

**'The Devil made her do it': Petty Treason and Women's Excuses
before the Law in Eighteenth-Century London**

by
Christine Fritze

A Graduating Essay Submitted in Partial Fulfilment of the Requirements, in the
Honours Program

For the Degree of
Bachelor of Arts

In the
Department of History

The University of Victoria
April 6, 2010

Table of Contents

I.	Introduction.....	Page 1
II.	Chapter I: Women, Violence and the Courts in London.....	Page 5
	a. London in the Eighteenth Century	
	• Violence in Early Modern Society	
	b. Gender and Society.....	Page 9
	• Views on Women – Continuity and Change	
	• Ideas about Masculinity and Patriarchy	
	c. Women in Court.....	Page 13
	• The Old Bailey as a Historical Source	
	• The Basics of Trial Procedure	
	• A Gendered Perception of Crime	
III.	Chapter II: Excusing the Inexcusable: Petty Treason Defences.....	Page 20
	• What is Petty Treason?	
	a. Appearing Feminine: The Importance of Character Witnesses.....	Page 25
	• Women acting like Women should	
	b. Common-law Relations	Page 33
	• When a Marriage falls apart	
	c. Domestic Violence.....	Page 40
	• Petty Treason as the Way-out	
	• The Bad Patriarch Defence	
	• The Battered-Wife Defence	
	d. The Power of the Devil.....	Page 51
	• Non Compos Mentis	
IV.	Conclusion.....	Page 55
V.	Bibliography.....	Page 58

List of Figures

Figure 1 – Criminal Offences tried at the Old Bailey where defendant
gender was female, 1674-1800. Page 18

Figure 2 – Witness testimony of character of female defendants charged
with murdering their husbands at the Old Bailey, 1674-1800
(counting by verdict).Page 27

Introduction

If Murder in general be one of the most heinous Sins, then in proportion the murder of one's nearer and dearest Relation must be still a greater Sin than common Murder; and not only of one who is most nearly Related, but also who, by the Laws of God and Man, is a superiour Person in Power and Honour; for that the Husband is called the Head of the Wife, her Lord, &c. and therefore the Laws of this Kingdom have wisely declar'd it to be a greater Crime, and affix'd a severer Punishment upon a Wife's murdering her Husband, than upon other Murderers.

—*Ordinary of Newgate's Account, 9th May 1726.*¹

In 1986, Joanna Innes and John Styles coined the term “crime wave,” in order to describe the recent explosion of historical works on eighteenth-century criminality.² Criminal history remains to this day an important means of writing history from below, shedding light on the lives of common people. Even though much work has been done in this area, there are still many gaps remaining in the historiography of women and the criminal law in eighteenth-century England; in particular, the ways in which women justified or denied responsibility for their actions has received very little scholarly attention.

This thesis explores the role of women before the law in eighteenth-century London, with a focus on the defences and excuses made by female defendants at the Old Bailey, London's largest criminal courthouse. Eighteenth-century women were much more likely to commit non-violent offences, theft in particular. This makes the women that were charged with violent offences all the more interesting to study, since they were perceived to be particularly deviant, morally corrupt and unwomanly. As John Beattie

¹ *Ordinary's Account, 9th May 1726*, Ref. No. OA17260509, *The Proceedings of the Old Bailey* online. Some titles of primary sources have been abbreviated; for full titles see bibliography.

² Joanna Innes and John Styles, “The Crime Wave: Recent Writings on Crime and Criminal Justice in Eighteenth-Century England,” in *Journal of British Studies*, Vol. 25 (October 1986); quoted in Paul Baines, “Crime Histories,” in *Eighteenth-Century Studies*, Vol. 42 Issue 1 (Fall 2008), 166.

writes: “[Murder] terrified and fascinated eighteenth-century society as it does our own, and in the trial and execution of the murderer the shared moral values of the society found their strongest expression.”³

For the purpose of this essay, I will focus on one particular category of violent crime, petty treason. As Malcolm Gaskill notes in his book *Crime and Mentalities in Early Modern England*, “Murder represented more than a just a breach of the peace: it struck at the heart of order in the Protestant state. Murder usurped God’s right to take life, symbolizing rebellion against providence, nature, authority and Christian society.”⁴

Women who murdered their husbands were considered to be particularly dangerous to the hierarchical structure of society, since their crime constituted a double transgression of both social and gender norms. Through the analysis of the petty treason trials before the Old Bailey in the late seventeenth and eighteenth centuries, I will show how the excuses made by women reflected contemporary ideas about patriarchy, and social anxieties about the reversal of the natural order of things. I also hope to shed some light on how women perceived their roles within society and the gender hierarchy.

Among the vast majority of cases discussed in this study, there seems to be one common denominator: if a female defendant was found to have a ‘bad’ character, she was sentenced to death, either as petty traitor, or as murderess. The reputation of the accused was largely established by neighbours and members of her immediate community, who served as witnesses and played a critical role in determining the outcome of a trial. The crucial importance of character witnesses does not mean that excuses were not important

³ John Beattie, *Crime and the Courts in England: 1660-1800* (Oxford: Clarendon Press, 1986), 77.

⁴ Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge: Cambridge University Press, 2000), 210.

in themselves, but a larger question of reputation or credibility helps explain why these excuses sometimes worked and sometimes did not.

This essay will be divided into two chapters. In the first, I will provide some background onto life in eighteenth-century London and give some insight into the ways gender was interpreted in English society. I will also comment on the place of violence in early modern society, particularly in regard to how women were affected by violence on an individual level – for example, in their family life. Here, I will also address the influence of gender on how crime was prosecuted during the eighteenth century and take a close look at the Old Bailey court proceedings as a historical source. Lastly, I will provide some basic information on trial procedure and show how there was a perceived distinction between male and female crimes.

This will lead me into my second and main chapter, in which I will provide an in-depth analysis of the excuses used by female defendants charged with petty treason. First, I will draw attention to the importance of appearing feminine in court, and the role of character witnesses. Throughout my study it will become evident that in many cases, the nature of witness testimony was the determining factor in the question of life or death. Virtually all of the excuses invoked by female defendants during the eighteenth century fall into a pattern of defence that can be divided into three main categories. Within the sample used for this study, there were a number of women who tried to reduce their sentence by claiming that their cases did not meet the basic requirement for being guilty of petty treason, which was to have been married to the victim. As we will see, using this defence was making a bad situation worse, since it was expected of a honourable woman to have sexual relations only with the man to whom she was married. I will then address

those women who used the physical abuse they had to suffer in their marriages as an excuse for their deed, and show the limitations of early modern marriage law. Finally, my focus will shift to female defendants who fell into the category of *non compos mentis*, most of whom were acquitted of their petty treason charges by reason of being mentally unsound.

Edward Muir and Guido Ruggiero have asserted, "the value of criminal records for history is not so much what they uncover about a particular crime as what they reveal about otherwise invisible or opaque realms of human experience," and I believe that the study of the excuses made by female defendants can open an important window into the lives and attitudes of ordinary eighteenth-century women.⁵ I further hope that my research will give a voice to women who have so far been largely neglected by historians.

⁵ Edward Muir and Guido Ruggiero, eds., *History from Crime* (Baltimore: Johns Hopkins University Press, 1994), vii.

Chapter I: Women, Violence and the Courts in London

London in the Eighteenth Century

One of the most notable characteristics of eighteenth-century Britain, like other places in Europe, was the rapid rate of urbanization. London in particular grew exponentially during this period: it is estimated that its population increased from approximately 70,000 in 1550, to 675,000 in 1750 and to over 1,250,000 in 1820.⁶ London was considered to be a city of great opportunity, as well as the degenerate heart of the nation, where young men and women could be easily led astray due to widespread poverty and the lack of informal control present in smaller communities.⁷ The high level of female criminality is particularly notable in this regard. In the urban setting of London, women's roles were less restricted than in rural areas. Women of the lower classes were generally under less supervision and were in direct contact with the harsh and uncertain conditions of the labour market.⁸ Nevertheless, London society, though different in many ways from rural communities, was by no means anonymous. On the contrary, early modern men and women relied heavily on the parish community and close neighbourhood they lived in, not only in everyday life, but also in extreme situations like court trials, as we will see in this essay.

London, unlike Paris and other European metropolises, lacked a professional police force, which meant that victims, or family members of victims, had to track down

⁶ Roger Finlay, *Population and Metropolis: the Demography of London, 1580-1650* (Cambridge: Cambridge University Press, 1981), 51; as quoted in Andrea McKenzie, *Tyburn's Martyrs: Execution in England 1675-1775* (London: Hambledon Continuum Books, 2007), 5.

⁷ Tony Henderson, *Disorderly Women in Eighteenth-Century London: Prostitution and Control in the Metropolis: 1730-1830* (New York: Pearson Education, 1999), 2; Beattie, *Crime and the Courts in England*, 14.

⁸ John Beattie, "The Criminality of Women in Eighteenth-Century England," in *Journal of Social History*, Vol. 8 (1995), 82.

offenders themselves, relying on the help of bystanders and, to some extent, constables and city watchmen.⁹ After the 1690s, there was a widespread sense that crime was on the rise, which can be seen, for example, in the increase of offences punishable by death under the British criminal code – the so-called ‘bloody code’. In 1675, there were only approximately 50 distinct capital offences; by 1820, this number had risen to over 200.¹⁰ Most of these capital offences were property offences, indicating the importance of the protection of property and the maintenance of social hierarchies in eighteenth-century Britain. Poverty was a common condition in London; it was easy to slip into indigence, having to resort to begging, prostitution or theft to stay alive.¹¹ Most members of society understood poverty to be an inevitable condition of the God-given social hierarchy and the acceptance of this fundamental inequality in distribution of property had a great impact on the formation and administration of criminal law.¹²

Violence in Early Modern Society

In the eighteenth century many public and private forms of violent behaviours were widely accepted in society. John Beattie defines violence very broadly as “destructive physical force used as a means of exerting one’s will, and the achievement of ends by the infliction of pain and the threat of injury.”¹³ One form of accepted violence was judicial violence, which was used for establishing discipline and maintaining

⁹ Beattie, *Crime and the Courts in England*, 36.

¹⁰ For the classic account of the growth of this legislation, see Sir Leon Radzinowicz, *A History of The English Criminal Law and its Administration from 1750*, “The Movement for Reform” (London: Stevens and Sons, 1948).

¹¹ Tim Hitchcock, *Down and Out in Eighteenth-Century London* (London: Hambledon and London, 2004).

¹² John Beattie, “Crime and Inequality in eighteenth-century London,” in *Crime and Inequality*, edited by John Hagan and Ruth D. Peterson (Stanford: Stanford University Press, 1995), 117.

¹³ John Beattie, “Violence and Society in Early-Modern England,” in *Perspectives in Criminal Law: Essays in Honour of John LL.J. Edwards*, edited by Anthony N. Doob and Edward Greenspan (Toronto: Canada Law Book Inc., 1985), 36.

authority.¹⁴ The several execution days per year were declared public holidays to ensure the attendance of the members of the lower classes, who were to take example from the unhappy end of condemned malefactors. The attendance at executions at Tyburn was estimated in some cases at 20,000 or more.¹⁵ There were also many other forms of public corporal punishments, including whippings, brandings and the pillory. Early modern authorities relied on public participation in these displays of judicial violence. The public was expected to condemn unacceptable behaviour, which makes public responses to trials and executions a very interesting area to study.¹⁶

Many historians have pointed out the difficulty of using execution rates, or even homicide rates, to determine the degree of violence in a certain society. In order to understand the place of violence in eighteenth-century English society, we must move beyond statistical data.¹⁷ The study of brawls, duels and many other aspects of early modern life suggests that people in early modern England had less control over their tempers and were generally more aggressive and more willing to seek violent resolutions of conflicts than they are today.¹⁸ Violence was also predominant in sports and recreation, which can be seen in the popularity of blood sports, such as bear baiting and cockfighting.¹⁹ It must be noted, however, that there were important changes over the course of the later eighteenth and nineteenth centuries. Criticism of the mistreatment of animals in blood sports, as well as rising dissatisfaction with the criminal law and its

¹⁴ Ibid., 38.

¹⁵ Andrea McKenzie, *Tyburn's Martyrs*, 13.

¹⁶ Beattie, "Violence and Society in Early-Modern England," 37.

¹⁷ Susan D. Amussen, "Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England," in *Journal of British Studies*, Vol. 34, No. 1 (January 1995), 2.

¹⁸ Beattie, "Violence and Society in Early-Modern England," 45.

¹⁹ Ibid., 45.

administration led to a number of reform movements.²⁰ Slowly, public whippings and the pillory were abandoned in favour of more private punishments, such as fines and imprisonment. There was a general movement towards a new system of punishment, which was intended to be more consistent and proportional, aimed at reforming criminals.²¹

For the purpose of this study it is particularly important to note that the higher tolerance of violent behaviours meant that victims of violence were less likely to complain to authorities, and it is those complaints that serve as sources for historians of violence and crime.²² As I pointed out earlier, there were clear distinctions between legitimate and illegitimate forms of violence. In an essay on the social meanings of violence in early modern England, Susan Amussen argues that “in general, violence was legitimate when used by superiors against inferiors; those who used violence outside of its accepted forms often sought to claim superiority - or at least equality - through their actions.”²³ The role of violence as a means to establish hierarchies, in public life, but more so in private homes, will form a central theme of this thesis.

²⁰ Ibid., 51, 55.

²¹ Ibid., 56.

²² Ibid., 41.

²³ Amussen, “Punishment, Discipline and Power,” 4.

Gender and Society

Views on Women – Continuity and Change

In their study on women in early modern England, Patricia Crawford and Sarah Mendelson state:

Women had a limited range of scripts, or stories, by which they could understand their experiences. The stereotypical choices were sharply polarized. Women could be good, proceeding from virginity to marriage and maternity, and die after a virtuously spent widowhood. Or they could be wicked: scolds, whores, or witches. What they could not be, in theory, was independent, autonomous, and female-focused.²⁴

As Crawford and Mendelson point out, this view of women was 'theory', and did not necessarily reflect eighteenth-century realities. The murderous wife, the central character of this study, violated the construction of women as incapable of initiative or autonomous action.²⁵

Married women had very specific roles to fill, and all of these roles were defined by their relationships to men: a woman was first a maid, then a wife and then – in many cases – a widow.²⁶ As an eighteenth-century author voices in his guidebook to trades,

A Woman is always under Age till she comes (in the Law Phrase) to be under Cover [i.e. *feme covert*, or married]. A Youth may be set a-float in the World as soon as he has got a Trade in his Head, without much Danger of spoiling; but a Girl is such a tender, ticklish Plant to rear, that there is no permitting her out of leading-strings till she is bound to a Husband.²⁷

Women ran their household, raised children and were responsible for making sure there was food and clothing available to the family. From a very early age on, girls were expected to learn how to behave from their parents, by observing others, listening to

²⁴ Sara Mendelson and Patricia Crawford, *Women in Early Modern England* (Oxford: Clarendon Press, 1998), 17.

²⁵ Frances E. Dolan, "Home-Rebels and House-Traitors: Murderous Wives in Early Modern England," in *Yale Journal of Law & the Humanities*, Vol. 4, No. 1 (1992), 3.

²⁶ Mendelson and Crawford, *Women in Early Modern England*, 66.

²⁷ R. Campbell, *The London Tradesman* (London, 1747), 228; as quoted in Beattie, "The Criminality of Women in Eighteenth-Century England," 98-99.

sermons and, ideally, by following the enormous amount of prescriptive literature of the time.²⁸ There were many visual and oral means of transmitting gender ideals; for instance popular rhymes, ballads, fairy tales and proverbs (for example, “a man of straw is worth a woman of gold”), which shaped and reflected ideas about femininity even in the remoter areas of England.²⁹

While there were many consistencies in the expected gender roles, the eighteenth century was also a time of profound change. Traditionally, women were viewed as sexually dangerous, corrupting beings, similar to, but more imperfect than men. The influence of Enlightenment ideas led to a shift in the social perception of women, who came to be seen as fundamentally different from men, sexually passive, morally superior, and primarily domestic beings.³⁰ In this way, the eighteenth century, even though part of the early modern period, can be seen as a transitional period or an in-between space, where traditional ideas about gender and crime were still predominant but change was on the horizon.

Ideas about Masculinity and Patriarchy

The term ‘patriarchy’ originally referred to the classical notion that fathers should rule. Although the understanding of patriarchy in the political sphere shifted during the seventeenth century, the authority of fathers in the domestic sphere remained unchallenged. By the end of the seventeenth century, monarchs might hold their crowns at the invitation of Parliament; but society still recognized the God-given right of husbands and fathers to govern wives, children, and servants.³¹

²⁸ Ingrid H. Tague, *Women of Quality: Accepting and Contesting Ideals of Femininity in England, 1690-1760* (Suffolk: The Boydell Press, 2002), 18.

²⁹ Mendelson and Crawford, *Women in Early Modern England*, 61.

³⁰ Tague, *Women of Quality*, 30, 31, 47.

³¹ Mendelson and Crawford, *Women in Early Modern England*, 6.

In early modern England, paternalism and deference were considered crucial to the functioning of society; this, of course, did not only concern the relationship between aristocracy and ordinary people, but also the private relationship between men and women. The social hierarchy was believed to be divinely ordained and subordination to superiors was to be learned in the family. Moreover, there was a lack of division between the public and the private, which meant that the family was considered to be a microcosm of the social order and was used as a metaphor for the state at large. The father and patriarch was supposed to govern the family, just like a landlord governed his estate, and the king ruled his country, making the family theoretically and practically a "public institution."³²

Husbands had the physical and financial power to direct the behaviour of their wives, and married women had to rely on their husbands to provide them with the money to buy necessities.³³ While the husband was obligated to offer protection and care to his dependants, in return he could expect subordination and obedience. The correction of wives, children and servants was not only considered to be the right of husbands, but also their duty; however, the acceptable degree of domestic violence was subject to debate, as I will discuss later.³⁴ In the early modern understanding of marriage, equality between partners was generally associated with conflict, which meant that in order for the family to function properly, one spouse needed to be privileged: the man. With marriage women gave up their status as *feme sole* and turned into *feme covert*, ending their independent

³² Amussen, "Punishment, Discipline and Power," 12, 73, 82.

³³ Mendelson and Crawford, *Women in Early Modern England*, 145; Beattie, "The Criminality of Women in Eighteenth-Century England," 106.

³⁴ Amussen, "Punishment, Discipline and Power," 13, 73.

legal existence.³⁵ Under the doctrine of coverture, the husband was legally responsible for his wife's actions, unless his wife committed a crime characterized as *male in se* – treason, keeping a brothel or murder – in which case married women had to answer for themselves.³⁶

Because husband and wife (just like servant and master) were mutually dependent, any insubordination or rebellion on behalf of the wife could be traced back to the incapability of the patriarch to lead his household successfully.³⁷ The honour of the head of the household depended on his own behaviour and the behaviour of his dependants, which, in some regard, gave women great power in the formation of men's identities.³⁸ Since manhood relied on the maintenance of household order, there were widespread anxieties about masculinity. Most men wanted to be patriarchs, especially since this was the societal ideal, but many were not.³⁹ This insecurity is one important reason for the harsh treatment of those who undermined social hierarchy and the superior position of men.

³⁵ Frances E. Dolan, *Marriage and Violence: The Early Modern Legacy* (Philadelphia: University of Pennsylvania Press, 2008), 3, 76.

³⁶ Mendelson and Crawford, *Women in Early Modern England*, 37.

³⁷ In this regard, a very interesting area to study is the role of women as 'patriarchs' in their function as mistresses. During the eighteenth century there were a number of cases in which women were charged with abusing and murdering their servants, which in its own way undermined the interdependence between master and servant. Three of the most notable cases of women hung for the murder of their servant were Elizabeth and her daughter Betty Branch in 1740, Elizabeth Brownrigg in 1767, and the Metyards, another mother and daughter team whose crime shook the nation in 1762; Kirsten T. Saxton, *Narratives of women and murder in England, 1680-1760* (Farnham: Ashgate Publishing Ltd, 2009), 78-80; *Select Trials for Murder, Robbery, Burglary, Rapes, Sodomy, Coining, Forgery, Pyracry, and other Offences and Misdemeanours at the Sessions-House in the Old Bailey*[...], 1764; Elizabeth Branch (1672-1740), Oxford Dictionary of National Biography.

³⁸ Karen Harvey, "The History of Masculinity, circa 1650-1800," in *Journal of British Studies*, Vol. 44 Issue 2 (April 2005), 298, 299.

³⁹ For more information on manhood in early modern England, see for example Alexandra Shepard, *The Meanings of Manhood* (New York: Oxford University Press, 2003).

Women in Court

The Old Bailey as a Historical Source

The main source for my study is the database of Old Bailey Proceedings Online, which contains almost 200,000 criminal trials held at London's central criminal court between 1674 and 1913.⁴⁰ Even though this database is a great tool, one must be careful and critical in using it, especially in regard to the legal categorization of crimes on which the database relies, since these categories have been created in modern times to make sense of the data.⁴¹ Historians should also be aware that the language used in these court records does not necessarily mirror what defendants, prosecutors and witnesses actually said. The records reflect the "unequal dialogue" of the hierarchy of governors and the governed.⁴² Nevertheless, the court records of the Old Bailey are of great value to historians; as John Langbein puts it, the Old Bailey Sessions Papers (OBSP) "are probably the best accounts we shall ever have of what transpired in ordinary English criminal courts before the later eighteenth century."⁴³

The English people have a tradition of great public interest in the lives (and deaths) of criminals. The late seventeenth and early eighteenth century saw proliferation of murder pamphlets, last dying speeches and life stories of convicted criminals.⁴⁴ The

⁴⁰ Old Bailey Sessions Papers, *The Proceedings of the Old Bailey* online, ><http://www.oldbaileyonline.org><.

⁴¹ Beattie, "The Criminality of Women in Eighteenth-Century England," 80.

⁴² Malcolm Gaskill, "Reporting Murder: Fiction in the Archives in Early Modern England," in *Social History*, Vol. 23 No. 1 (January 1998), 2; One of these stylistic means is, for example, how many murder victims are reported to have lived long enough to exclaim: "I have been killed" or "behold, my wife has stabbed me;" Ibid., 23; for more information on court room defences as unequal dialogue, see Douglas Hay "Property, Authority and the Criminal Law," in *Albion's Fatal Tree: Crime and Society in 18th Century England*, edited by Douglas Hay et al. (London: Allen Lane, 1975), 17-63; Andrea McKenzie, "'This Death Some Strong and Stout Hearted Man Doth Choose': The Practice of Peine Forte et Dure in Seventeenth- and Eighteenth-Century England," in *Law and History Review*, Vol. 23, No. 2 (Summer 2005), 296-297.

⁴³ John Langbein, "Criminal Trial before the Lawyers," in *University of Chicago Law Review* (1978), 271.

⁴⁴ McKenzie, *Tyburn's Martyrs*, 31.

OBSP fed into popular anxieties about crime and sin, and served the purpose of generating money, as well as informing, entertaining and intimidating the populace.⁴⁵ In the earlier eighteenth century, the reports of trials differed substantially in length and detail; in general, trials that led to capital punishment were considered more interesting, but even then, much information was altered or omitted in the aim to focus on what seemed to be central to the case.⁴⁶ It was only in 1778, possibly in response to the crime wave of the 1770s, that the city of London insisted that the OBSP should be a “true, fair and perfect narrative.”⁴⁷

Another important source for this study are the accounts of the Ordinary of Newgate, which were a sister publication of the OBSP. The Ordinary of Newgate was the prison chaplain and responsible for attending condemned prisoners spiritually, not only in prison, but also on their way to and at the place of execution. The surviving accounts provide details on the lives and behaviours of 58 women and 1129 men. Even though these accounts are highly subjective and to some extent mediated by the Ordinary and his editors, they can be a valuable source of knowledge on many aspects of eighteenth-century history, if used carefully.⁴⁸

⁴⁵ Henderson, *Disorderly Women in Eighteenth-Century London*, 9; There is a real difficulty in judging what the literacy rates during the early modern period actually were. It is known that men were much more likely to be literate than women; people residing in cities were also more likely to be literate than people from rural areas. In addition, there seems to have been a clear correlation between literacy and wealth/social rank. It should be noted that even those who were illiterate could find some entry to print: literates often read aloud in the streets or shared their knowledge privately; see McKenzie, *Tyburn's Martyrs*, 42, 45.

⁴⁶ Beattie, *Crime and the Courts in England*, 24.

⁴⁷ CLRO, Journals of the City Lands Committee, vol. 70, fols. 142-43, November 13, 1778 as quoted in Simon Devereaux, “The City and the Sessions Paper: ‘Public Justice’ in London, 1770-1800,” in *Journal of British Studies*, Vol. 35 Issue 4 (1996), 468, 470.

⁴⁸ McKenzie, *Tyburn's Martyrs*, Chapter 5; see also Peter Linebaugh “The Ordinary of Newgate and His Account,” in *Crime in England, 1550-1800*, edited by J.S. Cockburn (London: Methuen, 1977), 247, 251.

The Basics of Trial Procedure

The Old Bailey court was responsible for criminal cases in London and Middlesex and proceedings were held approximately eight times per year. Sessions lasted several days and the felonies processed – counting up to around 100 in some sessions – were not only tried, but also decided in batches.⁴⁹ Trials were extraordinarily rapid by modern standards. Here, it should be emphasized that women had nothing to do with the making or administration of law, but they were, of course, bound by it.⁵⁰ Appearing as a defendant at the Old Bailey must have been a significantly more intimidating experience for women than it was for men. All court personnel, from the judges and jury to lawyers and court officials were men; the only other women present would have been witnesses or spectators in the gallery.⁵¹ The accused, unlike the witnesses, spoke unsworn, which was considered to be for their own benefit, in order to protect them from the crime (and sin) of perjury.⁵² It was common procedure for judges to admit evidence based on hearsay, rumours and past conviction evidence, making the reputation of the defendant a crucial element of trial procedure, as we will see throughout this study.⁵³ Before the increased appearance of lawyers and defence counsel in the late eighteenth century, judges filled many of the roles we now identify with lawyers. Overall, judges had immense powers, having the ability to reprieve defendants, even if the jury had found them guilty.⁵⁴

⁴⁹ Langbein, "Criminal Trial before the Lawyers," 273, 275; see also John Beattie, *Policing and Punishment in London, 1660-1750* (Oxford: Oxford University Press, 2001), Chapter 6.

⁵⁰ Mendelson and Crawford, *Women in Early Modern England*, 36.

⁵¹ The only case in which women would appear as court 'officials' would be as part of a jury of matrons, which was only called if a female defendant said she was pregnant, in order to validate her claim.

⁵² Langbein, "Criminal Trial before the Lawyers," 283.

⁵³ *Ibid.*, 302, 303.

⁵⁴ *Ibid.*, 282, 296, 297. See also John Langbein, *The Origins of Adversary Criminal Trial* (New York: Oxford University Press, 2003).

As many historians of the early modern period have argued, discretion lay at the heart of the English legal system.⁵⁵ Discretion could be applied at all stages of criminal prosecution, which meant that defendants were constantly scrutinized for mitigating factors, such as age, gender, character and reputation.⁵⁶ As Beattie has demonstrated, during this period almost half – and sometimes more – of all defendants appearing at the Old Bailey on capital charges were women.⁵⁷ Yet women constituted only a small fraction, less than ten percent, of those executed.⁵⁸ It has been suggested that women were much more likely to receive leniency by the courts, since they were believed to constitute less of a social threat.⁵⁹ As Peter King argues, regarding property offences, “if female offenders almost certainly benefited from being perceived as less ‘troublesome’ than males, they may equally have gained from being seen as more ‘troubled’ – as more vulnerable and more motivated by economic difficulties not of their own making.”⁶⁰

But what about women charged with violent offences? Beattie argues that the number of women charged with homicide in his sample, compared to that of men, was too low to make a statement about differential treatment.⁶¹ In the sample of trials used for this study, the situation is reversed: since there were only two men charged with petty treason between 1674 and 1800, the statistics of the female defendants have to stand on

⁵⁵ Hay, “Property, Authority and the Criminal Law,” 17.

⁵⁶ In an influential debate about discretion in early modern law, Peter King has argued that the juries and judges exercised discretion and mercy towards women; Douglas Hay, on the other hand, viewed such judicial discretion as a means of legitimating a paternalist criminal code. See Peter King, “Decision-makers and Decision-making in the English Criminal Law, 1750-1800,” in *Historical Journal*, Vo. 27 No. 1 (1984), 25-58; Hay, “Property, Authority and the Criminal Law,” 17-63.

⁵⁷ Beattie, *Crime and the Courts in England*, 438.

⁵⁸ McKenzie Tyburn's *Martyrs*, 5.

⁵⁹ Mendelson and Crawford, *Women in Early Modern England*, 35.

⁶⁰ Peter King, *Crime, Justice, and Discretion in England, 1740-1820* (Oxford: Oxford University Press, 2000), 283.

⁶¹ Beattie, *Crime and the Courts in England*, 437.

their own. Of the twenty-five women charged with murdering their husbands, seven (28%) were convicted of petty treason; four (12%) were found guilty of murder; another seven (28%) had their charge downgraded to manslaughter; and eight (32%) were acquitted.⁶²

A Gendered Perception of Crime

Ideas about crime and sin were a central aspect of seventeenth- and eighteenth-century lives. Crime and sin were connected in the sense that crime was considered to be the individual's choice and the inevitable result of a life of vice. According to Andrea McKenzie, the "'public sinner' was different from the 'private sinner' only in degree, and not in kind [...]."⁶³ Even though in the eighteenth century crime began to be less associated with the inherent wickedness of human nature and more with social and environmental determinism, the idea of sin and crime as addictive and progressive persisted in popular culture.⁶⁴ In William Hogarth's series of engravings *Industry and Idleness* (1747) and *A Harlot's Progress* (1732), the artist portrays the slippery slope of sin, leading young men and women from honest lives to the gallows. For both men and women, one of the most dangerous pitfalls was to succumb to sexual temptation. As in George Lillo's play *The London Merchant* (1731), the character Millwood leads poor George Barnwell to steal from his master and kill his uncle, many male criminals of the eighteenth century blamed their contact with lewd women for their crimes.⁶⁵ One July 1752 execution account in the *London Evening Post* notes:

⁶² OBPS, *The Proceedings of the Old Bailey* online.

⁶³ McKenzie, *Tyburn's Martyrs*, 56.

⁶⁴ *Ibid.*, 57-59.

⁶⁵ George Lillo, *The London Merchant: Or, The History of George Barnwell* (London: 1731).

It is remarkable, that of the eleven, who Yesterday suffered, seven of them ascribe their Ruin to the Association of lew'd Women, who drove them to unlawful Courses, in order to support the Extravagancies of those Daughters of Plunder.⁶⁶

While women appear mainly as temptresses of men, they also had a place as criminals in their own right. In the common popular perception, there was a clear difference between crimes committed by women compared to crimes committed by men. Infanticide, for example, was considered to be a singularly female crime, even though court records show that there were many cases of men murdering infants that were simply tried as murder.⁶⁷

Criminal offences tried at the Old Bailey where defendant gender was female, 1674-1800.

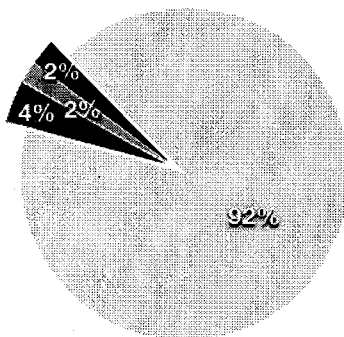


Figure 1.

Theft - 15206
 Killing - 329
 Other (non-violent) - 665
 Other (violent) - 411

At the Old Bailey, there were a total of over 16,000 females on trial between 1674 and 1800. Of all the accused women, 92% appeared on charges of theft, with only 2% on charges falling under the category of killing.⁶⁸ Except for infanticide, most violent

⁶⁶ *London Evening Post* (London, England), Saturday, July 11, 1752.

⁶⁷ OBSP, *The Proceedings of the Old Bailey* online. It should be noted that the overwhelming majority of women charged with infanticide were single women. The charge of infanticide is very closely related to the charge of concealment of the pregnancy and birth. Married women, like men who killed their children, were generally charged with murder proper. This reflects the status differences within gender, since married women were considered to be more reputable than unmarried women. See for example R.W. Malcolmson, "Infanticide in the Eighteenth Century," in *Crime in England, 1550-1800*, edited by J.S. Cockburn (London: Methuen, 1977).

⁶⁸ OBSP, *The Proceedings of the Old Bailey* online.

offences were committed by married women.⁶⁹ Overall, women were much more likely to use physical violence towards members of their own household or close acquaintances than towards strangers. As Beattie points out, this may have been because of the restricted scope of their lives, keeping them mostly in and around the home; women were also less likely to carry dangerous weapons.⁷⁰

⁶⁹ Beattie, "The Criminology of Women in Eighteenth-Century England," 102.

⁷⁰ *Ibid.*, 83-89.

Chapter II: Excusing the Inexcusable: Petty Treason Defences

This study is aimed at furthering the understanding of popular perceptions about crime and gender, with reference to the crime of petty treason, and the excuses and defences invoked by women charged with this offence. All the cases discussed in this study have one factor in common: the central aim of women's defences was to save themselves from being executed. Female defendants had only a limited number of defence options, since the violent death of their husbands was considered to speak for itself. Unlike in modern times, the link between the degree of violence and fatality could be very weak; relatively minor injuries could lead to death over time, due to the lack of efficient medical care.⁷¹ For instance, in 1695, Parthenia Owen bit her husband in the finger during an argument, which led to an infection, which in turn led to Owen's death over the course of several months. According to one witness, "the Husband spoke well of his Wife when he languished, and that she had nursed him very kindly during that time." Parthenia Owen was found not guilty.⁷² Women had to prove that whatever violence they used was unintentional in order to have their charge downgraded to manslaughter or to be acquitted altogether. However, as the example of Parthenia Owen illustrates, another crucially important aspect of a successful defence was to provide supportive character witnesses, who would testify to a defendant's good reputation within the neighbourhood or parish community. It is through the nature of female defendants' excuses before the law, as well as through the success or failure of witness testimonies that we can learn

⁷¹ Gaskill, "Reporting Murder," 24.

⁷² OBSP, *Parthenia Owen*, 8th May 1695, Ref. No. t16950508-12.

about the practical implications of gender roles and about what it meant for early modern women to subvert domestic hierarchies.

What is Petty Treason?

She was placed on a stool something more than two feet high, and a chain being placed under her arms, the rope round her neck was made fast to two spikes, which being driven through a post against which she stood, when her devotions were ended, the stool was taken from under her, and she was soon strangled. When she had hung about fifteen minutes, the rope was burnt, and she sunk till the chain supported her, forcing her hands up to a level with her face, and the flames being furious she was soon consumed.

— *Report on the Execution of Elizabeth Herring, September 11, 1773.*⁷³

Petty treason is defined as a servant's murder of a master, but was more often applied to a wife's murder of her husband, making it an almost exclusively female crime. Edward III first introduced the notion of petty treason to England in a 1351 statute. This statute remained in place for over 500 years, only being repealed in 1858. The term petty treason was widely used by the early seventeenth century.⁷⁴ The use of the word 'treason' implies betrayal, treachery and insubordination that were considered to be inherent in the act.⁷⁵ The boundaries of petty treason were elastic, which meant that the charge could, in theory, be applied to many different kinds of cases where a social inferior violated a private or public allegiance.⁷⁶ The murder of a husband was only considered to be petty treason if the crime was premeditated or planned with "malice aforethought;" if women

⁷³ Report on the execution of Elizabeth Herring. *London Chronicle or Universal Evening Post* (London, England), Saturday, September 11, 1773.

⁷⁴ Frances E. Dolan, "The Subordinate(s) Plot: Petty Treason and the Forms of Domestic Rebellion," in *Shakespeare Quarterly*, Vol. 43, No. 3 (Fall 1992), 317.

⁷⁵ Shelley A.M. Gavigan, "Petit Treason in Eighteenth Century England: Women's Inequality before the Law," in *Canadian Journal of Women and the Law*, Vol. 3, Issue 2 (1989), 346.

⁷⁶ Oaths were considered to be very important in late seventeenth- and eighteenth-century England. While today a marriage might be considered a private event, in the early modern period, the taking of an oath in marriage would certainly have been a primarily public allegiance. Frances E. Dolan, *Marriage and Violence: The Early Modern Legacy* (Philadelphia: University of Pennsylvania Press, 2008), 82.

could prove otherwise, their charge would be downgraded to manslaughter and punished with a brand on the thumb.⁷⁷

Petty treason, like high treason, was punished very harshly, the idea being that traitors deserved to suffer the maximum of pain and ignominy possible; in addition, the severe punishment of traitors was intended to have an exemplary effect and was used as a deterrent.⁷⁸ Linking petty treason to high treason in its name and punishment indicates that women who killed their husbands were perceived as a threat to the king and the state, challenging the strict patriarchal hierarchical social order.⁷⁹ I find it particularly interesting that women who were found guilty of petty treason were punished the same way as women convicted of high treason, whereas men were punished differently. Men convicted of petty treason (mostly male servants who killed their masters) were drawn to the place of execution on a sledge and hanged. They were spared the mutilation, disembowelment and decapitation that men convicted of high treason had to face.

Female petty traitors, just like high traitors, were burned at the stake. The fact that the punishment of these two offences was the same indicates that the danger the respective crimes posed to society were perceived as being virtually the same.⁸⁰ As Anne Coughlin points out, many historians

have argued that this harsh treatment arises from a conviction that the woman who offends has transgressed twice; by disobeying the commands of the criminal law, she also has violated society's expectations for appropriate conduct from one of her gender.⁸¹

⁷⁷ Gavigan, "Petit Treason in Eighteenth Century England," 348.

⁷⁸ Beattie, "Violence and Society in Early-Modern England," 39.

⁷⁹ Dolan, "The Subordinate(s) Plot," 317.

⁸⁰ *Ibid.*, 318; In fact, most women who were burned at the stake were convicted of coining, which was high treason.

⁸¹ Anne M. Coughlin, "Excusing Women," in *California Law Review*, Vol. 82, No. 1 (1994), 3.

In theory, however, the differential treatment of male and female traitors was due to the “indecent” of the public exposure of women’s bodies, “For the public exhibition of [women’s] bodies, and dismembering them, in the same manner as is practised to the men, would be a violation of that natural decency and delicacy inherent, and at all times to be cherished in the sex.”⁸²

Women who were condemned to burn at the stake were usually strangled beforehand. The last woman to be burned alive for petty treason in England was Catherine Hayes in May 1726. Even though it was often assumed that the executioner tried to strangle her, but burned his hand and dropped the rope, recent scholarship on Catherine Hayes has shown that officials ordered her to be burned alive, since her crime was perceived to be particularly heinous and should serve as a warning.⁸³ Even though petty treason remained distinct from murder until the nineteenth century, the burning of women was abolished in 1790. Traditionally, historians have attributed this change in penal practice to a new perception of the female sex brought on by the Enlightenment. Simon Devereaux, while acknowledging the impact of Enlightenment ideas, argues that the abolition of the burning of women must be seen in connection with the place of execution being moved into the city centre, where the act of burning a human being had a much greater and longer lasting impact on spectators and residents.⁸⁴

Between 1674 and 1800, there are a total of 20 criminal cases listed within the category of petty treason on the *Old Bailey Proceedings* online: two of the defendants

⁸² *The Laws Respecting Women, as They Regard their Natural Rights, or Their Connections and Conduct*, (London, 1777); quoted in Simon Devereaux, “The Abolition of the Burning of Women in England Reconsidered,” In *Crime, History and Societies*, Vol. 9 Issue 2 (2005), 4. See also William Blackstone, *Commentaries on The Laws of England*, Vol. IV, 1783.

⁸³ United Kingdom National Archives, SP 44/124, 284 (Delafaye to Recorder, 6 May 1726). I am grateful to Dr. Simon Devereaux for providing me with this source reference.

⁸⁴ Devereaux, “The Abolition of the Burning of Women in England Reconsidered,” 3.

were male and eighteen were female. The petty treason cases under investigation are spread out over the respective time period with one to three cases each decade.⁸⁵ It should be noted at this point that another seven cases of women murdering their husbands within this time period can be found under the category of murder.⁸⁶ Why they were listed under murder rather than petty treason is hard to say. One suggestion is that most of these seven cases fell within the 1750s. Officials may have been reluctant to send that many women to the stake within one decade. Their categorization may also indicate that administrative concerns affected sentencing, or that changes in attitudes about women actually began to manifest themselves in the behaviour of legal officials towards female defendants. Regardless of these seven cases of women killing their husbands being listed under the category of murder, rather than petty treason, they prove to be very pertinent to the discussions in this study. Throughout my thesis, these cases will be treated with equal attention.

⁸⁵ OBSP, *The Proceedings of the Old Bailey* online.

⁸⁶ I have mentioned earlier, the boundaries of what constituted petty treason were in theory very fluid. There were a number of cases of females murdering their male guardians, for example, which I have not included in my study.

Appearing Feminine: The Importance of Character Witnesses

I am a Fruiterer in the Fleet-market. I know nothing of the Fact, but the Woman always seemed an honest industrious Person. I seldom saw her in the Market scarce a Month together, but I saw her with black Eyes, and her Face bruised some way or another. I know nothing of the Fact, only the Woman used to take Care to get an honest Livelihood.

– *George Taylor, witness in the trial of Anne Williams, 9th September 1747.*⁸⁷

When Anne Williams was charged with petty treason in 1747, her chances of escaping the stake were slim. On July 21, 1747, Anne was found in the court of the house she lived in with her husband dead at her feet and a bloody knife in her hand. Neighbours had rushed into the court after they had heard ‘murder’ cried out, evidently by the defendant herself. Why was it that Anne was only charged with manslaughter, rather than petty treason? In many ways her case was similar to other petty treason cases of the time, but there were also some important differences. Anne Williams, according to witnesses was ready to accept the consequences of the deed; she is quoted to have said, “My Tommy is dead; if I have killed him I am ready to suffer.”⁸⁸ More importantly, however, Anne seems to have had the support of her neighbours who all attested to her having been severely abused by her husband and, like George Taylor, swore to her good character.

Before discussing the excuses invoked by female defendants charged with killing their husbands, I will turn my attention to the importance of character witnesses in the petty treason cases brought before the Old Bailey between 1674 and 1800. Throughout this study it will become evident that the outcome of a trial in which the defendant was female seemed to depend equally or more on the defendant’s reputation, as described by witnesses, than on physical proof. In her study largely based on slander accusations in early modern church courts, Laura Gowing has argued convincingly for the enormous

⁸⁷ OBSP, *Anne Williams, 9th September 1747*, Ref. No. t17470909-21.

⁸⁸ *Ibid.*

power of spoken words both outside of and within the courts.⁸⁹ During this period, people's words were accepted as a legitimate measure of character and were therefore directly linked to the reputation of any given person within a neighbourhood. Gowing further argues that women relied on verbal accusations and abuse much more heavily than men, since women had considerably less access to institutional means of complaint.⁹⁰

For the purpose of this study, it is important to note several arguments Gowing invokes in her book. As we have seen earlier, female honour and reputation were defined in reference to sexual character; a good woman was primarily a chaste woman. The early modern concepts of 'common fame' and 'credit' were almost exclusively orally conveyed and were central in proving a defendant's innocence or guilt in court.

For both men and women [...] credit was measured through a combination of factors; but for women, that combination was filtered through the lens of sexual honesty. Sexual morality was not the only gauge of female reputation: for women, neighbourly behaviour, hard work, and quiet living were some of the factors that might give a good name.⁹¹

The petty treason cases used for this study show how important good 'credit' was to the success of a trial, where compurgation by neighbours could mean the difference between perceived innocence and guilt, life and death. It should also be noted that in general, women were less influential witnesses than men. Being a witness, on the other hand, was much more important to women than to men, because it was practically the only means for women to participate actively in the justice system. As Gowing puts it, "the act of

⁸⁹ Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (New York: Oxford University Press, 1996), 111.

⁹⁰ *Ibid.*, 62.

⁹¹ *Ibid.*, 128-129.

testifying gave a weight to women's words and an attention to women's points of view that was rarely accorded them in law or in culture."⁹²

Witness testimony on character of female defendants charged with murdering their husbands at the Old Bailey, 1674-1800 (counting by verdict).

	Petty Treason	Murder	Manslaughter	Acquitted
Negative character	5	1	0	0
Mixed character	1	1	1	0
Positive character	0	0	5	5
No mention of references	1	1	1	1
References to mental instability	0	0	0	2
Total	7	3	7	8

Figure 2.

In this Figure we can see the type of character references given for each of the twenty-five women charged with murdering her husband by her neighbours and members of her immediate community. This table also shows the outcome of each trial, counting by verdict. Of the seven women convicted of petty treason, five received bad character references, one woman received mixed references, and in one case no references at all were mentioned. In total there were three women convicted of murder, none of whom

⁹² Ibid., 234.

received good character references. The picture of those women receiving manslaughter verdicts looks very different: one woman received mixed references, one received no references at all (that were mentioned), and the remaining five women were attested to have good reputations within their communities. Of the eight defendants who were acquitted of their charges, five received good character references, in one case no references were mentioned, and two women were found not guilty due to neighbours testifying to their mental instability. The numbers in this figure clearly suggest that the better the character references of a defendant provided in witness testimony, the better the chances of the defendant to escape the stake or the gallows. In the following sections of my thesis I will give many concrete examples, which will provide details on the women behind the numbers in this figure.

Women Acting like Women should

As I pointed out in an earlier section of this study, discretion was essential to the functioning of the early modern English criminal system. The law was in most cases flexible and the guilt of an accused person was assessed depending heavily on hearsay, opinion and the character of the defendant. Women were expected to act according to gender ideals, showing remorse, modesty and subordination to their superiors.⁹³ As Mendelson and Crawford point out, historians studying women accused of property offences have widely accepted that female defendants understood and could use the provisions of the law for their own purposes: why, then, should this be different for women charged with murder or petty treason?⁹⁴ This thesis will show that the defence

⁹³ Mendelson and Crawford, *Women in Early Modern England*, 47.

⁹⁴ *Ibid.*, 35.

pattern in late seventeenth- and eighteenth-century petty treason trials indicates that most women seem to have had an understanding of what judges and juries expected of them in terms of gendered behaviour.

As we will see in my section on domestic violence, women did attempt to play up their physical frailty or victimisation by husbands, even if such claims were not believed without external contributions, for instance by neighbours. One very gender-specific means for female defendants to escape execution at least for the time being, no matter what their crime, was to "plead the belly." If a woman claimed to be pregnant, a jury of matrons was called to examine the accused. Being found quick with child legally postponed the sentence, but in practice death sentences were often commuted.⁹⁵

Some of the women charged with petty treason are also reported to have displayed their feminine frailty by other means during their apprehension and trial. Elizabeth Symbole, for example, was charged for stabbing her husband with the help of her two sisters and a male accomplice in 1695. Her witnesses not only described her as religious and modest, they also report that after her husband's violent death, "Mrs. Symbole was much troubled, crying out, She was undone." Elizabeth and her sisters further described themselves as "affrightened" and helpless. Elizabeth Symbole is reported to have called "a whole Cloud of Witnesses to prove that her Husband and she had always lived very lovingly together, and that Mr. Symbole had been often times heard to speak very respectfully of his Wife, and loved her very well."⁹⁶ All three women were acquitted and the murder was blamed on the male accomplice who remained unapprehended.

⁹⁵ Ibid., 46; Beattie, *Crime and the Courts in England*, 431; In my sample, I only found one woman who pleaded the belly, Elizabeth Herring, but her claim was unsuccessful and she was burned at the stake in 1773.

⁹⁶ OBSP, *Elizabeth Symbole, 20th February 1695*, Ref. No. t16950220-18.

Another very interesting aspect of the behaviour of female defendants charged with petty treason is how often they remained silent. When analysing the trials held at the Old Bailey during the eighteenth century, we find that not all women actually made excuses or even spoke at their trials. It is possible that these silences were the result of censorship or compression on behalf of the Old Bailey recorders. As John Langbein points out, women's verbal defences may not have been included in trial accounts because they were not considered to be interesting.⁹⁷ While this explanation is feasible, historians should also consider that the silence of female defendants might have reflected a conscious adherence to a larger societal script, in which women were supposed to be silent and obedient. The absence of lengthy defence speeches in specific cases could also indicate that the defendant in question was crying too vigorously to speak. This could be seen as another aspect of the female 'script'.

Maybe some of the women charged with petty treason believed that silence would serve them better in front of an all-male jury and male judge. Mary Owen, for example, is quoted to have said in her petty treason trial in 1776, "I leave my defence to my counsel; my witnesses can tell better than I can."⁹⁸ This seems to reflect two different beliefs: first, Mary Owen was aware of the power of witness testimony in court; second, Mary felt that in court, a woman's best chance to be acquitted of a crime was by the words of others rather than her own.⁹⁹ Verbal restraint was considered a cornerstone of female virtue. As one seventeenth-century guidebook suggested, "She that is talkative is not likely to prove

⁹⁷ Langbein, "Criminal Trial before the Lawyers," 283.

⁹⁸ OBSP, *Mary Owen, 17th April 1776*, Ref. No. t17760417-58.

⁹⁹ As Cynthia Herrup demonstrates in her work on the Castlehaven case, women were not supposed to be verbal at their trials. Women who refused to remain silent were suspected to be unchaste, particularly if they chose to speak about sexual matters. See Cynthia Herrup, "'To Pluck Bright Honour from the Pale-Faced Moon': Gender and Honour in the Castlehaven Story," in *Transactions of the Royal Historical Society*, 6th Series (1996), 152; Gowing, *Domestic Dangers*, 122.

either a quiet wife, or a wise [...] for tis the guise of the harlot to be forever babbling."¹⁰⁰

The absence of many women's defence speeches is illustrative of the difficulty in extracting the experiences of women from sources that were exclusively recorded by men.

Criminal historians have widely accepted that female defendants who showed feminine frailty and vulnerability received more sympathy from both the authorities and the populace.¹⁰¹ The power of tears, fainting and similar behaviour can only be partially assessed, however, since it must be assumed that such behaviour was not always recorded. In some of the petty treason cases we can see how women tried to live up to gender expectations but failed for various reasons. The grief Elizabeth Lylliman was reported to have shown upon her husband's death in 1675 seemed to have been too far out of her usual character to be believed. It is said that

she fell into a kind of passion, and desired of the Court that she might see her dear Husband before she pleaded, which she insisted upon with seeming earnestness for some time; but this appeared to the Court to be but a mad kind of Artifice, designed out of her feigned passionate Zeal to her Murthered Husband to take off the suspicion of her being instrumental to his death.¹⁰²

Elizabeth Lylliman, who was described as "old both in years and wickedness," even though there was no mention of any witness testimony on her character, was found guilty of petty treason.¹⁰³

¹⁰⁰ Matthew Griffith, *Bethel: or, a Forme for Families* (London, 1633), 261; as quoted in Gowing, *Domestic Dangers*, 61.

¹⁰¹ As Andrea McKenzie points out in her work on the behaviour of condemned prisoners at the gallows, female criminals were frequently characterized as masculine and viewed unsympathetically, especially after the middle of the eighteenth century. For example, female courage at the place of execution was considered 'masculine boldness' and could trigger the anger of the crowd. McKenzie, *Tyburn's Martyrs*, 83, 196, 197.

¹⁰² OBSP, *Elizabeth Lylliman, 7th July 1675*, Ref. No. t16750707-4.

¹⁰³ *Ibid.* Similar to Elizabeth Lylliman, Catherine Hayes, who will be discussed in much detail later on, showed 'feigned passionate' grief when she was asked to identify her murdered husband's head. Since she was suspected of having murdered him, her reaction was widely considered to be insincere and, in the end, worked in her disfavour.

Elizabeth Herring, who was charged with cutting Robert Herring's throat at an ale-house in 1773, similarly appeared insincere during her trial. Her version of the circumstances leading up to the crime seemed too exaggerated to be considered true:

he came home and called me a great many bitches and whores, and used me very ill, and broke every little thing belonging to the apartment that I had; he ran a fork into my arm, I have shewn it to a great many people; he struck me and knocked me down, and used me very ill in every shape in the world. [...] I went to Mrs. Darling's who has had a spite against me six months, I called for a pennyworth of beer; he called me every thing that was ill; I had no person to take my part. [...] then he called me to come to him; he said you b - h come and eat a bit; I was overjoyed that he should ask me to come to eat with him after we had quarrelled; I went to him with as much joy as I should go into the kingdom of heaven this moment; when I came to him he took up a pipe and threw it in my face; after that I went to another box, then he threw a pint of beer in my face; I had a pennyworth of beer in one hand and the knife in the other; I threw the knife at him, which proved fatal.¹⁰⁴

The testimony of the witnesses at her trial is ambivalent. While most agree that her husband was a violent man, few have anything to say about Elizabeth's character. One female witness is reported to have said: "I have known the prisoner from a child, she is a sober woman; he was a very violent bad husband."¹⁰⁵ In the end, the Elizabeth Herring's defence speech seems to have undermined any sympathy she may have enjoyed: not only did she use coarse language, which was very unwomanly, her story also suggests that the people in her surroundings did not think much of her character.

¹⁰⁴ OBSP, *Elizabeth Herring*, 8th September 1773, Ref. No. t17730908-6.

¹⁰⁵ *Ibid.*

Common-law Relations

While it was important for female defendants to appear feminine at their trials, they also needed to provide sufficient reason for why they should be found not guilty of petty treason. In many instances this reasoning coincided with the motivation for their crime (for example, domestic abuse), in others, as I will discuss in this section of my thesis, the women on trial attempted to escape the stake on a technicality. The easiest way to avoid being found guilty of petty treason was to prove to never have been married to the victim in the first place. At the same time, claiming common-law relations was hardly a benefit to the defendant. In a society where a woman's reputation was founded on her sexual morals, living with a man without being married was considered highly inappropriate.

In a 1725 petty treason trial, Elizabeth Roberts claimed that her "dear Dickey" accidentally stabbed himself in the ribs during an argument with her. Even though she admits that she may have contributed to his unhappy end, she also points out that she was never married to him. The watchman who is called as a witness agrees: "tho' I must needs say, that I never suspected that he was her Husband, for they lived an abominable Life together."¹⁰⁶ The watchman's testimony is a strong indication that the neighbourhood did not approve of the Roberts' living arrangement. "Dickey," who lived long enough to accuse Elizabeth of his murder is quoted as saying: "My Wife! [...] D - her, a Bitch, she's none of my Wife, and I'll turn her a-drift to-morrow."¹⁰⁷

¹⁰⁶ While this witness depicted the relationship between Elizabeth and her husband as rather hostile, Elizabeth Roberts herself was one of many other women who attempted to establish that there was true affection between her and the deceased. When Mr. Roberts fell to the ground stabbed, Elizabeth claimed to have called out, "Speak to me, Dickey, (says I) My dear Dickey speak to me," suggesting that the deed committed against her partner was unintentional. OBSP, *Elizabeth Roberts*, 30th June 1725, Ref. No. t17250630-6.

¹⁰⁷ Ibid.

During the eighteenth century, an official divorce with permission to remarry was virtually impossible, requiring an Act of Parliament, which was very costly. A divorce by Act of Parliament could only be initiated by men, and only if they could prove their wives committed adultery.¹⁰⁸ Members of the middling and upper classes also had the option to pay a conveyancer to draw up a formal agreement of 'private separation', but this process did not legitimize remarriage. One option open to all members of society who had become victims of adultery or life-threatening cruelty was to sue in a church court for separation from bed and board – again, without permission to remarry.¹⁰⁹ However, not only was it very difficult to justify a lawsuit, but it is likely that the public nature of trials also repelled many women, who, trying to protect their own reputation and that of their families, preferred to find quiet solutions to their marriage problems.¹¹⁰

A woman charged with petty treason was assumed to be married to her victim; rather than the prosecution having to provide proof of marriage, the defendant had to provide proof she was not married if a common-law claim was to be successful. 'Success' in a common-law claim did in none of the cases mean acquittal, but a female defendant could avoid death by burning, since her charge would be downgraded to murder, for which the punishment was hanging. There was also a very slight chance of the charge being downgraded to manslaughter. This, however, was very unlikely, because a woman's 'bad' character – which was obvious in her living in sin with a man she was not married to – was enough to make her guilty.

¹⁰⁸ Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990), 141.

¹⁰⁹ *Ibid.*, 141.

¹¹⁰ Margaret Hunt, "'The great danger she had reason to believe she was in': Wife-beating in the Eighteenth Century," in *Women in History: Voices of Early Modern England*, edited by Valerie Frith (Toronto: Coach House Press, 1995), 83.

In 1773, Elizabeth Herring attempted to lessen her punishment by claiming to have lived common-law with her victim. In the Old Bailey Proceedings she is quoted to have said: "they say he is my husband, but he is not; I lived with him eleven years, but never was his wife." One witness deposed that "She had said she would spill his blood, and be hanged for him an hour or more before she did it."¹¹¹ This not only suggests that the crime was premeditated, but also that Elizabeth Herring expected to be charged with murder, since she referred to being hanged. At the time of the trial, it might have seemed a good idea to claim not to have been married, but in retrospect, Elizabeth made a bad situation even worse. Both Elizabeth Roberts and Elizabeth Herring had to pay with their lives. The former successfully downgraded her charge to murder and was hanged; the latter was burned as a petty traitor. One newspaper reports that in Elizabeth Herring's case, "an incredible number of persons attended the execution; and it is said several lives were lost by being trampled under foot by the mob."¹¹²

When a Marriage falls apart

To circumvent the costs associated with an official separation, many married couples simply chose to part ways and found new partners. Historians have limited means of measuring the rate of desertion and elopements among early modern people. Since official divorces and separations were financially costly, the people most affected by unofficial means of ending a marriage were the lower classes. There are a few sources that give insight into popular 'divorce;' one of these is reports of wife-sales, another is court records, such as bigamy trials. As newspaper reports, songs and other eighteenth-

¹¹¹ OBSP, *Elizabeth Herring*.

¹¹² *Middlesex Journal or Universal Evening Post* (London, England), Saturday, September 11, 1773.

century textual representations show, there was a custom of wife-sales among the lower ranks of early modern English society. Wife-sales were popularly believed to be a valid form of divorce, and there was much ceremony surrounding these events.¹¹³ A wife to be sold had to appear at a public marketplace, usually with halter around her neck – clearly a very humiliating experience for the woman involved – and was there auctioned off to the highest bidder, who was usually publicly known to be her lover.¹¹⁴ In order to ‘legalize’ wife-sales, it was custom to have witnesses present, state a minimum price, and in some cases even to draw up a written agreement.¹¹⁵ In the late eighteenth and nineteenth centuries, wife-sales increasingly became a subject of criticism by middle-class social reformers and moralizers, leading to numerous articles and reports being written.¹¹⁶

Though an interesting practice, as Lawrence Stone points out, historians must be careful not to overestimate the importance of wife-sales, since they probably attracted attention far beyond their significance.¹¹⁷ It can be safely assumed that rather than being sold on a marketplace, most women who ceased to live with their husbands had deserted or been deserted by them. Women who were unhappy in their marriage, in theory, had the option to simply leave. The problem, however, was that eighteenth-century women in most cases depended on male support to survive economically. Women may also have been reluctant to leave because they felt responsible for the well-being of their children, because of social pressure or for religious reasons.¹¹⁸ Besides, women who abandoned

¹¹³ Samuel Pyeatt Menefee, *Wives for Sale: An Ethnographic Study of British Popular Divorce* (Oxford: Blackwell Publishing, 1981), 1. See also E.P. Thompson, *Customs in Common*, Chapter 7: The Sale of Wives (New York: New Press, 1991).

¹¹⁴ Mendelson and Crawford, *Women in Early Modern England*, 141.

¹¹⁵ Menefee, *Wives for Sale*, 2.

¹¹⁶ *Ibid.*, 133.

¹¹⁷ Stone, *Road to Divorce*, 148.

¹¹⁸ Mendelson and Crawford, *Women in Early Modern England*, 142.

their husbands also abandoned any hopes of a good reputation, since their honour was inseparable from their domestic conduct.¹¹⁹

As the case of Lydia Adler illustrates, it was less problematic for a man to abandon his wife to spend time with his mistress. When standing trial in 1744 for killing her husband by giving him a mortal bruise in his private parts, Lydia claimed,

My husband loved women, he had got 2 wives besides me; he had a crew he lived with in St. Giles's, and one of them gave me a slap on the face; I asked her what she did here? and she said he was her husband and struck me, and said she could cut me in three pieces, and she tore my cap off my head.¹²⁰

The witnesses at Lydia Adler's trial were generally very sympathetic towards the accused. All witnesses attested to the cruel and irresponsible treatment of Lydia by her husband, which they had witnessed. One male witness deposed,

Joseph Steele: I have known the Prisoner about nine or ten years. Mr. Adler was acquainted with another woman in Golden-lane that he had two children by; he was always a loving man to his wives at first, and when they came to be a little expensive to him, they used to fight like dog and cat [...] She [Lydia] was as pretty a modest behaved creature as could be, and continued so for a long time; he was as fond of this at first as he was of the others, but then money growing thin he wanted her to work, and allowed her but little for it, and would buy stale things for 2 d. which if they were good would be worth 8 d. [...].

Court: You seem to say, that this woman really did beat him?

Steele: I believe she was like other women, that when he struck her, she struck him again.¹²¹

Even though it becomes evident that the defendant was not a 'quiet' woman, the witness testimony is primarily blackening Mr. Adler's reputation, rather than his wife's. The charge against Lydia Adler was downgraded to manslaughter and she was branded in the hand.

¹¹⁹ Moreover, a good reputation was central in terms of obtaining employment.

¹²⁰ OBSP, *Lydia Adler, 28th July 1744*, Ref. No. t17440728-23.

¹²¹ *Ibid.*

Another source that illustrates how common it was for early modern people to seek a second marriage or partnership are bigamy trials held at the Old Bailey. Between 1674 and 1800, there were 83 cases of women charged for bigamy (almost fifty percent of these cases were between 1710 and 1740 alone). While 83 women charged for bigamy may seem like a large figure, the number seems less significant when compared with the number of men charged for bigamy, which amounted to 273 during the same period.¹²² One of the reasons for the difference in numbers may have been that women were more likely to complain to courts, initiating a bigamy trial. It can be argued that it was more important for women to prove the legality of their marriage for the sake of saving their reputation and securing their economical survival. The case of Bridget Potter, who was charged for bigamy in 1718, can serve as an example of how complicated the marital relations between men and women could be.

Bridget Potter, alias Hamlet, alias Ward, was indicted for that she was married to James Hamlet the 26th of May last, and also married again to Edward Ward, the 4th of August last. The Evidence depos'd that after she was married to James Hamlet, he being some time absent from home, Edward Ward used to visit her in a way of Courtship, and as she was desirous for the present to keep her Marriage private, and as she pass'd for a Widow, to let him have the Freedom of coming to her as usual, which Jest she carried on till it came to earnest. The Marriages were both proved. She alledg'd in Court that Hamlet had another Wife at Plymouth but could not prove it, and he deny'd it, whereupon the Jury found her guilty of the Indictment.¹²³

The punishment for bigamy was in most cases branding, but towards the end of the eighteenth century, some men and women were imprisoned or had to pay fines.¹²⁴

I have suggested here that, even though it was legally impossible for women to divorce their husbands and remarry, there were some means to leave unsuccessful

¹²² OBSP, *The Proceedings of the Old Bailey* online.

¹²³ OBSP, *Bridget Potter, 10th January 1718*, Ref. No. t17180110-8.

¹²⁴ OBSP, *The Proceedings of the Old Bailey* online.

marriages and find new partners. The petty treason trials in which defendants argued to have lived in common-law with their victims illustrate the complicated circumstances of early modern marriages, which tended to work more to the disadvantage of women than men. These cases also show that some women were unaware of the harmful consequences of appearing 'unchaste', by admitting to have lived with a man without being married to him. The verdicts spoken in the cases discussed in this section prove that claiming common-law relations was not only an ineffective defence, but also demonstrated 'bad' character, providing sufficient proof for conviction.

Domestic Violence

A spaniel, a woman and a walnut tree,
The more they're beaten the better they be.¹²⁵

The excuse most commonly invoked in eighteenth-century petty treason trials is that of self-defence, necessitated by excessive domestic violence. The right of husbands to chastise their wives physically is one of the most telling examples of the subordination of women in the early modern period; however, the use of domestic violence and the way society dealt with it also illustrates that there were some limits to the power of early modern patriarchs, particularly in regard to community involvement.

As I discussed earlier, the people of eighteenth-century London had a much higher tolerance for violence than we do today. Some degree of domestic violence was not only tolerated, but also sanctioned, since it was considered to be the duty of the patriarch to discipline all members of his household, over whom he had natural authority.¹²⁶ According to *A Treatise of Feme Coverts: or the Lady's Law* wives were to suffer no bodily damage, "otherwise than appertains to the office of a husband, and for lawful correction."¹²⁷ The focus of the law was clearly on the rights of men, not on the rights of women, since it was assumed that men only used violence to keep their family in order, and the violent behaviour of a husband could be directly traced back to disorderly behaviour on the wife's part.¹²⁸ One of the most frequently quoted rulings in regard to domestic violence was the so-called *Rule of Thumb*, made famous by Sir Francis Buller in a 1782 ruling, which established that a man must not beat his wife with

¹²⁵ Popular early modern proverb quoted in Anthony Fletcher, *Gender, Sex and Subordination in England, 1500-1800* (New Haven: Yale University Press, 1995), 192.

¹²⁶ Beattie, "Violence and Society in Early-Modern England," 43.

¹²⁷ *A Treatise of Feme Coverts: or the Lady's Law* (London, 1732); quoted in *Ibid.*, 43.

¹²⁸ Amussen, "'Being Stirred to Much Unquietness': Violence and Domestic Violence in Early Modern England," in *Journal of Women's History*, Vol. 6 Issue 2 (1992), 75.

a stick any thicker than his thumb; neither should chastising lead to the drawing of blood.¹²⁹ Whatever lay in the “grey area” between moderate correction and excessive or life-threatening violence was for the courts to decide, and we can imagine, in many cases this did not work out in the favour of abused women.¹³⁰

In some cases husbands must have known when they went beyond the acceptable degree of violence. In 1714, Elizabeth Fisher, who was accused of petty treason, claimed that she had to defend herself against her husband’s physical attacks and did not mean to stab him in the side. A male witness deposed that the victim “told him he had given his Wife very great Provocation, and had got a Mischief by it;” another witness who nursed the victim after the stabbing, swore “that he told her he had misus’d and beat his Wife to a great Degree.”¹³¹ In the case of Elizabeth Fisher, witness testimonies were a crucial element of her defence, proving to the judge and jury that the deed was unintentional. These depositions also indicate that even Mr. Fisher acknowledged that his behaviour was out of line.

Petty Treason as the Way out

As I have shown in the section on common-law, there were few ways for women to get out of a marriage, regardless how bad it was. Women could, however, turn to the courts and “pray the peace” against husbands, and there were several cases in which courts stepped in to support women suffering from excessive domestic violence.¹³² Men and women were supposed to “live quietly together”, and if they did not, they often

¹²⁹ Fletcher, *Gender, Sex and Subordination in England*, 192.

¹³⁰ Hunt, ““The great danger she had reason to believe she was in’,” 83.

¹³¹ OBSP, *Elizabeth Fisher*, 8th September 1714, Ref. No. t17140809-41.

¹³² Beattie, “The Criminality of Women in Eighteenth-Century England,” 86.

became the source of complaints in the neighbourhood.¹³³ The division between public and private life we know today was in no way established by the eighteenth century. Plebeian domestic violence was therefore not only apparent in the household but in the larger neighbourhood as well.¹³⁴ Female defendants had to count on their neighbours to come to courts with them and speak on their behalf.¹³⁵ As the cases discussed in this study show, female witnesses did not always side with female defendants, but often took an opposing stand. Regardless of which side female witnesses took, their words were weighed heavily in court decisions, giving them extensive power over the outcome of a trial.¹³⁶ This meant that if a woman accused her husband of using excessive force in court, it was crucially important for her to have the support of her neighbourhood or community.

Even though women could and did turn to courts to get protection from violent husbands, prosecutors of domestic violence did not necessarily have a good chance to be heard and believed.¹³⁷ In fact, it was likely that violent husbands would turn even more hostile after having been asked to pay court fines and being publicly embarrassed by their wives.¹³⁸ Besides, even if a violent husband was found guilty and had to post a bond for his good behaviour, these measures were seldom effectively enforced.¹³⁹

¹³³ Amussen, "‘Being Stirred to Much Unquietness’," 77.

¹³⁴ Mendelson and Crawford, *Women in Early Modern England*, 140.

¹³⁵ Dolan, *Marriage and Violence*, 87; There were also different ways for neighbours to defend a battered wife without going to court, most notably public shaming rituals, such as charivaris.

¹³⁶ Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (New York: Oxford University Press, 1996), 218.

¹³⁷ Jennine Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720* (Columbus: Ohio State University Press, 2005), 5.

¹³⁸ *Ibid.*, 54.

¹³⁹ Hunt, "‘The great danger she had reason to believe she was in’," 81.

Joyce Hodgkis was found guilty of petty treason in 1717 and burned at the stake. After having been married to her husband for fourteen years, she stabbed him in the upper thigh, causing a mortal wound. Joyce claimed “that the cursed Wretch had been the Ruin of her and himself too” and that she had to kill him out of self-defence.¹⁴⁰ In his account of Joyce Hodgkis the Ordinary of Newgate wrote,

And now she was made sensible, that tho' her Husband was such a wicked Person as she had represented him, who dealt very ill with her, in using her most unmercifully, yet she ought not to have taken his Life away for that, but have endeavour'd by some proper Means (as having the Minister of their Parish, or some other serious Person, to discourse him) to bring him to a better Temper. This she acknowledg'd was a Fault in her, that she did not use such a Method, but instead thereof took a Course with him as rid her of him indeed, but brought a Guilt and Trouble upon her, more than she ever had before.¹⁴¹

This shows that Joyce was aware of the possibility of complaining about her husband before the legal authorities, but it also suggests that she did not perceive this option to be particularly helpful in her case. We should remember that women were generally held responsible for marital violence, and since they must have done something wrong, they had no right to complain. In the court record of Joyce Hodgkis' trial, there is no mention of any person providing testimony on her character or reputation.

Some historians argue there is a clear link a between domestic violence and the lack of options for divorce.¹⁴² I do not believe that this means petty treason can be seen as a practical rather than passionate deed, but it should nevertheless be acknowledged that some women trying to excuse their crime by claiming domestic violence may have seen the murder of their husbands as their only way out of an abusive relationship.

¹⁴⁰ OBSP, *Joyce Hodgkis*, 8th September 1714, Ref. No. t17140809-35.

¹⁴¹ *Ordinary's Account*, 22nd September 1714, Ref. No. OA17140922.

¹⁴² Dolan, *Marriage and Violence*, 93.

The Bad Patriarch Defence

As we have seen, women had only limited means to complain to authorities, and the authority of a husband could only be seriously questioned if he failed as a patriarch. Being a successful patriarch, as I have argued earlier, did not only mean to keep one's household in order, but also to protect and care for one's dependants. There were numerous women facing charges of petty treason, who claimed their husbands had failed as patriarchs. So, for example, was the case for Mary Aubry, often known as Mary Hobry or "the French Midwife", who was charged with petty treason in 1688. One night, when Mary's husband Denis came home drunk, she strangled him with packthread, dismembered his body and attempted to rid herself of the parts. When she was brought to trial, she tried to excuse her crime by claiming that her husband wasted all their money in France and expected her to provide for him.¹⁴³ Mary also invoked her husband's failure as God-fearing man and moral exemplar by arguing that Denis broke all of the oaths he made, in which he had sworn to become a good husband and change his ways.¹⁴⁴ In addition, Mary claimed her husband had abused her physically and sexually.

While [she] was weeping, her Husband took her in his Arms and Press'd her so hard, that she could not fetch her Breath, and that the Blood started out of her Mouth. Immediately upon this, he attempted the Forcing of [her] to the most Unnatural of Villainies [presumably sodomy], and acted such a Violence upon her Body in despite of all the Opposition that she could make, as forc'd from her a great deal of Blood, [she] crying out to her Landlady, who was (as she believes) out of distance of hearing her.¹⁴⁵

By focusing on this irresponsible behaviour, Mary depicted Denis as a bad patriarch who did not live up to his obligations to take care of her and protect her. Though

¹⁴³ *A Hellish Murder Committed by a French Midwife On the Body of her Husband* [...], 1688, 32.

¹⁴⁴ *Ibid.*, 30.

¹⁴⁵ *Ibid.*, 33.

it seems that Mary provided an plausible defence, her explanations were nonetheless unconvincing and she was sentenced to burn for petty treason. The reason for Mary's failure was most likely the extensive testimony of hostile neighbours who saw Mary as the abusive party. Mary Aubry was described as violent and disorderly, and many members of her community spoke up against her at her trial. One female witness deposed

that she hath many times heard the Wife of *Dennis Hobry* exclaim against her Husband, calling him Drunkard, and Lewd Names; and that within the Compass of Five or Six Months last past, she [...] hath heard the said wife of *Hobry*, say (meaning her Husband) that *she would kill him*, and that *she has had it in her head to Kill him*.¹⁴⁶

Another witness claimed that Mary talked about her and her daughter marrying new husbands (the 'Cousins'), who were supposedly good and industrious men. When the witness asked Mary how she planned to marry a man, when she was married to Dennis already, Mary is quoted to have said, "Oh Never Trouble your self for that: I will find out as many Tricks as the Devil himself but wee'le get quit of him."¹⁴⁷

Catherine Lewis, who defended herself against murder charges in 1727 successfully proved that her husband's death was accidental and brought on by his own drunkenness. Not only had he "been from her all day drinking," she also accused him on spending time with (and presumably money on) "his whore."¹⁴⁸ One of Catherine's female witnesses deposed "That the Deceased was very barbarous to the Prisoner, and used to beat her with the Saph, belonging to a Yoak to carry Milk-pails, which she produced in Court; affirming that he beat her with that End which had the Iron to it." Catherine's charge was downgraded to manslaughter and she was branded in the hand.

Unlike Mary Aubry, Catherine Lewis had the support of her community:

¹⁴⁶ Ibid., 17.

¹⁴⁷ Ibid., 14-15.

¹⁴⁸ OBSP, *Catherine Lewis*, 22nd February 1727, Ref. No. t17270222-11.

Thomas Inkly, William Coaker, Mary Coaker, Mary Hews, Ann Parott, Elizabeth Barnet, Mary Bellentine, and several others depos'd. That the Prisoner had ever been a careful industrious Women, but weak in her intellectuals, and that she went in danger of her Life from the Deceased on every trivial Occasion.¹⁴⁹

Probably the most famous murderess of the eighteenth century to claim her deceased husband was a bad patriarch was Catherine Hayes, whom I mentioned earlier. Catherine succeeded in killing her husband John with the help of two male accomplices and became famous for the deed due to the gruesome details of the murder and the rumours about the people involved. The idea of an insubordinate wife was enough to evoke popular anxieties, but adding an ambitious and frustrated apprentice and a morally questionable lodger to the tale could raise public hysteria.¹⁵⁰ Catherine and her accomplices killed John Hayes, dismembered his body and threw his head in the Thames. There it was found and was afterwards displayed publicly for several days in order to be identified. Catherine at first denied the murder, but later admitted to have been involved. She was suspected to have had sexual relations with both accomplices, one of them allegedly being her own illegitimate son.¹⁵¹

Catherine listed a number of excuses for killing her husband, including the claim that he had murdered two of their infant children and buried them in their yard – a very un-paternal thing to do.¹⁵² Particularly interesting is her claim that he forbade her to go to church. The Ordinary of Newgate reported her as saying that “she went to Church; it was without her Husband’s Knowledge, and contrary to his Consent.” From the conversations

¹⁴⁹ Ibid.

¹⁵⁰ Dolan, “Home-Rebels and House-Traitors: Murderous Wives in Early Modern England,” in *Yale Journal of Law & the Humanities*, Vol. 4, No. 1 (1992), 18.

¹⁵¹ Saxton, *Narratives of women and murder in England*, 57-65.

¹⁵² *Ordinary’s Account*, 9th May 1726, Ref. No. OA17260509.

with one of Catherine's accomplices, Thomas Billings, the Ordinary gathered that Mr.

Hayes

was cruel and barbarous in beating and abusing his Wife; that he threaten'd to murder himself, and said, some time or other he should kill his Wife; and that he was an avow'd Athiest, frequently Blaspheming in a manner which ought not to be express'd, denying the immortality of the Soul, and alledging that Men and Women were in the same Condition with the Beasts that perish.¹⁵³

To contradict these allegations, a contemporary song condemning Catherine's crime paints a different picture of the murder victim:

In Tyburn Road, a Man there liv'd
A just and honest Life,
And there he might have lived still
If so had pleas'd his Wife.

But she, to vicious Ways inclin'd,
A Life most wicked led,
With *Taylor*s and with *Tinker*s too
She oft defil'd his Bed.

Full twice a Day to Church he went,
And so devout would be,
Sure never was a Saint on Earth,
If that no Saint was he!
[...]¹⁵⁴

John Hayes was not only portrayed by his murderers as questionable in regard to his religion and readiness to abide God's laws, he was also made out to be an excessively violent man. Catherine alleged to have been severely physically abused, a claim supported by her accomplices. In her defence, she is quoted to have said: "John Hays was none of the best of the Husbands, for I have been half starved ever since I was married to him."¹⁵⁵ The defendant also attempted to appear feminine during her confinement in

¹⁵³ Ibid.

¹⁵⁴ *Select Trials at the Sessions-House in the Old Bailey, for Murder, Robberies, Rapes, Sodomy, Coining, Frauds, Bigamy, and other Offences* [...], 1742 (Printed in London by John Applebee and sold by J. Hodges in London), 23.

¹⁵⁵ OBSP, *Catherine Hayes*, 20th April 1726, Ref. No. t17260420-42.

Newgate Prison: "she commonly fainted away, which she acknowledg'd to proceed from the Thoughts and Apprehensions of her Husband's horrible Murder."¹⁵⁶

Even though Catherine Hayes' defence addressed issues of abuse and neglect, as well as her husband's bad character, her attempt at excusing petty treason was unsuccessful. When we try to explain why Catherine's claims did not work, we must consider the defendant's reputation in the neighbourhood. Like Mary Aubry before her, Catherine did not have the support of her neighbourhood and community. On the contrary, the official account of Catherine Hayes' life and death reads:

The Characters of Mr. *John Hayes* and his Wife were vastly different: he had the Repute of a sober, sedate, honest, quiet, peaceable Man, and a very good Husband [...].

As to his Wife, she was on all Hands allowed to be a very turbulent, vexatious Person, always setting People together by the Ears, and never free from Quarrels and Controversies in the Neighbourhood, giving ill Advice, and fomenting Disputes to the Disturbance of all her Friends and Acquaintance.¹⁵⁷

The Battered-Wife Defence

As tempting as it may seem from our modern perspective, using domestic violence as an excuse for criminal behaviour can be very problematic. Ann Coughlin convincingly argued that accepting the battered-wife defence means to deny women the same capability for self-governance that is attributed to men. If courts and the public expect men to withstand pressures and remain law-abiding citizen, the same should be expected of women. Since the battered-wife defence is an offspring of patriarchal

¹⁵⁶ *Ordinary's Account*, 9th May 1726.

¹⁵⁷ *Lives of the Most Remarkable Criminals who have been Condemned and Executed for Murder, Highway Robberies, Housebreaking, Street Robberies, Coining, or other Offences [...]*, "The Life of Catherine Hayes, A Bloody and Inhuman Murderess, &c," 1873, 5.

assumptions, so Coughlin, excusing women's behaviour because of exposure to domestic violence actually reinforces women's social subjugation.¹⁵⁸

Another aspect to be considered is that it was not always men who initiated domestic violence. Susannah Broom, for example, described to be in her late sixties, was condemned of petty treason in 1739, after giving her husband several stab wounds of which he instantly died. One male witness at her trial deposed: "she was an obstinate Woman, and used to quarrel with him. I have saved him from her a great many Times. [...] There was not a more quiet Man on Earth than he was. [...] She was the wickedest Woman on Earth." Another female witness agrees:

Mrs. Broom is a very turbulent Woman, I will not meddle with her Door. [...] she was a mighty Woman for carrying a Pen-knife with two Blades, which she valued very much, and said, she had a great Respect for that Knife, and it would do her good Service. When she and her Husband quarrell'd, she used to beat him with the Poker, and say, she would win the Horse, or loose [sic] the Saddle.¹⁵⁹

Clearly, Susannah's neighbours did not support her domineering behaviour. Several witnesses characterized her as overtly violent towards her husband, who, as far as she was concerned, had no authority over her. She was convicted of petty treason and burned at the stake. Susannah also seems to have been very assertive and vocal at her trial. She continually interrupted the proceedings and asked all the witnesses, "Did you ever see me take up a Knife to my Husband in your Life?"¹⁶⁰

Susannah Broom serves as a striking example of how it cannot be assumed that women were less violent because of physical weakness. While female murderers were traditionally associated with poison, it appears – at least from the sample of women used

¹⁵⁸ Coughlin, "Excusing Women," 2-6.

¹⁵⁹ OBSP, *Susannah Broom*, 5th December 1739, t17391205-2.

¹⁶⁰ *Ibid.*

for the purpose of this study – that women's favoured murder weapon was a knife or poker.¹⁶¹ Overall, there is no doubt that domestic violence was seriously underreported. Women were unlikely to complain for fear of retribution, and men were even less likely to report being abused, because it would seriously jeopardize their masculinity, having to publicly admit the reversal of expected gender roles within their household.¹⁶²

Even though court records indicate that there seems to have been some sympathy towards battered wives, women's violent resistance to male authority remained ultimately unjustifiable. It is striking that almost every woman charged with petty treason during the eighteenth century claimed that her husband was excessively violent, even though this defence seems to have been of little success. The only instance in which the claim of having been excessively abused could lead to acquittal was if a woman could prove that the injury was inflicted in self-defence and that the death was accidental and not premeditated. Significantly, the issue that usually tipped the balance in determining such questions was that of the defendant's character.

¹⁶¹ OBSP, *The Proceedings of the Old Bailey* online; The only women in my sample charged with poisoning their husbands were Jane Sibson in 1762 and Mary Owen in 1776; both were acquitted.

¹⁶² Beattie, "The Criminality of Women in Eighteenth-Century England," 83, 87.

The Power of the Devil

Now I will turn to the excuse cited in the title of this thesis, often summed up in the phrase 'The devil made her do it.' The idea of defendants blaming the devil for tempting them to commit crimes is an old one. In early modern England it was widely believed that the devil was omnipresent, leading those people who did not keep themselves busy with praying and working hard to commit sinful acts. Over the course of the eighteenth century, references to active demonic temptation gradually declined in the Old Bailey courtroom, due to a shift in beliefs brought on by Enlightenment ideas and a general secularization of society.¹⁶³ In fact, the official indictments of many different criminal charges, including petty treason, were introduced with the phrase "[Name] was indicted for that she, not having the fear of God before her eyes, but being moved by the instigation of the devil [...];" this indicates that by the eighteenth century, the acknowledgement of the devil by the court was largely a tradition and carried no significance for the individual proceedings. Nevertheless, there are several examples of women charged with petty treason who referred to the devil as an instigator of their crimes. It must be noted, however, that if such a defence was successful, it was most likely because judges and juries considered these women to be mentally unstable.¹⁶⁴

Esther Monk, charged for petty treason in 1760 serves as an example of a woman who blamed the devil for her actions. She admitted to hitting her husband across the head with an iron poker. She is also quoted to have said that her husband Richard "had been a

¹⁶³ Gaskill, *Crime and Mentalities in Early Modern England*, 12.

¹⁶⁴ It is very difficult to determine if judges distinguished between demonic temptation as a result of sin and insanity. I would suggest that rather than there being a difference in kind between the two, any distinction would be due to a chronological shift. There is no question that demonic temptation has traditionally been seen as a result of sin, but by the late seventeenth and eighteenth centuries, any direct reference to the tempting force of the devil would have been considered a sign of mental instability.

very good husband to her, and that she had a thought of it [the murder] about a month, or thereabouts, before." When being asked why she had done the deed, she replied that "the d - l made her do it." After all witnesses portrayed her as "out of her mind" and one witness even described her as seeming "very stupid, sometimes talking of going to drown herself, and in a very strange way," the jury acquitted her of all charges.¹⁶⁵ The famous murderess Catherine Hayes also claims to have been under the influence of the devil. In his report on Catherine's behaviour during her confinement the Ordinary of Newgate quotes her to have defended the murder by claiming, "the Devil put it into my Head," and when he asked her, "Was it the sake of Money? No, says she the Devil was in us all, and we were all got drunk."¹⁶⁶

Non Compos Mentis

Some of the women using the power of the devil as an excuse were successful; others, like Catherine Hayes, were not. Dana Rabin connects those cases in which women were acquitted because of being "non compos mentis" with the status of the eighteenth century as the so-called "Age of Sensibility", where excuses based on emotions and mental distress took on a completely new meaning. In the seventeenth century, for example, mental distress was considered a result of vice and crime, in the eighteenth century on the other hand, an incoherent mental state could be considered as an explanation for or cause of committing a crime.¹⁶⁷

¹⁶⁵ OBSP, *Esther Monk*, 16th January 1760, Ref. No. t17600116-26. It should be noted, however, that many women who were declared 'non compos mentis' in court were not actually free to leave, but were often locked up in Bedlam. See Joel Peter Eigen, *Witnessing Insanity: Madness and Mad-Doctors in the English Court* (New Haven: Yale University Press, 1995).

¹⁶⁶ OBSP, *Catherine Hayes*.

¹⁶⁷ Rabin, *Identity, Crime and Legal Responsibility in Eighteenth-Century England*, 3, 92.

When Elizabeth Godden stood trial for petty treason in 1758 for giving her husband a deadly blow to the head with an iron window pin, it was quickly established that she suffered from a mental illness. Elizabeth was acquitted of all charges, though it is unclear if this acquittal came about due to her mental instability or due to the fact that her husband had suffered from advanced tuberculosis. One male witness speaking of behalf of the female defendant reported that Mr. Godden told him

about five days before this affair happened, that his wife was out of her senses, and that she had been a very good, industrious, and honest wife for thirty five years before, and that he had been to St. Luke's hospital to see if he could get her in, for he could not leave her five minutes alone; I have known them this twenty years, they lived very happily together.

Elizabeth's apothecary confirmed this by pronouncing her "Very much disordered in her senses," a state which he believed was brought on by alcoholism.¹⁶⁸

A very different story is that of twenty-two year old Ann Mudd, who was charged for stabbing her husband in the back in 1737. Even though she did not mention the devil in her defence, it is clear that the judge and jury perceived her to be mentally unstable. Witnesses reported that Ann behaved very inappropriately towards her husband before the murder, slapping him in the face and sitting him down on her lap. More importantly, however, she is quoted to have said upon her apprehension that she "stabb'd him in the Back with a Knife, for Funn."¹⁶⁹ After Ann was condemned to burn at the stake, the Ordinary of Newgate Prison, who tried to give her spiritual support during her confinement, noted that Ann Mudd

had no more Sense of Vertue or of her Duty than a Brute, she said she never had been within a Church, and that none of her Family had ever shown her the Example of attending the publick Worship of God in Church or Chapel,

¹⁶⁸ OBSP, *Elizabeth Godden*, 13th September 1758, Ref. No. t17580913-49.

¹⁶⁹ OBSP, *Ann Mudd*, 20th April 1737, t17370420-6.

(a shameful Thing to a Christian Country!) She was of a Savage, barbarous Temper.

He also claimed she “was very senseless and ignorant, and so stupid, the most moving Representation of her Crime, or of her Condition, could not affect her.”¹⁷⁰ All witnesses called in her case agreed on the inappropriate behaviour Ann displayed just before the deed was done:

The Prisoner came to him, and hit him a slap in the Face, and gave him another Blow or two, as he stood on the Step: She had a Knife by her Side, which she laid down on the Cupboard, and then she said she would fight him; he would not fight with her, so she sat her self down in a Chair, and he went to her, and wanted to kiss her, but she would not let him; he sat down in her Lap, and she push'd him away; then they both fell from the Chair upon the Ground, and she got up, and took some Thing off the Cupboard, and jobb'd it at him.¹⁷¹

While Elizabeth Monk was characterized as good and industrious woman, regardless of her insanity, Ann Mudd lacked any sympathetic witness testimony. What we read about the unfolding of her trial makes her appear not only crazy, but also out of control, lacking what it took to be an honest woman in early modern England.

¹⁷⁰ *Ordinary's Account, 29th June 1737*, Ref. No. OA17370629. Ann's lack of sensibility may have played an important role in determining her level of moral guilt. For more detailed information on this topic see Randall McGowen, “A powerful sympathy: Terror, the prison, and humanitarian reform in early nineteenth-century Britain,” in *Journal of British Studies*, Vol. 25 (1986), 312-334.

¹⁷¹ OBSP, *Ann Mudd*.

Conclusion

The way in which petty treason trials unfolded at the Old Bailey courthouse between 1674 and 1800 can tell us much about contemporary ideas about gender and crime. Court records are some of the richest sources available to historians on the lives of ordinary English women. My analysis of the excuses women who were charged with murdering their husbands invoked affords some insight into how female defendants saw their place in society and the male-dominated gender hierarchy. Wives who killed their husbands not only transgressed legal boundaries, they also transgressed gender norms, defying what was expected of them as women.

The study of the excuses and defence speeches of women charged with petty treason opens a door to many different areas of criminal history, which have so far not received significant attention. In order to gain a multifaceted understanding of the meaning of defence speeches and the importance of character witnesses, historians will have to conduct further research into court records. A useful place to begin this research might be to compare the cases in which women were charged with the murder of their husbands to those in which men were charged with the murder of their wives. Between 1674 and 1800 there were a total of 242 murder cases on trial at the Old Bailey where the defendant was male and the victim female. It appears that in 80 of these 242 offences (33%), the victim was the defendant's wife.¹⁷² It is astonishing that, even though the amount of women murdering their spouses was much lower than that of men, the latter seldom appeared in the news and raised little public attention. This, again, indicates that

¹⁷² OBSP, *The Proceedings of the Old Bailey* online.

the disproportionate representation of female petty traitors was not due to the crime of spousal murder itself, but to women's subversion of the gender hierarchy.

The primary purpose of this thesis has been to show that women standing trial for murdering their husbands invoked excuses that fell into a very distinct pattern. Some of these excuses, such as claiming common-law relations, proved to be completely ineffective; others led to much higher acquittal rates. The attempt to excuse petty treason by claiming to have been severely physically abused is the defence strategy that was most common among women, and helped many defendants escape the stake. The most useful, but equally most restricted, excuse available to women was that of mental instability. In addition, claiming mental illness did not depend on the defendant as much as it did on her character witnesses.

Throughout this study, it became evident how important it really was for female defendants to have character witnesses in court who would attest to their good reputation. The success those women who had convincing character witnesses in court experienced suggests that even though patriarchy enjoyed extensive powers in their households, there were also set limits. Though the patriarchal order of eighteenth-century England was in many ways hostile to women, absolute authority of husbands was restricted by the watchfulness of the community, who considered it their right and duty to intervene in family affairs. It is important to keep in mind that, even if female defendants' courtroom 'stories' do not necessarily reflect the 'truth', they are nevertheless important sources on how women saw their roles within society and experienced their lives in eighteenth-century England. It is also significant that, if the 'truth' of some women's words was credited more than others, this was dependant largely on whether such women were

perceived by the community as being either disorderly and immoral or chaste and industrious.

Bibliography

- A Hellish Murder Committed by a French Midwife On the Body of her Husband, Jan. 27, 1687/8, For which she was Arraigned at the Old-Baily, Feb. 22, 1687/8, and Pleaded Guilty, And the Day following received Sentence to be Burnt.* London, Printed for R. Sare, published by Randal Taylor, 1688.
- Amussen, Susan D. "'Being Stirred to Much Unquietness': Violence and Domestic Violence in Early Modern England." In *Journal of Women's History*, Vol. 6 Issue 2 (1992), 70-89.
- Amussen, Susan D. "Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England." In *Journal of British Studies*, Vol. 34, No. 1 (January 1995), 1-34.
- Baines, Paul. "Crime Histories." In *Eighteenth-Century Studies*, Vol. 42 Issue 1 (Fall 2008), 166-170.
- Beattie, John. "Crime and Inequality in eighteenth-century London." *Crime and Inequality*. Edited by John Hagan and Ruth D. Peterson. Stanford: Stanford University Press, 1995.
- Beattie, John. *Crime and the Courts in England: 1660-1800*. Oxford: Clarendon Press, 1986.
- Beattie, John. "The Criminality of Women in Eighteenth-Century England." In *Journal of Social History*, Vol. 8 (1995), 80-116.
- Beattie, John. *Policing and Punishment in London, 1660-1750*. Oxford: Oxford University Press, 2001.
- Beattie, John. "Violence and Society in Early-Modern England." In *Perspectives in Criminal Law: Essays in Honour of John LL.J. Edwards*. Edited by Anthony N. Doob and Edward Greenspan. Toronto: Canada Law Book Inc., 1985, 36-60.
- Blackstone, William. *Commentaries on The Laws of England*. London, 1783.
- Blackstone, William. *The Laws Respecting Women, as They Regard their Natural Rights, or Their Connections and Conduct*. London, 1777.
- Campbell, R. *The London Tradesman*. London, 1747.
- Clark, Sandra. *Women and crime in the street literature of Early Modern England*. Basingstoke: Palgrave Macmillan, 2003.

- Coughlin, Anne M. "Excusing Women." In *California Law Review*, Vol. 82, No. 1 (1994), 1-93.
- Devereaux, Simon. "The Abolition of the Burning of Women in England Reconsidered." In *Crime, History and Societies*, Vol. 9 Issue 2 (2005), 73-98.
- Devereaux, Simon. "The City and the Sessions Paper: 'Public Justice' in London, 1770-1800." In *Journal of British Studies*, Vol. 35 Issue 4 (1996), 466-503.
- Dolan, Frances E. "Home-Rebels and House-Traitors: Murderous Wives in Early Modern England." In *Yale Journal of Law & the Humanities*, Vol. 4, No. 1 (1992), 1-31.
- Dolan, Frances E. *Marriage and Violence: The Early Modern Legacy*. Philadelphia: University of Pennsylvania Press, 2008.
- Dolan, Frances E. "The Subordinate('s) Plot: Petty Treason and the Forms of Domestic Rebellion." In *Shakespeare Quarterly*, Vol. 43, No. 3 (Fall 1992), 317-340.
- Eigen, Joel Peter. *Witnessing Insanity: Madness and Mad-Doctors in the English Court*. New Haven: Yale University Press, 1995.
- Finlay, Roger. *Population and Metropolis: the Demography of London, 1580-1650*. Cambridge: Cambridge University Press, 1981.
- Fletcher, Anthony. *Gender, Sex and Subordination in England, 1500-1800*. New Haven: Yale University Press, 1995.
- Gaskill, Malcolm. *Crime and Mentalities in Early Modern England*. Cambridge: Cambridge University Press, 2000.
- Gaskill, Malcolm. "Reporting Murder: Fiction in the Archives in Early Modern England." In *Social History*, Vol. 23 No. 1 (January 1998), 1-30.
- Gavigan, Shelley A.M. "Petit Treason in Eighteenth Century England: Women's Inequality before the Law." In *Canadian Journal of Women and the Law*, Vol. 3, Issue 2 (1989), 335-374.
- Gowing, Laura. *Domestic Dangers: Women, Words, and Sex in Early Modern London*. New York: Oxford University Press, 1996.
- Griffith, Matthew. *Bethel: or, a Forme for Families*. London, 1633.
- Harvey, Karen. "The History of Masculinity, circa 1650-1800." In *Journal of British Studies*, Vol. 44 Issue 2 (April 2005), 296-311.

- Hay, Douglas. "Property, Authority and the Criminal Law." In *Albion's Fatal Tree: Crime and Society in 18th Century England*. Edited by Douglas Hay et al. London: Allen Lane, 1975, 17-63.
- Henderson, Tony. *Disorderly Women in Eighteenth-Century London: Prostitution and Control in the Metropolis: 1730-1830*. New York: Pearson Education, 1999.
- Herrup, Cynthia. "'To Pluck Bright Honour from the Pale-Faced Moon': Gender and Honour in the Castlehaven Story." In *Transactions of the Royal Historical Society*, 6th Series (1996).
- Hitchcock, Tim. *Down and Out in Eighteenth-Century London*. London: Hambledon and London, 2004.
- Howard, Stephen. "'A bright pattern to all her sex': representations of women in periodical and newspaper biography." In *Gender in Eighteenth-Century England: Roles, Representations and Responsibilities*. Edited by Hannah Barker and Elaine Chalus. New York: Longman, 1997, 230-249.
- Hunt, Margaret. "'The great danger she had reason to believe she was in': Wife-beating in the Eighteenth Century." In *Women in History: Voices of Early Modern England*. Edited by Valerie Frith. Toronto: Coach House Press, 1995, 81-102.
- Hurl-Eamon, Jennine. *Gender and Petty Violence in London, 1680-1720*. Columbus: Ohio State University Press, 2005.
- Innes, Joanna and John Styles. "The Crime Wave: Recent Writings on Crime and Criminal Justice in Eighteenth-Century England." In *Journal of British Studies*, Vol. 25 (October 1986).
- King, Peter. *Crime, Justice, and Discretion in England, 1740-1820*. Oxford: Oxford University Press, 2000.
- King, Peter. "Decision-makers and Decision-making in the English Criminal Law, 1750-1800." In *Historical Journal*, Vo. 27 No. 1 (1984), 25-58.
- Langbein, John. *The Origins of Adversary Criminal Trial*. New York: Oxford University Press, 2003.
- Langbein, John. "Criminal Trial before the Lawyers." In *University of Chicago Law Review* (1978), 263, 272-316.
- Lillo, George. *The London Merchant: Or, The History of George Barnwell*. London: 1731.

- Linebaugh, Peter. "The Ordinary of Newgate and His Account." In *Crime in England, 1550-1800*. Edited by J.S. Cockburn. London: Methuen, 1977.
- Lives of the Most Remarkable Criminals who have been Condemned and Executed for Murder, Highway Robberies, Housebreaking, Street Robberies, Coining, or other Offences; From the Year 1720 to the Year 1735. Collected from Original Papers and Authentic Memoirs*. In Two Volumes. Vol. II. "The Life of Catherine Hayes, A Bloody and Inhuman Murderess, &c." London: Reeves and Turner, 1873, 1-36.
- London Chronicle or Universal Evening Post*. London, England. Saturday, September 11, 1773.
- Malcolmson, R.W. "Infanticide in the Eighteenth Century." In *Crime in England, 1550-1800*. Edited by J.S. Cockburn. London: Methuen, 1977.
- McGowen, Randall. "A Powerful Sympathy: Terror, the prison, and humanitarian reform in early nineteenth-century Britain." In *Journal of British Studies*, Vol. 25 (1986), 312-334.
- McKenzie, Andrea. "'This Death Some Strong and Stout Hearted Man Doth Choose': The Practice of Peine Forte et Dure in Seventeenth- and Eighteenth-Century England." In *Law and History Review*, Vol. 23, No. 2 (Summer 2005), 279-313.
- McKenzie, Andrea. *Tyburn's Martyrs: Execution in England 1675-1775*. London: Hambledon Continuum Books, 2007.
- Mendelson, Sara and Patricia Crawford. *Women in Early Modern England*. Oxford: Clarendon Press, 1998.
- Menefee, Samuel Pyeatt. *Wives for Sale: An Ethnographic Study of British Popular Divorce*. Oxford: Blackwell Publishing, 1981.
- Middlesex Journal or Universal Evening Post*. London, England. Saturday, September 11, 1773.
- Muir, Edward and Guido Ruggiero, eds. *History from Crime*. Baltimore: Johns Hopkins University Press, 1994.
- Old Bailey Sessions Papers (OBSP). *The Proceedings of the Old Bailey* online.
><http://www.oldbaileyonline.org><.
- Ordinary of Newgate. Ordinary's Account. *The Proceedings of the Old Bailey* online.
><http://www.oldbaileyonline.org><.

- Oxford Dictionary of National Biography. "Elizabeth Branch (1672-1740)." By Andrea McKenzie. ><http://www.oxforddnb.com><.
- Rabin, Dana Y. *Identity, Crime and Legal Responsibility in Eighteenth-Century England*. New York: Palgrave Macmillan, 2004.
- Radzinowicz, Sir Leon. *A History of The English Criminal Law and its Administration from 1750*. Vol. I, "The Movement for Reform." London: Stevens and Sons, 1948.
- Saxton, Kirsten T. *Narratives of women and murder in England, 1680-1760*. Farnham: Ashgate Publishing Ltd, 2009.
- Select Trials at the Sessions-House in the Old Bailey, for Murder, Robberies, Rapes, Sodomy, Coining, Frauds, Bigamy, and other Offences. To which are added, Genuine Accounts of the Lives, Behaviour, Confessions, and Dying Speeches of the most eminent Convicts*. In Four Volumes. From the Year 1720, to this Time. Dublin, Printed by S. Powell, 1742. (Printed in London by John Applebee and sold by J. Hodges in London).
- Select Trials for Murder, Robbery, Burglary, Rapes, Sodomy, Coining, Forgery, Piracy, and other Offences and Misdemeanours at the Sessions-House in the Old Bailey, to which are added Genuine Accounts of the Lives, Exploits, Behaviour, Confessions, and Dying-Speeches, of the most notorious Convicts, from the Year 1741, to the present Year 1764, inclusive. Which completes the Trials from the Year 1720*. 4 vols. J. Wilkie, 1764.
- Shepard, Alexandra. *The Meanings of Manhood*. New York: Oxford University Press, 2003.
- Stone, Lawrence. *Road to Divorce: England 1530-1987*. Oxford: Oxford University Press, 1990.
- Tague, Ingrid H. *Women of Quality: Accepting and Contesting Ideals of Femininity in England, 1690-1760*. Suffolk: The Boydell Press, 2002.
- Thompson, E.P. *Customs in Common*. New York: New Press, 1991.
- United Kingdom National Archives. SP 44/124, p.284 (Delafaye to Recorder, 6 May 1726).