to the prior British experience of the women with

⁴⁸ Such work is absolutely necessary but also reflects twentieth-century pre-occupations. Palmegiano, *Crime in Victorian Britain* shows the extent of the interest in crime other than prostitution. The suggestion that articles on "food adulteration" or "crimes of the turf" were, at times, as prolific as those on prostitution might merit some investigation!

⁴⁹ The lack of analysis of such work here is for ideological reasons, as well as purposes of space and time. I have already stressed the pre-occupation with woman as victim which is to be found in earlier criminal histories and in much of the early feminist criminology. Ultimately no quantitative comparison between rates of prostitution and of theft is possible since adequate runs of petty session figures do not exist.

⁵⁰ Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia* (Cambridge, 1996).

⁵¹ Ann Summers, *Damned Whores and God's Police: The Colonization of Women in Australia* (Melbourne, 1976; latest edition, 1994).

⁵² Portia Robinson, *The Women of Botany Bay: A Reinterpretation of the Role of Women in the Origins of Australian Society* (Macquarie, 1988).

whom she deals. She argues against a profoundly stereotypical view of “Convict women as belonging to a professional criminal class” in a way which is not sustainable if British sources are used.⁵³ In Britain women offenders never were perceived to be a ‘criminal class’ in the same way that men were. Oxley also, for example, speculates on the individual selection of transportees without any real regard to sentencing law or to the constraints on the magistrate. Her lack of attention to the chronology of the material is exemplified by a quote from Lombroso in a discussion of criminal type which is intended to focus on the 1820s and 30s.⁵⁴ Nonetheless the Australian contribution generally has richly shaped the historiography of British female offenders. Furthermore scholars of Australian convict history have gone on to challenge the good/bad dichotomy that informed the afore-mentioned discussions. Joy Damousi has suggested that the debate should be shifted away from a discussion of the ‘origins’ of convicts, the ‘nature’ of their experience and the ‘essence’ of their morality.⁵⁵ She calls for attention to ‘process’ and ‘meaning’ and for a focus on the construction of cultural meaning and the dynamics of relationships. What is the precise nature of such a contribution?

Some twelve years ago I turned with relief from the ever-shifting sands of literary theory to the apparent stability of the discipline of history. However, the call for acknowledgement of ‘process’ became my ‘Hound of Heaven’! For historians there has also been contentious discussion about the Saussurian ‘endless deferral of meaning’ and of the problems for the discipline if the fixity of the linguistic sign is denied.⁵⁶ This is not the place to re-open such a debate. However, what I have appropriated from the tension is some extremely limited and basic use of the tools of discourse analysis. There are problems with such an approach: not least that it is an easy undergraduate game to predict the questions and vocabulary that will come up in any such article. Joy Damousi’s article demonstrates such moments. Her conclusions that “Both male and female bodies were considered polluted and dirty” or that “transgressing the boundaries of power took place not from a single source but via a range of actions in a number of contexts” could be

⁵³ Oxley, *Convict Maids*, p. 13.

⁵⁴ *Ibid.*, p. 39.

⁵⁵ Joy Damousi, ‘Beyond the ‘Origins Debate’: Theorising Sexuality and Gender Disorder in Convict Women’s History,’ *Australian Historical Studies*, 106, (April, 1996), p. 61.

⁵⁶ Joan Hoff, ‘Gender as a Postmodern Category of Paralysis,’ *Women’s History Review*, vol. 3. no. 2. (1994); Catherine Hall, ‘Politics, Post-Structuralism and Feminist History,’ *Gender and History*, vol. 3, no. 2, (Summer, 1991); Raphael Samuel, ‘Reading the Signs,’ *History Workshop Journal*, no. 32, (Autumn, 1991).

applied to a myriad of historical situations.⁵⁷ Yet her analysis of discourse does move the debate on criminality forward. Her study of rumour as an effective way of unsettling power relations is convincing.⁵⁸ Indeed she too reminds us of Raphael Samuel's caveats regarding the influence of post-structural theory on history writing but, as Damousi claims, the approaches need not be mutually exclusive.

In particular, postmodern approaches have led legal theorists to challenge the autonomy of law. Feminists have usefully theorized gender equity, challenged legal treatment based on bodily difference and stressed women's cultural diversity.⁵⁹ This has in turn led to new and useful analyses, for example, of chivalry within women's criminal history⁶⁰ Perhaps the most useful application of postmodern analysis has, as Frances Heidensohn suggested, in her summary of the changes in the ten years between the first and second editions of *Women and Crime*, been that it has "encouraged a rigorous questioning of many previously taken-for granted assumptions."⁶¹ This thesis takes the opportunity afforded by such work to analyse statute in a way that might once have been dismissed by some lawyers as an irrelevant intellectual game of literary criticism. However, it is no longer tenable to view the law as a discourse accountable only unto itself.

Let us return to our overview of the more traditional mainstream criminal history and now acknowledge that much of the opening up of the field of history of crime has been by historians of periods before the nineteenth century. In general they have followed different routes to those of the post-modern feminist scholars but they too have called for new approaches. In 1980, Timothy Curtis called for criminal historians to see the evolution of law as an "intrinsic part of boundary maintenance." His theory of "boundary maintenance," taken from K. T. Erikson's *Wayward Puritans: A Study in the Sociology of Deviance*, relates to group alliances and towards attitudes to crime. For Curtis, too,

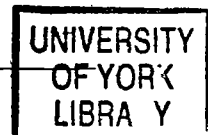
⁵⁷ Damousi, 'Beyond the Origins,' p. 64.

⁵⁸ Ibid., p. 65.

⁵⁹ Zillah R. Eisenstein, *The Female Body and the Law* (Berkeley, 1988); Anne Bottomley and Joanne Conaghan (eds.), *Feminist Theory and Legal Strategy* (Oxford, 1993).

⁶⁰ Carolyn Strange, 'Wounded Womanhood and Dead Men: Chivalry and the Trials of Clara Ford and Carrie Davies,' in France Iacovetta and Marana Valverde (eds.), *Gender Conflicts : New Essays in Women's History* (Toronto, 1992).

⁶¹ Heidensohn, *Women and Crime*, p. xv.



law is only “one component part of a whole process of manufacturing crime”.⁶² Since the appeal made by Curtis, work has abounded integrating the study of crime and the analysis of law. I have just demonstrated, for instance, that some feminists’ work has challenged assumptions embedded in legal doctrine and method. Furthermore feminists and other legal theorists have used disciplines such as psychoanalysis, philosophy, political theory and literary criticism to provide sharper tools for such analysis.⁶³

Despite such contributions relatively few studies by pre-nineteenth century historians have been concerned with woman as offenders, other than as witches or prostitutes.⁶⁴ A most notable exception is one of the earliest articles on women offenders: J. M. Beattie’s, ‘The Criminality of Women in Eighteenth-Century England’ has been a valuable starting point for most subsequent studies and in particular for those who wished to pursue urban/rural differences.⁶⁵ Peter King continues to contribute significantly with his work on the same period. One of the most useful aspects of his work is his consideration of the effect of life-cycles on female offenders.⁶⁶ Another particularly notable exception is the thesis by Garthine Walker and the collection of essays edited by Kermodé and Walker on women offenders in early modern England. This work also challenged the notion that women were merely passive victims.⁶⁷

This study will echo the call made by Tim Curtis and others for the study of the whole context of crime. It will, as I have suggested, refuse to respect the autonomy of law as a discourse separate from wider social structures. Yet whilst I endorse the need to examine the “total circumstances of those who encounter the law.” I will take issue with the idea that “The detail of who is protected and thus privileged (in Law) is not

⁶² Timothy Curtis, ‘Explaining Crime in Early Modern England,’ in *Criminal Justice History*, vol. 1, (1980), p. 133.

⁶³ Katherine T. Bartlett and Roseanne Kennedy, *Feminist Legal Theory: Readings in Law and Gender* (Boulder, 1991).

⁶⁴ Clearly there is a huge historiography for these topics but they must remain outside the scope of this thesis. James A. Sharpe, *Instruments of Darkness: Witchcraft in England 1550-1750* (London, 1996), is one of the most recent contributions. A disappointing attempt to combine literary sources and modern day fears and fantasies is found in Diane Purkiss, *The Witch in History: Early Modern and Twentieth-century Representations* (London, 1996).

⁶⁵ J. M. Beattie, ‘The Criminality of Women in Eighteenth-Century England,’ *Journal of Social History*, no. 8, (1975).

⁶⁶ Peter King, ‘Female Offenders, Work and Life-Cycle Change in Late-Eighteenth-Century London,’ *Continuity and Change*, 11, 1, (1996).

⁶⁷ Garthine Walker, ‘Crime, Gender and Social Order in Early Modern Cheshire,’ (University of Liverpool, 1994) ; J. Kermodé and G. Walker (eds.), *Women, Crime and the Courts in Early Modern England* (London, 1994).

discoverable by inspection of statutes nor by the study of the principles enunciated in legal texts.”⁶⁸ It is surely by using a range of methodologies, and even a synthesis of approaches, that a fuller picture may be gained.

One of the fundamental arguments of this thesis is that whilst female offenders in nineteenth-century York and Hull may at first sight, and in certain situations, appear to have been treated with leniency they were frequently experiencing what Joan Hoff summarises as a false equality.⁶⁹ Changes in legislation often offered English women what English men already had. But it might be argued, this was often too little, too late: by the time apparent legal equality had been granted the social context had often changed and equality was elusive. The chapter on ‘feme covert’ will demonstrate this mechanism.

The thesis as a whole, however, shows that legal inequality does not always appear as harshness towards women within the justice system as a whole, or on an individual basis. It demonstrates that there were occasions in which women were treated leniently perhaps as personal acts of kindness. There has, in recent feminist criminology, been lengthy debate over the extent of chivalry towards women in the justice system. Feminists have argued that quantitative studies show that leniency does not really exist.⁷⁰ Most have seen whatever chivalry is apparent to be a function of overall patriarchy.⁷¹ Indeed, Edwards and others have argued that chivalry can only occur in a situation where one party has power over the other.⁷²

My research demonstrates, as did that of Sharon Morgan for an earlier period and in a different geographical location, that the many inconsistencies in the treatment of women within the justice system reflect a multiplicity of attitudes and situations within a male-dominated framework. In an over simplistic approach to the historiography of chivalry Carolyn Strange insists that feminists must rethink their notions of chivalry as

⁶⁸ Judy Mackinolty and Heather Radi, (eds.), *In Pursuit of Justice: Australian Women and the Law 1788-1979* (Sydney, 1979), p. xiv.

⁶⁹ Joan Hoff, *Law, Gender & Injustice: A Legal History of United States Women* (New York, 1991).

⁷⁰ Carol Smart, *Women, Crime and Criminology*; Ilene Nagel *et al*, ‘Sex Differences in the Processing of Criminal Defendants’ in D. Kelly Weisberg, (ed.), *Women and the Law: A Social Historical Perspective* (vol. 1), *Women and the Criminal Law* (Cambridge, Mass, 1982).

⁷¹ Susan S. M. Edwards, *Women on Trial: A Study of the Woman Suspect, Defendant and Offender in the Criminal Law and Criminal Justice System* (Manchester, 1984).

⁷² Susan S. M. Edwards, *Gender, Sex and the Law* (London, 1985); Pat Carlen and Anne Worrall (eds.), *Gender, Crime and Justice* (Milton Keynes, 1987).

they have proved inadequate as models for explaining the treatment of women in court and, she claims, they have affirmed the class and race privilege of the men who wield the power. She insists that class and race must also be prioritised as tools of analysis.⁷³

In twentieth-century studies the work of Pat Carlen has demonstrated how poverty and class might function as ‘criminogenic triggers’ and tools of oppression within the justice system for women.⁷⁴ Ruth Harris and Mary Hartmann have demonstrated that issues of class could just as frequently serve similar functions in the nineteenth century.⁷⁵ What this thesis goes on to emphasise is that Victorians found it impossible to encapsulate neatly their attitudes to female offenders and the resultant paradoxes left individuals and policies in confusion. Carolyn Strange appeals for a rather simplistic application of the analytical tools of race, class and gender.⁷⁶ These categories will remain of fundamental importance and ever-valid although criminal behaviour and justice system judgements cannot always be subsumed by them. Other factors such as age, regionalism, political conviction, criminal record, religious beliefs, violent behaviour patterns, sexual proclivities and many more features now seen as ‘criminogenic triggers’ may relate to any, all or none of the above in various combinations.

A further obvious mark of interest in women in the criminal justice system is that most recent criminal histories contain much-needed and specific contributions on female offenders.⁷⁷ And yet these recent volumes are typical in that the discussion of female criminality is in general confined to one chapter.⁷⁸ Indeed Sean McConville in his otherwise significant contribution to prison history *English Local Prisons 1860-1900: Next Only to Death* places his discussion of women prisoners in a chapter entitled

⁷³ Strange, ‘Wounded Womanhood’, p. 151.

⁷⁴ Pat Carlen and Dee Cook (eds.), *Paying for Crime* (Milton Keynes, 1989); Pat Carlen, *Women & Crime and Poverty* (Milton Keynes, 1988).

⁷⁵ Ruth Harris, *Murders and Madness: Medicine, Law and Society in the ‘fin de siècle’* (Oxford, 1989); Mary S. Hartman, *Victorian Murderesses: A True History of Thirteen Respectable French and English Women Accused of Unspeakable Crimes* (London, 1977).

⁷⁶ Strange, ‘Wounded Womanhood.’

⁷⁷ Emsley *Crime and Society*, the second edition of this work has an additional chapter ‘Mid-point assessment I: crime and gender’; Briggs, *Crime and Punishment*, has a 3 page section entitled ‘Women’ pp. 183-185; Morris, *The Oxford History of Prisons*, pp. 329-363. Zedner’s chapter on ‘The Prison for Women’ has the intriguing title, ‘Wayward Sisters.’ I would like to suggest that it is unlikely that any contribution on male offenders would be called ‘Wayward Brothers.’

⁷⁸ Kermode and Walker, *Women Crime and the Courts* provides a contrast to the nineteenth-century work.

‘Enforcing Uniformity: Special Categories.’ In this chapter McConville argues “There were several other groups for whom the rigours of the regime were inappropriate, illegal, or who had special needs.” “The groups,” he goes on to say were, “females, juveniles, debtors, first-class misdemeanants, remands and military prisoners.”⁷⁹ Whilst there is no doubt males sentenced to hard labour comprised the largest single category of prisoners in the period it is unfortunate that his chapter structure reaffirms the nineteenth-century category of ‘woman’ as someone associated with “special needs.”

This might suggest then, that, for the most part, these newer works do not represent a truly gendered approach to nineteenth-century criminal history.⁸⁰ The opponents of such an approach might argue today that low numbers of women in the justice system do not warrant equal effort and expenditure researching females and males. Yet higher nineteenth-century figures make that position slightly less tenable. Furthermore a truly gendered approach may contribute not only to the key question of the disproportionate numbers of men and women but also add to debates over the treatment and behaviour of women ‘outside’ the justice system - and indeed reflect on male treatment and behaviour ‘inside’ and ‘outside’ the justice system.⁸¹ The study of female offenders may also therefore, be justifiable because it can impinge on the women who do not commit crime, in other words on more than half the population. The analysis of the causes of the fluctuations in these proportions may subsequently make a contribution to the question of why men commit crimes in greater numbers than women today. A gendered criminal history is a history of all our society and a necessary step in this is to recover the history of female offenders. In 1995, James A. Sharpe stressed that many early scholars of criminal history were attracted to criminal history “because it offered an important route to constructing a ‘history from below.’” And yet if Sharpe could argue, in 1995, that the history of crime “still seems to many students and teachers to be a marginal subject” how much more can it be argued that the inclusion of women in the debate has been perceived by some as even more peripheral. If, as Sharpe argued, studies of the history of crime can lead to the histories of the state; of governing ideologies; of

⁷⁹ Sean McConville, *English Local Prisons 1860-1900: Next Only Unto Death* (London, 1995).

⁸⁰ An example of marked progress in this direction can be seen in D. Philips and S. Davies (eds.), *A Nation of Rogues?: Crime and Punishment in Colonial Australia* (Melbourne, 1994).

⁸¹ Pat Carlen, ‘Why Study Women’s Imprisonment? Or Anyone else’s?: An Indefinite Article,’ *British Journal of Criminology* vol. 34, Special Issue, (1994), p. 132.

religion; and of how power operated in society then women offenders, even if numerically fewer than men, cannot be omitted from the picture. Such studies are no mere exercise in “redressing the balance.”⁸² They are a gendered route to addressing “a set of major historical concerns.”⁸³ Furthermore an historical view of women’s offences may not only illustrate some of the mechanisms which caused the fluctuations in crime rates but, in particular, can highlight some of the routes by which crime became increasingly masculinized.⁸⁴ Such justifications, however, will not seem necessary to women who see the study of women as their own neglected history, the study of which is legitimate in itself.

Thus we have seen that a summary of the historiography for this project must deal with disparate disciplines and cannot be confined to work found merely within the traditional discipline of history. We have seen that criminal history is itself a relatively new field which has been shaped, with considerable male bias, only in the last thirty years. Within that we need to consider research done by those specifically interested in the nineteenth century. Yet we need to acknowledge that research into earlier historical periods cannot be ignored for it has perhaps been richer and wider, and indeed formative, in providing models for the study of criminal history. Furthermore the burgeoning work in twentieth-century criminology and feminist legal studies has much to offer this study.

As I have indicated, much of the historiography of ‘modern’ criminal history has revolved around patterns of industrialisation. The comparison of York and Hull demonstrates the enormous variations in the socio-economic patterns between the two boroughs. The rate of population growth is a major difference and the study highlights the commercial development of the port of Hull and the relative stagnation of the County town, York. One aim of the thesis is, therefore, to analyse the possible effects of such features on the patterns of crime and on the lifestyles of female offenders. However, as I have demonstrated, simple polarities based on rural/urban divides, or on the effects of industrialisation have not always been deemed to be adequate frameworks for the analysis of criminality.

⁸² Anna Davin, ‘Redressing the Balance or Transforming the Art? The British Experience,’ in S. Jay Kleinberg (ed.) *Retrieving Women’s History: Changing Perceptions of the Role of Women in Politics and Society* (Oxford, 1988) pp. 60-78.

⁸³ James A. Sharpe, ‘The History of Crime in England, 1550-1914,’ *ReFresh*, 20, (1995), p. 8.

⁸⁴ Tim Newburn and E. A. Stanko (eds.), *Just Boys Doing Business: Men, Masculinities and Crime* (London, 1994), p. 1.

In fact, the overall picture in these two very different settlements is one of similarity in the range of offences committed, and in the rates of female offending. Nonetheless, within those similarities, I conclude that the relative anonymity for offenders in Hull, and the more fragmented nature of its middle class, had significant effects upon the women offenders in this study. It may have been, for example, one reason for more severe sentencing in Hull. Furthermore, within the generally similar range of offences there are particular instances of dissimilarity in the official records. For example, prostitution was more aggressively policed in York; and in Hull the offence of ‘uttering profane language’ was common, whereas in York it was non-existent in the court documents. I conclude that many variations found in the court records are the results of differing preoccupations within the law-enforcing sectors of the populations of these two towns and not inherent differences in actual criminality.

Another question raised within this thesis is the extent to which crime can be treated as a continuum. This was particularly relevant to nineteenth-century female offenders where prostitution was seen as the start of a slippery slope to the gallows. Whilst current criminological theory tends to increasingly emphasise the separateness of types of crime, quantitative historical studies have sometimes slipped into the former mode.

A further conclusion of this research is that the overall rates of female offences in the nineteenth century were higher than is the case in our own century. As I have already indicated, Lucia Zedner’s work has highlighted this difference, using national judicial statistics, but there have previously been no detailed local, or Northern, studies to substantiate her work.⁸⁵ I have no wish to assert that there are simple continuities between nineteenth and twentieth-century crime rates but neither is it necessary to create artificial ruptures between the past and the present. Such findings as these are significant for the twentieth-century debate on the nature of the female contribution to crime. Equally notable is the greater decline of females (to males) appearing before the courts during the nineteenth century. An exploration of this feature, and of the apparent masculinization of crime within the period, is one of the key focusses of the study.

Thus at the core of this project is a (necessarily limited) quantitative analysis of

⁸⁵ Emsley, *Crime and Society*, in his comments on ‘further research’ needed, points out that more detailed studies of “crime in some northern counties” would be useful. p. 301.

court records relating to the above.⁸⁶ However, the counting is regarded as of secondary interest to the subsequent qualitative analysis of other sources. Such an approach has been taken not only because of the limitations of the data set, and of the problems surrounding any statistical study of crime, but primarily because of a desire to stress the relationships of the offenders with the cultures that were the contexts for their criminal actions.

In the final chapter I discuss local representations of nineteenth-century criminal women. This exercise demonstrates that gender was a major issue in the discourses around crime throughout the nineteenth century and that these notions were sometimes perpetuated in unexpected places such as town guidebooks or children's fiction. Newspaper reports, official publications, criminological monographs, fiction, and other ephemera are analysed. The dramatic change in the distribution of printed matter in the years covered in this research makes this a particularly significant period for the study of the manipulation of perceptions of criminality. Furthermore the Victorians saw the discourses of the official law-enforcing agencies and those of the common public domain become more polarised; this research attempts to demonstrate that it was frequently at a local level, in the activities and the writing of local officials, where theory and practice, policy and public opinion, intersected.

The texts examined give some indication of attitudes to women criminals in the cities of York and Hull and beyond. The picture is one of conflicting opinions on women's potential for committing offences and Lucia Zedner has demonstrated the same contradictions within the national iconography. Females were depicted (often simultaneously) as more disruptive, but also as less capable of criminal action, than men. Assumptions that nineteenth-century interest in female criminal behaviour was simply concern about their sexual and moral behaviour are simplistic and reflect twentieth-century preoccupations. For the Victorians the links between sin and lawlessness were fundamental in a way that is, on the one hand, all too obvious to those familiar with the doctrinal basis of the Victorian church but paradoxically the full impact of this may be a difficult concept for many today.⁸⁷ This inextricably interwoven perception of law and

⁸⁶ Appendix one outlines the compilation of the sources.

⁸⁷ Despite the technical supposition, by some, that English jurisprudence was, in part, characterised by the strict separation of law and morals. Lobban, 'Was there a Nineteenth-Century 'English School of Jurisprudence'?' p. 34; See F. C. Cook, (ed.), *The Holy Bible, According to the Authorized Version, with an Explanatory and Critical Commentary* (London, 1881), Commentary on 1 John 111 v.4 which says "Whoever committeth sin transgresseth also the law," speaks of the reciprocity between law or "palpable violation of the law," and sin. It is possible that

morality applied in the first instance to both males and females.⁸⁸ Concerns over women's crime were not only confined to fears about their moral behaviour. Whilst women were not viewed as members of a criminal class in the same way as men, traditional fears of public disorder or concern over loss of property were still sometimes reflected in discussions of female offenders. However, simultaneous with such attributions of criminal responsibility was another, perhaps more overriding reaction to women's offending behaviour. This was a denial of the female potential for crime. In much of the nineteenth-century literature, in both the genres now labelled 'fiction' and 'factual' but then rather more resistant to rigid categorisation and frequently with very indistinct boundaries, female criminals were displaced into historical, mythical or foreign figures. These contradictions and paradoxes often led to a paralysis in policy regarding female offenders which remains today.⁸⁹

This thesis attempts to analyse different discourses of female criminality that prevailed in the nineteenth century. Today there is a vast difference between the discourse, for example, of the Prison Service and that of the press. In the nineteenth century these discourses appear to have been less distinct and the gap between popular and professional was less marked although it was precisely within the period of this study that the gap widened in a way that it had not done in previous periods. Many of the aforementioned volumes have documented this critical period of rising professionalization within the justice system. It could be argued that this process was, in part, responsible for the creation of a discourse which meant that 'male' offences were increasingly related to the public and 'female' offences to the private and, or, the domestic, although the lifestyles of many of the female offenders resist this categorisation.

Until the last few years there has been little attempt to grapple with the issue of women's status in the criminal law. In particular there has been very little work relating

many viewed this as applying to temporal and not only spiritual law.

⁸⁸ Edward Royle, *Modern Britain: A Social History 1750-1985* (London, 1987), p. 209. The Christian tradition emphasises this link. 1 John 3 v. 4. "Everyone who sins breaks the law; in fact sin is lawlessness." Whilst the law referred to here may not be British law this passage was used as a core text by the High Sheriff's of North Yorkshire's Chaplain in his address to 'The Lord Chief Justice of England' and many other officers of the court in the annual ceremony marking the start of the legal year. 13th October 1996. Evidence suggests that to the Victorians this link was as strong if not stronger than it is today.

⁸⁹ Sally Swift, 'Women and Prison', *Prison Service Journal*, no.104, (March, 1996). "Because policy has always been designed for men women have always been 'fitted in' to the criminal justice system." Coincidentally, she uses as her example the prison in which Grace Marks was kept (Kingston, Ontario) where women were kept in the attic of the men's penitentiary since there were no female cells, p. 2.

to their position in the criminal law of the nineteenth century. My research analyses some of the language of statute in this area. There is also a discussion of the nature of female criminal responsibility and of women's status as 'feme covert.' Part of the ambiguity demonstrated by this research is that whilst certain aspects of women's criminal behaviour - most particularly sexually-related ones - were more heavily policed as the century progressed, crime was, as already suggested, increasingly masculinized during the nineteenth century. This study outlines various mechanisms, within the criminal law, by which (in both statute and common law) this masculinization was being achieved and whereby, as both a causal factor and a result, 'macho' criminal behaviour was increasingly seen as undesirable for women. However, it must be said that this discourse generally exists as a subtext rather than an explicit statement of intent.

Conversely the lives of the women in this study demonstrate an agency sometimes denied for nineteenth-century females. Women frequented pubs and committed crimes in them. Their crimes were commonly committed alone or in the presence of other females; not as mere 'skirts' for men as has been previously suggested. Neither can simplistic notions of female sisterhood be maintained. These women schemed against each other, and contradicted each other, in order to defend themselves in court. Furthermore it may not be sufficient merely to impose our twentieth-century notions of agency on these nineteenth-century women. Their notions of such a concept would have been structured in an entirely different way. Perhaps for a middle-class Christian woman full personal agency would never have been seen as an option: lives were perceived as being subjected to the agency of God. His will would have been preeminent. Almost by definition the criminal woman was someone who had asserted her own agency as paramount and would not subject herself to the will of a higher being.

A further conclusion of this thesis is that it is simplistic to dismiss the women of the study either as victims of patriarchal oppression or as recipients of chivalric treatment. Self-evidently the justice system of this period was totally male-dominated. At times female offenders were clearly relegated to inferior status within the law and even seemingly preferential treatment such as 'feme covert' can be a result of basic gender inequities and lack of full 'personhood' within law. Yet a woman may have been meted out lenient treatment because, for example, of her status as a mother, and the needs of her children, and not because of the lack of her criminal culpability. The conflict remains today. It may be that the simple binaries of agent and victim are inadequate tools for

analysis of female criminal behaviour. Kermode and Walker point out in their introduction to *Women, Crime and the Courts in Early Modern England* that women in their period moved between active and passive, public and private and exploited “the paradoxes between the two.”⁹⁰ Likewise, the adoption of either the patriarchal or the chivalric model in regard to the criminal history of women results in a reductionist view. Thus attempts to fix women into particular modes of behaviour understandably failed and resulted in ambiguity, contradiction and confusion. Such paradoxical views about women offenders resulted in a muddled creation of policy within the justice system. The court treatment of the ‘feme covert’ being one example.

Finally, analysis of many of the texts used in this research demonstrates that often discussion of female offenders was in actual fact a debate over other matters entirely; women often served as the site of discourses and were not the real focus.⁹¹ My material on the prostitutes of Hull is one example of this. Whilst it remains true that female crime rates never seem to have equalled male ones, to deny women the rights to, and the responsibility for, criminality is to deny them their agency and to refuse to grant them full citizenship. In order to deal more satisfactorily with the seemingly paradoxical questions of female criminality the women themselves must be the real agenda. They cannot be regarded, as was frequently the case in the nineteenth century, as mutations of the ‘norm’ in the criminal world, that is to say corruptions of the male.

I hope, in this thesis, to contribute to the picture which others have recently begun to paint. In particular I hope to add to this portrayal by raising questions about female crime outside the metropolis and in the north of England. The sources from the more formal court, police and prison records of York and Hull have been juxtaposed with newspapers, journals and other ephemera such as broadsheets, and guidebooks. York material is analysed more fully than that from Hull. It is vital to remember that the vast majority of these sources are reflections of male views or are of female voices mediated by male middle-class members of the communities in York and Hull. Sadly the Hull depositions, supposed verbatim newspaper accounts and a few fragments of middle-class women’s writing remain the closest points of access to the female voices of the time. Even these are likely to be heavily mediated by males. For this reason alone (and there

⁹⁰ Kermode and Walker, *Women, Crime and the Courts*, p. 8.

⁹¹ Lata Mani, ‘Contentious Traditions: The Debate on ‘Sati’ in Colonial India,’ in K. Sangari and S. Vaid, *Recasting Women: Essays in Indian Colonial History* (New Brunswick, 1990) p. 118.

are many others) this study, as do most historical studies, concentrates upon the socio-economic and cultural contexts of the crime committed. Whilst modern theories of crime might stress cognitive, psychodynamic, or other individual factors contributing to criminal events historians are, on the whole, able only to access the situational factors.⁹² Indeed, we could ask, together with the novelist Margaret Atwood, who took Susanna Moodie's account of Grace Marks and re-created it as a work of fiction, whether it is possible to do any more than reveal a small number of the psychological ambiguities of these nineteenth-century female offenders. Thus any criminal history will remain, an albeit important, fragment of the whole.

⁹² Lyndal Roper's, *Oedipus and the Devil: Witchcraft, sexuality and religion in early modern Europe* (London, 1994) is a "journey" towards rectifying this but the use of mediated confessions to access behaviour must remain speculative and problematical; See Margaret Atwood, *Alias Grace* (London, 1996) for a conflation of genres in the re-construction of the Grace Marks' case mentioned in the opening lines of this introduction.

Chapter 1

‘CRIMINALS, IDIOTS, WOMEN AND MINORS: IS THE CLASSIFICATION SOUND?’: WOMEN AND LEGAL STATUS UNDER CRIMINAL LAW 1820-1870

A number of traditional studies have outlined nineteenth-century criminal law in detailed and coherent fashion.¹ However, it is necessary to question in the light of more recent feminist criminology the premises of those who maintain “the criminal law of England has always been sensitive to the needs and aspirations of the English people.”²

The early nineteenth century was, of course, a formative period in the structuring, and re-structuring, of English criminal law. Whilst the statistical basis of this study is the period 1830-1870 it is also necessary to reflect upon the reforms made in the decade of the 1820s. It was statute created in this period that was the foundation of much of the nineteenth (and indeed twentieth)-century criminal law. In 1827, for example, one act repealed 137 criminal statutes.³ These reforms to criminal law were as extensive as any made either before or since. As Clive Emsley has pointed out, Peel’s reorganisation of the criminal law reflected a move, born in the eighteenth-century, to view crime as a national, rather than a local, problem.⁴ Michael Lobban has charted an increased emphasis upon the common law as shaped by the collective reasoning of society and there was an increasing demand by the middle classes for certainty in ‘the Law.’⁵

Peel’s reforms of the 1820s ameliorated the justice system for many, and there was a clear reduction in punishments. The Criminal Law Commissioners continued these achievements in the following decades and rejected the sterner doctrines of William Paley. By the second half of the century imprisonment had ceased to be a secondary punishment and had replaced the gallows and transportation. Legislation enacted for reasons not directly concerned with criminal justice, such as the 1835 Municipal Corporations Act, also

¹L. Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, vol. 1, *The Movement for Reform* (London, 1948); Clive Emsley, *Crime and Society in England 1750-1900* (London, second edition, 1996); David Philips, *Crime and Authority in Victorian England: The Black Country 1835-1860* (London, 1977); John Hostettler, *The Politics of Criminal Law: Reform in the Nineteenth Century* (Chichester, 1991); Michael Lobban, *The Common Law and English Jurisprudence 1760-1850* (Oxford, 1991); W. R. Cornish, *Crime and the Law in Nineteenth-Century Britain* (Dublin, 1978).

²Radzinowicz, *A History of English Criminal Law*, p. ix.

³7 & 8 Geo. IV, c. 27.

⁴Emsley, *Crime and Society*, p. 13.

⁵Lobban, *The Common Law*, p. 4; Hostettler, *The Politics of Criminal Law*, p. 12.

had a noticable impact upon the practical running of the criminal justice system. By the end of the period in question there had been major alterations to legislation and to court procedure and this had affected almost every area of the justice system. However, by the 1870s many other proposals of the Criminal Law commissioners had been laid aside. The vexed issue of codification, for example, continued to be promoted by James Fitzjames Stephen but was never to be achieved.

Neither nineteenth-century criminal legislation nor the procedures of the Victorian justice system can be viewed as gender-neutral. Theoretically women were covered, in the majority of cases, by the same law as men. However, this chapter is an analysis of some of the distinctions which existed in theory and in practice. One quotation will serve as a reminder of the distinctive legal status, and the variant justice system treatment, of males and females. In the Parliamentary debate which resulted in the abolition of the whipping of female offenders, one participant concluded, "With respect to the public whipping of females, I am of the opinion that no exhibition can be more revolting to the feelings."⁶ Thus whipping for women ceased in 1820 but males were flogged for various offences throughout the century.⁷

Lack of consideration of negative and positive bias towards women has inevitably resulted in a prejudiced view of legal and justice system history. In *Criminal and Victim* Rudé concluded that women criminals were more leniently treated than men. One of the reasons given for this is that, "women were virtually never sentenced to be whipped."⁸ Whilst Rudé's conclusion may be a correct one, his use of evidence is flawed since the whipping of females had been abolished in the early years of his Gloucester sample. It is therefore hardly surprising that there was little statistical evidence of such punishment.

Two points, therefore, need clarification here. Firstly, gender distinctions clearly existed in the legislation which related to apparently gender-neutral crime (such as to theft, for example). Secondly, it is clear that legal historians and criminologists have not always recognised the need for a gendered analysis of the criminal law as a pre-requisite to a discussion of female criminality.⁹

⁶ Hansard June 20th 1820.

⁷ Radzinowicz, *The Emergence of Penal Policy*, p. 689; I Geo. IV, c. 57.

⁸ George Rudé, *Criminal and Victim: Crime and Society in Early Nineteenth-Century England* (Oxford, 1985), p. 62.

⁹ Another highly topical example is that of pre-meditation in murder/manslaughter definitions. See Susan Edwards, *Women on Trial: A Study of the Female Suspect, Defendant and Offender in the Criminal Law and Criminal Justice System* (Manchester, 1984) p. 108. The notion of premeditation was discussed by the Criminal Law

Where nineteenth-century legislation was overtly gender-specific, or where crimes were ones more often committed by women, there are different dilemmas to consider. One such instance is demonstrated in the administration of the law in cases of child murder by a mother. In nineteenth-century law, this did not differ from any other murder charge. However, the charge would frequently be reduced to one of concealment of birth. This crime was unusual in that the offender could be charged for a crime other than that on the original indictment. Indeed, this idiosyncrasy was actually discussed by the Criminal Law Commissioners in 1839, long before the intense interest in infanticide was seen in the 1860s.¹⁰ Whilst this technicality was clearly an unsatisfactory state of affairs in terms of legal coherence it would, at first sight, appear to mean that for women charged with murder there was a more lenient option than existed for male murderers. However further investigations into procedure may show that the situation was not so clear cut. The common practice of reducing charges may have meant that more women were initially charged with murder than would otherwise have been the case.

There were other ramifications of this particular practice of reducing murder charges. For example, in the early years studied in this project only offenders charged with a misdemeanour were allowed a defence counsel address to the jury. Not until 1836 were counsel allowed to “defend men [taken here to include women] indicted for felony and to address the jury.”¹¹ Further investigation is needed to show whether a female wrongly charged with murder was denied these rights.¹²

Indeed, until a more detailed study of women in nineteenth-century courts is made, it is difficult to reach conclusions about the relationship between law and the criminal justice system as a whole. Nonetheless it is possible to work on the premise that gender bias (negative and positive) did exist both within the law itself and in its application. Furthermore whilst greater attention has been paid to the law specifically relating to apparently ‘female’ crime (offences such as abortion, infanticide and prostitution, for example) there has been little attempt to place this in the context of nineteenth-century criminal law as a whole. Before greater assessment of female criminality can be made a fuller analysis of some of the criminal legislation, as applied to women offenders, must be

Commissioners.

¹⁰ Fourth Report of Her Majesty’s Commissioners on Criminal Law, 1839, (168) XIX, p. 276.

¹¹ 6 & 7 Will. IV, c. 114

¹² See Margaret L. Arnot, ‘Gender in Focus: Infanticide in England 1840-1880,’ Ph. D., (University of Essex, 1994) for a fuller consideration of these matters.

made.

Until Carolyn Conley's recent mention of women as 'feme covert' there had been disregard for the fact that, in theory at least, a nineteenth-century married woman was still protected by her husband in many criminal actions. Conley concludes that in practice in Victorian Kent, woman's status as 'feme covert' was virtually irrelevant.¹³ What is, therefore, of interest is the fact that in legal journals; in the reports from the Royal Commission which attempted to reform the criminal law; and in other jurisprudential publications it became a matter for concern. This chapter will consider the relevance of that debate.

For a twentieth-century reader the apparent chasm between theory and practice raises questions as to the nature of legal studies. It questions the relationship between the notions of law as an internalised and autonomous logical system ('internalist')¹⁴ but it also demonstrates that law cannot be dismissed as 'pragmatist'; a system solely based on day to day decisions "by practical men." The debate around women and the criminal law reflects a merging of the two. The nineteenth-century discussion of female offenders is also as, Michelle Perrot put it, "a discourse of crime that reveals the obsessions of a society."¹⁵ This chapter is therefore, a gendered analysis of the nineteenth-century criminal law which served as the basis for the prosecutions of the Yorkshire women documented in this thesis.

The legal position of the nineteenth-century female offender was an intensely problematical one for contemporary practitioners of the law.¹⁶ It is still equally dangerous territory. Dilemmas particularly revolved around the, now well-studied, issues of women and property ownership which contained many of the same paradoxes and inequalities.¹⁷ Scholars have continued to focus upon the definition of women's legal status exclusively

¹³ Carolyn Conley, *The Unwritten Law: Criminal Justice in Victorian Kent* (Oxford, 1991), p. 69.

¹⁴ Martin Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914* (Cambridge, 1990) p. 4.

¹⁵ Wiener, *Reconstructing the Criminal*, p. 7.

¹⁶ Charles Neate, *Considerations on the Punishment of Death* (London, 1851), p. 75. Neate discusses the treatment of capital punishment for females and concludes; "In this instance and in others, it is but too plain that our criminal laws were made by men"; It is interesting that, on a few occasions the problem of the treatment of married women offenders was set as an examination question in law examinations e.g. *The Legal Examiner*, no. 8, (Trinity Term, 1864); See also the various reports from the *Commission on Criminal Law* - this will be dealt with in more detail later.

¹⁷ Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill, 1986); Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Oxford, 1983); Susan Staves, *Married Women's Separate Property* (Harvard, 1990); M. L. Shanley *Feminism, Marriage and the Law in Victorian England 1850-95* (Princeton, 1989).

in terms of civil law.¹⁸ Theft was frequently debated in the context of the ownership of the stolen property.¹⁹ Indeed, possession was frequently a question of the property of husband and wife. Thus criminal and civil law were, and are, inextricably interwoven.²⁰

The question that must be raised is why both nineteenth and twentieth-century public and academic debates have usually focussed on civil status. In popular journals of the period it is clear that civil law was by far the greater concern of the general public; particularly of course of the growing campaign for women's rights. The most obvious reason is that the civil law affects a far greater number of women. There is, I believe, another reason. It is the problem, especially for feminists who have perhaps been responsible for most of the recent work on nineteenth-century women and the law, of discussing criminal women at all.

With such a debate comes the question of passivity and agency. This has been addressed by only a few. It is the shortcoming described by Beatrix Campbell in her 1991 forward to Ann Jones, *Women who Kill*.²¹ Feminism over the last two decades has, she says, reproduced a picture of women as victims. There is a need, as she says, for "the rehabilitation of women's agency" - to see woman as author of her own acts. Alongside this the constraints and pressures placed on nineteenth-century women, by a male-dominated society, must be balanced. At all times, in the debate of nineteenth-century law, it is a male-created law and a male-defined system of offences that is under scrutiny.

In fact, the legal journals of the early nineteenth century do reflect a great concern by the professionals and law reformers to address the complexities and contradictions of the criminal law as it affected women. However, as we will see, the motives for this were not normally concern for women's status. The law relating to women criminals was specifically, and frequently, discussed. Furthermore, reference to it was never far from the surface of the debate on civil law.

¹⁸ Joan Hoff, *Law, Gender and Injustice: A Legal History of United States Women* (New York, 1991).

¹⁹ A. H. Manchester, *A Modern Legal History of England and Wales 1750-1950* (London, 1980). Manchester particularises this when he asks, "Could you really define theft, for example, without a knowledge of the law relating to property, which itself was connected intimately with the law of contract, and so on"? p. 39.

²⁰ Note the linguistic connection in the term 'criminal conversation' as relating to divorce actions. The linkage is common in much of the material on women and property. Note that Holcombe introduces her book with Susannah Palmer, "charged with stabbing her husband." Holcombe, *Wives and Property*, p. 3; J. S. Mill was one of many nineteenth-century writers to link the married women's property debate and crime. He points out that "like felons" they are "incapable of holding property". J. S. Mill, *The Collected Works of John Stuart Mill: Public and Parliamentary Debates* (vol. XXVIII), J. R. Robson, (ed.), (Toronto, 1988), p. 285.

²¹ Ann Jones, *Women who Kill* (London, 1991), p. xiii.

Awareness of female criminals was extremely high in the early years of the nineteenth century. There can be no more obvious example of this than the name of Elizabeth Fry. Indeed perhaps the very myth associated with her now serves to divert attention away from the work she did in bringing the plight of women prisoners to the public.²² The unusual occurrence of two women giving evidence, on this topic, to the Select Committee on Secondary Punishment indicates the interest. Questions were asked, in 1831, about the “different effects” of solitary confinement on females and males, for example.²³ This fascination with criminal women is reflected, not only in journals and newspapers of every type, but also in debates in Royal Commissions, in Parliament, and consequently in statute.

Women were not always included in legislation merely by default: increasingly frequently they were specifically legislated for. The laws for women became more paternalistic and controlling, as has been pointed out by others working on areas such as prostitution. Josephine Butler complained specifically about the application of laws which controlled only females and about the dangers to civil liberties with the kind of state intervention envisaged by the proponents of the Contagious Diseases Acts.²⁴ In the Parliamentary debate on the Commission on Capital Punishment there was clearly a view that the logical course was to eliminate the crime by legislation controlling female attire. Mr Hunt had suggested that the crinoline was a cause of increased numbers of infanticides, “as it tended to conceal pregnancy.”²⁵ In 1862, *Punch* carried a number of cartoons on the issue.

Similar restrictions of women can also be seen in other, more apparently gender-neutral, laws. Scholars working in the area of civil law have pointed out that legislation of the 1830s was to extend the franchise for men but restrict it for women by introducing the

²² It is interesting that there is virtually no recent and detailed academic assessment of her role. Ignatieff and Zedner briefly discuss her contribution. Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850* (London, 1978); Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford, 1991), pp. 116-118. Anne Summers has made the only recent contribution in “‘In a few years we shall none of us that now take care of them be here’: Philanthropy and the State in the Thinking of Elizabeth Fry’ in *Historical Research: The Bulletin of the Institute of Historical Research* vol. 67, no. 163, (1994), pp. 134-142.

²³ *Select Committee on the Best Mode of Giving Efficacy to Secondary Punishments*, PP, 1831-2 (547), VII, p. 6.

²⁴ Judith Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (Cambridge, 1980); E. M. Sigsworth and T. J. Wyke, ‘A Study of Victorian Prostitution and Venereal Disease’ in Martha Vicinus, *Suffer and Be Still: Women in the Victorian Age* (London, 1980); Linda Mahood, *The Magdalenes: Prostitution in the Nineteenth Century* (London, 1990) - is one of the most recent studies discussing the complex processes of social control and female agency.

²⁵ Reported in *The Lancet* (1st August, 1863).

male person and giving statutory sanction to what had otherwise been a customary disability.²⁶ The consolidation of criminal law might be said to have had the same effect, even in areas where there was no deliberate intention to make gender distinctions.

1.1 The law pertaining to criminal women; 1820-1870

This chapter will consider three aspects of legislation: attitudes prevalent in gender specific laws; the differential recommendations created for men and women who committed seemingly non-gender related offences; and finally, an analysis of the text of laws (such as those which relate to murder and theft) which initially appear to be gender neutral but which made no explicit references to male or female.

Gender-specific legislation will be mentioned in less detailed fashion since it includes crimes which have been well-researched by others. Such statute related to offences such as prostitution, abortion, infanticide and other offences committed almost exclusively (in the opinion of nineteenth-century legislators) by females. However, it must also be said that, with minor exceptions - such as the Contagious Diseases Acts, the more recent academic debates have not specifically concentrated on the legislation relevant to these crimes but upon other discourses.²⁷ The major focus of my research is on the overt and covert attitudes implicit in non gender-specific legislation. Even with apparently neutral enacted and common law there remains a sub text, a hidden agenda, where women and men are perceived, and treated, quite differently.

These three topics are subsumed in the following sections which debate the synapse between language, women and criminal law. The first study is of the apparently idiosyncratic and arbitrary use of gendered language within statute before the 1850 Interpretation Act. The second section covers the period of increasingly paternalistic legislation between 1850 and 1870. This was an era where interested parties specifically aimed to protect women in certain areas of legislation - such as that discussed by those who formed the 'Associate Institute for Improving and Enforcing the Laws for the Protection of Women.'²⁸ The relationship between woman as a victim, in need of protection, and

²⁶ Erna Reiss, *Rights and Duties of English Women: A Study in Law and Public Opinion* (Manchester, 1934), p. xiii.

²⁷ Walkowitz discusses the Contagious Diseases Acts but much of the other work says little of legislation; Walkowitz, *Prostitution and Victorian Society*; Mahood *The Magdalenes*; Finnegan, *Poverty and Prostitution*.

²⁸ *The Female's Friend*, (April, 1846), pp. 72-86.

woman as criminal agent is, as has been suggested, at the heart of the dilemma inherent in this thesis. The final section of the chapter deals with the position of married women under the criminal law - and in particular under common law.

I shall highlight various statutes which specifically affected women in this period and which demonstrate general themes that seem to occur. The extent of nineteenth-century legal reform may then be re-evaluated within the framework of the gendered analysis. One obvious starting point for any such appraisal is the sign system used to name the categories and to articulate the legal experience.²⁹

1.1 a) Language, women and criminal statute

An adequate reading of the law, says Peter Goodrich in his controversial analysis of legal discourse, should treat law as “an accessible and answerable discourse, as a discourse that is inevitably responsible for its place and role within the ethical and political and sexual commitments of its time.”³⁰ He goes on to say that in both linguistics and jurisprudence, “it has been the abstract imperatives of a notional system that form the object of synchronic (static) scientific study; actual meaning, actual usage, the diachronic (historical) dimension generally are largely ignored.”³¹ “The greatest successes of modern jurisprudence,” he continues, “have been characterised by a re-assertion of the autonomy of law.”³² Legal scholars have traditionally treated the law as an internally defined system of notional meanings - a technical language that is univocal in application. For example, of Viscountess Rhonda’s claim for access to the House of Lords in 1919, Goodrich argues it was not the lexical (or semiotic) reference which determined the non-application of the rule but rather the “legal construction of meaning and capacity of the feminine gender” which was operative.³³ This approach, argues Goodrich, has led to one of the most “stringent of contemporary closures of knowledge.”

²⁹ “Languages do not simply name existing categories, they articulate their own.” For a basic, clear, and systematic exposition of Saussure’s system of semiology see Jonathan Culler, *Saussure* (London, 1976), p. 22.

³⁰ Peter Goodrich, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (London, 1987), p. 1.

³¹ *Ibid.*, p. 2.

³² *Ibid.*, p. 34.

³³ *Ibid.*, p. 59. By the 1919 Sex Disqualification Act a person was not to be disqualified by sex or marriage “from the exercise of any public function.” However, it was argued by the Lord Chancellor (Birkenhead) that a writ of summons to Parliament had never attached to a peerage held by a peeress.

My study attempts to read legal texts as part of a larger discourse, to place them within an institutional and socio-linguistic context rather than allow them to remain a discrete and unitary genre. Furthermore it must be remembered that some of the statute under discussion is, or has been until very recently, the operative legislation of our own time and the cultural and historical context of these sources is not necessarily only that of the nineteenth century. In such instances, it can be argued, value judgements need not be confined by the strictures of Victorian social codes. From the earliest times the courts have applied “common sense rules” in definitions within the criminal justice system; it is seen, for example, in attempts to determine the presence of a ‘guilty mind’ (*mens rea*).³⁴ This study demonstrates precisely how this common sense mind changes over time and it questions the long established resistance to opening up the discourse. Whilst not wishing to imply any kind of conspiracy theory, it is clear that nineteenth-century criminal law was redolent with gendered normative values.

I.1 b) Women and statute prior to 1850

Since this study cannot begin to be a full linguistic analysis of all the legislation operative between 1820 and 1870 I will demonstrate the type of analysis possible by sampling the use of gendered nouns and pronouns in statute. Within a traditional framework of legal analysis this approach may well be dismissed quite simply by the suggestion that male pronouns were generally applied to females in written law. However, this might lead us to ask why some Acts, prior to the Interpretation Act of 1850, contained explanatory interpretation clauses relating to gender, whilst others did not. William O’Barr in his study of court room language reminds us that legal documents employ semantic principles not used in ordinary English. “*Expressio unius est exclusio alterius*”, for example, makes it clear that if a list of specific words is not followed by a general term, then all things not mentioned are specifically excluded.³⁵ However, when we study the erratic way in which male and female nouns and pronouns were used in early nineteenth-century legislation we are led to question the inconsistencies of the internal logic used in the language of law.

The significance of gendered nouns and pronouns within the law has been discussed

³⁴ Philip James, *Introduction to English Law* (London, 1979), p. 173.

³⁵ William O’Barr, *Linguistic Evidence: Language, Power and Strategy in the Courtroom* (New York, 1982), p. 19.

in other contexts, namely in the nineteenth and twentieth-century debate on women's civil status. John Stuart Mill and Richard Pankhurst were but two involved in the fight to substitute the word 'person' for the word 'man' in the 1867 Reform Act, for example,³⁶ but the anomalies within the criminal law have not invited the same interest. The pattern of use of gendered nouns, and male and female pronouns, in Victorian legislation is erratic but does often appear to illustrate areas where gender difference was seen to be of importance.³⁷

It might be argued that there were four areas, in nineteenth-century legislation, where the use of female pronouns was more common. These are not rigid categories, nor is the pattern always consistent, but the use of parts of speech may be indicative of gendered normative values. Firstly there are documents which relate particularly to prison discipline. This demonstrates, as I have mentioned elsewhere, the great awareness that women were physically present in the prison system and highlights the fact that women were often referred to when their material presence meant they could not be ignored. Conversely, they were often forgotten in debates of more abstract issues. Furthermore, there is, during the period, another reason for such awareness of the physical female presence and that is the rise of interest in the gathering of statistical information. Increasingly statistical returns were gendered and the concern to register and document everyone ensured that sex-ratios were often signified.³⁸

The second area where the female pronoun is used more consistently is, predictably, where crimes are gender-linked offences such as prostitution. Thirdly, where society associated females with particular types of conditions or behaviour (such as insanity) the female noun or pronoun might be specified more frequently. Finally, where property ownership is referred to, the female gender is often explicitly stated - so, for example, in a discussion of thefts by tenants under larceny legislation, male and female pronouns are usually used and "master and mistress" commonly specified in relation to liability. It is

³⁶ Albie Sachs and Joan Hoff Wilson, *Sexism and the Law: A Study of Male Beliefs and Legal Bias in Britain and The United States* (Oxford, 1978), p. 23.

³⁷ Ann Bodine, 'Androcentrism in Prescriptive Grammar: singular 'they', Sex-indefinite 'he', and 'he or she', in Deborah Cameron, *The Feminist Critique of Language* (London, 1990). Bodine points out that in the 1850 Act which dealt with the use of gendered pronouns linguistically analogous phenomena are handled differently. Thus, 'singular OR plural' as generic, but masculine only as generic. p. 174.

³⁸ Returns relating to transportation distinguishes males from females "as called for by the Colonial Secretary's letter, 29th August 1836." *Transportation* (I. U. Petition, vol. 2) see Appendix; *The Return of Statements showing Comparative Number of Criminal Offenders Committed for Trial in England and Wales in the Last Seven Years*, P.P., 1835 (218), XLV, 43, p. 281 makes gender distinctions in some, but not all, of its categories and comments on the slight rise in the number of females committed and charged.

important to face the fact that much of the legislative language is a result of a standard format within the conventions of the drafting of laws, nonetheless the pattern of the use of this gendered language must still raise questions about collective notions of criminality. The legislator, or at least the drafter of law, must surely possess a brief which inherently includes the definition of operative terms within statute. Indeed, it is done with great precision in many places (see, for example, the definitions of terms relating to property).³⁹ An ironical juxtaposition is that terminology relating to animal thefts was usually defined with great care. (“horse, gelding, mare, foal, filly, ram, ewe, cow and ox”).⁴⁰ It would be far from original to conclude that definition (and within that, gender) mattered where it suited local property owners who were also, of course, the local administrators of justice. The following section demonstrates the unsystematic use of pronouns in the legislation before 1850 and it can be seen that the use of such parts of speech often fell into one or other of the afore-mentioned categories.

The normal practice within statute, prior to 1850, was to use gender-neutral terms. Humans were usually referred to as “any person” or “the offender.” The use of ‘any person’ is ironical since, later in the chapter, we will consider woman’s legal non-status as person. However, before 1850 the text frequently switched between the use of “him and her” and, more commonly, the sole application of the male pronoun. However, the Prison Act, 5 & 6 Will. IV, c. 38 and the Transportation Act, 4 & 5 Will. IV, c. 67 are two examples of penal legislation which used male and female pronouns more consistently than much other criminal law. They specified male and female, both in subject and object pronouns, whereas Acts of the same year, such as 4 & 5 Will. IV, c. 26, which abolished the hanging in chains of criminal bodies, and 5 & 6 Will. IV, c. 81, which abolished the death penalty for letter stealing, did not make any gendered distinction.

The Act, 7 & 8 Geo. IV, c. 29, a Larceny Act of 1827, demonstrates the tendency to use gendered language in property legislation. Until it was repealed in 1861, it was the operative statute covering many of the crimes committed by the women in my study. In general it referred to “any person” but oscillated between the use of male only pronouns and male and female pronouns together. For example, when theft by tenant and lodger (that is, an offence relating to property ownership) was discussed, male and female pronouns were used - this was a crime frequently committed by the York women in my sample. 12 & 13

³⁹ 7 & 8 Geo. IV, c. 28 s. XIV, for example, had included a rule for the interpretation of all criminal statutes.

⁴⁰ 7 & 8 Geo. IV, c. 27, for example.

Vict., c. 11 also specified male and female when discussing thefts by tenants.

The 1827 Larceny Act demonstrates the linking of specific crimes with particular genders (in the first instance with males). When embezzlement by clerks and servants was in question, only male pronouns were used. Clearly the latter was a crime much more likely to be carried out by employed males in the early nineteenth century. Nonetheless, when enshrined in statute, this represents a formal engendering of crime. The majority of the legislation which affected coining and forgery used the male pronoun. The York court records include a number of women convicted of this offence and others have shown that it was a crime committed by women. Yet, in the literature relating to this offence, this fact received little attention and forgery appears to have been a crime that remained masculinized in the collective subconscious. The process of masculinizing crime by such erratic use of language raises many questions, despite the lack of consistency of the evidence. There were also offences in which the existence of the female offender was clearly considered a possibility. Women were seen as possible smugglers and 8 & 9 Vict., c. 87 not only uses male and female pronouns but includes special provision for women to be searched by other females. It must however, be said that this is an Act of 1845 and by the late 40's the use of "him and her," whilst still not consistent, seems to have become a little more standard.

References to gender-specific crime are much less frequent in this period than in the years after 1850. In the latter period, Acts such as the 1861 Offences against Persons Act (24 & 25 Vict., c. 100), automatically included such topics as concealment of birth, rape, abduction and abortion. However, in view of the trend to explicitly relate one or another gender to certain crimes, (and indeed of the denial of lesbianism by Victorians) it is perhaps surprising that buggers - or solicitors to buggery - could be transported for the term of "his or her" natural life. (7 Will. IV, and 1 Vict., c. 84) One might expect the use of a male pronoun here in the same way that a female pronoun would normally have been associated with prostitution. This probably demonstrates merely the thoughtless application of standard form. It also, nonetheless, demonstrates the confusion inherent in the evolving notions of the criminalized male and female. Within the Acts, the use of gendered pronouns vacillated within close proximity thus demonstrating that there was awareness of the possibility of the woman criminal but that the reaction to this was confused. In 7 Will. IV, & 1 Vict., c. 87 the description of the offence of robbery defines the victim as "him" but the offender who would be transported as "him or her." This begs the question as to whether the male does, or does not, subsume the female within legal language. Furthermore such

inconsistencies caused confusion in the courts. In 1847 Reading magistrates were reported to have dismissed a case against a woman poacher saying that the statute applied “only to men.”⁴¹

1.1 c) Women and the law, 1850-1870

In 1850 the situation was to change. Prior to this some, but by no means all, Acts had included an interpretation clause which defined relevant terms. 13 & 14 Vict., c. 21, the Interpretation Act, stated that all words importing the masculine gender were to apply to females. Instances where gendered nouns and pronouns were still used after the Act are therefore worth noting. 19 & 20 Vict., c. 16 specifies that the Act is not to affect Peers “or Peeresses” thus gender distinction might remain where status and property ownership were in question. In 1857 the Act stating penalties for protecting absconders used male and female pronouns - thus penal legislation may still be demonstrating a preoccupation with female offenders.⁴² The 1864 Act relating to insane prisoners also used male and female pronouns - a reminder of the increasing association of females and madness.⁴³ In the light of the bulk of statute these examples may be seen to be isolated and confused incidents and, despite some exceptions, the masculine pronoun was used more consistently after 1850. Yet the now all-familiar case of Richard Pankhurst and his bid for women’s suffrage was based precisely on such inconsistency.

This masculinization may, however, have meant that because female-related vocabulary in ‘gender-neutral’ statute was even less apparent than it had been previously, the female was subsumed still further into the male. Thus it could no doubt be argued that there was an unfair emphasis on the male as criminal - a part of the evolution of male stigmatisation as criminal. A counter argument to this, however, would be that the consequence of protective legislation is a denial to women of the full rights and responsibilities of citizenship even if this means shouldering unpleasant consequences, such as women accepting criminal responsibility.⁴⁴ I would like to suggest that the vast majority

⁴¹ *Hull Advertiser*, 12th March 1847.

⁴² 20 & 21 Vict., c. 55.

⁴³ 27 & 28 Vict., c. 29.

⁴⁴ S. K. Datesman and F. R. Scarlatti, *Women, Crime and Justice* (Oxford, 1980), p.295. I have used the term ‘protective’ legislation because the notion of protection was integral to the nineteenth-century debate. It demonstrates the merging of all the issues in the nineteenth-century debate over women’s legal status. Thus within the debate of women and criminal law the ‘coverture’ was seen as the safeguarding of the weaker party. For this

of criminal legislation in the period 1820-1870, resulted in this kind of restricted application towards women despite an initial appearance of gender-neutrality. This, in turn, contributed to the masculinization of crime which occurred in the nineteenth century. It could, paradoxically, be argued that such masculinization was based on the denial of woman's full capacity to be as responsible a citizen as man.

Sometimes it is the absence of language dealing with female criminals that produces statements about gender. Thus policy for women in the criminal justice system has very often existed - rather than been actively created - because of omissions. "The law's silence" is a major aspect of women's existence, argues Katherine O'Donovan in *Sexual Divisions in Law*.⁴⁵ So for example, in the Prison Act, 28 & 29 Vict., c. 126 we are told that men must sleep alone in separate beds but there is no mention made of women. Presumably their sleeping together was not seen as physically or as sexually threatening as that of cohabiting males.

Thus, one might agree with Frances Heidensohn that "the language of law is a prominent indication of the social and historical genesis and motivation of the legal text as an instrument of social regulation and discipline." One could apply her summary of twentieth-century legislation in its relation to women to nineteenth-century legislation, when she concludes that "our criminal laws do not, at a formal level, discriminate very much."⁴⁶ Perhaps they did so only slightly more in nineteenth-century criminal legislation. However, at the level of specific signification; in the application of legal jargon; the use of 'ordinary' descriptive nouns and pronouns; and even of the grammatical construction of sentences, "ideology is inscribed in practice."⁴⁷ In the legal documents discussed here, "he" does not totally subsume "she," as was often supposed in discussion of females and the law. Nonetheless, the absence of "she" does, on occasion, indicate problems with the acknowledgement of the female offender. It is even clearer that where the pronoun "she"

see 'On the Protection of Married Women in Criminal Cases,' in *The Law Magazine and Review*, vol. 29 or 39, (1843), pp. 371-77. But, as in the twentieth century, the debate frequently slipped between discussion of female as criminal and that of woman as both victim and agent in prostitution and rape cases; it also interlinked with the movement for the amendment of property laws. See also J. J. S. Wharton, *An Exposition of the Laws relating to the Women of England; Showing their Rights, Remedies and Responsibilities in Every Position of Life*, (London, 1853). A reviewer in *The Law Review*, vol 19/20, August 1854, reviews Wharton, Davis and Norton together. Note that the examiner quoted in *The Legal Examiner*, no. 8, Trinity Term, 1864, asked "In what cases are married women not protected from punishment for criminal offences?"

⁴⁵ Katherine O'Donovan, *Sexual Divisions in Law* (London, 1985), p. x.

⁴⁶ Frances Heidensohn, *Women and Crime* (London, 1985), p. 33.

⁴⁷ Catherine Belsey, *Critical Practice* (London, 1980), p. 42.

remains, we see the creation of the shifting and ambiguous notions that both create and reflect female criminality.

To continue a gendered analysis of vocabulary after the 1850 Interpretation Act is still a valid exercise but the particular emphasis on gendered pronouns is obviously less relevant. In fact the gendered use of nouns still carried powerful statements and confirmed the stereotypes of women criminals discussed elsewhere in this thesis. It could be argued that after 1850 female-specific legislation became more common. In particular we see the increased interest in moral control, habitual offenders, drunkenness, the medicalisation of female criminals and other similar themes described by historians such as Zedner, Walkowitz, and by twentieth-century criminologists such as Smart, Edwards and Carlen.⁴⁸ Acts aimed at women prostitutes, at abortionists, and at women who kill babies were introduced. In 1861, for example, the first specific statement making it an offence for a woman to obtain her own abortion is made.⁴⁹

To say that such legislation increased is not, of course, to deny earlier attempts to deal with some of these crimes. In 1828, for example, the Offences against Persons Act dealt with child stealing and the procuring of miscarriage - both laws applied to males and females but there were greater ramifications for women.⁵⁰ This Act had also clarified law relating to the concealment of birth and was a part of the search for adequate ways to deal with what was seen (despite some controversy) as a problem related to illegitimacy. This legislation, however, serves as a reminder that debate over certain women's offences rumbled on in a muddle throughout the nineteenth, and into the twentieth, century. During the debate on infanticide there was great dissent about the differential application of such laws to married and unmarried mothers.⁵¹ This debate was particularly intense in the 1850s and 1860s and it has been argued that the Infant Life Protection Act of 1871 avoided the issues of criminal mothers and hid behind the more obvious commercial and public "wickedness" of the baby farmers.

The 1850s and 1860s was also a period of paternalistic legislation aimed at males who raped or abducted women. There existed, in tension, the desire to both protect and

⁴⁸ Pat Carlen, *Women, Crime and Poverty* (Milton Keynes, 1988) and Lorraine Gelsthorpe and Alison Morris, *Feminist Perspectives in Criminology* (Milton Keynes, 1991) are but two of the more recent relevant works.

⁴⁹ O'Donovan, *Sexual Divisions*, p. 89.

⁵⁰ 9 Geo. IV, c. 31.

⁵¹ *Report of the Capital Punishment Commission*, 1866, (3590) XXI, and 9 Geo. IV, c. 31, to name but two sources; O'Donovan says, "The object of the infanticide law was to discourage illegitimacy rather than to punish a crime". O'Donovan, *Sexual Divisions*, p. 94.

to police the 'fallen woman'. Although, it would, of course, be erroneous to suggest this concern for female morals was a feature that suddenly appeared in the mid-century. The 1824 Vagrancy Act was an earlier nineteenth-century example of an Act applicable to males and females but where the ramifications for each were different.⁵² There had been specific reference to women offenders in this Vagrancy Act and it was one of the earlier pieces of legislation in the nineteenth century which tightened the link between morality and crime, thus particularly increasing the moral scrutiny of the poorer women. It had not made prostitution a penal offence but it had given it a criminal character. "Every common prostitute . . . wandering in the street . . . behaving in a riotous manner may be imprisoned for one month" Control tightened in a period preceding that which has concerned Finnegan, Walkowitz and Mahood. Transportation policy had particularly solidified connections between criminality and female morality and we read, "the impression is that no female convict, whatever may have been her offence, can be chaste."⁵³ Nonetheless the moral policing increased as the period proceeded.

The protectionist element in legislation was an important linking factor between criminal and civil law. Networks between the Law Amendment Society, the National Association for the Promotion of Social Sciences and other groups concerned either with property, or criminal law reform brought together many individuals interested in both. Some, such as Matthew Davenport Hill, the Recorder of Birmingham, or Elizabeth Wolstenholme-Elmy were actively involved in the criminal justice system or in prison reform.⁵⁴

The ideal of motherhood is, predictably, another theme that is common in legislation applying to females in this later period. Fixed in statute is the Madonna image of which much has already been said by others. In 1869, for example, the Act relating to Habitual Criminals extended the Industrial School provision to children of women convicted for the second time. Whilst, presumably this was an attempt to provide for the youngsters this meant the children would be stigmatised as vagrants - there was no similar ruling for fathers.⁵⁵

⁵² 5 Geo. IV, c. 83; For a similar model see Pat Thane's gendered study of the Poor Law, 'Women and the Poor Law in Victorian England', *History Workshop Journal*, no. 6, (Autumn, 1978). pp. 29-51.

⁵³ *Select Committee on Transportation*, 1832, p. 20.

⁵⁴ Elizabeth Wolstenholme-Elmy, *The Criminal Code in its Relation to Women*, (Manchester, 1880).

⁵⁵ 32 & 33 Vict., c. 99, s. 16. This Act was an attempt to deal with the group of offenders seen as habitual criminals.

Lucia Zedner has discussed the medicalisation of women criminals in later periods but legislation in this earlier period paved the way for the development of this theme. 28 & 29 Vict., c. 126 was one of many official publications relating to the developing prison system. An attempt to medicalise the treatment of women may be reflected in the use of descriptive nouns within the Act. In the discussion of prison officers it is clear that male prisoners were in the charge of a “gaoler” but if there were only females in a prison the “matron” was deemed to be the “gaoler.” There were quite clear guidelines for matrons and their roles were not primarily custodial. In 27 & 28 Vict., c. 29 the pronouns are both male and female when insane prisoners are the topic for debate even though the male pronoun dominates the surrounding legislation.

Roger Smith has discussed the desire to account for some aspects of female criminal behaviour, by using non-criminal categories, in his consideration of the plea of insanity. He concludes that in many problematical trials of women, “Criminal insanity filled the gap.”⁵⁶ It is likely that from quite early in the century the legislative boundaries between mad, sad and bad were less distinct in the cases of female criminals than in those of male offenders. This apparently sympathetic (yet paternalistic) view was not necessarily true of public opinion generally.⁵⁷

One of the classic questions raised by different penalties under law is whether male chivalry accounts for variations in treatment. The immediate conclusion to be reached from Victorian legislation is that women were more leniently treated. One of the more tolerant treatments for females is found in 28 & 29 Vict., c. 126 where hard labour for males was of the 1st class, and for females of the less arduous 2nd class. The hair of a female prisoner could not be cut without consent except on grounds of “vermin or dirt” but the males’ hair could not be cut “closer than necessary” - there is no mention of consent. Earlier in the period, in a report on the introduction of the silent system, William Crawford, the prison inspector reported that in Wakefield the silent system (which Crawford believed was dreaded) had been introduced in the male section but “not in regard to the females.”⁵⁸ It is clear in the act of 1865 that, officially, women were intended to be treated more leniently.

The abolition of whipping mentioned earlier in this chapter is also an important

⁵⁶ Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh, 1981), p. 153.

⁵⁷ “Again it is notorious that a bad man - we mean one whose evil training has led him into crime-is not so vile as a bad woman,” wrote Mrs M. E. Owen in the *Cornhill Magazine*, no. 14, (1866), p. 154.

⁵⁸ *First Report of the Select Committee of the House of Lords into Gaols and Houses of Correction*, P.P. 1835, XI (438).

example of gender specific, and indeed more lenient, legislation, relating to women offenders and was a part of the general amelioration and movement away from corporal punishment. But it also reminds us that throughout the period documented in this work there existed itemised lists of different punishments for male and female offenders.⁵⁹ These descriptions of punishment are the essence of much criminal legislation. Whenever the distinctive punishments were restated in statute the existence of gender difference was reaffirmed with phrases such as “if a male to be whipped.”⁶⁰

Current feminist criminologists such as Smart and Carlen are constantly debating the problematical issue of gender bias within the prison system. A number of scholars have demonstrated that, despite apparently lenient treatment within the criminal justice system, women are frequently disadvantaged in practice.⁶¹ Many of these claims are highly controversial but Dobash and Dobash have claimed that small numbers and lack of policy for female offenders has resulted in worse rather than better treatment.⁶² Zedner’s thesis on late nineteenth-century women prisoners has also demonstrated how women were often particularly badly treated because they were frequently imprisoned in such small numbers that treatment was arbitrary and at the idiosyncratic whim of gaolers.⁶³ In the realm of punishment women, for example, were not to be punished corporally but there were alternative sanctions of hard labour and solitary confinement. Apparently chivalrous treatment of women within legislation may not have been so favourable when actually applied. On further examination the legal advantages are often seen to be either a redressing of basic inequalities, such as the possible reasons for the establishing of the notion of ‘feme covert’ which are examined later, or a denial of the greater privileges of citizenship and freedom. There are occasions - admittedly few - when legislation is seen to be harsher towards offending women.

It is this tension between suggestions by feminists that leniency in the written law did not mean indulgence in practice, and others who have stressed the study of law as, for

⁵⁹ Public whippings for males, for example, were not discontinued until 1861; 25 & 26 Vict., c.18 restricted whipping to juveniles and in doing so spoke of the “whipping of offenders.” It failed to acknowledge that this did not include women.

⁶⁰ 24 & 25 Vict., c. 96, a Larceny Act, is but one example.

⁶¹ R. P. Dobash, R. E. Dobash and S., Gutteridge, *The Imprisonment of Women* (Oxford, 1986), p. 207; Una Padel and Prue Stevenson, *Insiders: Women's Experience of Prison* (London, 1980, p. 4. also highlight instances of disadvantage.

⁶² Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (London, 1976), p. 138, is one of the earlier feminist attempts to compare the treatment of males and females within the criminal justice system.

⁶³ Zedner, *Women, Crime and Custody*, p. 100.

example, a metaphysical branch of legal science, that fuels the need for more research on the treatment of women in nineteenth-century courtrooms, for example.⁶⁴ Twentieth-century work on powerful and powerless language has demonstrated what disadvantages many women are under in court.⁶⁵ At the basis of any study would be the legal tenets that underwrote this. In the legislation of the mid nineteenth century one very frequently occurring phrase, which may have allowed for different treatment for men and women, was the expression “at the discretion of the court.” It was, of course, the ideologies behind such phrases that lay at the heart of the resistance to codification attempted in this period. The discriminatory processes within the criminal justice system that resulted from the flexibility of Britain’s uncodified system were of course both positive and negative. Furthermore there is no doubt that all prisoners, not simply women, were affected. Indeed Francis Place complained that there were seventeen stages at which an offender’s course could be subjectively directed in the path from being charged to being sentenced.⁶⁶ Nonetheless, the phrase, “at the discretion of the courts” is a constant reminder of the subjective nature of justice for nineteenth-century women offenders.

The Larceny Act 7 & 8 Geo. IV, c. 29, for example, states that the penalty for simple larceny is “at the discretion of the court” and may be seven years transportation. The majority of offences committed by women would have been offences in this category. If Deirdre Beddoe was correct in her conclusion that young females were transported with rather less reason than similar male offenders then we see here how in its execution legislation may not have been gender neutral.⁶⁷ This 1827 Act was one of the most relevant acts in the criminal justice of the period and was operative until its repeal in 1861. However, we will see in chapter four that women were perhaps more leniently treated in the same act where burglary in a dwelling house (as distinguished from robbery) became a capital offence if “the occupants were put in fear.” Rachel Short in her study of eighteenth-century female offenders in London argues that women were not easily identified with violent crime. It could, she points out, be argued that by the nature of the Act it was

⁶⁴ James Bryce, *Studies in History and Jurisprudence* (Oxford, 1901), p. 174.

⁶⁵ O’ Barr, *Linguistic Evidence*, p. 61.

⁶⁶ Charles De Motte, ‘The Dark Side of Town: Crime in Manchester and Salford, 1815-75’ D. Phil., (University of Kansas, 1977), p.107.

⁶⁷ Deirdre Beddoe, *Welsh Convict Women: A Study of Women Transported from Wales to Australia 1787-1852* (Barry, 1979), p. 153.

difficult to charge women with such burglary.⁶⁸

However, despite any apparent evidence of lenient treatment of female offenders generally in statute relating to sexual behaviour women were frequently seen as the villains. The female prisoner was clearly considered as a temptress in the Prison Act of 28 & 29 Vict., c. 126 which declares that women in a mixed prison were to be imprisoned separately, “in such a manner as to prevent their seeing, conversing or holding intercourse with the men.” Note here that it is the women who are the subject of the sentence, the implication is that they were seen as the active seducers. Grammatical construction of sentences may hold many clues as to attitudes.⁶⁹

Finally I will mention a further piece of legislation, enacted at the beginning of the period under discussion, which serves as a reminder that women had not always been more favourably treated under criminal law. The 1828 Offences against Persons Act abolished ‘petit treason.’ This was an offence generally applicable to both sexes but one particular aspect specially affected females. The murder of a wife had until this act been distinguished from the murder of a husband. The former carried a penalty of hanging but the latter, as treason rather than merely murder, had been punishable by burning and drawing.⁷⁰ This legislation clearly had its roots in the notion of subordination of women to their husbands. The concern for this particular ‘reform’ was, however, to iron out illogicalities left from a feudal system rather than to specifically improve women’s status. As such, it demonstrates something of the ambiguous legacy that nineteenth-century women inherited under criminal law.

All in all, it could be argued that statute law relating to criminal women was ameliorated during this period, as it was, albeit differentially, for men. This may be demonstrated in the reduction in capital sentences, for example, and in the general movement to reform gender-neutral legislation. On the other hand, it can also be seen that law specifically affecting women was becoming an increasingly moralistic one. Furthermore, some reform was actually an amendment of legislation based on underlying gender inequalities inherent in common and statute law. The revision of specific detail did not necessarily address the fundamental lack of equity. As Hoff has argued for the States, it was often “too little, too late.” It may also be the case that efforts to eradicate gender

⁶⁸ Rachel Short, ‘Female Criminality 1780-1830’, M. Phil., (Oxford, 1990), p. 188.

⁶⁹ O’Barr, *Linguistic Evidence*, p. 69; Kathlene Lyn, ‘The Impact of Gender on the Legislative Process,’ in Joyce Mc Carl Nielsen, *Feminist Research Methods: Exemplary Readings in the Social Sciences* (Boulder, 1990), p. 246.

⁷⁰ 9 Geo. IV, c. 31.

inconsistencies actually succeeded in writing women out of the law. This lack of provision for women may be seen by some as a form of leniency towards females. But it could also be claimed that this type of protection is a denial of full citizenship and of equal status.

1.2 a) The protection of married women criminals

The final section of this chapter is a brief consideration of an area of common law, which although not clarified by statute until the twentieth century, amply demonstrates the above.⁷¹ Indeed, it could be argued that the issue of criminal responsibility of married women has not yet been resolved fully.⁷² The issue to which I refer is one already mentioned - that of the 'feme covert'. Briefly summarised, common law determined that a married woman could not be charged with certain felonies if there was any possibility that she had committed the crime under the coercion of her husband. The felonies which were excepted varied according to the legal authority cited, and the extent of coercion necessary shifted from the mere presence of the husband to more obvious duress. Between 1830 and 1870 the definition of 'feme covert' was to prove a problem for professionals. The actual application of the law will be discussed at the close of the chapter.

"It was all Mrs Bumble. She would do it," urged Mr Bumble; first looking round to ascertain that his partner had left the room.

"That is no excuse," replied Mr Brownlow. "You were present on the occasion of the destruction of these trinkets, and indeed are the more guilty of the two in the eyes of the law; for the law supposes that your wife acts under your direction."

"If the law supposes that," said Mr Bumble . . . "the law is an ass - a idiot that's the eye of the law, the law is a bachelor . . ."

This famous comment by Dickens in *Oliver Twist* was written in 1837, some time before the major debate over the 'feme covert' and property.⁷³ The discussion of criminal 'feme covert' pre-dated these civil law debates although there were clearly links between the civil and criminal debate by the mid century.

The attempt to clarify the law relating to 'feme covert' between 1830 and 1870

⁷¹ J. C. Smith and B. Hogan, *Criminal Law*, 5th Edition (London 1983), The authors outline the confused state of law relating to the coercion of married women. A Criminal Justice Act of 1925 theoretically abolished the presumption of coercion but it still remained "a good defence." p. 219.

⁷² Ibid., p. 219. Smith and Hogan conclude that answers to questions on this matter "must await the decisions of the court when such cases arise."

⁷³ Charles Dickens, *Oliver Twist* (London, 1966), p. 461.

reflects the determination to consolidate law as a whole - it does not seem in the first instance to be a concern with women's status. The few articles on the criminal 'feme covert' in general periodicals (there were many in legal journals) do not reflect the violently anti-criminal sentiment that existed in some other areas of society.⁷⁴ The issue probably did not attract real public interest because it did not affect huge numbers nor was society generally threatened by the issue as they were, for example, by anomalies in the legislation covering prostitution or murder.⁷⁵

A clear summary of the status of women under the nineteenth-century law of 'feme covert' is as difficult for us as it obviously was for nineteenth-century lawyers. At no point between 1830 and 1870 is a clear position easy to locate. In his classic summary of the criminal law in 1885, James Fitzjames Stephen concluded that the law, "As regards marital compulsion... is at once vague and bad as far as it goes."⁷⁶ This was the situation throughout the nineteenth century. Only Conley has discussed nineteenth-century British criminal 'feme covert' laws in practice - and this briefly. Hull claimed, in research on 'feme covert' in eighteenth-century America, that women in Massachusetts benefitted greatly from the protection of coverture. Another article based on a study of eighteenth-century Pennsylvania concludes that it made little difference.⁷⁷ *It is not surprising that the effect* is difficult to assess since the confused state of legislation must have made application very difficult.

As it was common law, the nineteenth-century notion of 'feme covert' relied heavily upon eighteenth-century interpretation for its authority (see figure 1. 1). In 1732 *A Treatise on Feme Coverts or the Lady's Law* had outlined the law with apparent clarity. However, within its first paragraphs we see the cultural and social constructs upon which this women's law is based. "An ancient authority has assur'd us, that all women, in the eye of the law, are either married or to be married," the text declared. In the hundred years before my period the law, based on such inequalities, ossified into received practice.

⁷⁴ William Hoyle, *Crime in England and Wales, in the Nineteenth Century. An Historical and Critical Retrospect* (London, 1876), p. 55. Cases of crime, Hoyle states, represent far more than their numerical value but show "the corrupt and demoralized condition of the community."

⁷⁵As an aside it is also interesting to see how this whole debate highlights the dangers of developing case law in an age of unreliable and selective law reporting.

⁷⁶ James Fitzjames Stephen, *A History of English Criminal Law* (London, 1885), p. 105.

⁷⁷ G. S. Rowe, 'Femes Covert and Criminal Prosecution in Eighteenth-Century Pennsylvania,' in *The American Journal of Legal History*, (April, 1988), vol. XXXII, Pt. 2. pp. 138-156.

Ms. 1000

T H E
L A W S
 R E S P E C T I N G
W O M E N,
 As they regard their NATURAL RIGHTS,
 O R T H E I R
 C O N N E C T I O N S A N D C O N D U C T;

In which their Interests and Duties as

DAUGHTERS,	WIVES,
WARDS,	WIDOWS,
HEIRESSES,	MOTHERS,
SPINSTERS,	LEGATEES,
SISTERS,	EXECUTRIXES, &c.

Are ascertained and enumerated:

Also, the Obligations of
P A R E N T A N D C H I L D,
 And the Condition of
M I N O R S.

The Whole laid down according to the Principles of the Common and Statute Law, explained by the Practice of the Courts of Law and Equity, and describing the Nature and Extent of the Ecclesiastical Jurisdiction.

In which are inserted a great Variety of curious and important Decisions in the different Law Courts, and the Substance of the Trial of ELIZABETH Ducheſs Dowager of KENTON, on an Indictment for Bigamy, before the Houſe of Peers, April 1776.

I N F O U R B O O K S.

*Ut manus curvas; ne forte negat
 Incutiat tibi quid ſanctarum iuſtitia legum.*

Caution'd, beware; left direful Ills attend
 Thoſe who thro' Ignorance of Law offend.

HOR.

ANON.

L O N D O N:

Printed for J. JOHNSON, No. 72, St. Paul's Church-Yard.
 MDCCLXXVII.

Figure 1. 1 Eighteenth-century pamphlet: 'The Laws Respecting Women'

This treatise made it quite clear that Frances Power Cobbe was erroneous in her complaint that women were treated as criminals, idiots or minors - their situation was worse! The author informs us that, "A 'feme covert' in our books, is often compared to an infant, both being persons disabled in the law; but they differ in very much: An infant is capable of doing any act for his own advantage, so is not a 'feme covert.' An infant may bind himself for conveniences and necessities for himself and family.. a 'feme covert' cannot do so without the consent of her husband."⁷⁸ In fact this treatise was mainly concerned with civil status and the passing reference to criminal actions were a minor concern. Nonetheless the case law of 'feme covert' is built upon attitudes represented by such interpretative literature.

William Blackstone was one of the most frequently quoted authorities on this matter.⁷⁹ His 1765 edition of *Commentaries on the Laws of England* had rather less comment on 'feme covert' in criminal law than the 1803 edition. This perhaps reflects the growing concern with the criminal law rather than a general or editorial interest in female offenders. However the preoccupation with the latter can clearly be seen to develop in the early years of the nineteenth century.

The 1803 edition of Blackstone discussed women in the familiar context of protected minorities - infants, idiots, lunatics and drunks. The discussion of women was contained within the debate over criminal responsibility, compulsion and coercion. The interest was not in women 'per se' but in this problematical area of law. J. F. Stephen was to continue to insist that the problem of criminal responsibility was not whether infants, women and idiots were as such, irresponsible but whether or not the person committed an act wilfully or maliciously.⁸⁰ This insistence on exemption from criminal responsibility for women (usually married ones, but single women were also referred to) was increasingly problematical in the nineteenth century. By 1830 Austin, in his influential *Lectures on Jurisprudence*, maintained that women were included in the classes exempt from liability under Roman Law "not because of their general imbecility but because it is presumed that their information does not extend to a knowledge of the law."⁸¹ The decision as to the

⁷⁸ Anon., *A Treatise of Feme Coverts or the Lady's Law* (New York (reprint 1978); 1732 edition). p. 81.

⁷⁹ Blackstone's reliability as a source has been discussed in Duncan Kennedy, 'The Structure of Blackstone's Commentaries' in *Buffalo Law Review*, (Spring, 1979), vol. 28, no. 2.

⁸⁰ Fitzjames Stephen, *A History of English Criminal Law*, p. 85.

⁸¹ J. Austin, *Lectures on Jurisprudence or The Philosophy of Positive Law* (London, 1830), p. 240; This view is a particular irony considering the contribution of Austin's own wife, Sarah, to his publication. See Robert Moles, *Definition and Rule in Legal Theory: A Reassessment of H.L.A. Hart and the Positivist Tradition* (Oxford, 1987),

“certain cases” which would be protected rested on notions of right and wrong deemed to be “natural”- thus crimes of ‘*mala in se*’ (those that are “evil in themselves” - such as murder) were not included in protection. This study highlights the fallacies of the applications of a rigid legal structure to women’s actions when based on slippery notions of natural good and evil.

So, for example, Blackstone's summary of the law applied coverture to all felonies except murder and manslaughter. But definition will be seen to have been in dispute throughout the period. Blackstone was reduced to the phrase “seems to apply to...” He suggested that in some cases the command of the husband “either express or implied will privilege the wife from punishment even for capital offences.” He stressed that a woman was not guilty of theft, burglary or other civil offences if coerced by her husband “or even in his company.”⁸² Blackstone informed the reader that the doctrine was a thousand years old and that females and slaves had always been protected thus. This appeal to classical or Biblical authority was, as one would expect, common and constant, in the attempt to portray the naturalness of the order that Blackstone’s editors were attempting to impose upon the fragmented system of law. So we expect, after this summary, an emphasis on husband and wife as one being. We anticipate the kind of significance placed upon the marital relationship, by other commentators, when they remark that, “the only natural relation which the law regards as destroying competency is that of husband and wife.”⁸³ Somewhat surprisingly then we read in Blackstone that the inferiority of woman is a social construct. The *Commentaries* stated that coverture did not extend to crimes that were ‘*mala in se*’ because “in a state of nature no one is in subjection to another.” It would, therefore, the text continued, “be unreasonable to screen an offender from the punishment due to natural crimes merely by the refinements and subordinations of civil society.”⁸⁴ The *Commentaries* completely undermined, therefore, the notion of woman as naturally one with her husband. It further undermined the notion of wife’s complete obedience to husband by arguing that in cases of treason the offender has rebelled against the “most sacred tie of social community” and in such an instance the wife’s first duty is to the state and not to husband.

pp. 10-13.

⁸² William Blackstone, *Commentaries on the Laws of England* (London, 1803), p. 28. His authority for this is 1 Hal. P.C. 45.

⁸³ J. Chitty, *A Practical Treatise on the Criminal Law* (New York, 1978, reprint 1816 edition), p. 594.

⁸⁴ Blackstone, *Commentaries*, p. 28.

Thus we see the paradox - the wife is not necessarily, as she is frequently described in legal texts, part of the 'two in one' ("*erunt animae duae in carne una*").⁸⁵ She can be treated as an individual separate from her spouse. The notion of unity is further subverted by the existence of crimes which are classed as misdemeanours and not protected by coverture. A wife may, for example, be pilloried with her husband for keeping a brothel, "for this is an offence touching the domestic economy or government of the house in which the wife has a principal share" and an offence likely to be "conducted by the intrigues of the female sex."

The exceptions to the apparently central notion of oneness begin to outnumber the norms and Blackstone retreats into historical justification. In doing so the editor demonstrates the linkage between criminal and civil law. Thus he argues that a possible reason for coverture in burglary and larceny is the problem of ownership between husband and wife. Blackstone suggests that a more likely reason for the existence of coverture was that women could not claim benefit of clergy and the consequent mitigation of capital sentence.⁸⁶ It would, it grants, "have been an odious proceeding to have executed the wife and dismissed the husband with a slight punishment" - to avoid this it was better, according to Blackstone, to acquit her. Thus an apparent protection for women may here have been merely an attempt to redress an appalling inequality. It perhaps confirms the view that so-called chivalry within the legal system is merely a denial of the full status of citizen.

During the 1830s and 1840s the two Royal Commissions on Criminal law were reporting.⁸⁷ They spent considerable time examining the position of the 'feme covert.' There were also other debates within the Commission that related to women and criminal law. One discussion illustrates, topically, the fact that law which in one society seems gender-neutral, in another becomes a highly charged gender-debate. In 1839 the Commission reported uncertainty as to what constituted 'provocation.' It discussed the interval between provocation and killing - the argument, for the Commissioners, hinged on whether "passion" had subsided or still continued.⁸⁸

The reports contained other comment on women's position in criminal law. The

⁸⁵ J. H. Baker, *An Introduction to English Legal History* (London, 1979), p. 395.

⁸⁶ Benefit of Clergy was abolished in 1827 in 7 & 8 Geo. IV, c. 28.

⁸⁷ See Radzinowicz, *The Emergence of Penal Policy*, p. 723 for details of the Commissioners who were active between 1833 and 1849. See also Hostettler, *The Politics of Criminal Law*.

⁸⁸ *Fourth Report, Commission on Criminal Law*, p. 270. In the twentieth century this remains unresolved and central to feminist arguments relating to women who kill abusive husbands.

Commissioners highlighted, in their recapitulation of criminal legislation, the areas in which women received different treatment. For example, subsequent to the passing of a capital sentence a woman was given further opportunity to make a statement in order that she could disclose any pregnancy.⁸⁹ However, not all treatment was as lenient. There was an allowance for capital punishment to take the form of a severance of the head rather than a hanging (presumably, for some, a preferable, swifter option) but the Commission added a footnote, “The above provision appears to be confined to male offenders.”⁹⁰ Much of the Commission also demonstrated the illogicalities that had resulted from legislation based on prejudice and on excessively moralistic judgements relating to female social behaviour. The Commissioners recognised the problem, “It does not seem to be very satisfactory to make the question of felony depend on the fact of [the woman's] adultery,” they admitted.⁹¹

The Commissioners also acknowledged the inadequacies of the system of case-based law within this context. They reported that several of the sources used in the arguments relating to the wife's position in law are “very little known by the profession.” They continued, “from the quantity of obsolete and discarded law which is to be found in them, they would often mislead the unprofessional reader. The comparative weight of credit of these authorities, where they conflict, is a matter of professional science, which is not regulated by any determinate rules.”⁹²

However, whilst the Commissioners appear to have been generally dissatisfied with overtly moral judgements as a basis for law, other witnesses demonstrated that such views certainly existed within the criminal justice system. One said, of a prosecutrix in a Leeds rape case, “I have no doubt at first she was a consenting party ... detained longer than convenient ... and turned it into a rape charge.”⁹³ Another said of transported females, “For besides the particular offences for which females are transported, they almost always superadd those of intemperance and unchastity.”⁹⁴

We have digressed somewhat from the discussion of the law of ‘feme covert’ but the Commission were specifically concerned with the issue. The members of the Second

⁸⁹ *Fourth Report, Commission on Criminal Law*, p. 258.

⁹⁰ *Ibid.*, p. 413.

⁹¹ *First Report from His Majesty's Commissioners on Criminal Law* (1834), (537), XXXVI. vol. 26. p. 14.

⁹² *First Report, Commission on Criminal Law*, p. 30.

⁹³ *Second Report of His Majesty's Commissioners on Criminal Law* 1836, (343), XXXVI, p. 78.

⁹⁴ *Third Report of Her Majesty's Commissioners on Criminal Law* 1837, (79), XXXI, p. 27.

Commission reported in 1848 that they were unanimous, “in the opinion that the present law regarding the responsibility of married women, in respect of acts done in the presence of their husbands is irreconcilable with principle, and by no means settled or definite.”⁹⁵ However, whilst they agreed the law was inadequate, the Commission could not reach a decision about the presumption of coercion and had to include a separate report from a dissenting Commissioner. The dissenter felt that the existing law was based on “a sound intelligent principle” and ought to be retained “after having been sanctioned by the law for so long a period.” He declared that “difficulties experienced by magistrates” did not warrant the abolition of a “well-principled and humane rule.”

The dissenting commissioner did, however, concede that, whilst not a reason to change the law, there was actually a problem, since criminals could use their wives to aid them in felony under the existing law.⁹⁶ This may be an indication that the reason for concern about the ‘feme covert’ was more related to attempts to control male criminality. This point of disagreement was over the status of the woman who might be inclined to aid her husband when he was escaping from justice.⁹⁷ It was an important issue as it appeared, to many, to be the ultimate question as to where loyalty of the wife lay. From a Commission report which showed little disagreement, this lack of unanimity over the issue of ‘feme covert’ demonstrates the complexity and strength of feeling on the presence or absence of responsibility of married women. Their disunity stressed the “arbitrary limits within which the presumption in favour of the wife is confined.”⁹⁸ The “insufficiency of the reasons assigned for exceptions to its operation,” worried not only the Commissioners but other legal practitioners.

It is clear from Burn’s *Justice of the Peace*, a widely distributed handbook for magistrates and poor law officers, that confusion remained throughout the period. Burn specified robbery as a felony which was not protected under the laws of coverture. The author also attempted to reduce the coverture by stressing that the coercion was only a presumption until the contrary was proven - if the wife could be shown to be a principal actor she would be guilty. In the 1830 edition Burn then provided further illustration by citing cases of forgery, forcible entry and riot where coercion was not proved to exist at the

⁹⁵ *Fourth Report from Her Majesty’s Commissioners for Revising and Consolidating the Criminal Law 1847-8*, (940) XXVII, p. 351.

⁹⁶ *Second Report, Commission on Criminal Law*, p. 219.

⁹⁷ *Ibid.*, p. 418.

⁹⁸ *Second Report, Commission on Criminal Law*, p. 176.

time of the act.⁹⁹ Interspersed with his exceptions to coverture were the frequent reminders that husband and wife are “esteemed but as one person in law and are presumed to have but one will.”¹⁰⁰

Throughout the period various points of law of ‘feme covert’ were resurrected or clarified. The *Law Magazine*, for example, reminded its readers that it was for the jury to decide on the fact of marriage if a claim of coverture was made - each clarification reduced the chances of protection as a ‘feme covert.’¹⁰¹ In 1843 the *Law Magazine* published a six page article on ‘The Protection of Married Women in Criminal Cases’ - reminding readers as to the degrees of exemption within ‘feme covert’ - “a doubt,” it says, “which the recent cases have certainly not tended altogether to remove.”¹⁰² The article discussed recent cases and concluded with a hope that the doubts which hung upon the whole issue may be resolved. Ten years later J. S. Wharton was still discussing the same problems in *An Exposition of the Laws Relating to the Women of England* - a publication essentially concerned with the civil problems. In the 1860s Fitzjames Stephen and Russell, in *Treatise of Crimes and Misdemeanours*, still floundered in the same muddy waters. Interest in cases where a wife was in an adulterous relationship with the thief and where the husband was the prosecutor had increased markedly in the mid century and later period. The focus of interest had shifted, in such crimes, to property ownership within marriage; and demonstrates, once again, the increased interest in policing women’s morality.

There were a few, but not many, instances of interest in reform for the sake of women by the 1850s and 1860s. Sheldon Amos, a barrister and writer of jurisprudential works commented in his *Science of Laws*, in 1874, that it was only in very primitive societies that the head of the family was solely responsible for the wrongs of those under his control. “It becomes obvious,” he said, “that women have suffered even more than men from the domination of monopolies, exclusive theories and tyrannical usurpation.” He was concerned with the state of criminal as well as civil law.¹⁰³

This discussion of the law of ‘feme covert’ in the criminal context has made reference to only a fraction of the sources that are relevant but it indicates the wealth of

⁹⁹ Richard Burn, *Justice of the Peace* (London, 1830), p. 609.

¹⁰⁰ J. F. MacQueen, *The Rights and Liabilities of Husband and Wife* (London, 1848), p. 18.

¹⁰¹ *The Law Magazine* (Feb/Mar 1839), vol. 21, p. 411.

¹⁰² Anon., ‘On the Protection of Married Women in Criminal Cases’, *The Law Magazine and Review* (1843), vol. 29, pp. 371-77.

¹⁰³ Sheldon Amos, *The Science of Laws* (London, 1874), p. 128.

material available. It demonstrates attempts to lessen discrimination between genders but it appears that such efforts were more a concern for the integrity of law than for the inequities to either sex. It is also clear from this overview that nineteenth-century legislation was restricted by, and indeed partially a result of, the prevailing stereotypical views of women criminals and of acceptable female behaviour. Far from offering fundamental reform for females the laws merely concealed existing inequalities in the system. On a theoretical level a study such as this also indicates the need for a gendered interdisciplinary approach in order to break down the closure of nineteenth and twentieth-century legal discourse.

1.2. b) Married women and ‘feme covert’ in York and Hull

The dissenting commissioner in the second report of the Criminal Law Commission of 1836 referred to the practical difficulties experienced by magistrates in interpreting the ‘feme covert’ principles.¹⁰⁴ This chapter will conclude with references to some sample cases from the boroughs of York and Hull. They demonstrate, clearly, the inconsistency in the application of ‘feme covert’ law. Statistically such trials would not amount to a large proportion. However, one of the fundamental arguments of this thesis is that quantity is, on occasion, of little relevance in an assessment of the level of influence or public interest in criminal matters: murder being the extreme example. In the light of the cases mentioned here I would argue that Conley’s judgement of ‘feme covert’ as “virtually irrelevant” to Kent cases might not be universally applicable or, at the very least, that it would need qualification. The notion of women as criminally responsible beings can be seen to be problematical throughout the period at a local, as well as national, level.

Certainly in York there was inconsistency over the approach to the few ‘feme covert’ cases that came before Quarter Sessions. In 1835, in the case of Patrick and Mary Kelly, the couple were found guilty of theft and it was in his recommendation to mercy that the Recorder resorted to the principal of coverture. Thus, with this mitigation, Mary was sentenced only “until the rising of the court” as, according to the Recorder, “a woman was by law considered to be under the control and direction of her husband.”¹⁰⁵

In the 1843 case of Robert and Mary Ward, however, the defence counsel insisted

¹⁰⁴ *Second Report, Commission on Criminal Law*, p. 38.

¹⁰⁵ YQS 10th April 1835.

that the husband and wife could not be charged on one indictment. The prosecutor was forced by defence counsel to select whose case he would pursue and he subsequently persisted with the case against the wife. Although she appears to have been disposing of the goods for the husband the notion of coverture is ignored here.¹⁰⁶

Despite the general tightening up of application, which I have suggested was called for at national level, in York some vacillation continued. A Recorder's charge brought attention to the case of Thomas and Celia Brannon, in 1866, one of uttering base coin. He discussed the problem of the evidence for marriage - "though when a man and woman had been living together for some years it was difficult to say whether she was his wife or not," he commented, and continued:

It was not a matter of much significance although in practice there had been some remissness in dealing with offences by women. The latter had frequently been allowed to escape scot free, while in reality they were the more guilty party of the two. Presuming upon their supposed immunity from punishment they had been willing to lend themselves to the commission of crimes, more particularly of this sort.

He instructed the grand jury to ascertain whether, in this case, the woman had been compelled by the man. If she had been then there would be no *prima facie* case against her. He thought there would be no problem as a great many of the jury had been in the box before and would know their duties! The couple were charged. The recorder, describing the male as having "one foot in the grave" (he was 58) sentenced the husband to 6 months but the woman as the "active agent" (she spent the money) to 8 months. In this instance then, in contrast with the earlier one, coverture would not merely have provided mitigation of sentence but there would have been be 'no bill' found had there had been coercion. In the event, and unusually, the woman received the harsher sentence.¹⁰⁷

Hull Recorders reacted a little differently. In 1840 there were a number of cases involving couples where the man and wife were charged on separate indictments.¹⁰⁸ One was normally charged with stealing the other with receiving. It may be that a greater overall number of cases involving married women in Hull pressed court officials to clarify the issue a little more systematically and resort to the separate indictment method. Indeed

¹⁰⁶ YQS 26th June 1843.

¹⁰⁷ YQS 2nd July 1866.

¹⁰⁸ HQS, CQB 192-194.

the Recorder's charge in Epiphany 1852 is quite clear in the Capes case.¹⁰⁹ However, there were also frequent acquittals using this method. Presumably it was extremely hard to obtain proof of the offences when the exchange of goods was particularly private and between married couples. So whilst charging couples on separate indictments may have been a theoretical way around the protection of 'feme covert', there were still problems with acquiring sufficient evidence to prove an offence had been committed. Where wives stole goods and were not in the presence of their husbands, such as in the case of Jane Loft, there was usually no question of the woman's lack of criminal responsibility - even, as in this instance, where the husband was clearly involved in the crime at a later point. Furthermore we are told that Loft's daughter "clearly acted under the instruction of her mother."¹¹⁰ Thus when children became involved in the offence mothers might assume more responsibility for their criminal actions than mere wives.

One particularly interesting, and public, use of coverture, perhaps on both formal and informal levels, in Hull, was in the defence of Elizabeth Acland who was wife of the reformist James Acland.¹¹¹ In 1833 she was charged with libel (over an article in *The Portfolio*, a reformist newspaper run by her husband). Her defence claimed she had "acted under the control of her husband." She was not saved by this coverture claim and was sentenced. However, the judge appears to have had some sympathy for her and she was allowed to choose her own prison. Whether it was her marital, or her class, status that elicited this response is not clear but the judge suggested that in the York gaol she would not be provided with such a comfortable room as she would wish. Mrs Acland therefore elected to go to Beverley.¹¹²

One example of the local press interest in the legal responsibility of women was an article in the *Hull Advertiser* discussing a Queen's Bench case over the non-payment of fines. It reported that, "The court was of the unanimous opinion that the Act of Henry VIII gave no exemption to the wife from arrest." The case had clearly, however, stimulated a trawling around of "the books" which, the writer states, "did not cite any case where the

¹⁰⁹ *Hull Advertiser*, 9th January 1852. The Recorder's charge expressly states that the woman cannot be convicted of the robbery as she "was acting under the coercion of her husband" but that she might be charged with "receiving it afterwards."

¹¹⁰ *Hull Advertiser*, 24th October 1851.

¹¹¹ See chapter two for details of James Acland.

¹¹² *Hull Advertiser*, 26th July 1833.

right to arrest the wife was not recognised.”¹¹³

In 1845 the Hull Recorder appears to have been quite clear about how he saw the law regarding ‘feme covert.’ “Now the law,” he said, “presumes in favour of the wife, supposing her to be present and to take part in the offence, that she acted under the coercion of her husband.”¹¹⁴ The Recorder suggested that if the wife had pledged goods in the absence of her husband they may lay an indictment against **her** for receiving and **him** for stealing. But, he declared this would be difficult to prove. It was, therefore, the Grand Jury’s proper course to find a Bill against both husband and wife for stealing. However, he warned that then they would probably find “a case may hardly be constituted” against the wife after further enquiry into the presence or absence of the husband. Thus, we can see ‘feme covert’ cases could be a particularly good example of the shaping and re-shaping of indictments by Grand Juries and Recorders in the pre-trial process.

In 1848, Mary Alice Johnson was acquitted on the ground of being the male prisoner’s wife “and in the eye of the law acting under his coercion.” This may have been because she had “an eloquent defence” presented.¹¹⁵ There was further reason to invoke coverture here. The Recorder expressed his detestation that the male was content to live on the prostitution of his wife and other women, possibly he was a pimp. Once again we see the fluid nature of coverture - if the woman influenced a child she was less worthy of protection but if she cohabited with a particularly bad male she was more deserving.

By 1856, however, Hull cases seem not to mention the coverture of the woman where once they might have done. This is in line with the jurisprudential material nationally which seems to have made it increasingly more problematical for women to claim coverture. The case of Elizabeth Crowley, in this year, for example, might in an earlier period, have been a candidate for such defence. But the actual presence of the husband at the point of offence had become essential. This case was treated as a simple one of stealing and receiving with no suggestion of coercion. Elizabeth Crowley had not been present at the theft but disposed of the stolen goods for her husband. She received a two month sentence and her husband four.¹¹⁶ It is impossible to know whether the differential sentence reflected a mitigation policy which has been practised well into our own time, and where coercion

¹¹³ *Hull Advertiser*, 29th January 1847.

¹¹⁴ *Hull Advertiser*, 14th March 1845, Ann Williams.

¹¹⁵ *Hull Advertiser*, 27th October 1848.

¹¹⁶ *Hull Advertiser*, 5th March 1856.

by the husband has remained “a good defence.”¹¹⁷

It may have been the case that, early in the period of this study, a married woman in Hull stood more chance of being seen as under coverture than in York where ‘feme covert’ were treated less consistently as under protection. This may simply have been, as I have already suggested, a result of a greater number of cases in Hull which resulted in a more carefully articulated policy. However, as I have also said earlier in this chapter, the tightening of law relating to the liability of wives resulted more from a nineteenth-century desire for coherence within the law than from a desire to make women accountable.

¹¹⁷ Smith and Hogan, *Criminal Law*, p. 219.

Chapter 2

MORE THAN HALF THE POPULATION: WOMEN'S LIVES IN YORK AND HULL 1830-1870

Introduction

Before we continue with a more general examination of nineteenth-century female crime in York and Hull it is necessary to establish something of the pattern of daily life of the resident women. However, with the notable exceptions of Frances Finnegan, Sheila Wright and Anne Digby, few historians have placed particular emphasis upon the lives of women in York.¹ Little has been published which relates specifically to women's lives in Hull, although the data on occupations in nineteenth-century Hull, by Joyce Bellamy, is of interest to historians of women's work.² A mass of secondary material exists on the history of nineteenth-century English women and their life styles. Since the 1970s the field has created vigorous debate which has particularly revolved around the need to define the term 'woman;' to determine to what extent 'gender' should be a category of analysis; and to analyse the differences, as well as the common ground, of female lives.³ Particularly relevant to the

¹ Particularly important are: P. M. Tillott (ed.), *The Victoria History of the Counties of England: A History of Yorkshire; The City of York* (Oxford, 1961) subsequently referred to as *VCH*; A. Armstrong, *Stability and Change in an English County Town: A Social Study of York, 1801-1851* (Cambridge, 1974); C. H. Feinstein, *York 1831-1981: 150 Years of Scientific Endeavour and Social Change* (York, 1981); A. J. Peacock, 'York in the Age of Reform 1815-1850,' D.Phil., (University of York, 1973); N. Arnold, 'The Press in Social Context: A Study of York and Hull 1815-1855,' M. Phil., (University of York, 1988); S. L. Cummings, 'Evangelicals in York: The Public Activities of a Group of Leading Churchmen 1771-1865,' M. Phil., (University of York, 1990); See also the periodicals *York Historian* and *York History*; Older or primary source guidebooks and Registers are numerous and many are cited in chapter seven. Particularly useful is: C. B. Knight, *A History of the City of York* (York, 1944, second edition); ; For more detail of women's lives see: F. E. Finnegan, *Poverty and Prostitution: A Study of Victorian Prostitutes in York*, (Cambridge, 1979); F. E. Finnegan, *Poverty and Prejudice: A Study of Irish Immigrants in York 1840-1875* (Cork, 1982); A. Digby, 'The Relief of Poverty in Victorian York: Attitudes and Policies', in Feinstein, *York 1831-1981*; S. Wright, *Friends in York: The Dynamics of Quaker Revival 1780-1860* (Keele, 1995).

² For Hull there is rather less available but see, in particular, E. Gillett and K. A. MacMahon, *A History of Hull* (Hull, 1989, second edition); Joyce M. Bellamy, 'Occupations in Kingston upon Hull, 1841-1948,' *Yorkshire Bulletin of Economic and Social Research*, 4 (1952), pp. 33-50; Joyce M. Bellamy, 'Cotton Manufacture in Kingston upon Hull', *Business History*, 4 (1962), pp. 91-108; for a recent and thorough summary of Hull's nineteenth-century political, social and economic history see chapter one, David Welsh, 'The Reform of Urban Policing in Victorian England: A Study of Kingston Upon Hull from 1836 to 1866,' Ph. D., (University of Hull, 1997); numerous primary source directories and handbooks exist, for example, Edmund Wrigglesworth, *Brown's Illustrated Guide to Hull with a Glance at its History* (Hull, 1891);

³ June Purvis, (ed.), *Women's History: Britain 1850-1945, An Introduction* (London, 1995).

women in this study is the contentious debate around the notion of ‘separate spheres.’ In this study it is clear that men and women often occupied the same geographical spaces and that social and sexual perimeters of these were “the subject of constant negotiation.”⁴ The prescriptive ideology of desirable, and distinct, male and female spaces portrayed and constructed by the middle-class justice system, and discussed in the previous chapter, gives way in the subsequent chapters to far more fluid gender boundaries. Indeed the life styles of many of the women in the cohort of this study hints at a considerable convergence. In the context of crime, Lucia Zedner has impressively summarised Victorian notions of ‘normal’ and ‘deviant’ female behaviour.⁵

2.1 York 1830-1870

In 1838, one Victorian guide book writer spoke of York as the “second city in the British Empire”⁶ thus reminding his nineteenth-century readers of York’s impressive heritage. Despite the fact that the past remains a “dominant influence” to this day⁷, by 1870 York could no longer sustain a claim to importance as an economic centre. One of the major factors affecting York women’s daily lives was almost certainly the lack of industrial development. Factory work for York women remained extremely limited and employment opportunities were, in the main, in the retail trade or as domestic servants. Whilst the population of towns in the West Riding had grown enormously, York’s number of residents increased relatively slowly. York’s population was growing at only about half the rate of Leeds. Between 1801-1851, Huddersfield experienced a 343% growth rate, Leeds 225% but York only 112%.⁸

A number of historians have concerned themselves with the reasons for York’s lack of industrialisation. In fact, the general conclusion has been that, whatever the causes and despite the advent of the railway, York was a city in “decline.”⁹

⁴ Robert Shoemaker and Mary Vincent, (eds.), *Gender and History in Western Society* (London, 1998), p. 179.

⁵ Lucia Zedner, *Women, Crime, and Custody in Victorian England* (Oxford, 1991) Part 1, pp. 11-93.

⁶ Glaisby, *A Guide to the City of York* (York, 1838), p. 9.

⁷ Charles Feinstein, ‘Population, Occupations and Economic Development, 1831-1981’ in Feinstein *York 1831-1981*, p. 110.

⁸ Armstrong, *Stability and Change*, p. 77.

⁹ Peacock, ‘York in the Age of Reform’; Roger Swift, *Police Reform In Early Victorian York, 1835-1856* Borthwick Paper no. 73 (York, 1988); Armstrong, *Stability and Change*.

Relative to its industrial neighbours it most certainly was. In the eighteenth century, York had been a centre of aristocratic activity; by the mid nineteenth century even this was no longer true.

However, of great significance to this research is also the fact that, then as now, certain sectors of the population saw York's lack of industrial development as a blessing. The city in this period has been described as "conservative and parochial" and York seemed, to many, to be a relatively safe and comfortable city in which to live. The railway speculation was an unusual example of major development and the collapse of George Hudson's reputation was one of relatively few serious instances of the effects of conflicts of interest in York. Perhaps because York lacked industrial development, with the concomitant middle-class entrepreneurs and industrialists, wealthier tradesmen and professionals seem to have been all the more important in York.¹⁰ Just as it was in all towns of the period, the evolving middle class and the burgeoning body of professionals were key figures in York's criminal justice system. In chapter three I will say more of how the thriving middle-class culture was fundamentally important in reflecting and shaping the prevailing perceptions of law and crime in York. Suffice it to say, for now, that the middle class had a particularly strong hold in York. It was also, of course, this powerful middle class who manipulated public opinion through the press and, with occasional exceptions, delighted in presenting York as a relatively trouble free city. This view was not representative of the country as a whole. In general, nineteenth-century views on criminal matters reflected the widespread fear of revolution from Europe and panic reaction to the dislocations brought about by the industrial revolution.¹¹

2.1 a) York's female employment

Comfortable and safe might not, however, have been how many of York's working-class women perceived life in the city, despite the fact that the life style of most York women (and indeed of men) had remained 'pre-industrial.'¹² Small though the population growth may

¹⁰ The influence of the once extremely powerful guilds was still felt. Benson says, in 1833, that "None but a freeman could open up a shop, except by paying £25," quoted in Knight, *A History of the City of York*, p. 626.

¹¹ Compare, for example, statements from more general or London-based studies of nineteenth-century crime: "Not only were contemporaries almost unanimous in perceiving an ever rising amount of criminality of all kinds. . .," Martin Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914* (Cambridge, 1990), p. 15.

¹² See Swift, *Police Reform in Early Victorian York*, p. 1.

have been in comparison with West Riding towns, an increase of 112% could not go unnoticed in the overcrowded poorer areas of York. Whether the city was one of 26,260, as in 1830, or one of 43,796, as in 1871, conditions were frequently appalling for the poorer women of York.¹³

In 1841 women were only 2.2% of the work force occupied in “major manufacturing industries” in York, compared to 16.6% nationally. The male rate was also low - 8.9% compared to 17.4 % nationally. However, in the 1831 census abstracts about 3 times as many males were recorded as having occupations as females. The number of working women was approximately one quarter of the adult (over 20) female population.¹⁴ York’s largest industries were based upon glass-making, comb making and small linen “manufactories”.¹⁵ But census returns suggest that, in York, these industries employed mostly males.

Many of the women who appeared before the courts claimed that their husbands were not supporting them and particular difficulties emerged for women when they had to support themselves and their children and where employment opportunities were limited. The problems of Britain’s “superfluous women” have been discussed elsewhere.¹⁶ York was no exception to this and in the 1831 census there were 2,000 more females than males. In an essay on poverty in York, Anne Digby amplifies this picture and comments on the problem of widows, for example, and the fact that women vastly outnumbered men in the York outdoor relief list.¹⁷

The decline of York as a social centre for the gentry may have been of particular importance to many of the women in this study as it was accompanied by a fall in the number of servant positions. At the beginning of the period York had twice the number of servants per capita as Leeds.¹⁸ In the 1831 census abstracts 75% of the employed women in York were in domestic service of one form or another. 1,387 women over 20 years old were categorised

¹³ Tillott, *VCH*, p. 254.

¹⁴ Armstrong, *Stability and Change*, p. 19.

¹⁵ M. Durey, *The First Spasmodic Cholera Epidemic in York, 1832* Borthwick Paper no. 46 (York, 1974), p. 3.

¹⁶ James A. Hammerton, ‘Feminism and Female Emigration, 1861-1886,’ in Martha Vicinus (ed.), *A Widening Sphere: Changing Roles of Victorian Women* (London, 1977), p. 57, for example.

¹⁷ Digby, ‘The Relief of Poverty,’ p. 175.

¹⁸ Tillott, *VCH*, p. 259.

as domestic servants and 783 under 20. (There were 284 and 83 males respectively.)¹⁹ By the 1841 census Armstrong finds 71.7% of women employed as servants and the decline continued.²⁰

The presence of a large number of servants inevitably meant that their morality was an issue of concern amongst the middle-class employers in York. One guide writer recorded, in 1838, that 15th June 1820 was “remarkable for the formation of a society in York for the encouragement of female servants.”²¹ The moral policing of servant girls (at the Hiring fairs, for example) increased in York, in the period in question, and became an easy focus of concern for those who wished to reduce crime.²² There is no doubt that, nationally and in York, servant girls were perceived to be more prone to crime than many other females.²³ The links between high rates of women charged at York quarter sessions and servants will be discussed in more detail in a later chapter.²⁴

The other major area of female occupation in nineteenth-century York was retail work which also seems to have been affected by the decrease in gentry living in the City. However, although the shops which supplied the aristocracy may have declined in the early nineteenth century, other types of shops increased during the 1840s.²⁵ For example, clothing, wine and spirit, gunmakers and other gentry-related trades saw a decline but, in general shops related to food increased along with the population growth.²⁶ And although a number of York’s female offenders worked in shops, and a few were doubtless unemployed shop workers, there

¹⁹ Census abstracts 1831, York City Reference Library.

²⁰ Armstrong, *Stability and Change*, p. 28.

²¹ Glaisby, *A Guide to the City of York*, p. 35. There were in fact many similar organisations in other parts of the country.

²² York Penitentiary Society records. YCA, 212:246, After the York Martinmas Fair it was said that “A few Friends were interested in the welfare of young persons attending the York Hirings (especially females).” See Finnegan, *Poverty and Prostitution*, p. 130 for an illustration of a poster advertising tea rooms set up as a result of this initiative.

²³ This echoes the pattern found by most other studies which have looked at female offenders, whether in the nineteenth-century or earlier. See, for example, J. M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, 1986), p. 247.

²⁴ See also Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia* (Cambridge, 1996). Oxley demonstrates an extremely high ratio of servants amongst transportees, p. 165. Although she discusses the reason for this she does not flag up the fact that age may be the common factor rather than other causal links.

²⁵ Armstrong, *Stability and Change*, p. 40.

²⁶ Tillott, *VCH*, p. 259.

is little extant evidence that female offenders were consistently taken from the ranks of unemployed tradespeople.

There were, of course, many women who were not poor and these often provided employment for others as servants. The 1831 census states that 945 women were of independent means (but interestingly only 310 men). It is also clear that more women were actively involved in trades than has often previously been acknowledged. The general town directories give an indication of the females running various trade establishments. In 1846, for example, 146 entries possess female christian names. Other entries use only initials and there may, therefore, be other, unidentifiable, women. Hardly surprising to any one familiar with the drink-related offences in York, 21 of these women ran public houses, breweries or hotels. Other common occupations were, as might be expected, running lodging houses, milliner's establishments or food shops.

Many tradeswomen were probably widows who continued their husband's businesses. Three of the most notable and influential widows in York were to be found in the newspaper trade immediately prior to the period of this study. At the end of the eighteenth century, Ann Ward continued to own and publish the *York Courant* for thirty years after her husband's death. In 1820 the paper had, (admittedly only for six weeks!) another female publisher, Ann Peacock. The widow of the *York Herald* publisher Alexander Bartholoman did the same in 1811.²⁷ Widows also carried on Craven's confectionary business, Wood's timber company and Session's printing company in the mid nineteenth century.²⁸

Women, perhaps predictably, ran seminaries or agencies for servants although one such agency is unusual, in the days of coverture, in naming both "Mr and Mrs" as joint owners. In an 1846 York directory women also appear as 'gun-maker', 'farmer', 'printer' and 'bookseller', 'saddler', 'wharfinger' and 'sand merchant', 'builder', 'carver and guilder', 'cabinet maker and undertaker', 'tinner and brazier' and 'rope and twine maker'. Thus although women were employed in relatively small numbers they were nonetheless involved in a considerable range of occupations.

Markets and fairs were slowly moving out of the city centre in this period.²⁹ But clearly York was still, in Hobsbawm's terms, a 'parasitic' market town and, as such, was

²⁷ Interestingly Bartholoman claimed to be one of the first newspaper editors to publish trial reports (in about 1810).

²⁸ Knight, *A History of the City of York*, p. 565.

²⁹ *Ibid.*, p. 620.

intimately bound up with agricultural life.³⁰ The resultant mobility will be seen to be a marked feature of the court records. However, many of the York women offenders had migrated into York for employment as servants and only a few were actually employed in agricultural occupations. In 1851 about 400 men and women were employed by chicory farmers. This is said to have included many Irish labourers.³¹ According to Armstrong, there were large numbers of “women and labourers.”³² Generally, however, agricultural workers named in the court records tend rather to have been males, who had visited York for the markets, and who had become the victims of theft by prostitutes.

The women who appear in York court records (both offenders and victims) were, almost by definition, women who frequented the streets for one reason or another. It is clear that these women were not confined within their homes and, in any case, those homes were often communal. Whether the fall in female crime which came after the first quarter of the nineteenth century, one which I will mention in later chapters, reflects a retreat into the home by women is difficult to prove. That the domestication of working-class women may have brought a real change through time in female habits seems possible but, as yet, evidence is scanty. The extent to which women ‘retreated’ into the home, is of course part of the contentious debate relating to ‘separate spheres’ and which was mentioned in the introduction to this chapter.³³ A larger analysis of female street activity than has been possible in this study, accessed through court records, might be a useful addition to this polemic.

2.1 b) Poverty

Despite the fact that, as Clive Emsley expressed it, “crime is not, and never was, confined to one social class” female offenders who came before York courts were almost exclusively poor.³⁴ Notwithstanding this hardship, many visitors seem to have passed through York without too much concern for the well-documented poverty. Laycock and other

³⁰ E. Hobsbawm, *Industry and Empire* (London, 1969), p. 81.

³¹ Feinstein, *York 1831-1981*, p. 121.

³² Armstrong, *Stability and Change*, p. 97.

³³ See Catherine Hall, *White, Male and Middle Class: Explorations in Feminism and History* (Cambridge, 1992); Jane Rendall, *The Origins of Modern Feminism: Women in Britain, France and the United States, 1780-1860* (Chicago, 1985) to name but two classic texts.

³⁴ Clive Emsley, ‘The Criminal Past: Crime in Nineteenth-Century Britain’, *History Today*, 38, (April 1988), p. 45.

contemporary accounts made it abundantly clear that extreme distress existed in the city, as of course it did in any settlement of the period.³⁵

Cycles of poverty are discussed in more detail in relation to the crime figures in chapter three. However, a quick summary of conditions might suggest that York in the 1830s was less prosperous than the mid-century years and saw less building development than periods before or after. By the 1840s however, there was, in many respects, an upturn and it was in this decade that York became an important railway centre. Contemporaries perceived the effect of this period of development to be considerable. There was seen to be an influx of visitors, suburbs grew more rapidly, and shops increased by 5.5% per annum between 1841-8.³⁶ York's employment appears to have remained high in the late 1840s.³⁷

Even if it were possible to argue that the increasing population did not affect the actual rate of crime (which is unlikely) it certainly affected the justice system in tangential ways. One employee of the Castle appealed for a salary increase to compensate for his increased work load. "For," he said, "since the railroad commenced, visitors to see the curiosities alone" (the instruments and weapons housed in the Gatehouse) were 400-500 persons. He argued that this influx caused his wife to be fully occupied ensuring the debtors did not escape.³⁸ However, this development during the 1840s certainly did not eradicate the squalid hovels of the poor which were depicted in Laycock's report. He estimated that the poorer areas, inhabited by the labouring class, accounted for 3/10ths of the population.

Other events which resulted in increased distress in particular years include the major cholera outbreak in 1832, with another epidemic in 1849, flu in 1842 and typhus in 1847.⁷ In 1831 the women who inhabited the low-lying parts of York were put to great hardship by a particularly high flood (17' higher than normal) and in 1839 high winds demolished much property.³⁹ Reports such as Thomas Laycock's in 1844, detail such horrors of life in York. The implications for the women is obvious. In one area Laycock reports one small tap for 23 families in a cold open passage. In another, street water ran for only 10 or 15 minutes each

³⁵ Armstrong, *Stability and Change*, p. 47; B. S. Rowntree, *Poverty: a Study of Town Life* (London, 1901); Thomas Laycock, *First Report of the Royal Commission for Enquiring into the State of Large Towns and Populous Districts*, PP. 1844, XVII.

³⁶ Armstrong, *Stability and Change*, p. 46.

³⁷ *Ibid.*, p. 161.

³⁸ York Castle Museum, Archive Box 2.

³⁹ H. Bellerby, *Bellerby's Stranger's Guide to York* (York, 1841).

morning. In many of the lodging houses “there is no discrimination of sexes,” other places had one privy to nine families.⁴⁰

It was from such areas that many of the offenders before York quarter sessions came. Laycock lays great stress on the crowded nature of many areas of York - this frequently appears to have provided the opportunity for crime and we will see in the ensuing chapters that neighbours were often victims. Yet we will also see that the close proximity of living could work in either of two ways for the offenders: on occasion, friends and neighbours aided and abetted in the crimes and yet, at other times, it was those who lived near to the offenders who actually identified them.

Poor law expenditure in York rose throughout the first three decades of the nineteenth century and the 1840s brought a large influx of Irish immigrants which seems to have strained the workhouse system to a point of crisis in 1847. For certain sectors of the population this large scale immigration clearly counteracted any of the beneficial effects of the advent of the railways. By 1860 there was a ‘new’ workhouse but still “incontinent lunatic paupers lay on boards covered with coatings of loose coconut fibre.”⁴¹ By 1874 York’s death rate was still high at 24.9% compared to 20.8% for England and 23.4% for an average of the 50 largest towns.⁴² Whether the life style of York’s poorer women was ‘pre-industrial’ or not there were clearly problems of unemployment, poverty and ill-health for many individuals. Frances Finnegan’s work demonstrates, in more detail, the ramifications of poverty for the Irish and for the prostitutes in York, and Anne Digby has outlined the shortcomings of the Poor Law in York.

2.1. c) The physical and mental health of York’s poorer women

One feature of the poverty already described was clearly poor health for many of York’s inhabitants. The women who were charged with offences may have sometimes been in such a position as a direct result of illness - either their own or their partner’s, or of child-bearing. Victims could also be disadvantaged because of their illness. Rachel Robinson stole

⁴⁰ Laycock, pp. 41-44.

⁴¹ Tillott, *VCH*, p 281. Technically, of course, lunatics were meant to be housed in appropriate asylum accommodation by this period, for details see, for example, Andrew T. Scull, *Museums of Madness; the Social Organisation of Insanity in Nineteenth-Century England* (London, 1979) p. 186.

⁴² Tillott, *VCH*, p. 285.

from her mistress when she was ill in bed.⁴³

The extent to which conditions of poverty exacerbated the ill-health of York's poor is high-lighted in M Durey's account of the 1832 cholera epidemic in York.⁴⁴ Even within the workhouse, which many of York's offenders visited, health was extremely poor.⁴⁵ Frances Finnegan's work has also illustrated the inferior state of health of many of the poorer women in York. She concludes that for the prostitutes opportunities of better health must have been rare.⁴⁶

Perhaps surprisingly for a non-industrial city the male mortality rate was higher in York than nationally. Armstrong computes the mean death rate of male and female, during the period 1841-51, as 24.0: this compared with 22.3 nationally. However, York's female mortality rate between 1838 and 1844 approximated to that of the national average.⁴⁷ Infant mortality was also higher than the national average (and the female infant mortality was 5.6% worse).⁴⁸ Walmgate, the area of many 'scenes of crimes,' and seemingly of the residences of a large proportion of the female offenders, had a particularly high rate of deaths. This means that the women in this study were likely to be ill, or to lose children, husbands, partners or fathers earlier, or more frequently, than the woman who might represent the national average.

York made some provision for its sick poor who were not in the workhouse. Katherine Webb points out that the York Dispensary opened its doors to dispense free medical advice and treatment in the cholera epidemic of 1832 and as a result saw 400 extra patients.⁴⁹ York County Hospital, Monkgate, extended its facilities during this period.⁵⁰ Records indicate that women who appear in the court records frequented both the Dispensary and the County Hospital. For example, Charlotte Taylor appears to have been an in-patient with hepatitis from January to April in 1840, and Harriet Garbutt from January to July of the same year with

⁴³ YQS 5th May 1846.

⁴⁴ Durey, *The First Spasmodic Cholera Epidemic*.

⁴⁵ Anne Digby, 'The Relief of Poverty in Victorian York: Attitudes and Policies', in C. H. Feinstein, *York 1831-1981*, p. 171; Armstrong, *Stability and Change*, p. 117.

⁴⁶ Finnegan, *Poverty and Prostitution*, p. 163.

⁴⁷ Armstrong, *Stability and Change*, p. 127.

⁴⁸ *Ibid.*, p. 127.

⁴⁹ Katherine A. Webb, 'One of the Most Useful Charities in the City': *York Dispensary 1788-1988* Borthwick Paper no. 74 (York, 1988), p. 17.

⁵⁰ Tillott, *VCH*, p. 468; Durey, *The First Spasmodic Cholera Epidemic*, p. 6.

chlorosis.⁵¹ Prolonged periods of illness must have caused employment problems for many of the women. Others may have obtained out-patient help from the dispensary.

The poor law records also appear to refer to various women from the criminal cohort. Ann Child, for example, applied with her husband, from the House of Correction, for funeral expenses for one of her three children.⁵² Such hardships might lend weight to Finnegan's claims that poverty was the main feature in driving women to prostitution.⁵³ These poor law records also demonstrate that if it was not the woman's own debility which resulted in poverty it was often her husband's incapacity. Elizabeth Stubbs applied for relief in 1840 because her shoemaker husband was ill. They had two young children. In 1844 an Elizabeth Stubbs, the same age, was sentenced to the House of Correction for 14 days for stealing four books.⁵⁴ A number of other identities cannot be proved conclusively but the conditions of applications for relief provides hints as to the possible reasons for some women's lives of crime. Mary Ann Hall had two children and applied for relief as she was "wholly disabled through the ill-treatment of her husband."⁵⁵

As in most Victorian towns drink was a great cause for concern and that was the case both inside and out of prison. Sydney Smith had noted in his letter about conditions in the Castle, as early as 1824, that "about two years ago a woman was found dead drunk in the morning from the contents of a bottle of rum let down to her by the debtors."⁵⁶ The fact that it was reported as "two years ago" could make one question the incidence of such occurrences. However, in the visiting magistrates book for the city gaol, in the 1830's, we are told that visitors are examined for liquor as "intoxication had been very prevalent." In December 1836, a hole in the wall was blocked up to prevent the passing of alcohol.⁵⁷ Sheila Wright has pointed out the links between the Society for the Prevention and Discouragement of Vice and

⁵¹ YQS 7th April 1845; YQS 9th April 1847;

⁵² YQS 10th April 1840; York Board of Guardians, Poor Law Applications, Accession 304; Applications Accession 2.

⁵³ It is sometimes difficult to prove identities conclusively. When two or three biographical details such as name, age, abode or family name are the same then an assumption has been made that the two names may refer to the same individual.

⁵⁴ YQS 1st January 1844.

⁵⁵ YQS 18th October 1833; YQS 8th April 1836.

⁵⁶ A Letter to the Committee of Magistrates regarding York Gaol, Sydney Smith (1824), p. 8. Y365, York City Reference Library.

⁵⁷ York Castle Archives, Box 4. Report of the Visiting Magistrates, (1836).

Profaneness and the temperance movement in York. Nationally and locally, names such as J. J. Gurney, the Tukes and other Quaker families, connect prison reform and the temperance movement.⁵⁸

It seems, from qualitative evidence, that the patterns of destitution and disease found by Finnegan in the Penitentiary and Refuge records, and which shows wide scale ill-health amongst prostitutes are, predictably, likely to apply also to women who appeared in court for other kinds of offences.⁵⁹ What might be even less easy to access, however, is the effect of mental illness on offence rates in York.

Nineteenth-century York was particularly noted for individuals for whom mental health was a special interest. A number of these were men who acted as, what we now call, 'expert witnesses' in the field of crime and insanity. These individuals were members of the powerful middle classes involved in York's justice system and yet at a formal level their work was perhaps of more influence in the national arena than in the context of local female offenders.⁶⁰ Sadly it is difficult to estimate the numbers of female offenders from this study who were suffering from mental health problems. A small number of offenders who were deemed to be insane by the assize court and were sent to London as there was no local asylum for the criminally insane. Curiously, perhaps, I have found no women in the York quarter session records directed to any asylum. Technically, therefore, the quarter session offenders of York were not mentally ill. However, in the Bootham and Clifton asylum records there are many cases of violent female patients. The behaviour for which they have been incarcerated may in other instances have been treated as criminal. Despite the official legal provision for criminal lunatics it is unclear what criteria were used to direct a woman to the court system or to a mental institution, in practice, in York.⁶¹ Many of the patients admitted to the mental institutions contain references to family members and it may be that those who had support from family or medical men were more likely to be directed to such an institution. Those who could not call on support were more likely to be dealt with by police and courts. This seems particularly likely to have been the case in drink-related attacks.

⁵⁸ Wright, *Friends in York*, p.209.

⁵⁹ Finnegan, *Poverty and Prostitution*, pp.136-163.

⁶⁰ It has been impossible to include in this study much of the material gathered on men such as Laycock and the Tukes and the relationship of their published work to female offenders. I hope to pursue this elsewhere.

⁶¹ See David T. Hawkings, *Criminal Ancestors: A Guide to Historical Criminal Records in England and Wales* (Stroud, 1992), p. 174, for a basic outline of the provision.

2.1 d) Marriage and fertility

The ratio of females per 1,000 males stood at 1,301 in 1801 and 1,190 by 1831.⁶² Thus, as I have already said, there was a surplus of women in York. It seems likely that York attracted a relatively high number of women of independent means which may account for a proportion of this 'excess'. A class breakdown of single women in York would be necessary before any claim could be made that an excess female population had adversely affected the lives of these women driven to crime. It is unlikely that such information would ever be accessible. However, marriage as a brake to crime will be more fully discussed in chapter four.

The mean age of marriage for females in York was approximately one year older than the national average, that is 28.68 for males and 25.7 for females.⁶³ According to Armstrong, marriage rates remained sensitive to movements in real wages and, for example, the Registrar-General attributed a rise, after 1845 in Yorkshire and other areas, to railway building.⁶⁴ Armstrong's results also accord with the "widespread conviction" that the "poorer classes usually marry and have families at an earlier age than the middle and upper classes."⁶⁵ Religious differences could also play a significant part.⁶⁶

However, poor law records indicate that many married women fared badly and in itself marriage was not a protection from either the ravages of poverty or the punishment of the court.⁶⁷ Since a number of women were described, in the press reports of trials, as cohabiting, 'living together' was probably also a common situation. Thus by implication, the offenders in this York sample fell into conflicting stereotypical groups. As the 'poor' they were more likely perceived to be married and breeding rapidly but as the 'criminal class' they were perceived to be single girls, servants or prostitutes. Some of the actualities will be considered in the case studies presented later in the thesis.

As might be expected, in general the fertility rates in York were much below that of

⁶² Armstrong, *Stability and Change*, p. 156.

⁶³ Armstrong, *Stability and Change*, p. 63.

⁶⁴ *Ibid.*, p. 159.

⁶⁵ *Ibid.*, p. 165.

⁶⁶ Wright, *Friends in York*, p. 149.

⁶⁷ See U. R. Q. Henriques, 'Bastardy and the New Poor Law', *Past and Present*, no. 37. (July, 1967) 128, for one of the earliest considerations of the effect of marriage on poor law applications.

cities where the proportion of married women was greater. However, Armstrong also claims that the least salubrious district of the city showed distinctly higher fertility than other parishes. Trial reports would suggest that cohabitation figures were also high, therefore, raised fertility levels cannot simply be said to be a result of high marriage rates. Walmgate not only had a higher fertility rate during the 1840s but also the highest illegitimacy rate.⁶⁸

2. 1 e) Mobility

Armstrong suggests that most immigration into York was on a short-distance basis.⁶⁹ The women offenders appear to parallel this pattern - many of the cases mentioned in subsequent chapters will show that offenders had parents to call upon when they appeared in court. Frequently they were farming families and the daughter would have attempted to find employment in York.⁷⁰ Occasionally an offender would have entered York to give birth to a child.⁷¹ There was an obsession in York, as indeed there was nationally, with the link between crime and vagrancy. The Grand Jury of January 1831 commented, “nothing has a greater tendency to increase crime and corrupt the morals of the lower classes than unrestrained vagrancy,” and Pardoe, the police superintendent, was given extra funds to deal with problem.⁷²

Despite the decline in numbers of visiting gentry the great railway development of the 1840s meant that York continued to experience tourists and travellers of many kinds. Furthermore the assizes still attracted a considerable entourage. Thus, despite all I will say in the ensuing chapters about the lack of anonymity in York, perceptions of, and influences on, crime in York, were not the result of a static or inward looking population. Indeed the final chapter of this thesis will describe some of the literature produced for visitors to York as a contribution to, and a reflection of, local nineteenth-century perceptions of crime. Mobility was still a key causal factor in offending behaviour and in the perceptions which surrounded it, but as we will see, York’s mobility was of a different nature to that experienced in Hull.

⁶⁸ Ibid. p. 169.

⁶⁹ Ibid., p. 88.

⁷⁰ YQS 9th April 1849, Esther Stephenson had come from Sheriff Hutton, 9-10 miles from York.

⁷¹ YQS 9th April 1849, Catharine Robinson, 42 years old, the daughter of a Copmanthorpe farmer had come the 3-4 miles to be confined.

⁷² *Yorkshire Gazette*, 7th January 1831.

2. 1 f) Race

Linked to mobility was often the fear of those of a different race. The famine in Ireland brought considerable numbers of Irish to York. In the 1841 census the Irish represented 2.7% of total population but by the 1851 census this had become 5.3%.⁷³ Frances Finnegan has discussed the lifestyles of the Irish and their relationship to crime in York very fully. In her work she concludes that the Irish contribution to offence rates was disproportionately high but declined. This, she maintains, was a result of the extreme post-famine distress.⁷⁴ By contrast she concludes that prostitutes were drawn from a disproportionately low number of Irish women.⁷⁵ Here she argues, that whilst extreme poverty was the overwhelming reason for prostitution, the Irish women in York did not resort to it. Finnegan does not discuss the peer-policing or moral constraints that may be the reason for this. The lack of theft charges against them may also be, in part, because relatively few female servants were Irish women.⁷⁶ This may mean they were not in the category of easily-policed and detected women who appeared before quarter sessions.

Other immigrants play little part in the picture of nineteenth-century York. An Italian male appears before quarter sessions but this was exceptional and we will see this is in sharp contrast to Hull where, predictably for a port, racial difference was perceived as more of a threat.⁷⁷

2.1 g) Literacy

Digby points out that enquiries in 1836 revealed that nearly one child in three, in York, did not attend school.⁷⁸ This was perceived by contemporaries to be a problem and the charity

⁷³ Finnegan, *Poverty and Prejudice*, p. 27.

⁷⁴ *Ibid.*, p. 154.

⁷⁵ *Ibid.*, p. 32.

⁷⁶ *Ibid.*, p. 5.

⁷⁷ Small numbers of immigrants from other countries appear to have been relatively well-received. See, for example, David Poole, 'Victorian York - European Influence on Commerce', *Y.A.Y.A.S Times*, no. 34, (November 1996), pp. 6-8.

⁷⁸ Digby, 'The Relief of Poverty in Victorian York,' p. 168.

school on King's Staith would, it was hoped, prevent criminality.⁷⁹ Armstrong argues that educational provision in York was actually better than in many other towns.⁸⁰ However, this was not perceived to be the case by all. In 1836, York was selected by the Manchester Statistical Society as a suitable comparison with Manchester, Liverpool and other towns, with respect to the state of its education. Although York fared well in terms of the numbers attending school, the report considered that many of the teachers in dame schools were "commonly women of little education," many in the depths of poverty and some "actually paupers".⁸¹ For many reformers education was seen as a panacea and as such was seen as a useful tool in eradicating criminal behaviour. Anne Digby points out that in 1856 a girls' school was opened specifically hoping to recruit from the notorious "criminal district" of the Water Lanes.⁸² However, in the extant depositions from Hull, very many of the offenders appear only able to leave a mark and unable to sign their names. The literacy ability which was recorded upon the York prison calendars suggest that most of the offending women in York had, likewise, only the most basic literacy skills.

2. 1 h) Housing

Frances Finnegan has given a detailed picture of the kind of accommodation that many of the offenders in this study would occupy. Many of them appear to have come from Walmgate, Water Lanes, Bedern and the areas highlighted by Finnegan. It is not possible to trace the homes of most of York's female offenders directly through court records as only the location of the offences are officially recorded and my conclusions are based upon any additional information that can be gleaned from census returns or Poor Law Applications. However, as this study progresses it will become clear that many of the offenders lived in lodgings and other temporary accommodation. Cases discussed in the following chapters also demonstrate that much of the crime was inextricably interlinked with the crowded conditions in which many of the poor spent their lives. We will see that this style of living profoundly affected definitions of property ownership and consequently of theft.

⁷⁹ Ibid., p. 178.

⁸⁰ Armstrong, *Stability and Change*, p. 66.

⁸¹ Knight, *A History of the City of York*, p. 611.

⁸² Digby, 'Poverty in York' p. 178.

2. 2 Hull 1830-1870

2.2 a) Poverty, population and general life styles

In practice, Hull's female offenders appear, on a day to day basis, to have lived very similar existences to the women who committed crime in York. I will not, therefore, rehearse again the conditions of poverty and ill-health in which most of the Hull female offenders lived. They too suffered the cholera epidemics of 1832 and 1849. They too suffered the horrors, not only of the illness and the death, but also of the unpleasantness of the remedies. Their streets were watered with a solution of chloride of lime and the poor were given vitriol to create a "powerfully disinfecting gas" around their homes.⁸³ Burial grounds in Hull were similarly said to be "disgusting and inhuman."⁸⁴ Morality was ever the source of comment and judgement. Perhaps middle-class readers of the reports of the deaths of cholera victims found comfort when the sufferers were described as of "irregular" habits, even in their time of death. Although such reassurance could not always be offered and others died despite being "of cleanly habits" and "highly respectable" in their "rank of life."⁸⁵

Hull had a population of 32,958 in 1831 but of 121,892 in 1871.⁸⁶ In other words the two boroughs were not remarkably different in size in 1831 but whereas York's population doubled, Hull's quadrupled. Census returns also show that Hull had a similar excess of female population to that found in York. However Hull's economic growth during the period of this study was not comprehensive. Indeed, there were aspects of Hull's life that saw decline. Such change clearly meant disruption and trauma for some of the women in the affected families. The whaling fleet decreased quite rapidly from 63 ships at the beginning of the century to 6 by 1861.⁸⁷

⁸³ *Hull Advertiser*, 14th September 1849.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Allison, *A History of the County of Yorkshire East Riding*, p. 215; Whilst York is a city throughout the period in question Hull does not receive city status until 1897. This is symbolic of the difference in the historical status of the two places.

⁸⁷ Gillett, *A History of Hull*, p. 230.

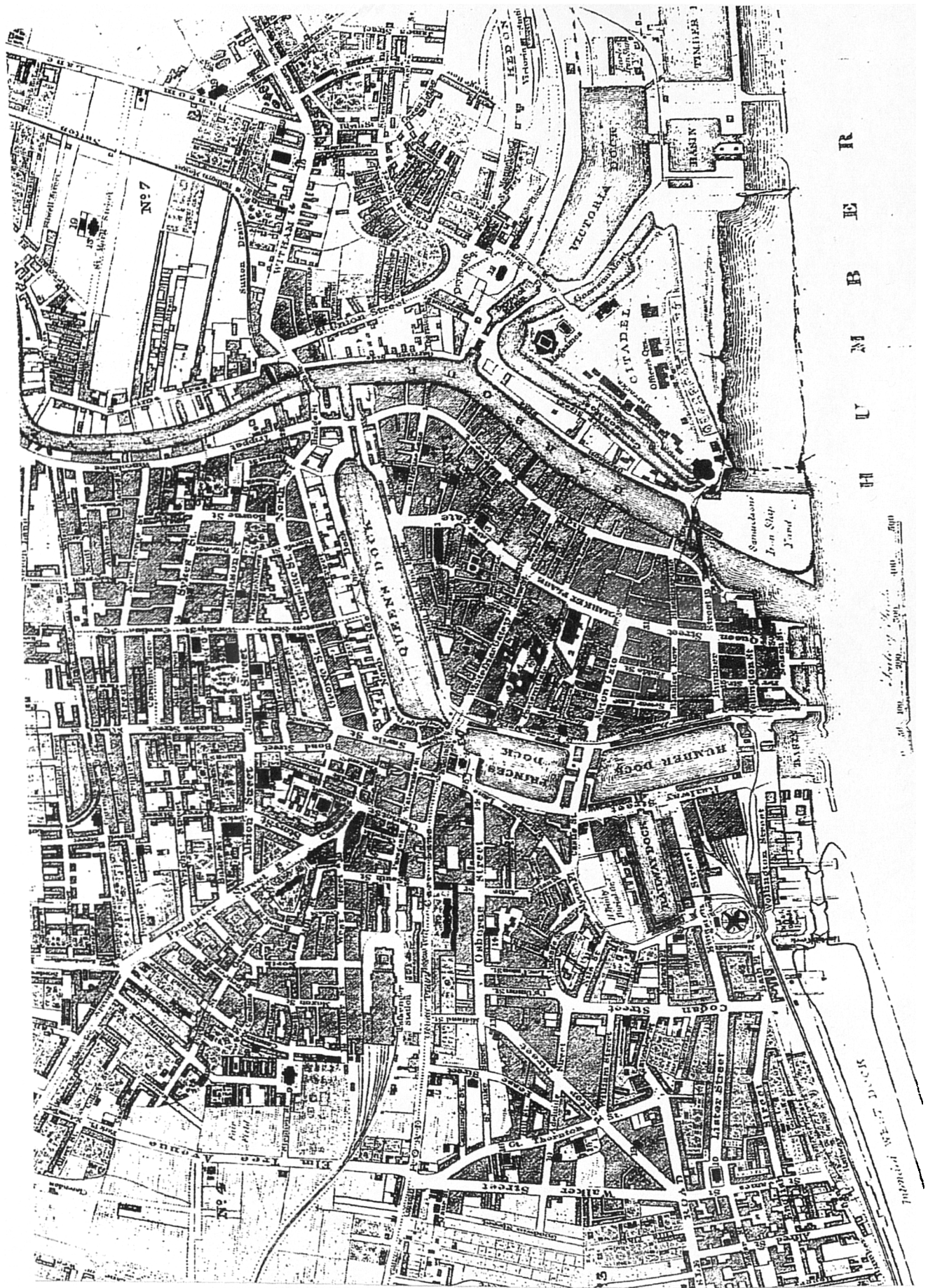


Figure 2. 2 Hull in 1861: street plan
(Courtesy of Kingston upon Hull City Archives)

Early in the century Hull's population had felt keenly the effects of the war between 1793 and 1815 and some families had suffered great indignities as a result of press gangs.⁸⁸

2.2 b) Politics and religion

Perhaps, partially as a result of its disruptive history in the early nineteenth century, Hull was a far more bitterly divided town, politically, than was York. For some women this appears to have meant that there was a stronger tradition of political involvement than in York. For example, Hull had suffered food riots in the 1790's in which women were involved. Women were also involved in collecting 4164 signatures to petition against slavery in 1833.⁸⁹ In 1838 a "room was quite full of females" for a meeting of female radicals.⁹⁰ One of the 'feme covert' cases discussed in the previous chapter was that of Elizabeth, the wife of the radical James Acland. She was imprisoned for writing a libellous article in the reformist journal the *Hull Portfolio*. There are no obviously similar parallels to these in York.

Politically, and also religiously, these were very different towns. Despite small changes in its City Council, York's story, in this period, is generally one of continuity. It was spared an excess of political strife and throughout the period the same officials - and often therefore, justice system officials - lingered on, representing in particular, the Quakers and the evangelical Anglicans.⁹¹ By comparison Hull officials changed more frequently.⁹² Perhaps in keeping with York's pre-industrial tenor, the involvement of many of York's men and women in politics and local government was frequently through the medium of religious contact rather than, as was perhaps more common in Hull, a specific involvement in party-political organisations.

Hull's Anglican influence was, as one might expect, considerably less than in York, although dissent may have been stronger. The latter mostly took the form of Methodism. Hull's evangelicals were powerful and yet their influence appears to have been muted by

⁸⁸ *Ibid.*, p. 235.

⁸⁹ *Hull Advertiser*, 10th May 1833. Although the strength of this involvement may perhaps be expected in Wilberforce's home town; see Wright, *Friends in York*, pp. 100-104 for a discussion of York's anti-slavery movement. York women appear to have supported their menfolk in the movement but not created their own society; see also James Walvin, *The Quakers: Money and Morals* (London, 1997),

⁹⁰ *Hull Advertiser*, 2nd November 1838.

⁹¹ Arnold, 'The Press in Social Context', p. 19.

⁹² The new Hull corporation of 1835, for example, had no members of the old corporation, Gillett, *A History of Hull*, p. 265. See also John Markham, *Disraeli's Fellow Traveller: James Clay - M.P. for Hull* (Beverley, 1997) for an account of Hull's politics in relation to the national picture.

rivalry. In areas where Anglicans and Methodists might have combined forces to effect social reform, such as in education, bitterness divided them and stultified progress.⁹³ Religious influences will be particularly important in a discussion of prostitution in York and Hull. In York the Quakers, evangelical Anglicans and Methodists worked far more closely, for example, in activities aimed at restricting prostitution. Their combined forces appear to have controlled activities, but interestingly, may well have produced higher actual recorded crime rates in York.

Corruption amongst officials had a higher profile in Hull than in York. In 1835 the Hull mayor, Anthony Bannister, kept Henry Storrer, one of his personal debtors, in gaol for 6 years even though the debt had been paid. It took the interest of some well-disposed lawyers to bring the case to Queen's Bench to bring about his release.⁹⁴ So extreme was bribery in the elections of the 1840s that a Royal Commission denied Hull parliamentary representation for two years in the 1850s. In 1842 troops had been sent from the West Riding to Hull because of disturbances.⁹⁵ In 1853 the Report of the Commission into Corrupt Electoral Practices in Hull was published.⁹⁶

The old Hull Corporation had been Tory dominated but the tensions between this exclusive group and those of the powerful and wealthy seaman's guild Trinity House and the Dock Company, also exclusive and secretive, forced a Liberal victory in 1836 when none of the old council were returned.⁹⁷ The change of mood was reflected in the auction the new council held of the "ostentatious frippery" - the Madeira, claret etc. which had been laid down by the old council.⁹⁸

Hull was far more typical of the large towns of the age in its sense of unrest. The activities of reformers such as James Acland - who was repeatedly imprisoned and known as a "mob leader" by both contemporaries and some historians, were not matched in York in any sense. One nineteenth-century historian commented that Acland had kept the town's people

⁹³ Peter Stubley, *A House Divided: Evangelicals and the Establishment in Hull 1770-1914* (Hull, 1995).

⁹⁴ Gillett, *A History of Hull*, p. 266.

⁹⁵ J. J. Sheahan, *A History of Kingston Upon Hull* (Beverley, 1866), p. 212.

⁹⁶ *The Report of the Commission into Corrupt Electoral Practices in Hull*, (1853), KHRO, DXQ.

⁹⁷ Arnold, 'The Press in Social Context,' p. 27.

⁹⁸ Gillett, *A History of Hull*, p. 264.

in turmoil for three years.⁹⁹

2. 2. c) Female Employment

In 1836 Hull was not a manufacturing town but by the 1841 census there were two cotton factories in which 6% of Hull's occupied population were employed. Hull was "comparatively prosperous" by the mid-century.¹⁰⁰ Female industrial employment in Hull was limited in comparison with the West Riding factory towns but there was considerably more factory development than in York.

11.7% of the town's working women found employment in the cotton factories.¹⁰¹ Many of these were immigrants from other northern cotton areas. The industrial life style of these women contrasted sharply with that of York's women and, although it did not result in the female court appearances that the West Riding saw as a result of Factory Act infringement, it did give rise to occasional cases of the type never seen in York.¹⁰² In 1839, considerable column space was given to 'The Factory System.' Six girls were charged with unlawfully absenting themselves from work at the Flax and Cotton Mills. There was considerable argument over the case and this was complicated by the fact that at least three of the court officers were also the factory owners. Although these individuals agreed not to "interfere" in the case, one of them continued to "lecture one of the girls and to tell her he would not keep her in his service if she was in it." Another girl had been taken away by her mother who said that the girl had been "strapped" very "severely" by the overlooker. The newspaper reporter was vehement in his condemnation of the factory conditions and commented that "such cases demand public notoriety and investigation."¹⁰³

Hull's port also gave limited employment opportunities to females. Unusually in the 1851 census 275 women were stated as occupied as "boat and bargemen." More will be said in the chapter on Hull's crime about smuggling and theft in the port. Male employment in Hull

⁹⁹ Sheahan, *A History of Kingston Upon Hull*, p. 201.

¹⁰⁰ Welsh, 'The Reform of Urban Policing', p. 45.

¹⁰¹ Bellamy, 'Cotton Manufacture', pp. 91-92.

¹⁰² Barry S. Godfrey, 'Policing the Factory: Appropriation and Theft in the Factory System of West Yorkshire, 1830-1880', Ph. D., (Leicester, 1998).

¹⁰³ *Hull Advertiser*, 12th April 1839.

was likely to be more seasonal than in York since the fishing and port trade ceased in winter when the Baltic froze. This would naturally have affected the women of the households too. Furthermore there would have been a relatively high death rate amongst such males leaving widows and unsupported children.¹⁰⁴

Although the figures were smaller than in York, servants were similarly the largest category of women employed. As in York this was a declining figure. In 1841 66% of women were in service but in 1851 only 49% were recorded as so occupied.¹⁰⁵ Women were also involved in smaller numbers in textile work, particularly in sail making; retail work; food production and as makers of dress. The 1841 census show 200 professional workers of which 140 were teachers and 60 nurses. As in York, widows were sometimes active in 'male trades' where they continued the family businesses.

Conclusion

Despite many similarities in the life-styles of Hull and York's nineteenth-century women, we can also observe particular differences brought about because of the varying socio-economic and cultural conditions in the two boroughs. The major contrast was that Hull was a rapidly developing port with all the concomitant mobility. This created physical patterns, for example of immigration from further afield than that in York, which affected the lives of the women. It also allowed for the construction of different mentalities from those found in the City of York which was steeped in an aura of tradition and stability (however fictional the notions of permanence were). Thus, for example, differing attitudes to race will be outlined in chapter six. In particular, the effect of reform work based upon religious belief was more likely to be felt by the York women. Furthermore Hull's women were more likely to experience the effects of industrialisation and of factory work than were females in York.

Despite these differences, however, it is clear that there can be no simple explanation for the female crime rates based upon socio-economic conditions in nineteenth-century York and Hull. For example it cannot simply be argued that greater industrialisation resulted in higher crime rates. Having reviewed some of the differences between the two boroughs it is clear that where there are crime patterns that may be linked, however tentatively, to the living and working conditions the effect is complex and interesting. Where a high crime rate might

¹⁰⁴ Welsh, 'The Reform of Urban Police', p. 48.

¹⁰⁵ Bellamy, 'Occupations in Kingston upon Hull', p. 34-38.

be linked to a particular feature in one town - the converse side of the coin, as it were, is often seen in the other town. That is, if a growing crime rate in the 1830s and 1840s can be blamed on the rapid population expansion and rise of manufacturing industry in Hull, it is a possibility that, in York, some female crime was a direct result of the lack of expansion in industry and a decline in servant and some types of retail jobs in York.

Similarly, and perhaps linked to this, the large expansion in the population seems to have driven some Hull women to crime - or indeed might not have provided the peer-policing to constrain them. Yet, the women of York appear to have been caught more easily precisely because of the smaller population and the lack of anonymity. The fact that offences by servants and shopkeepers (a higher than normal proportion of the York female labour force) are so easy to police compounds this.

Thus the three features which most distinguish Hull from York in this period, that is to say the mobility, the population rise and the greater social unrest, do appear likely to have (both directly and indirectly) affected the criminal behaviour of Hull's female offenders and we will see more evidence for this in the subsequent chapters. However these features, particularly that of industrialisation, did not necessarily lead to higher overall recorded rates of crime and I will investigate the reasons for this more fully in the following chapters.

Chapter 3

“DWELLERS IN DIFFERENT ZONES”?: MALE OFFICIALS AND FEMALE OFFENDERS IN YORK AND HULL, 1830-1870

The major existing scholarship analysing the nineteenth-century criminal justice system has been outlined in the introduction to this thesis. Increasing centralisation was the main feature within the police, prison and court systems. However it cannot be stressed too highly that there also remained enormous regional differences throughout the period of this study. Martin Wiener’s call to integrate the local scenes into nineteenth-century criminal history is important.¹ For example, his claim that “contemporaries were almost unanimous in perceiving an ever-rising amount of criminality of all kinds” is not especially applicable to either York or Hull.² In York there was never really such a fear, and even in Hull there were long periods when any fear clearly subsided. Indeed, in the same period to which Wiener refers, there was perceived to be a seven year decline in Hull crime rates.³ This chapter will, therefore, summarise the general state of the justice systems of nineteenth-century York and Hull, and comment upon Victorian attitudes towards the system and upon the perceived extent of crime.⁴

I will also ask whether women’s experiences of justice in these two Yorkshire boroughs were different to men’s. Each area of the justice system demands separate treatment, so vast is the material available to criminal justice historians. What is provided here can only be an overview aimed at stimulating questions worthy of more research.

When a woman was suspected of committing an offence in nineteenth-century York or Hull there were, as I have already indicated in chapter one, numerous avenues along which

¹ Martin Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge, 1990), p. 10.

² *Ibid.*, p. 15.

³ *Hull Advertiser*, 4th July 1851. The Alderman concerned conjectured that this may have been an effect of “the Exhibiton” - rather an illogical conclusion if he was commenting on a seven year trend!

⁴ For the most comprehensive, if whiggish, summary of the justice system nationally see L. Radzinowicz (and R. Hood, vol. 5.), *A History of English Criminal Law and its Administration* (5 vols.); See also David Philips, *Crime and Authority in Victorian England: The Black Country 1835-1860* (London, 1977); Clive Emsley, *Crime and Society in England 1750-1900* (London, 1996 second edition) and as helpful aids to primary sources on the topic the excellent Michelle Cale, *Law and Society: An Introduction to Sources for Criminal Justice and Legal History from 1800*, Public Record Office Readers’ Guide no. 14. (Kew, 1996); David T. Hawkings, *Criminal Ancestors: A Guide to Historical Criminal Records in England and Wales* (Stroud, 1992).

she might proceed.⁵ This, of course, applied to males within the system too and the basic procedures have been usefully outlined by Clive Emsley.⁶ As I have already claimed, much of the recent gendered criminology has demonstrated that the justice system might operate differently for men and women.⁷ It would appear that a number of these differences also applied in the nineteenth century. Lucia Zedner's work on prisons illustrates one facet of this.⁸

In addition to the differential application of law outlined in the first chapter, what other discretionary treatment might a woman encounter in the Victorian justice system of York or Hull? We will assume that a woman has been caught in the act of an offence. The first act of discretion would be whether or not the victim chose to report the crime.⁹ Clearly there might be gendered implications in this decision. At times the offender may have been perceived as physically less threatening to the victim than a male offender. On other occasions she may have been seen as more threatening morally. If the crime was reported, to whom was it brought? At any stage there may have been peer-group policing in action as well as, or instead of, formal sanctions.¹⁰ Clearly in some cases employers would also intervene. Many questions, for which there is little extant evidence, are raised.

Other issues are more easily quantifiable. If the police were involved, how frequently did they bring charges? How often did the police issue informal cautions and was there a gender difference in the practice? In particular, might procedures differ where the victims were clients of prostitutes involved in theft? Furthermore, at the beginning of my period the offender may have been apprehended by the victim, by the police, or by the York or Sculcoates

⁵ See reference to Francis Place, chapter one.

⁶ Emsley, *Crime and Society*, especially, pp. 178-292.

⁷ One example from a burgeoning field of research might be: Hilary Allen, *Justice Unbalanced: Gender, Psychiatry and Judicial Decisions*, (Milton Keynes, 1987), p. xi. In her introduction Allen summarises her findings by concluding that a woman appearing before a criminal court is about twice as likely to be dealt with by psychiatric as penal means; Marilyn G. Haft, 'Women in Prison: Discriminatory Practices and Some Legal Solutions' in Susan K. Dantesman and Frank R. Scarlatti (eds.), *Women, Crime and Justice* (New York, 1980), p. 321, concludes that women may be sentenced to longer terms than men for the same crimes.

⁸ Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford, 1991), p. 300.

⁹ One of the most recent debates of nineteenth-century prosecution is to be found in Peter Langford, 'State, Law, Prosecution: The Emergence of the Modern Criminal Process 1780-1910,' Ph.D., (Warwick University, 1993).

¹⁰ For example, Jane Fowcett asked pardon from a surgeon for suggesting that he had disinterred bodies, she begs him to discontinue legal matters, *Yorkshire Gazette*, 6th April 1833.

associations for the prosecution of “Felons, Cheats &c.”¹¹ Sometimes the prosecutor hoped to frighten the offender but not to proceed to the bitter end.¹² In York the victim would be the prosecutor throughout the period. In Hull, from as early as 1840 the Police Superintendent would prosecute on behalf of ‘Regina.’ Whether it was a private or a police prosecution there might be cost implications, for example, in the form of witnesses expenses.¹³ What difference, if any, did the shift to police prosecutions make?

If the case was pursued the decision would be made as to the nature of the charge and the jurisdiction of the court. There may have been a decision as to bail. Were mothers, for example, more likely to be bailed? The indictment must be correctly made out and witnesses had to be called. Frequently offenders were discharged because there were errors in the trial procedures. Early in the century cases dealt with summarily may have been dealt with ‘in session’ or ‘out of session’ but by the 1830s the latter method was insignificant in York and Hull criminal cases. The choice of which court was often left to the prosecutor but Emsley stresses the power of the magistrate in affecting such decisions.¹⁴ We will also see that local finance was a factor. At the quarter sessions the Grand Jury would decide on whether there was a case (a Bill) to answer, and the offender would decide on her plea. After 1855 this would be decided at an earlier stage, in some cases, as it might determine the court jurisdiction. The Traverse Jury would decide on the verdict thereafter.

Whether or not an offender had counsel in the higher courts depended on the date of the trial. After 1836 felons on trial were allowed to make “full answer and defence thereto by counsel learned in the law,” and in 1867 were able to call witnesses, on recognizance, in the same way as the prosecution.¹⁵ It depended, of course, on the personal finances of the

¹¹ David Philips, ‘Good Men to Associate and Bad Men to Conspire: Associations for the Prosecution of Felons in England, 1760-1860’ in Douglas Hay and Francis Snyder (eds.), *Policing and Prosecution in Britain 1750-1850* (Oxford, 1989), pp. 113-170; Linda Haywood, ‘A Case for Reward: The City of York Association for Prosecution of Felons, Cheats etc.’ in *York Historian* 8, pp. 52-59.

¹² In the case of Elizabeth Manual the prosecutor recommended mercy because of the prisoner’s respectable family and said he hoped the experience of the trial would be enough. She was imprisoned only until the rising of the court. *Yorkshire Gazette*, 8th January 1841.

¹³ Clive Emsley, *Crime and Society*, p. 149, Emsley comments on lack of studies on the role of police prosecutors. This is an early use of police prosecutors. David Welsh suggests that superintendent Mc Manus deliberately uses the threat of prosecution to control Hull publicans in ‘The Reform of Urban Policing in Victorian England: A Study of Kingston Upon Hull from 1836-1866,’ Ph.D., (University of Hull, 1997), p. 250.

¹⁴ Clive Emsley, *Crime and Society*, p. 143; See also Clive Emsley, ‘The English Magistracy 1700-1850,’ *International Association for the History of Crime and Criminal Justice Bulletin*, vol. 15, (1992), pp. 28-38.

¹⁵ J. H. Baker, *An Introduction to English Legal History* (London, 1971), p. 279.

offender and on the nature of the offence. Certainly the York women were more frequently without counsel than with it, substantiating Emsley's claim that the accused remained at a disadvantage.¹⁶

After a decision by the jury the final act of discretion was the manner of disposal. Firstly, the offender might be acquitted. Then as now, this might be for reasons of innocence or on some technicality. If the defendant was guilty she would be sentenced either to a custodial sentence - ranging from imprisonment to 'the rising of the court,' to penal servitude, transportation, or to a fine (usually only in the petty sessions). At the magistrates' court the most common penalty was a fine; at quarter sessions, imprisonment; and at the assizes it could be a capital sentence. In chapter six I point out differences between Hull and York in sentencing practices. Imprisonment may at times have been in the House of Correction, or on other occasions in the Gaol, and may have been with or without hard labour. This varied throughout the period in York and Hull and sentences sometimes depended on the prevailing conditions, and on the available accommodation, in these institutions.¹⁷ Both assizes and quarter sessions ordered transportation - the last woman to be transported from York quarter sessions was in January 1853. That discretion was used is demonstrated in the case of Margaret Wrightson where the recorder said that had it not been for her age he would have transported her. She was 59.¹⁸

3. 1 Women, crime and the justice system in York

Despite claims that nineteenth-century York was a "relatively orderly city,"¹⁹ and notwithstanding the fact that perceptions were that crime was far worse in neighbouring cities such as Leeds, Roger Swift is doubtless correct in his assertion that "beneath the veneer of Victorian respectability, the people of York were far from being either wholly decent or orderly." Indeed there were occasions when "contemporaries displayed considerable anxiety

¹⁶ Clive Emsley, *Crime and Society*, p. 153.

¹⁷ Mary Ann Thompson and Mary Ann Walton, for example, were recommended to mercy and given a shorter sentence because both jury and recorder appeared to think there were problems in the York House of Correction, YQS, 8th January 1841.

¹⁸ *York Herald*, 3rd January 1840.

¹⁹ *Ibid.*, p. 40; *The Yorkshire Gazette*, 10th July 1830 commented that the assize calendar was lighter than for some years and this was not an untypical remark.

over the state of crime in the city.’²⁰ Inevitably there were times when law and order became a focus of discussion in the city. York had a history as a legal centre with a large County prison and a gallows and the presence of the assize courts meant the regular attendance, in the city, of high-profile members of the judiciary.²¹ The social events attendant upon the assize gatherings attracted large crowds and legal matters were common topics of debate (See figure 3.1).

However, crime was never, in the York of this period, a party political issue in the way that law and order has become in our own time. Whilst I do not wish to oversimplify the complexities behind the term ‘middle class,’ in York in this period, those involved in the justice system seem generally to have subsumed any differences for the better enforcement of law and order.²² In general the solidity of middle-class values prevailed and the protection of peers was ever a priority. Nonetheless, within a general middle and upper-class public consensus there were minor disagreements. For example, those who wished for more police emphasised lawlessness, and those who wished to applaud the work of the local magistrates (frequently close friends; members of the same religious groups or other societies; or colleagues) stressed the orderliness of York. Attitudes of the working classes are difficult to access other than through the extant remarks in trial reports.

Fiscal matters were, predictably, the most contentious. Arguments about funding were seen in all areas of the justice system in York in this period. Financial problems however, were not always locally created. For example, City archives record a disagreement between the County and the Treasury. The latter refused to pay the full amount claimed for criminal prosecutions in the years 1866-1872.²³ Minor arguments over which budget should finance particular areas of the justice system were not uncommon and were not always a result of differing political views.

²⁰ R. Swift, *Police Reform in Early Victorian York, 1835-1856*, Borthwick Paper no. 73, (York, 1988), p. 2.

²¹ Samuel Tuke’s daughter recalled, “We were sometimes allowed to go to the court with our governess, to hear the prisoners tried for lesser offences. Lord Brougham was then a pleader, and a very clever one too.” Charles Tylor (ed.), *Samuel Tuke; His Life, Work and Thoughts* (London, 1900), p. 76.

²² See Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class 1780-1850* (London, 1978), pp.18-35 for a discussion of, and problems regarding, definitions of the English middle class; See also R. J. Morris, *Class, Sect and Party: The Making of the British Middle Class, Leeds 1820-50* (Manchester, 1990).

²³ YCA, TC/YDG, 319/1. Letter 7th May 1872.

CRIES OF YORK.

Come Buy a true Kalendar.



(Castle-Gate.)

Of Prisoners in the Castle drear.
Come buy a Kalendar.
Their Crimes and names are set down here
'Tis TRUTH I do declare.

CRIES OF YORK.

15

Buy my Fine sharp Needles.



Come Maids buy my needles so Sharp,
Your fingers they'll prick to the bone
I'll give you a tune on my Harp,
Buy my needles before they are gone

END OF THE FIRST PART.

Figure 3. 1 "Come buy a True Kalendar": Kendrew, *Cries of York*
(Courtesy of York Minster Library)

However, local administration was, on occasion, responsible for problems relating to funding. In 1868 the York City Corporation owed more than £60,000. This debt was an ever present burden in the debates over local finance. Nonetheless, the majority of the dissensions do not appear to have escalated into high-profile debate in the press, one major exception being the reorganisation of police under the Municipal Corporation Act of 1835.²⁴

3. 1 a) York women and the Police

The nineteenth-century policing of York City has been effectively discussed by Roger Swift.²⁵ He concurs with Jennifer Hart's view of the national picture, that reform was gradual and that, unlike in Hull, the 'new' police were hardly distinct from the old.²⁶ He also demonstrates the parochialism of the city council and their emphasis on 'strict economy.' Swift concludes that policing in York "poses a question mark against the 'conflict view' of police history."²⁷ And he argues that the social control interpretation of borough policing is a less persuasive hypothesis in a city untouched by the Industrial Revolution. Linda Haywood's extremely thorough work on policing and parish constables in the period preceding this study adds weight to this argument, since many of the parish constables in service at the beginning of the period of this study were to continue to function. She shows how traditionally, in York, these officers appear to have been locally accepted, indeed even integrated and respected members of York's lower middle and middle classes.²⁸

How did York's policing affect women? Swift comments on the paternalism of the ancient cathedral city and the evidence uncovered in this study suggests that females certainly experienced this. Indeed I would argue that the actions of this informal middle-class 'policing' affected them far more than the actual official police force in York. Although the latter were not a separate group of outsiders but were strongly integrated with an active and well-

²⁴ Swift, *Police Reform*, p. 6.

²⁵ *Ibid.*

²⁶ See also Clive Emsley, *The English Police: A Political and Social History* (Hemel Hempstead, 1991); David Taylor, *The New Police in Nineteenth-Century England: Crime, Conflict and Control* (Manchester, 1997).

²⁷ Swift, *Police Reform*, p. 41.

²⁸ Linda Haywood, 'Aspects of Policing in the City of York 1722-1835,' M.A., (University of York, 1996).

established middle class.²⁹

Predictably this manifested itself in the policing of prostitutes. Frances Finnegan has demonstrated clearly how this operated.³⁰ Indeed one possible reason for the low level of hostility towards York's new police was because the middle classes, together with others from evangelical and Quaker philanthropic organisations, turned their joint attention to the moral policing of females. On his appointment, in 1836, Superintendent William Pardoe, for example, wrote a letter recommending improvements in which he apportioned blame for York's crime.³¹ In the following chapters I suggest that this concern did not dominate police activities and has been over-estimated, yet there is a clear agenda indicated in Pardoe's statement.

The relationship of female offenders and the York and Hull police was clearly more complex than that of many male offenders.³² If many women before York quarter sessions were prostitutes (or connected with them) what was their relationship with those who were part of the "one in six" police client rate of prostitutes?³³ Does this mean, as Finnegan suggests, that the police were more ready to ignore the women's public misdemeanours? Or might they actually have vigorously pursued cases in order to hide their own guilt? The Watch Committee records would appear to suggest, predictably, that the York force was made up of members who would take opposing positions on this.

3. 1 b) York women and the courts

If women were suspected of committing an offence, and if a victim wished to pursue the case, the offender may, after contact with the police, proceed to the York courts. Minor

²⁹Ibid. Her discussion of the constables also indicates the lack of distinct or consistent boundaries between those who might be called working class and those who might see themselves, or be perceived by others, to be middle class.

³⁰ Finnegan, *Poverty and Prostitution*.

³¹ "Scarcely an instance of crime occurs, which may not in a degree greater or less be traced to their (prostitutes) influence," wrote William Pardoe in a 'Letter to the Improvements Commission', YCA, TC/YDG, 320/1, 1836. He went on to describe the "schools of crime" provided by the 'Houses of ill-fame.'

³² David Welsh suggests that the "most pragmatic senior police officers regarded it as inescapable that police would be involved "in compromise" and "that the letter of the law would sometimes be contradicted or ignored, for example, when dealing with prostitution." 'The Reform of Urban Policing,' p. 378.

³³ Finnegan, *Poverty and Prostitution*, p. 122. Finnegan uses this figure as an average for the whole of her period, 1837-1887. She gives no indication of any changes through time in the rate. The implication is that there is little improvement.

cases were tried in the petty sessions court held in the Guildhall by the Lord Mayor and magistrates every Monday, Thursday, and Saturday,³⁴ and later in the period, as the business increased, daily. The court was held in a formal hall, in marked contrast to the many petty sessions still held in pubs.³⁵ Magistrates also met in the Castle indictment room, every Saturday, for the Ainsty petty session court.³⁶

More serious offences went before the court which is at the heart of this study, the quarter sessions. This was held at the Guildhall every quarter. However the final court destination of a suspect might be a more arbitrary result than we would expect. For example, we will see, in the following chapters, that violence might be downgraded thus affecting the technical severity of the crime and its treatment. There were also major legislative shifts of law which affected the jurisdiction of the nineteenth-century courts.³⁷ Shifting boundaries between felony and misdemeanour might be one example.³⁸

Two York cases demonstrate precisely how confused the definitions were at this period. Mary Burley, a 16 year old, appropriated 4 pounds of raisins and 2 pounds of sugar and was sentenced, in July 1830 by the magistrate Peacock, to 3 months in the House of Correction with hard labour. At the same sessions Charlotte Meek (19 years old) stole several articles of wearing apparel and on a second charge pens and a book but was sentenced to only 14 days. Neither are recorded as having a previous conviction. Stealing the raisins was officially a misdemeanour because Burley obtained the goods by “false pretences” from the shop. Technically the offence was therefore less serious, yet her sentence was more severe. Meek’s case was a felony, there were two counts, and the offender was older yet the sentence was more lenient.³⁹ Definitions and procedures were constantly shifting.

Furthermore, there was frequent confusion as to the geographical and legal boundaries of the courts. An instance of cattle stealing, for example, resulted in one newspaper comment,

³⁴ Glaisby, *A Guide to the City of York* (York, 1838), p. 66.

³⁵ The ‘Lobster House’ sessions, which covered the Heworth area, still, as the name suggests met in a public house on the Malton Road. The ‘Evelyn Slide Collection’ housed in York City library holds a slide view of this building.

³⁶ James Hunton, *York and its Vicinity; A Guide for the Resident and the Tourist* (York, 1855), p. 112.

³⁷ See Radzinowicz, *A History of English Law*; Philips, *Crime and Authority*; Emsley, *Crime and Society*. These will be considered in more detail in chapters four - six.

³⁸ See Philips, *Crime and Authority*, p. 299. for definitions.

³⁹ YQS 15th July 1830; *Yorkshire Gazette*, 17th July 1830. Meek had not suited the victim as an employee and items had been found missing after her dismissal. Interestingly she is described as “a very modest interesting girl.” Was this a factor affecting the sentence given?

“An attempt to take the case out of the jurisdiction of the city magistrates was overruled.”⁴⁰

The most serious cases were brought before the Yorkshire County assize court which were held in spring and summer, with a Winter Gaol delivery in December.⁴¹ The assizes were a subject of dissent. Population shifts meant that it was keenly felt by many in the West Riding that York was not the best place for their assizes. In July 1830 the *Yorkshire Gazette* voiced opposition to the removal of the court because of the great expenditure that had been devolved on the Castle.⁴² As Peacock has commented, the redistribution of population was severely straining the assize system’s rurally orientated framework.⁴³ During the period of this study various administrative shifts occurred in order to alleviate the problems. In 1863 York was transferred to the Midland Circuit from the Northern one. In 1864 Sheffield and Leeds were granted an assize.⁴⁴ However, virtually no female residents from the City of York appeared before the York assizes.

The court officers wielded considerable personal influence upon the lives of the women who appeared before them. York’s magistrates were most likely to be tradesmen and a number were leading evangelicals or Quakers.⁴⁵ The City was a relatively small community and frequently these individuals were involved also in the work of the penitentiary or the numerous other charities or institutions which might impinge upon the lives of York’s female offenders. Magistrates were seldom, as in Leeds, large employers. Glass manufacturer James Meek, a liberal, was probably one of the largest employers.

That there was contact between the women who came to court and the officers of the justice system was inevitable in such a small city. On the 23rd October 1835 Ann Cobb, a 25 year old servant, was charged with stealing a quantity of fabric from her employer. In respect

⁴⁰ *Yorkshire Gazette*, 3rd July 1830. The same newspaper, in the same period, discussed Brougham’s attempts to introduce more local courts, *Yorkshire Gazette*, 10th July 1830.

⁴¹ Hunton, *York and its Vicinity*, p. 111.

⁴² *Yorkshire Gazette*, 10th July 1830.

⁴³ A. E. Peacock, ‘The Creation of the West Riding Court of Assize,’ *Northern History*, vol. XXIII, (1987), pp. 119-137.

⁴⁴ *Ibid.*, p. 129.

⁴⁵ This contrasts with the those in a study of East Riding magistrates who were, predictably, from rurally based occupations or, more frequently, clergy. A. T. Balchin, ‘The Justice of the Peace and County Government in the East Riding of Yorkshire 1782-1836,’ Ph.D., (Hull, 1991), p. 49; See also Sandra Lee Cummings, ‘Evangelicals in York: The Public Activities of a Group of Leading Churchmen 1771-1865,’ M.Phil, (York, 1990), pp. 36-54; It is difficult to see York’s magistrates as either patrician or patriarchal paternalists. Emsley, ‘The English Magistracy,’ p. 36.

of her age, occupation and offence, she was not untypical of the 518 women brought before the York Quarter Sessions between 1830 and 1870. Although found guilty, she was “recommended to mercy” because of the excellent character references she received (this was also fairly common). Such testimonials often give an insight into the kinds of employment patterns and other networks which both enmeshed and supported the female offenders.⁴⁶

Ann Cobb stole from a linen draper, in whose employ she was at the time of the offence - but she also had references from a shoemaker and the landlady of a pub for whom she had worked for a year. No doubt, however, the reference that carried most weight was that from a local solicitor whose servant she had been for 6 months, 2 or 3 years prior to the court case. It is interesting that he still felt able to give her a character reference after such a period out of his employ. It is also interesting that the solicitor was clerk of the court, Joseph Munby.⁴⁷

On a different scale was the national and the local influence of a magistrate from the York area, the Rev. Sydney Smith. His Yorkshire residence pre-dates this study and his magistracy was not in York City itself. However his works were re-published frequently during the period of this study. In 1822 he had entered into the larger public debate about female prisoners when, in the *Edinburgh Review*, he had supported the use of the treadmill for females and he engaged in debate with the Lord Chancellor over the issue.⁴⁸ During his residence in the York area he hosted visitors such as Macaulay, Romilly, and Brougham. He accompanied Elizabeth Fry on a visit to Newgate. But he also applied his theories at a local level. He corresponded with Brougham on local legislative matters and he took his work as a magistrate seriously: “I am determined to strike into the (Benthamite) line of analogous punishment but what can I do about Bastardy? How can I afflict the father analogously?”⁴⁹

1835 was technically a year of significant administrative shift in the justice system in York. In theory, after this date, the new corporation could include non-conformists and non freemen which could have changed their emphases. However, in fact the Quakers had been involved in local government, in York, before this date and in practice many of the individuals

⁴⁶ A similar case was that of Mary Carter who had been the servant of Alderman Hearon. She was acquitted for lack of evidence but it was said that her “good character” was an important feature, YQS 9th April 1831.

⁴⁷ Joseph was father of Arthur Munby the author of the diaries published in Derek Hudson, (ed.), *Man of Two Worlds* (London, 1974), a book that has spoken volumes of the possible kinds of relationships between middle-class male employers and their servants. Arthur also published articles on law and order, for example, ‘Trial by Jury,’ in *St Pauls*, vol. vii, (1870-71), pp. 131-144.

⁴⁸ *Edinburgh Review* no. 36, (1822), p. 353. See chapter seven for further discussion of 1849 republication.

⁴⁹ Lady Holland, *Memoirs of the Reverend Sydney Smith* (London, 1855), p. 107.

remained the same.⁵⁰ The new Corporation became responsible for “the prosecution and maintenance of offenders.”⁵¹ It was proposed at this stage to unite the gaol and house of correction to save money. The Lord Mayor had, in the early 1830s supreme power at sessions of the peace. However, in 1835 the Recorder became sole judge of the court. The mayor was no longer a justice of the peace for life but only for the term of his office. Justices of the Peace, in 1835 became distinct from the aldermen and appointments of the Crown. Until 1836 the Sherriffs had care of the debtors and felons amongst other judicial duties. The Recorder had precedence next after the mayor, was an ex-officio justice of the peace, and sole judge at the quarter sessions. His appointment was also vested in the Crown. Charles Heneage Elsley lived in the city centre and occupied this position from 1833 to 1864.⁵²

3. 1. c) York women and the prisons

The women’s lives in this study neither began nor ended with their offences. Unfortunately, since records only exist for particular sections of the women’s lives it is a difficult task to re-construct clear biographies of the offenders. Clearly, however, the lives of many of the women in the following chapters could not but suffer a rupture when they were sent to gaol.⁵³ In this local northern study it is important to summarise the state of the prisons in York and Hull. As Zedner found in her work, the majority of sentences were short. The prison populations in York were not static but constantly changing. The fears voiced in the various chaplain and gaolers’ journals indicate, probably unrealistic, attempts to stem the flow of contact between individuals inside the prison and those outside.⁵⁴ But this proved impossible.

⁵⁰ The Quaker Benjamin Horner had been sheriff in 1830. See Sheila Wright, *Friends in York: The Dynamics of Quaker Revival 1780-1860* (Keele, 1995), p. 95. Although in 1833 Quakers had been sent away from jury service as “ineligible.” *Yorkshire Gazette*, 13th April 1833.

⁵¹ P. M. Tillott, (ed.), *The Victoria County History of the Counties of England: A History of Yorkshire; The City of York* (Oxford, 1961), subsequently referred to as Tillott, *VCH*, p. 264.

⁵² Elsley was elected with a reasonable majority from 3 candidates, *Yorkshire Courant*, 18th June 1833.

⁵³ This thesis does not focus on offenders as prisoners, for that readers should see Lucia Zedner’s rich and thorough study, *Women, Crime, and Custody in Victorian England* (Oxford, 1991). Her work was wholly based on southern records, nonetheless there are many common factors. As I have noted in the Introduction the recent prison histories have progressed to include single chapters on female offenders but there remains some distance to go in order to achieve truly gendered studies in the area.

⁵⁴ For example, 24th November and n.d. December 1836. Visiting magistrates report on the City Gaol, York Castle archives, Box 4.

As well as police cells there were four main prisons in York in the mid-nineteenth century; brief histories of which are related in the *Victoria County History*.⁵⁵ At the beginning of the nineteenth century York's prison system was perceived to be relatively well-developed compared to some English towns. In 1823 York had been one of 17 towns to be brought within the regulatory terms of the Gaol Act. Yet it will be seen that the system remained fragmented and patchy with greatly inadequate facilities. For example, a promotional town guide admitted that in 1838 Peter Prison was "disgraceful" and "a striking relic of the brutality and cruelty of earlier ages."⁵⁶ Peter prison was a small prison catering for a handful of prisoners from the Liberty of St Peter. For example, it housed the infamous incendiarist Jonathan Martin. There is no evidence of any female prisoners in this period, although women did come before the Liberty court. In 1832 it had one prisoner and it was pulled down in 1838. It demonstrates the idiosyncratic nature of the penal system in the period.

For a period there was a House of Correction at Toft Green, which was built in 1814. However, its closure in 1836 serves as an ironic indicator of comments I will make in following chapters regarding the significance of railway development. The building was sold in 1838 to the railway company to become the site of the first railway station. In 1807 the new city gaol had been completed: it had been started in 1802 and was situated on 'Baile Hill.' Most of the women in this study were sentenced to this institution. Its buildings were said to "reflect the honour, public spirit and liberality of the city."⁵⁷ However, the visiting magistrates perhaps took a different view of the inhabitants. In 1837, for example, a male prisoner kept two female visitors in his room and admitted to having "improper intercourse" with them.⁵⁸ In 1836 the gaol became the House of Correction until it was finally closed in 1868. During the adaptation of the building prisoners went to the most prominent York prison, the Castle, which had been built in 1701.

There is some symbolic inconsistency in the use of the names 'Gaol' and 'House of Correction' in the records and other ephemera which may be said to be another reflection of the fragmented and constantly changing nature of the prison system. There remains no clear indication as to why some offenders were sentenced to one institution and some to another.

⁵⁵ Tillott, *VCH*, p. 526.

⁵⁶ Glaisby, *A Guide to the City of York* p. 98.

⁵⁷ W. White, *History and Gazetteer and Directory of the West Riding of Yorkshire: With York and the City of Hull* (Sheffield, 1838), p. 549.

⁵⁸ York Castle archives, Box 4.

Occasionally members of the family appear to have been deliberately separated but there is no extant evidence as to the intentional nature of such decisions. Moves within the general prison population were frequently a result of boundary changes rather than a reflection of an alteration in crime rates.⁵⁹

York Castle was the County prison for prisoners awaiting trial, and it was the debtors prison.⁶⁰ It was not officially a long-stay convict prison and the convicted serious offenders would generally be moved to London for imprisonment or transportation. It received very few of the women prisoners named in my quarter session study. However, the prison calendars indicate that some women from assizes remained there, ostensibly awaiting transfer, for a mysteriously long time.⁶¹ The gaoler's journal mentions female offenders rather less frequently than the male inhabitants but notes significant events for women. In 1830 two female prisoners, for example, were given solitary confinement for fighting and in 1836 a woman hanged herself.⁶²

I would like to argue that the Castle's very presence had relevance to the local perceptions of crime. For example, in 1780 a wing called 'the female prison' was erected. This wing is large and suggested to me, at first sight, that there had once been a large number of women prisoners. Despite, however, the comments on its presence in local nineteenth-century guide books, and the nomenclature, there is no evidence that this wing was ever used solely for females.⁶³ Indeed there are examples of male graffiti from the wing.⁶⁴ Thus whilst there is no conclusive evidence, it is possible that, in York, there has been more, rather than less, awareness of female offenders; a perhaps disproportionate awareness.

During the early years of the century the development of the Castle ensured that the

⁵⁹ For example of the Ainsty which was returned to the West Riding. See *ibid.*, p. 137.

⁶⁰ For both county and city debtors after 1838.

⁶¹ See *Crown Calendars and Castle Gaol Deliveries*, for example. Ruth Jubb from Leeds was sentenced to transportation in 1828 and Dinah Nicholson in 1829. They are still "awaiting transportation" 27th August 1832. It is difficult to track down any men held for such a lengthy period.

⁶² York Castle archives, Box 3.

⁶³ Oral communication, York Castle Museum, Keeper of Social History.

⁶⁴ Royal Commission on Historical Monuments, *An Inventory of the Historical Monuments in the City of York*, vol.ii, *The Defences* (London, 1972), p. 81.

prisons had a high profile in the town.⁶⁵ Throughout the period there was ongoing debate in the local press as to changes in its use and of its systems. In 1853 the Castle was forced, after much debate, to provide hard labour for its inmates - the House of Correction (gaol) had long been doing so. That Peter prison and the old House of Correction did not do so serves as a further reminder of the fragmented nature of the prison system within one small city. There was, throughout the 1850s and 1860s constant criticism, in the press, of the lax discipline - this paralleled the national tightening of the prison regime under prison inspector Du Cane.⁶⁶ In 1861 the press was involved in the controversy of the 'silent' versus the 'separate' systems. The writer was, "as a Yorkshireman," objecting that the Castle had been called "a nursery of crime and misery." He points out the absurdity of abandoning the prison after an expenditure of £200,000 on alterations and he urges the Court of Gaol Session to "take the bull by the horns" and adopt the system of separate confinement.⁶⁷ Such systems were not always applied equally to male and female prisoners.⁶⁸ Lucia Zedner has stressed the differences in prison conditions for female convicts and for lesser offenders in London but this division was less marked in York.

The presence of the gallows also sustained a heightened popular interest in the prison. Executions were public until 1868. In 1856 one author reported that the morning trains to York on execution day were heavy but he lamented the lack of "cheap excursions!"⁶⁹ This feature also had gendered implications for reactions to the hanging of females were likely to be different to those generated by male executions.⁷⁰

The public had access to parts of the prison both legitimately and illegally. In 1835 some "improper females," disguised as men had access to the debtors - this was facilitated by

⁶⁵ Local newspapers also carry considerable correspondence in response to visits by Gurney and Fry. See J. J. Gurney, *Comments and Strictures on Mr Gurney's Letter Regarding York Castle Improvements*, York City reference library, Y365; See also June Rose, *Elizabeth Fry*, (London, 198).

⁶⁶ Radzinowicz and Hood, *The Emergence of Penal Policy*, p. 572. The authors refer to Du Cane as "authoritarian."

⁶⁷ *Yorkshire Gazette*, 19th October 1861.

⁶⁸ As I reported in chapter one, note 58.

⁶⁹ *Yorkshire Gazette*, 12th July 1856.

⁷⁰ V. A. C. Gatrell suggests that "The Weaker sex became a vehicle through which men registered their potency, benevolence, and chivalric sense." *The Hanging Tree: Execution and the English People 1770-1868* (Oxford, 1994), p. 336; Whilst Judith Knelman has taken a different view, "A pattern was established in the 1830s of public vilification of murderesses." *Twisting in the Wind: The Murderess and the English Press* (Toronto, 1998), p. 229. Chapter seven will demonstrate that in York there was a complex mix of these views.

the prison nurse who was a discharged prisoner. Whilst the panoptican and castellated walls were built between 1825-35 the romantic and rural myths were sustained by the tudor gothic style and by the Governor's deer roaming in the grounds. In fact part of the complex, 'the eye of York' was used for election hustings, allowing thousands of people to congregate there; furthermore debtors' visitors were allowed to wander freely in and out of the gaol.⁷¹ Visitors could walk in the Castle yard upon application at the gateway.⁷² The notion of a 'total' or 'closed' institution cannot be applied to the nineteenth-century prison within York Castle.

It is also possible that the work of three authors, connected with York Castle, created and reflected interest in criminal matters in York. Sydney Smith has already been referred to. In 1824, in a published letter to the magistrates about York Castle, he had recognised the problems for female prisoners, "We have no right, for instance, to shut a young woman up only accused for crime, with female thieves and murderers who are convicted, because there are, generally speaking very few women in the jail."⁷³ "Our economy is no excuse to her for the degradation and pollution of morals to which she has been exposed," he concludes. The possible effect on the local attitudes to crime of some of the material published about the York prisons is discussed in chapter seven.

3. 1. d) Voluntary organisations

Voluntary contributions remain a central core of the twentieth-century English and Welsh justice systems although their impact is frequently underestimated by the general public. That virtually all offenders initially appear before voluntary magistrates is the most significant example.⁷⁴ If the full impact of this is recognised, and if we also acknowledge that in the early part of the nineteenth-century prosecutions were also often handled by voluntary societies, then perhaps we can begin to imagine the full significance of unpaid work within the Victorian justice system. Yet relatively little nineteenth-century criminal justice history has prioritised

⁷¹ Ann Lister, for example, says "Walked round the castle yard with my aunt (she wanted some knitted nightcaps off the debtors)." Helena Whitbread (ed.), *I Know My Own Heart: The Diaries of Anne Lister 1791-1840* (London, 1988), p. 169.

⁷² James Hunton, *York and its Vicinity: A Guide for the Resident and the Tourist* (York, 1855), p. 113.

⁷³ Sydney Smith, *A Letter to the Committee of Magistrates for the County of York*, (York, 1812), p. 12. This was published and sold for 1s.

⁷⁴ Davies, Croall and Tyrer, *Criminal Justice: An Introduction to the Criminal Justice System in England and Wales* (London, 1995), p. 150.

the contribution of volunteers. Theses on magistrates tend to remain unpublished⁷⁵ and the other contributions tend to be popular histories of visitors such as Elizabeth Fry or work, particularly by David Philips, on prosecuting associations.

Such volunteer contributions were, of course, of significance in York and Hull. In addition to the work of the magistrates, the unpaid contributions relating to law and order tend to fall into three categories. The first includes associations that aimed at helping or reforming offenders or those deemed likely future offenders. For the most part, in York and Hull, these were directed at women and prostitution, and were the highest profile organisations. Secondly, there were societies aimed at helping policing or prosecution. Thirdly, there were prison charities which granted a range of things from coal for prisoners to a preacher for the castle.

For York, the first group has been described in detail in Finnegan's work and demonstrates admirably the shift towards moral policing of female vice. The original society, the Society for the Prevention of Vice and Profaneness, was formed to deal with "lewdness, drunkenness, profane swearing and Sabbath breaking" in 1808 (a non-gendered aim) but by the 1830s it was virtually defunct. The Penitentiary Society had been established in 1822, for the purpose of setting up a home for fallen women, although it did not acquire finances until 1843 for permanent premises. Some of this money came from the original Society for the Prevention of Vice and Profaneness (one third of their total assets). In other words women were increasingly targetted as perpetrators of vice. In 1845 all the society's funds were transferred to the Penitentiary Society. By the 1850s, in line with national interests, York's anti-crime campaigns were aimed at juveniles and females.⁷⁶ The York Penitentiary Society joined forces with the York Society for the Prevention of Youthful Depravity in 1860.⁷⁷ The Refuge, run by the Penitentiary Society, was one of five or six institutions in the city for fallen women. Nearly half of the prostitutes in Finnegan's records applied to Refuge.⁷⁸ Sheila Wright has demonstrated how the network of Quakers were key members of these associations and involved in other related organisations, founding the Vagrancy Office, for example.

⁷⁵ See Emsley, 'The English Magistracy'; John R. Knipe, 'The Justice of the Peace in Yorkshire, 1820-1914,' Ph.D., (Wisconsin, 1970); Balchin, 'The Justice of the Peace,'; T. Sweeney, 'The Extension and Practice of Summary Jurisdictions in England 1790-1860,' Ph.D., (Cambridge, 1985).

⁷⁶ As we saw in the previous chapter, for example, the provision of cheap tea rooms by the Penitentiary Society.

⁷⁷ Finnegan, *Poverty and Prostitution*, p. 167.

⁷⁸ Her work relied on the records of these societies but it was not her concern to relate them either to crime as a whole or to outline the chronological development of interest in female and juvenile crime.

Indeed Elizabeth Fry stayed with one of the committee members of the Penitentiary, Lindley Murray, on at least one of her visits.⁷⁹

The work of another voluntary society, the City of York Association for the Prosecution of Felons and Cheats, reminds us of the lack of adequate policing or prosecution system at the beginning of the century.⁸⁰ This society was the main representative of the second category of voluntary organisations. It also stresses once again the networks between professionals and lay members involved at different levels and in diverse offices in the numerous organisations. The newspaper proprietors were early members, as were many of York's Aldermen and leading citizens - some of these the magistrates before whom the offenders might eventually appear.

Finally, and much less significant, were the prison charities.⁸¹ They demonstrate the accidents of history which might provide benevolence for the women in the fragmented prison system in nineteenth-century York and highlight the dependence of prisoners on the whims of individuals.

3. 2 Women, crime and the justice system in Hull

3. 2. a) Hull women and the police

In 1833 there were 44 regular constables and 72 watchmen in Hull and Myton. By 1852 there were 152 officers and men.⁸² This represents a change from the old system of policing to the new. David Welsh has argued, in his recently produced and very thorough thesis, that the change between old and new police was, unlike that in York, very considerable. It would be inappropriate, therefore, to give anything other than the briefest summary here of the nascent force during the forty year period of this study, since Welsh offers a worthy

⁷⁹ She also mentions visiting her dentist, Benjamin Horner, Rose, *Elizabeth Fry*. p. 138. He has been referred to earlier as the first Quaker sheriff. *Memoir of the Life of Elizabeth Fry* (edited by two of her daughters) (London, 1848), p. 83.

⁸⁰ This is highlighted in Linda Haywood, 'A Case for Reward: the City of York Association for the Prosecution of Felons, Cheats &c.,' *York Historian* 8, (1988), pp. 52-59.

⁸¹ The details of the bequests can be found in Tillott, *VCH*, pp. 439.

⁸² K. J. Allison, (ed.), *The Victoria History of the Counties of England: A History of the County of York East Riding*, vol. 1, *The City of Kingston upon Hull* (Oxford, 1969) afterwards known as Allison, *VCH*, p. 379. Despite the change in structure this does not represent a large increase in actual manpower. given the population increase

critique. In chapter six I will comment further on the relation of Welsh's work to Hull's female offenders.⁸³ Work on nineteenth-century police is burgeoning rapidly and it will be interesting to juxtapose Welsh's claims that Hull's police were not typical of many other forces with forthcoming work.⁸⁴ However the development of the Hull and the York police clearly took different forms.

One contemporary commentator remarked on the "efficiency" of the Hull force.⁸⁵ However, there are many instances where a reader can assume that the women were disadvantaged along the lines that research into twentieth-century policing of females has shown.⁸⁶ And yet to assume that women were always disadvantaged does not give sufficient regard to the complexities of human relationships nor to hierarchies of power that depend on factors other than gender.⁸⁷

The Watch Committee minutes report many instances of inefficient practices and of corrupt individual officers but the presence of these reports in official documents could indicate either a particularly corrupt force or, conversely, a force keen to investigate all its shortcomings.⁸⁸ What is incontrovertible is that many of these incidents involve women. PC62 George Taylor was reported in 1836 by a Mr Symmonds for being in his house and talking to his servant girl.⁸⁹ He was "severely reprimanded" but quite what the extent of his offence was is unclear. The reports show that women were not always given fair treatment. However, in these documents we see suggestions that women offenders were not always as docile as many have liked to assume. Sergeant Barnforth was reported for allowing one Mary Massey, a

⁸³ Welsh, 'The Reform of Urban Policing.' Other histories of Hull's police include an outline in the East Riding volume of the *Victoria County History* and a somewhat uncritical volume written by a former Deputy Chief Constable: A. A. Clarke, *The Policemen of Hull: The Story of the Hull Police Force 1836-1974* (Beverley, 1992).

⁸⁴ See Institute of Historical Research, *Theses in Progress* (London, 1998).

⁸⁵ J. J. Sheahan, *A History of Kingston Upon Hull* (Beverley, 1866), p. 664.

⁸⁶ Interestingly, however, research into female offenders and their relationship with the police remains more fragmentary than that relating to other aspects of the justice system. Heidensohn argues that encounters with police tend to be "largely informal and unscripted." Frances Heidensohn, *Women and Crime* (London, second edition 1996), p. 51. This highlights the difficulty of analysing nineteenth-century contact between offender and police.

⁸⁷ See Joanne Belknap, *The Invisible Woman: Gender, Crime and Justice* (London, 1996), for an excellent overview of recent research. Belknap does not shy from presenting the inconsistencies which have occurred in this field.

⁸⁸ Certainly Constable Ticklepenny was dismissed when found to be shielding a wife charged with child cruelty, *Hull Advertiser*, 13th October 1848. There were numerous such disciplinary actions.

⁸⁹ KHRO, TCM/188, 19th August 1836.

convict, to escape when on her way to the hulks at Woolwich.⁹⁰ Furthermore these records suggest that women felt able to complain if they were ill-treated.⁹¹ The ill-treatment of women appears to have been an unacceptable feature of policing to many senior officers in the force and PC 30 Lyth was suspended for making use of “indecent and unbecoming language to a female prisoner” in the presence of a superior officer. Although insubordination could have been the greater offence in such a situation.⁹² Special provision was made for female offenders, in both York and Hull, in the form of female searchers.⁹³

3. 2 b) Hull women and the courts

In basic procedure and structure the Hull quarter sessions were very similar to York’s. They were run by the mayor and the aldermen and held in Hull’s Town Hall. As in York, and other quarter sessions, the Grand Jury would first be sworn and charged and would decide whether or not the Bills could be found. At the end of the first day the Grand Jury would return with all the Bills it had ‘found.’ Offenders whose Bills had not been found (*Ignoramus*) would be dismissed. When this task was completed, often on the second day, the ‘Traverse’ or ‘Petty’ Jury would be called and any absentees, without good cause, would be fined. Where Bills had been found those charged would be arraigned and those pleading guilty would be dealt with as quickly as possible and their witnesses released. Those who had been granted bail did not usually appear until after the other cases. The court would usually sit on Saturday mornings, as well as weekdays, and towards the end of the particular quarter session any appeals would be heard.⁹⁴

The Hull assizes had transferred to York in 1794.⁹⁵ And so the more serious cases from Hull would be sent to that city. Apart from the practical inconvenience and expense this clearly caused to offenders and witnesses alike, there is a clear sense in Hull of officials feeling

⁹⁰ KHRO, TCM/188, 23rd December 1836.

⁹¹ KHRO, TCM/194, 29th December 1859. Limited details in such cases prevent any real analysis of motives, however.

⁹² KHRO, TCM/188, 2nd January 1837.

⁹³ KHRO, TCM/188, 15 June 1836; panels of matrons were also occasionally used in the nineteenth-century. Mary Bateman’s case, discussed in chapter seven, was one instance.

⁹⁴ *Hull Advertiser*, 9th October 1840, for example, contains all the details of days and times needed by the witnesses and other interested parties. This information was published in the press for each session.

⁹⁵ Edmund Wrigglesworth, *Brown’s Illustrated Guide to Hull* (reprint Howden, 1992), p. 42.

somewhat removed from the legal hierarchies and expertise which existed in the assize towns. However, in 1837, the Recorder outlined the introduction of a new bill designed to enable quarter session recorders to 'reserve' cases in order to give them opportunity to obtain advice. In his Easter charge to the jury, the recorder bemoaned the existing lack of legal expertise at lesser courts. He noted that "When a person is tried before the judges at York. . . should any point of law arise the judge is at liberty. . . to take opinion upon the subject." He stressed, there had been no such facility in quarter sessions despite the fact that those acting as judges in such courts had less expertise.⁹⁶

There was clear resistance to sending cases to York for financial reasons and this could be played upon by defence lawyers.⁹⁷ Financial constraints do generally, however, seem to have been less of a contentious problem for the administrators of the Hull courts than they were for those in York. Two items of expenditure that York does not seem to have experienced were the regular costs of bringing overseas witnesses for trial, and the employing of a regular court interpreter.⁹⁸

We have seen that York's recorder, Elsley, was in office for much of the period of this research. Hull's officers were more mobile and served much shorter terms. Furthermore one of the features that demonstrates York's dominance in the legal context may be reflected in the resignation of one of Hull's recorders, Cresswell Cresswell.⁹⁹ He was seldom present in Hull quarter sessions because he was usually engaged on assize business in York. As a consequence his deputy routinely sat. However, in 1835 the Municipal Corporations Act forced changes on the appointments and, for example, after that date recorders were to sit alone and not with magistrates. Deputies could only sit in cases of illness and so Cresswell had to resign since he was unable to fulfil the commitment.¹⁰⁰ However, even after this date Hull, unlike York, appears to have suffered from absentee Recorders. In 1839 the recorder apologises, in his charge to the jury for the inconvenient clash of the quarter session with the Hull fair. The Recorder had been unaware of the clash "for not residing in the borough he was

⁹⁶ *Hull Advertiser*, 7th April 1837.

⁹⁷ *Hull Advertiser*, 15th December 1843. In the case of an innkeeper charged with attempted abortion on his servant, the defending barrister said that he "hoped the magistrates would not put the borough to the expense of a prosecution at York."

⁹⁸ KHRO, TCW. Between 1860 and 1882 Dr Julius Jacobsen was paid as a police court interpreter.

⁹⁹ This does appear to be his name.

¹⁰⁰ *Hull Packet*, 8th May 1835. However, on his resignation he commented that there were no better magistrates in the country, which might suggest his relationships with the locals were not too soured.

not likely to be appraised of the fact.¹⁰¹

Mathew T. Baines is an example of a number of Hull recorders whose job appears to have been a stepping stone to higher profile public duties and he gave up his job as Recorder to be an MP and in 1849 became a Poor Law Commissioner.¹⁰² However, he continued to engage in lengthy, locally published debate about criminal law reform with national figures.¹⁰³

The courts' administrators and the sentencing practices were controlled by both national and local legislation. By definition the latter varied in the two boroughs. The two most frequently used local acts were the York City Act and the Myton Act in Hull. These local Acts brought many cases related to sanitation and welfare to the quarter sessions. I have excluded discussion of these from this thesis. Most frequently these might be cases of illegally dumping night soil or weights and measures offences.¹⁰⁴ Some women were involved in such cases but not in large numbers. The York City Act is most relevant to the crime in this thesis as it was the law under which prostitution was prosecuted in York. The Myton Act in Hull did not cover this offence.¹⁰⁵

The most obvious example of the rationalising of the court system in this period was the formalization of the magistrates courts and the increasingly standardised lay out of new court buildings. In many ways the police courts in these two towns reflect the London ones studied by Jennifer Davis.¹⁰⁶ However, Davies did not particularly draw attention to the fact that it was precisely the kinds of offences that women committed frequently which had been shifted to the petty sessions by the Criminal Justice Act of 1855. Women and men were affected differently by the increasingly formalised and centralised court system. In effect, the quarter sessions dealt with more serious offences but they also became 'dumping grounds' for crimes other than minor theft. Sometimes this simply meant the crimes which had not been

¹⁰¹ *Hull Advertiser*, 11th October 1839. The recorder then went on to proclaim his own willingness to delay the session but reminded the court that all those held were technically innocent and argued that it would be difficult to justify the prolonging, even for a single day of the imprisonment of "an innocent man." There were, despite the use of the word "man," 15 women for trial at the session, almost half the number of those charged!

¹⁰² Alderman Thomas Johnson, *Sketches of Hull Celebrities* (Hull, 1875), p. 454. Baines was the Liberal son of the Leeds publisher Edward Baines.

¹⁰³ *Hull Advertiser*, 10th December 1847 carried one of a series of letters on the topic.

¹⁰⁴ 'Out of sessions' cases were also likely to be this sort of offence where they were used.

¹⁰⁵ The York City Act will be discussed in more detail in chapter five. The Myton Improvement Act was made law in 1810: 50 Geo. III, c. 41.

¹⁰⁶ Jennifer Davis, 'A Poor Man's System of Justice: The London Police Courts in the Second Half of the Nineteenth Century,' *Historical Journal*, 27, (1984), pp. 309-335.

carefully allocated, defined or re-distributed within the system because of the infrequency of their occurrence.

3. 2 c) Hull women and the prisons

In 1829 Kingston upon Hull's gaol was built at a cost of £22,000 and it was united with the old House of Correction, the original building of which was then closed.¹⁰⁷ The classic "panoptican" design was chosen and this was enclosed within a walled octagon. The average daily population in 1835 was 85.¹⁰⁸ In 1836 the prison returns commented that the prison was "wholly sufficient, secure and well adapted for the purpose intended and for the number of prisoners."¹⁰⁹ In 1835 it was announced that the silent system had been introduced in the United Gaol and House of Correction "apparently with success."¹¹⁰ Participation in hard labour, in 1836, was mainly by men and that was generally nine hours at the treadwheel. At one stage in 1836 only one woman, Harriet Gill, participated in hard labour and the other woman was employed daily in the kitchen. But at other times a number of women were put to the treadwheel for nine hours. These particular records show just how variable was the system. By 1837 the hours for women at the treadwheel were shown variously as seven and ten.¹¹¹ A comparison with York further demonstrates the differentials in the system; a woman's (and indeed man's) punishment depended very much on the locally available options. A further complication of punishment in Hull was the state of the gaol in the 1840s.¹¹² There was no similar major crisis in the York prisons.

In 1865 the mayor laid a foundation stone for a new prison on Hedon Road, also in the "panoptican" style, and until the transfer in 1870, the old gaol building was put under increasing pressure with an average daily population of 394.¹¹³ Relations between the townspeople and the gaol committee were sometimes tense reflecting both fear of offenders

¹⁰⁷ Hull Advertiser, 19th June 1829.

¹⁰⁸ Allison, *VCH*, p. 438.

¹⁰⁹ As required by 4 Geo. IV, c. 64. s.14.

¹¹⁰ *Hull Advertiser*, 17th July 1835.

¹¹¹ KHRO, TCGL, 1/1-11.

¹¹² The scandal in Hull Gaol is discussed in more detail in chapter six.

¹¹³ KHRO, TCGL, 1/1-11; In 1866 Sheahan wrote, "For several years past this gaol has been found insufficient." Sheahan, *History*, p. 664.

and matters of security. In 1841, for example, the gaol committee was attacked for not properly opening up to tender some work requiring brick layers; only selected potential suppliers had been approached.¹¹⁴ Despite the 1840s' newspaper coverage of the conflict between the Inspector of Prisons and governor of the gaol, the prisons in Hull do not appear to have demanded the level of attention that the development of the (centrally situated) York Castle complex did.

3. 2 d) Voluntary organisations

Hull's voluntary organisations were essentially similar to York's. However some reference to them is important since they contrast with those in the smaller borough in that they do not seem to have represented quite the same middle-class hegemony as found in York.¹¹⁵ The Sculcoates Association for the Prosecution of Felons had been formed in 1820.¹¹⁶ However, in 1829 it had prosecuted only 68 prisoners and its funds were reported to be "nearly exhausted."¹¹⁷ Despite this it clearly staggered on and had 39 members in 1847 and was still active in 1848. The association was much concerned with protecting animals, and also warehouse and dock property. It does not appear to have prosecuted any women although the evidence does not allow for a completely conclusive search.¹¹⁸

In chapter six I will outline, in more detail, some of the problems of the Hull charity work amongst prostitutes. However, Hull's nature as a seaport meant that it was not only the women, as it was in York, who were seen to be in need of charity work. Although I argue that prostitute behaviour in Hull was ignored to a large extent, some individuals clearly saw the

¹¹⁴ *Hull Advertiser*, 8th October 1841. A member of the gaol committee had responded that only workers who could be trusted in the gaol could be used. One Mr Tall replied such a rationale threw an "imputation upon the rest of the bricklayers in the town" and that the committee member responsible should be ashamed.

¹¹⁵ Hegemony is perhaps too strong a label for there were, of course, dissensions in York. For example, middle-class individuals can be seen to have been in disagreement over the management of the Bootham Park Hospital and the Dispensary in the period. Indeed Katherine Webb claims the Dispensary dispute reflected "the bitterness and partisan nature of local politics in the 1840s" and the notorious "Railway King," Katherine Webb, "*One of the Most useful Charities in the City*": *York Dispensary 1788-1988* Borthwick Paper no. 74 (York, 1988), p.17. However the word may perhaps be used, with qualification, in a relative sense here.

¹¹⁶ It was certainly not the only association still active in the 1840s. The Yarborough Association was still offering rewards, *Hull Advertiser*, 19th November 1847.

¹¹⁷ *Hull Advertiser*, 16th January 1829.

¹¹⁸ KHRO, DSS. What is also interesting is that this small organisation used male and female pronouns throughout its literature. I have argued elsewhere in this thesis, that this was not typical practice of the period.

need to protect male sailors from brothels and wished to establish a home for them.¹¹⁹ Nonetheless evidence of a powerful hold by the middle classes on the street life of Hull is much less apparent than in York. It is clear from Finnegan's work that there was an enormous effort in York to control female morality. Such campaigns were nationally popular but it is possible to argue that York was particularly effective in operating their campaign because of the powerful family networks of the Quakers and Evangelicals. The closely knit middle-class network made the social control of the women tighter than in the larger, more-fragmented, port of Hull.

¹¹⁹ E. Gillett and K. A. MacMahon, *A History of Hull* (Hull, 1989), p. 324.

Chapter 4

“LITTLE SPECKS OF DAILY TROUBLE”: WOMEN’S OFFENCES AT THE YORK QUARTER SESSION COURT, 1830-1870.

Minor forms of theft, drunkenness and prostitution constituted the majority of crimes by females which were recorded in nineteenth-century English court records. The pattern in York was no exception.¹ Predictably, almost 80% of the thefts committed by the women of this study were of small amounts of money, food, household goods or clothing which were taken as the women went about their daily routines. The specific focus of this chapter will be an investigation of such crimes of theft by females; that is of offences which were examined within the York quarter sessions between 1830 and 1870. A number of ‘criminogenic triggers’, such as socio-economic factors, which bore upon the offences will be investigated and some other types of crime will be discussed as a wider context to the offences of theft.²

By analysing the York quarter session court records this study, by definition, prioritises discussion of what might be termed ‘mid-range’ crime. It was less sensational crime than the murder cases tried by the assizes and was perhaps more mundane crime than the prostitution offences brought before the magistrates at petty sessions. In particular, it is my wish to analyse more fully the offences of those women who were not, in the first instance, accused of sexually related ‘crimes.’ In much of the previous research into nineteenth-century offending females the concentration has been upon offences which were overtly linked to morality and, in particular, to prostitution. Such lawbreaking activity has frequently been viewed in isolation from other female criminal activities. Clearly, a distinct divide between the women who committed the different types of offences was not always evident and yet the more ordinary

¹ This thesis deals with the offences that have proceeded as far, in the justice system, as the court records. There were clearly many crimes which did not and I have noted in my Introduction the caveats which must be regarded before any attempt is made to discuss the ‘criminality’ of a period. I have also referred to discussions of the lack of reliability of criminal records by other criminal historians. V. Gatrell and T. B. Hadden, ‘Criminal Statistics and their Interpretation’, in E. A. Wrigley, *Nineteenth-Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data* (Cambridge, 1972) remains the clearest summary of the problems which might accompany the extant nineteenth-century sources for criminal history.

² The term ‘theft’ is not completely synonymous with the legal definition ‘larceny’. The former expression has been used more frequently in this chapter (and, for example in Figure 2) since not all thefts were technically larceny; for example, ‘misdemeanours with intent to steal’. Fuller definitions of larceny have been given in chapter three.

crime of theft is one of the areas which has been most neglected.³ Conversely, however, the simple connection between types of crime, and in particular that of prostitution, sometimes assumed by the Victorians, as the start of a slippery slope to the gallows, cannot necessarily be established.⁴

The structures and practices of the criminal justice system reflected, and helped shape and create, the cultures and the lifestyles which have been outlined in the previous two chapters. Some of the ways in which these operated in relation to the York offenders will be considered. Changing perceptions of crime impinged on notions of masculinity and femininity, and we will see this reflected in the discussion of the lack of violent offences in York. Conversely, however, perceptions of appropriately gendered behaviour were, on occasion, responsible for legal definitions which then determined further legal change. Some of these reciprocal mechanisms will be seen in operation in this chapter and can also be related back to the discussion of administrative shifts and crime rates in chapter three.

Although social and economic shifts have been outlined in chapter two their effect on criminality, then as now, is difficult to particularise. Much prior scholarship has been concerned with these issues. For example, Gatrell has suggested clear links between nineteenth-century crime and trade cycles⁵ and others have noted the effect of war⁶. I will consider some of these arguments in relation to women offenders in York. I will ask whether

³ M. M. Feeley and D. L. Little, 'The Vanishing Female: The Decline of Women in the Criminal Process, 1687-1912', *Law and Society Review*, vol. 25, no. 4 (1991), p. 723. This article is one of the few to use nineteenth-century female larceny as a basis. The authors stress that interest in the history of female crime has, in general, been extremely limited and, they suggest, the "few exceptions have done little more than puzzle over the high rates of female criminality." Even some of the most recent (and sympathetic) work which discusses female offenders has frequently concentrated, for example, its debate of adolescent crime on male crimes because "men dominated the criminal record." See Peter King, *Crime, Justice and Discretion: Law and Society in Essex and South-Eastern England 1740-1820* (forthcoming) (chapter 6, p. 7. With thanks to Peter King for an early draft). However, I have elsewhere acknowledged Peter King's interesting contribution to the study of women offenders in his work on life-cycles; Conversely, the most recent publications on Victorian prostitution do not, for example, mention 'theft' in their indexes despite the strong links clearly demonstrated and assumed elsewhere. Trevor Fisher, *Prostitution and the Victorians* (Stroud, 1997); Linda Mahood, *The Magdalenes: Prostitution in the Nineteenth Century* (London, 1990); Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge, 1980). The notable exception is Frances Finnegan, *Poverty and Prostitution: A Study of Victorian Prostitutes in York* (Cambridge, 1979). Finnegan, in her case histories, demonstrates that theft was a part of many prostitutes' lives.

⁴ Nor must it be assumed that prostitution was perceived as the only, or even the main, starting point for the slippery slope: theft was seen to be one of the main problems. In one article which mapped out the "preparatory gradations of vice" which befitted many for "the terrible tragedy of the scaffold" prostitution was unmentioned yet the "petty pilferer" was a major player. *York Courant*, 10th March 1832.

⁵ Gatrell and Hadden, 'Criminal Statistics', p 368.

⁶ Clive Emsley, *Crime and Society in England 1750-1900* (London, 1996), p. 28.

particular employment patterns of women in York affected crime types. Indeed, the constantly shifting nature of criminal definition might best be demonstrated at the interface between the socio-economic changes in nineteenth-century York, the raw material of individual human nature, and the actions of the Victorian administrators.⁷ However, since such intersections frequently seem to be incalculable in the twentieth century, I have therefore assumed (along with many other criminal historians) that it is similarly unlikely that there are simple solutions for the causes of crimes in the nineteenth century. Nonetheless, examining the relationships between the quantitative, the cultural, the official and the 'personal' is of itself beneficial to the available body of historical knowledge about crime in this period.⁸ The 'personal' will be more closely focussed upon in chapter five.

The major sources from which offence details are derived in this chapter are the York quarter sessions minutes, the criminal registers, the gaol calendars and the local newspapers covering the period 1830-1870. Appendix one outlines the use of these, and other, sources within the selected database. Additional materials such as York prison records, Watch Committee material, Poor Law records and other similar local materials have been used as background to the lives of the women in the study but these aspects will be more fully analysed in the next chapter. In order to contextualise the crimes I have also included discussion of material from the magistrates and the assize courts although there are major problems which prohibit the direct comparisons of figures between the different jurisdictions. Nonetheless, the implications of the juxtapositions will be discussed. As in any study of women, the question about the extent to which male data should be utilised is important. In order that the focus of this work may remain upon females statistical data in this thesis pertains essentially to women. Limited data relating to males is used for comparative purposes only. Firstly, however, I will give some general indication of the female crime rate in nineteenth-century York and relate it to the national picture.

⁷ Michael Zander, *A Matter of Justice; The Legal System in Ferment* (London, 1988), p.264. In the York case that is both local participants and those who might currently be called "the faceless men in Whitehall"

⁸ The combination of V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford, 1994), with some of his quantitative work footnoted elsewhere in this chapter might be an example of this. Martin J. Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830-1914* (Cambridge, 1990), might also be an example. Nothing, as yet, has been published which contributes, in the same significant way, to the scholarship of women's nineteenth-century criminal history.

4. 1 Rates of crime in York

Nineteenth-century crime rates were intimately dependent upon the approaches and attitudes of the individuals operating the justice system. Shifting legal definitions and varying procedures differentially affected the ways in which offences were quantified in York and Hull, as in every other locality. It is not tenable to argue that legislation was created, or that the justice system operated in a social vacuum, or even that they were imposed from some external, impersonal source. Thus in order to emphasise the strong local and personal influences, the discussion of the rates of crime in York follows on from the discussion of the structure of the justice system and of the officials who operated it.

Analysis of the data presented can neither offer conclusive proof of rising, nor falling, crime rates nor of an increasingly effective justice system, since numerous variables affected the figures. An increase in the rate of females before the quarter sessions may have resulted, not only from a true percentage rise in female crime, but from an influx of females to the town, improved policing, changes in policing policy, differences in methods of prosecution, or any one of a number of features outlined in the previous chapter.⁹

In the York quarter sessions 518 women were charged compared with 1,523 women in the Hull quarter sessions.¹⁰ The most obvious reason for this near threefold difference lies in the population differential between the two boroughs.¹¹ Clearly any consideration of crime rates must allow for such demographic influences. In the historical study of crime, population figures seem seldom to have been fully adjusted for the male/female ratios of population. As others have pointed out, the exact nineteenth-century methods of enumeration of the population involved in crime are not clear¹² and there is no indication that they were adjusted for the gender balance of the population in general. Twentieth-century criminal historians have not usually made any comment upon the effect of gender imbalance.¹³

⁹ See also Eric A. Johnson (ed.), 'Quantification and Criminal Justice History in International Perspective,' (Special Issue), *Historical Social Research* vol. 15, 4, (1990).

¹⁰ These numbers cannot be definitive since there are small variations between the various types of court record; for example, between the Criminal Registers, the quarter session minutes and the gaol calenders of prisoners.

¹¹ Population figures have been given in chapter two.

¹² Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford, 1991), p. 20.

¹³ V. A. C. Gatrell, 'The Decline of Theft and Violence in Victorian and Edwardian England,' in V. A. C. Gatrell *et al.* (eds.), *Crime and the Law* (London, 1980), p. 239. Using committal figures per 100,000 population, for example, does appear to allow for an imbalance of gender; In the York census abstracts for 1831 the female population is given as 15,443 and the male as 13,399 (total 28,842). This is a 15.26% difference in the ratio. These

4. 1 a) York petty session rates

A significantly greater proportion of female offenders were convicted in the nineteenth-century York petty sessions when compared with twentieth-century magistrates courts¹⁴ (Figure 4. 1). In 1866 there were 312 male and 136 female convictions. By this time numbers prosecuted at quarter sessions were low and so this number represents the majority of the females prosecuted in the city. In this year 43% of the offences were prostitution and, in this later period, the proportion of these charges had risen significantly and ranged from a quarter, to almost a half, of all petty female offences. An increase in charges for this offence is one of the main reasons for the rise in the female proportion of summary convictions which rose from 18% in 1840 to 34% in 1860 (Figure 4. 2). Nationally, female summary convictions remained fairly constant at around 23% (Figure 4. 3). It seems likely that a particularly high level of ‘moral policing’ of women helped inflate York’s female crime figures.

The rise was also partially attributable to the Criminal Justice Act of 1855 and to the Juvenile Acts of 1847 and 1850 which shifted particular types of larceny to the jurisdiction of the magistrates.¹⁵ However, although the percentage of women offenders convicted at York petty sessions almost doubled in this forty year period, there was no single dramatic increase of crimes at petty sessions which would correlate fully with any specific legislation. Furthermore, if administrative shifts alone had been the reason for the increase then one might expect a similar picture to have occurred nationally. Indeed in York there was not even a moderate rise, in 1855, to equate with that seen on the national graph for males (see Figure 4.3). Prior to this legislation there had already been a steady growth in the number of York’s female petty session convictions (see Figure 4.1).

figures are for the city and Ainsty and a number of boundary changes described in chapter two affected the catchment areas for the courts in this period. Furthermore this high female proportion is not necessarily typical of other regions. (See J Langton and R J Morris, (eds.), *Atlas of Industrializing Britain 1780-1914* (London, 1986), p. 16.). It is impossible, therefore, given the small sample, the boundary shifts, the unreliable and the unavailable figures for York’s population to re-adjust crime figures for population imbalance. However, I suggest that future large scale studies, where the arguments around crime rates depend more critically on population rates might need at least to appraise this dimension.

¹⁴ Frances Heidensohn, *Women and Crime* (London, second edition, 1996), p. 6.

¹⁵ David Philips, *Crime and Authority in Victorian England: The Black Country 1835-1860* (London, 1977), p. 22.

Summary Convictions:York 1840-1865

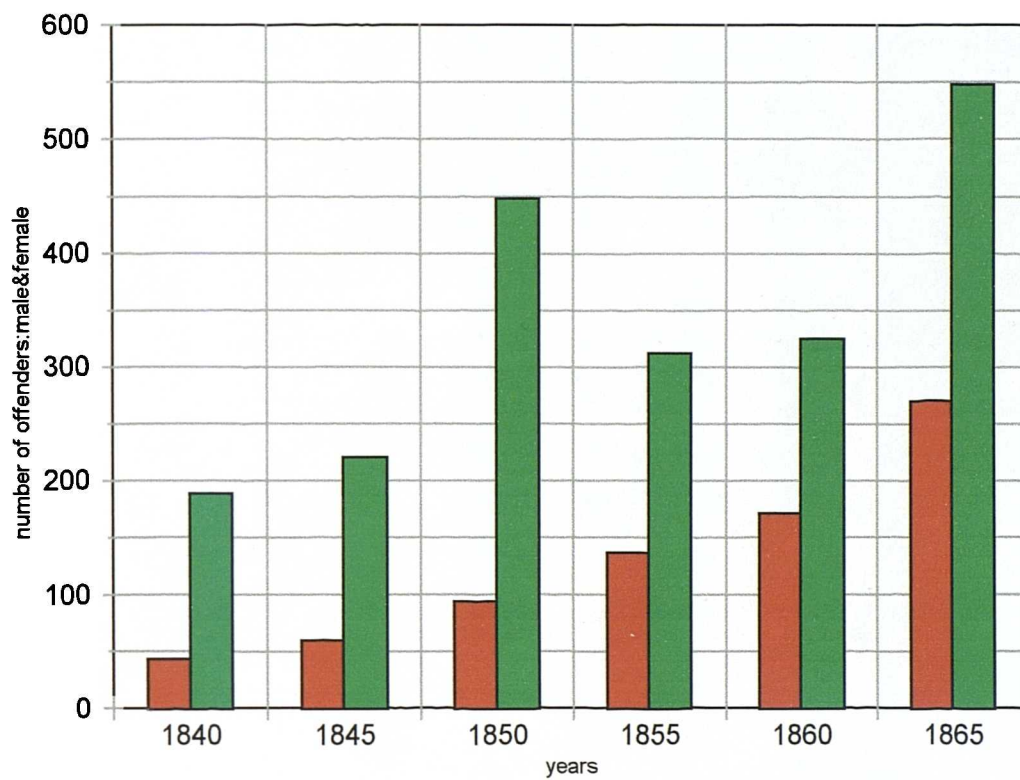


Fig.4.1

female male

Summary Convictions: York 1840-1865

Percentage female offenders

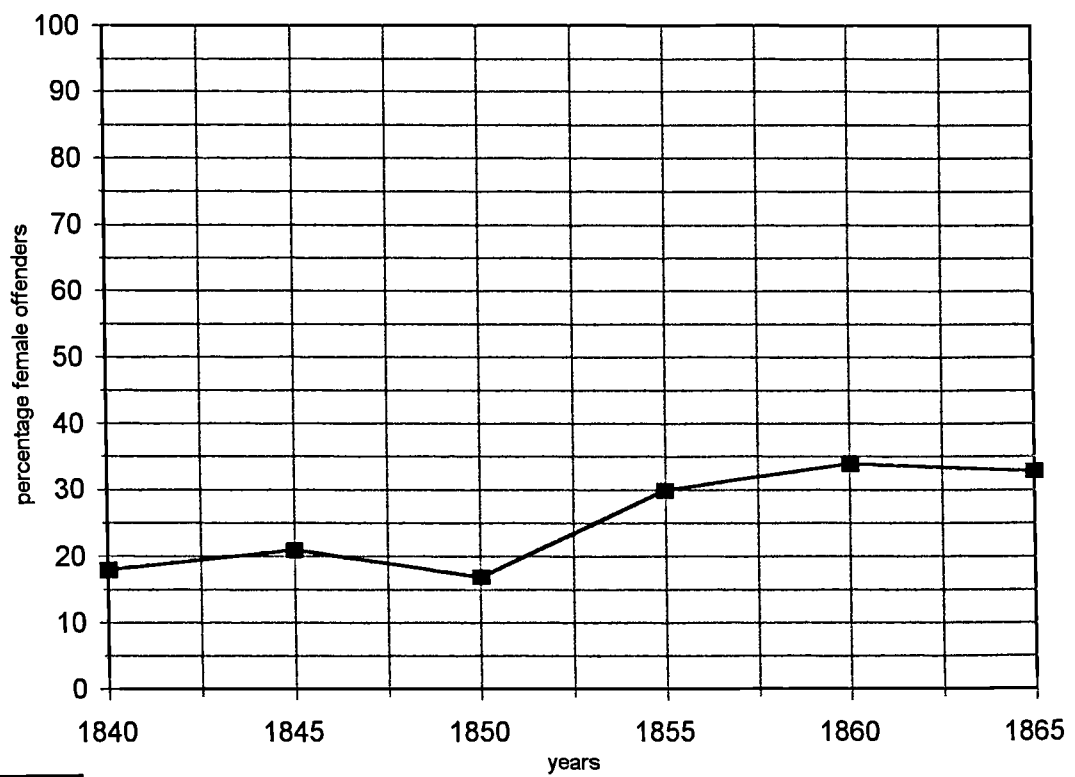


Fig. 4.2

Summary Convictions:National 1854-1870

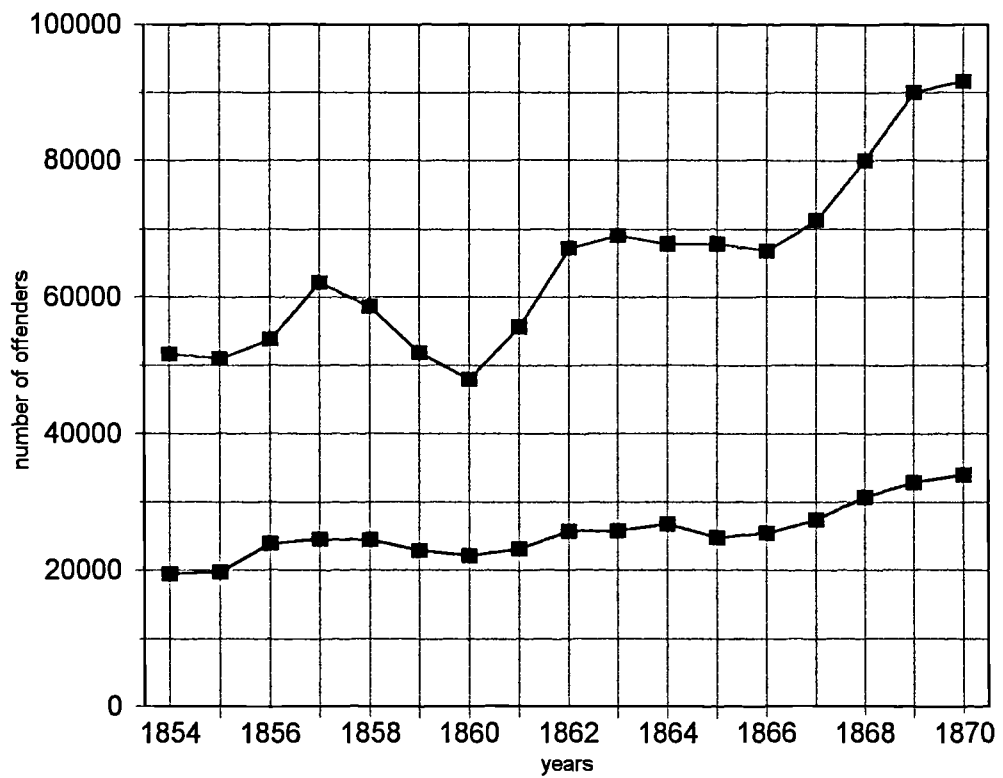


Fig.4.3

—■— female —■— male

Thus, we must conclude that the steady rise in women at York petty sessions cannot wholly be ascribed to a particular administrative shift from quarter sessions and is likely to reflect the policing of female morals in the form of the prostitution convictions.

What is also of interest is that levels of female convictions in York petty sessions rose steadily whereas male figures fluctuated more; peaking in 1850, falling, then rising again in 1865. However, in the quarter sessions the male crimes peaked in 1850, shortly after the juvenile legislation but the female crimes did not peak until 1855. Thus despite the clear move of a number of female juveniles from quarter sessions it would appear that there was an actual rise in adult female offences in the quarter sessions which created this increase.

In York, it is possible that the difference between the judgements and procedures of the petty and quarter session courts may actually have been closer to their intended purpose than in towns where local geographical access was only to one type of court.¹⁶ There is a very clear divide in the York courts between the types of cases in the two lower courts. I have mentioned, in the preceding chapter, the possibility that some Hull cases were tried locally and summarily where there was room for discretion.¹⁷ Women (and men) in York may have been more readily sent to the easily accessible quarter sessions than might have been the case in a town without its own quarter sessions. There is little extant evidence relating to these decisions but a lack of reported discussion may also indicate that the decisions were relatively easily made.

For the individuals receiving sentences the main practical difference would have been that at petty sessions a fine was more likely than incarceration. If the latter is viewed as a harsher sentence then it could be argued that some of York's women (and men) may have been more severely sentenced than if they had offended in a town with no quarter session. It is precisely such "local idiosyncrasies," which Gatrell argued would be ironed out by long term trends, that were of great significance in the lives of nineteenth-century offenders. In this analysis it is these differences that are of particular interest.

¹⁶ An Act of 1842, (5&6 Vict., c. 38) had confirmed the limits of jurisdiction. See Philips, *Crime and Authority*, p. 298.

¹⁷ T Sweeney, 'The Extension and Practice of Summary Jurisdiction in England, c.1790-1860', D. Phil (Cambridge, 1985), p. 5. Sweeney maintains that "Magistrates could, and frequently did, 'bend the law' to allow them to convict summarily when on technical grounds the offence was indictable."

4.1 b) York assize court rates

No city of York women were tried before assizes between 1830-1870.¹⁸ As Baker has suggested, from time to time some less serious crime was still divided between assizes and quarter sessions “as efficiency and convenience demanded.”¹⁹ A glance at the York assize calendars indicates this was still the case for some Yorkshire women. Maria Moseley was charged in the Summer Assizes 1830 with having stolen from the person 1 watch and 7/6d. There are no extant case details which suggest why she was not dealt with in the quarter sessions as were many similar crimes. In 1842 Elizabeth Hartley, from Knaresborough, was charged at the assizes with keeping a disorderly house.²⁰ York City quarter sessions frequently dealt with cases such as these and it appears that only the most serious cases from York would have been tried at the assizes. Consequently it would also seem that no such serious crime was committed (or rather detected?) by women of the city. Very few York males were charged at the assizes and so the proportion of female crime remains unaffected.

4.1 c) York quarter session rates

Between January 1830 and October 1869, 518 cases involving women were brought before the York quarter sessions (Figure 4. 4). The number of female convictions in these cases varied annually from a minimum of 3 in 1864, 1865 and 1867 to a maximum of 29 in 1855. However, by the 1860's the very small overall numbers at quarter sessions would make it difficult to make a statistically valid quantitative assessment of changing factors throughout this forty year period. Although some discussion-triggers relating to change through time are revealed by at least attempting such an exercise, it is difficult to see any particular causal link behind the fluctuations in these ‘real’ numbers. Furthermore raised levels still represent typical types of thefts, with no particular rise in assaults or of other clusters of specific crime types.

¹⁸ Women from Acomb and Heslington appeared at assizes but they were technically from the West and East Ridings. In 1844 Sarah Robinson and Mary Cowl from Heworth were charged with two males for breaking and entering: these women were not from a parish within the City boundary but are the only local women I have traced.

¹⁹ J H Baker, ‘Criminal Courts and Procedure at Common Law 1550-1800’, in J. S. Cockburn, (ed.) *Crime in England 1550-1800* (London, 1977), p. 28; Moseley was from Norton and it may have been as easy to send her to York Assizes as to the East Riding quarter sessions.

²⁰ Clerk of Assize Records, Ass 1, 41. Minute book 20. (PRO)

York Quarter Sessions 1830-1869

Offenders by gender

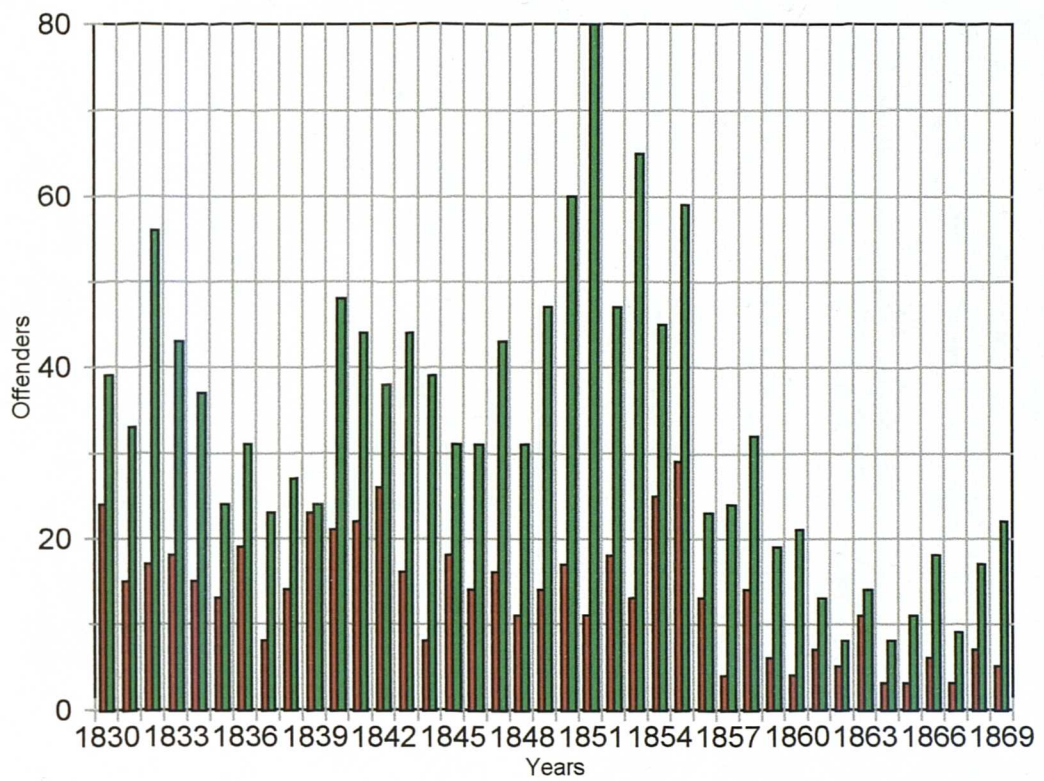


Fig.4.4

female male

In all years the male crime rate was substantially greater; for example, in 1864, 8 males were convicted and in 1855, 59 males. The peak male year was 1851 when 80 men were charged (see figure 4. 4). The proportion of York female offenders to male starts relatively high, at 38% and climbs to its overall peak at 49% in 1839 (Figure 4. 5). After a fall, and whilst the rate declines and the total numbers are small, the percentage proportion then peaks again at 44% in 1863. Despite the differences and even allowing for a small sample size, there is no escaping from the conclusion that, occasionally, in the Victorian city of York, women were in and out of the quarter session court in almost the same numbers as men.

What, if anything, can an overall view of the case load of the York court suggest? If the figures of Lucia Zedner, Rachel Short, and also of the twentieth century, are born in mind, the female proportion of York crimes at quarter sessions is, as I have already discussed, relatively high. Short, in a discussion of overall crime rates in a slightly earlier period, finds that, “as in contemporary society women accounted for less than one quarter of all offenders, and often markedly less.”²¹ Lucia Zedner concludes, “In Victorian England women made up a far larger proportion of those known to be involved in crime than they do today.” She continues, “During the second half of the nineteenth century over a fifth of those convicted of crime were women - today they make up only an eighth.”²² Figure 4. 6 shows that, relative to Hull, York’s high incidence is particularly marked in the first two decades of the period under study.²³

In York, the mean percentage of female offenders, between 1830-1869, was 29% and can be seen to decline over the period under discussion from 1849 to 1870 (see Figure 4. 5). It can be seen in Figure 4.5 that the ‘best fit line,’ showing females as a percentage of total offenders, decreases from 34% to 25% at the end of the period under discussion.²⁴

²¹ Rachel Short, ‘Female Criminality 1780-1830,’ M. Litt., (Oxford, 1990), p. 1.

²² Lucia Zedner, *Women, Crime and Custody*, p. 1.

²³ Reasons for this will be discussed in chapter 6.

²⁴ ‘best fit line’ is taken to mean the line which passes as closely to all data points as is possible. For methodology see Roderick Floud, *An Introduction to Quantitative Methods for Historians* (London, 1973), p. 100.

York Quarter Sessions 1830-1869

Percentage female offenders

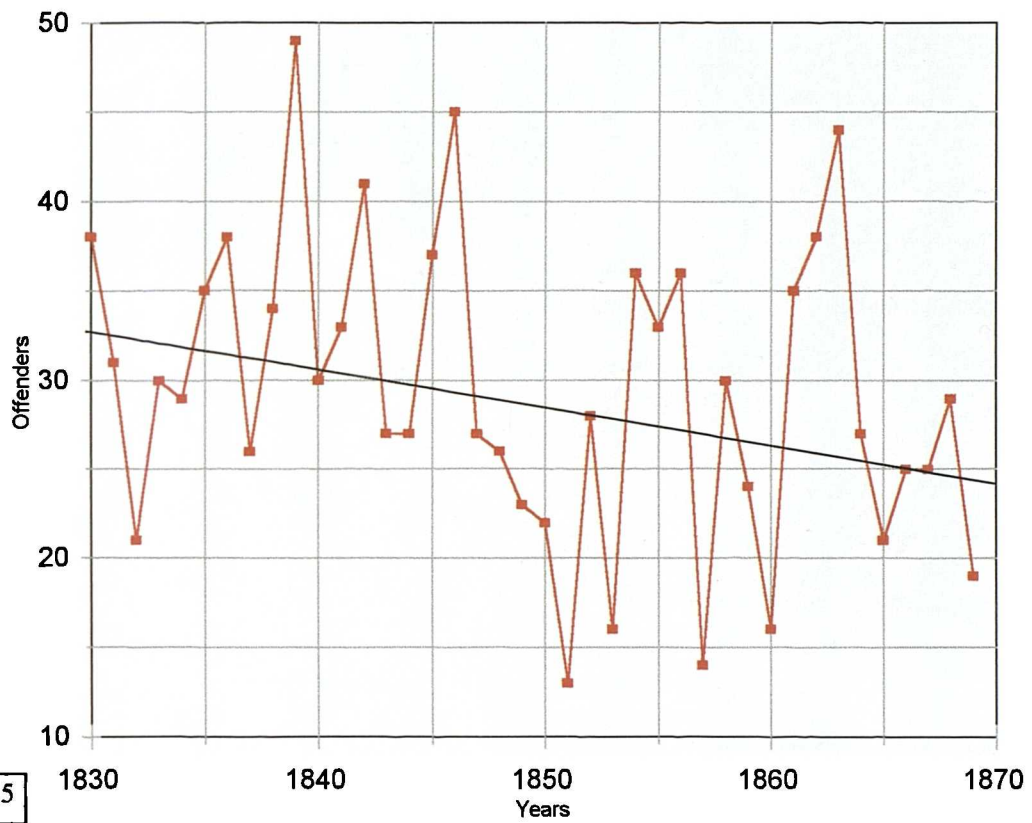


Fig 4.5

York & Hull Quarter Sessions: 1830-1869

Percentage female offenders by decade

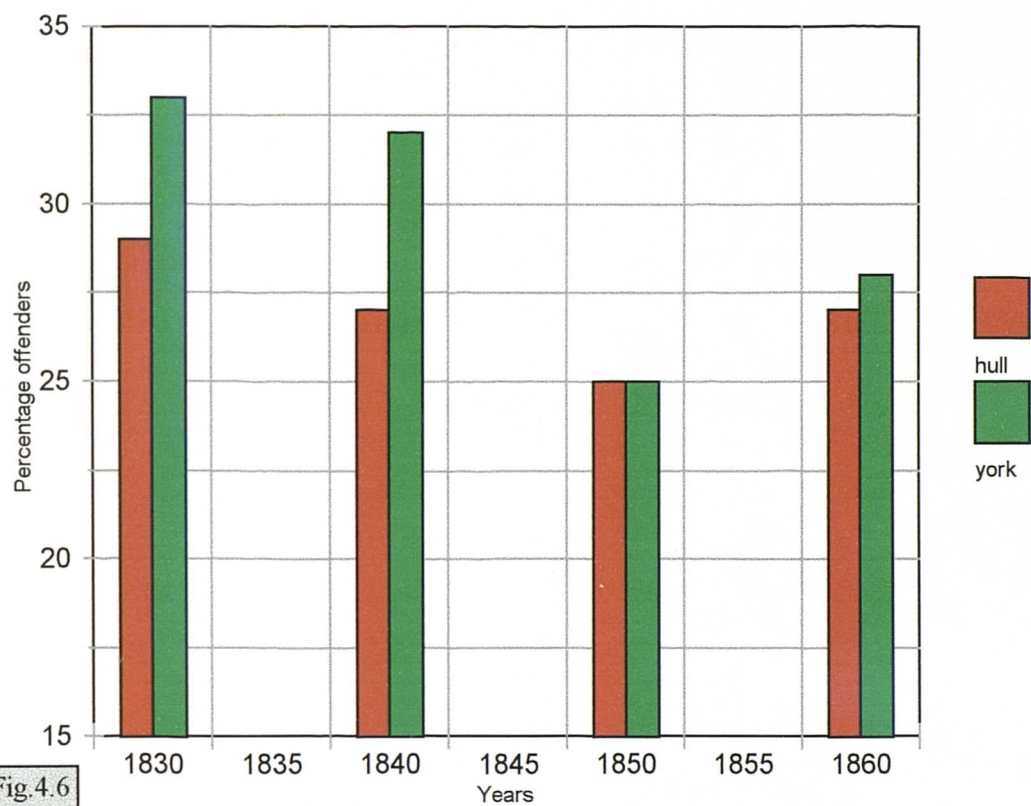


Fig. 4.6

Women as a proportion of all York quarter session offenders were at the lowest in 1851(13%),²⁵ and at their highest in 1839 (49%) This was the only year when male and female crimes were virtually equal in number. Thus the most obvious trend, in this small sample, is of a very gentle decline. If women were being increasingly targeted for sexual crimes and, therefore perhaps under greater scrutiny in York, any fall in rates might be surprising. Nonetheless it is clear that, in York, as the petty session female **convictions** rose the quarter session female **charges** fell. Furthermore, where women had been moved to petty sessions they would not be reflected in national figures based on indictable crimes.

Feeley has asked, of a wider set of studies, whether the decrease in female quarter session offences was an 'actual' decrease or a decline that was the result of administrative change?²⁶ Clearly York's female quarter session rates were greatly affected by the legislation that was enacted in 1847, 1850 & 1855. Despite my claim that no sudden or dramatic fall occurred, the figures, portrayed by Figure 4. 4, demonstrate clearly that there was, despite temporary blips, a noticeable reduction in annual cases after 1855. The average number of females at quarter sessions per annum before 1855 was 17 (41% of the total) and 6 thereafter (35%).²⁷ There would, however, appear to have been a gentle decline from the beginning of the period under examination. After 1855 it simply becomes more marked and the legislation of the late 1840s and early 1850s cannot be isolated as the only reason for decline.

The decrease brought about by the 1855 Act was not, of course, confined to females. In the ten years before 1855 the average number of males brought before the York quarter sessions per year was 48; this fell to 17.3 in the ten years after the Act. Indeed there was a temporary period of increase in the proportion of female to male cases after 1860. This appears to have been caused by a more marked decline in male cases after 1858 thus resulting in a raised short-term female percentage of overall crimes. But clearly, despite the fluctuations, male figures were also reduced by the 1855 Act (see Figure 4. 4). There had been a rise in male quarter session cases in the 1840s but for the period as a whole the trend was

²⁵ A year with a particularly high rate of male offences.

²⁶ Feeley and Little, 'The Vanishing Female,' 'actual' is used as a comparative term here and does not indicate 'real' levels of crime.

²⁷ Or to view it in decades: the female annual average number of cases was 15.7 in the ten years preceding the Act and 7 in the ten year period after.

downwards.²⁸ Once again these figures support Feeley and Little's picture of a decline and they demonstrate the considerable influence of the legislative shifts, whilst supporting earlier scholars' claims that they are not the whole story.

The gendered effects of the 1855 Act remain confused and unclear and other regional studies, on a larger scale, are needed to tease out any marked patterns in this respect. In theory, for example, the 1855 Act shifted the kinds of crime more generally perceived to be committed by women. Yet in reality in York, many men's offences were also shifted to the lesser court.²⁹ If we look more closely at the figures for the period immediately after the Act there is a less than clear picture about what was happening. In January 1856, for example, no women were taken to petty sessions for the type of minor theft that would previously have been tried at quarter sessions (9 men were). During the remainder of the year, 21 women were convicted of offences that would probably have taken them to quarter session the previous year. However, with such small figures this fluctuation might easily relate to other factors, or, indeed, to chance.

In nineteenth-century York, perceptions were that there was not a reduction in crime after 1855. The Recorder pointed this out in a charge to the jury.³⁰ However, obfuscation occurs because the perceptions of the Recorders did not always tally with the trends demonstrated by the figures. In 1853, he had commented upon the "unprecedented quantity of business", and indeed numbers had been higher than in the previous year.³¹ However, in 1851 the numbers had been considerably higher still. Even the short-term recollections of the Recorder seem at times to be based on perceptions biased by recent experience in the West Riding, rather than on accurate appraisal of previous York court figures.

In fact, these early years of the 1850's seem to be a short-term phase where the York court officers were actually afraid of a burgeoning crime rate, unlike the borough in the rest

²⁸ This would entirely substantiate the work of Gatrell and Hadden and Feeley and Little in their conclusions that there was a decrease of both male and female indictable crime during the period. Gatrell, 'The Decline of Theft and Violence,'; Feeley and Little, 'The Vanishing Female.'

²⁹ This should be borne in mind in the discussion of the 'value' of stolen goods later in the chapter. It might support the notion that men's thefts were not often of goods of much higher value than those taken by women

³⁰ *Yorkshire Gazette*, 12th January 1856. He stressed that lower numbers in the quarter session, in 1856, did not mean a reduction in crime. He concluded that the 'missing' offenders had simply been summarily disposed of and that "there was little, if any, actual diminution in crime."

³¹ *Yorkshire Gazette*, 16th April 1853.

of the period.³² The Recorder suggested that the maintenance of law and order was becoming more difficult as the town grew.³³ This may well have been true, but it is interesting to note a clear example of justice system officials manipulating the discourse, however inadvertently, in a way which is generally attributed to the lay public. Distorted and conflicting views of the extent of criminal activity are, of course, integral to any study of crime figures. Such opinions may, in turn, have affected policy and treatment within the system and consequently further influenced offence rates.

One other factor which must be considered is the extent to which crimes may have been 'lost' to the record during this period.³⁴ A possible explanation for any such loss might be the poor transferral of petty session figures during the 1855 change-over. Surviving petty session figures are notably hard to find and it is no new suggestion to say that they were not kept as consistently as the higher court records. The inconsistency is highlighted by the way in which Hull, but not York, convictions from petty sessions were presented to the quarter session for ratification in two categories. One section consisted of 'normal' petty session crimes, the other was a special list of those convicted under the 1855 Act. It is possible that the latter figures were not initially returned systematically to be included in the crimes represented by the national rates depicted in Figure 4. 7.³⁵ In York, the figures given by the Recorder in his charge to the jury, in the first session of 1856, for example, are greater than those in the quarter session minute book.³⁶

4.1 d) York quarter sessions and the national and county crime figures

Gatrell argues that between the late 1850's and the pre-war period of the twentieth century indictable offences declined by one third.

³² Charges to the jury *Yorkshire Gazette*, 15th March 1857; 20th October 1860; 8th July 1867 and 28th June 1869 all discuss light calenders or probable falls in crime.

³³ *Yorkshire Gazette*, 19th April 1856.

³⁴ Such a feature would relate neither to 'real' nor to administrative shift in the sense already discussed: nor is it likely to be explicitly gender linked if it exists.

³⁵ Returns of summary convictions were not routinely collected on a national basis until 1856. Sweeney, 'The Extension and Practice', p. 13.

³⁶ *Yorkshire Gazette*, 12th January 1856. In the light of the above note the date of this discrepancy is particularly noteworthy.

Indictable Offences: National 1835-1870

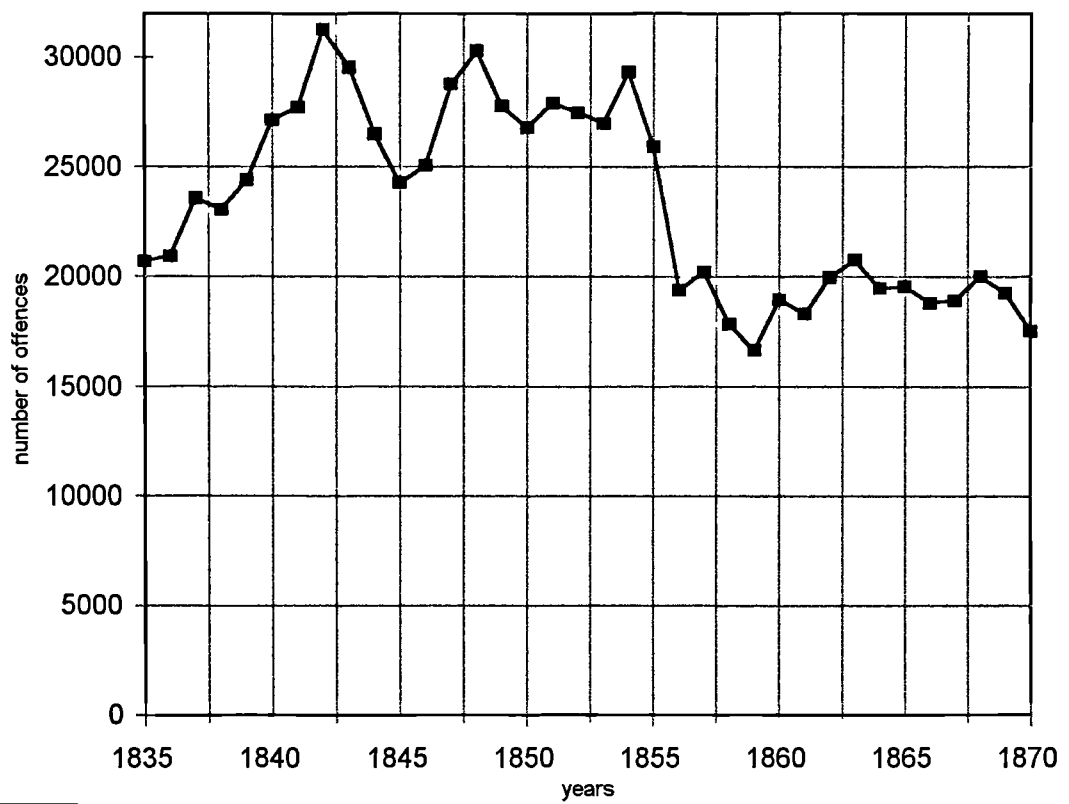


Fig.4.7

1842 provided the year of peak committals.³⁷ Despite an actual decline, crime was, in general, perceived to be an increasingly serious threat. York mirrored the country in its declining figures but was not as seriously affected by the rising fear over crime. The declining proportion of York women proceeded against by indictment paralleled the national one.³⁸

An interesting comparison with York and national figures are the figures for indictable offences in the county of Yorkshire. York's crimes would, of course, have been included in these figures. But the general pattern is different. Male and female figures fall, predictably after 1855. However, actual male figures soared again and in 1865 peak at about the same figure as in 1840. These figures no doubt reflect a rapidly industrialising area with the concomitant population increase. Since the county is not a major focus of this study precise calculations have not been undertaken. Nonetheless, the figures alert us to the differences that larger data sets can mask. Indeed, if the figures were population adjusted, or adjusted to accommodate other differences in the region, they may not reflect a major rise. Interestingly the proportion of female offenders increased after 1855 in Yorkshire, only to fall again after 1860 (Figure 4. 8). Using non-population adjusted figures, the female decrease seen in York and the national indictable offences (Figure 4. 5 and 4. 7) was not quite paralleled in Yorkshire. There is a need for further investigation of the gendered ramifications upon crime of the industrialisation of the northern counties. Whether or not the fluctuations discussed in this section of the chapter were 'real' or 'perceptual,' does not matter in one important respect: the proportion of crime committed by females cannot be assumed to be static or constant.³⁹

The previous chapter, in conjunction with this one, will demonstrate that the "regional idiosyncrasies" ironed out by such large samples may, in fact, be most helpful in a fuller investigation of female criminality. Despite striking similarities within any criminal category it is, of course, well acknowledged that the variables which build up the profiles of particular crimes can be quite different. For example, that Louisa Creaser's crime of shoplifting food for personal use, committed, as far as can be ascertained, as a result of illness and "destitution," can be collated in the same larceny category as the theft of Ann Burns' is gross oversimplification.

³⁷ Gatrell, 'The Decline of Theft and Violence,' p. 283.

³⁸ Zedner, *Women, Crime and Custody*, p. 36., Zedner calculates the fall as one from 27% in 1857 to 19% in 1890.

³⁹ See also the Introduction for discussion of Malcolm Feeley's contribution to this.

Indictable Offences:Yorkshire 1835-60

Percentage female offenders

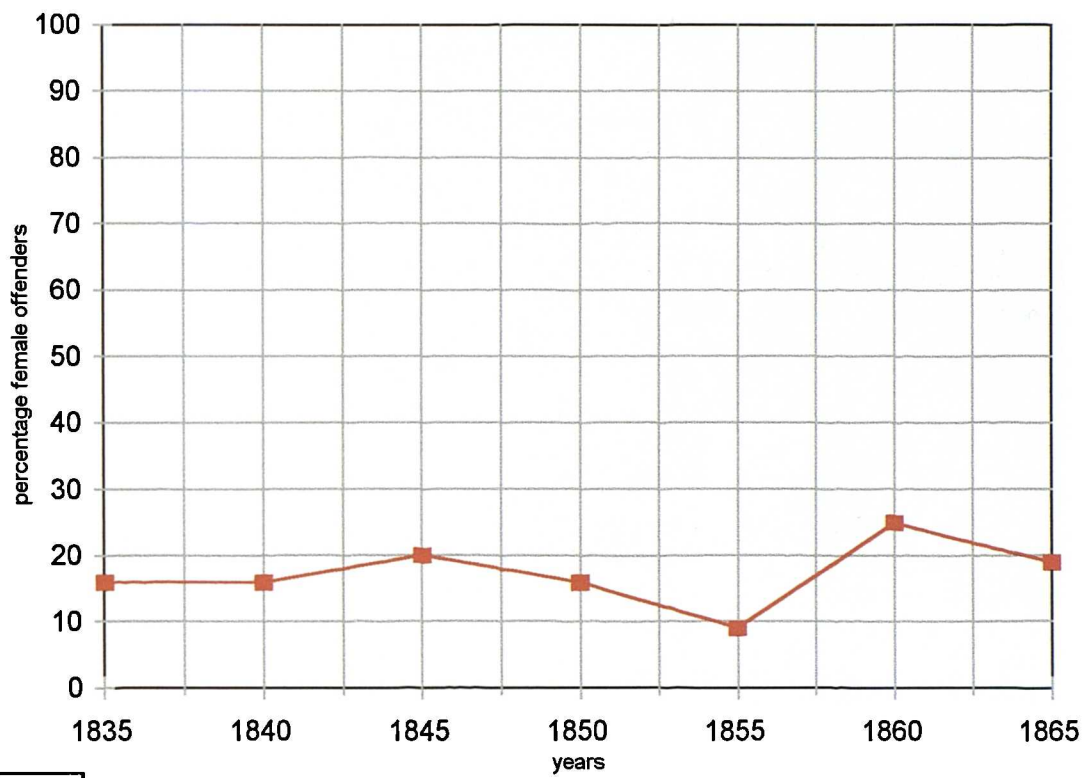


Fig.4.8

The latter committed her offences in disguise and then, in turn, “conned” other poor women into buying the goods. Such subtleties are denied in long-term quantitative studies. Eliciting long term trends from statistics based on the very crude nineteenth-century categorisations of crime mixes must only be one, necessary but small, part of the jig-saw puzzle of studies into female criminality.

One of the main conclusions of the comparative work of the previous chapter was that regional variation, in the criminal justice system, was still extremely marked between 1830-1870. Despite establishing a number of basic similarities, between the crime, and the justice systems, of York and Hull, the main thrust of this thesis is that more local studies are needed in order to investigate the “local idiosyncrasies” which can be of equal, if not more, significance than the similarities.

4. 2 The types of offences committed by women in nineteenth-century York

Figure 4. 9 divides the female offences from York quarter sessions into 6 categories. The distinctions used were introduced by Redgrave in the first criminal statistics of 1834 and are still used today.⁴⁰ It can be seen that the overwhelming preponderance (91.64%) of offences were crimes against property with no violence. This pattern echoes those found in the majority of historical studies of English crime. These have been studies in which, understandably, the analysis of male crime was an unspoken priority.⁴¹ It might, therefore, be argued that, in this significant pattern of crime, gender differences are slight. Within this overall, and perhaps deceptive, numerical similarity, however, we will go on to note a number of differences between male and female theft. Furthermore, it should be said that in the other categories of crime it is likely that gender differences are of far greater significance.

⁴⁰ Emsley, *Crime and Society*, p. 19. Other, less traditional, strategies of organising categories of crime in this survey were considered. For example, analyses based on location, on public or private, on *modus operandi*, or on sentences would all have been possible but such approaches seemed to create as many (if not more) limitations as Redgrave’s categories. Results based on alternative approaches would also be less easy to juxtapose with existing studies.

⁴¹ J. A. Sharpe, *Crime in Seventeenth-Century England: A County Study* (Cambridge, 1983), p. 91; Philips, *Crime and Authority in Victorian England*, p. 177.

York Quarter Sessions 1830-1869

Female offenders:categories of crime

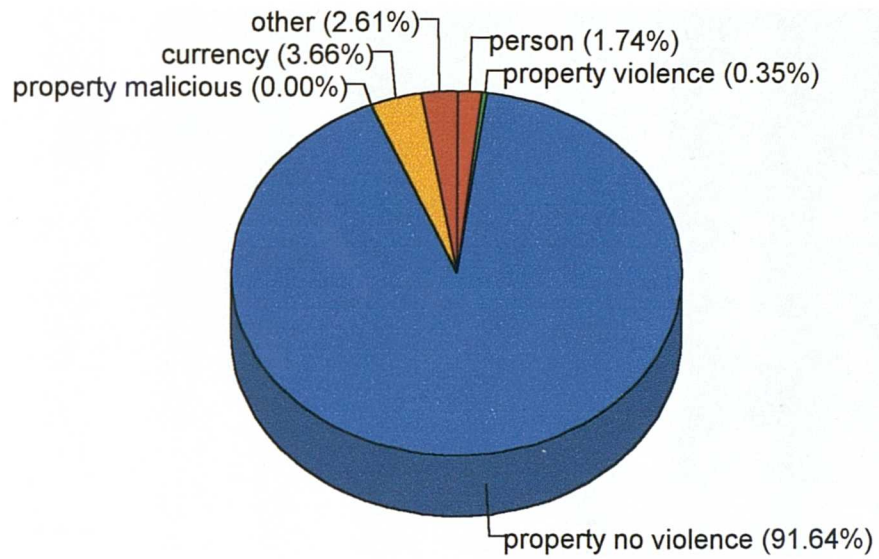


Fig.4.9

88% of the 'female' quarter session crimes committed between 1830 and 1870 were felonies; by this period these were serious but not usually capital offences (Figure 4. 10).⁴² As I have indicated, most of these were crimes against the person with no violence and, in particular, they were theft of one form or another (Figure 4. 11). This figure is a little higher than that found by Philips in the Black Country.⁴³ As far as can be ascertained from the Minutes of York quarter sessions and the Criminal Registers, 'Simple larceny', 'theft from the person' and 'theft by servant' accounted for 485 of the felonies.⁴⁴ 'Misdemeanours with intent to steal' accounted for a further 23 indictable crimes (Figure 4. 12). Typical of such a case might be a woman using an ex-employer's name in order to buy goods from a shop.⁴⁵

The impression of theft in York is, predictably, that the range of goods stolen by women was narrower and more related to home and domestic life than goods stolen by men. In 1840 and 1841, for example, all the women's thefts were of clothes, food, jewellery or household goods and this is typical of the data in this study. The men's thefts in these years, however, also included three separate incidents of stealing large amounts of coal (40 stons); in three other offences numbers of ducks, geese and cocks were stolen and another theft was of 7,000 quickwood plants.⁴⁶ By contrast, only two women in the whole forty-year period stole livestock in York and these were thefts of poultry from the market. Working implements stolen by the men in 1840-1 included an iron crowbar, a 15 stone weight and an iron loop.⁴⁷ Women stole nothing comparable in the same period. This sample reasonably reflects the differences between male and female theft in York.

⁴² See Philips, *Crime and Authority*, p. 298, for a summary of the distinctions and shifts in definitions of felony and misdemeanour.

⁴³ Philips, *Crime and Authority*, p. 177. Philips says offences against property without violence accounted for 85% of indictable crime. Of this, larceny constituted 80% of all committals to trial.

⁴⁴ 'Simple larceny' is in many senses used as a 'catch all,' in the York quarter session records. It is likely to have included some crimes which might, in practice if not technically, have been 'thefts from the person' and also 'thefts by servants'. The distinction between 'grand' and 'petty' larceny disappeared in 1827 (7&8 Geo. IV, c. 29).

⁴⁵ YQS 16th October 1849, *Yorkshire Gazette* 19th October 1948, Jane Jackson Wylde had been a dressmaker and used her previous employer's name to obtain 15 yards of black satinette. This is one of the few cases where the crime is explicitly linked to an opium habit.

⁴⁶ Note that none of these were valued highly: the wood estimated at £1 was of the greatest value.

⁴⁷ YQS 1840 sessions.

York Quarter Sessions:1830-1869

Felony as a proportion of female crime

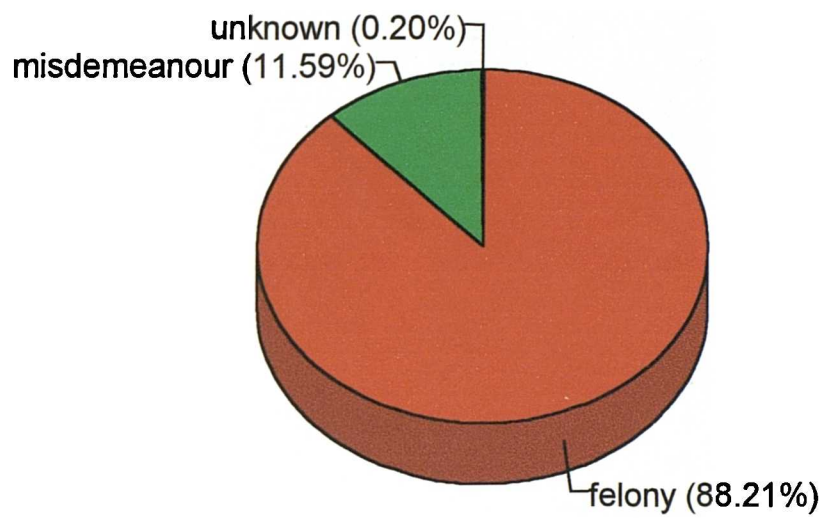


Fig.4.10

York Quarter Sessions:1830-1869

Theft as a proportion of female crime

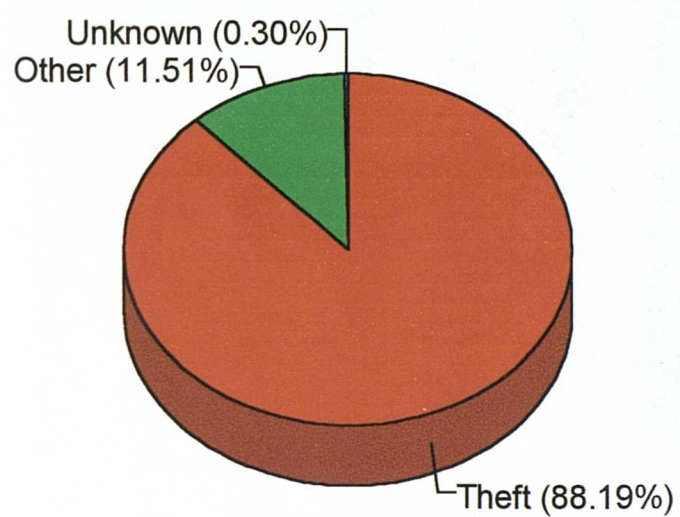


Fig.4.11

York Quarter Sessions 1830-1869

Female offenders:breakdown of offences

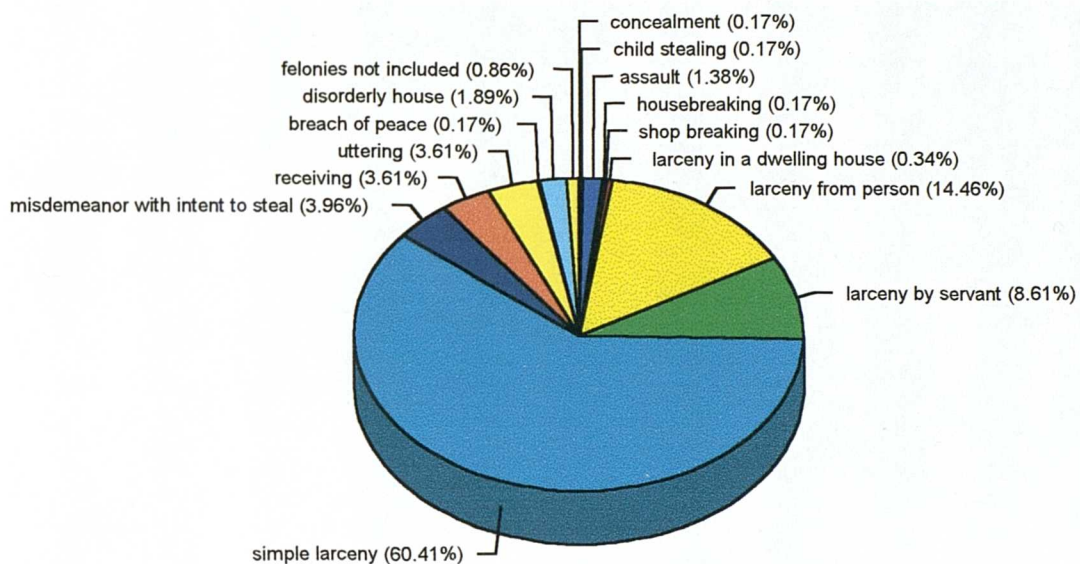


Fig.4.12

That men generally stole more items for use outdoors such as carts, wood, brass wire and iron bands correlated, of course, with opportunity. Other scholars have commented on this relationship. For example, in his work on the eighteenth century, Peter King has commented on the effect of different employment patterns on types of theft.⁴⁸ Clearly outdoor employment offered easier opportunities for both acquisition and disposal. And we will see shortly that, despite heavy surveillance, York's female servants may have been in a similar position to appropriate goods.

Women do not appear to have stolen bulky items as frequently as men. However, a marked exception to this, during the period as a whole, was Catherine Swales who was charged with taking a door, amongst other items, from her lodgings.⁴⁹ But women did steal bulky bundles of fabric and this clearly represents the opportunities available to them. At least 12 thefts by women, throughout the whole period, were of more than 10 yards of fabric and, in total, there were 38 thefts of bundles of ribbon or fabric. In fact, although less frequently, men stole fabric. Christopher Watson, for example, stole 9lb weight of wool. We do not know if this was for use by his family or for selling on but as a previous offender, he was transported.⁵⁰ It is also helpful, in this instance, to compare the records for a more industrial area. In the Leeds and West Riding sessions there was a marked preponderance, compared with York incidents, of women stealing large quantities of fabric. This clearly relates to their access to goods (particularly in employment) and to the market for such items.⁵¹ In this context, such patterns of crime call into question any strong suggestions of inherent male/female variations in inclination to crime based on supposed physical or psychological difference. In these cases the opportunities afforded to the offenders for appropriation and disposal appear to have been of greater significance.

In many respects the pattern of nineteenth-century York women's theft mirrors that

⁴⁸ Peter King, *Crime, Justice and Discretion*, p. 24.

⁴⁹ YQS 30th December 1867.

⁵⁰ YQS 22nd October 1860.

⁵¹ All available sessions' records from the period have been viewed. The judgement is impressionistic but there was without doubt a large number of cases. For example, in 1830, Mary Ann Forest was transported for stealing 20 yards of cotton in Bradford, Alice Sykes was acquitted on the charge of stealing one hundred pounds of wool and Mary Hughes was transported for stealing fifty eight yards of fabric in Rotherham. West Riding Quarter Session records QS4/61 and 62. Leeds Quarter sessions shows many similar incidents.

of Garthine Walker's cohort of seventeenth-century Cheshire women.⁵² Household linens and utensils were similarly, and entirely predictably, more often taken by females. At least 144 York thefts were of household linen or utensils.⁵³ Likewise their crime was piecemeal and they were prone to stealing more than one type of item at a time. Thefts by lodgers or servants frequently fell into this category.⁵⁴ As Walker concludes, the pattern of their crime was "eclectic but clearly defined."⁵⁵

Furthermore, the common thefts of many of the items speak of a period of increased consumerism and in particular of the increase of ready-made articles available in retail outlets. As such many York thefts might reflect the arguments relating to the early modern period made by Beverly Lemire.⁵⁶ Relating, as does Lemire, a surge in popular consumerism to theft is a persuasive argument which might be applied even more strongly to acts of appropriation in England, and indeed York, in the nineteenth century.⁵⁷ However, unlike many of Lemire's cases, thefts of clothes in nineteenth-century York appear to have been for personal wear or for immediate financial gain.⁵⁸ There is little extant evidence that the acquisition of clothes was commonly for reasons of vanity although that is not to deny the possibility of it ever being a causal factor.⁵⁹ Existing evidence does not suggest that the clothes stolen in York by these

⁵² Garthine Walker, 'Women, Theft and the World of Stolen Goods,' in J. Kermode and G. Walker (eds.), *Women, Crime and the Courts in Early Modern England* (London, 1994).

⁵³ This is approximately a quarter of the incidents. By comparison only about 1/20th of a five yearly sample of the male crime can be identified as theft of household goods and linens. Even those items which were taken were often of a different type of household good to those, such as kitchen utensils, stolen by women. In YQS 7th April 1860 for example, two items stolen which are less easy to categorise as household goods were a brass tap and brass castors.

⁵⁴ YQS 5th April 1841. Elizabeth Hodgson, a servant, stole pillowcases, shirts, stockings, silver tea spoons, glass decanters, jelly glasses, custard glasses, a bed valance and 2 snuffers.

⁵⁵ Walker, 'Women, Theft and the World of Stolen Goods', p. 87.

⁵⁶ Beverly Lemire, 'The Theft of Clothes and Popular Consumerism in Early Modern England', *Journal of Social History*, vol. 24, no. 2, (Winter, 1990) pp. 255-276.

⁵⁷ Elaine S. Abelson, *When Ladies Go A-Thieving: Middle Class Shoplifters in the Victorian Department Store* (Oxford, 1989), p. 21, argues "Shopping dwarfed all other activities." There is every reason to suppose, from York newspaper advertisements and other accounts that shopping was a major activity in York. See also Prudence Bebb, *Shopping in Regency York: Butcher, Baker, Candlestick-Maker* (York, 1994) for a popular, unfootnoted, account of some of York's shops in the period immediately prior to that of this study.

⁵⁸ Lemire's challenge to Sharpe's assertion that much of the clothing theft in his study was opportunistic is never quite substantiated. There is certainly no evidence in nineteenth-century York of a "very professional collection of criminals who made their living acquiring and selling clothes". Lemire, 'The Theft of Clothes,' p. 265.

⁵⁹ That a high ratio (possibly as much as 1/5th of clothes' thefts) was of shoes (and in particular boots and children's shoes) is not, of itself, evidence that functional clothes were being sought but it suggests the possibility.

women were being sold on in any organised fashion.⁶⁰ Only 9 out of a sample of 105 clothes thieves were noted as having previous convictions.⁶¹ However, Philips suggested that severe sentences for such clothing thefts might indicate recidivism and almost 50% of the York sample received sentences of 3 months or more. These are relatively severe sentences and certainly suggests that the offences were taken seriously. However, in general, the case histories of the women who stole clothes indicate opportunist modes of theft. Frequently these incidents occurred during the normal daily routine of the women and in particular these were linked to lives as servants, shoppers, lodgers and prostitutes.

The stealing of small items was predictably common. Women frequently stole books and silver spoons from shops and lodgings. Watches were stolen, from buildings or from pockets, on at least 27 occasions and probably on many more. Of those offences, 10 attracted a sentence that was longer than 3 months, which might suggest that such crimes were taken seriously. However, the fact that only one offender was transported for stealing a watch might temper the view that authorities were too energetic in their removal of female pickpockets who were frequently prostitutes. The reason for stealing such readily available, valuable and easily disposable items is self-explanatory. Indeed the *modus operandi* of thefts by ‘pick-pockets’ has been well mapped out by Philips and the York findings are similar in the majority of ways. One exception was that women did not tend to participate in the kind of pocket-picking Philips says took place in pubs amongst males. In such instances the victims were the peers of the offender and the incident may, Philips suggests, have started as some kind of practical joke. Few of the recorded comments from York women echo the desire to trick their peers that Philips implies.⁶² Nonetheless, drink-related theft did play a large part in prostitution-linked offences and the ‘pub’ or ‘beer shop’ was also frequently associated with other types of thefts by females.⁶³ Chapter five will contain more comment on drink related crimes. That females more frequently had male victims because they were duped in prostitution-related circumstances appears to be true but women also frequently stole from other women. Women victims, however, were more likely to be employers, lodging house keepers, shopkeepers or

⁶⁰ Although, as the next chapter will illustrate, pawnbrokers, predictably if not always wittingly, appear to have greatly eased disposal.

⁶¹ I have noted in chapter five the difficulties in systematically recording previous convictions in the period. However, there were no women in this 40 year period who were repeatedly charged with this offence.

⁶² Philips, *Crime and Authority*, p. 212.

⁶³ YQS 8th April 1836. Elizabeth White and her accomplice went to the Black Boy public house for rum but stole shoes whilst the prosecutor was out.

pub landladies than peers. The difficulty with tracking female victims is that very often prosecutions were brought by the male heads of household.⁶⁴

One intriguing ‘crime from the person’, in York, appears to have been committed on a number of occasions by males and females. This was the theft of handkerchiefs. Initially one possible explanation for these crimes seemed to be (as has been suggested for window-breaking offences.⁶⁵) that it was a deliberate attempt, by offenders, to gain a night’s accommodation. However, evidence for such agency on the part of the offenders is not extant. Furthermore, on occasion, the severity of the sentences for handkerchief theft seems quite out of proportion with other punishments given at the same sessions. For example, in 1830, two men were transported for the offence of stealing a handkerchief but in the same year five other men were given short imprisonments for the same offence.⁶⁶ The former punishment must reflect cumulative sentencing and an official way of removing known offenders.⁶⁷ For many of these cases it seems most likely, after the consideration of the available evidence, that the charge of handkerchief stealing was the one chosen in the court, by the prosecuting counsel, as most likely to bring about a conviction.⁶⁸ Yet of 12 women charged with this offence, only one was actually transported and 5 were acquitted. Even this charge was clearly never a predictable verdict for the prosecutor.

Martha Summerwell was transported in 1838 for stealing a silk handkerchief and on a second indictment, a pair of shoes.⁶⁹ There is no record of her being active as a prostitute but she had at least 4 previous convictions and had stolen the items from a fellow inmate in the workhouse. Her intent was clearly not simply to secure a night’s accommodation since she

⁶⁴ YQS 28th June 1841. Thus Ann Butler’s theft of stays is prosecuted as “belonging to John Hartley.” The prosecution was in the husband’s name since property would technically be his possession. This situation makes a count of the gender of the victims difficult since prosecutor does not always equate with victim. However, records other than the quarter sessions minutes frequently cite the victim’s name and it is possible to build up an impressionistic picture of the gender balance of victims.

⁶⁵ Frances Finnegan (Beechey), ‘The Irish in York 1840-1875’, D. Phil, (York, U.K., 1976), p. 291.

⁶⁶ YQS 15th July and 21st October 1830.

⁶⁷ YQS 6th November 1865. William Cooper was sentenced to 5 years Penal Servitude for the theft of a handkerchief. In his case it is recorded that he had a previous conviction in 1861.

⁶⁸ YQS 14th January 1836. The prosecution opted for the charge of handkerchief stealing even though 10 sovereigns had also been taken.

⁶⁹ YQS 5th January 1838.

already had some.⁷⁰ Interestingly her husband was charged with stealing lead piping at the same session. There are no extant sources to indicate whether there is any possibility that the couple were under the illusion that they could achieve a new life together in the colonies. By contrast, the following session, Judith Foster was given only seven days for stealing a handkerchief from a publican. This discretionary use of sentencing combined with a notion of cumulative sentences make direct comparison between the treatment of any offenders, and particularly a gendered comparison, extremely difficult. Clearly in the Summerwell case it could have been tempting for York officials to rid themselves of a financial burden by transporting someone seen as a Poor Law burden.⁷¹ A case in which ‘downgrading’ of the offence went a step further still was that of Margaret Duncan and Ellen Gordon. The former was convicted of stealing a handkerchief but there was even less proof of larceny against the latter and we are told that the court therefore decided to treat her as a ‘rogue and a vagabond’.⁷² These cases are excellent examples of how inadequately the court records might actually represent the real nature of the larcenies committed.

The valuation of stolen goods is another unreliable feature in the court records of this study. Yet valuation was a key factor in the judicial treatment of the offenders and it was, indeed is, a tricky foundation upon which to build either historical comparison or sentencing policy. For the victim of crime the emotional effects of an offence might, then as now, have been of equal significance. One particularly problematical area occurs in the ascribed value of stolen goods.⁷³ Garthine Walker concluded, in her work on early modern women’s theft, that

⁷⁰ Sweeney argues that in the area of London in his study prison accommodation was sometimes perceived as more desirable than the workhouse. See Sweeney, ‘The Extension and Practice of Summary Jurisdictions,’ p. 271. At least one example of a male said to have broken a gas lamp in order “to get into gaol” does exist in the York records. However, he was not someone already in the workhouse. *Yorkshire Gazette*, 21st January 1851. Also of tangential interest, in this context, is that local papers carried a considerable number of articles on the alleged abuse of the inmates by Mrs Levers, the matron of the nearby Tadcaster Workhouse. Her actions appear to have been ones of extreme violence and cruelty, including, for example, blistering one child’s arm with a hot iron. She had previously been asked to resign from the Leeds Hospital for Women and Children. *Yorkshire Gazette*, 11th March 1865.

⁷¹ That this was an issue is exemplified by one court case. In 1832 the constable of Clifton was charged with assault for unlawfully carrying away a pregnant female and laying her on the road. The intent was clearly to move her from Clifton parish into Rawcliffe. After “several hours” the court agreed that Giles had acted “injudiciously walking her out of the parish in her condition.” *Yorkshire Gazette*, 7th January 1832.

⁷² *York Courant*, 28th September 1830.

⁷³ A number of criminal historians have highlighted the dangers of court valuations. See Sharpe, *Crime in Seventeenth-Century England*, p. 92. Yet others have used them without caveats. For example, David Jones, *Crime, Protest, Community and Police in Nineteenth-Century Britain* (London, 1982), p. 124.

women did not necessarily steal goods of lower value than men.⁷⁴ Earlier examples quoted in this chapter could be used to give general, and impressionistic, support for the application of Walker's premise to this nineteenth-century study. However, even the valuations of goods given in the court minutes can vary surprisingly. The silver teaspoon stolen by Elizabeth Nichols in 1840 was valued at 1 shilling but the ones stolen by Elizabeth Huntingdon only the following year were valued at 2 shillings each.⁷⁵ Valuations for gowns varied between 2 and 20 shillings in the period 1841-1850. Conclusive proof is impossible to find but it is easy to suspect that amounts were sometimes adjusted for the purposes of the court. Since the York records do not systematically value all the goods stolen it is impossible to quantify this data in an accurate fashion and the question of absolute value must remain indeterminate. Officially 206 thefts were of goods over the value of 5 shillings and only 34 were clearly under that value but other valuations are missing. Such valuations are, of course, by legal definition, why many of the offences are in the records of quarter sessions and not of the petty sessions.

However, it is clear that York women seldom stole very large amounts. Thefts of money are, by definition, more accurately valued and a typical haul appears to have been two or three sovereigns. One more exceptional theft, for example, was eight £5 notes and one unusually 'lucky-haul' consisted of two Bills of Exchange worth £200 each and one Banker's Draft for £100.⁷⁶ However, such large thefts were seldom seen and frequently the thief acquired only a few shillings.⁷⁷ The occasional large amounts in the record appear merely to have been exceptionally 'lucky-finds' for pickpockets, rather than planned or pre-meditated crime.⁷⁸ The few who stole larger amounts of money were invariably transported in the earlier decades of the study.⁷⁹ But even after the cessation of transportation there are no women thieves in this study who stole large amounts on more than one occasion. For goods, other than money, low values tended to be the norm. In the year 1840-1, the highest value given by the court record to goods stolen by a female was 3 yards of woollen cloth valued at 15 shillings

⁷⁴ Walker, 'Women, Theft and the World,' p. 86.

⁷⁵ YQS 10th April 1840; YQS 5th April 1841.

⁷⁶ YQS 10th April 1854.

⁷⁷ A 5 yearly sample of thefts of money showed only 3 thefts of more than 4 sovereigns.

⁷⁸ YQS 21st October 1861. Ann Muldawny "snatched" a cap and "ran upstairs" in Mrs Megginson's Beer House. Whilst a particular theft may have been opportunist that is not to say an offender had not planned to commit a theft at the first available opportunity.

⁷⁹ YQS 17th October 1834, Jane Appleyard was transported for 7 years for stealing two promissory notes valued at £5 each and 3 sovereigns. This was unusual and amounts were normally less than 2 or 3 sovereigns.

and this was not untypical. One item that might be of more value was, of course, the watch.

After 1855, as summary justice became the more common method of dealing with 'theft from the person,' such women were shifted to the lesser courts and would generally receive a fine. It is interesting, however, that in 1856 and 57, that is to say after the 1855 Act, there were still a number of 'theft from the person' cases which went to the quarter sessions. Clearly a few women did not see it in their interests to plead guilty simply in order to go to the magistrates court.⁸⁰ Such types of theft committed by prostitutes were particularly difficult to prove and there was frequently little sympathy with the male clients and their expenses would be denied.⁸¹ These women would have little to lose in the way of reputation if their trial went to the higher court whereas their male 'victims' might have had. Because of the nature of the records I have not been able to gather evidence as to whether juries were perceived as more sympathetic than magistrates but in fact, by opting to go to the quarter session these women risked a more severe sentence if found guilty.⁸² Sentences given by the higher court were more likely to be six to twelve months incarceration after 1855 and not one or two months as would more frequently have been the case before the 1855 Act.

One feature of York which may have contributed both to a high rate of female offenders, but also to a decline in the later years of the period as demonstrated in chapter three, was the high rate of female servants in the city. 'Theft by servant' was an extremely common York women's offence. At least 50 offenders in this study are specifically identified as servants. If other sources of biographical details are utilized, for example, where women give a lists of previous employers in order to use them as character witnesses, there appear to have been many other women thieves who, on occasion, were in such employment.⁸³ The percentage of York's female work force employed as servants was high (only 2.2% of York's

⁸⁰ Taking the period, as a whole, at least 55 of the 84 offences against person pleaded 'not guilty' (with 19 unknown pleas) this was a much higher rate than overall (205 'guilty', 252 'not guilty' pleas and 124 unknown).

⁸¹ YQS 22nd April 1830. A prosecutor from Barnsley, visiting for the assizes, was told that as a married man he had disgraced himself and would receive no costs as a lesson.

⁸² David Philips has argued that summary conviction "was also much more certain if one only had to convince a friendly magistrate." Quoted in Sweeney, 'The Extension and Practice', p. 11. However, the male prosecutors in 'prostitution' cases would, on the whole, have been excluded from the 'old boy network' mechanism that is implicit here.

⁸³ E. Higgs has, of course, noted the particular problems in categorising the precise nature of the occupation of servant. *Domestic Servants and Households in Rochdale 1851-1871* (New York, 1986), pp. 26-48; Zenobia Taylor, *Yorkshire Gazette*, 16th October 1843.

women were employed in manufacturing as opposed to 16.6% nationally).⁸⁴ As will be explained more fully in chapter five this high servant rate often meant both a high level of opportunity for theft but also a high detection rate. Furthermore, the category of ‘theft by servant’ encouraged prosecution by employers. Jane Abbey was actually discovered by her employer wearing her slippers which, perhaps understandably, prompted a search of the employee’s boxes.⁸⁵

Only 2 recorded ‘thefts by servant’ can be found in York quarter sessions after 1855. One third of the offending servants before 1855 had been under 20 years old and, therefore, a number of servants’ crimes are likely to have been juvenile offences. As such they would be even more likely to be dealt with at petty sessions. After the 1855 Act ‘theft by servant’ offences were tried by the magistrates if the defendant pleaded guilty. It is interesting that few servants chose to plead not guilty (in comparison with the ‘thefts from the person’ offenders discussed earlier).⁸⁶ It seems likely that there was less chance in such cases, than in those concerning prostitutes, of the women being acquitted for lack of evidence. There were, however, clearly many disputes about ownership in such crimes and servants often claimed they had been given the items deemed stolen.⁸⁷ Such claims could, of course, have been used merely for defence purposes but they may possibly point towards some quasi-perquisite system. It is possible that servants were in the habit of appropriating goods that they thought were old or were to be thrown out.⁸⁸ The reduction in cases may also reflect a population of employers less ready to report employees or to involve employees in an increasingly formalised

⁸⁴ Alan Armstrong, *Stability and Change in an English County Town: A Social Study Of York, 1801-1851* (Cambridge, 1974), p. 19; p. 179. In 1841, 55.7% of the female work force were employed as domestic servants but 71.7% in York. Only 5.9% of the male work force were employed as servants in York. In real numbers this was almost five times as many women, p. 28.

⁸⁵ YQS 4th July 1853. That Abbey was wearing the slippers openly might indicate some other problem such as confusion of ownership. Charlotte Meek (YQS 15th July 1830) was another one of many offenders to have her “boxes searched.”

⁸⁶ 25 women pleaded guilty out of all the ‘servant’ offences but only 16 pleaded ‘not guilty’. The remainder of the pleas are unknown.

⁸⁷ YQS 12th March 1839, Jane Wallace thought she had a right to the goods under an agreement with her employer. YQS 5th March 1841, Elizabeth Huntingdon claimed she had been given the goods by her employer’s son - this raises many questions about relationships within the households; YQS 6th July 1838, Edith Holden was acquitted after pawning her employer’s table cloth because she intended to redeem it and was therefore not adjudged to have stolen it. The sympathy of the courts was clearly not automatically with the employers.

⁸⁸ I have encountered no specific York evidence but Pamela Horn suggests that servant -mistress disputes were sometimes “over the exact quantity and values of perquisites” and quotes one satirical handbill which announced that “Mistress’s old clothes have ever been, and must continue to be, the property of maid-servants.” Pamela Horn, *The Rise and Fall of The Victorian Servant* (Dublin, 1975), p. 140.

justice system. People may have been less ready to use the quarter session court as a warning. Certainly the offenders before quarter sessions, and particularly after 1855, would by this stage have received longer sentences and not merely a few days or weeks which might earlier have seemed acceptable as a warning.⁸⁹

The receiving of stolen goods resulted in 21 women being charged. However, it is often difficult to determine the real nature of the offences.⁹⁰ By the nineteenth century such receiving was a felony but it is particularly complex to elicit any real idea of the actual criminal culpability of these females. For example, a higher proportion of these offenders (than thieves) had accomplices and were with relatives.⁹¹ Indeed the lack of evidence as to who was a principal, and as to who had “felonious intent to steal,” was often precisely why these offenders had been charged with receiving and not with theft.⁹² Clearly the receiving charge was often used to attempt to secure a conviction in York where a number of individuals were involved in the offence and where culpability was, therefore, particularly hard to identify.⁹³ Legal responsibility was especially difficult to establish when husbands and wives were involved, as we have already discussed in chapter one.⁹⁴ Nonetheless, many of the cases of receiving in this sample do appear to have been distinct criminal acts. Yet none of the women in this study were convicted of receiving more than once and, most significantly, few seem to have been professional ‘fences’.⁹⁵ Only three women were charged with ‘fencing’ clothes: Mary Ann Lofthouse was charged with two counts, one of stealing and one of receiving the

⁸⁹ YQS 22nd April 1830. Ann Ridley, for example, was sentenced to only 1 day for two counts of stealing from her master. It was said that she was “clearly guilty” but she was recommended to mercy because of her excellent character reference. After 1855 no sentence was less than 1 month and the majority were much longer.

⁹⁰ YQS minutes appear, at times, to note ‘receiving’ simply as a ‘second count’ to theft with little detail.

⁹¹ YQS 3rd January 1834. Elizabeth Sampson was discharged, by George Peacock, from a charge of receiving currants and raisins from her son, with a warning, because of lack of evidence.

⁹² Philips, *Crime and Authority*, p. 219.

⁹³ YQS 15th January 1830. The Recorder said that the indictment would lie against them all as principals even if some were found guilty of theft and some of receiving. In this case, the thieves were punished far more severely than the receivers. The scenario seems to have been one involving drink and prostitution. *York Courant*, 19th January 1830.

⁹⁴ Whilst ‘feme covert’ created a particular problem in theory, in practice it could be just as difficult to prove liability where the husband was charged with receiving from the wife. The court could not establish “evidence of a guilty knowledge” in the case of Ann Lorriman’s husband. She was given 12 months in the House of Correction for theft. YQS 6th March 1832.

⁹⁵ YQS 27th June 1842, Catherine Mac Donald may have been an exception. She is asked by the male offender to “fence some rings” and he is overheard to say he had made a “crack” and would give her a dozen for “fencing.” *York Courant*, 29th June 1842.

same items.⁹⁶ This double action was clearly used on a number of occasions to help secure a conviction. It appears to have been used in an even more regular way in the West Riding sessions. Yet a surprisingly high number of York receivers were acquitted; 11 of the 21 in this sample. Lofthouse was one of a number of thieves and receivers reported by a suspicious pawnbroker. This suggests that, in some situations at least, it could not be assumed that York pawnbrokers would necessarily aid in the disposal of stolen goods.

If we return to Figure 4.9 we will notice that 21 (3.66%) women were categorised as committing currency offences. These women were charged with ‘uttering’ or ‘having in possession counterfeit coin.’ Such crimes frequently took the form of passing counterfeit coins to buy drinks in a pub or goods from the market. In York these offences (by women) appear to have been relatively leniently treated. Philips claims that whenever the court had reason to suspect that offenders were habitually passing bad coins there would be a tendency to transport the offender.⁹⁷ However, Jane Mitchell was sentenced to one year’s imprisonment for her “5th uttering offence.”⁹⁸ 6 months was the typical sentence for the York women. In a husband and wife case of 1866, the wife was deemed to be the “active agent” and received 8 months; the husband was given 6 months.⁹⁹

Of the crimes classed as “other” in Figure 4. 9, keeping ‘disorderly houses’ accounted for 11 cases. These offenders were often women who had not been effectively dealt with by the magistrates and there was strong public feeling. Sarah Heaton, for example, had been removed with 16 other women from Aldwark but when they transferred their “scenes of vice, profligacy and debauchery” to Bedern, “the respectable inhabitants had therefore determined to see whether she or they were stronger.”¹⁰⁰ A key question might be why more cases were not brought given the concern over prostitution. One answer might be that the law in this matter was seen to be complex and inadequate.¹⁰¹

⁹⁶ YQS 5th January 1852.

⁹⁷ Philips, *Crime and Authority*, p. 234.

⁹⁸ YQS 15th July 1830; Until 1832 forgery and currency offences were capital offences. Philips, *Crime and Authority*, p. 233.

⁹⁹ YQS 2nd July 1866.

¹⁰⁰ *Yorkshire Gazette*, 3rd July 1840.

¹⁰¹ At common law the indictment lay for keeping a ‘disorderly’ house on the grounds of nuisance but if an indictment was brought against someone for frequenting such an establishment more precise evidence was needed as to the ‘bawdy’ nature of the house. Leon Radzinowicz, *A History of English Law and its Administration from 1750*, vol. 2 (London, 1956), p. 290. The *Times* carried an article deploring the ineffective nature of the law in this

Many of the cases in this study remind us that with a seemingly infinite range of variables in action, any assumptions about chivalric or discriminatory treatment in respect of gender must be treated with caution. Joanne Belknap has shown that such theoretical or methodological frameworks cannot be consistently applied to twentieth-century female crime. It seems equally unlikely that simple patterns will be found for nineteenth-century female crime. In one situation, such as in the sentences I have outlined for coining, chivalric treatment might generally be seen; in another where 'feme covert' might apply the woman may appear to receive chivalric treatment but indeed be in that situation precisely because her life was totally bound by her general lack of legal status.¹⁰² No one mechanism appears to have been consistent or supreme in nineteenth-century York.

A partial and inconsistent story may exist even more in the categories of crimes we will now consider. Only 10 (1.74%) offences in this study were recorded as 'crimes against the person'. Only 8 York women were convicted of 'assault' at quarter sessions, and 6 of these were involved in one incident. In the other case the defendant and accused were women with the same surname and the incident may have been a family affair. This is an extremely small proportion of offences and reflects the overall lack of violence seen in the official court records of crimes by York women. That there were so few recorded violent crimes by women is of paramount importance to debates about criminality in general. Indeed more recently histories of women's crime have begun to question the apparent absence of female violence and suggest that it may relate to different perceptions as to the level of acceptable violence.¹⁰³

A comparison with Rachel Short's unpublished, but excellent, work on women's crimes of violence in the years immediately prior to those of this study certainly suggests that levels varied. The lack of violent crime in York is in direct contrast to Short's figures for London and Berkshire women between 1780-1830 where she finds a surprising number of cases of assault. However, she also suggests that women's violence was generally understated and that

respect and the need for summary powers, *The Times*, 4th September 1816. This was not a provision until 1956.

¹⁰² Joanne Belknap, *The Invisible Woman: Gender, Crime and Justice* (Belmont, California, USA, 1996).

¹⁰³ M. Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London,' *Gender and History*, 4, 1992, pp. 10-33; E Ross, 'Fierce Questions and Taunts: Married Life in Working-Class London 1870-1914,' *Feminist Studies*, 8, 1982, pp. 575-602; N. Tomes, "'A Torrent of Abuse": Crimes of Violence Between Working-Class Men and Women in London 1840-1875,' *Journal of Social History*, 11, 1978, pp. 283-345. The work mentioned elsewhere on infanticide has, to date, ignored the darker side of women's violent activities.

such offences were often down-graded, for example, to simple larceny.¹⁰⁴ There are a number of possible explanations for the small total of violent women's crimes in York. The first is that York women were less violent than those in Short's study. It is possible to argue that the larger metropolis bred more actual violence than the smaller settlements of this study.¹⁰⁵ The comments frequently made in the Recorder's charges to the juries indicate at least the perception that this was so.¹⁰⁶ Or it may be the case that women were committing fewer acts of violence by the second quarter of the nineteenth century. One possible argument, which I have raised in chapter two, is that the general conduct, of some women, was increasingly restrained, either by domestication, or by the controls of the workplace, during the Victorian period. Whether or not this was the case, it was a perception of some of the nineteenth-century commentators on women and crime in the late nineteenth century that women leading a "more cloistered" life committed less crime.¹⁰⁷ Since direct comparison with eighteenth-century figures is impractical such an assertion must remain speculative until further evidence becomes available.

One plausible possibility for the lack of violent recorded crime in York appears to be that, for whatever reason, charges of violent crime were not so readily brought against women (or men in this instance) in York.¹⁰⁸ Sharon Morgan has argued, of London in the period of which Short also speaks, that much of the outdoor theft was likely to be prosecuted as highway robbery.¹⁰⁹ Women appear to have committed far fewer of these crimes than men but nonetheless were convicted of around 10 crimes of highway robbery per annum (compared with 43 male offences per annum). In York, street-thefts were common but were virtually

¹⁰⁴ Short, 'Female Criminality', p. 125. It does also appear unlikely that the male number of violent offences would ever be matched however crimes were quantified.

¹⁰⁵ Beattie, 'The Criminality of Women in Eighteenth-Century England,' *Journal of Social History*, 8 (1975) p. 109, might support such an argument.

¹⁰⁶ Certainly when the Leeds Recorder, Robert Hall, presided because of the illness of York's recorder he commented not only on the "extraordinarily light" calendar but also on the less serious nature of the crime. *Yorkshire Gazette*, 1st January 1844.

¹⁰⁷ Zedner, *Women, Crime and Custody in Victorian England*, demonstrates the opposing views of this argument. p. 70.

¹⁰⁸ *York Courant*, 29th June 1843. The Recorder declares the lack of violence very "satisfactory". There is not perceived to be a major problem from males or females.

¹⁰⁹ Sharon Morgan, 'Woman & Violent Crime in London 1800-1830,' M. Litt., (Cambridge, 1993); Emsley also uses highway robbery as an example of regional differences in classification, *Crime and Society*, p. 23.

never treated as highway robbery.¹¹⁰ Thus it would appear that York prosecutors and court officials downgraded violent crimes for both men and women in York.

There is also qualitative evidence that some women's violence was indeed ignored in the court record. Virtually all the women's theft cases in York quarter sessions were classified as larceny; clearly in some cases some show of force had occurred which technically made such offences robbery. In 1852, for example, York residents Elizabeth Shields and Elizabeth Beaumont, together with two other females from Leeds, were transported for stealing a box and a few sovereigns. They were previous offenders and so the sentences were fairly routine in this period for women who were frequent attenders in the courts.¹¹¹ However, it would appear from newspaper reports that one of the offenders had grasped hold of the victim's throat whilst he lay on his bed. The jury in its guilty verdict called the incident a "drunken spree" and the defence called for an acquittal on this basis. However, the jury then claimed they had not, in fact, summed it up thus but that their foreman was hard of hearing! Whatever the precise nature of the incident, and of the technicalities of the trial, this case would appear to be an example of women's violent activity being recorded in the court minutes and other court documents simply as a case of larceny.¹¹²

One type of crime against property 'with violence,' that of 'breaking and entering,' was clearly more often a feature of men's theft than of women's. Many, though by no means all of the sessions, included an offence committed by males.¹¹³ However, in the York quarter sessions there were only two 'breaking and entering' charges against women and, unusually, there is no record of what was taken. Significantly one of these offences was committed by a group of four males and Martha Stewart. Three of the men received Penal Servitude and appeared to have previous convictions. Martha was sentenced to three months in the House of Correction. The Recorder thought that the case against her was slight "as she might be acting under the control of her husband."¹¹⁴

¹¹⁰ Although it is important to note that the newspaper reports often used the terms 'theft', 'larceny' and 'robbery' interchangeably and without the technical distinctions made in the legal documents. *York Courant*, 9th July 1835, for example, where an account describes the taking of items from a cart as robbery.

¹¹¹ See Finnegan, *Poverty and Prostitution*, p. 110 for biographical details of Elizabeth Shields who was a known prostitute.

¹¹² YQS 18th October 1852; *Yorkshire Herald*, 28th October 1852.

¹¹³ See 22nd October 1860 (this group included four men and one of the two women to commit such an offence.) And also 7th April and 31st December session of the same year. 1840 sees four such incidents but 1850 only one.

¹¹⁴ *York Herald*, 27th October 1860. Her case has already been discussed in chapter one as one of 'feme covert.'

It is possible that women were excluded from charges such as robbery because of the legal definitions of those offences. For a man to claim that he had “been put in fear” by a physically smaller woman might be difficult.¹¹⁵ Such criminal categories ensured that the higher courts, and therefore ‘serious’ crime, was a masculine domain. I have shown in chapter one that as legislation burgeoned and was formalised during the nineteenth century this was increasingly the case. But masculinization of the law was not the only reason for the absence of women from such serious crime charges. Offences such as breaking and entering and embezzlement remained in the quarter session jurisdiction, but women were hardly ever tried for such crimes in York because, on the whole, the sites of such crimes were located in domains, such as factories, business and commerce in which few York women participated.¹¹⁶ As we have seen when they did enter such worlds, such as the Leeds factories, their participation in criminal activity in those areas appears to increase. This is not, however, to say that the women’s contribution equalled the men’s in such situations. Indeed the small number of women from other areas of Yorkshire tried at the Assizes for such house breaking or robbery were usually accompanied by males.¹¹⁷ Yet as with the earlier examples of violent crimes, offences could be down-graded and it was more likely that women would be charged with simple larceny¹¹⁸ or even that values of goods stolen might have been down-valued.¹¹⁹ The comparison made earlier in the chapter with work on highway robbery in London, by Sharon Morgan, demonstrates precisely how flexible and arbitrary the treatment of such crimes could be from region to region.

Of the ‘offences against the person with violence’(see Figure 4. 9) which were neither a form of theft nor of ordinary assault only one was a concealment of birth. Mary Watson was

¹¹⁵ Short’s much neglected M.Phil. analysis of female criminality between 1780-1830 also stressed the understating of the violent element in crimes by the women in her cohort, Short, ‘Female Criminality’; A tragic modern parallel might be found where husbands have felt unable to bring cases against physically abusive wives. See Murray A Strauss, ‘Physical Assaults by Wives: A Major Social Problem,’ in *Current Controversies on Family Violence*, (eds.) R J Gelles and D R Loseke, (Newbury Park, Ca., 1993).

¹¹⁶ For a contrast see Barry S. Godfrey, ‘Policing the Factory: Appropriation and Theft in the Factory System of West Yorkshire 1830-1880’, Ph. D., (Leicester, 1996).

¹¹⁷ Crown Calendar 27th August 1832. Priscilla Tatham from Halifax was charged with breaking and entering (with another male).

¹¹⁸ Catherine Murgatroyd, for example, was alleged to have held her victim against the wall, at midnight, in order to take a joint of beef. The charge is of simple larceny rather than robbery, *Yorkshire Gazette*, 11th April 1853.

¹¹⁹ One surprising valuation, for example, was made in 1840 when Catherine Tallon stole two cloth jackets and a waistcoat which were valued at 2/6d whilst, at the same session, Isaac Garside and William Thompson stole a scarf, a ribbon and some stockings valued at 3/1d, YQS 4th October 1840.

a nineteen year old and pleaded guilty to the offence but there are too few extant details to help determine why her particular case was not sent to the assizes which would have been the more normal trial court in York.¹²⁰ The court records might indicate that there was no real infanticide or baby farming problem visible in York. None of the numerous women charged at the assizes with concealment of birth or with the murder of their children appear to come from York city and certainly there was much less press concern over the issues than there was elsewhere.¹²¹ However, a report in 1835 suggests that even if problems did not always reach the courts there were worrying incidents. In this occurrence a woman left her unconscious child in a bed in the Black Dog public house. It was assumed to be doped with opium and a reward was offered for apprehension of the “unnatural” mother.¹²² A thorough investigation of the extent to which such crimes actually existed in York but did not reach the courts is outside the brief of a study of quarter session crime but remains to be investigated more thoroughly. Yet, as I have already discussed, and despite the enormous problems of detecting infanticide, it seems likely from the *qualitative evidence that there were few actual cases in York*. There was, as we saw earlier, little police or coroner’s concern or press coverage of suspect infant deaths and very little interest in the Infant Life Protection Act of 1872. It was, in fact, a very different scenario to that found in London.

The infanticide issue also reminds us that if crimes in York were carried out in a more domestic sphere they may have been more difficult to detect. Indeed, as I said in the introduction to this chapter, many incidents perceived in the twentieth century as domestic crimes, such as abuse, were far less likely to be perceived as offences in the nineteenth century. One woman appeared at the magistrates court for beating her step-son. It was claimed that the child often had black eyes. The woman claimed that she had not beaten the child but that her husband had actually used the stick in question on her. Ignoring this accusation, the father

¹²⁰ Mary Watson, YQS 14th October 1839. Note that she only received fourteen days as she had already served two months ‘on remand.’

¹²¹ My interest in this thesis was in part stimulated by an MA dissertation on infanticide which I completed in 1985. Susan E. Grace, ‘A Melancholy Catalogue of Murders: Infanticide in mid nineteenth-century London’, M.A. (London, 1984) In this I mapped out the press coverage nationally and in London, and commented on the interest in infanticide of the first medically qualified coroners. There was at that time very little material on the topic indeed. In the intervening years a disappointing study by Lionel Rose, *Massacre of the Innocents: Infanticide in Great Britain 1800-1939* (London, 1986) has been superseded by the impressive study by Margaret Arnot discussed more fully in my Introduction. Margaret L Arnot, ‘Gender in Focus: Infanticide in England 1840-80.’ Ph. D., (Essex, 1994); A quantity of mint condition posters detailing the requirements of ‘The Infant Life Protection Act’ of 1872, printed in and for York, and still extant in the City Archives, remind us of how legal requirements were disseminated to the general public.

¹²² *Yorkshire Gazette*, 5th December 1835.

claimed that the child was “a devil” and that the beating was “quite proper.” The case was dismissed.¹²³ Thus cases of violence which, in our own time would cause great concern, appear to have been of much less significance to the York residents.

Whilst there are no clear cases of physical or sexual abuse by mothers recorded in York quarter sessions there was abuse of children in more minor ways.¹²⁴ Some cases indicate that children could be used as easy dupes or victims, particularly where safeguards did not exist as regards child minding. Alice Clancy had stolen from her employer whilst minding the prosecutor’s child for 2d; but Alice was only 12 years old herself.¹²⁵ Harriet Atkinson had volunteered to escort one Cawood woman’s grandchildren up the Minster tower and was charged with picking their pockets.¹²⁶ York residents could frequently read of forms of child abuse in other localities. One detailed report was of a tragic, and perhaps unusually middle-class, case. A Leeds solicitor’s wife was sentenced to 9 months in Wakefield House of Correction for kicking, beating, starving and other cruelty towards her son.¹²⁷ However, cases of violence by parents appear to have been less likely to be perceived of as serious crimes or to be dealt with in the assizes. The important point in this context is that women were clearly involved in acts of cruelty towards others.

A further interesting but unusual crime, in York, in this category was of child stealing. York quarter sessions saw only two cases by women, and assize offenders for this crime do not appear to have ever originated from the city of York. Yet, by contrast, in the years 1801-1830, 72 women appeared before the Old Bailey for this offence.¹²⁸ Martha Barrett was sentenced to twelve month’s imprisonment for enticing away a twelve year old. The comment that it “had been practised in other towns to a great extent” adds weight to Morgan’s evidence

¹²³ *Yorkshire Gazette*, 4th October 1831.

¹²⁴ Mary Skinner was brought before the Lord Mayor for desertion but the case was not pressed, *Yorkshire Gazette*, 7th April, 1838; See also *Yorkshire Gazette*, 23rd January 1858, when Alderman Seymour found a deserted, dead new-born child in Clifton. However, cases of cruelty by mothers from other areas of Yorkshire were dealt with in the assizes from time to time.

¹²⁵ YQS 11th March 1834.

¹²⁶ YQS 5th July 1839.

¹²⁷ *Yorkshire Gazette*, 9th January 1841.

¹²⁸ Morgan, ‘Women and Violent Crime’, p. 58. Population differences may account for this contrast in figures, however, the point is that there was little fear of such crime in York.

but suggests that such offences were not perceived to be a problem in York.¹²⁹ The language of the indictment is a reminder that crimes involving women and children were still a matter of the theft of the property of the father. Barrett stole “with intent to deprive one James Thorpe, the father, of the possession of such child.”¹³⁰

Whilst impossible to quantify, it would appear likely that actual rates of violent crimes committed by York women were lower than in larger urban centres. Certainly the fear of it was absent and there seems to have been little interventionist policing of women’s violence in York. The public perception of women as perpetrators of violent behaviour was virtually non-existent. Yet occasional newspaper reports suggest that women did, from time to time, participate in violent activity, not least towards children. Studies of ‘moral panics’ have demonstrated that fervent interest in particular offences does not necessarily depend upon high initial rates of the crime: increased policing itself can produce those high rates. The reciprocal nature of these features makes the real extent of women’s violence unfathomable in this York context. If York’s law enforcement officers chose not to police women’s violent activity we are much less likely to be able to access it.

However, it would seem that the quarter session was becoming more of a male court as crimes were re-categorised and the notion of serious crime was being constantly re-vamped. The question of the lack of recorded women’s violent crime also returns us once again to an issue raised in the introduction to this chapter; that of the double-edged question of women’s agency in crime. On the one hand it seems likely that women in York were not actually committing serious crime in anything like the same numbers as men. On the other hand, it also seems that women were being culturally demarcated (as we will see in chapter seven) as beings who, by their essence, were unable to commit serious crime and, in particular, who were incapable of violence. Such views must surely play their part in the long process which, until recently, has seen serious crime as men’s business. If the current predictions that women’s rates for violent crime will equal men’s by 2016 are worrying, then there is surely urgent need for more retrospective gendered studies of crime which might indicate what factors have precipitated such changes.

¹²⁹ *Yorkshire Gazette*, 24th October 1868. Reports of cases in other towns were common. See also, for example, *York Courant*, 19th January 1843. There was clearly more of a fear that women were involved in such activities in larger cities. See *Morning Chronicle* 22nd October, 1821, for example.

¹³⁰ YQS 19th October 1868.

4.3 Socio-economic influences on York female quarter session crime

A number of features of the lives and activities of York's offending women such as their accomplices, their employment, their accommodation and their ages will be considered in chapter five. Some other, more general, socio-economic factors will be considered here. It was noted in chapter three that there were basic similarities in the actual patterns of male and female crime in York quarter sessions. However, it was also seen to be the case that there was a slightly greater fluctuation in the male numbers (see Figure 4. 4). We also determined that York's relatively small sample made it difficult to establish, with authority, any causal links between socio-economic factors and the erratic peaks and troughs of individual years. We must continue to ask, however, whether socio-economic factors had any overt link with the types of crimes committed.

Incidents of public disorder, which caused raised levels of male crime nationally in the 1840s, had relatively little direct effect on the types of offences occurring in York. Within the generally violent decade of the 1840s the year of optimum male cases was 1840. This was two years earlier than the national peak which occurred in 1842 and was the year of the 'Plug Plots.' York's (male and female) actual offences were seldom ones which related to direct political action. Indeed the Recorder's addresses show that he perceived York as relatively safe from such "unfortunate disturbances."¹³¹ Nonetheless, the relatively high rates of York's male and female quarter session crime in the 1840s may indeed indicate the underlying tensions of years of political unrest and agitation nationally. Press coverage of the large number of Chartist cases in the York assizes would have ensured that local people were very well aware of the agitation and political unrest that surrounded them. Such a lack of involvement in political action indicates a considerable difference between York and its West Riding urban neighbours. Yet, within this context there is a possibility that higher figures for both sexes, in the period, represented some increased vigilance on the part of the York police and the discussions found in the Watch Committee's documents would substantiate this.

As I have already indicated, the interest in policing of prostitutes, as reflected in the quarter session records, seems to reach its height in the 1840s. In 1840 six women were brought before quarter session for keeping a disorderly house whereas in all of the previous 10 years there had only been three cases and in the next twenty there were only to be two more incidents. The notion, and existence, of 'disorder' is critical here. As I have said earlier, an

¹³¹ *York Herald*, 9th January 1841; *Yorkshire Gazette*, 22nd October 1842.

element of nuisance was necessary in order to charge prostitutes under the relevant law in York.¹³² Serious cases of assault by males appear never to have been dealt with summarily in York¹³³ but it was extremely unusual for female violence to be dealt with in the quarter session in York: such crime normally remained in the petty sessions. However, and unusually, in the 1840s the six women were indicted for assault and dealt with in the quarter session. These are extremely small numbers on which to build any argument. Furthermore, it must be said that the Recorder did not choose to comment on these particular cases nor were the women used to set a public example at the level of the court.

I have acknowledged, elsewhere, that public order was never a major issue, in York, as it was in larger cities. It remains the case that, whilst there were incidents before the petty sessions of small groups of women fighting, there were *no incidents in the quarter sessions that could be construed as serious public order offences*. In the final analysis the increased interest in the criminal nuisance element in women's crime in York may well have been more of a concern over female morality rather than public order. However this should be qualified. Whilst it is impossible to prove any direct link here between panic over public order and tighter policing of female sexual offences it nonetheless remains possible that, in the 1840s, police were more anxious about public disorder of any kind, even that caused by females. If nothing else, this probably demonstrates that the distinction between crimes of morality, public order offences and acquisitive theft is less clear than has often been implied in much of the feminist, and other, work on prostitution. The increased policing of female cases may reflect more than simply an eagerness to police the moral and sexual behaviour of women and must be placed in the context of other mechanisms that were at work within the justice system of this period.

One impression gained from a summary of the types of crime before quarter sessions during the forty year period is that, predictably, women's crime was more affected by privation, such as that of the 1830s and the slightly raised female rates of crime in the 1830s might well relate to a period of particular hardship in York. In turn this might determine the types of theft which occurred. 1832 was, of course, the year of York's first cholera epidemic and was clearly a year of great fear for the population of York. It is possible that victims of cholera were easier targets for crime. There is no evidence, however, that such crime was limited to female 'carers.' Ann Fowler, for example, was charged with receiving promissory

¹³² In 1834 the Recorder directed that there should only be true bills brought against the alleged keepers of 'disorderly houses' if they had been "a nuisance to the neighbourhood." *Yorkshire Gazette*, 5th August 1834.

¹³³ *Yorkshire Gazette*, 7th April 1845. Comment by the Recorder on his charge to the jury.

notes stolen from a cholera victim but the actual theft had been committed by a male.¹³⁴ Furthermore none of the offences of 1849 appear to relate to the cholera outbreak of that year. But 1832 was also the last of three wet harvests and clearly a time of stress; it is more likely that the cumulative effects of these features added to the causal factors of York female crime, in the 1830s which was also a peak period in national crime rates. The vast majority of this crime was, as we have seen, theft of small items, often clearly for personal use.

Female theft before the quarter sessions in the 1830s and 1840s consisted of strikingly similar numbers of thefts of household goods (between 30-40 each decade); similar numbers of thefts of money; about a dozen food thefts and a similar number of shoe thefts. The major difference between the decades is seen in the thefts of clothes with double the number in the 1840s. Such thefts included more thefts of stays, gowns and silk or crepe shawls which could be construed as being crimes of an acquisitive nature and less offences which were attempts to survive.¹³⁵ Nonetheless, there were clearly still women who stole from desperation.¹³⁶ However, a larger quantitative study than York figures can yield would be needed to provide conclusive evidence of such a shift in motives for crime in any given period. It is also likely that shifts in increasing police prosecution shifted the focus in this period and these will be considered more carefully in the comparison with Hull. Most importantly there will always remain the more inaccessible psychological factors perhaps reflected in Elizabeth Thompson's crime. She declared she had taken three pounds of mutton "out of fun" in April 1840.

However, that poverty had one of the strongest correlations with the women's criminal activity is clear.¹³⁷ In spite of the fact that, as now, York was sheltered from many of the ravages of inner city life, there is no doubt that many of its women suffered unimaginable hardships in their homes.¹³⁸ For the majority of the York offenders poverty seems to have been a common experience and as Pat Carlen claims, "By the mid-nineteenth century it was their

¹³⁴ *Yorkshire Gazette*, 7th July 1832. They were acquitted on a direction by the Recorder but the *Courant* called them "morally guilty."

¹³⁵ There were similar numbers of crimes in these decades but the shortfall in clothes crimes in the 1830's seems to be replaced by a number of different crimes rather than one type. For example, there were slightly fewer non-thefts; slightly more handkerchief thefts; slightly more fabric thefts etc. Low numbers might resist any general conclusions on these patterns.

¹³⁶ *York Herald*, 11th March 1840; YQS, Ann Child, 10th April 1840 and Maria Dirkin, 3rd July 1840.

¹³⁷ Mary Thompson, for example, had just come out of the workhouse and was said to be in a "state of great destitution," *York Herald*, 20th October 1837.

¹³⁸ See, for example, A. Digby, 'The Relief of Poverty in Victorian York: Attitudes and Policies', in C. H. Feinstein (ed.), *York 1831-1981: 150 Years of Scientific Endeavour and Social Change* (York, 1981), pp. 160-187.

poverty, rather than their lawbreaking that made working-class children (and the women in this study) prime candidates for incarceration.¹³⁹ However, improved living conditions may have played some part in declining crime rates.¹⁴⁰ During the period of this study the cost of living in York was decreasing and Armstrong claims there was a real “advance in living standards for the urban working population.”¹⁴¹ Certainly reduced crime in York was linked directly, by one Recorder, to increased employment opportunity.¹⁴²

Conversely, however, we have seen that York’s theft may not simply have resulted from the poverty of its inhabitants but also from the wealth of certain sectors of York’s residents.¹⁴³ A relatively high number of servants in an area implies the presence of a larger number of wealthy people. Indeed York had a far higher number of people of independent means than had nearby urban areas.¹⁴⁴ It is difficult, even today, to obtain statistical evidence that directly links increased poverty and law-breaking¹⁴⁵ but as Steven Box argues, “‘income inequality’ (rather than poverty alone) is strongly related to criminal activity.” Thus York’s nineteenth-century women were frequently placed in a position where goods they could not afford were to hand and there may have been the temptation to appropriate such items -

¹³⁹ Pat Carlen, *Women, Crime and Poverty* (Milton Keynes, 1988), p. 5.

¹⁴⁰ Whilst there is great debate about the actual extent of this improvement in living standards the consensus would appear to be that there was real amelioration for many. See, for example, Simon Szreter, ‘Mortality and Public Health, 1815-1914,’ *ReFresh*, (Spring 1992), No 14, p. 1-4; My assumptions here might be seen as an example of the wider findings of Gatrell and Hadden, in ‘Criminal Statistics,’ that “women stole more frequently in times of depression than they did in times of prosperity,” (p. 369) but in contrast to those of criminologist, Professor David Smith, of Edinburgh University, who has recently said, “It is the norm to assume growing crime is the consequence of inequality, poverty, deprivation or social exclusion. But rising crime seems linked with economic growth rather than deprivation. Economic growth leads to increasing opportunities for crime.” *Sunday Times*, 11th January 1998; The crimes represented in York quarter sessions in the 1860s are more clearly related to prostitution or to more overt and calculated deception than in earlier decades. However this is not evidence that crime, in general, was less of an opportunistic response to poverty; it merely reflects the fact that this type of crime had become the staple diet of the quarter sessions. Poverty might be better revealed by the petty session crimes of this period. However, extant records are not sufficiently detailed.

¹⁴¹ Armstrong suggests that, in York, poverty was less deep or widespread by the time of Rowntree’s survey than it had been earlier in the century. Armstrong, *Stability and Change*, p. 195

¹⁴² “This average (of prisoners) was a decrease that indicated there was employment for the poor of the city.” *York Courant* 9th July 1864. In the *Yorkshire Gazette* 23rd October 1852, the recorder attributes the lack of an increase in crime to a “better feeling among all classes and their enjoying more comforts.”

¹⁴³ Armstrong suggests that income discrepancies may have been more obvious, and by implication more fixed, in York than in growing industrial towns. This, he suggests, was a reason for the lack of class confrontation since there would be seen to be little chance of changing the existing social order. However, such a situation might be seen to lend itself to the more covert activity of theft, Armstrong, *Stability and Change*, p. 195.

¹⁴⁴ *Ibid.*, p. 30.

¹⁴⁵ Pat Carlen, *Women, Crime and Poverty*, p. 8.

whether as acquisitive crime or as ‘social crime.’

In chapter five we will see that mobility brought about by railway development did play some part in the crimes committed by some females, nonetheless York women seem to have been relatively unaffected by the concomitant population movement. Even allowing for factors which might have affected police availability, it would still appear that supervision of offenders was easier in York than, for example, in Hull. Many of the women thieves were easily recognised, often precisely because they were servants who had shopped for their employers in the places from which they stole.¹⁴⁶ Economic marginalization was clearly part of a dual mechanism at work in female crime. The powerlessness of many women, of which poverty was a part, may have led to female crime but that same lack of power may also have been part of social control. Lack of finance might in some cases mean that a woman was confined to the home area where any anti-social behaviour could not be anonymous. The friends of 19 year old Sarah Ann Franks, for example, maintained that they had tried to “reclaim her.”¹⁴⁷ It might be argued that the numbers of women offenders charged was higher than in more urban areas because of this difficulty of remaining anonymous. But it could also be said that being visible in the home location, in general, acted as a control and kept more women from crime than men. The two mechanisms seem to have worked, paradoxically, at the same time. One reason for this may be, as Pat Carlen argues, that women were more firmly controlled, than were men, within two material and ideological sites of social control; the workplace and the family.¹⁴⁸ Furthermore York’s strong middle class, heavily influenced as it was by evangelical, Quaker and Methodist teaching, does not appear to have allowed its working-class women much leeway when it came to anti-social behaviour. It may also have been that the easily accessible Borough sessions were seen as a way of dealing offending women the short, sharp shock of incarceration, although comments suggest that this lesson was perceived by contemporaries as compassion and not merely as a desire to keep the streets clean.

York was a garrison town and yet this seems to have had surprisingly little overt effect on its criminality. Finnegan comments on cases of prostitution affecting soldiers but in respect

¹⁴⁶ YQS 26th June 1847, Eliza Young was recognised when she tried to sell a stolen shawl back to the shopkeeper who had sold the item to her employer in the first instance; YQS 15th October 1849, Jane Wylde used her ex-employer’s name to obtain fabric. She was discovered when employer’s sister visited the shop.

¹⁴⁷ *Yorkshire Gazette*, 6th July 1833.

¹⁴⁸ Pat Carlen, *Women, Crime and Poverty*, p. 12. It is difficult to find written evidence of such familial control. However, it is clear that offenders frequently needed support from their families when they did offend; Elizabeth Martin was one of many to be protected by her sisters. (YQS 22nd March 1830) It could be argued that offenders came from homes where such social control was not in existence.

of other types of crime the barracks attracted surprisingly little adverse publicity in the press.¹⁴⁹ Despite the fact that the relationship between war and crime has invited much comment,¹⁵⁰ there are particular dangers in ascribing fluctuations in crime figures to effects of war in a garrison town. Constant troop movements makes trends extremely difficult to establish¹⁵¹ and there are no obvious correlations with crime rates and major wars in York.

We must, here, return to ask why the York female rate of crime stayed steadier than the male one in the years between 1840 and 1855? One suggestion is that, despite the earlier comments about lack of mobility, Irish immigration may have had considerable effect. The demographic analysis of York in chapter three reflects the major single cause for population increase as that of the Irish immigration of the 1840s. Frances Finnegan concluded that the Irish were responsible for a “greatly disproportionate” contribution to York crime.¹⁵² But in fact, this statement appears to relate more particularly to Irish men. Finnegan’s figures for the participation of York’s Irish population in crime suggest that they were, as a community, responsible for a quarter of the crimes in 1851, falling to a fifth in 1861.¹⁵³ However, her quantitative analysis is not gendered, and is, in any case, based mostly on offences at the petty sessions. It is at this point, however, that this argument relates to crime type. Since Finnegan stresses elsewhere that a disproportionately low number of Irish women were involved in prostitution it is possible that peer control kept the Irish women out of crime generally.¹⁵⁴ Whilst it would appear that Irish males contributed to the rise in the male rate of convictions before quarter sessions the number of women brought before York quarter sessions in the 1840s declined. Very few of the women charged with theft appear to have been Irish. What rise there was in female convictions at petty sessions in this decade reflects the increased targeting of prostitutes. However, as Finnegan has pointed out, any Irish women offenders were more likely to be females caught up in groups engaging in disorderly street behaviour. The majority of these offenders appear to have been women native to Yorkshire rather than

¹⁴⁹ Finnegan, *Poverty and Prostitution*, p. 27.

¹⁵⁰ Gatrell, ‘The Decline of Theft and Violence,’ p. 320.

¹⁵¹ *York Courant*, 17th October 1844. In one evening a company of the 70th Regiment left for Manchester; the same evening a company of the 83rd Regiment arrived from Northamptonshire. See also *VCH, The City of York*, p. 541 for more information on troop movements.

¹⁵² Frances Finnegan, *Poverty and Prejudice: A Study of Irish Immigrants in York 1840-1875* (Cork, 1982), p. 153.

¹⁵³ Finnegan (Beechey) ‘The Irish In York,’ p. 324.

¹⁵⁴ Finnegan, *Poverty and Prostitution*, p. 32.

immigrant women.¹⁵⁵ This was a very different scenario from that in Hull where, as we will see in chapter six, prostitutes were frequently perceived to be Germans intent on ‘invading’ England.

It is possible that the increased sense of alienation, anonymity and mobility affected crime patterns in other, more subtle, ways and these pressures may have accounted for temporary rises in certain types of female crime. It is difficult to find direct evidence of such mechanisms but one example of behaviour which could have quickly resulted in a criminal action was demonstrated in the bigamy case of Michael Carroll. When his Irish wife and young baby arrived to join him in York they found he was living with another York woman. On her arrival the wife was locked in a room, “scornfully treated” and then thrown out by Carroll’s new partner.¹⁵⁶ Such domestic disputes might easily lead to charges of violence or theft and also to vagrancy charges. Further effects of immigration on crime will be discussed more fully in chapter six.

The lack of overtly racist comments about York offenders does not necessarily mean that racial origin was not an underlying concern within the justice system. Place of origin was sometimes a matter for discussion in court, partially in respect of settlement issues relating to the Poor Law. Hannah Johnson “in reply to the Court” said she had been born in America.¹⁵⁷ Furthermore, the ever-present middle-class interest in English supremacy can sometimes be seen at a sub-textual level. For example, preoccupied with the English origins of the judiciary, an article in the *Yorkshire Gazette*, of 1845, stresses that the present bench offers a “fair example of the combinations and origins of English names.” It goes on to stress the link of the Vice Chancellor’s name with a Saxon saint.¹⁵⁸ In other words, the justice system officials (unlike the offenders) may have been perceived to hold impeccable ‘English’ credentials.

In their charges to the jury at the opening of the quarter sessions the Recorders frequently referred to seasonal influences. In the eyes of one official, for example, incidents of crime increased in the winter when employment was hard to come by. This makes clear sense when discussing male figures but how do women offenders fit into this picture?

¹⁵⁵ Biographies constructed from available sources suggest that many of the women were from relatively local Yorkshire villages. Nonetheless the women were still perceived by the Recorder to be outsiders, although not particularly foreigners. *Yorkshire Gazette*, 3rd January 1853.

¹⁵⁶ *York Herald*, 11th March, 1840.

¹⁵⁷ *York Courant*, 29th October 1835.

¹⁵⁸ *Yorkshire Gazette*, 5th April, 1845.

Certainly there was a marked fall in offences in the summer months May, August and September (Figure 4. 13). This is possibly accounted for by the availability of harvest work and fewer women coming into York from the surrounding country. It may conversely be that there were fewer males looking for employment and consequently fewer victims of prostitutes and pickpockets. As I have already suggested, many of the women and men involved in crime, as both victims and as offenders charged before the quarter sessions, were from Yorkshire villages.¹⁵⁹ Many of them had moved from nearby rural areas to seek employment. March and November had the highest incidences of crime, in general. In January 1846 the Recorder commented that the short days and long nights gave more opportunity for crime and that severe weather prevented the poorer classes from working.¹⁶⁰

‘Thefts by servant’ were predictably less subject to seasonal variation but ‘thefts from the person’ committed by women follow the seasonal pattern commented upon by the Recorders and the highest rates are in November and December. June also had a high figure which may be more difficult to explain. Races were held in June but this cannot account for all of the offences. Indeed the Recorder commented in June of 1851 that he could see the races from his house and he was amazed that only two felonies resulted from such a large gathering.¹⁶¹ However, despite the June figures, one tenuous conclusion from this work might be that the employment available for women in the summer months may have offered some financial relief and some consequent small reduction in crime. The Recorder’s perceptions seem, in this case, to have been reasonable ones.

Conclusion

In this chapter I have attempted to indicate the rich potential for future research into the offending patterns of women. More regional studies and larger qualitative and quantitative analyses are required before assumptions can be made about long term trends. It must be recalled that the “urban world of early industrial Britain was essentially one of small communities.”¹⁶²

¹⁵⁹ *Yorkshire Gazette*, 3rd January 1853.

¹⁶⁰ *Yorkshire Gazette*, 5th January 1846.

¹⁶¹ *Yorkshire Gazette*, 30th June 1851.

¹⁶² Edward Royle, *Modern Britain; A Social History 1750-1985* (London, 1987), p. 21.

York Quarter Sessions:1830-1869

Seasonal variation:female offenders

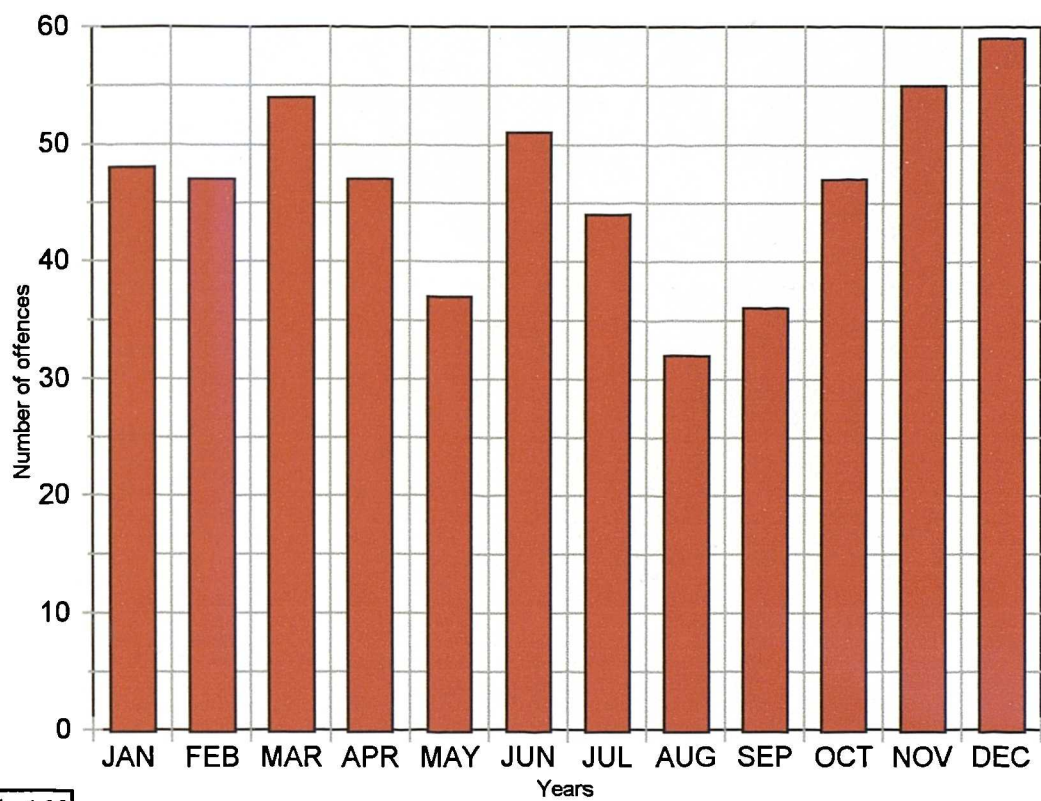


Fig.4.13

In this respect York would not have been untypical of much of Britain in the first half of the nineteenth century. The picture of a nation of large urban masses with mounting panic regarding crime may even have been overstated.

However, in general, types of crime appear less diverse in the small county town than, for example, in the Metropolis. That there were fewer female offenders than male ones, does not mean that a more limited number of variables were at play in the lives of those who did offend. Consequently, historical studies of female criminality cannot assume that less-nuanced summaries than those applied to men will suffice simply because women offenders were a statistical minority. That said, there are issues addressed in this chapter where only partial answers have been possible because of the numerically small nature of the sample. Inevitably, therefore, the analysis has relied more heavily on qualitative rather than quantitative material. The comparison of York and Hull's female offences and offenders in chapter six will explore further some of the themes that have been analysed in less detail here. Meanwhile we can draw together the topics of this chapter and indicate areas which have resonances in other chapters.

In York the extant court records present clear boundaries to the types of cases before the quarter sessions. York's quarter session court dealt with a remarkably coherent set of thefts: thefts which although in many respects similar to male offences had a distinctly gendered pattern. We have seen that the particular use of policing and of the courts in York may have helped create a high rate of mid-range offenders. Inevitably the offending behaviour and its control was interlinked with York's high rates of prostitution and the desire to limit this activity. Increased attention towards women's moral behaviour was specifically policed in the petty sessions but seems likely to have resulted in higher quarter sessions rates. The high rates of 'theft from the person' prosecuted in York might be one ramification of this surveillance. The pressure from the Quaker and evangelical organisations was, as I have said in chapter two, one of the key influences in the moral policing of York women on an informal basis; but the individuals from these groups were also the members of the judiciary before whom the offenders appeared in court. Thus those religious attitudes might be reflected in court judgements just as much as in the Penitentiary Committee. Moral, as opposed to legal, judgements were frequently passed from the Bench. Mary Poulson's prosecutors, for example, were told that they were "as bad as the prisoner."¹⁶³

On the other hand, we have seen that York did not charge its street thieves, male or female, with highway robbery. The city's middle class did not perceive violence to be a threat

¹⁶³ *Yorkshire Chronicle*, 9th March 1831.

in the way in which their peers in other, more urbanised, areas did. They did not, therefore, see the need to resort to the heavy policing of such crimes. In particular, those in the justice system in York did not seem to see women as capable of serious violent crime. Assaults by women were, in the main, examined only in the magistrates court. This was not true of Hull assaults. We have seen that incidents of violence may have been down-graded. This refusal to see women as aggressive continues to shape female crime rates today and yet has only, very recently, become a subject of debate.¹⁶⁴ Ironically, it seems possible that York's small town environment resulted in a higher detection rate of female offenders than did large cities. The high rate of female servants in York and, therefore, of 'theft by servants' also accounted for a considerable contribution to the female offence rate and a 'small town' control mechanism is particularly seen in many of those cases. Clearly, and frequently, offenders were easily recognised and reported in York. Mobility was an important feature but women criminals appear to have been less mobile than their male counterparts. York was neither a large anonymous industrial area nor a small village with the peer group restraints that have been shown to operate in such an environment. Nevertheless, it has been suggested that for particular groups of women, such as the Irish, peer control may have kept them from criminal activity.

The effects of industrialisation on York were limited and clearly not the cause of the high rate of women's criminal activities. As we have seen, York thefts took place in shops, homes and on the street and in pubs. The question must rather be whether or not the limited employment opportunities led to any real higher level of female crime than might otherwise have existed; the summer fall in thefts might suggest that there is room to investigate this phenomenon. Certainly, there remains a need for further comparative study into the effects of industrialisation on Victorian women and crime. This study, with its limited data set, can only suggest that whilst a large city, with its industrialisation and concomitant population increases, could lead to relatively high crime rates, conversely a small town, with its closer moral and peer policing, easier detection and higher prosecution rates might also result in apparently high crime rates. It remains a strong possibility (based on a limited comparative qualitative analysis of quarter session records of female crime in areas of Yorkshire which include York, Hull, Wakefield and Leeds) that whilst industrialisation or urbanisation account for rises or falls in one region, the very lack of such phenomena might affect figures differently

¹⁶⁴ Ngaire Naffine, *Feminism and Criminology* (Cambridge, 1997), says "Instrumental aggression in women...lacks a place in our culture," and she continues, "the angry woman is defined as the hysteric; but there is no equivalent concept of the male hysteric." p. 147.

in a neighbouring locality.

Given, however, that a decline of female participation in crime was established in chapter three, what other reasons have we seen in this chapter for women's falling involvement in crime? The crime patterns outlined above, fluctuating and peaking both in time of economic boom and in times of hardship, are familiar patterns to us in the twentieth century and causal connections are just as difficult to establish. The question, similarly relevant today, is, to what extent and in what ways were those who committed crimes specifically and personally affected by such economic features? The qualitative element of this study demonstrates without doubt that many women stole because they were poor. Poverty appears to have been the overwhelming reason for thefts. This conclusion cannot be based simply on verbatim witness or offender statements quoted in the press. Such defence statements alone would be notoriously unreliable. They are substantiated by a consideration of ancillary sources which enables a picture of the women's lives to be drawn. However, a necessary next step in the search for links between crime reduction and increasing prosperity would be to analyse thefts in the fifty year period after the close of this study: this remains to be done.

The circumstances of the thefts in this study might suggest that women offenders in nineteenth-century York were less directly affected than men by factors external to their immediate neighbourhood and home environment, such as the social unrest and political agitation seen in the 1840s. As we have seen, women in York were more likely to steal goods for their own use than to sell them in large quantities; the wider market may have been of less relevance in this respect. Their crimes were more likely to have been opportunist and of goods for their own use. The thefts by men may, admittedly, have been for the same motive but it has been more difficult to assess motive where the sale of larger goods from the workplace was involved, or indeed where more third parties were involved. Less clear employment patterns for women also make it more difficult to directly relate female crime figures to larger economic trends. Where any work record exists for the women offenders it usually demonstrated a multiplicity of types of jobs rather than continuing within one main occupation. Noticeable exceptions to this were the servants and we have seen, in chapter three, that the decline of this occupation in York may have had some implications for the female crime rate.

The conclusions I have reached within this chapter have considerable bearing on recent debates about women and crime. That rates of female crime were higher in the nineteenth-century is of enormous significance for current debates on female criminality but how those rates were arrived at is of even more importance. Predictions such as that by Radzinowicz that

rising female crime rates would accompany greater female freedom can only be assessed within a more general social and historical context.¹⁶⁵ This may then endorse or deny the view that greater freedom for women does indeed encourage crime. Indeed many of the female offenders in this study appear to have been free to visit pubs and eating houses, wander the streets freely, and live a life generally unfettered by the constraints of the later nineteenth-century, middle class female. The types of thefts committed were often a result of this relative freedom. It seems equally possible that the spread of Victorian notions of respectable female behaviour did, as the work of Tomes, Ross and Hunt have shown, lead to a lower level of acceptable violence amongst women and a decrease in the level of violent crime. And, of course, this may have been partly responsible for decreasing male crime rates too. The question for the future must surely be whether restrictions on women curtailed their criminal activities for a period and, if they did, what lessons could be learnt that would help to reduce, significantly, the normally higher male rates of crime? The immediate reaction to such a question might elicit a facile or glib retort from those who remain convinced that crime is “just boys doing business” but meanwhile the historical differences between male and female rates of crime remain under-researched.

This chapter has also demonstrated, however, that the arguments made above regarding greater outdoor movement of women might actually reflect an unemployed, rootless population of women. Women moving around nineteenth-century streets must have seen a great inequality of wealth-distribution. We have seen that they stole from necessity and, probably at times, simply to acquire coveted goods. From these York cases it is likely that greater freedom for women to use the public spaces of the streets, the markets and the pubs were neither the only, nor indeed the dominant, trigger in the early nineteenth-century raised levels of female crime. All of these features seem likely to have been at play in nineteenth-century York women’s lives.

Nineteenth-century crime, just as our own, was indeed multi-factorial. It has been difficult, with the clear exception of poverty, to highlight trends and patterns in this small sample. Nonetheless we have seen a complex picture which defies simple solutions. Furthermore, and most importantly, the psychological causal factors which would add to the depiction of the male and female crimes in this study remain almost totally inaccessible. Yet the profiles of the offences in the York quarter session records have been seen to possess underlying similarities as well as differences. We must question, in the following chapter,

¹⁶⁵ L. Radzinowicz and J. King, *The Growth of Crime: The International Experience* (London, 1977), p. 26.

whether a similar analysis of the offenders will yield greater differences or more similarities and thus add to the glimpse we have received of the “little specks of daily trouble” experienced by some of York’s nineteenth-century women.

Chapter 5

BETWEEN THE SHE-DEVILS AND THE SAINTS: FEMALE OFFENDERS IN YORK 1830-1870

Introduction

In the previous chapter I focussed upon some of the offences committed by York women in the mid-nineteenth century and upon the wider legal and social conditions which affected those crimes. In this chapter I will develop more fully the profiles of the female offenders who were charged in York quarter sessions. In particular I will continue to focus upon some ‘criminogenic triggers’ which affected the lives of the female offenders in question; that is to say features which might currently be termed the ‘situational factors.’¹ These include such characteristics as the networks of people amongst whom the offenders lived their lives: the families, friends, employers, accomplices and the victims with whom they had contact. In particular, since this is not merely a study of the life-styles of nineteenth-century women in general, I will view these aspects in the context of the accomplices with whom the women offended and of the victims against whom they offended. Secondly, I will consider the ages and life-cycles of the women; the employment patterns of some of the offenders, and the accommodation and patterns of mobility of some of the York female offenders. Much of this picture will be created from qualitative evidence and from snapshots of particular women’s lives. Some aspects of the criminal careers of the women will be considered; particularly those which relate to previous convictions and sentencing patterns. The networks relating to the acquisition and the disposal of goods will also be touched upon in this context.

The principal purpose of this chapter is to consider whether it is possible to create a stereotypical nineteenth-century female thief based upon ‘situational factors.’ Any similarities between the stereotypical thief and the prostitute or drunk may then be investigated more fully. It cannot, in the first instance be automatically assumed, as perhaps Victorians often did, that women were involved in all three types of ‘offences.’ Nor must it be conjectured without further investigation that the offenders were either victims or agents within their society. I would suggest that a question based upon such simple polarities does not provide a useful

¹ See appendix two for model of ‘situational’ and ‘individual’ factors relating to crime.

framework for analysis.² ‘Individual factors,’ such as personality traits or constitutional psychological features which relate to patterns of offending, may also have played a significant part in offending behaviour. These are even more difficult to access for criminal historians than for present day criminologists. For the historian, the lack of depositions in York further increases the problem. This chapter will also continue to probe the extent of the masculinisation of crime in the period and to analyse the reciprocal relationship between the notions of crime and the construction of norms of masculinity and femininity. As an approach to these questions, we will look at the networks in which the York women committed their offences.

5.1. Networks and accomplice patterns

Questions regarding the sub-cultures and peer pressures of offenders have been of key interest to twentieth-century criminologists.³ The issues are of no less interest to the historian although they are frequently almost impossible to access.⁴ Where extant sources allow a consideration of such features the conclusions impinge upon many areas currently under debate by criminal historians. Furthermore a key question that has frequently been raised in studies of female criminality is whether or not women have fewer opportunities to commit offences than men - thus accounting for lower female crime rates. In part such an investigation might be aided by a consideration of the social bonding, and of the friendship and familial networks, of the women. The question as to whether there were constraints created by the networks and

² The work of L. Mahood in *The Magdalenes; Prostitution in the Nineteenth-Century* (London, 1990) and much other recent work suggests that creating a discourse of woman as victim was an act of social control. Alix Kirsta in *Deadlier Than the Male: Violence and Aggression in Women* (London, 1994) suggests that the integration of twentieth-century women into ‘victim culture’ renders them “highly targetable” and implies helplessness as an “inescapable dilemma of the female condition” which “cannot but impede women’s progress in all areas of life.” p. 4. Michael Ignatieff in *A Just Measure of Pain* (London, 1978) has also described the creation of dependence arising between rich and poor as a function of philanthropy in general.

³ Studies have ranged from the early titles produced in the 1960’s and 1970’s such as M. Young and P. Willmott, *Family and Kinship in East London* (London, 1962) to more recent studies such as J. Williams and R. Taylor, ‘Boys Keep Swinging: Masculinity and Football Culture in England,’ in T. Newburn and E. A. Stanko (eds.), *Just Boys Doing Business? Men, Masculinities and Crime* (London, 1994), pp. 214-233. One of the classic histories of youth culture and street violence since the nineteenth-century is G. Pearson, *Hooligan; A History of Respectable Fears* (London, 1993). There have been few studies of women and peer pressures and sub-cultures.

⁴ Robert Sindall, *Street Violence in the Nineteenth-Century* (Leicester, 1990), has challenged researchers to acknowledge when areas are “unresearchable” for lack of sources. He concludes that the “working of the minds of nineteenth-century criminals is lost forever.” p. 12. I acknowledge that the sources for this study are, sadly and at all times, texts mediated by middle-class men but maintain that a moderated view of women offenders is better than no view at all.

whether these diminished the opportunities to commit delinquencies is of great interest.⁵

A full answer to this would depend on an examination of the informal structures of peer-group policing and of the control from within the peer groups of the women in question. I have already mentioned the possibility of such mechanisms in the brief discussion of York's nineteenth-century Catholic women and a similar example of the effect of peer policing might be inferred by Sheila Wright's study of York's Quaker women who were seldom charged with crimes.⁶ Other direct evidence is extremely difficult to find retrospectively. For example, no mention has been found in sources relating to nineteenth-century York of incidences of the 'rough musicing' which existed in earlier periods or in other regions.⁷

Clearly, this is not to say informal control was not exercised and there are a very small number of extant examples of other modes of informal sanctions.⁸ One possible reason for the cessation of some of the 'charivari' types of informal 'policing' in the nineteenth-century was surely the burgeoning of print and of a media which offered an alternative form of censure by a growing middle class. Whilst printed posters had long been used in the control of offenders, more widely available newspapers resulted in easier dissemination of such material. One example of such informal negotiation in York might be the public apology printed on the front page of the *York Courant* by John Brown of Claxton. He apologises for illegally cutting, and taking away, branches from the hedge of one Colonel Chomley and asks that legal proceedings will not be taken.⁹

A further way in which the question of peer group control, or indeed the lack of it, may be examined is by looking at the groups in which the offenders committed their crimes.

⁵ Steven Box, *Power, Crime and Mystification* (London, 1983), p. 180.

⁶ Sheila Wright, *Friends In York: The Dynamics of Quaker Revival 1780-1860* (Keele, 1995), p. 75. One clear device in this context was the stress on a personal sense of sin. Wright quotes from the York Female Penitentiary Minute book where two girls are sent to the workhouse "as a test of their desire to turn from sin."

⁷ C. Emsley, *Crime and Society in England 1750-1900* (London, 1996), p. 179; Indeed James Hammerton's opening example of the 'rough musicing' of a wife beater is a case, as late as 1883, and from Yorkshire. 'The Targets of 'Rough Music': Respectability and Domestic Violence in Victorian England,' *Gender and History*, vol. 3, no. 1, Spring 1991. pp. 23-44. In York the only remaining evidence of the censuring of the ill-treatment of wives is in the press. For example, an 1830s article in the local press condemning wife sales, *York Chronicle*, 21st March 1833.

⁸ Clearly neighbours might be involved in such sanctions. Mary White's neighbour "hinted that he (the prosecutor) should look in her basket." *Yorkshire Gazette*, 8th August 1839; Some prosecutors still initiated a charge to teach a lesson but did not expect to proceed with the case. One solicitor laid a charge for assault but said that if "Mr Jackson would make an apology, and promise never to molest him in the same way again - that was all that was required." The offender did so and was also left to pay 5s. expenses. *Yorkshire Gazette*, 8th October 1831.

⁹ *York Courant*, 18th June 1833. No female examples have, as yet, been unearthed.

Clearly the networks of the criminal fraternity exercised the imagination of the Victorians and much has been published on this topic.¹⁰ Judgements in York's courts frequently gave occasion for comment upon the relationships of the offenders to those who were seen as corrupting influences.¹¹ At its extreme, of course, the Victorians believed offenders to be part of a distinct criminal class and for many the only hope (but not cure) was seen to be separation from its members.¹² However, it must be said that the comments available in the York material lead me to conclude that York's middle class did not view its women offenders as serious or full members of a 'criminal class.'¹³

For the moment, however, we will consider the actual mix of accomplices which can be seen from the quarter session charges. Figure 5. 1 indicates the formations in which nineteenth-century York women carried out offences which were proceeded against in the quarter sessions.¹⁴ Out of the 518 offences in which the women of this York sample participated, 32 women committed their crimes in pairs which consisted of one male and one female. This is surely a lower proportion than previous scholarship which insisted on woman as 'helpmate' to the male would imply. Only 3 women offended with groups comprised of themselves and a number of males; 22 other offences were committed by mixed-sex groups. Large groups of female offenders working together were unusual. Only 22 of the women were charged with crimes committed in the presence of one other male.

¹⁰ On the subject of women and the criminal classes see Lucia Zedner, *Women, Crime, and Custody in Victorian England* (Oxford, 1991), p. 19.

¹¹ YQS 6th November 1865. Alice Jackson was given Penal Servitude "for the purpose of keeping her away from her bad associates."

¹² One of the more commonly cited nineteenth-century authors on this topic stressed this very concept in the title of one of her most well known publications: Mary Carpenter, *Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders* (London, 1851).

¹³ This is in contrast with Zedner, *Women, Crime and Custody*, who, speaking of the mid-century, suggests that Victorians depicted members of the criminal class as of a separate "species." p. 78. She argues that members of the criminal class were seen to be "by definition, vicious in character", p. 20. Despite the excellence of her seminal work Zedner does not ever quite analyse the application of such terms specifically in relation to women offenders. In York neither attributes were linked to women. For example, in many cases it was clearly recognised that the offender came from a "respectable" family and that their crime was a result of "distress and poverty" as in Ann Glover's case, YQS 9th April 1849. Such offenders could not logically be seen as members of an hereditary criminal class or species. The notion of viciousness was also resisted as has been explained in references to violent behaviour elsewhere in this thesis.

¹⁴ It may be that a comparison with male results would significantly add to this debate. However, for a number of reasons (most particularly that women need not always be used as a comparator for a norm that is male) this will not be pursued in this instance.

York Quarter Sessions:1830-1869

Female offenders:gender of accomplices

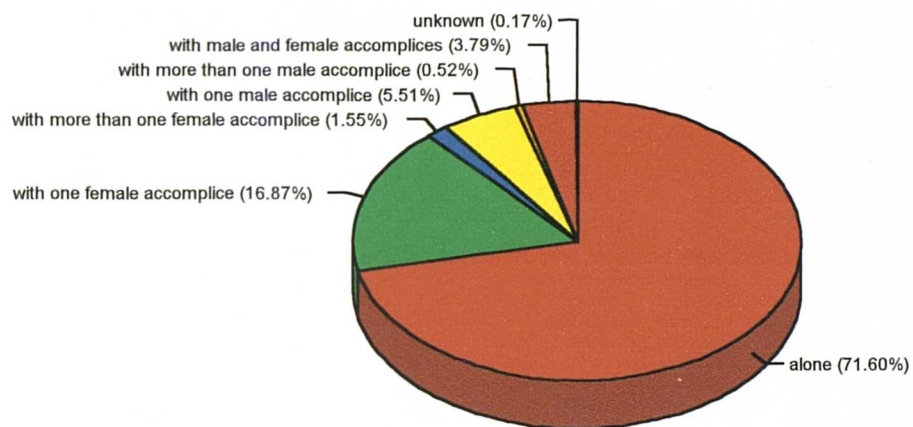


Fig.5.1

By far the most common multiple-unit was a pair of females; such groups accounted for 98 of the crimes.

However, the vast majority of crimes in this study were committed by women on their own. Initially this feature may appear surprising for, unlike women's crimes at assizes such as infanticide (murder), theft can more easily be a communal activity. Philips' work on pickpockets suggested that women (and young boys) were prominent in this area of crime and the perception is that "usually" pickpocketers "operated in pairs."¹⁵ Indeed, previous scholarship on nineteenth-century criminals has perpetuated the Victorian view of the female offender as a "skirt" for her man and it was, partially, the existence of such views that triggered this research.¹⁶ However, since this exercise was carried out for these nineteenth-century women, Garthine Walker has also published similarly high rates for 'early-modern' women to support the argument that women did not in fact normally commit theft as accomplices to males.¹⁷

Admittedly, being charged as sole perpetrator certainly did not mean that all of the 416 solitary women were alone in the total experience of the crime. Frequently others, male and female, would be involved in receiving. Alternatively there might have been insufficient evidence to commit co-participants.¹⁸ At other times accomplices were simply not apprehended. In twentieth-century British law, crime is generally considered an individual action and there is little weight given in law to 'collective accountability.' Indeed offences committed in crowds are notoriously difficult to prove. The dilemmas over the 'feme covert's' (analysed in chapter one) demonstrated the complexities that arose in nineteenth-century courts when offenders were charged on joint indictments and when an attempt was made to define the links between offenders. Numerous women in this study were acquitted on technicalities because the indictments were not accurate with regard to their specific and personal

¹⁵ D. Philips, *Crime and Authority in Victorian England* (London, 1977), p. 210.

¹⁶ Zedner, *Women, Crime, and Custody* cites one article, admittedly by a female, Isla Craig, but nonetheless representative of views of the time: "Women are more often the accomplices of crime, its aiders and abettors, than its actual perpetrators." p. 19.

¹⁷ J. Kermode and G. Walker (eds.) *Women, Crime and the Courts in Early Modern England* (London, 1994), p. 85.

¹⁸ *Yorkshire Gazette*, 8th April 1838, Elizabeth Putson was charged with receiving from one Isabella Howe. Interestingly there is no record of Howe actually being charged. However "The Recorder censured the conduct of the witness Howe who, upon her own acknowledgement, had been guilty of theft."

contribution.¹⁹ Such an apparently high rate of solitary criminal activity may possibly suggest the prevalence of opportunistic crime rather than of planned and pre-meditated activity; although of that there could never be proof. More will be said of the lives of these 'sole perpetrators' later.

For the moment we will return to look at a number of features which are highlighted when the idea of the accomplice is used as a lens through which the crimes, offenders and the women's networks are viewed. 98 of the crimes were committed by two females together. What, if anything, does that 'choice' of accomplice tell us about the offenders? Such 'paired' crimes were frequently shoplifting where, often, one woman would act as a decoy. Isabella Dickinson, for example, tried on shoes whilst her mother hid other shoes under her cloak.²⁰ The design of clothes was clearly of use in such crimes - frequently items were discovered peeping from long shawls or skirts.²¹ Or the incidents might be prostitution-related thefts and in particular 'pickpocketing.' One question prompted by the Dickinson case is whether York women offenders often 'chose' to work with family members since this might be considered an obvious arrangement for accomplices.²²

5. 1. a) Crimes committed by pairs or groups of family members

Figure 5. 2 shows that not quite 7% (40) of the offenders in this study were definitely recorded, in the sources used for this research, as having committed offences with relatives. This is probably far from the actual number of familial links which existed in the cohort and it appears that these relationships were frequently unstated in the court records.²³ Whilst the number of recorded relationships is likely to be under-recorded this, nonetheless, returns us to the question of why more crimes do not appear to have been planned between relatives in the home.

¹⁹ YQS 30th June 1851. In the case of Catherine Donnally and Mary Hall there was discussion as to whether they were acting "in concert."

²⁰ YQS 18th October 1847.

²¹ YQS 3rd January 1848, Margaret Wilson.

²² The extent to which women chose to, or were coerced into, working with each other is almost always impossible to determine without more evidence than exists in the York records.

²³ Much of this information is consequently based on newspaper accounts and I recognise that there are likely to be inaccuracies in such reports.

York Quarter Sessions:1830-1869

Relatives as accomplices

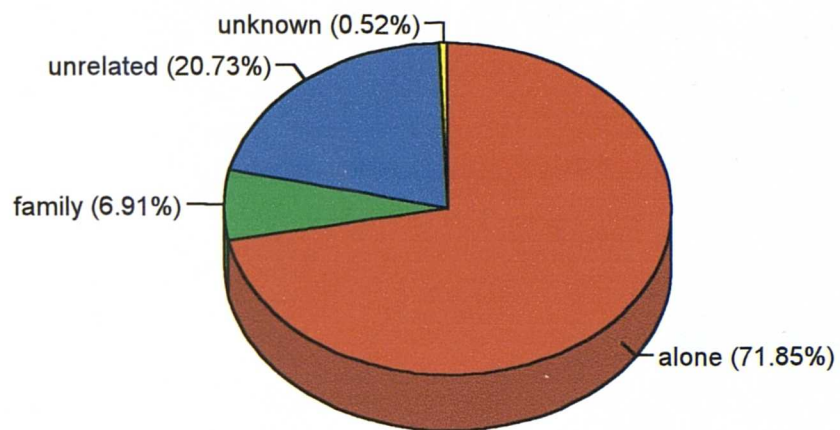


Fig.5.2

One, entirely speculative, possibility was that the presence of children acted as a brake to such activity. Evidence for such a mechanism would, almost by definition, be impossible to find. Only three of the pairs of women charged in this cohort were stated in the court records as being mother and daughter although a number of other mothers and daughters appear to have been involved in the disposal of each other's goods.²⁴ There are relatively few mentions of the offender's children in the extant records. But this is not to say others did not exist. However, the notion of a duty to protect and maintain children's innocence is perhaps, in part, why the converse, in the form of Fagin's activities has titillated audiences for almost two centuries. Conversely, and occasionally, women stated children as their motive for crime.²⁵

The mother/daughter pairs seem to have caused considerable discussion in the courts. Ann Hodgson, aged 69, was given 12 months in gaol for stealing some items of clothes. Her daughter, aged 40, was recommended to mercy "on account of her large family" and given three months in the House of Correction.²⁶ Few women, at this time, were sent to the gaol (as opposed to the House of Correction) and this may have been an attempt to separate the women.²⁷ It would appear here that the mother, despite her age was seen as the more guilty. This may have been because of the actual circumstances of the crime but it may also serve as a reminder that the motherhood of criminals could act in contradictory ways. It sometimes served to mitigate sentence, not only because the children needed looking after but also because the woman was seen to be acting as a female should - bearing and raising children. This was even, of course, taken to the extent of deferring a capital sentence where the infant life had also to be protected.²⁸ But motherhood also, at times, added to the horror of a woman's crime; that a female, as a mother, could transgress so badly might sometimes serve

²⁴ In the case of Isabella Dickinson (26 years old), quoted earlier, some kind of bargaining clearly took place with the prosecutor where her mother offered to pay for the allegedly stolen goods, YQS 18th October 1847.

²⁵ Ann Child said she had two children in the workhouse and had taken the "food from want." She seems to have been particularly unfortunate in days of poor record keeping for the court managed to produce the fact that she had been in gaol 23 years previously "on suspicion." YQS 10th April 1840; *York Courant*, 13th April 1840.

²⁶ This sympathy may be seen as counter to the situation in 32 & 33 Vict., c. 99, s. 16 where children of second offenders were removed from their mothers.

²⁷ YQS 3rd July 1835.

²⁸ A York example of this was Mary Bateman who will be discussed in the final chapter. Although hanged in 1809 her story was being widely circulated in publications compiled in the period of this study.

to compound her evil in the eyes of the commentators.²⁹

A similarly low number (only three) of the recorded incidents are of sisters acting together. One of these may demonstrate both the desire for self-protection but also the strength of family ties and the potential for plotting. Sarah Martin's trial was deferred since two witnesses had disappeared, "with a view to shield the prisoner." In fact, Sarah had carried out the same act of absenteeism from witness duty to help sister Elizabeth at the April sessions of the same year. The first time it had worked and Elizabeth had been acquitted for lack of witnesses. However, when the sister, Elizabeth, from whom Sarah was accused of receiving stolen goods, was eventually brought to court as a witness Sarah was still transported.³⁰ The court were presumably not going to allow the family to get away with such activity twice. There were clearly other sisters involved in lawbreaking activity who never reached the courts. One such case is interesting because it probably demonstrates that the reduction of 'perks,' about which much has been written by criminal historians, applied to women as well as to men, and also to juveniles. Two sisters were caught taking chicory from a heap in Dunnington. The justice in the case, Meek, wished to dispose of them quickly and with the least fuss, but in fact had his hands tied by the recent juvenile legislation which dictated that two magistrates must sit at such cases.³¹

Even more interestingly, given the perception of crime as male activity, there is virtually no mention of women being led into crime by brothers.³² Furthermore there are only two

²⁹ Amongst other things she was seen to be guilty of perpetuating the criminal classes. Of women transportees it was said that "their very children imbibed vice with their mother's milk." Quoted in P. Robinson, *The Women of Botany Bay: A Reinterpretation of the role of Women in the Origins of Australian Society* (Macquarie, 1988), p. 5. The contrast between the highly emotive language and imagery of the literature frequently used to describe women transportees and the much more understated language used in York descriptions is marked.

³⁰ YQS 15th July 1830; YQS 21st October 1830; *Yorkshire Gazette*, 17th July 1830, 22nd October 1830; *York Chronicle*, 21st October 1830. Martin's reported reaction might support the view that transportation was not always seen as undesirable. She is quoted as saying, "Thank ye, Ladies and Gentlemen - you've insured my life for 7 years and you did not know it would last so long." Why "ladies" should be included is interesting, since none could be responsible for the actual sentence. It could be construed as accidental but sub-textual analysis may suggest a class dimension implicit in the comment.

³¹ *Yorkshire Gazette*, 27th January 1851. This may be seen as a demonstration of Thomas Sweeney's conclusion that the elaboration of the system of summary jurisdiction did not always represent a process of de-criminalizing minor offenders but could, in fact, result in a more extensive criminalization in the long term. T. Sweeney, 'The Extension and Practice of Summary Jurisdictions in England c. 1790-1860,' D. Phil., (Cambridge, 1985).

³² YQS 19th October 1868. Ann Debnam is an exception and is accused of committing a crime "similar" to her brother.

stated cases of fathers and daughters involved in the same incidents.³³ The Farmerys were deemed to be “respectable” looking: however, the father was transported for 7 years for stealing 5 fowls whereas the 15 year old daughter received only 7 days in the House of Correction. The father was clearly seen as responsible and seems to have been sentenced more severely since he was seen to aggravate his case by trying to “blacken” the character of a witness. It is possible that he suffered more because he, and not she, was energetic in their defence. He was clearly seen as the morally responsible one in the case.³⁴

What is perhaps surprising is that there are not more familial groups, given that the home would make the ideal planning ground for offences. It also contrasts sharply with the general Victorian perception of the corrupting influence of the families of the ‘criminal class.’³⁵ This fact, combined with the reality that many women were frequenting pubs and living in lodgings together must be seen to give the lie to the notion that women do not commit crimes because they do not have the communal leisure opportunities to plan them.³⁶ Certainly the police perceived the brothels as precisely the space where crimes might be planned.³⁷ However, it is highly unlikely that offenders would depose honestly as to the planning of an offence since this would confirm intent beyond any shadow of doubt.

Certain aspects of marital relationships have already been analysed in the discussion of ‘feme covert’ in chapter one. A quantitative study of crime and marital status is not possible since court records do not systematically record this feature. However, it would seem either that married women offended much less frequently than single ones or that they were filtered

³³ The majority of historical studies of juvenile crime have not considered generational attitudes. There remains room for a study based upon depositions and familial attitudes to crime. Even in twentieth-century studies there remains the need for further studies: “Parental attitudes have rarely been the focus of research in crime and delinquency.” Janet Foster, *Villains: Crime and Community in the Inner City* (London, 1990) p. 149.

³⁴ *Yorkshire Gazette*, 24th April 1830; YQS 22nd April 1830.

³⁵ Despite this Finnegan does demonstrate that whole families could be involved in law-breaking activity. That offending behaviour did not inevitably continue from generation to generation, as some Victorian social commentators might have predicted, is demonstrated by the fact that more recent generations of some of the families mentioned in Finnegan have become respectable York professionals. Oral communication: V. M. Wilcock, née Bickerdike (born 1919), a teacher and great-granddaughter of prostitute Elizabeth Bickerdike. See F. Finnegan, *Poverty and Prostitution: A Study of Victorian Prostitutes in York* (Cambridge, 1979), p. 92.

³⁶ This study would certainly reinforce recent work which suggests that the experience of lodgings was much greater than once thought. See, for example, L. Davidoff, ‘The Separation of Home and Work? Landladies in Nineteenth- and Twentieth-Century England’, in L. Davidoff, *Worlds Between; Historical Perspectives on Gender and Class* (Cambridge, 1995), p. 173. Further aspects related to lodging houses will be discussed later in the chapter.

³⁷ In Pardoe’s words a “breeding ground,” quoted in Linda Haywood, ‘Aspects of Policing in the City of York 1722-1835,’ MA (York, 1996) p. 67.

out of the system before they reached the courts.³⁸ Furthermore the kinds of crimes for which women were more easily apprehended in York, such as theft by servants, were not as likely to involve married women. Although I argue later that the added aura of respectability of married women probably meant some leniency in their cases it does seem more likely that fewer married women were actually committing offences. Marriage, and particularly children, may have acted as a restraint on mobility. This could mean that married women stole less frequently than single women for fear of being caught. Certainly Rachel Short also argues, in her study of female offenders in the late eighteenth century, that marriage acted as a brake to offending in Berkshire and London.

However, it is also likely that the apprehension of married women who did steal was easier. It is equally possible that married women were more well-established in settled communities and subject to greater peer group control and to easier detection if they did steal. Elizabeth MacCormack, for example, stole when drunk. The offence was committed in one of her local shops where she was known.³⁹ A number of the married women offenders tried to pawn stolen goods and were detected because of this.⁴⁰

As expected, few York cases describe husbands as having ‘respectable’ occupations. One exception was Sarah Smith. She was described as a cook whose husband was a “respectable man” working at the railway.⁴¹ Sarah Burchell may have been another. She pawned items from someone in service with her husband at a vet’s. She claimed she had been lent the items and was strongly recommended to mercy; however, it is interesting to note that she had two previous convictions.⁴² These cases represent, in the first instance, selective reporting and the survival of relevant records; nonetheless the evidence suggests that such women were few and far between.

Despite the conclusion that not many women had husbands in ‘respectable’ employment newspaper accounts suggest that a number of the thieves were married.⁴³

³⁸ No accurate quantitative study of this is possible since York court records do not automatically document marital status. Information on this has therefore been gleaned from newspaper reports, census and poor law records and is therefore impressionistic rather than systematic.

³⁹ YQS 1st July 1850.

⁴⁰ YQS 11th January 1864. Sarah Smith, appears to have been well-known in the area but pawned the goods she had taken and was caught.

⁴¹ YQS 11th January 1864.

⁴² YQS 16th October 1843; *Yorkshire Gazette*, 18th October 1843.

⁴³ I referred in chapter one to some of the complexities regarding the definition of marriage in Victorian society.

However, a complicating factor in any attempt to judge marital status is that some offenders pretended to have husbands in order, apparently, to gain respectability. Jane Hudson was one such and Ellen Mather appears to have believed that saying she had only been married two weeks before her offence might help her case.⁴⁴ Interestingly, Finnegan suggests, based upon similar sources to my own, that over 90% of prostitutes in her study were unmarried.⁴⁵ An impressionistic judgement would be that there was a slightly higher proportion of single women prostitutes than quarter session offenders. It is likely that impoverished married women could turn to theft more easily than they could to prostitution.

5.1 b) Women who offended in the company of non-family members

Clearly a majority of women arrested with accomplices did not offend in family groups. Many of these women seem to have known their accomplices well; others appear, or at least claim, not to have been close to their associates.⁴⁶ Were there any marked accomplice patterns in the types of non-familial groupings involved? Although it is difficult to identify the precise nature of a considerable number of the larceny cases, and therefore no accurate quantitative analysis can be made of the different types of theft, clearly one of the offences committed by pairs, or small groups, of women was that of shoplifting. Between 1840-1849 over 35 of the offenders were prosecuted for offences occurring in shops. This is not a large figure per annum but is likely to represent considerable under-reporting. Many offences which occurred in shops were actually charged as cases of 'intent to deceive' (a misdemeanour) rather than as felonious larceny. By definition these latter crimes presume criminal 'intent' but not necessarily an 'intent' to permanently deprive the owner of goods as would be the case in larceny. In many cases one woman would often act as decoy whilst the other secreted items. There is no evidence as to the extent of planning in such operations but to succeed together without planning would imply that the women might have considerable knowledge of how their partner was likely to act. In such misdemeanours there was frequently debate about intention

⁴⁴ *Yorkshire Gazette*, 9th July 1864; *Yorkshire Herald*, 7th July 1939; YQS 5th July 1839.

⁴⁵ Finnegan, *Poverty and Prostitution*, p. 74; Judith Walkowitz presents a similar finding, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge, 1980), p. 19. However, the small number of women brought before the York quarter session courts for keeping disorderly houses were usually married.

⁴⁶ YQS 22nd October 1866, Catherine Howard claimed not to have known her co-accused and to have been alone.

to pay.⁴⁷ There often appears to have been considerable trust on the part of the shopkeeper.⁴⁸ Sometimes one woman would hinder in the chase of a partner.⁴⁹

However co-operation between the two women did not always extend to the court room and Betsy Inchbald and Ann Kirk accused each other of the robbery of which they were jointly charged.⁵⁰ There is little extant evidence as to the precise nature of the friendships of these women but frequent bitter exchanges between neighbours, and also between women involved together in crime, raise questions of any easy notions of sisterhood. These partnerships, however, denote one of the crucial differences between the offences outlined by Elaine Abelson in her account of the development of the notion of kleptomania.⁵¹ The nineteenth-century concern, in the latter cases, was with what might be termed the ‘individual’ factors of the offender, in particular, of course, their psychological state.

Class, as well as gender issues are also of major significance here. Compared with the interest in the kleptomaniacs of the later century the York thieves were not perceived to be middle-class women suffering from any illness. There was perceived to be an element of agency within the actions of these working-class, willing participants in wrongful acts.⁵² There is some indication that female shoplifting was taken seriously, at a national level, since of the women transported for this offence between 1826-1840, nearly half were transported for a first offence.⁵³ Yet many were not first offenders. Elizabeth Watts was charged with Harriet Dixon for stealing children’s shoes. As is common, she was already purchasing a first pair of shoes. However, Watts seems to have been in the wrong place at the wrong time on more than one occasion. She had a previous conviction from the preceding year and unluckily for her, the

⁴⁷ eg. Isabella Dickinson and Catherine Borthwick in YQS 18th October 1847; In Elizabeth Thompson’s case she claimed that she thought the others with her had paid for the stolen meat in question. YQS 10th April 1840, *York Herald*, 12th April 1840.

⁴⁸ Eliza Walker and Sarah Thompson said they would return to pay later but did not. YQS 3rd January 1842; *Yorkshire Gazette*, 4th January 1842.

⁴⁹ eg. Cecilia Tomlinson in YQS 1st January 1844.

⁵⁰ YQS 12th April 1833.

⁵¹ Elaine S. Abelson, *When Ladies Go A-Thieving: Middle-Class Shoplifters in the Victorian Department Store*, (Oxford, 1989). Interestingly although this work is concerned solely with American theft the ballad quoted by Abelson as an introduction, and from which the title is taken, is English c.1867. The offender, a beauty, operates alone and her theft of fripperies is viewed as an idle alternative to the important tasks of men such as fighting and dying.

⁵² In a number of cases attempts at pre-arranged disguises are implied. Ann Burns is said to have pretended to be “someone else” and to have worn a “thick veil” in order to achieve this. YQS 5th April 1869.

⁵³ Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia* (Cambridge, 1996), p. 45.

couple were for “some reason” taken up at the Guildhall that day and it was then that the stolen shoes were found. Interestingly there was a twelve year age gap between these two women and it was frequently the case that pairs were not of the same age, thus perhaps not always appearing to us as an obvious friendship between peers.⁵⁴

There appears to have been fewer incidents of shoplifting by male/female pairs. The obvious explanation for this is that male/female shopping was not as normal a practice as was female/female shopping. However, one incident of mixed-sex theft was of 20 yards of fabric. This would clearly have been a bulky item to carry and it was perhaps more normal for a woman to have male assistance in such a situation. This theft took place between 6.0 pm and 8.0 pm and what is clearly apparent in a study of shoplifting is the long opening hours of the shops and that women were about on the streets at these late hours. Late night thefts might also, predictably, involve mixed pairs. Ann Wilson and Michael Harding dashed into a butcher’s shop at 10.00pm on a Saturday night and stole 6lbs of beef.⁵⁵ Indeed, if the information gleaned from shoplifting offences is combined with the information on the drink-related crimes, a picture of a town full of activity early in the morning and late at night emerges. Harriet Matthews and Elizabeth Davison, for example, claimed that they couldn’t get the rum they wanted on a Sunday morning and so they stole a table cloth from the pub in question.⁵⁶ Ellen Gibson and Elizabeth Eden committed their theft in a pub at 11.00pm.⁵⁷ Catherine Murgatroyd and her group of (mixed sex) friends took a joint of beef when an eating house owner refused them a meal at midnight. Since this took place late at night and the victim was held against the wall it appears there was a downgrading of the crime and they were not charged with robbery or other violence. Furthermore Murgatroyd was the only one charged.⁵⁸

Such offences appear, although without conclusive evidence, to have been opportunistic crimes that occurred as friends or acquaintances went about their recreational business and their normal activities. The picture of York’s female offenders is one of female presence in the streets; of women’s activity in the streets; and of women who worked in or

⁵⁴ YQS 18th October 1841; *York Courant*, 20th October 1841; *Yorkshire Gazette*, 20th October 1841.

⁵⁵ YQS 9th January 1854.

⁵⁶ YQS 3rd January 1834.

⁵⁷ YQS 12th April 1850.

⁵⁸ YQS 11th March 1853.

drank in public houses. On the other hand, their lack of participation in breaking and entering cases or of the kinds of late night street robberies described by Philips (usually, he says, not taking place before 1.00am) suggests that there was still an outdoor world, perhaps a world of planned crime, unoccupied, at least to the same extent, by females, as by males.⁵⁹

The crimes committed by a female and a male together were most frequently carried out on the street. The most common scenario was where a woman would approach the victim (usually male). She would pick his pocket. Clearly many of these would have been potentially prostitution-related events and a number of historians have commented on such crimes.⁶⁰ At times the victims were customers of the prostitutes but frequently they were chance meetings on the streets. Determining the extent of sexual activity is impossible retrospectively. For example, the Recorder said of the victim in the case of Hannah Brook and Ann Smith, “The only fact he would or could know, was that he felt Smith’s hand in his breeches pocket.”⁶¹ But Margaret Duncan’s comment in court in 1830 may serve as a reminder of the ‘double entendre’ of such descriptions. She commented, “I had my hands full of spectacles and it was not likely I should put my hands into any gentleman’s pockets.”⁶²

Frequently, in the male/female partnerships, the man would hinder in a chase, pass on the stolen article, or run away with it. Sometimes either the male or female would be charged with receiving but there is no particular pattern in the gender distribution of this. There is not, contrary to previous claims, any evidence that the male was always the driving force in such crimes.⁶³ For example, in Bridget and John MacHale’s case (they are specifically said to be unrelated),⁶⁴ it is the male who is recommended to mercy and receives a shorter sentence. Bridget is the one whose retort to her court sentence is quoted by the press. She consequently sounds the most belligerent; although the quote may, of course, represent selective reporting of a phrase chosen for its greater effect. Her quip, “I can wash for two months like a brick,”

⁵⁹ Philips, *Crime and Authority*, p. 249.

⁶⁰ Philips, *Crime and Authority*, p. 207; Emsley, *Crime and Society*, p. 153; Finnegan, *Poverty and Prostitution*, p. 124; Walkowitz, *Prostitution and Victorian Society*, p. 198.

⁶¹ YQS 8th January 1836.

⁶² YQS 21st October 1830.

⁶³ Emsley, *Crime and Society*, carefully cites the views of Tobias who sees such women as, “primarily, the aiders and abettors of their men folk” but it is interesting, and perhaps untypical of Emsley, that he gives no judgement of his own on this area of the criminal responsibility of these women. One might be forgiven for sensing that the jury is still out on this issue, p. 153.

⁶⁴ Bridget Mac Hale was a known prostitute. Finnegan, *Poverty and Prostitution*, p. 106.

shows the impossibility of executing any kind of analysis of ‘power versus powerless’ language in nineteenth-century courts.⁶⁵ The meaning of her retort remains totally unclear to me.

Furthermore the reporting of this case is a perfect example of a newspaper being in a powerful position to provide additional sanctions if its reporter or editor was not satisfied with the court verdict. In other words, the journalist could resort to covert opinion reflected by the selection of quotable material in a report. In this instance the reader is told that the ‘not guilty’ verdict was “to the great surprise of the bench and everybody in court.” One newspaper also chose to include the fact that a witness had said that he had seen the prisoner pick three pockets in a few minutes. Whatever the appropriateness of the verdict, the journalist leaves his reader in no doubt as to his own opinion that the offender was guilty despite the acquittal.⁶⁶

Other crimes associated with mixed pairs were centred on lodgings. Mary Shepherd and John Warren represented themselves as being married and left their lodgings in Water Lane without paying, taking a blanket as they went. They were found in lodgings in Walmgate, raising a question often prompted, that of why offenders often stayed around where they could be caught.⁶⁷ It suggests that, whatever the reasons, the crimes were not always too carefully calculated. It may also have been the case that impoverished offenders simply did not have the means to move on. Crimes related to lodgings will also be discussed later in the discussion of location and mobility.

5. 2 Networks and employment

5. 2 a) Prostitution

One of the purposes of this study of female offenders has been to shift the focus away from sexually-linked crimes to other types of crime which, are superficially, at least, more gender-neutral crimes. As such, they have been neglected by historians of women and of crime.⁶⁸ Yet, as I have discussed, many of the women in this study, particularly, for example,

⁶⁵ YQS 26th October 1863.

⁶⁶ *Yorkshire Gazette*, 21st October 1830; *York Courant*, 21st October 1830.

⁶⁷ YQS 1st January 1849.

⁶⁸ Emsley concludes that “In general the larcenies committed by women appear to have been very petty.” *Crime and Society*, p. 155. Indeed, as I concluded in the last chapter, in monetary terms, this is the case. Nonetheless, the vast majority of women transported were, technically at least, guilty of some kind of property appropriation. Between 1790-1840, for example, Oxley suggests almost 4,000 of their crimes had been larcenous. *Convict Maids*,

pickpockets, are likely to have been involved in prostitution. It would be perverse, therefore, not to give at least some attention to this group of offenders. The essential question this study poses is the extent to which the thieves and prostitutes were the same women. The involvement of prostitutes in theft has been addressed, in passing, within various studies of prostitution. The extent to which thieves were involved in prostitution has been given less attention. Whether or not there were distinct groups of offenders in this respect is of relevance to the Victorian notion of the 'slippery slope' from prostitution to gallows.

Walkowitz's work on prostitution suggests that women, as "important historical actors" would take "rational choices" to improve their conditions.⁶⁹ Certainly many were likely to participate in the "predatory" behaviour which resulted from their unstable economies.⁷⁰ But were there York women who were willing to steal and yet not willing to participate in paid sex? Or were there prostitutes who saw paid sex as a legitimate way of earning money but who would not steal? Anecdotal evidence tends to present an inconsistent picture.⁷¹ Although not, as we will see shortly the whole story, the emphasis in York courts on respectability might initially imply that theft for survival was regarded more sympathetically than was theft by a woman who had transgressed the bounds of respectable gender behaviour. The few available comments in newspapers might suggest that some of the women thieves also made this moral distinction.

Qualitative evidence suggests that whilst a large number of prostitutes were thieves a large number of thieves were not prostitutes.⁷² Yet in much historical scholarship this latter group of women have been subsumed in the former. One might, for example, be forgiven for assuming that all York's female offenders tended to be prostitutes merely because they are the ones who have been highlighted by Finnegan's work. Conversely, however, the (now seemingly accepted) viewpoint that the priority of the Victorian middle class was to police

p. 43. We should not underestimate the considerable number of lives affected, either as victim or as offender, by female theft.

⁶⁹ Mahood, *The Magdalenes*, p. 6.

⁷⁰ Walkowitz, *Prostitution and Victorian Society*, p. 198.

⁷¹ Mahood, *The Magdalenes*, p. 13. Some of the more recent scholarship has attempted to find approaches to areas which have resisted more 'traditional' analysis. However whilst Mahood's study has enriched the field I would assert that it is still necessary to treat the 'prostitute' as a "valid, observational category, with numbers to be counted." Such an approach does not, of necessity, mean the denial of the "contested category" of the label 'prostitute.'

⁷² The Watch Committee felt that "a very large proportion" of prostitutes were the "companions and accessories of thieves" and that in general they were "thieves and pickpockets".

female morality might need to be adjusted in the light of reactions such as that of Harriet Matthews. She claimed that although she had been very “troublesome” to the magistrates she had never committed a felony before. She clearly saw this theft as more serious than her previous offences.⁷³

Frequently, of course, these women were the same individuals. It is clear that over a quarter, and possibly up to a half, of the female-only pairs of offenders charged with larceny involved prostitutes. Of the women involved in the 518 cases of my study there are 109 name matches with prostitutes either named by Finnegan, named in the police report of 1842 or specifically stated in court to be prostitutes. Of the 330 names available from Finnegan’s published work (only a quarter of the total number of prostitutes she claims were operational during the period) 70 are included in the above figure. It could be argued, therefore, both that a fairly high proportion of the prostitutes were at some time charged with theft and that a fairly high proportion of thieves were prostitutes. The same women were also likely to commit a number of other types of offence. It is acknowledged that, as with most crime, these figures probably constitute a considerable under-reporting both of the incidences of prostitution and theft. Yet, in fact, this also leaves a considerable number of thieves who may not have been prostitutes and whose offences had nothing to do with sexuality.

Frances Finnegan’s study has been depicted as typical of an “oppression model” and condemned by Linda Mahood for portraying women as “passive victims of male oppression.”⁷⁴ However, this is not entirely true. Where the women acted in pairs, whether as decoys or as principals, Finnegan emphasises their agency: their aim, she says, was “For the purpose of fleecing their clients.”⁷⁵ It is clear from Finnegan’s work and from my quarter session analysis that, in many of these York cases, the women did not merely act in this capacity on behalf of male partners, as ‘skirts.’ Nor is there evidence that women were acting for male pimps. More frequently the prostitutes involved in these charges of theft were from ‘houses of ill-fame’ where a client had slept overnight and had his pockets emptied from under his pillow. These establishments were most frequently run by other women and not by men. Often the male victims were drunk and were visitors to York. The modes of operation in these crimes substantiate the patterns of prostitute crime found by David Philips in his study of the Black

⁷³ *Yorkshire Gazette*, 4th January 1834.

⁷⁴ Mahood, *The Magdalenes*, p. 5.

⁷⁵ Finnegan, *Poverty and Prostitution*, p. 123.

Country.⁷⁶ Yet we must not assume that such crimes were representative of theft in all towns. Philips points out that, with the exceptions of Wolverhampton and Dudley, there were few prostitutes in the Black Country.⁷⁷

Despite an apparent lack of pimps, the prostitution related thefts were, perhaps ironically, the offences in which women were more likely to work in co-operation with men.⁷⁸ As David Philips found, a man would frequently assist in these thefts.⁷⁹ One offender would often try to escape with the goods. Rebecca Johnson, for example, was seized by her victim later in the day but another man, claiming to be her husband, came to her defence.⁸⁰ Ann Connor was aided by 3 males who helped her to escape - only to be found later "in a pig sty."⁸¹ She was transported. Offences in brothels often involved a number of residents, and could be mixed sex groups. Six such people were charged with theft in January 1830. This offence took place in the house of 56 year old Mary Moore and her husband. The house was said to be a brothel and the victim was allegedly drunk. This type of crime accounts for a number of 'group' offences. One of the main problems of bringing a prosecution seems to have occurred where women operated in such groups. Many victims of thefts that took place in houses of ill-fame could not prove which woman was responsible for the offence.⁸²

What is apparent, from these cases, is the coming and going within the rooms of the brothels. Movement was everything: instability and impermanence were the order of the day. This applied to property as well as to people. Frequently groups of women were involved in thefts and it was consequently difficult to prosecute thieves for operating within these

⁷⁶ Philips, *Crime and Authority*, p. 208.

⁷⁷ *Ibid.*, p. 209.

⁷⁸ Finnegan, *Poverty and Prostitution*, discusses the activities of male brothel keepers but does not (appear) to refer to pimps. She stresses that male brothel keepers were seldom brought before the authorities, p. 112. It would appear that pimps were unimportant in York and that also would reflect the general conclusions of Walkowitz. She speaks of the "strong female subculture" that was associated with nineteenth-century prostitution, *Prostitution and Victorian Society*, p. 25.

⁷⁹ *Ibid.*, p. 208.

⁸⁰ YQS 5th April 1841; *Yorkshire Gazette*, 7th April 1841.

⁸¹ YQS 26th June 1843; *Yorkshire Gazette*, 28th June 1843.

⁸² Elizabeth Robinson was acquitted because the victim of the offence did not know which of the 4 women present in the house had committed the theft, *York Courant*, 8th April 1838; YQS 6th April 1838.

establishments.⁸³ When Bridget MacHale and Mary Ann Hardisty were charged, for example, two other girls were witnesses and claimed to have seen Hardisty take money from under the victim's pillow.⁸⁴ Other cases frequently refer to a number of women in the victim's room; clearly these clients were either being offered some form of group sex or it was normal to engage in sexual activities in such places without regard to privacy. Alternatively they may have offered mutual protection.

Although prostitution need not have been the full-time, or only, occupation of the prostitutes on trial for theft it was seldom that any other occupation was directly recorded in these cases. Only in the newspaper reports did additional details surface.⁸⁵ Conversely, in cases where women were able to furnish another occupation any prostitution may have remained hidden.⁸⁶ It is easy, of course to argue that lack of other employment drove women to make a living through prostitution or, indeed, other forms of crime. However, resorting to a simplistic assumption of patriarchal control, as has sometimes been done in debates over prostitution, may not always be wise. It could be argued that it is precisely the problematical mechanisms associated with defining women's occupations, as outlined in the previous chapter, which have contributed to a criminalising of males rather than females in the official record, in this context. If women did not have a stated occupation this was perhaps seen as less threatening to the good order of the nation than if men could state no occupation.⁸⁷ The return compiled by the York police in 1842, for example, of "Persons in York who have no visible means of earning an honest livelihood" contained the names of no women at all.⁸⁸

The aim of this section has been to examine what might be called the 'interface' between the prostitutes and the 'criminals' before York Quarter Sessions. The main question is, of course, the extent to which there was a continuum in their criminal activities. Finnegan

⁸³ Yet again an example of the need for evidence of individual culpability in crime. This can be compared with the difficulty today in obtaining convictions in riot incidents. The innocence of the **individual** until proved guilty is the underlying, and most important, tenet.

⁸⁴ YQS 22nd October 1855.

⁸⁵ See Finnegan, p. 73, for some discussion of prostitutes' occupations.

⁸⁶ Mary Ann Jackson, for example, was a servant in the Groves area. She was dismissed for entertaining a soldier upstairs in her employer's house. She was accused of taking some silver as she left. Whether this male was her boyfriend or one of a number of male visitors remains lost to the record, YQS 6th July 1865.

⁸⁷ Indeed, in an amendment to the Vagrancy Act of 1824 it later became a lack of occupation ("visible means of subsistence") that could lay males open to prosecution for living on immoral earnings. Trevor Fisher, *Prostitution and the Victorians* (Stroud, 1997), p. 150.

⁸⁸ YCA, YDG 320/1-321/1 B7.

has argued that Acton attempted to explode the myth of the prostitute's downward progress. She stresses from her own work that prostitutes were indeed likely to be in and out of prostitution but not, she says, in and out of 'respectable' life. She dismisses Acton's picture as too optimistic in this respect and concludes that York prostitutes were likely to follow the kind of picture portrayed by William Logan, author of *The Great Social Evil; its Causes, Extent, Results and Remedies*. That is that their average duration as prostitutes was about five years; that the most common termination of career was death and the most likely destination drunkenness or disease. Their lives, she argues, were ones of abject poverty and wretchedness.⁸⁹

I have qualified Mahood's summary of Finnegan's work as simply seeing the women as victims. Yet it may be that the general approach of women's history which has been one that has focussed on victim status has resulted in a refusal to see other types of criminal behaviour in women (both prostitutes and non-prostitutes). Historians such as Finnegan, Walkowitz and Mahood have produced admirable studies of prostitution. Perhaps, however, the proliferation of such studies has created an over-emphasis on sexually deviant (in Victorian terms) behaviour in their portrayal of nineteenth-century views of women offenders.

Certain sectors of York society were clearly pre-occupied with such matters: the Refuge Committee is an obvious example of this. By contrast, the York Watch Committee records show some, but not an excessive, interest in prostitutes. Prostitutes are listed by the police of the period, as are other types of offenders. However, the small extant sample of Weekly Occurrence books which remain, for example, document almost wholly reports of thefts and any incidents of irregular behaviour by the constables; there is little day-to-day comment on prostitution. There is an elusive sub-text suggestion that if prostitution were decriminalised we would be left with no Victorian female criminals.⁹⁰ This is not the case. Nor was theft simply an adjunct to prostitution. Many thefts outlined in the previous chapter appear to have been unrelated to prostitution.

There has been, of course, a need to discover the hidden prostitution within the

⁸⁹ Finnegan, *Poverty and Prostitution*, pp. 6-7.

⁹⁰ In part, this is because those early scholars who re-discovered the extent of Victorian prostitution have concentrated upon the Victorian view of the activity as a threat to moral integrity and religious, family and community values as perceived through the gendering of roles. The other, and not necessarily the same, view held by Victorians, was of prostitution as 'nuisance.' This latter aspect, implicit in the 'disorder' element of the law, has perhaps been underplayed by historians. See Augustine Brannigan, 'The Postmodern Prostitute: A Thematic Review of Recent Research,' *Criminal Justice History*, vol. 15, (1994), pp. 275-288, for an explanation of the differences as applied to twentieth-century prostitution.

nineteenth century and clearly it was endemic in certain geographical and social areas. However, whilst the activity may have been hidden to the official record documentation on prostitution is an extremely accessible area for historians. Sources are more easily available for prostitute women because of their contact with the various reforming organisations. Furthermore this greater documentation was true in the lifetimes of the offenders. Whilst there may have been erratic recording of previous convictions, and despite my earlier caveats regarding over emphasis, much of the prostitute behaviour was known to the police and detailed lists of prostitutes were kept after 1842.⁹¹ To compound this problem it would appear that the journalists, as now, were more interested in reporting details of sexually-related offences than those of mere theft. Thus, in newspapers, crimes involving prostitutes appear to be reported, and perhaps, therefore distorted, in more detail. The historical picture of women's crime has seen the balance redressed towards an inclusion of sexually-related offences but further revision is needed in order to prevent an overemphasis of this kind of record

Although Finnegan has clearly demonstrated that York had large number of prostitutes the proportion charged specifically as prostitutes before petty sessions was surprisingly low. For example in the Michaelmas Petty Session, 1868, only 14 out of 153 offenders were recorded as "disorderly prostitutes" and the majority of offending women were charged as "disorderly" or "rogues and vagabonds." Thus in the actual legal record prostitution offences are a small minority. Clearly, many of the charges of drunkenness and disorderly behaviour were actually prostitution-related yet easier to dispose of as drink-related crimes, disorderly behaviour or vagrancy offences.

However, the question remains, if prostitution was such an abhorrent activity in York why then were even more women not prosecuted as such? Much has been made of the difficulty of proving prostitution cases but the records for the thefts in this study demonstrated that theft was also exceedingly difficult to prove.⁹² That prostitution charges were less likely to 'stick' is not self-evident. Unlike some boroughs, where legislation was inadequate, the York City Act did not make it difficult to bring such cases.⁹³ Watchmen were given power to

⁹¹ This is one year earlier than Finnegan's quoted first return and was discovered after her work.

⁹² Examples have been given elsewhere about the difficulty of proving 'guilty knowledge'; of proving intent to permanently deprive; of drawing up accurate indictments; and of the identification of stolen items, to name but a few problems relating to the proof of theft.

⁹³ Later offences were charged under both the City Act (6 Geo.IV c.127) and the Town Police Causes Act of 1847; York magistrates did not have to resort to the Vagrancy Act as did many other places.

apprehend and secure “prostitutes” which seems to contrast with the situation in Glasgow or Aberdeen, where Mahood claims the police lacked authority.⁹⁴ Crimes of theft, drunkenness and disorder may have actually been crimes of prostitution in another guise but many, and probably the majority, of those offences were precisely what they said. Furthermore, if police were more concerned to control the women’s morality than their theft it is interesting that the prostitute-thieves were not charged with prostitution, as a secondary strategy, where theft charges had been dropped, or upon the prostitute-thieves’ release from custody. These would have been obvious ways to control such women yet there is no evidence of this happening.

Certainly there is no proof that anxiety to reduce prostitution in York resulted in overtly unfair treatment in court for prostitutes. It did not mean that a conviction would be pursued at all costs. Theresa Wagner, a well-known prostitute, was apprehended for theft and was discovered to have most of the stolen money on her person. In the police office she tried to burn this evidence. However, she was acquitted because the indictment drawn up was for theft and there was evidence only of her receiving.⁹⁵

By the end of the period, sentences for drunkenness, prostitution and disorderly behaviour were very similar and perhaps the substitution of one charge for another was seen as having no great material effect on the outcome. However, larceny, even in the magistrates courts, was usually given a far more severe sentence. Three to six months for larceny, compared with seven to fourteen days for the ‘street crimes’ must imply that these were perceived as crimes of a very different order. It could be argued that women’s prostitution was often the minor, not the dominant, part of their criminal careers.

Finnegan comments that one Margaret Barrett was sentenced in 1869 “on the unusual charge of being a prostitute,”⁹⁶ although Barrett had been convicted on numerous occasions of ‘indecenty.’ Clearly if prostitution could not be proven police resorted to such a charge. Yet, on many other occasions she had been charged with drunkenness or theft. Her thirtieth charge, for example, was of being drunk and disorderly. Thus in Barrett’s particular case it is clear that the types of offences she committed were numerous and that prostitution was just one of many. Finnegan admits that it is unclear whether her alcoholism was the cause or the consequence of her becoming a prostitute. That it was the prostitution that set her on the slippery slope cannot be proved or disproved; although it was precisely such case histories that

⁹⁴ Mahood, *The Magdalenes*, p. 137.

⁹⁵ YQS 25th October 1858.

⁹⁶ Finnegan, *Poverty and Prostitution*, p. 138.

the Victorians were wont to use to make such a case.

On her incarceration in the Castle (for stealing alcohol) Barrett was charged with assaulting the Matron and with wilful damage to prison property. Indeed her violence meant that she was put in irons by the Governor. As a prison inmate the immediate fear was not of her behaviour as a prostitute and her charge was far more likely to be intended as a deterrent to prevent others from unruly behaviour. That her sexual 'problems' worried the authorities any more than her drunkenness, or her violent behaviour, or her lack of abode is not substantiated. There is no more evidence that the fear of her behaviour over the years was primarily one of immorality than that it was, as with men, a fear of violent disorder, theft or general subversion. In chapter six we will see that the fear of drink is seen to be the cause, not the outcome, of prostitution in Hull. It is possible that the police, in both boroughs, were concerned about the riotous behaviour (or theft) by women for its own sake and not simply as an outward sign of inappropriate moral or sexual female behaviour.

The possibility should be considered that many of the official records do actually reflect the crimes committed by women. The current interest in sub-texts should not mean that the main texts are ignored. Drunken women may sometimes have behaved in a sexually 'permissive' fashion but they also brawled, in inebriated fashion, in the streets. We must then ask to what extent, if at all, the Victorian attempt at the social control of females was actually a reaction to the same fears which surrounded male crime. Such public disorder was not only threatening morally but also physically. Despite the general reluctance to depict women as violent, only where there was a total lack of experience of female violence could it be denied that some women have the capacity to frighten other women.⁹⁷ Prostitutes who stole did not only subvert the sexually accepted norms: they threatened the notion of ownership and the right to property. Certain sectors of society clearly saw it as their first duty to police female sexual morality. However, fears of behaviour other than that which was sexually permissive, also affected the treatment of women's crimes once they were within the justice system.

Furthermore male sexual morality was given attention in the courts. In many cases the prosecutors who had been clients of the prostitutes had their 'knuckles rapped' and prosecution expenses denied. Such prosecutors were frequently labourers from other towns. The motives of such victims for prosecuting can only be wondered at: in most cases it appears

⁹⁷ From time to time Victorian society was reminded of this in sensational representations such as that depicting the crimes of 'The Axe Woman of Surrey.' Catherine Webster was hanged in 1879 for chopping up her employer, boiling her in the copper, and putting the pieces of her body in a box in the Thames. *Illustrated Police News*, 2nd August 1879.

to have simply been an attempt to retrieve stolen property.⁹⁸ Interestingly, where a prosecution was brought by the police there was a danger that the victim might not actually appear as a witness and the case would then fail.⁹⁹

Finnegan has shown that police were also involved as clients of prostitutes and the quarter session records substantiate this. Rose Pickard invited a constable from Manningham, who was in York for the Assizes, to a 'House of ill-fame' where he was robbed.¹⁰⁰ What seems strange is that he prosecuted the woman. Perhaps this suggests that it was no great shame for him or that he would be treated more favourably than would she. Or else he thought that York might provide anonymity and the folks at home in Manningham would not hear of the incident? One can only assume he was quite desperate to retrieve his goods.¹⁰¹

Offenders who were perceived not to be prostitutes, were often considered in the newspapers, almost by definition, as "respectable." Ann Hodgson, a sixty five year old was charged with uttering but was described as "a very respectable looking woman" even though she was out on bail for another offence when caught.¹⁰² That there might not be a clear divide between the women seems not to be entertained. Thus there was a tension between the notion of a continuum of criminality in women and that of a rigid demarcation between fallen and respectable women. There were many other priorities in the debate over criminality. Some of these agendas did not simply ignore but, for Victorians, transcended gender issues. Concern for law and order as an absolute to be upheld at all costs was of the utmost importance in the policing of women as well as of men. Stealing, for example, was seen as wrong and the law had to be applied with vigour whether the offender was male or female. That there were then gender differences in the way in which the law was applied is a different matter and is pursued at many other points of this thesis.

One of the main differences between the prostitutes and those convicted of other offences at quarter sessions may have been that many of the latter were less likely to be destitute women. Many of the servants who stole, for example, whilst not necessarily in long-

⁹⁸ Finnegan gives further details of such cases. *Poverty and Prostitution*, p. 119.

⁹⁹ *York Courant*, 11th June 1833. Jane Appleyard was discharged on this occasion after a theft in a beer-house. The victim had reported the theft to the Patrol but did not appear in court. Since all the cases in this sample were private prosecutions it is more likely that the victims were prepared to see their cases through court than if they had been victims persuaded to appear by police.

¹⁰⁰ YQS 9th March 1846.

¹⁰¹ Finnegan also concludes that these cases indicate "the high value placed on property," p. 119.

¹⁰² YQS 22nd October 1830.

term posts, were not homeless at the time of the offence. Predictably, fewer of their offences appear to be drink-related than those of the prostitutes. A considerable number of these women had excellent character references. Ann Ridley, for example, was found guilty but was recommended to mercy because of an excellent character reference.¹⁰³ Mary Carter was acquitted of theft from her employer and the importance of her good character was stressed.¹⁰⁴

5. 2 b) Servants

If prostitution was a suspect form of employment for most nineteenth-century employers servanthood was clearly not. It is employment that has long been regarded as an appropriate form of labour for females. In chapter four we noted that nineteenth-century York possessed a particularly large proportion of women servants. I suggested that there was a potential link with the seemingly high rate of thefts by women in the York of the period in question. Previous work on nineteenth-century offenders has frequently considered links with employment.¹⁰⁵ However, the connections between women criminals and employment patterns are likely to be far more difficult to probe. Deborah Oxley claims that most women who were transported had experienced employment prior to transportation and that many of them listed second, or even third and fourth, occupations. She maintains that there was depth and specificity to their job histories. Oxley suggests that most of the female transportees in her study were skilled and semi-skilled workers. She includes in this the skills of domestic workers.¹⁰⁶ However, the problems of categorising female labour have already been implied in this thesis. Far more women than men are likely not to have worked in paid labour, or to have had fragmented employment patterns, or indeed not to have been able to define their working habits in the traditionally accepted ways. A comparison with the work of David Philips on work-place theft highlights this. In his study, by far the highest category of thefts were industrial and many of these were clearly related to the employment of the offenders.¹⁰⁷

In York few of the female thefts were explicitly linked to the workplace since women

¹⁰³ YQS 22nd March 1830.

¹⁰⁴ YQS 9th March 1831.

¹⁰⁵ George Rudé, *Criminal and Victim: Crime and Society in Early Nineteenth-Century England* (Oxford, 1985), p. 52, for example.

¹⁰⁶ Oxley, *Convict Maids*, pp. 116-122.

¹⁰⁷ Philips, *Crime and Authority*, p. 179.

were simply not in industrial employment and opportunities were not there for such appropriation of goods. The York records certainly do not echo the sophistication of the employment pattern of Oxley's women. In part, this may be that the convict women were specifically recording job experiences in order to obtain work in their new land. It must have been important for the women to present as full a 'curriculum vitae' as possible; with inadequate records it was highly unlikely that the women's claims would be seriously challenged. Whilst there is no reason to deny the 'skill-stock' of Oxley's cohort nor is there real evidence to substantiate all the assertions of the women. They did, after all, have everything to gain and little to lose from presenting themselves in the most positive light possible. One undeniable feature, however, of her cohort and of the York women is the large number of women claiming to be, or described by others as, servants.

Thefts by women identified as servants accounted for 50 of the 581 offences in this York sample and there were probably numerous other offences which were not documented as such. We have noted the high rate of female servants in York in chapter two and also the easier detection of thefts by servants. Peter King has studied the effects of servanthood, and in particular the controls of apprenticeship, on youths in the eighteenth century. He suggests that magistrates had extensive powers to punish offences by servants but claims that informal controls were much more normally resorted to.¹⁰⁸ York seems to be little different to London of the 1720's or 1790's in that servants were one of the "dominant groups" of female offenders before the courts.¹⁰⁹ This feature must surely account for some of York's high level of servant prosecutions and in turn for the higher rate of York's female offenders.

Sturma argues that "a more important factor influencing crime amongst servants" was high levels of unemployment.¹¹⁰ This might also have been an important element in York's figures for offending females. However, the technical cases of 'theft by servant' were by definition cases of theft by servant where women were in employment at the time of the offence. Indeed it is clear that many of the women were prosecuted because of the easier policing (both official and informal) of these employed servant women. Ann Butler, for

¹⁰⁸ Peter King, *Crime, Justice and Discretion: Law and Society in Essex and South-Eastern England 1740-1820* (unpublished draft; with many thanks to the author). p. 9.

¹⁰⁹ Peter King, 'Female Offenders, Work and Life-Cycle change in Late-Eighteenth-Century London,' *Continuity and Change*, 11, (1) 1996, pp. 61-90.

¹¹⁰ J. M. Beattie, for example, hints at the surveillance of servant women in his references to discoveries of infanticide in 'The Criminality of Women in Eighteenth-Century England,' *Journal of Social History*, no. 8 (1975), p. 84; Michael Sturma, 'Eye of the Beholder: The Stereotype of Women Convicts, 1788-1852,' *Labour History* (Canberra), vol. 34 (1978), p. 4.

example, 16 years old, slept with one of her employer's children. Missing stays had been found "on the girl" who clearly had little privacy and who may even have been physically searched.¹¹¹ This pattern of detection is common.

The thefts by servants fall into three categories. Firstly, those who stole from their employers in the course of their work and were formally charged as committing 'theft by servant.' Interestingly this does not appear to have been a common practice.¹¹² Secondly, there were those who happened to be servants when they committed their crimes but were charged with 'simple larceny.' They may have stolen either from their employers or, as frequently happened, from others. Thirdly, there was a number of women who, at some time, were employed as servants but where there was no essential link between their employment and their offences. The latter cases particularly highlight the problematical links of the status of their employment. Working practices become particularly elusive. Many women may have called themselves servants in order to sound more respectable to the courts than a woman with no employment. Of the offences by women who called themselves servants but who were not technically charged with 'theft by servant' a good number may have been currently unemployed. However, the majority of women fall into the second category and were frequently prosecuted precisely because they were so easy to catch whilst employed as servants.

Occasionally the 'servants' would work for shop keepers and the definition of servant must then come under closer scrutiny. Ann Cobb, for example, had been in the service of a linen draper for two months when she was accused of the theft of some "cotton furniture print." It is, from existing records, impossible to tell the nature of her "service." She had worked for a pub landlady, a shoemaker and for Munby the solicitor and clerk of the court. The print had been in an open box in a lodging room in the house. Clearly then, the shopkeeper also had lodgers; the offender must have worked in the house but to what extent she helped in the linen drapery business is impossible to ascertain. Occupational boundaries, as has been indicated frequently by others, were very indistinct not only in records but in life. In the un-industrialised city of York they may have been even less clear than in, for example, Philips' area of study, the Black Country. Interestingly, the prosecutor in Cobb's case was

¹¹¹ YQS 28th June 1841. Prudence Bebb suggests that, in a slightly earlier period, servants might be expected to wear stays. *Shopping in Regency York: 1811 to 1820, Butcher, Baker, Candlestick-Maker* (York, 1994), p. 17. She suggests Mrs Lyon of High Petergate sold cheaper stays for servants.

¹¹² Few are described as 'theft by servant' in either the criminal registers or the York quarter session minutes. Differences in the practice in Hull will be mentioned in the following chapter.

chastised for acting “very injudiciously” in leaving the box open and placing the prisoner “in her present situation.”¹¹³ There was clearly, in York courts, a notion of protecting women offenders. A notion that they should not be placed in a position of temptation.

I have found only two women, in this study, described as charwomen and the precise distinction between this and ‘servant’ remains unclear. Generally this term implied inferior status compared with other types of servant. However, it did not necessarily imply ineffectiveness on the part of the woman. One of them, Ann Ashbrough made a “statement which appeared to have considerable weight with the jury” and this was not a conclusion reached often by the reporters.¹¹⁴

Thefts by servants were not only thefts by an employee from an employer but were frequently larcenies by one woman from another woman. In such cases gender seems to be far less relevant than class, or more particularly than property ownership. Nor is it possible to defend the servants merely on the grounds of their poverty. Ann Parker was accused of having stolen stays from the blind sister of her employer. She was acquitted because the stays were not properly identified. As was common, in thefts by servants, there was a dispute of ownership and in this case that was perhaps more complex because the owner was blind. To sympathise, automatically, with the servant as someone who was acting out of poverty and taking something that would hardly be missed or could easily be replaced would be to ignore possible personal invasion of privacy and space of a blind female victim.¹¹⁵

There are a number of incidents of theft by servants which might prevent us from assuming that the employees were simply the exploited victims of their mistresses. Frances Hardisty complained of feeling ill soon after her appointment and was reputedly looked after by her employer’s wife who gave her “sherry and sago.” However, Hardisty then departed to her mother’s taking some of her employer’s clothes with her.¹¹⁶ Such close relationships under one roof also remind us, however, that, as in the observation of a marriage, it is impossible for the outsider to grasp fully the nature of events. Nonetheless, it is clear that women were frequently the victims in offences by other women.

It is also possible to argue that in many thefts by servants there was an unfortunate lack

¹¹³ YQS 23rd October 1835.

¹¹⁴ YQS 29th June 1846; *Yorkshire Gazette*, 5th June 1846.

¹¹⁵ YQS 15th July 1834.

¹¹⁶ YQS 3rd January 1848.

of clarity in cases where ownership was disputed. Elizabeth Huntingdon, for example, argued that her prosecutor/employer's son had given her the goods. Clearly, although there is absolutely no extant evidence, this opens up questions as to the nature of her relationship with that son.¹¹⁷ On the one hand, it is difficult to see why a prosecution would be brought if the stolen item had been given to the employee but on the other hand lies the grey area of perquisites. Philips argues that "unlike industrial thefts there was no attitude of popular legitimization of clothing thefts" and so, perhaps it was, with items taken by servants.¹¹⁸ However, as I argued in the previous chapter, some women may have seen it as legitimate to appropriate old, or seemingly superfluous, household goods and clothes whilst employers might feel threatened by such an attitude.

Taking up no references when employing a servant was clearly common practice. We will see later in the chapter that it was even frowned upon by the court. Often such employers did indeed fall foul of the women they employed hastily. Even where references were used they were probably easy to falsify.¹¹⁹ Charlotte Meek was a servant who appears to have offended when engaged "on liking merely." She "didn't suit" and so left her position after a few days. It is possible, and perhaps popular, to defend her as an abused employee, a victim of the 'hire and fire' mentality of middle-class employers.¹²⁰ Indeed, there was some support for her at the time. Her subsequent employer was prepared to take her back, after the case, and the *Yorkshire Gazette* implies some sympathy in its loaded phrase, "a very modest and interesting girl."¹²¹ However, this girl had not only left with the property of her employer but also stockings and stays from a "fellow servant".¹²² Thefts by servants were frequently from their peers.

Many of these servants had been in employment for a very short time when they committed their offences. Mary Wilson, for example, for only five days.¹²³ This probably suggests either that conditions were appalling or that the women had no intention of staying

¹¹⁷ YQS 5th March 1841; *Yorkshire Gazette*, 8th March 1841.

¹¹⁸ Philips, *Crime and Authority*, p. 198.

¹¹⁹ YQS 17th October 1842; *Yorkshire Gazette*, 21st October 1842, Ann Huscroft used fictitious references.

¹²⁰ YQS 22nd October 1830.

¹²¹ Such descriptions will be analysed more fully in chapter seven.

¹²² YQS 15th July 1830.

¹²³ YQS 1st July 1836.

in employment and had actively sought or seized the opportunity for theft. It may also have been that servants would steal from one type of employer but not from another who might be part of a network of friends. Martha Pouter, for example, had left her employment, after only five days; it was only after her departure that a theft had been discovered. Meanwhile, however, she had found employment with “a landlady” who claimed to have known her a long time and trusted her enough to let her look after her shop.¹²⁴

In York there was a great effort to ‘protect’ servant girls and also, thus, ultimately to protect employers.¹²⁵ This was not only the concern of the organisers of the penitentiary, in order that they may prevent girls being drawn into prostitution, but also by others who wished to distinguish between ‘good’ and ‘bad’ girls. Some offenders, such as Mary Ann Giles, had been given domestic work in order to reform them. Giles was, we are informed, “partly reclaimed” due to the “good offices of some benevolent ladies” prior to being placed in the penitentiary.¹²⁶ The employer of Mary Daniel, “a woman of so infamous a character that she had been under sentence of death,” was actually reprimanded by the court for not obtaining references because it was “an act of great injustice to those servants who possess good character.” Yet seldom were the servants prosecuted in York Quarter Sessions condemned for their immoral or sexually-linked activities. Sturma has commented on Mayhew and Hemyng’s stereo-type of servants as ‘dollymops’ and prostitutes and suggests that whilst exaggerated it may underline some patterns of working-class behaviour.¹²⁷ The concern in the extant York records, in cases of theft by servant, is explicitly with the crime of theft and not with sexual immorality. However, it is clear that, in York, there were different, if intersecting, discourses relating to female criminal behaviour.

Once again these crimes call into question simplistic notions of women offenders as victims of their class or gender; or of crime simply being for survival. Such crimes may open up the possibilities of less frequently mentioned motives. Servants may simply not have got on together. Women may have wished to save money in order to move on from their position or they may have stolen for what today might be called a ‘kick.’ Philips says the latter motive

¹²⁴ YQS 3rd January 1842.

¹²⁵ See Finnegan, *Poverty and Prostitution*, p. 130.

¹²⁶ YQS 9th March 1849.

¹²⁷ Sturma, ‘The Stereotype of Convicts,’ p. 7.

was seldom one amongst the females in his study but the cause cannot entirely be ruled out.¹²⁸ Mary Ann Walton's case raises a number of interesting issues. Firstly, that she was prosecuted by a hawker is worthy of note. Secondly, it is interesting that she was recommended to mercy because of the difficult conditions in the House of Correction. Thirdly, she is reported, in the press, to have taken the items "for a lark."¹²⁹

Limited narrative material in the York sources also gives only restricted insight into crimes caused by bitterness or of malicious feeling and in retaliation for dismissal. However, there were clearly some crimes which could have been caused because of such emotions. Jane Weatherill, for example, was discharged for being intoxicated. She returned to see her ex-mistress and stole a silver fork whilst waiting to see her.¹³⁰ There remains no proof, however, as to whether this was merely opportunistic and because she was in need, or whether the woman stole in retaliation. In most cases the lack of records neither support nor deny such personal motives.

Clearly, one of the most common types of theft by servant was where offenders were employed in public houses. Edith Holden was discovered to have pawned a table cloth from the 'Robin Hood' public house where she was a servant. The landlord's name was on the item! She was found not guilty because she intended to redeem the item.¹³¹ Sarah Wilson is also an example of a case where more astuteness could have avoided detection. She took money from her employer's bedside and hid it on her person. The prosecutor declared he had gone to bed early in order to get up at 3 or 4 am to brew - highlighting once again the limited distinction between night and day for some workers in York.¹³² Emma Parker's theft was presumably the result of 'front of house' work in a pub. She robbed the till in The Queen's Hotel where she worked.¹³³ Where servant thefts had the involvement of family members the charges tended to be cases of receiving; a prosecution brought because the goods had been found in the house.

¹²⁸ Philips, *Crime and Authority*, p. 212.

¹²⁹ *York Courant*, 8th January 1841.

¹³⁰ YQS 11th March 1834.

¹³¹ YQS 6th July 1838 ; Discussion of this aspect of the law of theft will take place in the section of this chapter which relates to pawnbrokers and disposal of goods. More will also be said in the discussion of 'individual factors' relating to crime of the apparent ignorance and naivety which relates to the discovery of offenders.

¹³² YQS 3rd January 1853.

¹³³ YQS 10th March 1854.

5.2 c) Other occupations of York's female offenders

Only rarely were the offenders' occupations recorded in York court records, and newspaper sources shed light on only a few women. For the most part occupational details occur only when specifically relevant to the crime, for example, on Jane Jackson Wylde (aged 27), whose job had given her the opportunity for her offence. Wylde had been employed as a dressmaker and had used the name of her employer to acquire fabric under false pretences. We have no idea as to the extent of her occupation or the number of customers/employers. She claimed to have supported herself for the four years she had lived in York. She will be mentioned later in the following chapter for her opium habit.

Generally, however, as I have already argued, lack of industrial employment meant less opportunity for persistent theft from the workplace. Ann Cooper lived near a warehouse and stole glass and earthenware over a period of time - perhaps the kind of slow and systematic appropriation that sometimes occurred amongst factory employees.¹³⁴ Cooper's theft was unusual. However, the workplace of Mary Birch also gave her opportunity for her crime. As she was receiving her wages, from her employer in Coney Street, for her work as a glove sewer, she hid some coppers.¹³⁵ Another woman, Harriet Frankish, stole horse hair from her upholsterer employers and had done so over a period of time.¹³⁶ One of the few 'group' workplace thefts was by two girls who worked in a perfumer's shop on Coney Street. They stole a brush and some cologne.¹³⁷ What this small number of cases might demonstrate is the range of occupations within the retail and service sector. However, employment is often recorded only when relevant to the crime and, once again, the cases indicate the difficulties of assessing precisely what the women did for their employers.

Women who kept shops were in a good position to receive stolen goods although there are relatively few reported cases of female 'fences' in York. Ann Donaldson was charged with such an offence and dealt with very severely. She was given four years penal servitude for taking goods stolen from a railway company by young boy employees. She was accused of

¹³⁴ YQS 19th October 1846.

¹³⁵ YQS 20th October 1837.

¹³⁶ YQS 2nd January 1843.

¹³⁷ YQS 21st October 1831.

being “the ruin of two or three young boys.”¹³⁸ Catherine MacDonald was also charged with receiving and one J. Bell had been overheard saying that he had made a “crack” and would “give her a dozen for fencing.”¹³⁹

Other offenders were workhouse residents and probably not in regular employment. The occupations of mother and of child minder (of whatever kind) receive little specific mention in the York criminal records and have already been discussed in the previous chapter. As might be expected, other evidence shows the casual nature of many women’s occupations. A prison sentence would jeopardise the financial stability of offenders such as Ann Holmes who was recorded as an “artificial flower maker.”¹⁴⁰

5. 3 Networks, disposal and acquisition

5.3 a) Pawning

A large number and range of stolen goods were pawned. Whilst offenders sometimes attempted to sell jewellery and silver to the appropriate traders even items as small as silk handkerchiefs could be used to raise cash at the pawnbrokers. Melanie Tebbutt points out that in 1870 York had 7 licensed pawn shops.¹⁴¹ Compared with Hull’s 77 this seems a small number and highlights the difficulty of anonymity in York. Furthermore policing of the York pawnbrokers themselves must have been easier. Nonetheless much of York’s pawning was by those who were nomadic. Melicent Johnson, for example, pawned her sheets and a bible after three weeks in her lodgings. She claimed she had permission, once again illustrating the complexities of proving ownership or intent to steal in pawning-related thefts.¹⁴²

Clients and owners of ‘houses of ill-fame’ may have been particular victims of the pawning method of disposal. Presumably some victims did not dare complain. Mary Poulson, who had also moved on after three weeks, pawned the property of the owners of the ‘house of ill-fame’ in which she had lodgings. When such victims prosecuted they were usually

¹³⁸ *Yorkshire Gazette*, 12th January 1856.

¹³⁹ YQS 27th June 1842; *York Courant*, 30th June 1842.

¹⁴⁰ YQS 5th March 1869.

¹⁴¹ Melanie Tebbutt, *Making Ends Meet: Pawnbroking and Working Class Credit* (Leicester, 1983), pp. 2-3.

¹⁴² YQS 9th March 1831.

reprimanded and warned that they would be arraigned if they did not take more care.¹⁴³ This is further evidence that not only the male middle class chose to prosecute. Tebbutt also points out the tensions between the aims of respectable and regulated pawning and the realities of back street urban pawning.

For crimes carried out on opportunistic or even vengeful impulse, pawning was the easiest route to profit. Dinah Jefferson pledged an article from a washing line.¹⁴⁴ Elizabeth White stole shoes and pledged them whilst waiting for rum in a pub.¹⁴⁵ Harriet Matthews took the table cloth from the Wheatsheaf Inn, Castlegate, because the prosecutrix “would” not serve her with rum. She pledged it.¹⁴⁶ Note here that the landlady used the word “could” not serve rum on a Sunday morning and also that this clash was between women. Yet again this raises, as this study has frequently done, issues of power and of class relationships between women. There was an argument between Matthews and her co-accused as to the presence of the latter at the incident. There was no easy system of loyalty between women placed in the dock. The individual offenders, whatever their sex, were thrown back onto defending their individual actions and often with acrimony.

Pawning was even used as a rather unlikely excuse for mobility when Catherine Tallon said she was a native of Dublin and had come to York for the purpose of paying interest on a pawn ticket. Perhaps she felt this claim would make her appear more honourable.¹⁴⁷ Communal and mobile living patterns made pawning easy. Jane Gordon pawned a gown belonging to a room-mate in her lodgings.¹⁴⁸ Complex actions around the pawn tickets, combined with mobility, must have made detection more difficult in some cases. Eliza Young pledged a shawl for 8 shillings but then tried to sell the pawn ticket. She said she came from near London.¹⁴⁹ Presumably having made such a transaction successfully an offender could leave town with the proceedings.

¹⁴³ Ibid.

¹⁴⁴ YQS 7th March 1837; Hannah Waddington committed a similar offence, YQS 14th October 1839.

¹⁴⁵ YQS 8th March 1836. It is interesting that many of the women in pub-related offences were drinking strong spirits generally and not only the infamous gin - the gender associations of whisky, gin and rum clearly shift through time!

¹⁴⁶ YQS 3rd January 1834.

¹⁴⁷ YQS 10th March 1840.

¹⁴⁸ YQS 28th June 1841.

¹⁴⁹ YQS 26th June 1847.

Tebbutt suggests that ascertaining the ownership of goods, particularly in lodging houses, was frequently complex for the pawn shop owners.¹⁵⁰ The prosecution of thefts where pawning had occurred could clearly, therefore, be technically complicated too. Such cases frequently involved servants as well as lodgers. Edith Holden was found not guilty of stealing her employer's table cloth because she had pledged it and "intended to redeem it."¹⁵¹ For those unfamiliar with the law of theft this is at first sight a surprising judgement. It hinges, however, on the notion of the lack of intent to steal and, in particular, intention to permanently deprive the owner of the goods in question. In practice, such law might appear to sanction the borrowing and using of goods without the owner's permission. Many of the women in these York offences appear to act as if this was indeed the case. It might reinforce the idea, already mentioned, that nineteenth-century notions of property ownership were not always as rigid as our own.

David Philips argues "on the whole pawnbrokers made it a rule not to enquire too closely into the antecedents of a pledged article."¹⁵² No doubt many pawnbrokers did indeed retain "a criminal reputation."¹⁵³ In fact, York pawnbrokers also appear to have played a considerable role in the policing of offences although to what extent there was duplicity in this role is impossible to fathom. Three named York pawnbrokers (Colburn of Spurriergate, F. M. Stowe and Wood of Lady Peckitt's Yard) were regularly involved in detecting some of the crimes of this study and there were clearly others doing likewise although pawnbrokers are not always named in the reports used. One pawnbroker's name, Charles Epworth, occurs a number of times as one in receipt of court expenses paid to witnesses.¹⁵⁴

It must be asked whether such pawnbrokers could actually make more money from acting as witnesses than from siding with offenders. The spoons pawned by Mary Severs were carefully examined by the pawnbroker and he questioned her about the initials on a spoon.¹⁵⁵ Mary Davis was discovered because of the confused story she told to the pawnbroker.¹⁵⁶ Such

¹⁵⁰ Tebbutt, *Making Ends Meet*, p. 19.

¹⁵¹ YQS 6th July 1838.

¹⁵² Philips, *Crime and Authority*, p. 220.

¹⁵³ Tebbutt, *Making Ends Meet*, see illustration entitled 'Crime' following p. 86.

¹⁵⁴ YQS 30th June 1845, for example.

¹⁵⁵ YQS 12th March 1850.

¹⁵⁶ YQS 20th October 1837.

recoveries did not always require great skills of detection on the pawnbroker's part. Edith Holden pledged a tablecloth, stolen from her employer, and the pawnbroker noticed the owner's name on it.¹⁵⁷ Perhaps, in a relatively small city, such as York, pawnbrokers were also more thoroughly policed and found it in their interests to side with the police - at least on occasions. Sometimes they themselves needed to resort to law. In the case of Caroline Hawkridge the prosecutors were pawnbrokers. They were also her employers. Furthermore they had detected her crime. Money had been missed from the till and marked. The money was found on her.¹⁵⁸

On other occasions, however, detection was not so simple as pledges may have been made by accomplices of the thief.¹⁵⁹ Sometimes it was through the finding of pledged items that the theft was brought to the attention of the victims. The prosecutors of Robert and Mary Ward had not realised any items were missing until the police turned up with the pledged goods.¹⁶⁰ It is clear that these shops were one of the first lines of search by the police. In the case of Catherine Robinson, for example, the newspaper reports that "the police were called in, and on going to several pawnbrokers shops," they found the stolen goods.¹⁶¹ Harriet Garbutt was prosecuted by her father for pawning their property over a period of time. This may have been an instance of desperate parents seeking help. She was separated from her "bad companions" by the Recorder with a deliberately longer than normal sentence.¹⁶² On occasions the fact that pawned stolen goods could be returned by the offender may have meant a mitigation of the sentence. Catherine Swales, for example, was told to return the goods and the Recorder told her she had had a lucky escape.¹⁶³ The prosecutor of Mary Driffield searched the pawnbrokers in the city in order to find the moleskin trousers stolen from his shop.¹⁶⁴

The existence of pawnbrokers makes it very much more difficult to interpret some of

¹⁵⁷ YQS 6th July 1838.

¹⁵⁸ YQS 4th March 1842.

¹⁵⁹ YQS 17th October 1842, Ann Jameson pledged the coat which Mary Hines was accused of stealing.

¹⁶⁰ YQS 26th June 1843.

¹⁶¹ *Yorkshire Gazette*, 14th April 1849.

¹⁶² YQS 7th March 1845.

¹⁶³ YQS 30th December 1867.

¹⁶⁴ YQS 9th March 1847.

the crimes. Whether females found it easier to pawn stolen goods than males would make an interesting study. Certainly the domestic pledge patterns outlined by Tebbutt would facilitate the temporary raising of credit by women pawning the types of domestic items they often stole. Because the offender's intent to recover the articles seems sometimes to have been taken into account and at other times not it makes it particularly difficult to guess the motives of women such as Ann Johnson. Elsewhere I have used her to demonstrate that the victims of female thieves were not always of a wealthier or higher class. However, it is possible that as the washer woman to a labourer with six children she was merely engaging in what Tebbutt suggests was a common practice, that of pawning the washing for a few days.¹⁶⁵ However, she had a previous conviction which might have meant the court were less sympathetic to such a claim. The pawning of bedding from lodgings was a common offence but there is inadequate evidence to show whether in some cases this may not have been a similarly common practice; someone in desperate circumstances could have hoped to sleep without sheets for a night or two and trusted that the landlord would not notice.¹⁶⁶

It is difficult to find direct evidence for shifting notions of ownership of goods in England in the last two hundred years, however, these pawning cases certainly bring into question clear-cut demarcations of property ownership amongst working-class communities who were often living in very close proximity, or sharing accommodation.¹⁶⁷ It is very difficult to see, in cases where the offenders claimed they thought they had a right to use or borrow property, whether this was simply an attempt to gain mitigation of sentence or whether they genuinely felt they had a right of shared access to the goods in question. Mary O'Hara, for example, was acquitted because she claimed the prosecutor had given her the item to pawn and that she had handed over the pledge money.

5.3 b) Other receiving and disposal networks

In an age of door to door pedlars it may also have been easier for women to sell stolen goods on a casual basis. Ann Robinson stole a book from a circulating library and offered it

¹⁶⁵ Tebbutt, *Making Ends Meet*, p. 22.

¹⁶⁶ YQS 3rd March 1843, Ann Sedgwick, for example.

¹⁶⁷ For a development of these arguments see Tebbutt, *Making ends Meet*, pp. 70-100.

for sale to a butcher on Feasegate. She said she had bought it from a man in the street.¹⁶⁸ Ann Nelson sold her neighbour's spoon to a silversmith for 2/7d but the next day went to get it back. The silversmith said Nelson must bring the woman she claimed had given her the spoon before he would return it.¹⁶⁹ Eliza Young attempted to sell a shawl she had stolen. An unfortunate coincidence meant that she tried to sell it to the man who had been the original vendor when the victim had bought the shawl.¹⁷⁰ This sort of concurrence was not unusual and was clearly much more likely to happen in a small town than in a larger urban area. What is perhaps surprising is that offenders in York persisted in disposing of goods in their own locality. Clearly, in an age of limited formal policing, such local tradesmen were active in the informal policing of those they dealt with. However we have also seen that a number of shopkeepers were active as receivers and there were occasions when the traders also stood to benefit themselves from the exploitation of offenders.

York women clearly acted as receivers and in turn used other family members and friends as their receivers. For a very small minority it may have been part of more professionally organised crime.¹⁷¹ More frequently, as Philips has pointed out, charges of receiving were used where it was easier to prove possession than intent to steal. Most cases of receiving appear to have been where goods were found in the family home of the thief or where two people were present at an incident and it was difficult to prove the level of participation of both.¹⁷²

5. 4 Offenders and victims

Emsley suggests that by far the greatest number of nineteenth-century prosecutors were men.¹⁷³ This was inevitable since most property owners were *men* and thefts from wives or households were usually, therefore, prosecuted in the name of the husband. However a

¹⁶⁸ YQS 1st January 1831.

¹⁶⁹ YQS 3rd January 1842.

¹⁷⁰ YQS 26th June 1847.

¹⁷¹ See chapter four, Catherine MacDonald, YQS 27th June 1842. (Note 95).

¹⁷² YQS 12th March 1839; *Yorkshire Gazette*, 13th March 1839, Mother and daughter were seen leaving the home of the daughter's employer with goods. The mother was charged with receiving. This was also discussed in the context of 'feme covert' in chapter one.

¹⁷³ Emsley, *Crime and Society*, p. 178.

number of women victims and prosecutors are named in the York quarter session records. In the 1840s, for example, whilst 132 males are named as victims or as prosecutors (the distinction is not always easy to make from the York quarter session minutes) 25 women are also named. Thus whilst it may be possible to claim that the majority of female offenders were victims of greater social and patriarchal evils, and in particular of poverty, we have already noted that in the specific instance women could be the unfeeling or uncaring perpetrators of crimes against other women or children. Such victims, it might be claimed, were often no better situated than the offenders.¹⁷⁴ The prosecutor of Jane Hanagan was a fellow servant who claimed that the offender had disappeared with her property to Pocklington Fair.¹⁷⁵ Other victims were women where there appears, at some stage, to have been an element of trust in the relationship. Alice Douthwaite stole from her victim after having been asked to look after her box of things. However, part of Douthwaite's defence was that the sister of the prosecutor had also stolen and that she might have been the culprit. Women were ready to blame other women if it meant they themselves were exonerated. As I have already discussed, living in close proximity clearly changed the notions of ownership. Class differences or disparity in the ownership of property are often of far more significance than common gender ties in the choice of victim. One woman disappeared and stole property from her employer who was ill although, of course, we have no idea of the events which led up to this.¹⁷⁶ Frances Hardisty has already been mentioned as stealing from her new mistress who was looking after her in her illness.¹⁷⁷ Eliza Franks and Maria Blake both stole from small children; the latter from the daughter of her friend.¹⁷⁸ Margaret Allison stole from an 80-90 year old woman travelling on a carrier's wagon from Escrick.¹⁷⁹ Women may not, according to the formal record, have offended in callous or brutal ways as frequently as men but they were not strangers to such practices, nor was there a simple mechanism of class-difference at work.

¹⁷⁴ This may be an unpopular argument in some feminist quarters because, as Janaki Nair says, "The woman-as-victim paradigm has been an empowering one for feminist historians." However, as Linda Gordon has pointed out, 'It is false and impossible to see the history of female experience as powerless.' Being less powerful after all 'is not to be powerless, or to lose all the time.'" in 'On the Question of Agency in Indian Feminist Historiography,' *Gender and History*, vol. 6, no. 1, (April, 1994), pp. 82-100.

¹⁷⁵ YQS 30th June 1845; *Yorkshire Gazette*, 3rd July 1845.

¹⁷⁶ YQS 5th January 1846, Rachel Robinson.

¹⁷⁷ YQS 3rd January 1848.

¹⁷⁸ YQS 5th January 1846, YQS 9th April 1866.

¹⁷⁹ YQS 8th January 1855.

5. 5 Personal criminal histories

Of the women who appeared before York quarter session 72% were found guilty, 22% not guilty and in 6% of cases there was 'No Bill' (or '*Ignoramus*'). These figures are remarkably similar to those presented by Philips for the Black Country, which combine male and female rates.¹⁸⁰ A larger data set and more detailed analysis would be needed before any gender differences were to be confirmed or denied but in the first instance this comparison would suggest little real difference. No complex analysis of sentencing practices has been attempted here since more detail than is available for each case would be needed if a reliable account of discrepancies in sentencing patterns were to be given. However, a basic summary of the sentencing patterns reveals that the vast majority of women who were found guilty at the quarter sessions were sentenced to the House of Correction with hard labour (77%). This also mirrors quite closely the pattern found by Philips.¹⁸¹ Of the remainder, 31 (7%) were transported and a very small number (only 12) received sentences of Penal Servitude once this provision had replaced transportation.

Only a handful of women were ordered to pay fines or sureties although this was the common sentence of the petty session. Only 7 were chastised by being given the nominal sentence of incarceration "until the rising of the court." The York quarter session justices used a very small range of sentences for the women whom they convicted and if a woman's case did go as far in the system as the quarter sessions she was much more likely than not to be removed to the House of Correction. From time to time the sentences were affected by the prevailing conditions in the prisons.

Of the offenders in this study at least 48 women are stated as having previous convictions and this, as I have noted elsewhere, is almost certain to represent significant under-reporting. Often the previous offences had taken place elsewhere. However, the picture of York women's quarter session crime is not one of serious recidivism and, unlike in the petty sessions, names do not re-occur with any great frequency. Initially, of course, transportation prevented the re-appearance of some women but even after its abolition there is no evidence to suggest that women were the 'habitual offenders' who were to become the pre-occupation of the authorities in the latter years of the century.

¹⁸⁰ Philips, *Crime and Authority*, p. 170.

¹⁸¹ *Ibid.*, p. 172.

The dominance of the lone woman offender has already been asserted. Furthermore groups of offenders which exist in this study do not appear to constitute what would nowadays be understood as criminal gangs. The handful of women participating in the larger gatherings, which were not familial, tended to have previous convictions and were most severely sentenced. Four such women were transported in 1852. They were all previous offenders. Another all-women group seems to have disappeared from the record prior to trial. Unfortunately because of the Victorian practice of cumulative sentencing it is difficult to link such punishments to particular crimes or modes of operation and not to previous conviction.

It does appear, as one might expect in an age of revolution, that group crimes were more worrying for the authorities. However, such disturbances in York, both amongst women and men, appear to have been more related to in-fighting for internal reasons than to shows of political will. In 1840, for example, a small scale fracas occurred with one group counter-accusing the other but the incident appears to have been related to a small-scale personal assault.¹⁸² The largest mixed-sex group were all given penal servitude in 1860, most of them having previous convictions. In another group the males were transported for stealing hats but the women were acquitted.¹⁸³

The investigation of transported women has not been extended in this research.¹⁸⁴ However, it was fairly routine, in the early period of this study, to transport both male and females with previous convictions. Ellen Mather, aged 24, had, according to the *Yorkshire Gazette*, “for some time been carrying on an extensive system of robbing draper’s shops.” She is said to have confessed “that she could not help thieving.”¹⁸⁵ Her recidivism was solved for the community in York by transportation. However, 17 out of the 31 women transported from York have no previous convictions mentioned in either the newspaper trial accounts, the quarter session records or the criminal registers. Only 4 of the transported women had been charged together with males and 16 were charged alone. 29 of the women received 7 year transportations and the longest sentence was 14 years.

Interestingly the transported women were not predominantly very young woman as

¹⁸² YQS 23rd October 1840.

¹⁸³ YQS 6th April 1832.

¹⁸⁴ For discussions of this topic see D.Beddoe, *Welsh Convict Women: A Study of Women Transported from Wales to Australia 1787-1852*, (Barry, 1979) and for the most recent work and a fuller bibliography on the topic Oxley, *Convict Women*.

¹⁸⁵ YQS 14th October 1839; *The Gazette, York Courant*, 16th October 1839.

Beddoe's work has suggested. Only 5 of the women were under 20 and 6 were over 30. Attempts to correlate names suggest that more than half were prostitutes. Yet, when combined with qualitative sources, the evidence suggests that transportation was never considered as an easy option for ridding York of its prostitutes. Offenders were sentenced to transportation only when there was clear evidence of offences other than prostitution and half of the prostitutes had a number of previous offences. These offenders were also more likely to have committed their offences in the company of others. Numbers for this group are, however, small, and more studies would be needed before trends could be established.¹⁸⁶

5. 6 Offenders, life cycles, and age

Of the cases in this study the ages of forty of the women have remained elusive. This is a reminder that not only are the court records in different stages of completeness but that there are the same difficulties of unreliability of quoted ages as has been found in work on the census figures. However Figure 5.3 clearly demonstrates the predominance of under 30 year-olds amongst female offenders in York. Furthermore, it can be seen that the over 21 year-olds were more likely to offend. This would entirely substantiate the age distribution found by researchers on female offenders in other periods. Furthermore it is closely linked to the average age of domestic servants and of prostitutes.¹⁸⁷

The largest number of York's female offenders fall in the age band 21-30 (218) and the next largest into the band 11-20 (151).¹⁸⁸ The median age is 20 (40 offenders). If the bands are sub-divided into five-year periods around this median it can be seen that the majority of crimes fall between ages 17-21 (139), nineteen and twenty year old offenders being by far the most common. One hundred and twenty one offenders were between 22 and 27; twenty two and twenty three year olds being the worst offenders in this age band. Only four female offenders were over 60.

¹⁸⁶ Interestingly, whilst there has been much discussion around the notion of transportees as prostitutes little attention has been paid to the sentencing of prostitutes in the major existing studies of British prostitution. Transportation, for example, is not indexed in Finnegan, *Poverty and Prostitution*; Mahood, *The Magdalenes*; Walkowitz, *Prostitution and Victorian Society*.

¹⁸⁷ Oxley, *Convict Maids*, p. 167; Finnegan, *Poverty and Prostitution*, p. 76.

¹⁸⁸ This reduces significantly during the period as a result of legislation that directs juveniles to the petty sessions.

York Quarter Sessions:1830-1869

Age distribution of offenders

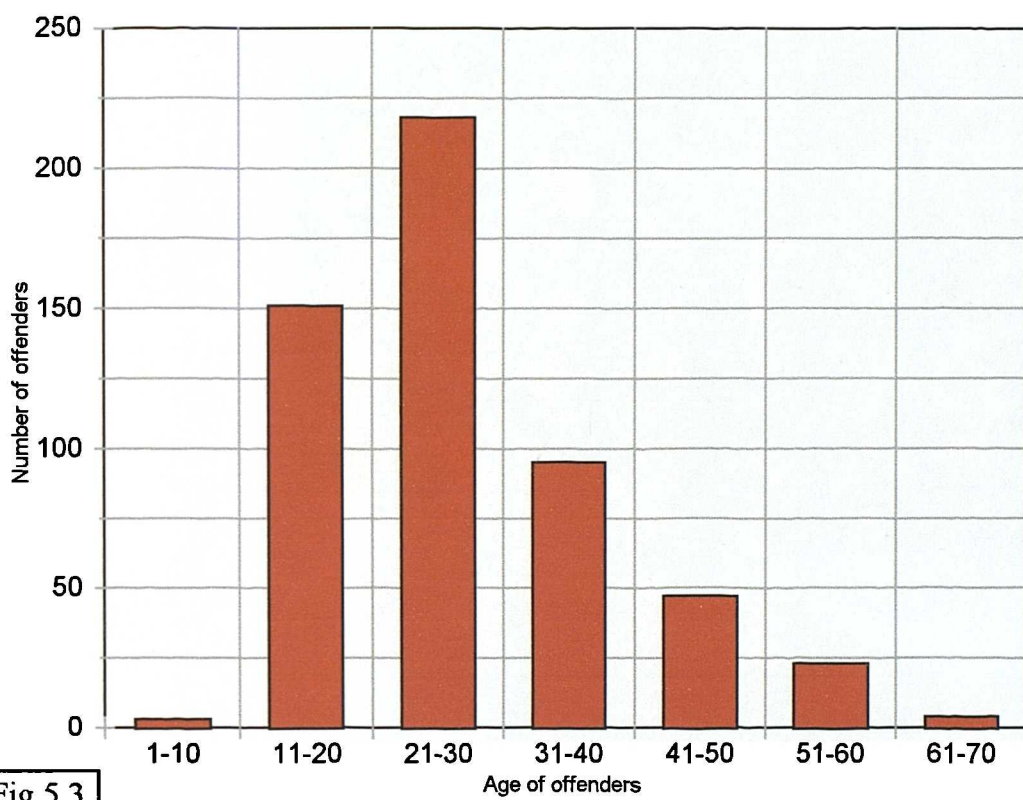


Fig.5.3

Another interesting question is whether the average age of thieves differed from that of prostitutes. It is easy to assume that prostitution would provide a better living for young girls than for older women. Indeed Finnegan claims that relatively few women were engaged in prostitution over the age of thirty.¹⁸⁹ Conversely, and despite the general pattern of the age-spread, quite a high proportion of women over thirty committed quarter session offences - some 169 out of 434 known ages. Whilst young women could turn to prostitution to make money older women may have found it more lucrative to find other means. Similarly whilst it is impossible to quantify comparative numbers of mothers it may have been easier for women with young children in tow to steal whilst going about their normal routine, rather than to act as prostitutes.¹⁹⁰

As might be expected the very young thieves are often in the company of others, particularly mothers. For example, Rachel Stewart, aged 10 was charged with her mother of stealing a piece of cloth. Her father was also found guilty of receiving it.¹⁹¹ The child was acquitted but the parents were sentenced to nine months imprisonment. However what is also clear is the early age at which girls were used as cheap labour as child minders. Frequently 14 and 15 year olds' offences were classified in the category 'theft by servant'. Twelve year old Alice Clancy pleaded guilty to stealing a fur tippet. She had been paid 2d. for looking after the owner's child.

Other offences show conflict in the home between parent and child. Harriet Garbutt, aged 20, was prosecuted by her parents for pawning their property. She looked after the home as the parents were frequently away. (Her father was described as "a labouring man.") She was sentenced to a longer sentence than normal in order that she might be separated from "bad companions." This is an unusual use of the court system to aid parental discipline although it may be that other parents used officers of the law and did not proceed to the court stage.

Sentences of youngsters are not always recorded or are often very short. Sometimes alternative forms of disposal were deemed appropriate. For example, an attempt was made by the Sheriff to place Mary and Elizabeth Collins, who were aged 9 and 7, in a school. They had been described as destitute.¹⁹² There was a clear expectation that fathers as well as

¹⁸⁹ Finnegan, *Poverty and Prostitution*, p. 81.

¹⁹⁰ The fear that prostitutes bred illegitimate children was rife. Finnegan found that that 55 prostitutes in her study could be identified as having children but this is not a large percentage.

¹⁹¹ YQS 12th April 1833.

¹⁹² YQS 30th June 1845.

mothers should bear responsibility for the moral well-being of daughters.¹⁹³ There is little use of reformatories in York.

The infrequency of recorded crime where children in York were the victims, has already been noted - a juxtaposition of rates of such crimes with the developing notion of the 'juvenile' would be of interest where a larger data set was used. Eliza Franks' theft from two small boys - she persuaded them to go on an errand for her and to leave their property with her meanwhile - was not punished with particular severity. She was given 9 months despite it being a second offence.¹⁹⁴ At the same session, a second offender, Eliza Burns, was transported for theft from the person. Mary Ripley was discharged from *King v. Ripley* (an early state prosecution) "as a compromise had been effected."¹⁹⁵ She had deserted a female child for 10 days. There does not appear to be great censure in this early period where children were victims. Conversely, there is not much evidence of 'Fagin-style' use of young children to aid adult offenders. However, Jane Carr aged 32, was given a heavy sentence of 12 months imprisonment with some solitary confinement for stealing a pair of shoes and two aprons. The severity of the sentences may have been because she induced a girl at the ragged school to steal for her.¹⁹⁶

There is little obvious evidence, either in the court records or the newspapers, of particularly troublesome gangs of youths in York. In 1851, 14 and 11 year old boys together with 16 and 17 year old girls were given House of Correction sentences of 9 months for the boy and girl with previous convictions and 6 for those with no record.¹⁹⁷ Family groups of more than two offenders accounted for about half a dozen of the female juvenile incidents. Usually there was a mother involved with either daughter or son and it was then often the obvious charge of one receiving from another.¹⁹⁸ The only father/daughter case (a theft of fowl) has already been mentioned and resulted in the father being transported and the girl (aged 15) being given 7 days. She was clearly seen as under his influence and looked at sympathetically rather than as a member of a potential criminal class. Indeed in York,

¹⁹³ YQS 20th October 1837, case of 14 year old Mary Benson; YQS 22nd April 1830, case of Hannah Farmery.

¹⁹⁴ YQS 5th January 1846.

¹⁹⁵ YQS 8th January 1836.

¹⁹⁶ YQS 5th January 1852.

¹⁹⁷ YQS 30th June 1851.

¹⁹⁸ YQS 3rd January 1834.

throughout the period, younger offenders, like women, seem to have been treated with sympathy and not seen as part of an irredeemable criminal class. Many of the pre-occupations attributed to those involved in nineteenth-century criminal justice by twentieth-century scholars were ever present and yet in the day to day dealings by the court they were not always in the foreground. Indeed in the treatment of York offenders there is a sense that the justices tried to deal with the specific offences and the specific occasions rather than enacting the hidden agendas depicted by the press or other criminal justice lobbies.

5. 7 Accommodation, location and mobility

5. 7 a) Location and mobility

One of the dominant features of this cohort of offenders is their mobility. Movement may have been from town to town but certainly it often meant re-location between different homes or jobs. Of the approximately two hundred women in the 1850s and 60s about one quarter have no details pertaining to the home location or the mobility of either victim or offender. Of these cases, 58 indicate some mobility on the part of either victim or offender and the real figure for such a group would probably be very much higher. Such mobility parallels the movement found by Finnegan amongst her prostitute group.¹⁹⁹ Jane Bean was not at all unusual. She had been in service only three days when she stole waistcoats from her publican employer.²⁰⁰ But whether her crime was the cause or the effect of the moves she made is inevitably difficult to establish.

Offenders gave stated places of origin from as far as Dublin, London, Newcastle and Cumberland. Many came from Yorkshire villages. Some of these had simply come to obtain employment but clearly there were many other motives. Catherine Robinson had come to York to be confined but was from the nearby village of Copmanthorpe. She has already been mentioned as probably having some 'respectable' connections since she was employed as a searcher for the police. In fact her case also demonstrates that it was frequently the mobility of the victims, as well as the offenders, that gave occasion for the crime. Victims of prostitute-thieves were the most typical example of these.

There were also many female victims who were mobile. Commonly these were

¹⁹⁹ Finnegan, *Poverty and Prostitution*, p. 24.

²⁰⁰ YQS 4th March 1842.

landladies or employers who were not necessarily of a much higher social status than the offenders. Catherine Robinson took lodgings with “a charwoman.” Whilst the landlady was absent the goods were stolen. The pattern of criminal activities clearly demonstrates that women were frequently absent from the home for long periods of time - even if only for the time-consuming business of shopping. The offences in this study certainly indicate that nineteenth-century York working-class women were out and about the town working, shopping and socialising. In the case of Ann Gibson the reporter states that this was one of “numerous robberies” from travellers’ carts. The stolen parcel had initially been delivered by railway and transferred to a cart. Clearly by this period the influence of the railway in York was well-established, and the actual mechanics of journeying continued, as they always had done, to give ideal opportunities for theft.²⁰¹

Although, in the reporting of the York quarter session female cases, nationality is seldom an issue, a number of offenders came from Ireland. Finnegan has elaborated upon the use of the Irish as scapegoats for York’s crime, and we have already discussed in relation to prostitutes that generally this applied to males. However, amongst the cases in this particular study there are occasional examples where the reporter has chosen to select the details of Irish background for his press report.²⁰² These are, almost by definition, reminders of the mobility of the offenders in question. For example, it is noted that Mary Robinson had two good references from “respectable families” in Ireland despite four spells in the House of Correction in York.²⁰³ Such mobility, of course, begs the question of the effect of ‘distance.’ Did a nomadic lifestyle ever serve to make the forging of a respectable past easier? Court reports show that, at times, such histories made it credible when aspiring servants put a positive gloss upon the past. However, such backgrounds were normally disadvantageous and, in most cases, dislocation, poverty and the pressures of existence in an ethnic minority group introduced women, such as Mary Robinson, to lives of crime.

Mobility was often used to attempt to cloud the picture in explanations of the acquisition of goods. Upchurch declared she had purchased the watch she was accused of stealing in Sheffield.²⁰⁴ Other offenders had committed crimes in other towns. Mary Robinson

²⁰¹ YQS 9th January 1854.

²⁰² Despite the ownership of the *York Courant* by Ann Ward 1759-1789, as would be expected, there is no record of any female reporters in York in the period.

²⁰³ YQS 5th July 1839, Mary Bott was one example.

²⁰⁴ YQS 7th January 1831.

had a previous conviction in Leeds, under a different name.²⁰⁵ Ann Mellenby had previous convictions in Hull and Northallerton; Catherine Lacey had supposedly been charged nineteen times at places such as Knaresborough and Richmond. It is interesting to note here that the previous convictions are not most frequently from the more industrial West Riding which might be assumed to have offered more opportunity for crime and also to have provided more anonymity. What may be more relevant is that whether or not such records followed the offenders around was based upon chance occurrence. Furthermore, records suggest that York courts found it easier to obtain information from the local North Riding courts. Women who had committed crimes in these towns may have had their records traced more easily. Other offenders clearly caused the police problems by moving on and were arrested in places as far afield as Liverpool.²⁰⁶

As was noted in the previous chapter another relevant feature of mobility was the prevalence of local fairs. The victim of Mary Davis missed his watch at Wetherby Fair.²⁰⁷ Contemporary concern in some quarters was that such occasions, together with the races and the assizes, were breeding grounds for crime.²⁰⁸ Yet perhaps not as many quarter session offences as the nineteenth-century press reports and other commentators might suggest, occurred - or at least were discovered - at such events. It is probably more likely that such crimes were treated as less serious and processed by petty sessions. Nonetheless, it is clear that, from time to time, fairs, or the races, were either opportunities for disposing of goods or occasions on which the women could parade the stolen goods.²⁰⁹ Jane Hannagan, for example, took a muslin collar and "disappeared to the fair in Pocklington" with it, as to whether it was to sell or to wear there is no evidence.²¹⁰

A further feature which caused great concern in this period was over the effect of

²⁰⁵ YQS 10th March 1835.

²⁰⁶ YQS 13th October 1845, Elizabeth Harley had stayed only three days in service before she stole and was captured in Liverpool.

²⁰⁷ YQS 20th October 1837.

²⁰⁸ YQS 9th March 1846, Rose Pickard was arrested for robbing a witness visiting York for the Assizes. She had invited him to a 'house of ill-fame.'

²⁰⁹ YQS 18th October 1847, Ellen Hartley's victim was in York for the races and her reported comment to her partner was "Here, Jack, take this mantle it will do for the parasol I lost yesterday at the races."

²¹⁰ YQS 30th June 1845.

lodgings.²¹¹ These, as we have seen, were invariably linked with immoral and/or illegal behaviour in York. Jane Clarkson was dismissed from court with ‘no bill’ yet the Recorder suggested, at the close of the hearing, that there should be suppression of lodging houses which, he argued, were known to be places of rendezvous for disreputable characters.²¹² Indeed, Finnegan has demonstrated some of the irregularities and uses of the lodging houses in, for example, the Water Lanes.²¹³

Particular problems arose in proving legal culpability in cases of alleged receiving within lodging houses. Mary O’Gara was acquitted of receiving the leather her male lodger had been found guilty of stealing from a tanner.²¹⁴ It was extremely difficult to prove “guilty knowledge” in such cases. The extent to which lodgers were informally policed by their landladies is similarly difficult to ascertain. It is likely that they were simply asked to leave in many cases. Rapid mobility between lodgings also meant that personal property was continually on the move giving opportunity for further crime. Eliza Mitchell, an inmate of the workhouse, for example, went to a house where another inmate of the workhouse had previously lived and claimed some items. The owner never received them and Mitchell was sentenced to two months in the House of Correction.²¹⁵

Victims of crime were also frequently dwellers in lodging houses. Not surprisingly perhaps their property frequently disappeared from washing lines and the identification of such items usually proved a problem.²¹⁶ Mobility was also at the heart of many prostitution-related thefts; many victims were robbed in the temporary ‘homes’ of the offenders and it is clear that the ‘room’ as opposed to the ‘house’ was the common form of accommodation for many women in York. A number of the prosecuted women were relatively permanent landladies of ‘houses of ill-fame’. Ann Render, for example, was one whose name appeared in a number of cases and yet she was not the one being prosecuted.²¹⁷ The brothel keepers were easy targets of a fluid population. At other times prostitution was carried out in pubs and so the actual

²¹¹ See Davidoff, ‘The Separation of Home and Work?’ pp. 151-179.

²¹² YQS 9th March 1846.

²¹³ Finnegan, *Poverty and Prostitution*, p. 39.

²¹⁴ YQS 23rd October 1854.

²¹⁵ YQS 7th March 1860.

²¹⁶ YQS 8th January 1855.

²¹⁷ YQS 25th October 1858, Teresa Wagner; YQS 26th October 1857, Mary Ann White, for example.

'homes' of the women were not involved. Agnes Harvey took a male to a pub where they were offered a "private room."²¹⁸ She "pulled him about" and then left with his watch.²¹⁹

5. 7 b) Parish distribution

The parishes in which most offences at quarter sessions took place parallel closely those in which Finnegan found in her studies on the Irish and crime in York and those in which much of the prostitution took place. Figure 5. 4 shows that All Saints Pavement, and St. Crux featured the largest number of offences and St. Mary Castlegate and St. Michael Spurriergate the next highest number. Christ Church, St. Sampson, St. Dennis, Minster Yard and St. Saviour spawned between 20 and 30 offences in the period under study. All Saints North Street, Holy Trinity Mickelgate, St. Giles, St. John Mickelgate, St. Michael-le-Belfry and St. Peter Little appear in the next batch where between 10 and 20 offences happened. In other words, as one might expect, offences occurred in major shopping areas and in streets where prostitutes and travellers were more common. This may provide a different map to one prioritising male offences since they appear more likely to have included house-breaking offences in other residential areas.

Conclusions

That there are many more areas that could be studied in greater depth for this chapter is without doubt. The decision in this thesis to discuss areas such as literature and law means that considerable cuts have had to be made in the presentation of more empirical criminal history. Much material about sentencing practices, police and court practices remains unused.

What has been established provides no surprises which may, in fact, partially provide a reason for the dearth of studies into women's theft. These women provide no exciting "she-devils," no picture of glamour, of licentious behaviour, or of excitement. Nor do they provide "saints" as attractive role models for feminists or indeed, for anyone else

²¹⁸ The legality of sex in rented private rooms is a complex and interesting issue and, predictably, an entirely different one for the wealthy. Women would not have been acting illegally. Anne Lister rented a pub room at the Black Swan, Coney Street where she slept with Isabella Northcliffe. There is no doubt that the purpose of the rental was sexual activity. See Helena Whitbread (ed.) *I Know My own Heart: The Diaries of Anne Lister 1791-1840* (London, 1988) p. 170 and p. 65.

²¹⁹ YQS 6th March 1868.

These women's lives appear relatively drab and unexciting for the historian; a majority of women appear to have stolen, entirely predictably, because of their poverty.

PARISH	NUMBER OF OFFENCES
ALL SAINTS NORTH STREET	11
ALL SAINTS PAVEMENT	51
CHRIST CHURCH	25
HOLY TRINITY MICKLEGATE	12
MINSTER YARD	20
ST CRUX	59
ST DENYS	29
ST GEORGE	10
ST GILES	12
ST JOHN MICKLEGATE	14
ST MARGARET	22
ST MARTIN CUM GREGORY (MICKLEGATE)	7
ST MARTIN CONEY STREET	9
ST MARY CASTLEGATE	44
ST MAURICE	10
ST MICHAEL-LE-BELFREY	17
ST MICHAEL SPURRIERGATE	33
ST PETER LITTLE	19
ST SAMPSONS	29
ST SAVIOUR	24

Figure 5. 4 York parishes with more than 5 offences 1830-1870

Although many of the women were charged alone in court for their law-breaking activities, they appear to have lived amongst peers, male and female, who allowed their activities to continue. Conversely, we have seen glimpses of control exercised by these peer groups which suggest that the community did have some power to restrain or condone the activities of neighbours, families and friends. Opportunities for the disposal of stolen goods have often exemplified both the former and the latter mechanisms. Furthermore prevalent notions of property ownership may, frequently, have differed from those of the law-makers: this often made the proving of 'intent' in the law of larceny particularly problematical.

That female offenders often feared 'ill-repute' is clear from their defences in court. Numerous histories have demonstrated that this has long acted as a particular, and a powerful, constraint upon women. Entirely predictably, the life-cycles of the women affected their opportunities and their need for criminal activity. Normative constraints for many nineteenth-century women included carrying the burden of both home and work. Sometimes these demands also provided the reasons for illegal activity. But these women were neither wholly victims nor totally agents in their own lives.

That the 'gender ratio' has not been considered in this chapter has been, partially, a matter of word restraint. However, to be successful, such an exercise would necessarily be based upon far more than a simple comparison of the male and female crime rates. Nineteenth-century women faced entirely different employment situations and possibly an "additional series of controls"²²⁰ to those which affected men. Thus as Frances Heidensohn has suggested for the twentieth century, a simple "crash programme" of research into nineteenth-century female crime is inadequate. Yet this chapter has provided a contribution in an area that still, even in the 1990s remains "hidden from history," and hopefully, therefore, it has added to the extremely slow process of engendering criminal history.

A summary such as the one I have given might suggest the possibility that it is easy to create a stereotype of the nineteenth-century female offender. Yet this would be to oversimplify the mass of criminological research which exists. Furthermore many of the distinguishing features of any stereotype might frequently be applied to women who did not offend. Individual differences amongst the women mean that simple stereotypes must be treated with great caution. Chapter six will look closely at a different group of female offenders and, as a part of that, will provide comment upon some of the 'individual factors' that affected the crimes committed by both York and Hull women.

²²⁰ Frances Heidensohn, *Women and Crime* (London, 1996), p. 198.

Chapter 6

‘THE LAND OF GREEN GINGER’ VS. WHIP-MA-WHOP-MA-GATE’; A COMPARISON OF THE LIVES, CRIMES AND TREATMENT OF FEMALE OFFENDERS IN NINETEENTH-CENTURY YORK AND HULL

Introduction

In chapter two of this thesis I discussed some of the socio-economic and cultural differences between the settlements of York and Hull. The two areas produced essentially similar female crime rates but within these basic similarities there were a number of variations in the types and ratios of crime recorded; in the way in which female crime was perceived and, on occasion, in how it was dealt with in the two communities. This chapter will demonstrate some of the differences in the experiences of female offenders within the justice systems of the two towns.

It is evident that a female who committed a crime in the central street of Hull that is intriguingly known as ‘The Land of Green Ginger,’ for example, would perhaps not have received the same treatment as if she had committed that same offence in the central York street of ‘Whip-ma-whop-ma-gate.’ One of the differences, that of the treatment of the ‘feme covert’ cases, has already been discussed in chapter one. Many of the other variations in the reported crime rates, and in the subsequent treatment of offenders, in York and Hull are predictable results of the socio-economic, political and religious differences in those two boroughs.

The percentage of female to male offenders is similar in both towns. ‘Best-fit lines’ run at a very consistent 30% in Hull and at a similar, albeit gently declining, level in York (Figure 6. 1). This, one might argue, is to be expected given a steady interpretation of law and an increasingly consistent application of court procedure nationally. Indeed an analysis of offences reported in the local press also suggests that many of the crimes committed by females in York and Hull were similar in nature. The majority of the cases in both boroughs were mundane minor thefts and could commonly be contextualised in lives of drab poverty.

York & Hull Quarter Sessions 1830-1869

Percentage female offenders

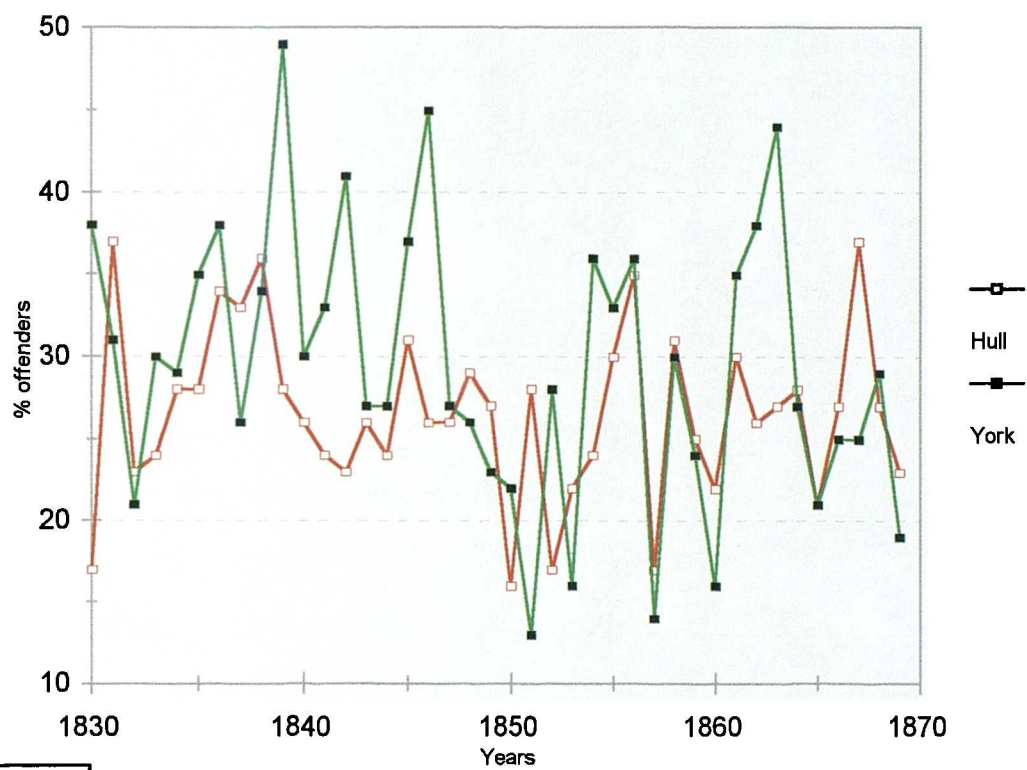


Fig.6.1

However, closer study will show that whilst there are overall similarities in the types of crimes with which women were charged there was, in fact, a significant difference in the way certain crimes were policed, prosecuted and disposed of within the court system - the application of law was neither fixed nor unambiguous.

Whilst this thesis has had as its core a study of quarter sessions offences, it is in the petty session convictions ratified at the quarter sessions that the most noticeable differences occur in relation to female crime in York and Hull. Firstly, for example, prostitution was more heavily controlled by the police and the courts in York. Whilst I have argued that the policing of prostitution was not the only, or even the over-riding, concern of York police it was nonetheless considerably more of a target than it was in Hull. Secondly, in Hull, many women were charged with "using profane language." In York there is no such offence documented in any of the court records. The reasons for these differences will be examined later.

What this chapter demonstrates is that there were different pre-occupations within the two communities of York and Hull which resulted in different biases within recorded crime rates. There is no real evidence of any inherent difference in the types of crime practised within the boroughs. One of the conclusions of this chapter is that far more local comparative studies of female criminality are needed before long term studies can be of true value.

6. 1 Types of offences

6.1 a) A comparison of the total range of quarter sessions crimes in York and Hull

The total range of crimes that came before the quarter sessions was larger in Hull than in York (Figure 6. 2). However, the numbers of the 'additional' crimes in Hull were small - often just single cases. For example, in Hull there was one recorded case of stabbing, in York none at all. One could argue that, for the most part, this situation was simply a feature of a larger population group. Other types of offences were clearly a result of the fact that Hull was a port. Although, surprisingly perhaps, the extant records show only 3 Hull women specifically charged before the quarter sessions with the crime of 'Stealing from a vessel in a port.' This may, however, have been because a considerable number of thefts were actually processed as 'smuggling' offences in the petty sessions.¹

¹ The records of ratified convictions for these offences can, as has been mentioned elsewhere, be found in the quarter session records.

Hull Quarter Sessions 1830-1869 Female offenders:breakdown of offences

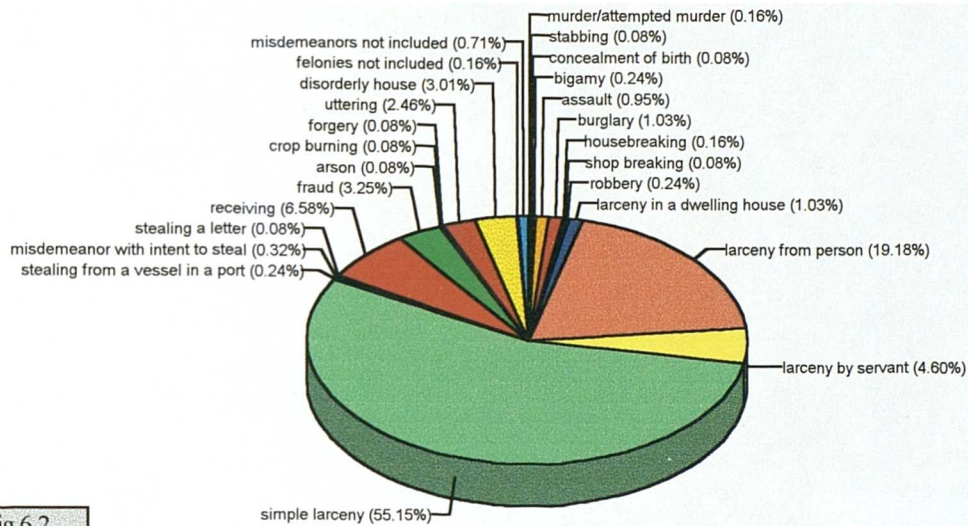


Fig 6.2

Such smuggling was a far cry from the traditional and romanticised image of smuggling and there was little apparent glamour. For example, in July 1837, Margaret Quillash was charged with smuggling six and a quarter gallons of foreign brandy. This was concealed under a false bottom in a bed in a cabin of a steam packet. The false bottom would certainly suggest pre-meditation and planning and perhaps frequent activity - by the steam packet employees if not by this particular individual.² In 1840, Hull's Recorder made it plain that the docks and ships must be particularly well-protected since an abundance of goods lying around made this an especially vulnerable area.³

Despite a smaller population in York, (indeed perhaps because of the concomitant control which was outlined in chapter five) and despite the city's relative quiescence in terms of social unrest and disorder, there was a slightly higher proportion of certain crimes in that city. The proportion of charges of counterfeiting, for example, was slightly higher in York (3.6% in York, 2.4% in Hull). The reason for this is difficult to determine since total numbers are relatively small and unlikely to be of any real statistical significance. The most likely possibility for the slightly higher figure is that detection was easier in the smaller community. Like many other women charged in York the female counterfeiters were sometimes traced because they were recognised.⁴ Alternatively the offences could have been a coincidental result of the residence of certain individuals involved in coining.⁵

Evidence suggests that nineteenth-century police tracked criminals through their networks as they do today. In a small town like York these connections appear to have been easier to map out than they were in Hull. Furthermore, I have already suggested that York's police, in the early part of this period, were local men with strong networks of their own. Cecilia Brannon, for example, was a local York woman with an ailing husband and Mary Clark, "a straw-bonnet maker," were tracked from one pub to another.⁶ A careful study of Hull 'Informations' provides evidence of similar 'intelligence' networks used by the police. However, the impression is that many offenders were unknown to those around the crime

² HQS CQB 182, 16th July 1837.

³ *Hull Advertiser*, 23rd October 1840.

⁴ YQS 12th April 1858, Harriet Loughran, for example, was recognised in the second pub where she paid for rum with some counterfeit coin.

⁵ Jane Mitchell received her fifth conviction for uttering base coin in the York summer sessions of 1830.

⁶ YQS 2nd July 1866; YQS 5th July 1858.

scene even when the crimes were committed in the vicinity in which the witnesses lived.⁷ Furthermore, the mobility involved was frequently of a different order to that in York.⁸

Incidentally, in the charge to the jury at the sessions attended by Mary Clark, the Recorder also highlighted another difference between York and Hull. In Hull, as was mentioned in chapter five, there were far more pawnbroker shops and far more unlicensed ones than in York. “In no other Yorkshire town did the trade approach the size of that in Hull” where there were 77 licensed brokers. York had only 7.⁹ There were clearly perceived to be problems relating to the control of the brokers in Hull and the Recorder spoke of the necessity of the £50 fine for non-payment of licences in the area.¹⁰ Anonymity in disposing of stolen goods in Hull cannot but have been more likely than in York with this situation. Even in Hull, however, pawnbrokers’ shops cannot be seen simply as trouble-free locations for the disposal of stolen goods and the pawnbrokers still provided useful sources of information for the victims. However, tracking down the offenders via the pawn shops of Hull appears to have relied more upon the victims’ own searches rather than on the operation of the wider networks of oral-communication sometimes demonstrated in York. Mary Ann Dyson was charged after her victim had visited a number of pawnbrokers and eventually traced his stolen handkerchief.¹¹ A common practice in Hull was for the offender to use an alias for pawning goods.¹² Furthermore there was wide use made of the many other kinds of shops in Hull for disposing of goods.¹³ Identification was clearly more difficult in Hull although, by definition, the cases used here indicate some success in tracking down both goods and offenders.

Women in Hull are not recorded as committing large numbers of ‘offences against the

⁷ *Hull Advertiser*, 24th May 1846, Mary Nicholson claimed “that she had no person in the town that knew her excepting a glass dealer...” Ultimately, of course, we cannot know whether this was truth or a statement to aid her defence.

⁸ *Hull Advertiser*, 18th April 1851. In the case of Frances Anne Skelton, for example, the offender claimed that she had been left a watch to pledge by her nephew who had gone to America. He was to reclaim the money “when he returned from sea.”

⁹ Melanie Tebbutt, *Making Ends Meet: Pawnbroking and Working-Class Credit* (Leicester, 1983), p. 3.

¹⁰ *Hull Advertiser*, 22nd July 1856.

¹¹ *Hull Advertiser*, 3rd April 1840.

¹² HQS CQB 186/256 ‘Informations,’ Harriet Garlick, for example.

¹³ HQS CQB 186/266 ‘Informations,’ Sarah Mountain tries to sell a mug from a pub but the shopkeeper is suspicious and sends for the police; HQS CQB 186/271 Mary Lawson is accused of “prigging” (used three or four times in the deposition and appears to mean stealing) the ironholders she tries to sell to a shop keeper. He uses the accusation of theft to negotiate a lower price for the items.

person with violence' although, as in York, records suggest that the extent of any violence was often understated. Just as in York, violent crimes such as infanticide were viewed as offences that occurred elsewhere and Hull documents do not reflect any concern that child murder was common locally. Hull newspapers contain numerous newspaper reports of incidences elsewhere in the country.¹⁴ Only one charge of concealment of birth is recorded at quarter sessions and there were only two recorded incidents of child stealing.

Between 1830 and 1870 only 3 women in Hull were charged with 'robbery' but none were similarly charged in York. The slight numerical difference does not, however, appear to be great enough to suggest a dissimilar approach between the two boroughs in this respect. The 15 charges of 'burglary,' 'house' and 'shop-breaking,' in Hull, represent a very slightly higher percentage of total female crime than in York but nothing of real significance.

However, of interest here is the fact that, just as there was little technical difference between York and Hull 'robbery' cases, there was also a similarity in the way in which the word "robbery" was casually applied in non-technical ways. Whilst the technical, legal charge of 'robbery' was unusual in both towns, it was common in the newspapers and depositions to see thefts (apparently where no 'putting in fear' or violence had occurred) described as "robbery." Conversely, such cases were sometimes, actually, technical cases of 'robbery' where the violent element had been ignored and the crime indicted as 'simple larceny.'¹⁵ This slippage of nomenclature also occurred in court where, for example, even the Hull Recorder spoke of "robbery of masters by servants" in 1856 when the context clearly implied no more than theft.¹⁶ Such blurring becomes an important consideration if any attempt is being made to determine the violent nature of offences. Our attention is turned, once again, to the fluid nature of the definitions of crimes. In the Recorder's charge to which I have referred, even the senior court official ignored the technical distinctions of the law, deliberately or unconsciously. Such use of terminology inevitably adds, or detracts, strength from the accounts of crime.¹⁷

¹⁴ *Hull Advertiser*, 8th March 1856, reports one in St Pancras. Reports from this area of London were common because it was the area from which medically qualified coroners Drs. Wakley and Lankester were actively publishing data. S. E. Grace, 'A Melancholy Catalogue of Murders: Infanticide in Victorian Britain,' M.A., (University of London, 1985).

¹⁵ HQS CQB 212/309 In the case of Bridget Cauley one witness says she heard there had been a "robbery." Although the case is indicted as 'simple larceny' the extent of the violence in a dark passageway remains impossible to quantify.

¹⁶ *Hull Advertiser*, 22nd July 1856.

¹⁷ Paradoxically, however, this problem may also make it impossible for us to determine whether or not a word such as "robbery" means the same thing to a twentieth-century reader: that, in Saussurian terms, such diachronic shift is unmeasurable.

Quantifying levels of female violence becomes even more problematical where the gap between levels of violence found in the court accounts and the probable action on the streets was particularly wide. In Hull, as in York, however, there was no attempt to charge street-thefts as ‘highway robbery.’ There appears to have been a similar, and general, lack of fear of serious violence in Hull and even less fear, than in York, of violent behaviour by women.

6. 1 b) Felonies and misdemeanours

In Hull, as in York, the majority of quarter session crimes between 1830 and 1870 were felonies; only a minority were misdemeanours (Figure 6. 3). In practice, the differences between such offences were often negligible, as I demonstrated in chapter two. Nonetheless, it can be seen that Hull’s proportion of misdemeanours was technically slightly less than York’s and the difference in Hull may probably be accounted for by the use of the ‘fraud’ charge. In Hull, there seems to have been fewer cases of offences which, in York, would have been categorised as the misdemeanour ‘false pretences’ (only 4 cases compared with York’s 23).

We saw in chapter four that these offences most frequently took the form of thefts from York shops where servant employees had used their master’s or mistress’s name to obtain goods. Far easier detection and lack of anonymity in a small population like York could obviously account for a high actual number of cases coming before the York courts. In fact what also appears to happen in Hull is that similar offences (though still appearing to be proportionally fewer) were charged in Hull as ‘frauds’ which were felonies and not misdemeanours (3.3% of Hull quarter session female crimes). No York offences were technically categorised as ‘frauds’ although the actual cases appear to be very similar in nature. A factor in this (albeit technical) severity may have been the developing awareness of Hull as a commercial centre. As early as 1840, the Hull Recorder made it plain that “in a commercial community” they needed to be especially watchful for cases of embezzlement.¹⁸

¹⁸ *Hull Advertiser*, 23rd October 1840.

Hull Quarter Sessions:1830-1869

Felony as a proportion of female crime

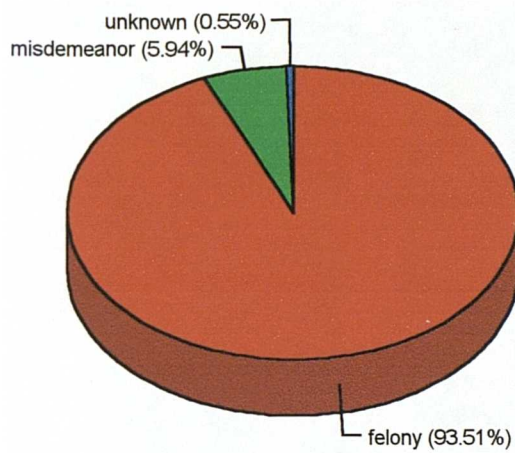


Fig.6.3

It may be, therefore, that attempts at deception were taken as a more serious threat in this rapidly developing port and by default a hard-line approach may have been extended to the treatment of women's more domestically-gearred deceptions.¹⁹ This may have been an even more powerful agenda than that of York's small traders who also tried to ensure that the city's policing protected their businesses.

Although more Hull crimes were technically categorised as felonies than in York, in practice, the range of sentences was wide in both boroughs. Indeed, whether or not the crime was technically a felony or a misdemeanour seems to have made little difference to the actual severity of the sentences and the slippage in definitions may or may not have affected the actual treatment of the women. Nonetheless, the practice of grading crimes could clearly differ from area to area. Such regional variation can be missed where historical studies are based upon large blanket judgements of crime types within the court records.

6. 1 c) Quarter session offences - thefts by servants

In Hull, the official record suggests that 4.5% of the total number of women's offences were thefts committed by servants whereas in York this group accounted for 8.6% of the offences. This difference may reflect both the higher proportion of the women who were servants in York and also the easier detection of such crime in a city where people could be traced with less effort. The figures could also reflect a more determined policing of servant women in York. In 1856 the Hull Recorder, in his charge to the jury, noted the absence of such crimes, although his comment that "leniency here is most mischievous" might suggest that he, at least, would not ignore the offences if they were discovered.²⁰

Figure 4. 6 shows the higher proportion of women offenders in York in the 1830s and 1840s. The slight decline in the York proportion of female offenders in the two later decades may have been partially due, as I suggested in chapter four, to the fall in the total number of women servants in York in this period. Although it can be seen in Figure 6. 1 that York's percentage of female offenders to male remains slightly higher than Hull's throughout the period examined. The average ratio of 1:3 female to male offenders in the Hull quarter

¹⁹ Linda Colley and others have noted, however, the strong links between national order and the desire to clear the streets of "disturbers of trade." Even shoplifting was seen as symptomatic of a larger disorder which might have far reaching consequences for the nation. Linda Colley, *Britons: Forging the Nation 1707-1837* (London, 1994), p. 98.

²⁰ *Hull Advertiser*, 22nd July 1856.

sessions remains roughly constant despite small yearly fluctuations from 1:2 to 1:5.

6.1 d) Petty session offences - general

The petty session conviction records of Hull show proportionally far fewer females than do those for York. In 1830, for example, only 3 guilty females appeared before the Hull petty session but 83 males were convicted. The available figures show that the proportion of convictions continue to be similarly small throughout the period of this study. Furthermore, one area, not included in the above figures, which seems to have remained a particularly male domain in the Hull courts, is that of 'binding over to keep the peace.' In April 1865, for example, 95 men were bound over but only 1 woman. This ratio was not untypical. One offence that may account for this difference in the rates of 'binding over to keep the peace' is the treatment of domestic violence committed by both males and females. In the 1830's in York such offences were more frequently dealt with in the Church court. Only when the church courts waned in York were such offences transferred to petty sessions and dealt with by binding the offender over (by recognisance). In Hull, which was less of an ecclesiastical centre, perhaps there was more use of local secular courts. In 1831, for example, a Major Wilkinson was charged by his wife Sara with beating her. He was sent to gaol until he could find the sureties.²¹ There are no similar cases in York.

6. 1 e) Petty session offences - prostitution

Until recently there has been no large scale study of prostitution in nineteenth-century Hull. David Welsh's thesis on the history of Hull's police which includes a section on prostitution, has now gone some way to filling that gap.²² That the sex-related crimes of females are chosen as an area for discussion in a study that is essentially concerned with police administration may be viewed, by some, as a token approach taken in order to ensure some discussion of women. Indeed, in some respects, Welsh's choice of sex-related crime as an example of women's law-breaking confirms some of my reservations about the historiography of prostitution. However, Welsh's work has covered essential ground, in a thorough manner.

²¹ HQS 7th April 1831.

²² David Welsh, 'The Reform of Urban Policing in Victorian England: A Study of Kingston-upon-Hull from 1836-1866,' Ph.D., (University of Hull, 1997).

Furthermore, York and Hull appear to represent differing views on the control of the sexual behaviour of women and this impinges upon any discussion of the treatment of law-breaking females. The attitudes of York's middle classes have already been summarised. Although qualitative evidence makes it clear that prostitution was very much an activity in Hull only 3% of the quarter session cases in Hull were for keeping disorderly houses. Welsh is almost certainly correct to claim that this crime did not overly worry the Hull authorities.²³

The low prostitution-related figures apply not only to a discussion of Hull quarter session offences. As in York, the official rate of petty session prosecuted offences specifically, and technically, related to prostitution were also low. At the Christmas 1864 sessions only 16 out of 303 convictions ratified from petty sessions were for prostitution. In 1854 the Hull police return of prostitutes listed a total of 464 but only 57 were charged in this year.²⁴ Out of 1,579 crimes for the same year only three charges were for brothel keeping. Hull police returns for 1868 record 792 prostitutes but only 72 offenders, according to the return, were taken into custody in that year. Fear of the offences did not appear to increase. Indeed in 1852 the Recorder in his charge to the jury commented on the decrease in the number of robberies committed by "women of the town."²⁵ However, qualitative evidence would suggest that such a reduction seems unlikely to have resulted from any real diminution in prostitution. Many of the offences described in reasonable detail in the 'Informations' appear to have been linked with sexual activity. The Recorder's perception is perhaps more likely to have reflected less concern by the middle classes. Many of the offences in Hull clearly took place in the night-time passageways of dockland.²⁶ One likelihood is that the middle classes of York felt that their lives were impinged on much more by prostitution than did the affluent classes of Hull who need not visit the unsafe areas.

Until the 1850s prostitutes in Hull were prosecuted under the Vagrancy Act. In 1840, for example, Elizabeth Mason represents a typical case and was charged with being "idle and disorderly" and with behaving in a "riotous and indecent manner, she being a common

²³ However, his conclusion that local opinion can be deduced by assessing the system used for grading these establishments must be treated with caution since Hull was following a practice commonly adopted elsewhere and not operating a locally constructed mechanism as Welsh seems to imply in 'The Reform of Urban Policing,' p. 239. See Trevor Fisher, *Prostitution and the Victorians* (Stroud, 1997), p. 26.

²⁴ Hull police returns, HCA CQB 253.

²⁵ *Hull Advertiser*, 9th January 1852.

²⁶ HQS CQB 212/317 The case of Ann Brown and Mary Fisher is typical of many of the 'larceny from the person' offences. The victim was a shepherd from near Doncaster. They drank together and then went to seek a private room in a pub. In the event, the victim claimed he was pushed into a privy and robbed by the women.

prostitute.”²⁷ In York, however, we have seen that specific provision had been made under the York City Act, 6 Geo. IV, c.127. A consistent ‘data set’ of reasons for vagrancy prosecutions in Hull is not extant but from the forty available charge sheets of the Michaelmas quarter sessions of 1848, for example, only six out of forty vagrants were specified as prostitutes.²⁸ Thus, as in York, the official Hull court record demonstrates little concern with prostitution in the period and, in fact, Hull newspaper reports suggest less concern, in general, about prostitution.

The possibilities that prostitution cases were not so actively policed in Hull and that the court records do not reflect the true extent of the crimes are both likely. Another possibility is that fewer cases of prostitution were actually prosecuted in Hull because of its nature as a seaport. A common offence, in Hull, was one such as that committed by Laverack and Foster where their ‘theft from the person’ was from an American sailor.²⁹ Predictably, many victims of prostitute-thieves in Hull were such foreign seamen. Within the court accounts there are frequently comments either on the expense of bringing witnesses from overseas or on the fact that witnesses were fined for non-appearance. It is hardly surprising that some witnesses would rather incur a £10 fine for their absence from England than travel from Holland, Belgium or Germany. Indeed, it is hard to imagine that such fines were ever collected.³⁰ Distance perhaps also meant that European dupes of Hull prostitutes found it impracticable to initiate action in order to recoup their stolen property as frequently as did many of the more local clients of the York prostitutes. Consequently, for all these reasons, references to prostitutes in newspaper reports are also likely to have been reduced.

There are various mechanisms at work here. It could be that prostitution was seen as an inevitable part of life in a port and tolerated as such.³¹ Geographically the prostitution may have imposed upon the middle-class residents of Hull much less than in York, as I have already intimated. The fact that throughout this period the middle classes of Hull were moving out of

²⁷ HQS 25th March 1850.

²⁸ The fact that the vagrants are prostitutes is indicated only on the charge sheets and is not signified anywhere else in the court records.

²⁹ *Hull Advertiser*, 22nd July 1856.

³⁰ *Hull Advertiser*, 28th December 1854; HQS/ CQB Epiphany 1855. By contrast, there are handwritten notes on the case notes of Joseph Wallenberg, who brought one witness from Ostend, which express concern about the expense.

³¹ Certainly the ‘Informations,’ and in particular the witness statements, which exist for the quarter session offences concern themselves little, if at all, with prostitution.

the city centre in a much more marked way than in York is perhaps one reason for the differences in the anti-prostitute campaigns in the two places, although it was not until the 1860s that the Hull middle classes moved in large numbers two or three miles out of the centre to the Pearson's Park area.³² In York, the middle class remained much more central. It is clear from diaries that many of the York professional males walked to their work from their residences in Bootham and other relatively short distances. As Finnegan maintained, York's areas of prostitution were often middle-class shopping areas - such as Fossgate.

Furthermore, in Hull, the clients of the prostitutes were probably perceived mainly as foreign male sailors - who were perhaps even seen as being kept out of other kinds of trouble, such as drunken street brawls, by prostitutes. In 1844 the Hull Recorder had acknowledged the problem of trouble from sailors when he commented on the temptations (for juveniles, in this context) particular to Hull: "... many of the crews are foreigners, of all nations - and the habits of common sailors are little calculated to improve the morals of mere lads . . . they invariably bribe boys to assist them in petty smuggling, thereby initiating them in illegal practices."³³ Prostitution could have been viewed as less troublesome, and indeed cheaper, for the Borough than the latter activities.

The prostitutes themselves were frequently thought to be German girls and so perhaps there was no perceived sully of English stock. This nationalist fear is explicit in a letter to the *Hull Advertiser* in 1847 where the author claims prostitution "can destroy some of Britain's strongest and fairest offsprings."³⁴ In 1854, for example, there was one of a number of panics that German girls were being systematically shipped over to Hull for purposes of prostitution. Earlier, in 1847 the *Hull Advertiser* had reported that "thousands were brought here" for this purpose.³⁵ David Welsh is clearly incorrect in his conclusion that racism played no part in the Hull debates around criminality. Panic bouts over prostitution in Hull may have been more spasmodic than in York but were particularly related to the fear of immigration (especially in the years 1847 and 1854).

The debate around the offending behaviour of Hull women may be a prime example

³² K. J. Allison (ed.), *The Victoria History of the Counties of England: A History of the County of York East Riding*; vol. 1, *The City of Kingston upon Hull*, (Oxford, 1969), p. 458.

³³ *Hull Advertiser*, 5th July 1844.

³⁴ *Hull Advertiser*, 26th November 1847.

³⁵ *Hull Advertiser*, 20th September 1847.

of the argument expounded by Lata Mani, in her article on Sati in India.³⁶ In this she argued that women were discussed, not out of concern for them as women, but merely as a convenient site of discourse in an entirely different agenda. In the Hull prostitute instance the discussion related not simply to worries about female morality but more generally to anxieties about European revolutionary influences and potential imported disorder. In the same vein, Hull was no stranger to anti-Irish sentiment. In Hull this was often used as a vehicle for discussing the ever pre-occupying problem of juvenile delinquency. The Gaol chaplain in a report to the quarter session, for example, refers to the “many” young people “who are thus ignorant and neglected and therefore vicious and are the children of Irish parents.”³⁷

Another example of prostitution becoming an issue for debate when the real agenda was actually something other can be seen in the report of the assault by Susanna King, “an old woman.” The assault was fully proven but was deemed “of an unimportant nature” until it transpired that she was the keeper of a house of ill-fame in the habit of harbouring “girls of extremely tender years.” In this case targeting the corruption of juveniles was the real agenda, not the activity of prostitution.³⁸ It is also clear that attitudes to the reform of prostitutes differed in York and Hull. Unlike membership of the prestigious York Penitentiary, committee involvement in the reform of prostitutes in Hull does not seem to have had quite the same social ‘caché.’³⁹ Of the 1843 annual meeting we are told that the attendance, although “highly respectable,” was “not very numerous” and “composed principally of females.”⁴⁰ Conversely, in York, the mayor presided at meetings which included the names of many of those, such as Tuke, Gray and Rowntree, who were influential in the justice system.⁴¹ Religious beliefs played a particularly powerful role in the activities of the York campaigners against prostitution.

In Hull, there was much less concern in the press over the activities of prostitutes. During this period there was little linking of newspaper correspondence about prostitution with key citizens. The spate of letters in 1847 were usually written under pseudonyms. As in York,

³⁶ Lata Mani, ‘Contentious Traditions: The Debate on Sati in Colonial India’ in K. Sangari and S. Vaid, *Recasting Women: Essays in Colonial History* (New Brunswick, 1990), pp. 88-126.

³⁷ *Hull Advertiser*, 18th April 1851.

³⁸ *Hull Advertiser*, 31st January 1845.

³⁹ The financial difficulties have been discussed in chapter three.

⁴⁰ *Hull Advertiser*, 15th December 1843.

⁴¹ York Penitentiary Minutes 1844-57.

and despite my comments about more limited religious concern in Hull, the one stated anxiety seems frequently to have been for souls. In much recent comment on philanthropy amongst “fallen women” the ‘genuineness’ of the religious dimension - as perceived by the philanthropists themselves - has been denied, underestimated or re-packaged as some more palatable twentieth century philosophy, and may therefore need re-stating.⁴²

Another point worth reiterating here, one that is overlooked because of its distance from the perceptions of many today, is the strength of the feeling - amongst many in the nineteenth century - that the policing of vice was, incontrovertibly, a state matter. This is exemplified by the fact that each court session could only proceed after the ‘Queen’s proclamation against Vice and Immorality’ had been read by the Clerk of the Peace. Clearly, in Hull, the task of controlling ‘vice’ (inappropriate sexual behaviour, in this context) was perceived to be the duty of the state but it was also recognised that others might have to assist: “and if the mighty engine of governmental influence will not sweep out the abhorred system (prostitution), private and organised effort must do it.”⁴³ But the latter was clearly seen as a second option.

In Hull it is probably fair to say that the greater sin was perceived to be drunkenness. The report of the prison chaplain for 1851 remarks that virtually all Hull’s prostitutes were also on the lists of drunkards, “for it is when overcome with drink that nearly every female who has come before me since I entered upon my present situation has confessed that she has entered upon that course of profligacy.”⁴⁴ He was not alone in his view.

One further possibility for the difference in control of Hull’s prostitutes is that Hull’s police were more involved with the women as customers and so protected them more than did the officers in York.⁴⁵ Certainly the Hull police dismissed and reprimanded a considerable number of such constables, seemingly far more than in York. Yet it is impossible to quantify the situation accurately. Furthermore, whether any higher figure represented any greater

⁴² See, for example, Mahood’s discussion of “the evangelical approach” to prostitution. This contains none of the religious imagery, or of the evangelical vocabulary relating to salvation, eternity and confession so prevalent in nineteenth-century evangelical debate. For Mahood the evangelical debate was one over “conjugal love and family stability” but this is clearly a twentieth-century secularist interpretation view of nineteenth-century evangelical thought. L. Mahood, *The Magdalenes: Prostitution in the Nineteenth Century* (London, 1990), p. 63.

⁴³ *Hull Advertiser*, 19th November 1847. Another letter of the same period points out that “Most certainly the suppression of vice constitutes one of the duties of both local and central government.”

⁴⁴ *Hull Advertiser*, 18th April 1851; Welsh, ‘The Reform of Urban Policing’ provides an interesting summary of the Hull police’s campaign against alcohol pp. 249-260.

⁴⁵ See Frances Finnegan, *Poverty and Prostitution* (Cambridge, 1979), p. 63.

consorting, or simply more determined policing, is also impossible to quantify. On the one hand, an impressionistic judgement is that there was more abuse of the situation in Hull where officers were more likely to be anonymous in their activities than in York. Yet this was not always the case. It may even be argued that police were more frequently intimidated, by pimps or male family-members, when they tried to police prostitutes in the more anonymous circumstances of Hull. For example, Thomas Ellwood and William Ellwood violently assaulted Police Constable 69 after the officer had ordered their sister to go home since she was “disorderly in the streets.” However, in this case, intimidation was unsuccessful and resulted in a charge for all of them and clearly, in this instance, resulted in more court appearances rather than fewer.⁴⁶

6.1 f) Petty session offences - profane language

Another interesting presence in Hull is the offence of “uttering profane language.” This ‘crime’ is never recorded in York but is quite common in the Hull records. In the Easter 1870 sessions, for example, 13 females and 2 males were recorded from petty sessions as having committed this crime. This was fairly typical for the period. The offenders were far more frequently female and were usually fined for the offence. Details of the cases appear to be non-existent. They did not attract media interest and never seem to be reported in the press.

Whether these were prosecuted under 17th century statute for profaneness, or whether a local bye-law was enforced, I have not discovered.⁴⁷ What we see here is precisely the mechanism outlined by Emsley. That is, where such prosecutions were brought, the norm was that they were police, rather than private, prosecutions. In York we have noted that prosecutions in this period were still private and appear, in the main, to have been brought in order to retrieve stolen property. Emsley argues that such a method of imposing public order was not uncommon where the police were the prosecutors. However, why police might choose to pursue offences of ‘profane language’ rather than other crimes remains unclear. It was perhaps easier to obtain witnesses for such offences - than, for example, for prostitution. Furthermore, whilst the indirect concern may have been to police the sexual morals of the women involved in this offence, the agenda could have related more directly to the control of

⁴⁶ *Hull Advertiser*, 8th October 1841.

⁴⁷ Clive Emsley cites a private prosecution for bad language in the street, pursued by Charles Dickens under a Metropolitan Police Act. Emsley, *Crime and Society*, p. 149.

other kinds of street behaviour.

6.2 Methods of prisoner ‘disposal’ within the justice system in Hull and the differences with York

6.2 a) The treatment of female offenders in Hull: variations with York

One of the main differences between the justice systems in the two boroughs was, of course, in the volume of court business. I established in chapter three that Hull had approximately three times the number of female quarter session offenders as York. For example, in York in the 1860’s, only 54 women appeared before the quarter sessions whilst in Hull there were 318 in the same period. Whilst the reasons for the discrepancy is undoubtedly an effect of population difference what is less clear is the effect that the difference in numbers may have had on the individual experiences of the offenders in these two courts. Would, for example, one of the 19 (male and female) prisoners in the York courts in 1869 have suffered a similar experience to one of the 177 offenders in the Hull court of the same year? Was a woman who was one of only 11 cases in the York Michaelmas session of 1840 likely to be given the same treatment as an offender who was one of 33 cases tried between 10 o’clock in the morning and 4 o’clock in the afternoon in the same Hull sessions? It is difficult to find evidence for the way in which this impinged on the experience of the offenders however the Hull Recorders frequently comment on the pressure of business.⁴⁸

I have argued that one of the effects of the population differences demonstrated in this study is that it is likely that Hull’s women (and men) were more anonymous in their contact with both court and police. The Hull ‘Informations’ give the impression of fewer offenders knowing each other, or of operating within well-established networks, than in York. I have pointed out in the previous chapter, it may sometimes have been in the offenders’ interests to feign ignorance of each other.⁴⁹ Despite lack of direct evidence, I will speculate that this played a part in the issuing of the harsher sentences of the Hull courts. This evidence will be

⁴⁸ On a number of previous occasions I have quoted the York Recorders as saying the business at the sessions was light. By contrast, in Hull comments were more likely to reflect the heavy or “serious” nature of the calendar. *Hull Advertiser*, 16th April 1847 and *Hull Advertiser*, 18th April 1851, for example.

⁴⁹ HQS CQB 212/317 Mary Fisher and Ann Brown are alleged to have asked the landlady of a Public House for a private room. The woman replied that she did not keep private rooms. York women appear likely to have known which pubs were open to such passing trade. Although the possibility remains that the women did know they could not have access to a room in the particular pub and that this ignorance was feigned and tactical.

discussed in more detail later in the chapter. In York, the individuals operating within the justice system seem more frequently to have contact in a philanthropic or employment context and consequently to have relied on formal sanctions less. Although ex-servants may have been more heavily policed, for example, they may also have been granted more ‘recommendations to mercy’ because of their ‘good characters.’ Mitigated sentences, such as in the case of Ann Cobb, who has been mentioned in previous chapters, where ex-servants were supported by previous employers, seem less common in Hull.

6. 2 b) Prosecution

From 1840 onwards (with a slight lapse in 1842) a major difference in the treatment of offenders in York and Hull was that in the latter place the prosecutions had begun to be police prosecutions. Hull’s police superintendent, Andrew McManus, was retained on recognizance to prosecute the majority of cases. The practical outcomes of this difference are exceedingly difficult to ascertain but it is likely that motive for prosecution was one of the most fundamental differences. In York’s private prosecutions the motives were varied but appear, most commonly, to result from a desire for the retrieval of goods. Sarah Ann Jackson’s prosecutor, for example, said that he would let her go if she would “return the shilling.” Unfortunately for all concerned, she said she had swallowed it!⁵⁰ But one case from the period of private prosecutions demonstrates another motive: the prosecutor told the police constable, “if she had confessed and apologised there might have been no more about it.”⁵¹ As we have seen elsewhere, police might be more concerned to prosecute for the sake of public order and morality whereas the individual might simply wish for an apology.

Another feature of prosecution in this period (and indeed of our own time) is that prosecution was probably more likely to be initiated if a favourable outcome was expected. In the nineteenth century this related not only to the outcome of the court case but also to the actual detection and apprehension of the offender. This might still depend on the personal involvement of the victim, as well as of the police, in the early years of this study. Despite my comments on the ease of recognition in York there were, of course, cases in Hull which also depended on local knowledge. Ann and William Green were found because “The Woman had

⁵⁰ HQS CQB 194 ‘Informations’ from Sarah Ann Jackson.

⁵¹ HQS CQB 194 ‘Informations’ from Mary Smith.

been at his dram-shop and knew his name.” The “Witness knew her former husband who kept the Artois public-house in Mytongate. Witness went to Mr Lee, the constable, who with Ogelsby, went in search of her to Mill St.”⁵² Having read many of the ‘Informations’ pertaining to around 1,500 Hull offences, perhaps the main conclusion, with regard to prosecutions in the nineteenth-century borough, is surprise that they were as abundant as they were, given the complexities of pursuing the cases. This must lead to serious speculation that a large ‘dark figure’ remained.

6. 2 c) Verdicts

One result of this research which is particularly interesting if juxtaposed with other localities is the ratio of verdicts. Given the many variations, in cases and in personal circumstances, there is a surprising similarity in the findings in both cities and, for example, with the findings of David Philips for the Black Country.⁵³ In Hull 65% of the recorded judgements were ‘guilty,’ 25% were ‘not guilty’ and 8.3% were of ‘No Bill.’ In York the figures were 72%, 22% and 6% respectively.

Of Hull’s female offenders, 24% pleaded ‘guilty’ whilst 66% pleaded ‘not guilty.’ The remainder are accounted for by ‘No Bill’ or unknown pleas. In York, the figures are a little different: 35% of the women pleaded ‘guilty’ and 43% pleaded ‘not guilty.’ The greater rate of ‘guilty’ pleas in York could be accounted for by the high rate of thefts by servants where offenders knew that the prosecution had a strong case and where the offender could only hope a ‘guilty’ plea would act in mitigation of sentence.

Thus whilst I have made a claim for many regional variations in attitudes to offenders and to the differential treatment of them it is also true to say, as I have already pointed out, that there were also many similarities in attitudes. National values, some particular to the period, may have ultimately subsumed local variations, particularly in a period of rapidly centralising services.

6. 2 d) ‘Disposals’ of prisoners and sentences

Whilst I have made no serious attempt in this thesis to make fine comparisons of

⁵² *Hull Advertiser*, 17th July 1830.

⁵³ David Philips, *Crime and Authority in Victorian England* (London, 1997), p. 170.

sentencing practice and policy (since there are always too many variables, or unknowns, between cases), it is interesting to note that of the cases categorised as 'simple larceny' in York (the most common crime as has been discussed in the previous chapters) 76.5% received sentences of less than six months, whereas in Hull the figure was only 56%. This suggests that Hull may in fact, have been sentencing more severely. In cases of thefts by servants no woman in York was sentenced to more than eighteen months whereas in Hull a number of such offenders were given Penal Servitude or transportation. For 'larceny from the person,' in York, 52% of women were sentenced to more than 6 months but in Hull a slightly higher proportion at 57%. In Hull, in the 1860's, there also appears to have been greater use of orders for solitary confinement than there was in York.

In sentences given to juveniles in Hull there appears to have been a greater use of reformatories; perhaps because Hull possessed its own whereas York did not. In this respect York's solution for girls who might have been dealt with in reformatories was the local, privately-run, penitentiary. Since this was a more successful venture than the Hull penitentiary there was perhaps less need to establish a state-run institution.⁵⁴ Girls (such as Bertha Kipling, from Hull, who was sent away for a long spell in the reformatory) were more likely to have been directed towards the Penitentiary if they came from York.⁵⁵

In both boroughs discretion in sentencing was used. Susannah Smith was imprisoned only until the rising of the court because of her health and Ann Headspith was recommended to mercy on account of her youth.⁵⁶ This exemplifies the extent to which local opinion determined provision for, and disposal of, offenders. In turn, the existing provision re-shaped the treatment of, and the policy for, such offenders.

6. 2 e) Prisons

A similar discretionary mechanism operated in both York and Hull in the provision made by the local prisons. Despite the high profile of York Castle's business, the position in Hull appears to have been more volatile. In 1848, for example, Hull gaol was undergoing a crisis. The fact that the wards' woman, Mrs Green, was accused of smelling of smoke, drink and opium by the 'Inspector of Prisons', Frederic Hill, seems to have been a minor matter.

⁵⁴ HQS CQB 189.

⁵⁵ Hull Order books, CQA 17 1860.

⁵⁶ *Hull Advertiser*, 20th November 1839.

More seriously, the inspector had been called in to remove the governor - a situation which the inspector said he had not experienced before. Hill set up what was effectively a trial in which the prison "task master" gave damning evidence against the governor and the head warden. The magistrates defended governor Lundie's moral character and requested that he be given another six months to rectify matters. Nonetheless, Hill said he would ignore this request and the chaplain was also asked to resign.⁵⁷

The problems of inadequate prison accommodation were common to both York and Hull. Furthermore York's small population did not necessarily improve the situation since small numbers within the gaol population often meant (usually because of re-organisation or re-building) the inmates had to mix with other offenders from the Assizes.

However, in other respects the prison inspector found things in Hull to his liking during this period. From time to time this particularly related to the treatment of females. For example, Hull women inmates were visited by prison visitors, which gave the Prison Inspector "much pleasure" in his report of 1845. He also noted with "much satisfaction" that the treadmill had been abolished for females.⁵⁸ Neither of these things appear to have been true of York. And yet in the same year a solicitor was charged with taking alcohol into the Hull gaol and one is left to wonder what systems of bartering and gift exchange operated as mechanisms of power within the establishment.⁵⁹

In York, the offences that came under the 1855 Criminal Justice Act were simply treated as petty session offences and given fines. In the Hull record these offences were separately listed, even as late as 1870, and might still have been perceived more as quarter session offences. In Hull, in the 1860's those sentenced under the Criminal Justice Act were more frequently sent to the House of Correction.

6. 2 f) Other comparisons in practice and procedure: York and Hull

One of the major similarities between the two courts was the variety of human response. This notion will be returned to in the final section of this chapter in which 'individual factors' affecting crime will be discussed. What is entirely impossible to quantify in a study of this nature is the unpredictable reactions to human situations. Often there were responses

⁵⁷ *Hull Advertiser*, 10th November 1848.

⁵⁸ *Hull Advertiser*, 31st January 1845.

⁵⁹ *Hull Advertiser*, 28th February 1845.

that were common to both places and that were, at first sight, very much reactions of the period. For example, penitence was a desirable factor in the disposal of offenders in Victorian courts.⁶⁰ In both York and Hull confessions could often mitigate sentence.⁶¹

However, this emphasis upon confession which has been clearly identified as a hallmark of the emerging nineteenth-century penal service may not be dismissed simply as a sign of Victorian respectability or religious fervour, as it has sometimes been. The preoccupation with reform and penitence has been seen by some commentators as religious bigotry but it must be said that there are also some features in common with current prison service policy. Dismissal of the work of Victorian prison reformers as religious zeal may, in some situations, be too simplistic.

Of course, just as today, prison workers were sometimes duped by confessions. In 1852 Zephirah Hoodless caused a stir by escaping from Hull gaol. She had been, “in consequence of her seemingly penitential air, allowed to wait as a servant on the matron.”⁶² The escape of Hoodless was subsequently seen as particularly “brazen” since she had claimed to be a visitor to the governor in order to effect her escape. Interestingly it was a form of peer group control which led to the failure of her bid for freedom: the persons in whose house Hoodless hid became afraid and informed upon the escapee.⁶³

Another similarity between the justice systems of York and Hull was that the poor used the courts in both boroughs. In York there was the tendency, as discussed, for those involved in prostitution - either as customer or vendor - to use the legal system to recoup lost property. In Hull this is seen less, probably because of earlier systematic police prosecutions, but it still occurred.

What is common to both boroughs is the occasional use of the justice system as an aid to family discipline. One such case in Hull was the family of a “sizing boiler.” Green, charged Hannah Moss with assault. Firstly, these parties were related - yet they resorted to the courts. Secondly, they eventually reached an out-of court agreement despite initially taking the issue to the court. More fascinatingly, and very unusually, this was an occult case. No such cases have been discovered in York. A relative of the parties had “fancied she was bewitched by the

⁶⁰ *Hull Advertiser*, 23rd January 1852. A letter from a transportee to the Matron of the Gaol is reported to “show a just sense of her past transgressions” and revolves around the notion of the offender’s forgiveness by God.

⁶¹ HQS CQB 194.

⁶² *Hull Advertiser*, 15th May 1852; 21st May 1852.

⁶³ *Hull Advertiser*, 21st May 1852.

complainant” and “having consulted a wiseman was advised to draw the blood of the bewitcher in order to deprive her of her power,” and it was acting upon this advice that the assault was committed.⁶⁴

Other cases where the court was used as an agent for resolving family issues were less fanciful and also combined formal and informal sanctions. For example, one family resorting to court discipline was that of Richard Dowling, “an able-bodied young man,” who had stolen a spoon from his mother. She said she would not process charges but told the magistrates of her difficulties with her wayward son. The mayor gave the prisoner a “severe reprimand” and told the woman to return with him if he didn't improve.⁶⁵ But it was clearly not only sons who were difficult for parents to handle. A further example of discretionary discipline by the court, and also of family negotiation, was in the case of 12 year old Eliza Chantrey. She was charged with stealing a gold ring but because of her age there was reluctance to send her to sessions. The charge was withdrawn but with the permission of her father she was sent to ‘solitary’ in gaol for a few days to teach her a lesson.⁶⁶

6. 3 ‘Situational factors’ and the crime of Hull’s female offenders

6. 3. a) Accomplices and networks

In 4,417 of the cases before the Hull quarter sessions men were defendants. A number of these cases would involve both male and females. It can be seen, however, that as in York, this was only a very small proportion. Also as in York, the vast majority of Hull’s female offenders were charged alone. Figure 6. 4 demonstrates that 1,107 women were in this position. As I have previously pointed out this does not mean the women were alone in the entire experience of the crime. Others - men and women - may have fled the scene or not been charged for technical reasons. Nonetheless one conclusion, strengthened by similar figures in York, is that women were not committing crime merely under the influence or the auspices of

⁶⁴ *Hull Packet*, 24th April 1835. Sadly there are no extant depositions for this case; *Hull Advertiser*, 24th January 1845 gives details of another case which has hints, at least of the fear of, if not actual, occultism. A “fortune teller” tells her victim she “will never prosper” unless she hands over the goods. She “made so many horrible ugly faces and such violent signs, that the witness trembled and was quite afraid of her.”

⁶⁵ *Hull Advertiser*, 23rd October 1840.

⁶⁶ *Hull Advertiser*, 3rd April 1840; One daughter, a 19 year old, pawned her father’s goods in order to pay a solicitor to defend herself when her father had her ‘bound over’ for her disorderly behaviour. The court clearly found it difficult to decide on a course of action, *Hull Advertiser*, 28th February 1845.

men. Out of the total number of women on the Hull record only 167 were actually charged with men.⁶⁷

Only 17 of the women in this Hull study are known to have offended in a mixed sex group where they were related to one of the group members. From the qualitative records, such as newspaper reports, this would also seem likely to me to be an underestimate due to gaps in the record. Nonetheless, at least at a technical and legal level, this, once again, counters the arguments of previous historians that women usually committed crime under the influence of, and on behalf of, 'their' men.

Of the cases in which both women and men were involved, 62 records state explicitly that the offenders were related to each other (Figure 6. 5). The extant information on this is by no means comprehensive - there may have been any number of others where the relationship has simply not been stated. However, the qualitative impression from a perusal of many newspaper accounts and quarter session 'informations,' amongst other sources, is that the proportion of relatives involved in the crimes together was, as in York, low. Once again this is surprising considering the developing Victorian notion of criminal classes and of hereditary criminal behaviour.

Family groups occur infrequently. However, one such family group was common to both York and Hull. Mary, Rachel and John Stewart were charged in York in April 1833. Mary, with the theft of, and John with receiving, some cloth. Rachel was the ten year old daughter of 30 year-old John and 45 year-old Mary. The parents were imprisoned for nine months. In April 1834 they appeared before Hull quarter sessions, on various counts, and were transported - the parents for fourteen years, and the daughter for seven years.⁶⁸ The records show relatively few attempts to deal systematically with whole criminal families - no doubt, once again, because the actual procedural mechanisms of (and consequently the records of) British justice, as I have already suggested, could only ultimately deal with the individual.⁶⁹

⁶⁷ It may be that such instances are indeed examples of the Durkheimian claims that as society became more complex individual crimes come to replace collective crimes. See, for example, Adrian Howe, *Punish and Critique: Towards a Feminist Analysis of Penalty* (London, 1994), p. 9.

⁶⁸ *Hull Advertiser*, 11th April 1834. They have been mentioned in chapter five for their York offences but they also represent the complexities discussed in chapter one where husbands and wives were involved.

⁶⁹ A number of practising lawyers and magistrates who have listened to papers based on this work have asked questions on precisely this point. They have argued that in their everyday experience of courts today they frequently deal with various members of particular 'known' families and are influenced in sentencing decisions because of this. It may be details of this kind of factor affecting disposal decisions that have been lost to the historical record.

Hull Quarter Sessions:1830-1869 Female offenders:gender of accomplices

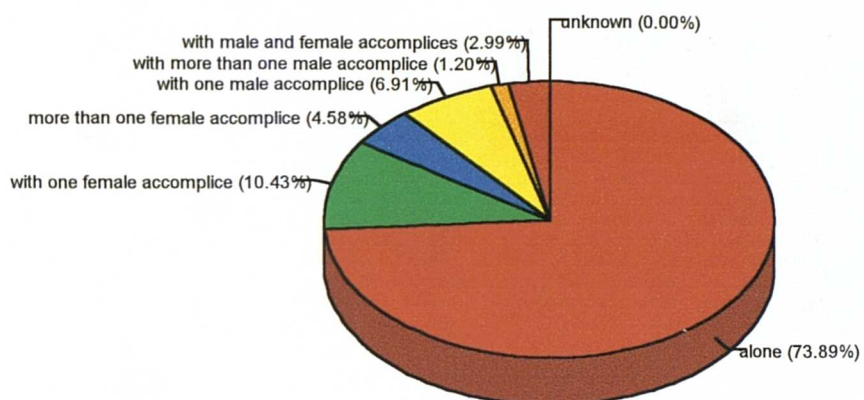


Fig.6.4

Hull Quarter Sessions:1830-1869

Female offenders:family as accomplices

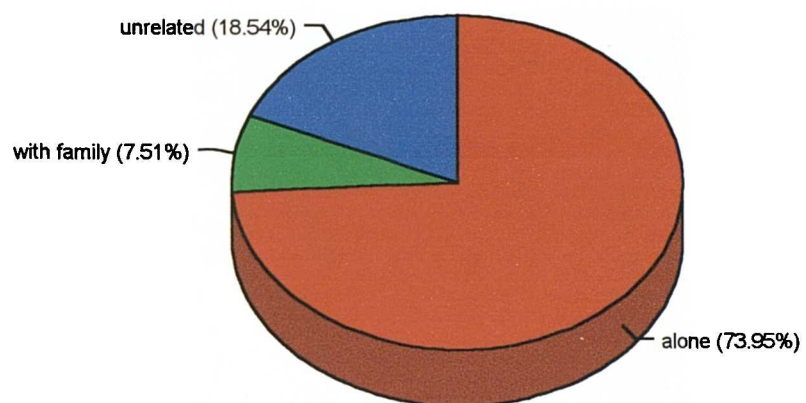


Fig.6.5

One cannot imagine the likely future of Rachel Stewart after this inauspicious beginning to her life. Ultimately the family was sentenced to go its separate ways. As nationally, the mounting interest in juvenile crime prompts a number of comments on the problems of bad parenting. The chaplain's gaol report of 1851 notes that "bad women" have rooms in a house where "a man and his wife and five children" had been living. To some extent it is this concern with the future of the children that stimulates debate upon both the drink and the prostitution issue in Hull. Concern is expressed that children "witness the doings of the parents."⁷⁰

As in York, the second largest configuration of offenders was that of two females charged together. One hundred and fifty five Hull women were in such partnerships. This constitutes 10.3% of the female crime compared with 16.8% in York. As in York these were generally incidences of pickpocketing by pairs of women (frequently prostitutes) or of shoplifting; the case of Elizabeth Preston and Sarah Sampson being typical. One of them enquired into the price of some fabric whilst the other one secreted a piece of gingham under her apron. This case, however, is possibly a good example of the distortion of the nature of group involvement in crime and of the understating of family involvement. Not appearing with these two was a female named Ann Preston who had been present at the time of the offence and convicted at an earlier date.⁷¹

6.3 b) Accommodation, location and mobility

One of the differences between York and Hull was that York consisted of many more small parishes. In York, one of the three different policing arrangements of this early period involved between 50 and 60 parish constables who were restricted to operating in their own parishes. Hull, with only two huge parishes covered by the borough sessions, had a different set of problems. However, after 1835 policing became more centralised and not parish based and so the fragmentation in York became less of a problem. By the 1840's the police in both boroughs were beginning to collate lists of known offenders. This doubtless eliminated some problems of identification and of recording previous convictions. However, this activity is likely to have created a new set of problems and reminds us, for example, of the whole dilemma which surrounds the stigmatising, and the publicising, of names of offenders. In Hull the latter clearly caused the Hull police some consternation. On the one hand, the authorities

⁷⁰ *Hull Advertiser*, 10th January 1851.

⁷¹ *Hull Advertiser*, 1st July 1831.

believed that the distribution of a list of prostitutes might be helpful to reformers. On the other, they suggested that any list should not "be distributed indiscriminately; - that would certainly aggravate the evil!"⁷²

Whilst the fragmented parish map of York theoretically meant more problems for unified policing, the smaller population meant relatively fewer practical problems than in Hull; it did mean that the location of offenders was easier. It was also easier for the historian to locate the actual situation of the offences in York. In Hull, the majority of the records simply state that offences took place in the parishes of Holy Trinity or of Sculcoates and it is difficult to be more precise than that from the court records.

6.3 c) Personal histories

As in York, the most common age of Hull women for committing crime appears to have been between 19 and 25 years old, and 82% of the offenders with recorded ages fall within this band. Whilst the lack of systematically kept records might account for the fact that in Hull only 64 (4%) offenders are recorded as previous offenders, the figure might also support the claim that the offending was related to a particular life cycle stage.⁷³ In York the proportionally higher figure of 48 (8%) is probably only accounted for by the fuller nature of the tabulated court minutes in that city and the ease with which local previous offenders could be recognised. But the effect of this administrative difference might also have meant that York women were then more likely to be severely sentenced as I have already suggested.

6.4 Mentalities and culture

Despite the similarities outlined above, as I have already suggested, the differing socio-economic structures in York and Hull often meant diverging mentalities within the places. A result of heavier immigration, for example, may have caused a different reaction to names. Frances Finnegan has written of the response in York to the Irish and crime.⁷⁴ In Hull the

⁷² *Hull Advertiser*, 18th June 1847.

⁷³ Peter King finds precisely the same pattern in his rather larger sample. Peter King, *Crime, Justice and Discretion: Law and Society in Essex and South-Eastern England 1740-1820* (Forthcoming) Draft copy, p. 27.

⁷⁴ Frances Finnegan, *Poverty and Prejudice: A Study of Irish Immigrants in York 1840-1875* (Cork, 1982).

reaction seems to have been stronger where the names were European names for, as I have already explained, most of Hull's shipping communications were with the nations of northern Europe. 'Foreign' names seem to have sometimes posed a particular problem for the Hull court officials and one offender is entered in the record simply as "A Negro (Giraffe)."⁷⁵ The reactions to the names in nineteenth-century York and Hull may, in twentieth-century terms, now be termed racist. But they can also be analysed as reactions that had differing historical and cultural connotations.

The issue of names was also a gendered one. In the court record names were a particular problem in the cases of female offenders because the women could legitimately use maiden names. These are often represented in the court records as "alias." The officers of the Hull courts wrote about the matter, in 1837, to J. L. Archbold of the Temple, a barrister who appears to have acted as their adviser at that time. The court was clearly troubled by the use of aliases and also by the subsequent problems that they were experiencing when indictments were wrongly named.⁷⁶

Two interesting themes which might be deemed to relate to 'situational' factors commonly re-occur in witness statements to crimes. The first topic is that of darkness. The obvious fact that, with only basic lighting, crime was easier to execute is often glossed over in twentieth-century studies. Not infrequently police officers arrived at the scene of the alleged crimes with only a candle to help them identify offenders and stolen goods.⁷⁷ It is hardly surprising that lack of identification was frequently a cause of lost cases.

A second common reference in statements are those alluding to toilets. Victims were frequently pushed into 'privy's in dark alleys and offenders often used the excuse of going to the toilet in their defence statements.⁷⁸ Facilities for such natural activities have changed so enormously, in our own century, that it is easy to forget the effects of the introduction of improved sanitation in criminal activity!

⁷⁵ HQS CQB 291, 28th December 1864, see petty session convictions; There is no reason to doubt that some discrimination was based on 'foreign' names given the evidence today for such practices. I. C. McManus *et. al.* 'Medical school applicants from ethnic minority groups: identifying if and when they are disadvantaged,' *British Medical Journal*, 310, 6978, (February 25th 1995) pp. 496-500; J. Collier, A. Burke, 'Racial and Sexual discrimination in the selection of students for London medical schools,' *Medical Education*, 20 (2) (March 1986), pp. 86-90.

⁷⁶ HQS CQB 180-183, 1837.

⁷⁷ HQS CQB 212/317 In the case of Mary Fisher and Ann Brown the policeman had to get a candle to look for the money that was alleged to have rolled out of the bed. It was between 8.00 and 9.00 pm.

⁷⁸ HQS CQB 231/724 Mary Ann Hudson claimed she had taken money from a bedroom after she "had gone upstairs to make water," CQB 212/309 The victim of Bridget Cauley "had gone into Phoenix passage to make water."

Differing and shifting notions of ‘sharing,’ whether it was of toilets, general accommodation or other goods, were hinted at in the previous chapter. The Hull ‘Informations’ confirm all that was suggested. Of bed-sharing one victim claimed, “The prisoner, I, another woman and man slept in the same bed.”⁷⁹ Clearly rooms and beds were shared and probably also storage areas as well. The latter might be suggested by the statement of the victim of Frances Harrison. The offender had “a drawer to herself” but clearly felt it legitimate to ‘borrow’ her room-mate’s stockings: “I saw the stockings on Saturday night and told Mrs Winship I would take them back on Sunday.” The room-mate clearly had not approved of this ‘sharing’ arrangement and had brought the charge.⁸⁰

6.5 ‘Individual factors’ pertaining to Hull female offenders with comparative reference to York offenders

As has already been suggested, one of the major omissions of most of the existing historical studies of nineteenth-century crime is a discussion of the psychological dimension of the offences committed. In chapter five I suggested that staff involved in work with offenders today generally assume a complex interaction of ‘situational’ and ‘individual’ factors. A lack of oral or personal records have made many of these factors impossible to access for historians.⁸¹ Offenders rarely left the documented evidence which would help historians to access the ways in which offenders perceived themselves. Indeed, much published nineteenth-century material accredited to offenders was actually written by prison officers or other interested parties. Depositions, which might offer closer access to such behavioural elements in crimes do not survive for York witnesses and offenders and, consequently, the only glimpse of such features in the previous chapters has been through the newspaper reports. Hull court records, however, do include extant depositions for most of the period of this study. Indeed, these documents could provide the basis for a much larger study than can be attempted here and the following section will merely indicate the types of avenues which could be pursued by using depositions.

⁷⁹ HQS CQB 231/727 victim of Mary Ann Watson.

⁸⁰ HQS CQB 186/257.

⁸¹ However, historians, such as Lyndal Roper, are beginning to make more use of highly problematical but extremely rich depositions to study the ‘individual’ factors in what was perceived to be ‘offending behaviour’ in the historical context. Lyndal Roper, *Oedipus and the Devil; Witchcraft, Sexuality and Religion in Early Modern Europe* (London, 1994).

6. 5. a) Self-portrayal

The extant Hull depositions allow a limited glimpse into the self-perceptions of offenders, notwithstanding the fact that such records were mediated documents compiled by male middle-class law enforcement officers. Disappointingly, however, the Hull ‘examinations’ of the law-breakers provide only extremely restricted quotes from the offenders themselves. By contrast witness statements are full and give great insight into the activities of those whose daily lives were touched, as victims, or observers, of crime. Despite the limitations, however, an analysis of these comments and of those in the newspapers suggests that the York and Hull women were often well aware of the expectations of others, regarding their expected behaviour, as they encountered the middle-class justice system. There is no doubt that the women were frequently well-acquainted with the perceived norms of middle-class society even though it was not necessarily the milieu in which they actually experienced their daily lives. As I have already argued, for example, unmarried women (particularly those suspected of prostitution) appear to have deemed it a good claim to respectability, on occasion, to state they were married. Ellen Gibson claimed to be Ann Thompson the wife of a sailor from North Street.⁸² Jane Hudson maintained that she had taken things from her victim because her husband worked for an acquaintance of the prosecutor: the logic of this connection may have been lost in the recording. However, it transpired that she had no husband working where she claimed.⁸³

Many of the women stated motives for their offences but these self-descriptions must always be treated with caution since many may have given particular reasons for their crimes in order to mitigate the circumstances of those offences. Frequently the deliberately-stated motives related to whether or not offences were planned or opportunistic crimes. But, of course, it must be born in mind that confessing to pre-meditated crimes would not be helpful and many women would have been aware of this. Distress was clearly the motive most likely for crime to evoke sympathy. A number of both York and Hull women gave such a reason for their offences.⁸⁴ However, compassion did not necessarily follow. Ann Child claimed to have taken food (six pounds of bread) “from want” and said that she had two children in the

⁸² YQS 12th April 1850.

⁸³ YQS 4th July 1864.

⁸⁴ YQS 9th April 1849, Ann Glover; YQS 20th October 1837, Mary Thompson; *Hull Advertiser*, 26th July 1833, Elizabeth Read.

workhouse. She was either very polite or rather facetious when she answered, “Thank yee sir” to her six week sentence which, once again, illustrates the impossibility of analysing the use of offender’s language in court. This case also demonstrates the haphazard nature of record keeping in the period. Frequently convictions from other areas would be unrecorded in the court documents yet Child was unlucky enough to have her twenty-three-year-old record of being in gaol “on suspicion” dragged up, which could not have helped her case.

In fact, what may be the real question in an analysis of the extant depositions in Hull, is the extent to which offenders were actually prevented from giving any picture of themselves in their defence. As I have said, the ‘Informations’ for the period contain detailed witness statements which outline the circumstances of the crimes. Yet interestingly the ‘Examinations’ of the offenders are invariably extremely brief. Most frequently they report that the accused declined to say anything.⁸⁵ The most common exceptions appear to be *in prostitution-related* cases which often contain relatively long defences of the actions of the accused. Clearly in such cases the testimony of the chief prosecution witness might well be no more credible than that of the alleged offender in the eyes of a jury member or magistrate.⁸⁶ And, therefore, offenders may have seen it as worthwhile to offer their versions of the incident. In other types of cases offenders may have seen withholding a statement as a better defence tactic.

In many cases the reader is not faced, at least at first glance, with obvious scheming or calculation by the offenders. Not infrequently, in fact, the impression is one of a lack of astuteness on the part of the women, in relation to their offences. At times, it must be admitted, the behaviour might even appear to reflect naivety or innocence and even, on occasion, what might be deemed sheer stupidity. Eighteen year-old Catharine Richardson, was not untypical. She stole dress fabric from a shop and on the same day, and in the relatively tight community in York, wore a dress made from the material. Perhaps not surprisingly, she was discovered.⁸⁷ Conversely, of course, neighbours or other witnesses may add to the ‘good character’ testimonials of the offenders. These were frequently helpful in mitigating sentence or acquittal.

⁸⁵ HQS CQB 231/811, for example, where Mary Dowling is quoted as saying, simply, “I have nothing to say.”

⁸⁶ HQS CQB 231/713 One of the accused, Hannah Penrose gives a lengthy explanation of her version of events, for example.

⁸⁷ YQS 14th October 1850.

6. 6 b) Substance abuse: alcohol and drugs

Jane Jackson Wylde's York case was one of the few cases that referred to the habit of opium eating. It would appear that her offence may have been in order to finance her drug habit.⁸⁸ No references have yet been found in Hull to such habits thus, parallelling the findings of Berridge and Edwards in their study of nineteenth-century opiate use, there seems to be little evidence in York or Hull as to the extent of opiate addiction.⁸⁹

Conversely and predictably, however, alcohol, as has been frequently stated, was seen as a common cause of crime. The Recorder commented during the York case of Sarah Smith, who was 60 years old and described as a married woman and a professional cook, that "nearly all cases arose from drunkenness and people stealing to obtain liquor." Although, in fact, this particular case of Smith's was unusual in other respects. She was far older than the average offender. She was also described as having a respectable husband working at the railway and was clearly in employment as she had pawned the property of the pub landlord for whom she worked.⁹⁰ It is difficult to distinguish between the offences of alcoholics and those who might now be called social drinkers. Clearly, however, women like Smith were prepared to risk a lot in order to obtain drink.⁹¹

A less remarked upon result of alcohol is that it accounted for a number of confused, and indeed amended, statements such as those in the case of Mary Smith. Alcohol may well have impeded or changed the course of trials. In this case one witness admits "I was drunk at the time."⁹² Mary Fisher, (whose case we have referred to on a number of occasions since, in several respects, it contains elements common to many of the offences) is quoted in her 'Examination' as saying, "I don't know what I said to the police. I was intoxicated."⁹³

Over forty different pubs, hotels beer and dram shops are mentioned in York newspaper reports of women's offences. There appear to be even more in Hull offences; so many, indeed, that there is little repetition of the names of the pubs in the depositions. Clearly, as Finnegan has pointed out, there was extensive use of alcohol amongst prostitutes and much

⁸⁸ YQS 15th October 1849.

⁸⁹ Virginia Berridge and Griffith Edwards, *Opium and the People: Opiate use in Nineteenth-Century England* (New Haven, 1987).

⁹⁰ YQS 11th January 1864.

⁹¹ YQS 15th October 1849.

⁹² HQS CQB 186/251.

⁹³ HQS CQB 212/317.

of the coming and going in the offences in this study were a result of trips to acquire drink within the brothels.⁹⁴ Much has been written upon the difficulty of disentangling drink-related activity and whether it related to leisure, employment or dependent habits.⁹⁵ In many of the cases in the Hull study, where men accompanied women back to accommodation, the couple would intersperse activities in bed with a visit to acquire food from a 'cook shop' and drink from a dram shop.⁹⁶

The Hull depositions confirm the view already offered earlier in this thesis of a high number of women either frequenting or working in pubs. Furthermore, the depositions depict, as do other sources, the pubs in nineteenth-century York and Hull as places of social activity where the company was mixed. Despite some official restrictions on Sunday and night-time trade, Hull 'Informations' suggest that drink-related activity took place around the clock. Bridget Cauley, for example, went into the dram shop at "ten minutes before twelve o'clock" (night-time) and then bought boots "a little after twelve o'clock." Her victim claimed to have been working at his Trinity House office until 11.00pm on the Saturday night of the offence.⁹⁷ Just as was seen in the York offences, some combination of four common elements was frequently present in the Hull criminal events documented in this thesis - drink, prostitution, lodgings and/or pawning.⁹⁸ The presence of the docks and the concomitant mobility, predictably, exacerbated the effects and created more anonymity.

6. 6. c) Verbal violence by women offenders

It is ultimately impossible to quantify the actual level of physical violence perpetrated by females and consequently it is difficult to make firm conclusions regarding its under-reporting. However, threats of violent activity, by women were referred to in many of the

⁹⁴ Finnegan, *Poverty and Prostitution*, p. 109. In particular see the Hull quarter session 'Examinations' that have been referred to frequently in this chapter.

⁹⁵ For the general discussion see Eileen Yeo, *Popular Culture and Class Conflict 1590-1914: Explorations in the History of Labour and Leisure* (London, 1981); Peter Bailey, *Leisure and Class in Victorian England: Rational Recreation and the Contest for Control 1830-1885* (London, 1978); Hugh Cunningham, *Leisure in the Industrial Revolution c. 1780-c. 1880* (London, 1980); Brian Harrison, *Drink and the Victorians: The Temperance Question in England 1815-1872* (Keele, 1994).

⁹⁶ HQS CQB 231/760, for example, where the victim and offender do this and are subsequently interrupted by two men at the window who attempt to take the offender away to a dram shop. It may be that the increase of domestic cooking and the greater ownership of home ovens was part of the domestication of women in the later nineteenth century. Much of the food in the Hull cases is clearly brought in ready cooked.

⁹⁷ HQS CQB 212/309.

⁹⁸ YQS 9th April 1831, case of Mary Poulson, for example.

witness statements in Hull. One such victim asserted that his assailants had demanded more money or they would “murder him.” His statement continued, “they all got hold of me and swore that they would knock my brains out if I did not part with the money.” He claimed, “They were all violent and I was frightened.”⁹⁹ Clearly many such claims could have been issued, by prosecution witnesses, in order to aid their case. Nonetheless, it appears likely, from the witness statements, that some claims were genuine and reflect actual threats of violence.

Other quotes reflect the use of what might be termed “indecent language.”¹⁰⁰ But these are seldom seen in the depositions and supposed verbatim quotes in the newspapers are more likely to reflect upon the attitude of the journalists than upon the motives of the offenders. Quotes may have been used precisely because they contained unacceptably strong language and thus might reflect adversely upon the woman in question. One York woman was quoted as saying, “Thank thee thou old b-----”, for example.¹⁰¹ Nonetheless the accumulation of such quotations might suggest that the women were not afraid to resort to challenges to the system in one of the only methods that remained to them - that of using strong language.

6. 6. d) Emotional behaviour

In similar fashion reporters might use the emotional response of the offenders in order to help make a point. Tears were seen as a sign of remorse and were, generally, appropriate female behaviour. One reporter commented,

Many a young woman, who has not been practiced in the ways of wickedness, has owned with tears, the vile arts that have been used to seduce her. Surely those young, wretched females demand the sympathy and assistance of the benevolent and Christian heart.¹⁰²

Conversely, a lack of tears was likely to be taken as inappropriate and unfeminine hardness of heart.

⁹⁹ HQS CQB 231/713.

¹⁰⁰ YQS 13th October 1851 and *Yorkshire Gazette*, 15th October 1851, reports of Ann Gibson’s comments, for example.

¹⁰¹ *York Herald*, 18th October 1852.

¹⁰² *Hull Advertiser*, 9th January 1852.

Conclusion

This study of women offenders has picked up clear areas of discretionary behaviour within the justice systems of York and Hull. The work load and number of offenders processed, the attitudes of individual officers, budgetary considerations, the influences of local politics and socio-economic conditions generally were but a few of the variables within the system. Clearly nineteenth-century courts, including those in York and Hull, had their own self-referential language and their own autonomous systems. Often these appear to have operated without reference to the wider world. However, this critique assumes, based upon the work of political scientists such as Fred Morrison, that courts, and all other areas of the justice systems, are, and indeed were, part of the political process and that they made authoritative allocations of values.¹⁰³

The discrepancies between the treatment of, and attitudes towards, female offenders in York and Hull which I have outlined in this chapter are clearly a result of the inter-connections of countless variables, only a few of which have been mentioned above. Many of these were not primarily gender-based differences. Attitudes to drunkenness or violence in each town, views on prostitution were all, in the first instance, based upon the perceived threat of disorder. In most cases *that was translated into fear of the outsider*. The level of this fear was quite different in the two locations. The other major preoccupation was a concern to protect property. This determined levels of prosecution, for example. However, within these fragmented agendas gender difference played a not insignificant part.

The initial picture of female crime in nineteenth-century York and Hull is one of similarities. Yet underneath this is a complex network of differently constituted ideas and situations. Each criminal case had its own unique structure of causal connections - personal, social and cultural. Furthermore, and indeed contrary to many popular views of nineteenth-century law and order, these were constantly in flux. The most crucial variable within the picture that has been constructed was, of course, individual behaviour; both that of the offender and that of the victim or law enforcers.

Perceptions of crimes, in York and Hull, as now, were partially defined by religious, political and cultural beliefs and expectations. Within each region there were features common to a number of offences. Socio-economic features, such as employment

¹⁰³ F. Morrison, *Courts and the Political Process in England* (London, 1973), pp. 17-20.

patterns shaped perceptions within a locality, for example. Hull's situation as a developing port and commercial centre was a marked example of this. The historical legacies of each borough played their parts too. The existence of bye-laws that dealt with prostitution in York might be an instance of this.

Budgetary restraints operated in different ways in the two settlements. The operating capacity within the local (and national) justice system was both a reflection and a construction of such views. In particular provision from the public purse was dependant on perceptions which had, in part, been shaped by local mentalities. These, we have seen, differentially affected the shaping of the local York and Hull police forces and the use of the petty, quarter and assize courts. A further example of discrepancy might be the particular dissensions over the state of the prisons in each borough - these clearly affected sentencing policy in different ways and at different times in the two areas.

Race was a more complex issue in Hull, as I have already suggested. In 1845 the *Hull Advertiser* reported a case of child abuse by a woman. More interestingly, the header sentence read, "A Mulatto female" ¹⁰⁴ At times, as I have already quoted, the court gave up if a name was too difficult to ascertain. Colour was more of an issue than in York.

In York, as Finnegan's work has shown, the Irish bore the brunt of racial prejudice but they at least had a strong community and a supportive church. Hull's non-British residents appear to have had little support. In Hull, there was also prejudice against the Irish and this is reflected in newspaper reports where race is mentioned gratuitously: "Two voluble daughters of Erin, named Margaret and Ellen White."¹⁰⁵ Or even cited overtly when the rise in crime is attributed to "the influx of the Irish" in an article on the Prison Inspector's report of the gaol.¹⁰⁶ In the main, however, Hull's targets of racism were more likely to be isolated individuals or those newly arrived in the port.

Hull's immigrants were likely to be from Germany where language and the reminder of European disorder provided further threats to the locals. Women offenders were clearly participating in conflicts where race was an element in the confrontation. Hanna Hoodley was charged with assaulting a pedlar to whom it is claimed she owed money. She was alleged to have faced him with a knife saying, "You little d----ned Jew,

¹⁰⁴ *Hull Advertiser*, 23rd May 1845.

¹⁰⁵ *Hull Advertiser*, 8th October 1841.

¹⁰⁶ *Hull Advertiser*, 25th May 1849.

what do you want here?"¹⁰⁷ As I have commented, the main prostitute scare in Hull, unlike the York one, was racially motivated. In York, whilst there was exaggerated fear of Irish riots (by men) there was rather less association of prostitution and Irish prejudice.

Thus there was, as I have shown, a different level of interest in the policing of the female crimes in these two boroughs. York was relatively more active in policing the moral and sexual crimes of women. The influence of the middle-class religious reformers seems to have been stronger in the smaller city, with its ecclesiastical tradition, its 'County town' status and inheritance, and its practically non-existent industrial and commercial development. Roger Swift's argument that class distinctions were less polarised in York than in more industrial areas also rings true in this context. This seems to have led to more informal methods of both controlling, but also of genuinely helping, those in the community who infringed the law.

My work on the language of nineteenth-century statute and, for example, on the employment and distribution of gendered pronouns suggests that at both the national and the local level certain kinds of crime were increasingly masculinized during the period. This was despite the fact that other kinds of offence were increasingly associated with women. Confusion over the application of gendered language was common throughout the whole period in Hull. For example, male pronouns were commonly used even when female offenders were present, in the Recorder's charges to the jury, for example.¹⁰⁸ And most frequently the male subsumed the female. For example, in more general discussion of crime: "The adult criminal is at once the creature and the victim of the custom of crime: **he** has been steadily "educated"" However, the same Recorder in the same charge refers to those in need of temperance activities as both "boys and girls."¹⁰⁹

Predictably, in some instances, policies relating to the treatment of female offenders, have been found to be more coherent where there have been a greater number of cases. Then a more carefully articulated policy had to be devised. It is apparent from both Lucia Zedner's work on nineteenth-century female prisoners, and from twentieth-century criminology, that small numbers of women offenders have often meant a more

¹⁰⁷ *Hull Advertiser*, 8th October 1841.

¹⁰⁸ For example, the charge quoted in the *Hull Packet*, 17th April 1835 even though there were 23 males and 10 female offenders involved.

¹⁰⁹ *Hull Advertiser*, 22nd July 1856.

haphazard application of the justice system for women.¹¹⁰ Thus, ironically, the greater numbers of females in the justice system in Hull may have resulted in slightly more consistent practices, regarding female offenders, in that town. This may have been a factor affecting Hull's harsher sentencing practices although I can offer no specific evidence for that.

Despite this harshness, however, it would appear that control of Hull's females focussed less specifically on sexual or moral behaviour than in York. Since crime, in general, appears to have been perceived as a greater threat in Hull than in York women offenders may have been policed for their part in this threat to peace on the streets or in the threat to the town's developing commerce. In Hull, in 1856, the *Hull Advertiser* spoke of a "serious affray between the military and the police" and estimated a crowd of about 5,000.¹¹¹ In York, there were no incidents on this scale; the fear of crime was less. If class distinctions were less marked the middle class may, more frequently, have been personally involved with the elements of society who were generally perceived to pose a threat. The mixed emotions that resulted from such relationships may well have been one of the reasons for the paradoxical approaches to female offenders. Hull justice system officials, as we have seen, attempted to exercise control over their criminal women in a different form.

¹¹⁰ The Home Office, *Handbook for Members of Boards of Visitors*, 1996, p. 188, says that since women prisoners are less than 4% of the prison population they are more likely (than men) to be incarcerated greater distances from home, thus "making the maintenance of home and family links very difficult."

¹¹¹ *Hull Advertiser*, 19th April 1856.

Chapter 7

“A THIEF, A WITCH AND A SMOOTH-TONGUED DECEIVER”?: DISCOURSES OF FEMALE CRIMINALITY IN NINETEENTH-CENTURY YORK

In her work *Women, Crime and Custody in Victorian England* Lucia Zedner mapped out an excellent summary of Victorian notions of normal and deviant women and of the possible extent of female criminality in the nineteenth century. Since her contribution no other major study has been published on the topic and there has been little other acknowledgement of the extent of the nineteenth-century debate over criminal women.¹ In particular, little regard has been paid to the type of female offender discussed in the previous three chapters. As I have already argued the woman thief has usually been ignored in favour of the more sensational prostitutes or murderesses.² Other research which exists has been generated from national sources; from material specific to the metropolis; or from crimes that can generally be deemed to be particularly associated with females.³

Lucia Zedner pointed out in her study that women have long been seen as Eve-like, both corruptible and corrupting and that women offenders were, at times, perceived as far worse than male criminals. This view was concurrent with, and oppositional to, the perception of the ideal Victorian woman as incapable of crime. Rachel Short has suggested that there was a homogeneity to the late-eighteenth and early-nineteenth century discourses as the “establishment of women’s essentially non-criminal character.”⁴ Certainly this was a frequently

¹ Lucia Zedner, *Women, Crime and Custody in Victorian England* (Oxford, 1991); Two significant Masters’ theses covering the years immediately prior to this research are useful: Sharon Morgan, ‘Women and Violent Crime in London, 1800-1830,’ M.Litt. (Cambridge University, 1993) and Rachel Short, ‘Female Criminality 1780-1830,’ M. Litt.(Oxford University, 1990). Margaret Arnot’s thesis is also helpful in this context, ‘Gender in Focus: Infanticide in England 1840-1880,’ Ph. D. (Essex University, 1994). Meg Arnot and Cornelia Usborne (eds.), *Gender and Crime in Modern Europe* (forthcoming) promises some relevant material.

² A number of historical studies of murderesses have been published: Mary S. Hartman, *Victorian Murderesses: A True Story of Thirteen Respectable French and English Women Accused of Unspeakable Crimes* (London, 1977) remains useful and Lionel Rose, *Massacre of the Innocents : Infanticide in Britain 1800-1939* (London, 1986) maps out the context for Arnot’s thesis. However, Literature scholars have probably made the greatest contribution to this field : Judith Knelman, *Twisting in the Wind: The Murderess and the English Press* (Toronto, 1998); John Kucich, *The Power of Lies: Transgression in Victorian Fiction* (London, 1994); Virginia B. Morris, *Double Jeopardy: Women who Kill in Victorian Fiction* (Lexington, 1990).

³ Other work on representations of female offenders (- most notably on prostitution) has very much reflected twentieth-century feminist pre-occupations with women as victims.

⁴ Short, ‘Female Criminality,’ p. 133; Zedner, *Women, Crime and Custody*, pp. 27-90.

expressed, and strongly held view. And, indeed, still a view which has impact.⁵ Both extremes of opinion can be seen in the published literature of nineteenth-century York. Indeed it would be difficult to claim any homogenous view since there is clearly a paradoxical presence of two contradictory notions of women and their potential for crime. However, it may, perhaps be suggested that ultimately the denial of female criminality became the stronger, if not dominant view. The presence of conflicting views, however, resulted in a paralysis and a lack of action locally. The offending women were seen and yet not seen. Indeed, as I have suggested, a similar tension exists today and whilst it continues to exist, the debates around female criminality tend to centre inwards on the contradictions rather than on the ways forward.⁶

Zedner has been accused of not informing her analysis with feminist theory and of producing a book where “the age-old positivist obsession with ‘plain fact’ and the recognition that crime is a social construction are in tension.”⁷ This thesis may be challenged on the same grounds for I have not viewed these two positions as mutually exclusive but as creating tension that is productive. But Zedner has also been challenged for not addressing the agency of the female prisoners who are the subjects of her study. Throughout this thesis I have implied that the simple binaries of victim and agent are not necessarily adequate ones for a study of criminal women. However, this chapter will continue to probe the question of the agency of offending women whilst acknowledging the restrictions imposed upon such research by a lack of extant sources. I have already suggested that one main reason for the difficulty of tackling the thorny problem of agency is that the agency of the women was denied in the period in which they lived. This makes sources for such analysis all the more inaccessible. However, in a close analysis of some of the crime-related literature from nineteenth-century York I will attempt to demonstrate more of the mechanisms by which women’s criminal agency was increasingly

⁵ Only recently has this been seriously articulated: “The problem that we now have to face is how to deal with the increasing incarceration of women in a system which has made few, if any, serious attempts to define what it should be attempting to do with the women in its charge.” And she argues, “that if we continue to imprison women they should be taken seriously as criminals,” Sally Swift (a prison governor), ‘Women and Prison’, in *Prison Service Journal*, (March, 1996), no. 104, p. 5.

⁶ During the writing of this thesis these debates on the capacity of women for crime were, as I have said above, hotly contested in discussions around Rosemary West, Louise Woodward, the ongoing Myra Hindley saga, and in other high-profile cases. Thus the positions in this debate have, even during the writing of this thesis, changed because of the prolific press coverage of such women and because of the opportunities for feminist criminologists, such as Professor Frances Heidensohn, to articulate their positions in popular fora, such as in radio discussion. Mark Jackson refers to some of the continuities in the case of Caroline Beale, in his preface to *Newborn Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (Manchester, 1996), p. vii.

⁷ See for example, Arnot, ‘Gender in Focus,’ p.xvii.

denied in the nineteenth century.

The period 1830-1870 is a critical one because it shows the construction of the agenda for female offenders alongside the newly evolving police and penal systems. What I argue is that the silences, tensions, contradictions and ambiguities contained in material about female offenders often resulted in a paralysis that has been in existence up until the present day. Women's place in that system has been subordinate and based upon even more distorted perceptions than those applied to male offenders. Because we cannot reconcile the contradictory attitudes to women and criminality we have been slow to deal with the problems of female offenders.

The main aim of this chapter is to consider the kinds of influences and attitudes that were pervading local culture in mid nineteenth-century York but also to begin to tease out the extent of the percolation of ideas between classes and genders in that context and in that period. As I have pointed out, justice system policy is not created in a vacuum and this must apply equally well to policy for females.⁸ It is absolutely clear that the many criminological histories which suggest that the debate over female criminality began with Lombroso are erroneous; this is neither true on a national level as Lucia Zedner has demonstrated, nor on a local level.⁹

Throughout the thesis I have emphasised that the climate of York was not that of a city pre-occupied or threatened by the criminal panic and fear of public disorder such as might be found in the Metropolis, or the larger urban areas, but in a relatively calm County town.¹⁰ Whilst it may be argued that relative quiescence allowed those involved in the debate time and energy to concentrate on less physically frightening areas of criminality, such as prostitution, it is clear from the material found in Hull that such debates over women's criminality also took place in more pressured, and developing city areas. Thus, whilst there is a need for more research on the matter of attitudes to crime, there is a possibility that York was not untypical of other areas of England. Indeed in the 1830s York was still large in terms of population and

⁸ David Philips and Susanne Davies (eds.), *A Nation of Rogues? Crime, Law and Punishment in Colonial Australia* (Melbourne, 1994), p. 2.

⁹ Carol Smart, *Women, Crime and Criminology: A Feminist Critique* (London, 1976), p. 27; Chapter one demonstrated how the law relating to females was based upon statute and common law from a much earlier period and gave example of treatises which had discussed female criminality, albeit in limited fashion but see Zedner, *Women, Crime and Custody*, pp. 51-90.

¹⁰ On numerous occasions in this thesis I have pointed out that York was not typical of the large number of industrial conurbations in the nearby West Riding. The attitudes found in this small city were perhaps more representative of other smaller, less industrial towns and of the many more rural areas in nineteenth-century England.

even by the 1870s it was still of medium size. Despite all I have just said, and although in some spheres discussion of ‘ordinary’ crime such as theft was rare, discourses relating to female offenders in nineteenth-century York were more common and various than may be imagined.¹¹

This research, and that of Lucia Zedner, has shown that females entered the justice system in higher numbers in the nineteenth century than today. The particular discourses in York which relate to criminal women were often located around what initially appear to be narrow groups of people (middle-class reformers, for example) or around points of intersection between two or three fairly clearly-defined groups of individuals (justice-system officials and middle-class tourists and residents, for example). The networks between such groups were in reality, of course, complex and far-reaching. Sometimes the discourses considered in this study were such that they involved interaction between groups with differing views and the deliberate interchange of ideas. Other discourses took the form of representations of female criminality where the creator intended to communicate ideology but expected no immediate response. Yet more discourses analysed in this study reflect, what might today be called, sub-conscious attitudes towards women who committed crimes.¹² One argument of this thesis is that such discourses around female criminality impinged upon, and influenced, each other. They were seldom discrete entities.

This chapter will concentrate mainly on material which was intended for local public consumption.¹³ The sources discussed range from broadsheets and chapbooks, and their woodblock images, to fiction and poetry and other ephemera relating to the law and order debate of the period and which was circulating in York between 1830 and 1870. One of the major analyses is of the information carried in the local newspapers and of the extent to which the press were involved in the local debate over crime. The resultant critique is far from a complete picture of the ‘modes of transmission’ in relation to crime in Victorian York but it

¹¹ References will only be made to the literature from Hull in an extremely limited manner for purposes of comparison. A study of the ephemera from Hull would result in a more restricted body of material because of its secondary status as a legal centre but what does exist provides a similar picture to that in York.

¹² For the sake of this research I have adopted a definition that suggests discourse is “a domain of language-use, a particular way of talking (writing or thinking)” which depends on certain “shared assumptions” and that ideology is inscribed in such discourse, Catherine Belsey, *Critical Practice* (London, 1980), p. 5. My definition of “representation” is based on the *Shorter Oxford English Dictionary* but implies some awareness on the part of the creator of the material that there is likely, if not immediately, to be a receiver to respond to the image produced.

¹³ I have referred elsewhere to the material produced in York, such as that by Thomas Laycock and Daniel Hack Tuke, for more specialist consumption in the world of mental health. In fact much of this was widely disseminated. Tuke’s discussion of witchcraft and insanity, for example, is referred to in the American work, Francis Tiffany, *Life of Dorothea Lynde Dix* (Boston, 1891), p. 235.

offers an overview of some of the different discourses around the area of female criminality within the constraints of the extant sources.

I have treated the sources used in this study as representative of a multiplicity of discourses. Each item has operated within hierarchical layers of discourse, sometimes at different, sometimes at the same time, and frequently in a number of different strands of discourse. It is difficult, however, in this discussion, not to privilege the material published in the local newspapers. These frequently mediate the other discourses and are often the vehicle through which the latter must be accessed. Alternatively, the newspapers offered interpretations or re-creations of the discourses in question. York theatre productions, for example, are most easily accessed through newspaper reports since programme details are often no more than fly-sheets.¹⁴ Furthermore, other printed material was often advertised through the columns of the local press and thus the newspapers themselves then become involved in the process of promoting or privileging certain discourses. Much of the earlier chapters of this thesis were also reliant on information from the press, (for example, on trial reports). The discussion of the newspaper coverage will conclude the chapter.¹⁵

Further aims of this project are to ascertain when gender was privileged in the nineteenth-century discourses of crime, and also to determine when gender should be privileged against other variables (age and race or poverty, for example) in historical studies of crime. To assume that any one variable (for example, gender) is consistently of greater importance than other factors creates an unhealthy rather than a productive tension between the positivist discovery of “plain fact” and presentation of socially-constructed pictures of crime.

There are specific methodological problems in this field. All historians have difficulties finding consistent runs of evidence. However, the criminal justice system, by definition, is dealing with security issues and today this is likely to result in extreme closure of information.¹⁶

¹⁴ In such performances York residents were introduced to a number of ‘criminal’ women. Lady Macbeth being the most notorious, for example, was performed 9th April 1845. In Hull there was similarly active theatre: with ‘Bride of Lammermoor,’ ‘Lady and the Devil’, ‘Woman’s the Devil’ all playing at the ‘Theatre Royal’ in August and December 1837. *Hull Advertiser*, 29th December and 18th August 1837.

¹⁵ In York, primary court records are usually too inadequate to compare directly with the newspaper reports in order to highlight specific discrepancies between cases or even to indicate larger shifts in emphases such as sentencing policy. In Hull a general examination of the newspaper trial reports and the extant ‘examinations’ shows them to be reasonably similar in detail.

¹⁶ There is, for example, frequently a massive gap between the popular ‘law and order’ debates within the twentieth-century press and the information circulated within today’s Prison Service. Some errors of fact are not corrected for security reasons.

It is likely that, on occasions, there were similar gulfs in nineteenth-century discourses. Even within extant documentation from the nineteenth-century prison or police service it is difficult to know what was seen as suitable for documentation and what has been intentionally or accidentally omitted. The problem of gaps and silences exists for all historians but it is probable that the gap is wider in a discourse dependent on officially restricted access to information.¹⁷

The discourses discussed in this chapter are those which were, on the whole, produced by, and absorbed by, middle-class members of York's population. Usually the group involved would be male-dominated. Since many of these individuals were involved in the administration of justice in the City it is assumed that the published views of these men had practical implications for the York female offenders. Sadly, but unsurprisingly, I have discovered no evidence of any printed contribution to the discourses by the women themselves. The only remnants of their voices are in the highly-selected quotes in the trial reports published in the newspapers. Furthermore, there is the silence created by the undocumented trivia of the women's lives - the noises, the smells and the "little specks of daily trouble" that determined their actions. Oral evidence is clearly unavailable and in the debate about crime the gap between written record and daily lives is particularly wide.

For the sake of my initial analysis, however, it could be argued that the discourses which are analysed in this thesis fall into four general categories. Firstly there is a discourse produced in what would now be known as 'the media'; and within this category fall other similar publications which were for public consumption. A segment of this - the chapbooks and broadsheets - is the material which was most likely to have reached the poorer inhabitants of York. There is a second discourse created within and around the official and the unofficial documents produced by officers who worked in the justice system. Thirdly, there is the debate relating to criminality which can be seen within the tangential sources such as records of charitable societies. And finally, there is the more casual discourse centred on the rather scarce, and more personal sources, such as diaries or letters. The discourses are infinitely variable and yet frequently interconnected. All the categories contain an abundance of overtly prescriptive material but as might be predicted the street literature prioritises norms somewhat differently to the latter categories. Frequently the literature created images of offenders that

¹⁷ In an age of litigation and multiple back-up copies of justice system documents this is perhaps difficult to fully comprehend. Conversely, it may be argued that twentieth-century professionals have been driven even more towards the use of 'off the record' comments. It remains impossible for historians to determine the extent to which casual comments were allowed for in the Victorian justice system, or to what extent officials guarded their remarks.

appear to have born little relation to the women we have examined in the previous three chapters.

One possibility in nineteenth-century York is that the confused approach to women offenders resulted in a displacement of the figure of the woman criminal to someone who was either a foreign or an historical (and possible legendary) figure such as Mother Shipton or Mary Bateman, “the Yorkshire Witch.” The re-cycling of such historical and ‘unreal’ women offenders added little positive to the contemporary debate but were a convenient vehicle for disposing of unpalatable issues. The female offenders were relegated to an unreal position; they were a “sideshow” in the justice system.¹⁸ The shift shown by Lucia Zedner towards seeing the woman offender as mad at the end of the century was also an avoidance rather than a solution. In fact the discourses we see in York as early as the 1830s in the field of mental health, show a similar, although less marked, displacement in early nineteenth-century York.

7. 1 Publications for public consumption

I will begin this analysis of material with a look at a source possibly unused before as an indicator of perceptions of criminality. In an era of developing civic pride many towns had publications about their institutions and localities. York, as a much visited and once extremely influential city, supported numerous such publications. Some of these were published by the newspaper owners and book sellers such as Hargrove and Bellerby. *Bellerby's Strangers Guide* begins “With the exception of the memorable names of Rome, Sparta, Athens and Jerusalem there are few places where history is composed of more interesting and instructive materials than that of the ancient metropolis of our country.”¹⁹ Such allusions might suggest that the intended readership was educated and widely-read and perhaps, in part, a middle-class or gentry audience. Others were specifically aimed at tourists as well as residents.²⁰ Yet because of its position as an historical city and an assize town, and as the possessor of a recently restructured gaol at the Castle, crime features significantly in some of the publications. Sometimes genre boundaries, as we would now understand them, are indistinct and the ‘guide

¹⁸ Thanks to Dr Peter Davies, Curator of HMP Prison Service Museum for this expression - used, in a different context, to summarise women’s position in nineteenth-century penal history.

¹⁹ H. Bellerby, *Stranger's Guide to the City of York* (York, 1841), p. 1.

²⁰ For example, James Hunton, *York and its Vicinity: A Guide for the Resident and the Tourist* (York, 1855).

book' is often inter-connected with what we might today consider to be social commentary or even jurisprudential material.

7. 1 a) Female criminals in the York guide books

The dominant position of York Castle meant that most of York's guide books centred on its architecture and history but this also necessitated some discussion of the treatment of offenders since the building had long been used as a prison. Furthermore, the extensive alterations to the building, and the massive expenditure of the period, in itself, generated a number of publications. These guide book chronologies may have played an active part in fixing the traditions of York's legislative and juridical activities. There are many comments on the assize activities; the visits of legal figures such as Brougham (who was granted the freedom of the City in 1831); the continuing works on the prison buildings; and biographies of high-profile offenders such as incendiarist Jonathan Martin.

In the early nineteenth century the written material about York Castle was more specifically penological and was dominated by Sydney Smith. Some of his contribution has been outlined in chapter three. His writing on female prisoners reproduced in an 1849 edition, and was available to a national readership, often reflects the confusion (one found throughout the century) mentioned above with regard to the invisibility of criminal women²¹

In *A Letter to the Committee of Magistrates of the County of York*, Smith had protested at the lack of facilities for the debtors when their movements were restricted because the assizes were in session. Initially it appears as though he spoke entirely of a male population: "Now when a man is confined for debt..."²² and "it is not only the debtors who are confined there, but their wives and children, who commonly live with them..."²³ and "Debtors are very often men of bad character"²⁴ However, seemingly as an afterthought, the reader is reminded that some debtors are actually female: "I must remind you that the female debtors themselves, are by the new Acts, ordered to be separated from the males: this will

²¹ Sydney Smith, *The Works of Sydney Smith* (London, 1849). Smith had, in fact, died in 1845.

²² Sydney Smith, *A Letter to the Committee of Magistrates of the County of York* (York, 1824, re-printed 1849), p. 2. It was, incidentally, sold for one shilling.

²³ *Ibid.*, p. 3.

²⁴ *Ibid.*, p. 8.

make another yard necessary.”²⁵ Smith continued his letter speaking essentially of male inmates but returned, periodically, to the necessity of separating male and female prisoners which was a major preoccupation of the time. The main point of Smith’s work is that there was clearly, within the writing on prisons, an awareness of female inmates and of the need for gendered policies.

Women were seen to be capable of misbehaviour: “...a woman was found dead drunk in the morning, from the contents of a bottle of rum..” but also in need of protection - the bottle in question had been let down by (non-gendered) debtors.²⁶ Smith was typical of his time in that he saw women as capable of limited agency and competence in general. His attitude to women’s ability is reflected in his approach to women warders: “Surely, women can take care of women as effectually as men can take care of men; or, at least women can do so properly assisted by men.”²⁷ If this was the case then perhaps also they were only deemed to have limited agency in their criminality. This confused approach to women as offenders articulated here during the 1820s was to persist throughout the period in question both in York and nationally.

William Knipe, in 1867, reflected on a long history of female offenders who had been incarcerated in York. His book, *A Criminal Chronology of York Castle* was more historical and biographical than Smith’s work had been and was clearly aimed at a general readership. Knipe’s publication demonstrates a common phenomenon in criminal writing generally; that of the revival of the legendary criminal figure. York features highly in such works and this will be discussed in a later section on fiction. As we will see, women were not exempt from this re-cycling process - Mother Shipton and Mary Bateman, ‘The Yorkshire Witch’ being classic examples. Even the more ‘factual’ guides referred to such figures. In 1841, for example, *Bellerby’s Stranger’s Guide* had cited the date of Bateman’s execution in 1809 in its chronology of York’s history and described her as “The Yorkshire Witch.”²⁸ Perhaps the extent of its interest to readers is indicated by the fact that the entry preceded an account of the jubilee celebrations of George III which happened in the same year.

In his book, Knipe grants offender Ann Barber, 1821 four pages, and he described the

²⁵ *Ibid.*, p. 5.

²⁶ *Ibid.*, p. 8.

²⁷ Sydney Smith, ‘The State of the Prisons,’ in *The Works of Sydney Smith*, p. 376.

²⁸ Bellerby, *Bellerby’s Stranger’s Guide*, p. 19.

actions of the incendiary Mary Hunter, who in 1833, incited another girl to fire her master's stacks.²⁹ He gives considerable coverage to offenders from earlier periods, describing the "heartless murderess" who killed her mother in 1605 and the "fine looking" Martha Chapel who was hanged for the wilful murder of her child in August 1803.³⁰ Knipe tells us, perhaps following popular tradition of criminal literature, that she died "penitent, acknowledging the justice of her sentence." Much of this might be viewed as entirely conventional descriptive technique of the period and furthermore, the passages are redolent with imagery commonly ascribed to female offenders in much earlier periods. Yet when Knipe devotes three pages to a pregnant offender of 1809 and tells the reader of the way in which the gaoler was affected when the woman put her older child to her breast we are also reminded that this is a sexual and not simply maternal body. On a number of occasions Knipe refers to the hearts or breasts of the women. Such reference to the physical (albeit with resonance of the emotional) is not typical of descriptions of murdering women in most of the fiction of the period where understatement and lack of reference to the female body is far more common.³¹ This might reflect slightly different notions of legitimate ground within the conventions of two different, yet overlapping types of literature. It is a typical example of the evolving genre boundaries in such nineteenth-century literature. Purporting to be a factual account, the boundaries between fiction, biography and informative factual observation are rather less than clear. 'Faction' might be said to be the common genre of these accounts. But a feature of the period is that boundaries between fictitious and factual accounts of crime become more distinctive

The last woman in Knipe's chronology, Ursula Lofthouse, was hanged for the murder of her husband in 1835. The tale of her hanging was frequently retold, but Knipe's tale is a simplistic summary with none of the tensions contained in the newspaper accounts.³² In fact, at the time of the hanging, the *York Herald* and the *York Courant* accounts were identical and related Lofthouse's claim that her uncle had told her to commit the murder. The *Yorkshire Gazette*, however, was quite different and said Lofthouse had claimed that her husband had knowingly taken the poison and sworn her to silence; "a tale so self-contradictory, that one

²⁹ *Ibid.*, p. 161 and p. 188.

³⁰ William Knipe, *A Criminal Chronology of York Castle*, (York, 1867), p. 140.

³¹ See for example, the lack of such description surrounding Hetty Sorrell in George Eliot's *Adam Bede* (London, 1859), Lady Audley in Mary E. Braddon, *Lady Audley's Secret* (London, 1862); See Virginia B. Morris, *Double Jeopardy: Women Who Kill in Victorian Fiction* (Lexington, 1990) for other examples.

³² *Ibid.*, pp. 192-195.

shudders to think of it being uttered”. None of this contradiction or tension is repeated in Knipe’s account.³³ Whilst the *Gazette* initially says she “does not appear to have been brought to a full confession,” the *Courant* and the *Herald* relate her recanting of the defence and say, “The confession appeared to relieve her considerably from the agonies which oppressed her.” Of Lofthouse’s defence Knipe merely ‘quotes’ (giving no source) “I have nothing to say sir; but I am innocent”; and of the ease of the court’s decision it was said, “Other evidence was adduced, which left no doubt as to the guilt of the prisoner.” By contrast, Lofthouse’s companion at the gallows, Joseph Heeley, who we are told in all three papers of the time, “had never denied” his crime, said, according to Knipe, that “the witnesses had sworn falsely.” Thus he depicted the female case as straightforward but the male one as more contested.

Typical of prescriptive literature of the period, Knipe also highlighted the attributes of motherhood and the women’s penitent spirit - or lack of it. Female offenders who followed the patterns of desirable behaviour, or who were perceived to be innocent, were ultimately submissive women and, by definition, lacking in agency. The women who did not fit this remorseful pattern, such as Mary Hunter, were deemed responsible and accountable for their actions.

A similar work to Knipe’s appeared at the end of the period in question. A. W. Twyford was the governor of York Castle and published *York and York Castle, an Appendix of the Records of York Castle*. Despite Twyford’s professional capacity this book simply reiterates the tales of Ann Barber, Mary Hunter and Ursula Lofthouse in very similar fashion - recycling the twenty year old opinions of Knipe.³⁴

Women are mentioned more cursorily in other guide books. Nonetheless we get a glimpse of their presence. Such women are not always offenders: we are given the occasional picture, for example, of women workers within the justice system. White in his *Gazetteer* mentions not only the name of the turnkey in the Castle but also his wife, Ann Houldgate, the prison matron.³⁵ Melville’s *Directory* names the Castle schoolmistress, Mrs. Johnson and the House of Correction Matron, Mary Gawthorp.³⁶ Women were gradually being seen as useful in the newly evolving justice system, if only under the command of men. In York there is no

³³ *Yorkshire Gazette*, 11th April 1835; *York Courant*, 9th April 1835; *York Herald*, 11th April 1835.

³⁴ A. W. Twyford, *York and York Castle* (London, 1883).

³⁵ W. White, *History, Gazetteer and Directory of the West Riding of Yorkshire: With the City of York and the Port of Hull* (Sheffield, 1838), p. 548.

³⁶ Melville and Company’s, *Directory and Gazetteer of the City of York* (York, 1855), p. 38.

extent evidence as to their influence upon notions and treatment of female criminality but clearly on a national level the contribution of Elizabeth Fry, Sarah Martin and other female prison workers marked a significant contribution in changing attitudes to women offenders.

These guides are some of the most detailed accounts available of the prison buildings in use in the century. The tone of such accounts is frequently one of Victorian moral superiority but they also bring to bear their opinion on judicial policy decisions. I remarked in chapter three, for example, upon Glaisby's comment on the disgraceful state of the still existent prison of St Peter Liberty. His comment, in the form of a public statement in *A Guide to the City of York*, that "it is fully expected that our liberal and enlightened Dean will renovate or remove this nuisance," may perhaps have applied some pressure to Dean William Cockburn (brother-in-law of Sir Robert Peel).³⁷

Quite frequently, at this date, the segregation of males and females - or lack of it - warrants comment in descriptions of the prison.³⁸ White tells us there were ten cells for males and eight for females in the City Gaol (an interestingly high ratio).³⁹ Accounts of the new Castle complex invariably mentioned the apartments for female debtors and criminals. The layout of the Castle chapel often attracted comment. Bellerby factually described the "eight compartments, for the use of the male prisoners, capable of holding twenty persons in each." He went on to say that the compartment for the female prisoners was "entered by a different approach, and the persons in it cannot be seen from any part of the chapel, except the pulpit."⁴⁰ This might suggest either that Glaisby felt it necessary to tell his readers that the females were well-protected, or that, as the active parties in seduction within the prisons, they, and not the males, were separated to prevent indiscretions. Interestingly a much later guide, Lawson and Groves' *Handbook for York* (1862) uses precisely the same words for its description and has clearly borrowed the passage wholesale.⁴¹ This repeating verbatim of written passages was common in the period. It acted as a kind of unofficial circulation of syndicated accounts. In the newspapers this often led to a false picture of the frequency of events and the prevalence

³⁷ Glaisby, *A Guide to the City of York* (York, 1838), p. 98.

³⁸ Hunton, *York and its Vicinity*; p. 113.

³⁹ White, *History and Gazetteer*, p. 548. This refers to the newly combined House of Correction and City Gaol.

⁴⁰ Bellerby, *Bellerby's Stranger's Guide*, p. 151.

⁴¹ Lawson and Groves, *Handbook for York* (York, 1862), p. 84.

of attitudes.⁴²

Sotheran's guide of 1852 reflects the now familiar use of medical language for female prisoners. He refers to the male units as "cells" but the female ones as "wards."⁴³ This, at one level, merely reflects the fact that the women were sharing larger rooms. However, "ward" had first been used as a term for asylum patients in 1749 and reflects the differential treatment of the women in the prison. The medicalisation process for women criminals was perhaps present, in a less marked form, at the early stages of the prison system and not simply at the end of the century as demonstrated in Zedner's work.

Thus the guide books demonstrate an awareness of the female offender, in York, in the period 1830-1870.⁴⁴ They recognise the need for penal policy for women inmates but illustrate the confused attitudes to the woman as offender; her agency simultaneously asserted and denied. I will now consider a body of literature that is likely to have had a different readership in nineteenth-century York.

7. 1 b) York's street literature and female criminals

There is a considerable body of scholarship on broadsides, chapbooks and the criminal world. Richard Altick's contribution being one of the more familiar.⁴⁵ One of the most recent

⁴² See, for example, the newspaper coverage of London infanticide cases. The same articles citing the work of coroners Wakley and Lankester are frequently seen in the *Camden and Kentish Town Gazette*, *The Times*, and the *Lancet* and the *British Medical Journal*.

⁴³ Sotheran, *Stranger's Guide to the City of York* (York, 1852), p. 101; *Shorter Oxford English Dictionary*.

⁴⁴ For an example of a guide written by a York doctor describing the prisons of Paris see Dr Tempest Anderson, *Notes on A Visit to the Prisons of Paris in the Summer of 1869 and some Sanitary Topics* (York, 1870). This was written by the son of the York Castle surgeon. He commented that the women's prison (housing about 1,000 prisoners) was interesting "as shewing what prisons generally were up to a few years ago." p. 22.

⁴⁵ Richard D. Altick, *Victorian Studies in Scarlet* (London, 1970); A number of scholars have published detailed work on popular literature. Secondary sources relevant to this research could perhaps be divided into three major areas. Firstly, there are a number of publications particularly pertaining to the nineteenth-century. Victor E. Neuburg, *Popular Literature: A History and Guide from the Beginning of Printing to the Year 1897* (London, 1977); J. F. C. Harrison, *The Second Coming: Popular Millenarianism 1780-1850* (London, 1979); L. James, *Fiction for the Working Man. A Study of the Literature Produced for the Working Classes in Early Victorian Urban England* (London, 1973); David Vincent *Literacy and Popular Culture: England 1750-1914* (Cambridge, 1989); Secondly there are a number of works by literary scholars, Marie-Christine Leps, *Apprehending the Criminal: The Production of Deviance in Nineteenth-Century Discourse* (London, 1992); Ian A. Bell, *Literature and Crime in Augustan England* (London, 1991); Lincoln Faller, *Turned to Account: The Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth Century England* (Cambridge, 1987); Thirdly there is a considerable body of work on popular culture in earlier historical periods which is of extreme importance to any analysis of ballads and street literature since many Victorian issues were reprints of much earlier material. See J. A. Sharpe, 'Plebeian Marriage in Stuart England: Some Evidence from Popular Literature,' *Transactions of the Royal Historical Society*, 5th Series, 36, (London, 1986), pp. 69-90; J. A. Sharpe, "Last Dying Speeches":

expositions of such literature in relation to crime is, of course, V A C Gatrell's fascinating and extremely rich analysis of plebeian texts and the site of the scaffold in *The Hanging Tree*.⁴⁶ However, until recently, little of the published scholarship, including the latter, has had much to say about women's worlds. Anna Clark's *The Struggle for the Breeches* being a very recent exception.⁴⁷

There was clearly a nineteenth-century view that popular literature was responsible for the perceived rise of crime. On June 15th 1868, the Home Secretary was asked in the House of Commons "Whether his attention had been directed to the lamentable amount of juvenile criminality, largely attributable to the spread of cheap publications and theatrical representations of an excitable and immoral character."⁴⁸ However, little of the previous scholarship on this topic has been specific to a geographical area, other than the metropolis, because of the problem of evidence of local links. To attempt to prove causal connections between public opinion and criminal activity at the local level, based on such ephemera, would be foolish indeed. But Sharpe has suggested that popular literature can help historians "get closer to the attitudes and mores of what have so often been thought of as the inarticulate classes."⁴⁹

What can be said is that York appears to have had its fair share of this literature - and indeed perhaps more than its share since it had been a centre of the printing trade for many years prior to this study. As a result, a number of chapbooks and broadsides with criminal subject matter had their origins in York. The work of J. Kendrew is a particular example. His publications began in the early nineteenth-century and continued on after his death in 1841 under the auspices of his son. He did an extensive trade in the popular, and long-established, 'dying speeches of criminals.'⁵⁰ At the same time he dealt in more 'factual' matters printing

Religion, Ideology and Public Execution in Seventeenth-Century England,' *Past and Present*, 107, (May, 1985); Barry Reay, (ed.), *Popular Culture in Seventeenth-Century England* (London, 1985).

⁴⁶ V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford, 1994).

⁴⁷ Anna Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (London, 1995); Dianne Dugaw, *Warrior Women and Popular Balladry 1650-1850* (Cambridge, 1989) is another exception and has a particularly extensive bibliography of publications on the topic of ballads.; Deborah A. Symonds, *Weep Not For Me: Women, Ballads, and Infanticide in Early Modern Scotland* (Pennsylvania, 1997) is an interesting contribution but presents the links between earlier ballads and the work of Walter Scott somewhat confusingly.

⁴⁸ Quoted in John Springhall, 'Victorian Video Nasties,' *History Today*, vol. 40, (February, 1990) p. 5.

⁴⁹ Sharpe, 'Plebeian Marriage,' p. 73.

⁵⁰ *Kendrew of York and his Chapbooks for Children* (Wetherby, 1988).

some of the criminal calendars (such as that for the Summer Assizes, Saturday 12th July 1834). Even in Kendrew's children's literature he did not avoid the topic of crime. In *Cries of York for the Amusement of Young Children*, (see figure 3. 1) we are presented with the type of crude 'scaffold' woodcut associated with the criminal broadsheet. It is of course impossible to assess the circulation and influence of his material. However there are interesting points to be made from some of Kendrew's publications.

Kendrew's chapbooks frequently, as expected, portrayed an 'ideal' version of woman. Predictably, in that context, she was depicted as the civiliser. In *The Sister's Gift; or The Bad Boy Reformed*, the saintly sister saves her cruel brother from the fate of his "vicious disposition." In this children's work the extent of the detail of cruelty is surprising and aggression is decidedly linked to the male. We are spared no details when the boy sticks pins through flies, nor when he ties bladders round the neck of the cat and throws her over the battlements. And even when women failed to meet the desired standards of womanhood they might be portrayed as victims and, particularly, as the easily seduced dupes of men. In *The Servant Maid's Tragedy of A Dreadful Warning to all Wild and Thoughtless Young Women* the innocent victim was lured to seduction and death in the traditional manner.

Kendrew's portrayal of criminal women was frequently of historical figures. For example, *The Life and Death of Fair Rosamund, Concubine to King Henry the II*, showed how the king was poisoned by Queen Eleanor. Kendrew also published a number of editions of pamphlets on Mother Shipton. In this literature, as in the guide book 'tales,' criminal women were predominantly portrayed as removed from the reality of nineteenth-century York to either another land, an earlier historical period, or a legendary land of witchcraft. The use of male legendary figures, in their re-cycling in Ainsworth's tales, for example, tended to be in addition to the depictions of the 'norm' of male offenders but for women criminals (with the exception of the stereotype of the 'fallen woman') the legendary, fictitious or historical figure became the 'norm.'⁵¹

However, Kendrew's publications also used females as a vehicle for salacious detail and criminal adventure. In *The Twin Sisters; or Two Girls of Nineteen; Being the Interesting Adventures of Sophia and Charlotte Melford* the innocents are invaded in their pub room by two male smugglers dressed as women. If women were portrayed as offenders they were often given male attributes; "The woman whom he addressed by the name of Maltsby, was a coarse, masculine creature" and "her language was gross." The sisters arrested by mistake for forgery

⁵¹ Harrison Ainsworth, *Rookwood* (1834). Dick Turpin, to name but one of many.

are used to suggest some of the corrupt practices that may have existed in the justice system; “And if I were civil and treated them with some liquor, I might remain there instead of being taken to a place of confinement, till the hour that the magistrate. . . .” Kendrew’s women reflect the opposing notions typical of the period. ‘Fallen’ women may be victims of a patriarchal society, but other women who committed ‘evil’ deeds tended to be seen as a kind of aberrant male or as a fictitious figure displaced into the language of fantasy, legend, or the past.

Other forms of popular literature which seem to have been available in nineteenth-century York may take us even further from the readers traditionally perceived of as ‘respectable’ Victorians. The Hailstone collection contains a variety of ballad sheets and other ephemera annotated and collected in York in the nineteenth century. There is no evidence that the material came specifically from York’s streets but there is no reason to suppose that some of it, at least, did not. The collection includes approximately five hundred broadsheets and pamphlets, some of which were grouped by Hailstone, in the nineteenth century, on a regional basis.⁵² Such ephemera is notoriously difficult to date but as far as possible examples which are from the nineteenth-century have been scanned for this project.

Gatrell’s depiction of the criminal world seen through plebeian texts is typically one of “boys doing business.”⁵³ And such a view would be the dominant tendency within the Hailstone ballads. One text is worth remarking upon here since it demonstrates an interesting conflation of what would traditionally be perceived as gender-specific conduct (about which nineteenth-century prisons were predictably rigid) and ‘female’ practices are used in order to punish males. In a sheet called *The Iron Child* a male prisoner is described as being forced to nurse the “iron child” for three months in Belle Vue Gaol. He had refused to support his alleged bastard child and so was sent to Gaol where he was given an iron baby to carry around the exercise yard. This was presumably a variant on carrying around heavy iron shot.⁵⁴ Since the ‘Iron child’ weighed 20lbs this was clearly a tiresome, as well as a humiliating exercise.

The main corpus of Gatrell’s material is represented by the Metropolitan ‘bawdy’ ballads which are of a less respectable nature than those in the Hailstone collection. It is likely that we are left with a more sanitized middle-class version of the criminal world in the latter

⁵² Thanks to Dr E. Royle for pointing out this collection.

⁵³ Gatrell, *Hanging Tree*, pp. 110-196.

⁵⁴ Oral communication with Dr Peter Davies, curator, HM Prison Service, confirmed that carrying the shot was a common punishment but that the practice referred to in the ballad was not.

collection than that demonstrated in, for example, Francis Place's discussion of ballads and the criminal world which is used so heavily by Gatrell. However, the vocabulary of the Hailstone ballads is not by any means as sophisticated as the model Gatrell proposes for the provincial ballads, which he argues were "markedly" different from those of the metropolis. The ballads in the Hailstone collection do not appear to have been targeted at a middle-class readership and their vocabulary is not a sophisticated one.

As one might expect many of these broadsheets challenge middle-class notions of criminal behaviour generally. A *Sketch of Roguery* outlined the different attempts at defrauding that on amongst tradesmen and professionals. Farmers, priests and lawyers together with bakers, millers and landlords were depicted as resorting to fraud in order to feather their nests and in particular to keep their woman in finery.⁵⁵ It ends "May the Lord have mercy on the poor, For the rich can help themselves." Such opposition to middle-class Victorian notions of crime as perpetuated by the 'dangerous classes' may indicate that the writers, purveyors and consumers of this 'street literature' did not hold that view. The long tradition of inversion used to bolster the status quo must be acknowledged here and yet there is no evidence in this ballad that such is the operative mechanism.⁵⁶

The bakers are as bad,
For they're always on the march,
And making up the bread,
Of allum bones and starch;
To rob the poor in every way,
They study day and night,
And when you go to buy your bread,
They rob you of your weight.

At times, this 'street literature', predictably, presented an idealised view of women as the 'angel in the house.' Such an image appears to have become increasingly dominant in the later material where the prescriptive picture is of a female who is passive, sexually pure and yet domestically creative. Even deviant women are not simply portrayed as "treacherous."⁵⁷ And language associated with acceptable female behaviour is, on occasion, transferred to 'fallen women.' An account of a relatively local male crime (Huddersfield) reminds us forcefully of the appropriate images of femininity even when a girl 'sinned.' The victim was child-like in her innocence (even though seduced):

⁵⁵ Many of these occupations follow a literary tradition seen, for example, in Chaucer's *Canterbury Tales*.

⁵⁶ See Sharpe, 'Plebeian Marriage,' p. 87.

⁵⁷ *Ibid.*, p. 133.

Her neighbours all around did her
'Little Rachel' call.

Although as a pregnant single lover she was soon reminded by her murderer and seducer what were acceptable moral standards for a wife:

He said, 'Thou little Harlot. Thou
Ne'er shalt be my wife.'

As expected, the cult of Christian motherhood is increasingly emphasised and in another sheet (identifiable as post-Dickens by its reference to the Artful Dodger) the hard life of mothers who are, "... angels of softness un [sic] mercy" and "Fairies who never desert us," is stressed.

Perhaps it is in these less 'bawdy' broadsheets, however, that there is a more complex picture of women than that elicited by Gatrell. There are two main tendencies in the portrayal of females in this literature. The first has just been outlined. But in opposition to this were portrayals of a more independent or assertive woman. Sometimes such active behaviour was justifiable within the tradition of domesticity. For example, a woman was allowed to protest at the marital state if her husband was a drunkard or similarly undesirable. A number of pamphlets even show woman as an equal worker and in equal control of the home and business. One example would be *The Way to Live*, where the male sells certain items but the wife sells other things in equal quantities in their chandler's shop. This particular ballad does not seem to be using the technique of inversion to suggest an undesirable situation. Anti-marriage pamphlets such as *The Woman that wished She'd never got married* also existed. Thus, at times we are presented with the wife, as active agent capable of asserting herself. The numerous re-prints of Chaucer's *Wife of Bath* would also follow this pattern.

Women as 'warriors' is one form of violent women that has traditionally been portrayed in ballads and this has been skilfully analysed by Dianne Dugaw. In a ditty by Samuel Dawson, in the Hailstone collection, women are called to action in war against Napoleon. The women, it is hoped, will choke the enemy with black puddings and be armed with bodkins, with which they will "prick the Russians in their nables.[sic]" An interesting reversal of the attacks of the period on crinolines (because they were seen as disguising unwanted pregnancies, and consequently playing a role in a number of infanticides) is that here the garments will be used to smother the enemy. A psychoanalytical approach might here make much of the potential of female attire to suffocate, or at least to threaten male armies!

On the same broadsheet the tale of *Brennan on the Moor* carries the story of a male highwayman whose wife is used to conceal the blunderbusses under her cloak and hand them

out at the appropriate time. There is no denial in this pamphlet that woman can be an active criminal agent. Brennan's wife is his "comrade" who was bound in irons and conveyed to gaol, tried and found guilty with him. There is absolutely no suggestion of coercion or of her being a married woman under coverture. However, as Dugaw has pointed out, many 'warrior' women are active in a quest for their man.⁵⁸ *Susan's Adventures In a Man of War; An Answer to the British Man of War* tells of young Susan who was "a blooming maid, so valiant, so stout." She joins the navy, fights and gets wounded but returns, acceptably, to marry the man she had followed. Thus the women's violence is generally used to uphold traditional marital roles.

As in the 'warrior' ballads, woman is often portrayed as an agent but within the parameters of a respectable marriage, or even in a romantically acceptable relationship. In an account of a suicidal drowning in the river Aire, (this was of course an offence although the law-breaking aspect is not stressed by the author) a lovelorn, destitute couple drown themselves. In this, it is the female who initiates the action by suggesting that there is a better place to which they should go, "To do this bad and wicked deed."

There are other 'criminal' areas in which women appear to have been protected both from the courts and within the literature in the Hailstone collection.⁵⁹ A reflection of this might be seen in the silence over the participation of women in protests. Thus although in an account of riots in Bradford and Halifax we are told "large numbers" of the crowd were women and in a further detail of another riot crowd on the same sheet: "The greater part of the Lancashire women are said to be bare-footed," there is nonetheless little detail of the women's subsequent treatment. There is generally a sympathetic approach to these women in the sheets and even the latter account (not generally supportive of the agitation) reflects what might, by some, be called chivalry both in the court treatment and in the prose. In Huddersfield seventeen were taken into custody "including 1 woman for throwing stones at the soldier." Fourteen of these were committed to York Castle but the woman was committed to the local House of Correction for 1 month. It is, of course, impossible without full knowledge of the incident to judge this account but, in general, newspaper accounts of riots give the impression of a resistance to seeing women as violent or as equal participants in the events. This probably reflects a reluctance on the part of the authorities to process these women in the justice system

⁵⁸ Dugaw, *Warrior Women*, p. 40.

⁵⁹ John Bohstedt, 'Gender, Household and Community Politics: Women in English Riots 1790-1810,' *Past and Present*, vol. 120 (1988), pp. 88-122.

in the same way as the men.⁶⁰ Another account of a Chartist meeting (although it is clearly one sympathetic with the aims of the protestors) describes “The numbers of well-dressed women with smiling countenances” participating in the meeting. Women’s physical features and their emotions in the form of smiles and tears are ever-present in these nineteenth-century accounts.

There are, however, women who were perceived as demonstrating criminal agency and who were seen as fully fledged participators in ‘criminal’ activity, and, for example, also capable of physical violence; “Then she blacken’d his eye”, we are told in *Sally Sly*. In one of the few surviving accounts of a York hanging, a broadsheet describes the hanging of nine men and one woman. The latter is clearly portrayed as an agent in her crime particularly as she incited other women to crime:

She’d hired a girl and told her if
She’d not burn them she’d be her death
The foolish girl did thus proceed
To do this bad and wicked deed.

Frequently the women in this literature are portrayed as the seductresses. One Arcadian picture of *The Maids of Australia* is ripe with sexual meaning and is nearer to the ‘bawdy ballads’ found elsewhere. An Australian maid, presumably with all the connotations to the reader of transported women and their reputed immorality, tells the hero of the poem that the maids of Australia are innocent and gay. She has merely come, she says, to bathe. But she pulls off her clothes, standing before him, as he blushes with confusion. She calls to him, “See here young man, how I float on my back.” As he leaps to help when she calls for assistance the mood changes and the seduction reaches its culmination. “She uncourteously slipt and fell back on the sand, So I entered the bush of Australia, Where the maids are so handsome and gay.” Such a ballad appears to represent the view of woman as temptress and yet, ambiguously, it is left open the text almost allowing for the possibility that the woman was seduced. In this instance, as in others such as *The Indian Lass*, the seductresses are likely to be foreign women. In the latter a soldier is seduced by an Indian woman when he is far from home.

Dolly Dixon recounts the duping by a woman of an innocent plough boy. He is chased as though he was the villain and although he escapes he cannot defeat her: “But yonder hoo comes, an her feyther pusuin, An so as they’re comin I’d better be gooin”. And so, ultimately,

⁶⁰ I am arguing here that there was a reluctance to process women through the judicial system not that there was a lack of women’s involvement in protest. For evidence of this see M. I. Thomis and J. Grimmett, *Women in Protest, 1800-1850* (London, 1982).

Dolly is still beholden to a male in this. The image of woman as fallen daughter is also used in an attempt to proselytize in the lengthy moral tale, *The Remarkable Life and Transactions of Miss Charlotte Drummond*. She was “decoyed away” from her “eminent banker’s” family and fell to a life of shoplifting, transportation and brothels but “was converted and became a Christian” by the end of the tale. Woman was increasingly seen as being the way to salvation and was seldom beyond redemption.

Women in seduction scenes were frequently considered as relatively innocent yet other women in seduction scenes were portrayed as the active agent. In *The Iron Child*, for example, the woman was clearly seen as wanton. “With three or four young fellows, she went rambling to and for . . . She tumbled in the straw.” But she was also portrayed as quick to resort to law. She went to court and “Took an oath.” In all the action Mary is the active subject of the sentence and the initiator of the sexual and legal activity. On the same sheet is a piece entitled *Woman Charming Woman, O!* in which we are told the woman can “set man to right,” “fight and scratch like fun,” “make a man to run,” and “will wear the breeches.” Not only are these women described as “cunning” but also as “The devil”.

As a further contrast to the picture of the female as innocent the texts are frequently concerned, throughout the period, to demonstrate woman as scold or gossip. This is a significant tradition in the depiction of women as offenders.⁶¹ In *A New Act of Parliament for Young and Old Men, Maids, Widows, Bachelors and Cooks* the author talks of the penalties that will befall, “Any woman that ill-uses her husband, or goes gossiping from house to house instead of minding her husband’s business.” Such a woman could be tied to the bed leg and fed gruel for three days. The ditty also refers to old maids and widows participating in what might now be termed ‘substance abuse’ for they were not to take more than one pound of snuff per week! Such references remind us that in other contexts or periods similar actions might be subject to legal sanctions.

The imagery of the “tongue” and that of woman as gossip more generally, is constantly linked to something more sinister than mere anti-social behaviour. In a Catnach broadsheet entitled *Woman’s Tongue* the tongue is “as stinging as a bee” and the woman is “the little

⁶¹ Martin Ingram, “Scolding women cucked or washed”: a crisis in gender relations in early modern England?” in J. Kermode and G. Walker, *Women. Crime and the Courts in Early Modern England* (London, 1994). pp. 48-80; Sharpe’s suggestion that verbal aggression was linked more to women and physical aggression to males perhaps remains true in the popular literature of Victorian England - particularly since some of the literature was re-cycled. See J. A. Sharpe, *Instruments of Darkness: Witchcraft in England 1550-1750* (London, 1996), p. 153. Yet it is interesting that very little comment on female verbal aggression was made in the newspaper or court reports referred to for this study.

devil.”⁶² It matters not that the male narrator is pursuing three females (all in the space of one stanza), woman was still condemned as “spiteful as a toad” and as a “termagant.” The woman whom the ‘hero’ eventually married “proved a shrew.” Another Catnach sheet, urges the necessity of acquiring a wife, but nonetheless says “... much is said and sung about a woman’s tongue ...” and warns, “Woman’s tongue must use its power”.

Such women could prove troublesome wives, but more importantly than this, they were linked frequently and strongly to witches, and recurrently seen as an agent of the devil. A number of pamphlets (about a dozen), purchased for the Hailstone collection in 1845, relate to the well-known Johanna Southcott and highlight the influence of this woman prophet.⁶³ The public response to Southcott elided the differences between areas associated with witchcraft and those concerned with religious prophecy.

Such pamphlets form part of a literary tradition. Another one relates to a female prophetess from Kelfield who died in York in 1839. Hannah Beedham, we are told, had a reputation “scarcely inferior to Johanna Southcott.” She predicted her own death and, according to the literature, great numbers gathered on street corners in York, waiting for news of her death. The tone of the account is critical of the woman and concludes with a reminder of the fact that she had been expelled from the Wesleyan Methodists, thus stressing her alien status. The distinctions between women as wife, scold, prophetess, witch and criminal offender are frequently blurred in this literature in a manner perhaps previously associated with literature from medieval or early modern England. Much of the publication of nineteenth-century literature that related to witches or scolds can be seen as a result of the ‘antiquarian’ interests of Victorians. However, it is clear that the genre was also occasionally adopted for contemporary purposes such as the promotion of prophecies and teaching or, indeed, condemnation of the work of those whose approaches were not favoured.

Gatrell says of visual images found on this type of material, “In the 1830s some broadsheet woodcuts were still saturated in a medieval iconography of angels and demons, expressing the survival of a folk theology distinct from official belief.”⁶⁴ In the verbal imagery contained in the work of the Hailstone collection such vocabulary is far more frequently associated with females than with males. This takes on a profound significance for the

⁶² James Catnach, probably the most famous, and the most prolific, criminal broadsheet printer of the century died in 1841.

⁶³ Harrison, *The Second Coming* pp. 88-127.

⁶⁴ V. Gatrell, *The Hanging Tree*, p. 177.

depiction of women as offenders if we ascribe to Gatrell's notion of the images in broadsheets as "ideograms," the purpose of which are as "totemic artefacts."⁶⁵ It is the male criminal who is worthy of serious discussion as 'real' offender; it is the female who is more frequently situated in the "folk theology."

There are, as further examples of this, other links between women, witchcraft, and vociferousness maintained in the street literature. In *Forcible Ejection or A lesson to Scoffs* the author uses the imagery of witches; "Toddle you old brimstone." This link is taken a step further in *The Devil in Search of a Wife* where the final stanza links troublesome wives to the devil:

Thus women rule it everywhere
The breeches they will ever wear
So beware of them each single elf
For a woman has mastered the D_____ himself.

The imagery of the devil is also invoked in the *Henpeck'd Club* where we are told "The wife's a stunner, she's a devil up a brow." Crime, women and the witch image are linked again in *The Dodger or Fare Ye vell My Whitechapel Boys* where a transportee promises to return and spend his money, "wasteful at a fair or a wake" but not under the influence of "star, gypsy or witch". Gypsies are actually a recurring theme in these pamphlets and in Victorian poetry.⁶⁶ In the latter literary form gypsies were more frequently ennobled beings from a Romantic tradition such as Matthew Arnold's *The Scholar Gipsy*. In the broadsheets there was a similar tradition. A number of famous depictions of gypsies were of women but they too had resonances of a mythical rather than a real world, such as the oft quoted Keats: "Old Meg was brave as Margaret Queen. And tall as Amazon." Meg Merriles was dramatised in a theatre in York in April 1848, for example. Yet they were also, as in *The Dodger*, linked with witchcraft and fortune telling, both of which were half-heartedly associated with criminality when they arose in York or Hull. Elizabeth Hall, for example, was reported, perhaps facetiously, to be "following the profession of fortune-telling, by which she got a fortnight's spell upon the tread-wheel; she was for all that no witch, for liquor took an effect upon her of which she had no previous conception."⁶⁷

⁶⁵ Ibid., p. 175.

⁶⁶ The link between gypsies and crime had been made explicit in the Vagrancy Act of 1824 when association with gypsies was made illegal. See Philips and Davies, *A Nation of Rogues*, p. 8.

⁶⁷ *Hull Advertiser*, 16th March 1838.

The witch and criminal connections are also emphasised in nonsense pamphlets such as *In Search of Old Mother Clifton*⁶⁸ - this story is a curious conflation of legends. The title has resonances of *Old Mother Shipton* but the woman's sister is "the old woman of Radcliffe Highway." Furthermore the witch image is then related to other crimes and drunkenness is portrayed as "a witch to the senses." Therefore relating drunkenness to a female spinner of spells.

A miscellany of other pamphlets and broadsheets refer to women who are either criminal or who are committing violence that may in other contexts be construed as such. Nonsense rhymes pose particular problems of interpretation.⁶⁹ On one occasion suicide is used as a gratuitous excuse, in *The Horrible Tale*, in order to "make cheeks run pale." It is the story of the deaths by suicide of a whole family. The father cuts his throat with a piece of chalk, the son blows his brains out with an umbrella but the mother hangs herself in the water butt and the daughter poisons herself with toasted cheese. It could be hinted at that the methods of death, such as the poisoning by the daughter and the shooting by the son, follow perceived gender stereotypes of murder but perhaps the tale is better taken as a humorous attack on "highly respectable family" values in a family where each "was affrighted at the other's shadow"!

Other crimes by females are treated sympathetically. Of *The Bride of Bretton Hall Surprised* there are two different texts. They are accounts of what was technically an attempt at bigamy (and this was an offence which was not infrequently seen in the Yorkshire courts of the period). It is a scenario similar to that involving Bathsheba Everdene in *Far from the Madding Crowd* where a long lost husband returns on the eve of the second wedding. The husband admits the long absence was his fault although we are not allowed to dismiss the woman's action as wholly innocent. She is accused of cruelty by her deserted spouse but her potential bigamy is hardly seen as her fault.

A number of the Hailstone broadsheets are tales of executions which partially adhere to the formula outlined by Richard Altick in *Victorian Studies in Scarlet*.⁷⁰ Sharpe and others have suggested that gallows literature tended to "bolster a social order perceived as threatened." He has also suggested that speeches decrying disobedience "were a little less

⁶⁸ Clifton is an area to the north of York and this may be a local allusion.

⁶⁹ See Sharpe's discussion of jokes in 'Plebeian Marriages,' p. 86 and Gatrell's consideration of the question of carnival as the way of dealing with horror, *The Hanging Tree*, pp. 90-99.

⁷⁰ Altick, *Victorian Studies in Scarlet*, pp. 47-66.

marked” after 1700.⁷¹ Gatrell has suggested that in other types of nineteenth-century literature on executions, such as that by Dickens or Hepworth Dixon there was always lip-service paid to conventional morality but that the broadsheets were their objective correlatives. These he says were usually “knowing, sardonic, and half-comic celebrations or lugubriously defiant.”⁷² Gatrell also concluded that “for the most part condemnation (of murder) was absolute, even of women convicted of infanticide.”⁷³ However these features do not particularly describe two broadsheets found in the York Castle archives. These were descriptions of two women, Fanny Amlett and Mary Jones, who had been hanged for the murder of their babies. The formulaic verse expresses clear pity for the women, For example we read, “There biting pain and cruel throes, Assailed her shivering frame.” Fanny and Mary were “overwhelmed in misery” and their hearts were “good and kind.” The reader is to “think in pity on her lot” and finally to “drop a tear.”

Whilst generally following a standardised format other sheets also varied in their tone and style even sometimes, for example, within the same decades. The account of a woman hanged in Chester in 1829, for example, is rather different in style and tone to many of the others of the same early period. The “unfortunate young lady” was only, it is stressed, 20 years of age. She “prayed in fervent devotion” and her confession was, we are told, received in a special way: “Never was such a scene before witnessed, everyone was struck with awe at her behaviour.” This was more typical of later literature in its moral style and in its sympathy and sanctity. However, there is a shift in tone in this particular narrative and we are told that her body was given to the surgeons “who cut her across the breast.” The males on the same sheet are by contrast introduced simply as . . . ”convicted of stealing.” Gatrell’s conclusion that “euphemisms veiled the most horrific crimes” is not necessarily applicable to a number of accounts of murder in the Hailstone texts.⁷⁴ Even more graphic detail was used in an account of murder committed by a woman, in 1805, who was guilty of “ripping the infant from the side of the neck...and taking “out its bowels.”⁷⁵ In general, the accounts of women’s crime from the early part of the century do not necessarily shy from telling the reader details of the

⁷¹ Sharpe, ‘Last Dying Speeches,’ p. 148; p. 168.

⁷² Gatrell, *Hanging Tree*, p. 156.

⁷³ *Ibid.*, p 167.

⁷⁴ *Ibid.*, p. 175.

⁷⁵ Broadsheet account of Ann Haywood, 1805.

offences.

In a pamphlet of the 1830s, murderesses are discussed on a sheet which also refers to events in ‘Captain Swing’ incidents. The woodblock at the head of this has two female outlines which may have been arbitrarily used but the details of one, a child murderess, are quite specific. We are told that she had put her infant “in a jar” and had poured boiling water on it.” and we are told “her life has been stained by many other disgraceful proceedings.” The general trend of these accounts does seem to be away from the brutality of the crimes and towards sensitivity. However, the problem of dating leaflets means it is difficult to find clear proof. Furthermore there is a lack of consistency in any shift that does occur during the forty years at the centre of this study perhaps reflecting, once again, a confused approach towards the potential of women for grave, cruel or criminal acts. What is clear is that these accounts of female offenders do not neatly fit the patterns in existing scholarship.

Throughout the period, and in contrast with some of the gratuitous description already mentioned, we also see females protected, by soft imagery, from the extremities of condemnation. Understatement is used, for example, in the tale of Hannah Smith (1812), who was clearly criminal on many counts but described only as a “misguided female” who was guilty of “riotously assembling” and of committing “highway robbery by stealing a quantity of potatoes.”⁷⁶ A hanged offender, Ann Miller, “behaved in a becoming manner.” This attribution of “becoming” behaviour is frequently ascribed to females. In another account of nine condemned rickburners the sole woman is treated sympathetically:

There’s Thomas Hunter’s dear wife
They say she’s sure to lose her life.

In conclusion then, comment upon desirable female behaviour is ever present in this collection of broadsides. On occasion this comment relates specifically to criminal women. As with the men, this was seldom to the types of crime that were most common, such as theft, but predictably to the more sensational offences that would sell the copy. Women are presented both as criminal agents and as those denied of agency. This has remained true in the representation of women criminals to the present day. This genre of literature was, generally to be displaced by the more restrained and respectable accounts circulated in the newspapers. In general there was a well-documented prescriptive shift through the period towards respectability. For many women this meant increased domestication and for some, a loss of

⁷⁶ For details of Hannah Smith see Jane Rendall, *The Origins of Modern Feminism: Women in Britain, France and the United States, 1780-1860* (Chicago, 1985), p. 203.

independence. Difficulties of dating the popular literature of the Hailstone collection makes the charting of such a shift, within the texts, problematical. It remains probable rather than proven.⁷⁷ But the criminal world was predictably a male one in this literature. What was clearly a common device was to use the imagined worlds of witchcraft and demonology, and of foreign and legendary lands, as imagery for female deviant behaviour. There the issue of their criminal responsibility did not have to be faced.

7. 1 c) Fiction circulated in, or based on, York.

Entirely typical of its day, York appears to have had an abundance of fiction in circulation. Its subscription libraries included a dissenter's library called 'The Secret Subscription Library'; Bellerby's Public Library, 13 Stonegate; Moxon's of the Shambles; Hargrove's, Coney St, and the smaller Croshaw's and Dickinson's libraries.⁷⁸ Bellerby and Hargrove were also newspaper owners and publishers of the guide books already discussed. There were three News-rooms, one exclusively "for gentlemen" the others "chiefly supported by tradesmen." Clearly the membership of such places was male.

However, local newspapers carried advertisements for the sale of the abundant crime-related fiction, ('Newgate novels,' for example) which presumably reached some of the population who were excluded from the reading rooms. The number of female offenders in such works is not small. Bellerby advertised the works of Ainsworth, Dickens, Gaskell, Collins and other the well-known authors.⁷⁹ There were also titles accompanying those mentioned above, on the respectable front pages of the local press, such as *White Slave* or *Nanette and her Lovers*, which might suggest a fascination with tales of deviant females.⁸⁰ Such fiction was clearly widely available. A number of the common literary devices outlined in this chapter and relating to female offenders can be said to permeate this type of fiction too.

⁷⁷ The even greater problem of analysing long term changes through time in literature that is appropriated, on occasion, almost wholesale from earlier centuries could only be reasonably accessed through a close textual analysis of early and late editions. This must remain outside the brief of this project.

⁷⁸ Bellerby, *Bellerby's Stranger's Guide*, p. 144.

⁷⁹ The role of female offenders in such novels has been commented on in, for example, Virginia B. Morris, *Double Jeopardy: Women Who Kill In Victorian Fiction* (Lexington, 1990).

⁸⁰ See, for example, *Yorkshire Gazette*, 8th January 1853.

Dickens' female offenders are often foreign (Madame De Farge or Hortense).⁸¹ Other authors secrete away their offenders, like Lucy Audley, in insane asylums. Their powers are frequently linked to "hellish powers." Or like Lady Audley they are linked to myth, fiction, history and insanity; "Do you remember what Macbeth tells his physician, my lady?" she is asked, before Robert Audley asserts that the mind of his step-aunt is diseased.⁸²

Published only three years after the period of this study, Wilkie Collins' *No Name* has a scene set in York. The plot centres on the schemes and intrigues of a female heroine, named quite pointedly, Magdalen. When she is discovered in York, after numerous pages of very detailed and specific description of the geography of the city, she is portrayed as an unreal, ethereal being from another world: "there she stood in the lovely dawn of her womanhood, a castaway in a strange city, wrecked on the world!"⁸³ Collins' sympathy for such women is well documented but he was not alone in his denial of woman as fully responsible for their criminal actions and in his attempt to escape facing up to the contentious problem.

A short story with a rather more tenuous reference to York was *The Mysterious Countess* published c. 1861.⁸⁴ The young and widowed Countess of Vervaine had drawn the attentions of the police by the "splendour of her equipage and her diamonds." The unsuccessful speculation of her husband in railway shares "in the days when Hudson was king" had ruined him. The source of his widow's wealth was therefore a cause of concern. The narrator is employed by the police to detect the crime. She disguises herself as a servant to Lady Vervaine in order to solve the mystery. The latter is discovered disguised as a man digging her way from the basement of her house into the vault of the next door bank. She has been appropriating a number of gold ingots on each of her visits. She is even believed to be armed. The robber escapes and the female detective pursues her to Blinton Abbey in Yorkshire. Even as she is caught with a bag of gold ingots "She raised her eyes to mine, and an expression of anguish ran down her beautiful countenance." The Countess raises a ring to her lips and swallows the poison it contains. The narrator concludes "I did not regret that so young and fair a creature had escaped the felon's dock." As in much of the other fiction of the

⁸¹ Furthermore the high-profile murderesses on whom fictitious characters were often based were frequently European-born; Maria Manning and Adelaide Bartlett to name but two.

⁸² Mary E Braddon, *Lady Audley's Secret* (London, 1985), p. 227.

⁸³ Wilkie Collins, *No Name* (New York, 1978), p. 165.

⁸⁴ Anon. (Attrib. W. S. Hayward) *The Mysterious Countess* in Laura Marcus (ed.), *Twelve Women Detective Stories* (Oxford, 1997).

period the female offender avoids the final confrontation in the justice system and as in other accounts she is too fair to warrant such normal punishment.

A number of York's criminal figures have attained considerable fame. Male figures predominated; Guy Fawkes, Dick Turpin and Eugene Aram being three of the most re-worked.⁸⁵ Ian Bell has claimed that Dick Turpin, like the others was "quickly transformed into a semi-fictional, legendary or mythical figure by the intervention of the press."⁸⁶ During the nineteenth century their tales were revived in various forms and some, for example, formed the basis of Newgate novels and were heroes of the work of Harrison Ainsworth.

It is frequently difficult to locate some of these tales either within the genre of fiction or within a tradition of historical or biographical trial accounts. Typically for their period they crossed boundaries that were as yet unsolidified. Thus some of these accounts were strongly related to the forms of popular street literature already discussed. Women offenders were not exempt from this treatment and were even used, for example, as title stories of anthologies. Thus a volume entitled *The Extraordinary Life and Character of Mary Bateman, the Yorkshire Witch; from the Earliest Days of her Infancy, Through a Most Awful Course of Crimes and Murders, till her Execution at the New Drop, near the Castle of York, on Monday the Twentieth of March 1809* went through at least nine editions. (Published by Edward Baines in Leeds) Handwritten notes in one copy indicate that the volume was bought by a tailor in 1834 and changed hands on August 22 1862, when it was rebound "in York".⁸⁷

The introduction to this particular version of Bateman's story speaks of the case as of "almost unrivalled in the annals of British atrocities." It is clearly in this edition being sold as a crime narrative.⁸⁸ However, her tale is one of almost fifty other offences in the volume which are described merely as "the other narratives." The other accounts include Eugene Aram, John Sheppard, Jonathan Wild, and many others including a number of females. It is interesting, therefore, that the female Mary Bateman is exploited as the selling point. As frequently happened, this particular female offender was attributed with male characteristics such as "a

⁸⁵ Eugene Aram, the murderer from Knaresborough, (1749) had his tale retold by Edward Bulwer Lytton and Thomas Hood and was mentioned in Thackray's *Novels by Eminent Hands*, by Leslie Stephen in 'The Decay of Murder,' in the *Cornhill*, (December 1869), and in Paley's *Memoirs*, for example.

⁸⁶ Bell, *Literature and Crime*, p. 52.

⁸⁷ A number of scholars have discussed both Joanna Southcott and Mary Bateman, particularly in their roles as prophetesses. J. F. C. Harrison, for example, suggests that some have seen "millenarianism" as becoming "a substitute for, or alternative to witchcraft," in *The Second Coming*, p. 49. He also suggests there was a "steady trade in ancient prophesies, p. 53."

⁸⁸ Similarly Lemon Thomas Rede, *York Castle in the Nineteenth Century* (Leeds, 1829).

knavish” disposition and her capacity and responsibility for her life of crime is not denied. She was described as a “vicious”⁸⁹ child and the final summary is of a woman who was a “callous” woman for whom “no ties of blood were held sacred.”⁹⁰

The author echoed the Victorian opinion that only a few ignorant people still believed in witches.⁹¹ However, this belief where it did still exist, was associated with “Young women” and in particular “servant maids” who might participate in activities which “peep into futurity.” Indeed this particular account of Bateman is partially a diatribe against “those who trust in ‘Diviners’ and their end was that they would be “confounded and perish.” Mary Bateman is portrayed as evil and her “vices were emphatically those of the heart.”⁹² Yet although she is condemned as criminal she is displaced from criminality into the witchcraft that the reader has been told is non-existent. Her case, we are told, serves as a warning that “this attempt to pry into our future lot is impious and forbidden”. Rede’s account of Bateman is also concerned to demonstrate that “the age of superstition has passed away.” The preoccupation with Bateman was that she had “sinned against heaven.” He explains how eighteenth-century “enlightened farmers and dispensers of law” have “expunged from the law all statutes against witches.” He adds that “fortune tellers (and generally gypsies)...are by law ‘Rogues and Vagabonds’ and liable to three months in prison.”⁹³

An interesting later re-telling of this story is by the writer of *Onward, Christian Soldiers*, Samuel Baring-Gould, in 1874. His account is far less florid. Bateman is generally less directly responsible for her actions. She is the passive object when she is “warped into low cunning.” And her “want of moral principle” may be “because it was never instilled into her by her parents,” who in the earlier versions had simply been described as “respectable.” However, Baring-Gould is quite emphatic and direct in his descriptions of her witchcraft: “Her first experiment with witchcraft was made. . .”; The witch also contrived. . . .” As she departs from her infant child to the scaffold Baring-Gould creates a hardened version of the woman who had in Baines edition left in “unutterable anguish.” The later version of Bateman simply

⁸⁹ Anon., *The Extraordinary Life and Character of Mary Bateman, the Yorkshire Witch; Traced from the Earliest Thefts of Her Infancy, Through a Most Awful Course of Crimes and Murders, Till Her Execution at the New Drop, near the Castle of York, on Monday the Twentieth of March, 1809* (Leeds, 1834?), p. 5.

⁹⁰ *Ibid.*, p. 56.

⁹¹ Anon., ‘Recent Cases of Witchcraft’, *The Westminster Review*, vol. 15, (1859). pp. 209-249.

⁹² *The Extraordinary Life of Mary Bateman*, p. 56.

⁹³ Rede, p. 31.

“left without showing any emotion at having to leave it for ever.” It is perhaps true to say there is no consistent picture presented, as to the responsibility Bateman held for her own actions in any of the versions discussed here. In the main the authors are simply keen to emphasise that primitive beliefs in witchcraft have been left behind.

By contrast the lessons, and the crimes, from the male offenders in these volumes are rooted in everyday, ‘real’ life. For example, John Sheppard’s warning is, pragmatically, to tell the reader “how much more labour it requires to be a thief than an honest man.”⁹⁴ The effect of Jonathan Wild’s story is of the real “horrors of guilt” which can become “intolerable” and life-threatening.⁹⁵ By contrast the portrayals of female offenders in the fiction discussed in this section have tended to be of women displaced from the real world.

7. 1. d) York newspapers and female offenders

What then of the material that purported to reflect that ‘real world’? Ten newspapers have been located for York in the period covered by this research. The majority of these have extremely short runs or exist for a single year and therefore three have been studied more closely; namely the *York Courant*, the *York Herald*, and the *Yorkshire Gazette*. These incidentally were the papers received by the main circulating libraries in York during the forty years covered in this study.⁹⁶ The *York Courant* and the *Herald* merged in 1848 and were owned by the Hargrove family for much of the period. The Bellerby family owned the *Yorkshire Gazette* for the first half of the period in question.⁹⁷

The extent of influence of the newspapers was, as it is now, impossible to determine. Within its likely middle-class readership one can probably assume a number of those who were active in creating local justice system policy and a closer look at the activities of the families named above also shows social networks linking the two worlds. Men like Daniel Tuke and Joseph Munby, mentioned elsewhere for their links with the justice system, participated as shareholders and on committees of management. There was clearly a perception that the press

⁹⁴ *Ibid.*, p. 70.

⁹⁵ *Ibid.*, p. 120.

⁹⁶ For one example see, *York Courant*, 22nd October 1846.

⁹⁷ A detailed analysis of the editorship and ownership of these papers can be found in N. Arnold, ‘The Press in Social Context: A Study of York and Hull 1813-1855’, M.Phil, (University of York, 1987).

was influential in the sphere of law and order. A letter of 1858 on the debate around the removal of the Assize court to Wakefield begins, “Aware of the extensive circulation of your valuable journal, and the importance attached to its columns...”⁹⁸ It is from these newspapers that my evidence regarding the lack of panic over crime in the city has been taken. Thus the relative calm was both created by, and reflected in, the York press.

The forty years of this study saw a marked shift to reporting issues of social interest in a far more detailed way than existed at the beginning of the period. If newspapers are as influential in the formation of views about law and order as some suggest then this is of necessity a key period in the formation of a major new influence in notions about crime.⁹⁹ The patterns of actual coverage appear to be very different to those outlined for the period 1780-1830 in the work of Rachel Short on London and Berkshire where she says “Crime reports usually appeared on the final page of the newspaper.”¹⁰⁰ Furthermore, she implies that in the London area local crime news was subsumed by cases of special interest and Old Bailey cases.¹⁰¹

In the York of the 1830s, common to all three papers, there existed a relatively factual style of reporting. Cases of prostitution were reported with little editorial or authorial comment.¹⁰² The sentences are stated as bare fact with no quotation or elaboration. A report of an alleged infanticide (child murder) from Bexley workhouse was not laden with judgemental comment as such reports were to become by mid-century. Although the author did choose to include details of the violence against the child: “. . . which had come to its death by its mother having thrown it on the floor, and kicked it violently when lying there. - A verdict of manslaughter was returned; - and the woman was committed for trial.”¹⁰³

Despite the relatively detached style of accounts in this early period authors did resort to emphasis on physical descriptions of females where it showed respectability. Sometimes

⁹⁸ *Yorkshire Gazette*, 10th July 1858.

⁹⁹ See for example, K. Soothill and S. Walby, *Sex Crime in the News* (London, 1991); G. Pearson, *Hooligan: A History of Respectable Fears* (London, 1983); R. Sindall, *Street Violence in the Nineteenth Century: Media Panic or Real Danger?* (Leicester, 1990).

¹⁰⁰ Short, ‘Female Criminality’, p. 134.

¹⁰¹ *Ibid.*, p. 135.

¹⁰² *York Courant*, 19th January 1830. The cases of Elizabeth Johnson, Hannah Hatfield and Mary Moore, for example.

¹⁰³ *Yorkshire Gazette*, 8th October 1831.

too, there were indications that women might have attempted to use the justice system without consulting their husbands. Although the independence exerted was short lived! One “very respectably dressed female” laid an information about a publican keeping a bagatelle table. She insisted she had seen people gambling when looking for her husband. When her husband appeared he wished her to withdraw her complaint which she did.¹⁰⁴

There was less denial in the early period of woman acting as initiator in criminal and violent situations. The *Yorkshire Gazette* of March 1831, reported the case of one Mrs Palmer. She had brought an assault charge against a beer-house keeper. He accused her of beating his wife twice which she denied “in a great passion.” There were accusations of her initiating violence from other males and of the wife of the accused “giving them ill-language” and throwing water over them.¹⁰⁵

However, by the early 1840s the York newspapers had increased in size and were reporting crime (as other social issues) in much more detail. The reduction of stamp duty to 1d. in 1836 had perhaps played a part in this. Furthermore the crime reporting had moved into a more subjective mode. York papers gave many column inches to crime-related articles. For the most part this change appears to have been a result of technological progress. New printing machines in York in 1840, 1843 and 1848 made it possible to double the length of the papers and to print far more quickly.

In general, crime was reported in a number of different styles and this depended on the category of the article. Court reports were inclined to be temperate in style with a lack of emotive or descriptive vocabulary. Editorials were by definition rather less dispassionate and other columns of debates of law and order issues could be quite impassioned. Reports of executions were almost formulaic but generally bore a substantial emotional and political charge. New legislation was normally summarised with selective authorial comment.

The extent to which the attitudes printed could be attributed directly to editorial policy is problematical. Frequently crime reports were identical, or extremely similar, perhaps even suggesting the use of a common court reporter. Certainly the political stances of the Tory and Evangelical *Yorkshire Gazette* and the Whig/Radical *York Courant* and *York Herald* do not create very divergent patterns in the crime reporting - although predictably the former is slightly less tolerant of both women and of offenders than the latter. Little information about the court reporting practices in York have come to light but the common factor, even of the

¹⁰⁴ *Yorkshire Gazette*, 23rd April 1831.

¹⁰⁵ *Ibid.*

seemingly more verbatim court reports (of which there were many) can to a great extent be simply read as a reflection of attitudes within some sections of York's middle classes. The extent to which editorial selection re-constructed and re-shaped those attitudes is of course impossible to ascertain since the gaps and silences cannot generally be accessed.

There does, however, appear to be some consensus in reports of attitudes towards the behaviour of female prison inmates. Reflecting the national pattern, women were perceived to be more of a behaviour problem than males. "The general behaviour of the prisoners, except for the majority of the females, (from want of power of separation) has been orderly."¹⁰⁶ The distinctions between the attitudes of those who are being reported, such as the magistrates, and those who are reporting are frequently blurred.

The newspapers were particularly interested in the emotional responses of women (for example, their behaviour in court). This was typical of most other discourses in this study. As might be predicted, all of the newspapers frequently noted whether women offenders cried. This, together with comments on physical appearance, was one of the few times in the more objective trial reports when the reporter appears to have strayed from verbatim reports. The reports perpetuated the desire to see demonstrable shows of remorse in men and women but more particularly - and more tearfully - in women.¹⁰⁷

Interesting 'titbit' items of news reflect what was seen as quaint or intriguing in respect of criminal behaviour. Following the national pattern of relating the usefulness of women's garments in incidences of theft, the *Yorkshire Gazette* reported a London offence where a woman was found to have ten pounds of feathers concealed in her bustle.¹⁰⁸ But in other more general reporting of crime, as might be expected, writers resorted to the male pronoun in any discussion of thieves. Crime was not generally acknowledged as a female domain.

The *York Courant* began the period in question with a view of crime that, for its time, was relatively liberal. In a discussion of criminal law reform it suggested, for example - and with resonances for ourselves - that the judges should keep their discretionary powers over the length of transportation sentences and that there should not be mandatory life tariffs. It asked for an "amelioration of our criminal code."¹⁰⁹ It argued that there was no real increase in

¹⁰⁶ *Yorkshire Gazette*, 5th July 1851, of Northallerton House of Correction.

¹⁰⁷ *Yorkshire Gazette*, 18th January 1851.

¹⁰⁸ *Yorkshire Gazette*, 25th January 1851.

¹⁰⁹ *York Courant*, 10th April 1832.

crime. As part of its lobby against capital sentences it countered the view of transportation as an easy option for the offender and argued that it was dreaded. However, it added that even this sentence would be far more effective than repeated short and ineffective imprisonments.¹¹⁰

The paper was not slow to criticise the court officers where it disagreed. In March 1833 it did so because the Recorder had refused expenses to witnesses who did not speak in an audible voice! This is an area where twentieth-century analysis of ‘power versus powerless’ language in court have shown that both the inarticulate female and the male could be particularly disadvantaged.¹¹¹ Although given the anti-gossip literature we have viewed it might be suggested that there has long been a particular constraint on females to aim for a quiescent demeanour rather than for a verbal delivery that could be construed as shrewishness.¹¹² But the *York Courant* did not challenge all the predictable views of Victorians on offending behaviour and adhered, at this stage, to the notion of a slippery slope of crime with the culmination of “the terrible tragedy of the scaffold.” It was particularly concerned in this respect with the juvenile offender and the destitute and saw education and amelioration of social conditions as the answer.¹¹³

In general, the earlier reporting of crime (as of other social matters) was less emotive than was to be the case later. *The main exceptions to this were long reports of sensational cases such as William Corder and Jonathan Martin and descriptions of executions.* There were however, notable exceptions in the paper with which the *York Courant* was to combine, the *York Herald*, which was given to detailed court reports and sensational headers such as “Barbarous Assault.”¹¹⁴ Its reporters were liberal in their use of adjectives such as “the horrid murder” or “a respectable butcher.”¹¹⁵ Street brawls outside a public house were reported as

¹¹⁰ *York Courant*, 3rd July 1832.

¹¹¹ See for example, work on verbal interactions and natural language analysis in Lyn Kathlene, ‘A New Approach to Understanding the Impact of Gender on the Legislative Process,’ in Joyce Mc Carl Nielsen (ed.), *Feminist Research Methods: Exemplary Readings in the Social Sciences* (Boulder, 1990), pp. 238-253.

¹¹² Although it cannot be used as evidence here there is an interesting comparison in J. Fenimore Cooper’s American trial story of an alleged arsonist and murderess Mary Monson. In a sympathetic portrayal the “melodiousness” of her voice is mentioned on more than one occasion and the legacy of her singing lessons is also referred to. *The Ways of the Hour* (London, 1996; first edition, 1850)

¹¹³ *York Courant*, 10th July 1834 and 3rd July 1832.

¹¹⁴ *York Herald*, 12th January 1834.

¹¹⁵ *Ibid.*

“Serious Riot in York.”¹¹⁶

Although the *York Courant* is explicit in its views in editorials and other columns of comment on the justice system in general it often made an attempt at impartiality in its court reports. However a closer analysis of its vocabulary reveals the sub-texts. Authors were concerned with the physical appearance of the criminal and this did not apply exclusively to women - they spoke in a gender-neutral way of the “scowl” of the hardened criminal and the “blush of conscious degradation“ of the criminal at an early stage in his or her career - no personal pronoun was used in these instances.¹¹⁷ However, it resorted to the familiar and technical nineteenth-century labels in comments on offending females. Jane Appleyard was introduced as “An incorrigible” in the report of her theft. She was described as “wretched young female” because she had been in custody on two previous occasions. Although, particularly in the reports of the Police court cases, such adjectives appear to be used more freely with women criminals, and for less serious situations. Their use is not exclusive to women. The murderer of Maria Marten, William Corder, was also described as “wretched,” however, this was prior to his execution and in a far more extreme situation.¹¹⁸ Lyn Nead has described the disempowering effect of this language of pity when applied to prostitutes.¹¹⁹ It could be argued that this is true of criminals in general. But one notable difference is that the *York Courant* frequently reported physical resistance from male offenders, for example at the scaffold, whilst the descriptions of women reflected a more passive clientele. Such reports were doubtless reflections of actual behaviour but to what extent they were also selective re-interpretations is impossible to determine. Any survey of such behaviour would be based on similar inherently problematical sources and yet a tentative suggestion might be that there is more likelihood that an offending youth would be labelled a “bad lad” and a young woman seen as “a member of the frail sisterhood.”¹²⁰ These clearly relate to different types of offences but they also indicate entirely different paradigms for male and female crime. As a contrast, however, Gatrell, in the *Hanging Tree*, includes descriptions of men at the scaffold who were sometimes “totally unmanned” which indicate that men, as well as women, were sometimes

¹¹⁶ *York Herald*, 5th January 1833.

¹¹⁷ *York Courant*, 10th April 1832.

¹¹⁸ *York Courant*, 19th September 1827, 12th March 1833.

¹¹⁹ Linda Mahood, *The Magdalenes: Prostitution in the Nineteenth Century* (London, 1990), p. 7.

¹²⁰ *Yorkshire Gazette*, 14th June 1851.

overwhelmed by impending doom.¹²¹

In common with other literature already described, the *York Courant* was more willing to discuss the female offenders, than the males, as either or both historical figures and foreigners. In 1828 the “legitimate villainy” of Maria Louisa, daughter of Ferdinand VII of Spain, was quoted from Hazlitt’s *Life Of Napoleon*, for example.

By the 1840s adjectives were being used more freely. One victim of crime was described thus: “The face of the poor little innocent was not at all disfigured, and the features, which were beautiful, looked smiling and placid in death.”¹²² This more elaborate mode of description was not peculiar to crime nor was it only typical of the *York Courant*. In this account of the mutilation of a child it is perhaps possible to observe the marked evolution of the role of which Soothill and Glover speak of today’s media and its relationship with crime: “Newspapers have a titillating role and help to feed the political agenda of the law and order lobby.”¹²³ The paper in question appears to devote more column space to crime coverage by the beginning of this decade. It appears to be reporting, in larger numbers, child murders from London and from lesser known places such as Bacup in Lancashire.¹²⁴ The latter is reported from the *Manchester Guardian* and it would seem, as I have suggested earlier, that such ‘borrowing’ of articles is common in this period. By the 1850s the *York Herald/Courant*, has changed its reporting style considerably and by this decade is generally more emotive. Although this seems to be a subtle change rather than a sudden change in editorial or journalistic policy the amalgamation with the *York Herald* seems likely to have played a part.

During the 1840s there is also a slow shift towards a harder line of treatment. Reports of the Recorder’s charges to the jury include comment on female criminality. Whilst this appears to be verbatim reporting it is in fact a summary and it is therefore interesting to note the selections that are made. For instance in June 1843 the paper notes that the Recorder has said, “As was frequently the case, the females confined there (the House of Correction) were not so well-behaved as the males”.¹²⁵

By 1840 the *York Courant* was reporting a perceived increase in crime and calling for

¹²¹ Gatrell, *The Hanging Tree*, p. 39.

¹²² *York Courant*, 14th April 1841.

¹²³ K. Soothill and C. Glover, ‘Media Coverage of Sex Offenders after Trial,’ in *Prison Service Journal*, March, no. 98 (1995), p. 67.

¹²⁴ *York Courant*, 19th January 1843.

¹²⁵ *York Courant*, 29th June 1843.

the improvement of prisons.¹²⁶ Such articles do not appear to be gender-specific. The House of Correction does appear to be crowded at this period and there was a concern for separation of the sexes. As has already been mentioned, a common feature of prison literature of the period was that the females were often blamed for the particularly unruly behaviour. The *York Courant* was no exception: “There were some disorderly females in the room in the front... Steps have been taken to prevent the females from going into the yard at all”¹²⁷ There was clearly great dispute in the council about whether this justified more expenditure or not.

By the 1850s reports of executions suggest a rather less tolerant view of the guilty in the paper and are more inclined to refer to the “hardened and impenitent demeanour” than the stoicism or becoming conduct described in the earlier decade. On the execution of Slack in 1829, for example, the reader was told the occasion was “distressing.”¹²⁸ Although the paper did not renege on its stance with regard to public hangings, this shift in attitude foreshadows the national hard line policy heralded by Sir Edmund Du Cane after 1862.¹²⁹

One of the changes by the latter part of the period may be said to be that of allowing women reformers more of a voice in issues relating to crime. Clearly the protests of Elizabeth Fry meant that penology had been unusual for its time in experiencing a spokeswoman. Her contribution has provoked many hostile responses but without doubt she laid a foundation on which other women built. In a *York Herald* of January 1861 one correspondent writes to promote the work of reformatories but chooses to use the words of a female to support his case: “I prefer to quote the letter of an intelligent lady.” [The writer, we are told, would be easily identifiable, since she was a relation of a famous (male) scientist.]¹³⁰ The press allowed a little more space for women’s contribution as long as it was respectably overseen by men. This article also indicates a second pre-occupation of the decade, that of reformatories for juveniles. Other articles of the time echo this and suggest the prevention of crime by addressing the problems of poor children.¹³¹ The *York Herald* sees this as “another step in the

¹²⁶ *York Courant*, 16th June 1840.

¹²⁷ *Ibid.*

¹²⁸ *York Courant*, 31st March 1829.

¹²⁹ L. Radzinowicz and R. Hood, *The Emergence of Penal Policy in Victorian and Edwardian England*, (Vol 5), *A History of Criminal law and its Administration from 1750* (Oxford, 1990), p. 526.

¹³⁰ *York Herald*, 9th January 1861.

¹³¹ *York Herald*, 19th January 1861.

right direction.”

The evocation of sympathy by more detailed description of the female appearance and of emotion develops too in the 1850s and 60s. For example, in an account of a fire in Dublin the author sees it necessary, in the midst of an account of great distress, to remind the reader that the women were “half-naked.” Another mother was “blistered and bleeding,” whereas the only man described was simply, “A man named Barker, in whose room the fire broke out.”¹³²

An article detailing the murder of three children by their mother reflects the increasing determination to see women offenders as mad. The author chooses to conclude the account by stressing that the “unfortunate” woman was in custody but had “for some time past given evidence of insanity.”¹³³ However, as a reminder of the duality of attitudes of which we have spoken the *York Herald* did frequently choose to report the Recorder’s comments on the culpability of the women involved in crimes with males, perhaps more so than did the *Yorkshire Gazette*.¹³⁴ In an article in which the paper lends its support to the silent system the author concludes with a reminder of the literary portrayal of penal systems in Charles Reade’s *Never too Late to Mend*, consequently reminding the reader once again of the symbiosis of the discourses.

Thus to summarise the attitudes of this paper it might be said that although initially relatively liberal in its stance on crime the *York Courant/Herald* became less tolerant in the 1850s and 60s. Its coverage of law and order issues became more overtly emotive during the forty years of this research period. The contradictory approaches to female offenders demonstrated earlier in the chapter are echoed in these newspapers. Women criminals were sometimes perceived as more depraved than men but at other times remained invisible. There appears to have been greater interest in their physical appearance and emotional behaviour than in that of the males. How does this compare to that of the more Tory York paper, the *Yorkshire Gazette*?

The *Yorkshire Gazette* was concerned with extensive reporting of criminal cases both locally and nationally at an earlier date than the *York Courant*. Indeed its reporting of cases was probably fuller than that of the other York papers throughout the period. It gave considerable space to the case against York’s M.P., S. A. Bayntun, but the style of the Bow

¹³² *York Herald*, 20th April 1861.

¹³³ *York Herald*, 13th July 1861.

¹³⁴ *York Herald*, 22nd October 1860, the case of Martha Stewart; 7th January 1856, the case of Margaret Wilkinson.

Street reporter who is quoted appears to be less impassioned, less wordy, than the local reports of York's Guildhall cases. The style of the London report appears to be more of a verbatim from the court proceedings and witness testimonies, although it is, of course, impossible to verify its veracity. The *Yorkshire Gazette*'s local court reports generally included considerable personal comment on the defendants, particularly where females could be described with phrases such as: "Mary Bott, a female of infamous character."¹³⁵

It may be that such phrases were sometimes used in place of other convenient modes of introductory description, such as an occupation. For example, in January 1854, Bridget Butler was described as "a woman of bad character" but the following report was of one "William Young" described as being "of Aldwark, currier."¹³⁶ Men often had a more easily definable occupation. It is also interesting that an address was more frequently given for the male offenders. In chapter six I recounted the police decision in Hull not to make publicly available the addresses of prostitutes, there may have been similar thinking in this reporting. Such judgements, however, can only serve as an example of the difficulties of attributing intention from the silences of the sources, and of the problem of access to any debate on the deliberate versus the accidental censoring of information. Another alternative is that the women dealt with here were more mobile than the men and were less likely to be in settled accommodation. Nonetheless, whatever the motive, the effect of the absence of female occupations or addresses could be to perpetuate the notion, albeit almost at subconscious level, of the women offenders as of a lightweight nature, as vagrants and of no fixed employment or abode.¹³⁷

The imagery used in the description of the physical features of the women is often bold. "Her face bearing evident marks of the **talons** of the complainant."¹³⁸ In another case a report of a gang of the men and three women "of very respectable appearance" who were circulating base coin, carries only a description of one of the women who was said to be, "of dark complexion and very quick in conversation." Whether this was the only description available is of course unknown but it is interesting that it is a female who was depicted.¹³⁹ However,

¹³⁵ *Yorkshire Gazette*, 27th April 1833.

¹³⁶ *Yorkshire Gazette*, 28th January 1854.

¹³⁷ An alternative effect - that of more thoroughly stigmatising and criminalising the male unemployed has already been discussed in chapter five.

¹³⁸ *Yorkshire Gazette*, 27th April 1833.

¹³⁹ *Yorkshire Gazette*, 15th April 1845.

in the same edition we are reminded of the common assertion that females are not capable of agency in criminal acts. “The woman, accompanied by a man, of course the perpetrator of the crime. . . .”

By contrast, the language of pity played on weakness, Amelia Young was described as one of the “frail sisterhood.” The sympathy of the writer appears to be with the woman who maintained she had kept a stolen watch only until she received payment from her customer in the brothel. The condemnation of the behaviour of the married man is typical of the fifties move towards protecting prostitutes. The reporter glamourises the woman “who it will be remembered, was the heroine in a case of abduction here some years ago.”¹⁴⁰

The *Yorkshire Gazette* was more explicit than the *York Courant/Herald* in its opinion of women’s assets: “Now-days men are wonderfully scientific; women are wonderfully lovely; railways are wonderfully convenient for both honest travellers and thieves.”¹⁴¹ Furthermore this use of women as amusing material was not uncommon. In a report of the York Poor Law Union meeting in 1851 the report of the Government Inspector read, “I think the boys have improved, although their state is still not very satisfactory...The girls continue in a Low state.” The reporter was, thus far, merely selecting to report verbatim from the speech. But as was common practice the author also selected whether, and when, to report the crowd’s reaction and so to add “(Laughter)” here, as he does, very much changes the tone of the report - reinforcing and perpetuating the presumed intention of the speaker who had perhaps devised this as an attention keeper for his audience.

The *Yorkshire Gazette* was less liberal in its attitude to crime than the *York Courant*. It quoted, without criticism, an article from the *Examiner* which argued that the law had lost its “terrors for the guilty.” However, it was also vehement in its condemnation of public hanging and indeed declared, “We moreover think that the entire abolition of capital punishment would be better than repetition of such scenes.”¹⁴²

The *Yorkshire Gazette* appears to have participated more fully in debates on national issues of law and order than the *York Courant*. It, for example, devoted space to the agitation against burial clubs that was being lobbied by Clay in Preston and in Parliament. As early as the 1830s it reported an alleged case of child murder in Hull; in general the interest in

¹⁴⁰ *Yorkshire Gazette*, 14th June 1851.

¹⁴¹ *Yorkshire Gazette*, 5th November 1864.

¹⁴² *Yorkshire Gazette*, 19th November 1864.

infanticide was not common until the 1860s. (And even then was extremely limited compared to local London papers) The report commenced with the fact that “a great sensation” was caused, rather than with the actual crime details. The article suggested mental illness in the mother after the birth of the child although the vocabulary used demonstrates the problem of interpretation of nineteenth-century expressions. The author maintained, “She had been flighty ever since her confinement.” The precise meaning of this is hard for us to determine. Both she and the child were referred to as “unfortunate” and “wretched.”¹⁴³

In a similar style to today’s tabloid press the *Yorkshire Gazette* used headlines to titillate and to interest its readers. It juxtaposed seemingly opposing images. An “Inhuman mother” was also “A female of respectable appearance...” This woman was also referred to as “unnatural” and “unfeeling.” The final sentence almost seems to contain an implicit judgement; “She had with her a new reticule basket.”¹⁴⁴

The slightly more right wing stance of the *Yorkshire Gazette* did not mean that it was unfeeling towards all convicts. In December of 1835 the *Yorkshire Gazette* reported the sinking of a convict ship carrying 150 female convicts. There was little comment on the personalities involved but a large column was devoted to the incident which was perceived of only in terms of a tragedy. There was outright condemnation for the inadequacy of the ship - the third such to have been sunk in a short space of time.¹⁴⁵

Quite early in the period, the *Yorkshire Gazette* acknowledged the contribution of women within the prison service. For example, the turnkey’s wife was credited with the discovery of spirits being smuggled into the City Gaol.¹⁴⁶ Furthermore the paper carried adverts from other women who took full advantage of the assizes. Elizabeth Triffet of the Fleece Inn placed an advertisement inviting the custom of the professional gentlemen who had on previous occasions honoured her with their company.¹⁴⁷ It is likely that there was a number of York women who profited both legally and illegally from the assize business.

Rachel Short in her work on female offenders in London in the slightly earlier period of 1780-1830 found a “relatively homogeneous body of opinion emerged” in her study of

¹⁴³ *Yorkshire Gazette*, 27th December 1834.

¹⁴⁴ *Yorkshire Gazette*, 5th December 1835.

¹⁴⁵ *Yorkshire Gazette*, 12th December 1835.

¹⁴⁶ *Yorkshire Gazette*, 8th March 1834.

¹⁴⁷ *Yorkshire Gazette*, 23rd February 1839.

newspaper coverage. Her conclusion that the “media denied women criminal capacity” and “that they down-stated the violence in their reports and either trivialised or exaggerated their crime in order to sustain the ideal notion of women” was the underlying tenor of York’s reporting too.¹⁴⁸ Views of female offenders were not always consistent and there was often confusion and contradiction over women’s capacity for committing crime. Women were not perceived of as possessing the same capability for crime as men. Simultaneously with this, they were perceived as potentially more evil than men. Whilst women may not have presented the same physical threat they were more capable of moral corruption. Whilst females were often not regarded as agents of crime they were still perceived as the active partners in seduction.

The material discussed in this chapter is clearly that circulated by male middle-class editors and owners. Beyond the moderate political differences and relatively minor variations in churchmanship there is little dissension demonstrated in the York press over matters relating to the justice system.¹⁴⁹ This ‘climate of information’ probably reflected and created the dominant ethos which in turn provided the cultural context for policy making. The earlier work in this thesis has demonstrated that some of the readers¹⁵⁰ and creators of the material discussed in this chapter were often the same individuals who were actively working with female offenders and thus affecting their lives on a practical level with these beliefs. But the discourse on women offenders was not a clear cut repressive one as Marie-Christine Leps claims in her analysis. She argues “one of the primary functions of the discourse on ‘criminal man’ was to authorize repressive measures against the lower orders.”¹⁵¹ With criminals in general the need to repress was clear cut but the tension and ambiguity that surrounded the female criminal was perhaps even more complex. On the one hand action had to be taken to curb the unruly woman but on the other hand she was seen as incapable of criminality. And so repression came under the guise of protection. Sometimes it was seen as necessary to protect her from herself (far more overtly than in the case of the male offender) since woman

¹⁴⁸ Short, ‘Female Criminality’, see abstract.

¹⁴⁹ As mentioned in chapter three the major disagreement was probably over police and even that, compared to some boroughs was relatively easily resolved.

¹⁵⁰ One strand of evidence regarding the class of some of the readers might be found in the identity of those who wrote letters to the newspapers on matters relating to the justice system. A number of whom, for example, were middle class clergy men. Another guide might be the membership of the libraries and clubs where newspapers could be read.

¹⁵¹ Marie-Christine Leps, *Apprehending the Criminal: The Production of Deviance in Nineteenth -Century Discourse* (Durham, U.S., 1992), p.221.

was, at the same time as being the most unruly kind of criminal, incapable of too much agency.

The legacy of this ambiguity remains today in prison policy, as I pointed out at the beginning of the chapter. Even today, motherhood is still seen as a redeeming feature in offending woman and yet small numbers of women's institutions mean that women inmates are likely to be further away from home than men and the importance of mothering is denied. The lack of a clear focus on female criminality, the contradictions inherent in the matter (- complications which feminist criminology has not always simplified) have meant contradiction in policy. It is also symbolic that women are still frequently housed in Young Offenders' Institutions.¹⁵² If we analyse the eighteenth and nineteenth-century association of 'criminals, idiots, women and minors,' - it is clear that women criminals have never been fully integrated into the definition 'criminal' and have tended to be linked more readily with juveniles or the insane.¹⁵³

Whilst women are confused about their capacity for agency they are, to some extent, frozen in the midst of the confusion. The message that permeated from the Victorian middle classes 'down' to the 'working' and 'criminal' classes was not simply that they should be passive and subservient, it was more complex. The message was a mixed and confused one that women were both less capable of crime than men and at the same time more disruptive than men. The former perhaps continued as the more dominant view.

Nineteenth-century York women were sometimes thieves, as has been demonstrated in the previous chapters yet little of the literature considered in this chapter devoted much discussion to these offences. A considerable amount of popular literature devoted space to descriptions of women as witches and as "smooth-tongued deceivers." Of the former there was little evidence in Victorian York. The problem of assessing the extent of the latter is more complex but women clearly retained exaggerated associations of shrews and gossips. Creations of literary criminal women often appear to have negated or ignored the real offenders whilst creating discourses of women's criminality that artificially linked categories of undesirable female behaviour.

¹⁵² Home Office, *Handbook for Members of Board of Visitors* (1996). p. 184. "Juveniles and short term young adults should be held separately from long term young adults, except in some female establishments which are both prisons and YOIs."

¹⁵³ It is also significant that whilst there has been a move to include work on women prisoners in the new nineteenth-century prison histories, Sean Mc Conville in *English Local Prisons 1860-1900: Next Only to Death* (London, 1994), feels constrained to include women in a chapter called 'Special Categories' which has unfortunate resonances of either the twentieth-century term 'Special needs' or serves as a reminder of the nineteenth-century categorisation of which Frances Power Cobbe commented 'Criminals, idiots, women and minors: is the classification sound?' in *Fraser's Magazine*, vol. 78, (1868), pp. 777-94.

CONCLUSION

He to the Judge and Jury said,
My heart won't let me prosecute that maid,
Pardon I beg for her on my knees,
She's a valient [*sic*]maiden, so pardon if you please.

In a widely distributed nineteenth-century ballad sheet entitled *The Female Smuggler* a female offender shoots a naval commodore.¹ The above stanza recounts the victim's response. The final chapter of this thesis has reflected upon the complex and dangerous relationship between fictitious portrayals of crimes and criminals and the historical context in which they were created or disseminated. Depictions of offenders and of criminal events are particularly prone to distortion and exaggeration, as much previous scholarship has shown. No account of a Hull woman smuggler given in the court records remotely equates with the fictitious portrayal quoted above. Yet, whilst the precise modes of transmission remain unclear and contentious, this thesis assumes that general perceptions of the crime of any era both shape and are shaped by such literature.

Nineteenth-century views of female offenders were, as Zedner has shown, complex and often contradictory constructions.² At times criminal woman was perceived as having fallen further from grace than her male counterpart, or as being a less evolved creature than a "bad man":

Woman form'd by nature's plan,
More virtuous, noble, great, than man,
When turn'd from paths of peace and good,
As far exceeds in vile and blood.³

However, despite the evidence for such views in nineteenth-century York and Hull, the greater presumption was that women were not capable of offending to the same degree, or in the same way, as men. That the actual numbers of women offenders were fewer than male law-breakers was unquestionable. But that women's incapacity for crime may also have become, to some

¹ Various versions, including a Catnach Press issue from the late 1830s are quoted in Diane Dugaw, *Warrior Women and Popular Balladry 1650-1850* (Cambridge, 1989), pp. 75-90; My version is from the Hailstone collection.

² Lucia Zedner, *Women, Crime, and Custody in Victorian England* (Oxford, 1991), pp.11-90.

³ Lemon Thomas Rede, *York Castle in the Nineteenth Century* (Leeds, 1829) p, 30. This stanza relates to Mary Bateman.

extent, a self-fulfilling prophecy is also evident.

The methodology of this research has brought together linguistic and discursive analyses of the law and of representations of criminal women with empirical research. A purely quantitative approach to female criminality is, perhaps, a less adequate avenue to the study of women's offending behaviour than it is in the case of male criminality, given the smaller proportion of female crime and the male-orientated paradigms of criminology. Interdisciplinary approaches to research bring particular kinds of challenges and yet the resultant tensions have been productive. The combination of an empirical analysis of ever-problematical crime rates and a critique of the local discourses surrounding female crime has enabled us to glimpse some of the mechanisms by which notions of crime may have been created and re-structured. The acknowledgement of the symbiosis of these areas is all important.

Representations of behaviour that is perceived as criminal by a society are extremely likely to be overstated. For example, it is true for both males and females that little of the ephemera which accompanies crime portrays one of the most common offences, theft. Murder makes a more marketable literary topic. Furthermore depictions of criminal behaviour are shaped by highly gendered normative values and, as I have suggested in the final chapter, portrayals of female criminality have frequently been particularly fictitious creations.

In this study I have analysed approximately 2,000 offences that were committed by women and tried in the quarter session courts of York and Hull between 1830 and 1870. The York cohort has been considered in greater depth and the Hull sample has served as a 'control.' As far as can be ascertained from the available data set the figures would substantiate the findings of earlier studies of the period that women constituted a higher proportion of offenders than has been the case for the major part of the twentieth century. This is of major importance since it demonstrates that the gender ratio of crime is not necessarily constant through time. The proportion of female offenders declined through the nineteenth century. Administrative changes played a large part in this decline although they were unlikely to be wholly accountable for the fall.

These findings represent a number of regional variations and demonstrate the need for further local studies of female crime. It is of extreme importance in the analysis of women's offences that "local idiosyncrasies" are not ignored, particularly since, as I have maintained earlier, generally smaller numbers of female offenders demand alternative methodologies and sources. Yet, despite the localised disparities there is an overall similarity between the types and rates of female crime in York and Hull, and indeed with other regions, such as the Black

Country. Such correspondence would also justify the call by Malcolm Feeley for more large scale and long-term studies. Both types of approach remain important.

There are strengths to a close analysis of crime within two boroughs as opposed to the more common approach of studying the crime rates of counties. Rapid industrialisation, particularly in the north of England, frequently meant that nineteenth-century English counties experienced an enormous range of socio-economic conditions. Studies of offences, based upon the accretions of earlier county boundary constructions might be less appropriate for nineteenth-century Yorkshire than for previous periods in its history. The increasing diversity of the socio-economic profile of the county would inevitably mean the incorporation, and occasionally the elision, of an even greater range of variables than was present in many criminal histories of earlier periods. Essential though large-scale research remains, one aim of this study has been to foster a greater awareness of the dangerous slippages that can occur in 'macro' studies of crime. Types of offences may easily become merged and distinctions between different motives for crimes, and the particular circumstances surrounding varying kinds of criminal activity, may become blurred.

The few studies of large scale, or long-term, trends in female crime have tended to exacerbate such conflation. Indeed the inference has often been that smaller numbers of female crimes must also mean less nuanced offending behaviour than is present in male crime. Whatever the overall crime rates, it is vital that different types of law-breaking are analysed in entirely separate ways, and that they are seen as distinct in kind and not simply in degree. Inevitably, this research has fallen into some traps of elision and conflation, yet nonetheless it is hoped that its nature as a 'micro' study of female criminal activity has somewhat reduced the problem. I have attempted to juxtapose cultural, psychological and socio-economic information, and to suggest that Victorian women offenders who committed one type of crime, in York or Hull, did not necessarily readily commit other categories of offence. Admittedly the historian's general lack of access to sources relating to the psychological dimensions of crime means that studies must remain far from complete.

The sharp geographical focus of this research has made it possible to analyse some intricate social and familial networks which are ever important in criminal activity. Personal relationships both eased and discouraged offending behaviour. The complex notions of appropriate human behaviour that were integral to the criminal actions of the women in York and Hull were highly gendered. Victorian female offenders in these boroughs were not perceived as part of a criminal class in the same way as men. All of this both shaped, and was shaped by, the capacity and the priorities of the justice system.

The central chapters of this thesis demonstrated that there were particular regional differences in the way crimes were perceived, categorised, quantified and treated. These could in great measure be related to socio-economic and cultural differences within the two boroughs. However, they cannot simply be ascribed to rural and urban difference or to processes of industrialisation or demographic change. A particular feature, such as lack of industrialisation, could have a two-edged effect. It could result in increased crime because of low employment opportunities but could also restrict offending behaviour as a result of stronger, domestically based, peer-group control. Equally well, increased industrialisation could result in a rise of certain types of crime, and increased formal control of employees, but a loss of peer-group control around the home. The result of tighter middle-class control in the smaller location may, paradoxically, have resulted in higher, rather than lower, crime figures.

Both boroughs displayed the fear of the outsider which has been frequently spoken of in other contexts. In Hull this particularly reflected a fear of Europe. But the image of the outsider could also be a useful vehicle for portraying criminal women. This is manifested in the literature analysed in the final chapter which frequently portrayed women offenders who were foreign, historical or even legendary. Many of the varied sources used in this research reflected a Victorian tendency to use offending women as a site of discourse for entirely different agendas to that of female criminality. Thus, for example, we saw discussion over 'feme covert' reflecting a nineteenth-century desire for coherence in the law; discussion of Hull's prostitutes as German invaders reflecting, of course, the nineteenth-century paranoia over European revolution; and the establishing of British cultural superiority in the portrayal of female criminals as foreigners or as relics of a less-evolved past.

That there were clear inequalities within nineteenth-century statute and common law has been obvious. Sometimes, however, these partialities took the form of leniency towards women, and on other occasions, towards men. However, women were fundamentally disadvantaged since most of the disparities related to their lack of legal 'personhood' and a denial of their rights as equal citizens. Reform was often a superficial remedy but seldom a real cure for the underlying problem. Similarly inequality was experienced in the practices and procedures of the justice system. The nineteenth-century courts in York and Hull, for example, referred to perceived norms from their external environments which undeniably reflected a male-dominated society. Where priorities differed regionally this might be reflected in the specific assigning of values within court and other justice system decisions.

The period 1830-1870 saw a clear masculinization of the law and of the justice system. Numerous administrative changes outlined in this thesis have reflected this feature. The 1855

Criminal Justice Act, for example, was of major significance as it shifted many women into the jurisdiction of the petty sessions, as I have argued, for example, in the description of York's female offences where thefts by servants were transferred from the higher court. As legislation and the criminal justice system were centralised and rationalised women were frequently omitted from policy or defined by inappropriate male categories. Taken to its extreme, the use of the male pronoun in legislation could lead to women being acquitted.⁴ However, I have been unable to uncover any case in the courts of York and Hull as intriguing as that from Reading where it was reported, in the *Hull Advertiser*, that Mary Egerton had been discharged in a poaching case. The magistrates had said that the particular gaming legislation "only related to male offenders."⁵ Criminal responsibility was based upon notions of reasonable behaviour generally applicable to, and determined by, males.

The increasing view of crime as a male sphere may well have acted as a brake to female criminal activity and has certainly resulted in a more clearly masculinized criminal justice system. The concept of criminal women was a particularly threatening one for Victorians and a denial of their agency became the most common approach to female offenders. Women were seen as best controlled within the home environment in a society that was constantly seeking respectability in a Christian tradition. The commodore's proposal in *The Female Smuggler* offered the cheapest and easiest form of disposal and control of the nineteenth-century female offender:

If you pardon that maid - said the gentleman,
To make her my bride is my plan:
Then I'd be happy for evermore,
With my Female Smuggler, said the bold Commodore.

However, masculinization was not a totally uncontested shift. The demand by women for citizenship also brought calls for women's criminal responsibility. As we have seen there were numerous manifestations of the perception of evil women as descendants of Eve, that is, as more 'fallen' from grace than man, in the literature of the period. In the eyes of others, criminal women were less evolved than offending males. Yet these notions were probably outweighed by the desire to see women as feminine and as incapable of violent acts. Women's criminality was increasingly, as Zedner has demonstrated, accounted for in the vocabulary of insanity; or as other forms of ill-health; or in terms of their sexuality: in other words as emotional or biological, but seldom as the product of rational behaviour or intellect.

⁴ Just as, conversely, it denied them suffrage.

⁵ *Hull Advertiser* 12th April 1837.

Notwithstanding all that I have said which implies an overemphasis on prostitution, such charges did increase in the 1860s in both boroughs, and, as is well-established, women's crime also became increasingly perceived as sexually-related behaviour.⁶

The full agency of women was denied in law and society. However, it has also been implied throughout this thesis that the simple binaries of agent and victim cannot be seen as an adequate framework of analysis of women's crime. Vital research into women as victims, particularly females who have been physically, sexually, or even verbally abused must not be minimised - indeed it must be wholeheartedly supported. Nonetheless, viewing women simply as victims of patriarchy is not adequate. A far more subtle analysis of the ever-shifting connections of class and gender together with an examination of other inextricably interwoven features such as regional difference, age, race, and, in particular, the seemingly inaccessible factors of individual psychologically-based behaviour patterns, is needed before we can even begin to contemplate the multi-factorial causes of crime. Only when research is based upon openness to this infinite variety of interconnections, rather than rigidly adhering to one agenda, can we begin to determine when to prioritise gender as a "category of analysis" in the field of women and crime.

While I have concentrated in this thesis upon the essential recovery of part of the missing criminal history of women, such "redressing the balance" is merely one step in the path to a truly gendered criminal history. A token chapter dedicated to "Special Categories," and including females, such as that found in the prison history of Sean Mc Conville, is not, ultimately, an adequate approach to criminal history: it is merely another step on the trail.⁷ If, indeed, it is important to discover our criminal history, then it is essential, not only to ascertain why half the population is over-represented in the crime figure, but why half (indeed more than half in nineteenth-century York and Hull) the population were under-represented. It is also essential to analyse the differentially gendered mechanisms by which notions of, and portrayals of, criminality are constructed. Only when these are considered as a whole will we arrive at truly gendered criminal history.

This in turn will lead to a fuller understanding of the power structures reflected in the legal discourses and in the cultural representations discussed in the first and last chapters of this thesis. Then can we begin to address, adequately, some other "major historical concerns"

⁶ Whether or not the rise in actual figures represented more than population rise is irrelevant in this instance since the general effect upon public perception might remain the same.

⁷ Sean Mc Conville, *English Local Prisons 1860-1900: Next Only Unto Death* (London, 1995).

relating to nineteenth-century society.⁸ Furthermore we could then attempt to answer the vexing and perplexing question as to why Grace Marks' conspirator looked with astonishment at his partner in crime and asked, "Can this be a woman?" As definitions of 'woman' have shifted, so too has the extent to which females have been presumed capable of criminal responsibility. But the relationship has been reciprocal and the perceptions of female criminal behaviour have, in turn, informed definitions of 'womanhood' and her status as citizen. The full extent, or even the existence of, sexual and biological differences between male and female offenders remains inaccessible to the historian and thus no definitive answer as to why 'he' should ever have subsumed 'she' in ideology or in practice, either in the world of nineteenth-century law and order, or in society as a whole can be offered. Yet what is absolutely clear is that Victorians succeeded in increasing and confirming the socially-constructed differences in the criminal potential of male and female.

⁸ James A. Sharpe, 'The History of Crime in England, 1550-1914,' *ReFresh*, 20 (1995), p. 8.

Appendix 1 Sources used in the compilation of the profiles of the York and Hull quarter session offenders and their offences

The core information for this study has been drawn from the quarter session minutes for the boroughs of York and of Kingston upon Hull 1830-1870. The following information outlines some of the sources used to supplement the basic documents. In particular it indicates how the sources have been used in order to compile the quantitative information for the indictable female offences which were tried at York and Hull quarter sessions.

a) York

Standard entries in the York quarter session 'minute' books comprise reasonably detailed and consistent accounts of the offenders' names; nature and possible location of offence; committal and trial dates; the types, and sometimes the value, of goods stolen where the offence was a theft; the plea; the name of the victim or prosecutor; the verdict; and the sentence type and length. It has been possible to supplement this information, for most of the period, with the age and the 'degree of education' (1835 onwards) from the printed session calendars or gaol calendars. These exist consistently until 1853 in York City Archives (Acc. 203) and in more fragmented form in the York City Reference Library (Y343.1) with occasional lists in York Minster Library. A similarly fragmented picture is true of the Gaolers', Chaplains' and Visiting Magistrates' journals which are distributed between York City Archives, York City Reference Library (for example, Chaplain's Books 1835-1867, Y 365.66; Gaoler's Journals 1824-1863, Y 365), York Minster Library, North Yorkshire County Record Office and the York Castle Archives. These details have then been checked against the Criminal Registers which are held in the Public Record Office, (PRO HO 27. Piece numbers 40-157.) Other records from the PRO have proved useful in a less systematic way, such as HO 8, 'Quarterly Prison Hulk Returns'; HO 10, 'Census of Transportees'; HO 24 'Returns for England and Wales'; and assize records for the Northern and Midland circuits (this included Yorkshire 1864-1871) See ASSI 11 - 15 and ASSI 41 - 54.

Details of the offenders have also been compared with newspaper reports of the trials from the three main York newspapers of the period. Also available from the 'minute' books is information regarding the presiding magistrates and the jury members' names.

b) Hull

The material available for an analysis of Hull's quarter sessions is very similar to that found in York. However, the 'order books' or 'minutes' provide a less consistent run with only names, offences and sentences provided for the years 1846-1857. As in York, it has been possible to fill in the majority of gaps for the major 'fields' in this study with information from gaol calendars, Criminal Registers and newspaper trial reports. Furthermore bundles of quarter session documents are still extant for the whole of the period, providing indictment rolls, 'examinations' and an extremely rich set of documents for Hull quarter sessions. Prison calendars and other relevant penal sources are more conveniently held in one institution, that is to say, Hull City Archives. Both borough archives have plentiful Watch Committee records, such as Police Weekly Occurrence Sheets from which numerical and verbal details of offenders can be extracted.

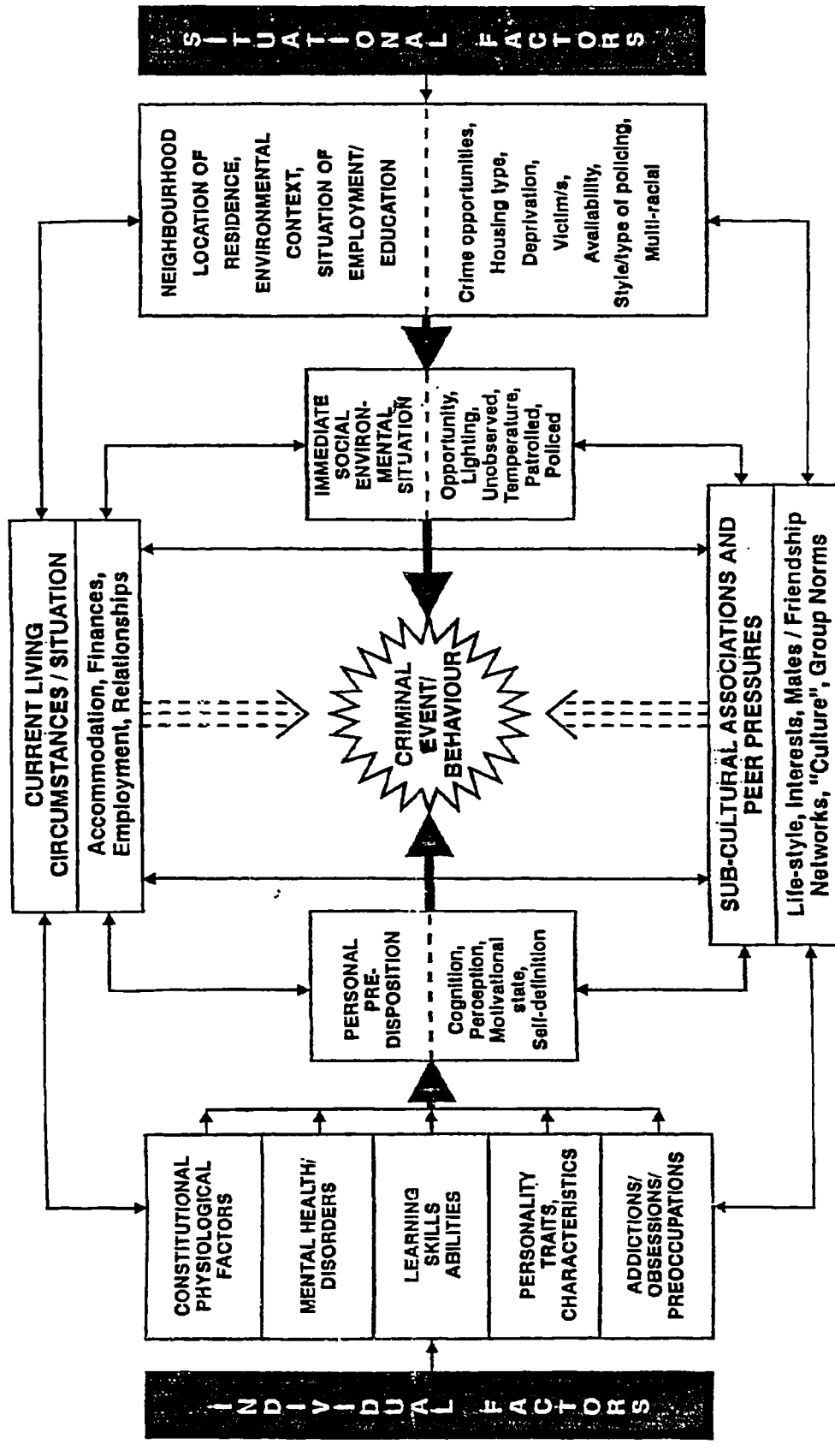
Official documents do not provide information on marital status or occupation in any systematic way. Some mention was occasionally made in court documents where the offender was deemed to be a "spinster." Information regarding these features has been gleaned from newspaper, census, 'Board of Guardian' reports and *hospital records*. *No systematic study of occupations has been possible but patterns have been discussed where a reasonable amount of information has been available, such as on servants. Literacy levels have been collated but not analysed since the crude categories allow for very little meaningful analysis. However, these records could perhaps be usefully combined in studies of literacy using other sources since they appear to have been ignored in existing studies of literacy.*

This information was tabulated with 18 fields of information, as listed above, initially on an SQL database. The system necessitated the coding of much of the information including types of offences, sentence length etc. This was a less than satisfactory approach since the process of coding inevitably meant even more slippage in meaning than occurred in the original sources. A change of computing systems by the University of York meant the transfer of all records to the Paradox system. This proved a more satisfactory database since coding became unnecessary and it allowed for textual qualification to be included in the fields. Thus where offences initially appeared similar it was possible to document particular features of the crime that would allow for sharper interpretation within the overall category of the crime.

Where previous studies have dealt with far larger data sets for tabulation this has inevitably meant only a small number of sample years could be studied “in depth.” David Philips, for example, selected two years for which he investigated the circumstances of individual cases. However, the smaller data set of this research has allowed for a reading of the vast majority of the extant sources for the approximately two thousand cases in the study. Much ancillary information collated, such as that from ‘recognisances to prosecute’ or information regarding those ‘bound over to keep the peace’ has remained unused in a direct or specific way but has provided useful background information for more general discussion.

Access to petty session offences has generally been limited to an analysis through the convictions ratified in quarter sessions and to offences reported in the newspapers because of the lack of other documentation. However, unusually perhaps, Hull quarter session bundles contain documentation for cases transferred to quarter sessions from petty sessions and these have sometimes given additional insight into this little-researched area of the justice system.

ANALYSIS OF FACTORS AND PATHWAYS CONTRIBUTING TO CRIMINAL EVENTS AND BEHAVIOURS:



CH/01.10 24

CH/01.10 24

Appendix 2, A model of 'Situational' and 'Individual' factors of crime
 (Courtesy of K. Swallow, Chief Probation Officer, HMP Full Sutton and Oxford University, "What Works" project)

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- A) Archival
- B) Official Publications
- C) Journals and Newspapers
- D) Printed Sources

II. SECONDARY SOURCES

- A) Published Sources
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I. PRIMARY SOURCES

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Watch Committee Minutes and Papers; including Police Occurrence Books 1842-45

YORK CASTLE MUSEUM

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Leeds Borough Quarter Sessions, 1845-1870

NORTH YORKSHIRE COUNTY RECORD OFFICE

Calendar of Prisoners at York Gaol 1754-1854
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KINGSTON UPON HULL RECORD OFFICE

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Quarter Session Minutes or Order Books, CQA

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