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## Justice Not Done : The Hanging of Elizabeth Workman

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Scott M. Gaffield \*

### Introduction

Shortly before nine o'clock on June 19, 1873, Elizabeth Workman spoke her last words as she stood on the newly-constructed scaffold in the Sarnia gaol yard, tucked away in the southwest corner of Ontario, Canada. According to the *Toronto Evening Mail*, she expressed the hope that her case would serve as a warning to all wives who had drunken husbands, and to all husbands who had drunken wives. A signal was then given to release the portion of the scaffold on which she stood. When the rope was finally severed, she fell six feet into a pit that had been dug to accommodate her, executed for killing her husband, James Workman. The knot of white flowers that Elizabeth Workman had carried with her from her cell to the scaffold remained clenched in her hand and more flowers were placed on her heart, as fifteen observers watched with mixed emotions, unsure of whether Mrs. Workman deserved the fate that she met.<sup>1</sup>

The uncertainty surrounding Elizabeth Workman's execution was linked to the uniqueness of her situation. Not only would Elizabeth Workman be the only woman executed in Canada for the next twenty-six years, her case is unique among all women who received the death penalty, since her execution was contrary to the recommendation of the jury as well as public opinion. Popular campaigns to commute the death penalty for murder, such as the one launched for Elizabeth Workman, succeeded in more than half of the cases between 1867 and 1878.<sup>2</sup> However, the chances of receiving a commutation were significantly increased if recommended by the jury. In fact, a convict's chances of commutation rose to 71 % with the jury's endorsement.<sup>3</sup> Most significantly, there was only a single woman hanged in Canada contrary to the jury's recommendation - Elizabeth Workman.

Elizabeth Workman's death was shocking to her acquaintances who had signed the petitions pleading for mercy. It was equally surprising to the more

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<sup>1</sup> "Execution of Mrs. Workman for the Murder of Her Husband: The Final Scene" *Toronto Evening Mail* (June 20, 1873) 1.

<sup>2</sup> These campaigns had a 56 % success rate. National Archives of Canada, RG 13, C 1.

<sup>3</sup> *Ibid.*

notable members of the Sarnia community, who put their highly-regarded support behind Elizabeth Workman. Even now, over one hundred and thirty years later, the question remains unanswered: Why was Elizabeth Workman executed?

The established literature on Elizabeth Workman is modest. A few scholars have focused on specific aspects of the case as part of larger studies in legal history. In his book, *The Canadian Department of Justice and the Completion of Confederation, 1867-78*, Jonathan Swainger briefly utilizes the Workman case to illustrate how the Royal Prerogative of Mercy functioned in 19<sup>th</sup> century Canada. In theory, the Royal Prerogative of Mercy was an institution that allowed the Queen's representative, the Governor General, to commute any sentence that he wished. However, Swainger argues that in practice, this decision fell in Canada to the Governor General's chief advisor, the Minister of Justice. Swainger does not focus on the details of the Workman case, but rather on how the decision to execute her "devolved onto one man and how that man viewed his responsibilities within the context of the times."<sup>4</sup> Swainger's analysis suggests that the entire apparatus of the court, including judge and jury, provided only a first indication of what would happen to the convict, and that ultimately the decision would fall to one man, the Minister of Justice. Left unanswered is why the decision concerning Elizabeth Workman is the sole exception to the acceptance of the recommendation for mercy in the case of women.

In his book, *A Dance With Death: Canadian Women on the Gallows, 1754-1954*, Frank W. Anderson offers a short, sensationalized summary of each of the forty-nine cases in which a woman met death through capital punishment during those two hundred years. Most of the cases are classified into groups with attention-grabbing titles such as "The Poisoners," and "Murder for Profit," although Elizabeth Workman's is placed in a miscellaneous category at the end of the book. In his description of the Workman case, Anderson asserts that "the killing of a husband by his wife was considered to be the second-worst crime a human could commit."<sup>5</sup> Contending that treason was the only crime that was considered more heinous, Anderson believes that this mindset was the key factor in Workman's execution, and "explained why, in some instances, Ministers of the Crown ignored the recommendations of the jurors and carried out the supreme penalty: Male authority had to be maintained."<sup>6</sup> However, this conclusion is not a satisfactory explanation of the Workman case as a unique event in Canadian history. Moreover, it raises questions about why all the other recommendations for mercy were accepted in the cases of convicted women.

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<sup>4</sup> Jonathan Swainger, *The Canadian Department of Justice and the Completion of Confederation, 1867-1878* (Vancouver: University of British Columbia Press, 2000) at 72.

<sup>5</sup> Frank W. Anderson, *A Dance With Death: Canadian Women on the Gallows, 1754-1954* (Toronto: Webcom, 1996) at 220.

<sup>6</sup> *Ibid.* at 220.

A scholarly and more thorough study of the Elizabeth Workman case has been undertaken by F. Murray Greenwood and Beverly Boissery, in their book, *Uncertain Justice: Canadian Woman and Capital Punishment*. They discuss the Workman case in the context of the larger history of battered women and capital punishment in Canada, likening Elizabeth Workman's outburst of violence to that of Lyn Lavallée, a battered wife who shot her husband in 1986, but was subsequently acquitted. While they remain puzzled by the case, the authors suggest that there are two possible explanations for Elizabeth Workman's execution: that "the legal and political establishments in Canada thought husband-murder such a particularly atrocious crime that wives needed continuing deterrence by the sight of executions;" or that her fate resulted from the era's "insensitivity to the plight of battered women."<sup>7</sup> However, they also point out that each possible explanation "seems quite simple," while also noting that "like so many poor and capitially-charged at the time, Elizabeth was not properly represented."<sup>8</sup>

In this context, the following discussion seeks to advance our understanding of the hanging of Elizabeth Workman by reporting on a comprehensive study of a series of interrelated questions: why was Elizabeth Workman convicted? Why was she recommended for mercy? Why was this recommendation not accepted? The answers to these questions suggest that the explanation for the execution of Elizabeth Workman is not simple at all. Rather, her hanging was the result of a specific convergence of factors, all of which worked together to seal her fate.

Following the approach of Constance Backhouse in her book, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada*, this study has systematically examined the legal record within the larger historical context of Elizabeth Workman's life, including issues such as the temperance movement, women's work in the labor force, and race relations in nineteenth-century Canada.<sup>9</sup> This approach emphasizes that Elizabeth Workman must be studied in terms of the social, political, and economic conditions of working-class women in early post-Confederation Canada. An understanding of this context is shown to be essential to an understanding of Elizabeth Workman's experience within the Canadian legal system.

In addition, attention will be paid to Elizabeth Workman's treatment in both local and national newspapers as a way to relate her experience to public opinion. As will be discussed, Elizabeth Workman was initially reported by newspapers to be guilty, and her crime was the source of much gossip in the area.<sup>10</sup> Soon enough, however, the court of public opinion ruled in Elizabeth Workman's favor, and there was considerable support for her

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<sup>7</sup> F. Murray Greenwood & Beverly Boissery, eds., *Uncertain Justice: Canadian Women and Capital Punishment* (Toronto: Dundurn Press, 2000) at 156.

<sup>8</sup> *Ibid.* at 157.

<sup>9</sup> Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Osgoode Society, 1991) at 1.

<sup>10</sup> "Suspected Murder: A Man Beaten to Death" *Toronto Evening Mail* (October 29, 1872) 1.

case in the press. Though it took an article in the *Sarnia Observer* to provoke specific action, the opinions of the community changed significantly over the course of Elizabeth Workman's time in the Sarnia gaol. This support appears to have come from not only the common people, but also from the more notable members of Sarnia society, such as the mayor, the sheriff, and the future Prime Minister, Alexander Mackenzie.<sup>11</sup> The established scholarship on the Workman case simply notes this change of heart, rather than attempting to explain and analyze the sudden outpouring of sympathy for Elizabeth Workman.

The capital case file of Elizabeth Workman contains the manuscript transcript of the coroner's inquest and of the trial itself held on March 21 and 22, 1872. These documents record the testimonies given at both of these proceedings and provide evidence of the operation of the judicial apparatus of the time. The file also includes the closing statement of the presiding judge, as well as a series of petitions for clemency addressed to the Governor General or the Department of Justice. This study is also based on a systemic examination of both local and provincial newspaper coverage. The Elizabeth Workman case became widely known across Ontario, including front-page coverage in the *Toronto Evening Mail* from the time of James Workman's death. The articles in the *Sarnia Observer and Lambton Advertiser* are especially valuable for getting a sense of the local public discussion of the case. These articles also include other information about Elizabeth Workman and her family that are not obtainable from any other resource.

Additional research was undertaken in sources such as the Canadian census and the papers of Sir John A. Macdonald. The census offers insight into the date of birth, religion and occupation of many of the individuals involved in the case.<sup>12</sup> The personal papers of Sir John A. Macdonald provide evidence about his view of the Elizabeth Workman case as well as his perspective on the different racialized identities of the day, a highly pertinent factor as will be discussed.

To examine the Workman trial and subsequent events, a thorough understanding of the individuals involved is essential. In addition to examining their occupation, age, religion, place of residence, and other characteristics as revealed by sources such as the manuscript census, research has focused on how they were described at the trial, in the local newspapers, and in the petitions pleading for mercy, in an attempt to explain their actions. There are a number of important individuals in the Workman case, but none as important as Elizabeth herself. A native of Scotland, Elizabeth Workman came to Canada with her newly-wed husband, James,

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<sup>11</sup> NAC, RG 13, vol. 1410, File 64A.

<sup>12</sup> The census data is useful, though it must be examined with a critical eye as errors are not uncommon in the reproductions of these early federal censuses. Errors could have occurred in the transcription from the original documents, and it is also difficult to distinguish between individuals of the same name, especially when the rest of the information provided is not necessarily reliable.

around 1856, along with his daughter, Mary, from a previous marriage. According to newspaper accounts, Elizabeth arrived with dreams of a new beginning, that in the following years were only very partially fulfilled.<sup>13</sup> After sixteen years in Canada, the family lived in a two-room unit in the bottom floor of a house in Mooretown, a small farming village just outside Sarnia in the southwest corner of Ontario. Elizabeth gave birth to a son Hugh around 1865, but the Workman family was apparently not a happy one. The evidence indicates consistently that Elizabeth had put up with James' verbal abuse for a long time by the early 1870s, and though he had forced her into refuge at a neighbor's residence on more than one occasion, she had remained loyal to him. Moreover, she was described as a good mother and an industrious woman, who worked outside the home when the family fell upon hard times.<sup>14</sup>

James Workman was much older than Elizabeth, and though their exact difference in age is uncertain, his age played a key role in the case.<sup>15</sup> James Workman's previous wife had reportedly died of natural causes. In Canada, James never earned enough for the family to escape poverty. In his later years, as he became less physically capable, his drinking habit increased, and the family's sparse economic resources further declined. Moreover, he became more abusive to his family, constantly berating his wife, and even causing his daughter to move out to escape his behavior. Though Mary's exact age is unclear, she seems to have been a very young child when she was brought to Canada, and was about twenty in 1873. In fact, when she left home to become a boarder in Sarnia, she ceased to be known as Mary Workman, instead adopting the family name of her new guardian, Mrs. Skirving. After her father's death, however, Mary Skirving assisted Elizabeth Workman in cleaning the house before the authorities arrived, a clear indication that she remained on good terms with her stepmother.<sup>16</sup> Hugh was Elizabeth Workman's only natural child.<sup>17</sup> He regularly attended school, a fact made noteworthy by his family's financial and domestic

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<sup>13</sup> "Execution of Mrs. Workman" *Sarnia Observer and Lambton Advertiser* (June 20, 1873) 2.

<sup>14</sup> "Local News" *Sarnia Observer and Lambton Advertiser* (November 8, 1872) 2.

<sup>15</sup> Age estimates for James Workman range from 55 into his mid-sixties, depending on the source. The case file itself does not give any age, and the census records could certainly be erroneous. In fact, there is no James Workman listed in Lambton County in 1871. There are two other listings of James Workman, a 55-year-old Scot butcher who lived in Perth South, and a 66-year-old English farmer who lived in Oxford North. Though it is unclear why he is listed as living in Perth, the first of those two appears to be the most likely to refer to the James Workman in question, though 55 is likely less than his actual age. In the trial, it is revealed that butcher tools were around the Workman home, one of which was reportedly used by Elizabeth to deliver the fatal blow. The age gap between Elizabeth and James is noted many times in the newspaper articles, however, and so the best estimate puts James Workman at somewhere in his early sixties at the time of his death, about twenty years older than his wife.

<sup>16</sup> Trial testimony of Sarah Patterson, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>17</sup> "Execution of Mrs. Workman" *supra* note 13.

situation; in fact, as evident in his testimony at the trial, he was an articulate and intelligent eight-year-old child in 1873.<sup>18</sup>

Occupying the floor above the Workman family was a couple, David and Sarah Patterson, who apparently shared a good marriage. They, too, were poor, living on David's wages as a labourer. Elizabeth Workman was friendly with Sarah Patterson and had used the Patterson residence as a refuge from her husband a number of times.<sup>19</sup> Beyond the Workman family, and their upstairs neighbors, the key individual in this case was Samuel Butler. In his mid-to-late thirties, Butler was a barber, who arrived in Sarnia and opened his shop only about three weeks before James Workman's death.<sup>20</sup> The most important fact about Samuel Butler in relation to this case was the color of his skin; Butler was Black. Soon after he arrived in Sarnia, he hired Elizabeth Workman to do his laundry and cleaning around his shop. Butler quickly struck up a friendship with the Workman family and he began visiting their residence, often bringing a bottle of whiskey.<sup>21</sup> During these weeks, an alleged illicit relationship between Butler and Elizabeth Workman became the subject of the town rumour mill.<sup>22</sup>

Though protected to some extent under the law in Canada, Blacks were far from social equals. In fact, S.G. Howe argued in his 1864 report to the American government, that the "prejudice against [Blacks] among the Whites (including the English) is engendered by the same circumstances, and manifested with the same intensity, as in the United States."<sup>23</sup> The Honorable George Brown, a member of Canadian Parliament went further to say that "I think the prejudice against the colored people is stronger here than in the States."<sup>24</sup> Personal relationships between Blacks and Whites were certainly not common under these circumstances, and as a Colonel Stephenson argued in 1864, relations between races were "looked down upon with such dreadful contempt by all the classes – even the negroes themselves."<sup>25</sup> Although Canadian law did not officially recognize any distinction of color, observers regularly noted that Blacks "labored under very great disadvantages."<sup>26</sup> As Susan Boggs, a Black woman from St. Catherine's, concluded, "If it was not for the Queen's law, we would be mobbed here, and we could not stay in this house. The prejudice here is a great deal worse than in the States."<sup>27</sup> It is even possible that the rural area in

<sup>18</sup> Trial testimony of Hugh Workman, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>19</sup> Trial testimony of Sarah Patterson, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>20</sup> *Ibid.*

<sup>21</sup> "Local News" *Sarnia Observer and Lambton Advertiser* (November 8, 1872) 2.

<sup>22</sup> "Man Killed in Mooretown" *Sarnia Observer and Lambton Advertiser* (November 1, 1872) 2.

<sup>23</sup> S.G. Howe, *Report to the Freedmen's Inquiry Commission, 1864: Refugees from Slavery in Canada West* (Boston: Wright & Potter, 1864) at 102.

<sup>24</sup> *Ibid.* at 43.

<sup>25</sup> *Ibid.* at 31.

<sup>26</sup> *Ibid.* at 35.

<sup>27</sup> *Ibid.* at 45. There are many other testimonies to the racist environment in Canada in Howe's *Report*, including statements such as "Niggers are a damned nuisance," from a

which the Workman family lived was more prone to racism than were cities. Dr. Egerton Ryerson, the Superintendent of Public Instruction in Ontario, for example believed that, “[t]he American feeling still exists in this country in regard to people of color, especially among the country people.”<sup>28</sup> In this context, the fact that Samuel Butler was Black must be taken into account in any explanation of the hanging of Elizabeth Workman.

Certain features of the Workman family were typical of a working-class family of the era.<sup>29</sup> The man of the house, James Workman, reportedly controlled all of the family’s financial resources, even though these resources were not all acquired by him. This control extended beyond the financial arena, as James Workman controlled or attempted to control his wife and children as well.<sup>30</sup> As his wife, Elizabeth Workman was essentially subordinate to him being the judicial equivalent of minors and idiots. In Bettina Bradbury’s words, marriage “severely limit[ed] women’s legal right to act as independent agents,” even leaving those like Elizabeth Workman without any control over the wages that she had personally earned.<sup>31</sup> Social programs did not usually offer financial assistance to families with able-bodied fathers, regardless of whether or not the father was fulfilling his obligation to provide for his family.<sup>32</sup> As will be discussed, the economic situation of the Workman family affected the way that the laws of the time were applied to Elizabeth. These laws gave wives no economic power at all, but were often bent for members of the upper classes. This, however, would not be so for Elizabeth Workman.<sup>33</sup>

The economic changes of this period left their mark on the Workman family. Production was moving out of the home and into factories in the growing cities and land was becoming much less available for family

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head clerk at a Hamilton hotel (at 40), and “niggers are a low, miserable set of people, and I wish they were not here,” from the Head Magistrate in Malden (at 41), who was not named.

<sup>28</sup> *Ibid.* at 40.

<sup>29</sup> Bettina Bradbury notes there were many differences between family models, depending on social class, and so the Workman family can, and should only be compared to other working-class families of the time. (Bettina Bradbury, *Canadian Family History: Selected Readings* (Mississauga: Copp Clark Pittman, 1992) at 2-12.)

<sup>30</sup> As S.J. Wilson notes: “The lack of power women have in determining the economic condition of their lives is reflected and reinforced in personal interaction.” (S.J. Wilson, *Women, Families and Work*, 3<sup>rd</sup> ed. (Whitby, Ont.: McGraw-Hill Ryerson, 1991) at vii).

<sup>31</sup> Bettina Bradbury, *Working Families: Age, Gender and Daily Survival in Industrializing Montreal* (Toronto: McClelland and Stewart, 1993) at 49-51.

<sup>32</sup> Margrit Eichler emphasizes the fact that only 11 divorces were registered in Canada in 1900, notes the reluctance of public assistance programs to replace what an able-bodied father did not provide, and asserts: “Such women and children were doubly trapped: they were forced into economic dependency on one man, but when the man failed to support them, no one else took over his role” (Margrit Eichler, *Family Shifts: Families, Policies, and Gender Equality* (Toronto: Oxford University Press, 1997) at 10-12.). In retrospect, it is certainly not clear that James Workman was able-bodied, because of his age, but at the time, it is less likely that he was viewed in such a sympathetic light, largely because of society’s disdain for his drinking.

<sup>33</sup> Bettina Bradbury notes the differences in practice between social classes for laws that concerned women. (Bradbury, *supra* note 31 at 50).

farming in southern Ontario.<sup>34</sup> Families like the Workmans, that in previous years would have been more likely to fulfill the dream of acquiring a small farm, were forced to rely on wage-earning labor to sustain themselves. The fact that they only had one child is also indicative of the changing times, as children were increasingly seen as more of an economic burden than an extra worker.<sup>35</sup> In this context, husbands and wives were judged by different criteria. While a husband and father's adequacy was measured in legal terms, a wife or mother was examined through the far more critical lens of moral, sexual, and social ideals.<sup>36</sup> Described by some historians as "one of the last bastions of male occupational hegemony and even exclusivity," the criminal justice system was similarly controlled by men in 19<sup>th</sup> century Canada.<sup>37</sup> The courts in nineteenth-century Canada sometimes exhibited chivalric attitudes in their treatment of women, often allowing them to escape with little more than a slap on the wrist. This may have been because the courts were embarrassed by the idea of dealing with women in circumstances so different from the accepted norms, but it is not to say that women always received more lenient treatment than men.<sup>38</sup> A Hamilton police magistrate once went on record as stating that in situations where a woman adamantly sought prosecution in domestic disputes, that he favored the man.<sup>39</sup> A crime that rarely came before the courts, spousal battery was undoubtedly more common than statistics indicate. For example, in the twelve months beginning in December 1872, there were only three convictions by the Justices of the Peace in Sarnia for wife beating, contrasted with eighty liquor-related offences. All three wife-beating convictions were made by Charles Taylor, who was the Mayor of Sarnia at the time of Elizabeth Workman's trial and execution, and whose name appeared on the petitions in her support.<sup>40</sup> Even more uncommon in the courts was the case of a wife who beat her husband. There is no record of

<sup>34</sup> Nancy Mandell and Ann Duffy describe this transition in some detail, as they assert that this period was the foundation of a family structure that did not change significantly until the early 1980s. This model held the father as the provider, and the mother as the homemaker. (Nancy Mandell & Ann Duffy, *Canadian Families: Diversity, Conflict and Change*, 2<sup>nd</sup> ed. (Toronto: Harcourt, 2000) at 5-17).

<sup>35</sup> Emily Nett describes the effects of increasing urbanization and industrialization, noting the changes in family structure that this trend brought. She notes that 1/8 of paid workers in Canada in 1891 were women, often through part-time labor that they did in their home. The washing that Elizabeth Workman did for Samuel Butler is a perfect example of this type of labor. (Emily M. Nett, *Canadian Families: Past and Present*, 2<sup>nd</sup> ed. (Toronto: Butterworths, 1993) at 47-51).

<sup>36</sup> Eichler mentions this double-standard, even noting that adultery would render a woman unfit in the eyes of the courts to retain custody of children, but would not have the same effect for a man. (Eichler, *supra* note 32 at 11). Interestingly, Nett does not make this distinction, rather stating that "perhaps monogamy is the oldest tradition," not limiting it to either sex. (Nett, *ibid.* at 96).

<sup>37</sup> Robert A. Silverman, James J. Teevan, Jr., & Vincent F. Sacco, *Crime in Canadian Society*, 4<sup>th</sup> ed. (Markham: Butterworths, 1991) at 70.

<sup>38</sup> D. Owen Carrigan, *Crime and Punishment in Canada: A History* (Toronto: McClelland & Stewart, 1991) at 449.

<sup>39</sup> John C. Weaver, *Crimes, Constables and Courts: Order and Transgression in a Canadian City, 1816-1970* (Montreal: McGill-Queen's University Press, 1995) at 265-69.

<sup>40</sup> "Return of Convictions" *Sarnia Observer and Lambton Advertiser* (May 2, 1873), (July 18, 1873), (October 17, 1873), (January 23, 1874) all on page 1.

this sort of conviction over the same time period in Sarnia, and between 1859 and 1918, there was not a single male complainant of spousal abuse in Hamilton.<sup>41</sup>

An understanding of the individuals and the historical setting of the Elizabeth Workman case provides the context within which the trial itself can be analyzed. Though there are a few minor discrepancies between some of the testimonies, the trial transcript describes a consistent narrative of events that begins on the morning of Thursday, October 24, 1872. Elizabeth Workman was at Samuel Butler's barbershop, scrubbing the floor when her husband arrived between eight and nine o'clock in the morning with their eight-year-old son, Hugh, in tow. Obviously intoxicated, James demanded that Elizabeth return home with him. Though he gave no reason for this demand, it can certainly be inferred that he was either jealous or suspicious of the relationship between his wife and Samuel Butler. When Elizabeth did not respond, James grabbed at her, but Butler quickly intervened. How exactly Butler intervened is not agreed upon. According to the testimony of Samuel Judson, a merchant whose place of business was across the street from Butler's shop, Butler pushed James Workman out the door of his shop, and Workman tumbled into the street, more a result of his inebriation than Butler's use of excessive force.<sup>42</sup> According to the different testimony of Peter Mayhew, a laborer who happened to be in the street at the time, Butler shoved James up against the wall, and put his hand on his throat, uttering threats.<sup>43</sup> However this incident transpired, James Workman did leave with his wife and child, though without much dignity, according to all witnesses.<sup>44</sup> The fact that Elizabeth Workman left with James likely had little to do with his ability to physically force her to do so, and was perhaps more a result of her desire to end the confrontation, one in which her drunk husband was on the losing end.

What happened next illustrates the limits of viewing family life from the perspective of legal and social ideals. According to the testimony of Hugh, his mother Elizabeth was furious with her husband's behavior that morning, and she exacted her revenge for his behavior by beating him with a mop handle that she kept behind her front door. James was confined to bed for the rest of the day, apparently as a result of his intoxication, and the rough treatment that he had received both that morning and afternoon. In the evening, Samuel Butler came by the Workman residence, although he reportedly did not bring his customary bottle of whiskey.<sup>45</sup> He did stay late, nonetheless, at least until after Hugh had joined his father in bed. Hugh

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<sup>41</sup> Weaver, *supra* note 39 at 75.

<sup>42</sup> Trial testimony of Samuel Judson, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>43</sup> Trial testimony of Peter Mayhew, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>44</sup> Trial testimony of Samuel Judson, *supra* note 42 and trial testimony Peter Mayhew, *supra* note 43.

<sup>45</sup> Trial testimony of Hugh Workman, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

testified that he heard Butler and his mother in conversation until he fell asleep. Hugh did not recall his mother coming to bed that night, but he remembered that she was up and about when he rose the following morning.<sup>46</sup>

For his part, David Patterson, the upstairs neighbor, claimed that he saw a man leaving the Workman residence at around four o'clock in the morning. Patterson testified that he was awakened when he heard someone who he felt was much heavier than James Workman pulling on his boots, and he went to the landing to see who it was. The visitor had his back turned and could not be immediately identified by Patterson, whose curiosity motivated him to go downstairs. After inspecting the size of the footprints left in the ground by the boots that had awakened him, Patterson surmised that the man he had seen was Samuel Butler.

Around six forty-five in the morning, Patterson rose for the day, and for a second time witnessed someone leave the Workman home. This time he saw the man's face; it was Samuel Butler. Patterson noticed that he was carrying a small bowl of what appeared to be pickles. Moreover, this sighting confirmed his belief that the earlier visitor had been Butler, as both figures sported the same type of jacket.<sup>47</sup> According to Hugh Workman, Samuel had returned to the house, some time between seven and eight o'clock that morning, this time bringing his dirty clothes to Elizabeth.<sup>48</sup> According to Hugh, this visit was not out of the ordinary at all, as Butler's laundry was part of the work Elizabeth did for him; this testimony suggested that she gave him the pickles as a gift.

Later that morning while Elizabeth was doing Butler's washing, James Workman still lay in bed. He called out to Elizabeth from time to time, asking for her presence, berating her for her initial refusal to leave the barber shop and for her abusive behavior towards him the previous day. According to Sarah Patterson, Elizabeth decided that she had had enough by the afternoon, and for roughly two hours, between two and four in the afternoon, Elizabeth beat her husband with the mop handle. It is likely that during this time, James' legs were bound with rope of some sort, as he had injuries revealed in the post-mortem examination that were consistent with such restraint.<sup>49</sup> Elizabeth Workman reportedly beat him quite severely, even asking at one point if "he had got enough."<sup>50</sup> The beating continued, leading to an extremely heavy blow, all heard by Sarah Patterson. James screamed that he was dead, and Elizabeth hit him one final time, before all fell silent.<sup>51</sup>

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<sup>46</sup> *Ibid.*

<sup>47</sup> Trial testimony of David Patterson, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>48</sup> Trial testimony of Hugh Workman, *supra* note 45.

<sup>49</sup> Trial testimony of Edward Oliver, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>50</sup> Trial testimony of Sarah Patterson, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>51</sup> *Ibid.*

During the course of that Friday morning and afternoon, Sarah Patterson had not heard anyone other than Elizabeth and James in the Workman residence.<sup>52</sup> When Hugh arrived home from school later that afternoon, Elizabeth gravely told him that she believed that his father's health was declining, and that she feared he might soon die.<sup>53</sup> Elizabeth then went upstairs to see Sarah Patterson, bringing with her yet another dish of pickles, like those she had earlier given to Samuel Butler.<sup>54</sup> Elizabeth inquired as to what Sarah had overheard that afternoon. Sarah responded that she had heard some blows and some heated words exchanged. Using a very different tone of voice from that in her earlier discussion with Hugh, Elizabeth proudly announced that she had given James a beating that he would not soon forget.<sup>55</sup> Apparently her intent was that he would learn that she was capable of harming him and that this would serve to dissuade him from harming her in the future.

At this point in time, James was clearly in bad condition, having been beaten and tied in bed, but he was reportedly still alive. That evening, Samuel Butler visited again, bringing whiskey with him. He left before Elizabeth and Hugh went to bed.<sup>56</sup> It is unclear whether Butler was made aware of the goings-on of that afternoon, or the nature of the injuries received by James, although from the point of view of all those who testified, his visit did not appear to implicate him in James Workman's death. Sarah Patterson testified that James Workman then gathered enough strength to berate his wife once again about what she had done to him that day. The weakness apparent in his voice, however, revealed a precarious physical state, and no further beating was heard.<sup>57</sup>

The confrontation between James Workman and Samuel Butler on the Thursday morning had not gone unnoticed among the villagers, and had certainly not been forgotten by Butler. Being the proprietor of a barber shop, he spent a good deal of his day in conversation, little of which remained private. Robert Richmond, a blacksmith, and Constable of Sarnia, was called twice to the stand as a witness concerning two topics. The first of his testimonies concerned the tension between Samuel Butler and James Workman, and the possible motives that Butler might have had to involve himself in the murder. Richmond recalled overhearing Butler telling a customer on Thursday morning after the incident that if Workman did not "keep away," that he would "break his neck."<sup>58</sup> Richmond also testified that he was a chance witness to Butler's leaving the Workman home, some time between nine and ten o'clock on Saturday morning.<sup>59</sup> For his part, Hugh

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<sup>52</sup> *Ibid.*

<sup>53</sup> Trial testimony of Hugh Workman, *supra* note 45.

<sup>54</sup> Trial testimony of Sarah Patterson, *supra* note 50.

<sup>55</sup> *Ibid.*

<sup>56</sup> Trial testimony of Hugh Workman, *supra* note 45.

<sup>57</sup> Trial testimony of Sarah Patterson, *supra* note 50.

<sup>58</sup> Trial testimony of Robert Richmond, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>59</sup> *Ibid.*

Workman remembered that his father asked him for a glass of water shortly after Butler left. Hugh complied, and, along with his mother, helped his father drink from the glass. Reportedly, the family had spent the night in bed together, as James' health rapidly deteriorated. Hugh could not remember the last time that he had seen his father eat anything. This drink of water must have given James a short burst of energy, however, as he was able to harangue Elizabeth again, enough that she gave him a blow in the shoulder, again with her mop handle. This blow was not particularly severe, but James' condition remained precarious, and he stayed in bed.<sup>60</sup>

Around two o'clock in the afternoon, on Saturday, October 26, Elizabeth called out to David Patterson, to "come and see what is the matter with Father."<sup>61</sup> David arrived in the Workman bedroom, and when he saw James Workman, immediately sent Hugh to fetch Sarah. Before her arrival, David cradled James' head with his arm, and noted that James' right shirtsleeve was off his arm and shoulder.<sup>62</sup> As David raised James' head, he noted that air was expelled from James' lungs. David's testimony caused some confusion at this point, since his initial account at the coroner's inquest was taken to mean that James had been alive when David arrived and that he had died in his arms. At the trial, however, David Patterson testified that James was dead when he arrived. He noted that some of James Workman's clothes seemed a little wet, and he believed the body to have been recently washed, and then re-dressed.<sup>63</sup> Also, the body was cold, and somewhat stiff, according to Sarah Patterson, who guessed that James Workman had been dead for four or five hours.<sup>64</sup>

David Patterson then left the Workman home, and, although his motives in doing so are unclear, he quickly began to spread word of the death. In the small town, this news traveled fast, and visitors began arriving to see the body for themselves.<sup>65</sup> One of these visitors was a man who was named in the trial transcripts simply as Brooks, a merchant who came to the house on Saturday evening. He asked Elizabeth about the bruises that were obvious all over James' body, and she replied to him that "he got them by throwing himself about the room and hitting and abusing himself."<sup>66</sup> This testimony contrasted with the earlier description by Sarah Patterson of Elizabeth Workman's pride in physically punishing James Workman for his behavior.

Since the authorities were apparently not immediately contacted, Sarah Patterson enlisted the help of James Workman's estranged daughter, Mary Skirving, to clean the house. Mary helped Sarah remove the clothes from James' body and they tidied up the home. In doing so, they threw out the

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<sup>60</sup> Trial testimony of Hugh Workman, *supra* note 45.

<sup>61</sup> Trial testimony of Sarah Patterson, *supra* note 50.

<sup>62</sup> *Ibid.*

<sup>63</sup> Trial testimony of David Patterson, *supra* note 47.

<sup>64</sup> Trial testimony of Sarah Patterson, *supra* note 50.

<sup>65</sup> *Ibid.*

<sup>66</sup> Trial testimony of Mr. Brooks, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

mop handle. Sarah Patterson testified that they had no knowledge of the fact that Elizabeth had used it as a weapon.<sup>67</sup>

The authorities, including the coroner, Dr. Edward Oliver, arrived late on Saturday night, and immediately closed off the area such that no more visitors would disturb the scene. The post-mortem examination was conducted on Sunday morning. Dr. Oliver concluded that James Workman had received no nourishment for at least twenty-four hours before his death, as his stomach was completely empty. In the coroner's view, bruises and abrasions on James Workman's legs were consistent with having been bound with rope. Other bruises covered the body from an estimated twenty to thirty blows from a blunt object; however, the fatal blow was one deemed to have been made "by a sharp cutting instrument" near the left temple. Dr. Oliver observed two butcher's tools in the home that could have caused this injury. Additionally, he noted that the body appeared to have been washed.<sup>68</sup>

The events of that Saturday rapidly became a news story, appearing in the *Toronto Evening Mail* on the front page, as well as the local *Sarnia Observer*. Foul play was immediately suspected.<sup>69</sup> Perhaps as a result of this undesirable attention, the Patterson family moved out of their home a week later.<sup>70</sup> Public suspicion fell on Elizabeth Workman, because of the evidence that placed her alone with her husband at the time of his death, and also on her alleged lover, Samuel Butler.

A coroner's inquest, called by Dr. Oliver, was held on November 4, to determine whether or not there would be a trial, and if so, whom to charge with the alleged crimes. Involving almost all of the same witnesses as the subsequent trial, and nearly identical testimony, this inquest concluded that "James Workman came to his death by receiving excessive violence and from the evidence we believe that the said violence was inflicted by his wife, Mrs. Workman, or a Negro barber known as Samuel Butler, or both."<sup>71</sup> The fact that Butler was described as a Negro emphasizes that his perceived racial identity was considered relevant to the case. Both parties were arrested immediately and thrown in jail.

Following her arrest, Elizabeth repeated her initial denial of any involvement in her husband's death, instead blaming it on natural causes and giving the *Sarnia Observer* reporter a "plain, and seemingly straight-forward account of her husband's illness and death."<sup>72</sup> In the same interview, she corroborated Samuel Butler's denial of his involvement as well, confirming his statement that he had "never so much as seen him, [James Workman] from the Thursday previous, till after his death on Saturday afternoon."<sup>73</sup>

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<sup>67</sup> Trial testimony of Sarah Patterson, *supra* note 50.

<sup>68</sup> Trial testimony of Edward Oliver, *supra* note 49.

<sup>69</sup> "Suspected Murder: A Man Beaten to Death" *supra* note 10.

<sup>70</sup> Trial testimony of Sarah Patterson, Sarnia, *supra* note 50.

<sup>71</sup> Jury's verdict, Coroner's Inquest, County of Lambton, November 4, 1872, NAC, RG13, vol. 1410, File 64A.

<sup>72</sup> "Man Killed in Mooretown," *supra* note 22.

<sup>73</sup> *Ibid.*

The legal system at the time tried all cases during one of four periods over the course of the calendar year. During each season, a jury would be named, and this jury would sit and hear all the cases that transpired during the previous few months. Elizabeth Workman was tried on the opening day in the Sarnia spring assizes of 1873. That day, Friday, March 20<sup>th</sup>, was the first point where it became apparent that Elizabeth Workman did not have a defense lawyer and did not have the means to pay for one. In light of this, the court requested that a Mr. John A. Mackenzie undertake this task.<sup>74</sup> A member of the Sarnia Town Council, Mackenzie was a 33-year-old barrister who was native to Ontario and Scottish by descent.<sup>75</sup> The start of the trial was set for the following morning, and thus Mackenzie had little time to familiarize himself with the case and to formulate a defense.

The trial was conducted and a verdict reached in two days. Witnesses were called and recounted their observations without objection from Mrs. Workman's lawyer. The Crown attorney was a Mr. Idington.<sup>76</sup> The presiding judge, Adam Wilson, Jr., later Sir Adam Wilson, was a fifty-nine year old Scot, and former mayor of Toronto. As a lawyer, he had worked with Robert Baldwin, a future Reform Party leader in the Province of Canada, from 1840 until 1849.<sup>77</sup> Justice Wilson made a strong closing statement that began with the claim that there was no option but to acquit Mr. Butler, as there was no evidence presented against him. He then summed up the story that the witnesses had told the jury and presented the evidence against Mrs. Workman in a list. First on his list was the claim that "she was not very kind to her husband."<sup>78</sup> Justice Wilson then argued that the abuse heaped upon Elizabeth by James had never been physical, but only verbal. Wilson also noted that Butler had taken Elizabeth Workman's side against James, even threatening him in her presence, and "that the evidence pointed to some kind of improper intimacy between" Samuel Butler and Elizabeth Workman.<sup>79</sup>

Wilson concluded that there was strong circumstantial evidence against Elizabeth Workman, in that she had been alone in the house while the alleged beatings were taking place, and that she had been seen leaving the bedroom after the beatings were overheard. She was also said to have asked her husband if he had "got enough," and as well to have boasted that she had given James a beating that he would not soon forget. Judge Wilson pointed out that Elizabeth did not send for any medical help, and only contacted authorities after her husband had been dead at least several hours. Wilson ended his statement by charging that "these are reasons – some of them

<sup>74</sup> "The Assizes" *Sarnia Observer and Lambton Advertiser* (March 28, 1873) 2.

<sup>75</sup> Federal Census of 1871, Ontario Index, NAC, RG 31.

<sup>76</sup> Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>77</sup> W. Stewart Wallace, *The Macmillan Dictionary of Canadian Biography* (London: Macmillan, 1963) at 805.

<sup>78</sup> Statement of Judge Wilson, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>79</sup> Statement of Judge Wilson, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

strong – perhaps convincing and all more or less applicable for implicating the woman.”<sup>80</sup> The *Sarnia Observer* interpreted Wilson’s closing statement as having “charged the jury rather strongly against the prisoner, giving it as his opinion that they could not avoid convicting her of murder, for it was either that or nothing.”<sup>81</sup>

In keeping with Judge Wilson’s statement, the jury convicted Elizabeth Workman; Samuel Butler was set free. At the same time, however, the jury recommended the use of the Royal Prerogative of Mercy that could be exercised in Canada by the Queen’s representative, the Governor General to save Elizabeth Workman’s life. The court then adjourned, after setting an execution date of June 19, 1873.<sup>82</sup>

Elizabeth would spend the next three months in the Sarnia prison, hoping for a commutation, as recommended by the jury. When no action was forthcoming, the *Sarnia Observer* ran an article on Friday, April 18, 1873, calling for support. The article presented “some reasons why steps should be taken to give effect to the jury’s recommendation,”<sup>83</sup> and it inspired a variety of petitions in favour of Elizabeth Workman. At this time, the Governor General of Canada was the Earl of Dufferin, and the Minister of Justice was the Prime Minister, John A. Macdonald. The petitions were forwarded to the Department of Justice, addressed to Lord Dufferin, but in keeping with Jonathan Swainger’s analysis of such appeals, Macdonald believed the decision was in reality his own.<sup>84</sup> The documents Macdonald received included a letter supporting the execution from the trial judge Adam Wilson, Jr., and two letters favoring mercy from the future Prime Minister, Alexander Mackenzie. The letter from Wilson stated that he “had nothing to say of the case favorable for the prisoner,” reporting that “the fact remains that she did commit the acts charged to her and she alone.”<sup>85</sup> In contrast Mackenzie’s first letter raised several arguments in Workman’s favor and partially attributed the acts to the fact that “the parties were of a very low class.”<sup>86</sup> Mackenzie’s statement concerning the “class” of the Workman family shows the way that different families and individuals were perceived, almost incapable of being responsible for their actions. His second letter to Macdonald, however, was simply a personal plea: “feeling against the execution of Mrs. Workman [is] stronger than ever. For any sake do something to postpone the execution.”<sup>87</sup> In a last-ditch effort to save Elizabeth Workman, the Sarnia County Council sent a delegation of Mr. Mackenzie and Mr. Rae, both council members, to Montreal to meet the Earl of Dufferin and John A. Macdonald, and plead the case a final time. These

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<sup>80</sup> *Ibid.*

<sup>81</sup> “The Assizes,” *supra* note 74.

<sup>82</sup> Jury’s Verdict, Sarnia, County of Lambton Criminal Court, March 21, 1873, NAC, RG13, vol. 1410, File 64A.

<sup>83</sup> “Mrs. Workman’s Case” *Sarnia Observer and Lambton Advertiser* (April 18, 1873) 2.

<sup>84</sup> Swainger, *supra* note 4 at 56.

<sup>85</sup> NAC, RG 13, vol. 1410, File 64A.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

efforts were in vain. Macdonald decided against Elizabeth Workman since, as he explained to the Governor General, he could not in this case “undertake the responsibility of arresting the operation of law by the exercise of the Queen’s Prerogative.”<sup>88</sup>

The sequence of events between the end of the trial, on March 22, 1873, and Elizabeth Workman’s death, on June 19, 1873, emphasizes the importance of the way that she was characterized at her trial. The closing statement of Justice Wilson weighed heavily against Workman, and illustrated how the legal system viewed a reportedly adulterous woman who had physically harmed her husband. However, a crucial reason that Elizabeth Workman was allowed to hang was that this negative characterization was uncontested at the trial. Elizabeth Workman, a poor, marginalized, working-class woman was ill-served by a judicial system that accorded her little regard. Specifically, no real effort was made to defend her.

This argument does not blame her lawyer, John A. Mackenzie, since he was only assigned to the case the day before the trial began. The fact that Elizabeth Workman had no counsel was not officially noted until the start of the trial, which was then delayed only one day to assign Mackenzie to the case. The late date that the absence of a defence lawyer was addressed is indicative of the lack of official importance given to the case. In a letter to John A. Macdonald dated May 28, 1873, future Prime Minister Alexander Mackenzie argued, “I am not surprised at the judge having a strong impression against the woman. It would be strange if it were otherwise, as there was no opportunity of bringing out evidence that might tilt in her favor. The unfortunate woman had no counsel engaged, and no one interested in assisting her,” and though she was eventually assigned counsel, “what could he do on a few hours notice?”<sup>89</sup> In the one night that John A. Mackenzie had to prepare for the case, he came up with a statement that asserted her innocence, but nothing else. In a closer examination of her circumstances in the larger context of the times, it becomes apparent that a defense could certainly have been mounted and might have convinced the jury to return a verdict of not guilty, or at least made it difficult for the judge to characterize her so negatively in his closing statement.

The most desperately needed defense was of Elizabeth Workman’s character. Justice Wilson’s closing statement at the trial characterized Elizabeth Workman as a bad woman who acted without justification against her husband. While Wilson’s claim that Elizabeth had never suffered any physical abuse was not explicitly contradicted by the testimonies given at the trial, this claim could certainly have been undermined by witness testimony. For example, the fact that Elizabeth Workman fled to the Patterson residence on a number of occasions, suggests that it is unlikely that James Workman

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<sup>88</sup> Letter from John A. Macdonald to the Earl of Dufferin regarding Mrs. Workman’s case (1873) NAC, RG 13, C 1.

<sup>89</sup> NAC, RG13, vol. 1410, File 64A.

never physically abused his wife. Sarah Patterson was never given the opportunity to shed light on this matter at the trial. David Patterson's testimony that other men frequented the Workman residence is the only potentially damaging evidence about Elizabeth's interaction with individuals other than her husband.<sup>90</sup> In fact, in every other instance she was described not only at the trial, but in the newspapers and petitions as a hard-working, devoted mother and wife, who was soft-spoken and mild-mannered.<sup>91</sup> She kept her son in school, a remarkable feat for a family firmly in the grips of poverty. Elizabeth also worked odd jobs outside the home in an attempt to make ends meet. It could even have been argued that her alleged illicit relationship with Samuel Butler was a form of prostitution, and that she was simply trying her best to help her family survive. Her case would certainly have been helped if individuals in the community had been called to testify on her behalf. The consistently positive characterizations of Elizabeth Workman that appeared after the trial contrast sharply with Judge Wilson's condemnation of Elizabeth Workman in his closing statement.

In addition, a proper defense could have raised serious questions concerning the circumstantial nature of most of the prosecution's evidence surrounding James Workman's death. In fact, as one petition argued, "[t]he whole of the evidence (...) was purely circumstantial."<sup>92</sup> Explanations favouring Elizabeth Workman could have been proffered for many of the factors that appear to have been used against her. For example, the bruises on James Workman's legs appeared to have had been made by a rope. The implication was that this rope was used to tie James down so that Elizabeth could abuse and kill him. There is no direct evidence of this intention. The defense could have argued that Elizabeth had tied James down when he was drunk to contain him, an act of fear and self-defense on Elizabeth's part. Similarly, Elizabeth's fear might have been used to explain why Samuel Butler stayed over late on the night of Thursday, October 24, until after James had gone to sleep. Rather than demonstrating that Elizabeth was a bad wife, who committed adultery, Butler's presence at the Workman home could just as easily have been a precaution that Elizabeth took for her own safety; this explanation would be consistent with the earlier incident at Butler's shop. Both of these alternate explanations paint Elizabeth Workman as a loyal wife living in fear, rather than as a vengeful adulterer who decided to kill her husband.

A different defence strategy for Elizabeth Workman could have shifted blame to Samuel Butler, perhaps by appealing to the pervasive racism of the time. The coroner's inquest had indeed concluded that "the said violence was inflicted by his wife, Mrs. Workman, or a Negro barber known as

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<sup>90</sup> Trial testimony of David Patterson, *supra* note 47.

<sup>91</sup> "Mrs. Workman's Case" *Sarnia Observer and Lambton Advertiser* (June 13, 1873) 2.

<sup>92</sup> Edward Oliver, Samuel Judson, Robert Richmond, Mr. Brooke, petitioners, Mooretown (April 1873) NAC, RG13, vol. 1410, File 64A.

Samuel Butler, or both.”<sup>93</sup> One of the petitions for Workman’s commutation argued “[t]hat the coloured man, with whom the condemned was arraigned, for lack of positive testimony, was discharged; although in the minds of the community in which the awful deed was perpetrated, the man was equally guilty.”<sup>94</sup> Given the description of Butler as “negro” or “coloured,” in the *Sarnia* newspapers and trial transcript, the possibility of deflecting at least part of the guilt onto Butler certainly existed. Moreover, it was reportedly well-known in the community that Butler had earlier been on trial for poisoning a woman in his previous town of Listowel – could he not have also poisoned James Workman? Perhaps his death was not at all a result of the beatings, but rather a poison administered by Samuel Butler.<sup>95</sup> The fact that Butler had expressed a dislike for James Workman and had been seen roughing him up outside his shop could have been used to support this explanation.

In addition to offering alternative explanations of the circumstantial evidence, a proper defense for Elizabeth Workman would have raised serious questions about key aspects of the witness testimony. Firstly, there was no issue made of the fact that the site of the body was thoroughly cleaned by Mary Skirving and Sarah Patterson before the authorities arrived. They admitted to removing the mop handle with which Elizabeth allegedly beat her husband, and the possibility remains that they had removed other evidence as well. In fact, the defense could have emphasized how the crime scene was left unprotected for an extended period of time after James Workman’s death.

Secondly, the attitude with which the community viewed alcohol consumption could have been useful to the defense. The temperance movement in Canada traces its roots to the eastern coast in the 1820s, perhaps reaching its peak in October 1854, when a prohibition bill was passed by the House, 97-5, only to be struck down on a technicality the following year.<sup>96</sup> Described by Ontario newspapers as “the widest spread and most destructive vice with which our land is cursed,” liquor was seen to “lure the tippler on the road to ruin and destruction.”<sup>97</sup> Concurring with Elizabeth Workman’s own last words, the *Sarnia Observer* described James Workman’s death as “the result of intemperance (...) thus adding another to the many evidences of the sad effects of indulgence in strong drink.”<sup>98</sup> Nonetheless, James Workman was a known drunk, while Elizabeth was no more than a social drinker.<sup>99</sup> This angle could have been played in two ways

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<sup>93</sup> Jury’s verdict, Coroner’s Inquest, County of Lambton, November 4, 1872, NAC, RG13, vol. 1410, File 64A.

<sup>94</sup> Edward Oliver *et al.*, *supra* note 92.

<sup>95</sup> “Man Killed in Mooretown,” *supra* note 22.

<sup>96</sup> Jan Noel, *Canada Dry: Temperance Crusades Before Confederation* (Toronto: University of Toronto Press, 1995) at 11.

<sup>97</sup> The first quote is taken from Noel, *ibid.* at 132, and the second from “The Drunkard’s Daily Experience” *Sarnia Observer and Lambton Advertiser* (July 25, 1873) 1.

<sup>98</sup> “Man Killed in Mooretown,” *supra* note 22.

<sup>99</sup> Opinions on this vary, as four of the petitions describe her as “sober,” while the fifth describes Elizabeth Workman as “addicted to intemperance.” Mr. Elliot, foreman, and 16

– to portray James Workman as an evil man who tormented his wife, and also to suggest that he was drinking himself to death.

None of these arguments were raised in court; indeed, no real defense was mounted. In contrast, five petitions submitted after the trial were signed by 628 individuals from all levels of society. Two of the petitions contained the same text, but the others all offered their own arguments. The recurring theme in the first four clemency petitions can be summed up in two phrases that were used to describe Elizabeth Workman and her husband. Elizabeth was “a sober, industrious woman of good character who worked hard to support her husband and child though often deprived by her husband of her hard earnings as soon as obtained.”<sup>100</sup> James, on the other hand, “was very dissipated and cruel and frequently ill-treated her compelling her to take refuge in the houses of her neighbors.”<sup>101</sup> These petitions were signed by many local notables, including the Sarnia Mayor, Charles Taylor, many local politicians, the county Crown Attorney, and Peter Mayhew, a witness at the trial. These petitions argued on the basis of character, but the final petition, dated April, 1873, went a step further.

The fifth petition appears to have been created by the doctor who examined the body, Edward Oliver, and it does not refer to Workman’s character at all. Instead, three arguments are clearly labeled and proposed. The first argument questions the circumstantial evidence of the crown, while the second argument demands to know why Samuel Butler was released without punishment, despite being “equally guilty” in “the minds of the community.”<sup>102</sup> Lastly, the blame for the crime is laid upon Elizabeth Workman’s own intoxication, arguing that “it is possible the fatal blow may have been administered under excitement.”<sup>103</sup> In addition to Oliver, this petition was signed by Samuel Judson, Robert Richmond, and Mr. Brooke, all men who testified at the trial against Elizabeth Workman.<sup>104</sup>

For its part, the *Sarnia Observer* referred to two other local cases in an effort to show how mercy should be accorded to Elizabeth Workman. The *Observer* argued that Elizabeth Workman should be treated with more leniency because a man named Peter MacDonald had been sentenced to only three years in jail “for an offence of a more aggravated character, as viewed by the community generally.”<sup>105</sup> In addition, the newspaper, as well as the fifth petition, contrasted Mrs. Workman favorably with a man named Horton, who had “wantonly and in cold blood (shot) Robinson.”<sup>106</sup> The county council had successfully petitioned for his mercy and held that “Mrs.

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other petitioners, Grand Jurors of the Court of General Sessions (1873) NAC, RG 13 , vol. 1410, File 64A and Edward Oliver *et al*, *supra* note 92.

<sup>100</sup> Charles Taylor and 119 other petitioners, addressed to the Earl of Dufferin (1873) NAC, RG 13, vol. 1410, File 64A.

<sup>101</sup> *Ibid.*

<sup>102</sup> Edward Oliver *et al*, *supra* note 92.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> “Mrs. Workman’s Case,” *supra* note 91.

<sup>106</sup> *Ibid.*

Workman, in our opinion, and in the opinion of the public generally, [was] much more worthy of clemency than Horton was.”<sup>107</sup> It was this argument that was mounted by the delegation that the Sarnia County Council sent to Quebec to meet Dufferin and Macdonald.<sup>108</sup>

In Canada at this time, the death penalty could be ascribed to only five crimes: murder, attempted murder, treason, rape, and carnal knowledge of a female under ten years of age.<sup>109</sup> Between the years of 1867 and 1878, however, the only crime for which the death penalty was used was murder. The threat of the death penalty was retained as a deterrent for the other crimes. In a statement that clearly shows the racial biases present in Canada at the time, Prime Minister John A. Macdonald argued that the threat of the death penalty was still necessary for rape

(...) on account of the influx of Blackguards from the United States, who can cross and re-cross our borders at will and occasionally commit all kinds of outrages. We have thought it well also to continue it on account of the frequency of rape committed by Negroes, of whom we have too many in Upper Canada. They are prone to felonious assaults on White women: if the sentence and imprisonment were not very severe there would be great dread of the people taking the law into their own hands.<sup>110</sup>

Coming from a man who played the key role in determining her fate, such racism cannot have helped Elizabeth Workman’s case, given the perception of her relationship with Samuel Butler.

Historian Jonathan Swainger argues that successful clemency campaigns in nineteenth-century Canada followed one of four approaches: an application for remission of sentences on the grounds of good behavior; the introduction of a legitimate doubt that justice had been served by the original verdict; documentation that further imprisonment would directly lead to unnecessary harm to the accused; or reference to an extraordinary service performed while imprisoned.<sup>111</sup> Thus, according to Swainger, the only approach that could have been applicable to this case, and perhaps have saved Elizabeth Workman was to cast doubt upon the original verdict through the presentation of new evidence or by demonstrating that the sentence was not proportional to the crime.<sup>112</sup> For convicted men, the chances of a commutation varied, depending on the Minister of Justice in power at the time. During Macdonald’s five years holding the position, he

<sup>107</sup> *Ibid.* An error was made in the logic of the county council, however, since the cases to which they referred did not prove their argument – Horton had been allowed to live because of a mental condition. (NAC, RG 13, vol. 1409, File 42A)

<sup>108</sup> Sarnia County Council Minutes, June 10, 1873, NAC, RG 13, vol. 1410, File 64A.

<sup>109</sup> Swainger, *supra* note 4 at 64.

<sup>110</sup> *Ibid.* at 64. This statement, though certainly demonstrative of Macdonald’s feelings on the issue, is not necessarily representative of the entire public opinion concerning Black men and White women. As S.G. Howe argues in his report, some believed that “the respect paid to women, by colored men, as soon as they become free, is one of the most hopeful signs for the race.” (Howe, *supra* note 23 at 95-96)

<sup>111</sup> *Ibid.* at 59-60.

<sup>112</sup> *Ibid.* at 60.

commuted sixteen of thirty-six murder convictions to a lesser sentence.<sup>113</sup> Of the sixteen commutations by Macdonald, ten received recommendations from the jury, and of the twenty executions that he allowed to proceed, only six would be against the jury's recommendation.<sup>114</sup> These six included only one woman, Elizabeth Workman.

The main grounds of appeal, of character and family situation, were historically ineffective, according to Swainger, because "the Department of Justice was little inclined to be charitable towards such petitions for the simple reason that regardless of a person's family circumstances, the prisoner had been found guilty and the sentence had to be served."<sup>115</sup> As Swainger notes, "these rejections bore the unmistakable tone that had inmates thought of their families before breaking the law, they would not have placed themselves and their loved ones in such disadvantageous positions."<sup>116</sup> The arguments raised by the fifth petition and the Sarnia Council delegation fall into the second category that Swainger describes, attempting to cast doubt upon the original verdict and to categorize the punishment as disproportionate to the crime. In contrast, research on the Elizabeth Workman case suggests that a focus on the weakness of the circumstantial evidence would have been the most effective argument that could have been put forth by the clemency campaign. Similarly, this line of argument might have been even more effective in the courtroom. But the courtroom had failed Elizabeth Workman.

Elizabeth Workman thus became the only woman ever hanged in Canada contrary to a jury's recommendation for mercy, as a result of the specific convergence of individual actions, social context, and legal culture and practice. While unique, her experience reflects the complexities of law and society in nineteenth century Canada. Moreover, her hanging appears to have influenced subsequent judicial decisions. In their analysis of the case of Hilda Blake, a young Manitoba woman executed in 1899 for the murder of her employer, historians Reinhold Kramer and Tom Mitchell focus on the first execution of a woman in Canada after that of Elizabeth Workman. Kramer and Mitchell suggest that the long gap between executions was perhaps a backlash to the "public lament, rather than (...) sense of justice done" that had marked Workman's hanging.<sup>117</sup> They argue that a few of the women whose sentences were commuted after 1873 killed with much less provocation than Elizabeth, and that the Workman case may have affected the decision not to execute them. In this sense, public reaction to the hanging of Elizabeth Workman also helped assure her unique place in Canadian legal history.

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<sup>113</sup> NAC, RG 13, C 1.

<sup>114</sup> *Ibid.*

<sup>115</sup> Swainger, *supra* note 4 at 59.

<sup>116</sup> *Ibid.* at 59.

<sup>117</sup> Reinhold Kramer & Tom Mitchell, *Walk Towards the Gallows: The Tragedy of Hilda Blake, Hanged 1899* (Toronto: Oxford University Press, 2002) at 184.

### **Résumé**

Dans l'histoire judiciaire du Canada, une seule femme fut exécutée contre la recommandation du jury : Elizabeth Workman. Pendue en 1873 à Sarnia, en Ontario, cette mère de classe ouvrière et immigrante avait été condamnée du meurtre de son époux. Cet article vise à approfondir notre compréhension de la pendaison d'Elizabeth Workman en répondant à un ensemble de questions reliées : Pourquoi fut-elle condamnée? Pourquoi le jury recommanda-t-il qu'elle soit graciée? Pourquoi cette recommandation ne fut-elle pas acceptée? Pour répondre de manière fondée à ces interrogations, un corpus substantiel de sources primaires et secondaires a été consulté, incluant le dossier judiciaire, des données de recensements, des quotidiens locaux ainsi que des travaux scientifiques plus récents sur le contexte social et légal du procès et de l'exécution. Ces données suggèrent qu'Elizabeth Workman est devenue la seule femme à être exécutée contrairement à la recommandation d'un jury suite à une convergence d'actions individuelles, du contexte social et de la culture et pratique légales.

### **Abstract**

Throughout Canadian history, there has only been a single woman hanged contrary to the jury's recommendation: Elizabeth Workman. Hanged in 1873 in Sarnia, Ontario, she was a working-class immigrant mother, who had been convicted of the murder of her husband. This article seeks to advance our understanding of the hanging of Elizabeth Workman by reporting on a comprehensive study of a series of interrelated questions: why was Elizabeth Workman convicted? Why was she recommended for mercy? Why was this recommendation not accepted? To best answer these questions, a wide range of primary and secondary sources were consulted, including the capital case file, census records, local newspapers, and more recent scholarship on the social and legal context in which her trial and execution took place. The answers to these questions suggest that Elizabeth Workman thus became the only woman ever hanged in Canada contrary to a jury's recommendation for mercy as a result of the specific convergence of individual actions, social context, and legal culture and practice.

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