Criminal Conversations

Rowbothan, Judith, Stevenson, Kim

Published by The Ohio State University Press

Rowbothan, Judith and Kim Stevenson.
The Ohio State University Press, 2005.
Project MUSE. muse.jhu.edu/book/28295.

For additional information about this book
https://muse.jhu.edu/book/28295

For content related to this chapter
https://muse.jhu.edu/related_content?type=book&id=1152518
“Kicked, Beaten, Jumped On until They Are Crushed,” All under Man’s Wing and Protection: The Victorian Dilemma with Domestic Violence

SUSAN EDWARDS

Introduction

Nineteenth-century men extolled themselves as the protectors of women, reflecting Blackstone’s presumption of male protectiveness in his much-quoted words:

By marriage, the husband and wife are one person in the law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband. . . . Even the disabilities which the wife lies under are for the most part intended for her protection and benefit. So great a favourite of the female sex are the laws of England.¹

The popularist conversation encapsulated in this was challenged, interrogated, and contested by an equally compelling “conversation” about women’s protection under the law.² Matilda Blake chose a somewhat excoriatingly satirical title The Lady and the Law in her 1892 contribution to this ongoing “conversation” in which she showed that under common law, women were denied rights to property, custody of their children, and protection from male domestic violence:

the sentences given for violent assaults by husbands on their wives at police and sessional courts are evidently guided by such a theory of the marriage relationship. Cases might be quoted by scores in which the killing of wives is brought as manslaughter, and punished by a few years’ (or even months’) imprisonment.³
Lord Chief Justice Coleridge commented:

I can scarcely believe that if the House of Commons was as much aware as every lawyer is aware of the state of the law of England as regards women, even still, after the very recent humane improvements in it, it would hesitate to say it was more worthy of a barbarian than of a civilised State.

Or, as Fitzjames Stephen remarked, “common instances of brutality seldom find their way into the papers” because they were seen as part of a daily normality.

Blake devoted a further article specifically to the treatment of victims of domestic violence by men and by the courts:

Their so-called protectors daily beat, torture and violently assault them, often with such violence that death results; while the male judges, appointed by a Government chosen by an exclusively male electorate, punish the offenders in a most inadequate manner, holding a woman's life at a lesser value than a purse containing a few shillings.

This alternative “criminal conversation” challenged the portrayal of women as “protected by the law,” exposing this version as masculinist hegemony inherent in the common law wherein the male point of view was taken as objective. This chapter explores the reality behind the hypocrisy underpinning debates based on assumptions of male protectiveness, examining the treatment of violence against women in the substantive law, issues around the trial process itself, and media reporting of such matters. There are powerful modern echoes: the most pressing issue with regard to contemporary legal treatment of violence against women remains the fact that so few perpetrators are formally prosecuted. The same was also an urgent concern for Victorian jurisprudence.

Women under the Rod of the Common Law

The first major obstacle to Victorian women's protection was long-standing enshrinement of male violence. Common law effectively allowed women to be beaten at men's will, if it could be shown that the assault was committed in the name of moderate chastisement, as the old authority's stated moderate castigone. If her behavior was considered deserving of masculine resentment, then violent conduct was regarded as justifiable, because the common law provided that a husband could subject his wife to physical punishment or
“chastisement” so long as he did not inflict permanent injury. That legacy ensured that women lived *sub virga*, under the rod. By the Victorian period, debates on the topic had a long pedigree, with comment from earlier periods being still regularly invoked.\(^{10}\)

Whately argued that beating a wife was only justified where she was of “unwifelike carriage”:

> But for blows . . . nothing should drive a husband to them, except the utmost extremities of unwifelike carriage, unless she be peremptory and wilful in cursing, swearing, drunkenness etc . . . unless she outface him with bold maintaining, that she will do as she doth, in despite of him, unless she begin the quarrel and strike or offer to strike.\(^{11}\)

Nicolas Brady stated that “A man may beat an outlaw, a traitor, a pagan his villain or his wife because by the Law Common, these persons can have no action.”\(^{12}\) Essentially, “unwifelike carriage,” the common law justification for violence, provided the dominant justificatory rationale where so long as “correction was confined within reasonable bounds,” the “law thought it reasonable to intrust him with this power” because a man was legally bound to “answer for her misbehaviour.”\(^{13}\) Nineteenth-century interpretations proclaimed that “A man can beat a wife with a whip or a stick but he cannot knock her down with a cudgel or an iron bar.”\(^{14}\) Often referred to as “the rule of thumb,” subsequent debates have raged over whether in fact it ever existed in law.\(^{15}\) However, it was certainly the case in practice in England, and cannot be dismissed as a fiction.

**Male Violence against Women in the Nineteenth Century**

Cobbe famously detailed the problem of domestic violence:

> Wife-beating exists in the upper and middle classes rather more, I fear, than is generally recognised; but it rarely extends to anything beyond an occasional blow or two of a not dangerous kind. In his apparently most ungovernable rage, the gentleman or tradesman somehow manages to bear in mind the disgrace he will incur if his outbreak be betrayed by his wife’s black eye . . . The dangerous wife-beater belongs almost exclusively to the artisan and labouring classes. . . . In the worst districts of London as I have been informed by one of the most experienced magistrates, four-fifths of the wife-beating cases are among the lowest class of Irish labourers a fact worthy of
more than passing notice... seeing that in their own country Irishmen of all classes are proverbially kind and even chivalrous towards women.16

Victorian women inherited not only a tradition of male brutality but also the legacy of the violence of the common law which sanctioned commission of that violence against them with relative impunity. The regular newspaper reports of domestic violence cases corroborate Cobbe’s thesis that unwifely behavior could amount to “a bell not answered with the required promptitude—a dinner somewhat late or badly cooked—a pair of slippers not to be found when wanted—a book carried off—a set of papers disarranged.”17 In a further echo of the press reporting, Cobbe added “Should she be guilty of nagging or scolding, or of being slattern, or of getting intoxicated, she finds usually a short shrift and no favour—and even humane persons talk of her offence as constituting, if not a justification for her murder, yet an explanation of it.”18

Mrs. Fenwick Miller wrote a letter to the *Daily News* (picked up and commented on by the *Pall Mall Gazette* in an interesting interpress dialogue):

Week by week and month by month, women are kicked, beaten, jumped on until they are crushed, chopped, stabbed, seamed with vitriol, bitten, eviscerated with red-hot pokers and deliberately set on fire—and this sort of outrage, if the woman dies, is called “manslaughter”: if she lives it is a common assault.19

“Unwifelike carriage” has obvious parallels with modern justificatory narratives attempting to exculpate masculine violence. Such narratives are not only embedded in cultural explanations of legitimate reasons for assaults against women but also within legal discourse, becoming embodied in legal method itself.20 When men kill wives, then the narrative of the provoked “reasonable” man is in effect the anthropomorphization of masculinist rhymes and reasons, which justify male violence by an appeal to the fiction of an objective authority of “reasonableness.”

Modern feminists have exposed these narratives as privileging male violence in much the same way as their Victorian counterparts took issue with the masculinism of the law and the media.21 The evolution of mass feminine (and feminist) journalism has roots in this discontent, as feminist activists used newspapers and periodicals to argue for the preeminent necessity of protecting women from men, commenting that to do so, it was first necessary to protect women from the law’s violence.22 Recognition of this, quite as much as of the issue of male violence, prompted Robert Kerr to take issue with Blackstone’s eulogy: “With the exception of the protection afforded to the
separate property of the wife by the courts of Equity, it is difficult to find any substantial ground upon which to support this conclusion; in other respects, the law always favoured, and in many respects still favours, the husband.”23

Other Victorian male legal commentators concurred: “Blackstone, we know, wrote his famous book with a bottle of port by his side; and we would wager a dozen that (describing women as the sex singularly favoured by English law) he sipped his glass and chuckled.”24

The Substantive Law

Nineteenth-century feminists turned to reform of the substantive law in efforts to defend themselves and to challenge the law’s collusion with male violence, developing a lively print conversation to forward their campaigns. The scale of the task they undertook in tackling the legal system was enormous. If today, British women can call on a wide range of remedies, their mid-Victorian sisters had little formal redress.25 After years of strenuous print campaigning, during which the feminist protagonists regularly encountered fierce and vociferous opposition in the dominant print productions of the day, criminal remedies began to appear, starting with the Aggravated Assaults Act 1853. Its full title read “An Act to provide better legal protection for women and children and for preventing delay and expense in the administration of certain parts of the criminal law.” Upon conviction, an offender could be imprisoned for a period of not more than six months or receive a fine of up to £20.

That Act was later consolidated into section 43 of the Offences Against the Person Act of 1861:

When any person shall be charged before Two Justices of the Peace with an Assault or Battery . . . upon a male child . . . or upon any female, whether upon the Complaint of the Party aggrieved or otherwise, the said Justices, if the Assault or Battery is of such aggravated Nature that it cannot in their Opinion be sufficiently punished under the Provisions herein—before contained as to Common Assaults and Batteries [see section 42 of the said Act], may proceed to hear and determine in a summary way.

“Aggravated assault” embraced both domestic violence and sexual assault against women and physical assaults against children within and outside the domestic context.26 In fact many indecent assault cases were proceeded against as aggravated assault.27 Despite the regular newspaper reporting of cases which invoked the conditions of the Act, its success could be held to be
limited, witness the fact that further efforts to provide better protection for women and children against violence failed.

The Aggravated Assaults Bills of 1860 and 1882, introduced to provide what was intended by their advocates as a more effective system of sentencing (to include whipping perpetrators), were defeated by the same mentality that marginalized any serious consideration of the reality of domestic violence by reasoning that the battered wife brought violence upon herself. In debates brought to public consciousness via reportage in *The Times*, for instance, one of the 1860 Bill’s main opponents asserted:

> But though there are many cases in which delicate women came forward and claimed protection against brutal husbands, it must be remembered, on the other hand, that a mischievous and ill-tempered woman could very easily impose on a magistrates, and by aggravating her husband until he struck her, might continue to bring him into a police court, rid herself of his society, and disgrace him by the punishment which this Bill proposed in to inflict.\(^{28}\)

Another MP spoke out in similarly vehement opposition to such measures, warning the House to be wary of “the venom of an angry woman's tongue.”\(^{29}\) Indeed, how far either the Aggravated Assaults Act 1853 or its successor, the Offences Against the Person Act 1861, section 43, actually improved the protection of women has been the subject of considerable academic debate by feminist historians in an interesting echo of the Victorian conversation.

For instance, Nancy Tomes, in a diligent study of the statistics of cases of aggravated assaults proceeded with, argues that a decline in such can be taken without question as an indicator of the deterrent impact of the new law.\(^{30}\) Yet one might reasonably expect any improvement in the substantive law to be reflected in a greater confidence of women to report abuse, with the resultant effect of an increase in prosecutions. Tomes examined aggravated assaults in the London police courts, finding that between 1853 and 1889 “aggravated assaults” fell markedly from 800 cases in 1853 to 200 cases in 1889.\(^{31}\) I do not dispute this evidence. Indeed my own examination of Judicial Statistics\(^{32}\) and later Criminal Statistics demonstrates this decline as a continual one into the twentieth century (see Table 1).

The question is, how is this decline in aggravated assault cases to be interpreted? The first point is that summary courts provided only one of several court forums for hearing criminal cases. Summary courts supposedly dealt with minor criminal cases, referring more serious criminal cases to the Petty Sessions, Quarter Sessions and Assizes. These included assault charges laid in accordance with the Offences Against the Person Act 1861, including those...
brought under section 47 (assault occasioning actual bodily harm), section 20 (grievous bodily harm) or section 18 (grievous bodily harm with intent). Essentially, analysis of aggravated assault figures provides only one part of a wider picture.

The decline in the use of section 43 observed by Tomes in the London police courts was, I suggest, the result not of any deterrent effect of the new legal measures but instead a disenchantment with the use of the new aggravated assault provision. As the widespread reporting of the working of the new law emphasized, section 43 seemed not to enhance the focus on violence against women but quite the reverse. Its effect was to downgrade the seriousness of violence against them by driving the prosecution of such assault almost exclusively into the summary courts which, by definition, only concluded “less serious” matters. The creation of a specific offense of aggravated assault against women and children to be dealt with at summary level meant that whenever a crime of violence was committed against a woman, whatever its features, however serious or life threatening, it was unlikely to be referred higher.

By contrast, other violence involving men was legally constituted according to its severity, as a section 18, section 20, or section 47 offense under the 1861 Act. Qualitative evidence, using newspaper reporting among other sources, indicates that while magistrates did have a power, under section 46 of the 1861 Act, to commit serious domestic violence cases to the Assizes, it was rarely invoked, if only because of fears that the time lapse between committal

---

Table 1. Aggravated Assaults on Women and Children in Courts of Summary Jurisdiction, 1863–1983

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1863</td>
<td>3,043</td>
</tr>
<tr>
<td>1866</td>
<td>3,047</td>
</tr>
<tr>
<td>1879</td>
<td>2,229</td>
</tr>
<tr>
<td>1883</td>
<td>2,102</td>
</tr>
<tr>
<td>1886</td>
<td>1,721</td>
</tr>
<tr>
<td>1889</td>
<td>1,774</td>
</tr>
<tr>
<td>1893</td>
<td>1,879</td>
</tr>
<tr>
<td>1896</td>
<td>1,743</td>
</tr>
<tr>
<td>1898</td>
<td>1,637</td>
</tr>
<tr>
<td>1904</td>
<td>1,212</td>
</tr>
<tr>
<td>1910</td>
<td>798</td>
</tr>
<tr>
<td>1950</td>
<td>115</td>
</tr>
<tr>
<td>1983</td>
<td>12</td>
</tr>
</tbody>
</table>

*Source: Judicial Statistics, and later, Criminal Statistics for the respective years*
and trial, plus the cost of taking such cases to the higher courts, would induce women to drop charges. The reluctance of many women to initiate serious proceedings against brutal husbands was widely recognized, and formed a consistent thread in the reporting of magistrates’ comments. It was not long after the introduction of the 1861 Act that magistrates, after presiding over many section 43 aggravated assault cases, began to express their collective disquiet about the use and implications of the new legislation in a number of print outlets.

They expressed reservations to the Home Secretary in 1874 about its use to deal with violence against women, claiming that such cases were effectively relegated to the lower courts regardless of the actual seriousness of the offense. The case against William Babbington was typical of the kind causing them such anxiety. Babbington was charged before Warrington Police Court with brutally assaulting his wife, kicking her with his mining boots in the face, body, and ribs. Four women testified against him, including to his repeated kicking of her even after she was on the ground. Press reporting commented: “The Bench, as it is only an occasional court, could not inflict a heavy penalty, so gave the heaviest sentence they could—viz, fourteen days’ hard labour and ordered the payment of seventeen shillings costs.”

Of course, violence against women might still be treated as a common assault under section 42, but “the statistics needed for a good study of male-female violence were not kept consistently in the London police courts. Thus any conclusions about the incidence of such crimes must be advanced tentatively.” In those cases where the accused was committed for trial “the classification adopted in the Parliamentary return does not permit of identifying the cases which concerned women only.” This means that it is difficult to provide an accurate comprehensive review of the prosecution of domestic violence in all courts. Cobbe noted that more accurate information was to be found in the abstracts of the Reports of Chief Constables presented to the Home Secretary for 1870–74. Here, the total number of convictions for violent assault on women for that period was 6,029, although such figures for convictions were an underestimate as many Chief Constables failed to provide a return or simply stated that there was no brutal assault in the counties for which they were responsible. As Table 2 suggests, crime statistics (then as now) are notoriously difficult to interpret. Taking one magistrates’ court in London, Bow Street, between 1860 and 1864, it can be observed that whereas “aggravated assaults” declined overall, the proportion of husbands charged with “aggravated assault” actually increased. This might indicate a greater commitment by the women to prefer charges against violent husbands than hitherto.

Notwithstanding admirable efforts to interpret nineteenth-century figures...
on cases of violence against women proceeded against, the general warning not to read too much into crime statistics must be remembered. The statistics of cases recorded by police, of cases proceeded against and the number of convictions is no more (then as now) than an artifact of the process of the social construction of crime figures. Cobbe noted that one report to the Home Secretary recorded a figure of 351 such assaults on women in the London area alone, adding it was unlikely to be a full picture. Modern print analyses of the production of crime figures can greatly assist in interrogation of nineteenth-century material. Research in 1984 found that 384 cases of domestic violence were recorded by police in the London area; but also that the Metropolitan Police were only presenting the Home Office with those cases of recorded violence which were proceeded with (ie: resulting in a prosecution) for entry into the official Crime Statistics. Thus, cases where violence had been reported and investigated but where charges had been withdrawn by the complainant or dropped by police prior to a court hearing were later systematically removed for the purpose of the final classification. It was little different in Victorian times, with police recording always prone to systematic manipulation for political ends. Cobbe reported that in 1874, 2,841 cases were proceeded with; in 1875 it was 3,106; and in 1876 it was 2,737 cases. But she also stated that it was impossible to ascertain how many of these assaults were on women and children by husbands/partners and fathers, as these were not elements that the police wished to add to the conversation.

**Underreporting—Motives for Silence**

What was the reality behind the statistics indicating a decline in violence against women on the basis of cases dealt with under summary jurisdiction?

<table>
<thead>
<tr>
<th>Charges</th>
<th>690</th>
<th>199</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remitted to sessions</td>
<td>16</td>
<td>-</td>
</tr>
<tr>
<td>Disposed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discharged</td>
<td>424</td>
<td>137</td>
</tr>
<tr>
<td>Convicted</td>
<td>250</td>
<td>62</td>
</tr>
<tr>
<td>Total</td>
<td>674</td>
<td>199</td>
</tr>
<tr>
<td>Husband total</td>
<td>97</td>
<td>58</td>
</tr>
<tr>
<td>Convicted</td>
<td>23</td>
<td>41</td>
</tr>
<tr>
<td>Discharged</td>
<td>74</td>
<td>17</td>
</tr>
</tbody>
</table>

*Source: Judicial Statistics for the respective years*
Victorian women, even more so than modern women, underreported such offenses for a variety of reasons. A fundamental reality, though, was that domestic violence was habituated and common practice: “The working class response to . . . assaults cannot be separated from working class culture, employment, social aspects of their lives and the societal reaction to such women.” Additionally, working-class women generally “did not regard police as protectors.”

Pearsall has noted that domestic assaults rarely came to the attention of police unless the assault was very brutal or resulted in death. When women did report violence to the police, the police rarely took independent action to press charges unless (as Victorian newspaper reporting underlines) the violence was such an open scandal that local authorities endorsed such an expense. Commonly therefore, unless a woman had herself the financial and temperamental will to prosecute, individual incidents (no matter how brutal) would have a short life in the public debate, rarely reaching the wider criminal conversation on this vexed issue.

In my view, therefore, the Aggravated Assaults Act of 1853 did little to alter or change the public and legal perception of such violence. Motives for women’s relative silence in the face of male violence reflected very similar motives to those that still silence women. Economic dependency, family pressures, fear, and shame provided powerful constraints. Implicit in the reporting of many cases which did come to court was the pressure of economic dependency. There was, outside the dreaded workhouse, no guaranteed maintenance provision for wives or for children if a husband was imprisoned. Alternatively, if a woman decided to escape domestic violence by leaving the matrimonial home, she remained vulnerable to husbandly deprivations on any income she generated until the Married Women’s Property Act 1882, and until 1895 she could, theoretically, be dragged back for desertion. Harriet Taylor asserted in 1851 that underreporting of violence by women was related among other factors to women’s economic dependency on men.

The Matrimonial Causes Act 1878 was primarily concerned to address this problem by offering improved support to a wife forced to leave a husband because of his violence toward her. Under section 4, the Act allowed for a separation order on the grounds of cruelty with provision of a maintenance order to the wife and legal custody by her of children under ten, so long as no immoral conduct could be proved against her. If the magistrate was satisfied that her future safety was in peril, he could invoke the provision that “the husband shall pay to his wife such weekly sum as the court or magistrate may consider being in accordance with his means.” A consideration of the case law suggests that it was a section only relatively rarely properly implemented and
reveals the difficulties which confronted women who applied for such orders. Elizabeth Hetherington was granted a judicial separation from her husband and an order for maintenance. After it was granted, she gave birth to a child, and the payment order was therefore discharged. In an 1888 case, both parties were guilty of adultery, so that even though the husband was also found guilty of cruelty, all relief to the wife was refused. Proving cruelty at a level sufficient to invoke maintenance payments could be difficult. James Broad appealed against an order to pay seven shillings weekly. His counsel argued successfully that the Act demanded more than a single act of cruelty. Mabel Sharman Crawford asserted “the 1878 Act required the wife to be beaten and assaulted to the point of near death before an order was ever granted.”

Often, women were frightened to report violence against them. Tomes noted one case where a wife took out a warrant for the arrest of her husband, and he proceeded to stab her fatally, with the words “You——-, you want to swear my life away.” In another case the wife had acid thrown over her by the husband. It is interesting to contrast the case cited by Tomes with another in the *Daily Telegraph*, when Edward Kelly was charged with throwing vitriol at his partner, Catherine Moiran. He was discharged because she claimed the incident was her fault, and their son endorsed this. As other chapters in this volume underline, sexual assault against women was especially shrouded in silence and underreported.

**Charging Practices**

Decisions about the bringing of any charges, including the definition of the offense involved, was complex, providing a real dilemma for contemporaries, as the debate surrounding the question “what is an aggravated assault upon a woman?” indicates. An example came before the Middlesex Sessions on 19 July 1879, referred on an appeal from a stipendiary magistrate’s decision. George Coppleston had been convicted of an aggravated assault upon his wife and sentenced by Mr. Woolrych to three months’ imprisonment with hard labor. The question was whether this was a proper punishment for the violence involved. Mr. Edlin held that the true reading of the statute required the assault to be of an aggravated nature. Since the assault in question “merely” involved striking his wife’s breast and knocking her down, resulting in bruising, the Bench quashed the conviction. Women were also frequently deterred from reporting cases by members of the public. *The Times* reported that a wife who had brought and supported a prosecution for assault against her husband was herself, upon his conviction and sentence to six months’ hard labor,
The Recanting Victim

The recanting victim who withdrew her case before a conclusion, or who refused to bring charges against an abusive man, was an all-too-familiar feature in the Victorian landscape of prosecution of male violence, to the frustration of many magistrates. Cases tried under section 43 were brought at the expense of the prosecutor, generally supposed to be the female victim, and finding the necessary guinea fee provided one clear problem for many poor women. Some cases might be supported by philanthropic societies, such as the Society for the Protection of Women and Children, but societies had limited funds and more demands upon their resources than they could meet. On occasions, the police would act to bring prosecutions themselves, often without the support of the injured wife but using instead the evidence of neighbors scandalized by a level of violence perceived by them as unreasonable. However, pressures on police costs meant that local policies of support for such initiatives were patchy, and varied over time from place to place. The unwillingness of wives to prosecute husbands (or children, fathers) was behind one suggestion from the stipendiary magistrate of Marlborough Street Police Court that “the deposition of the wife or child, taken before the magistrate, should be received in evidence in event of the non-appearance of the witness at the trial; otherwise there might be a failure of justice.” Edward Cox noted that in the witness box the wife “denies all that she has stated to the magistrate,” and if wounded, would claim that “the wound was caused not by any blow from him, but she fell by accident against the knife; the black eye was caused by the bed-post.” Comprehending this reluctance to prosecute ensured that legal authorities were eager for domestic violence cases to be heard speedily and was one factor prompting the Aggravated Assaults Act 1853.

The example provided by Henry Bennett further reflects the predicament of magistrates dealing with cases which depended on the willingness and financial ability of women to undertake a prosecution. Bennett, who no longer lived with his wife, was charged at Bow Street police court with assaulting her. On 4 December 1852 she was walking in Drury Lane when she met the defendant, who asked her how she was getting on. She replied “pretty well,” but he then called her “a w——- and without provocation struck her as hard as he could,” knocking her down and injuring her back severely. With the “assistance of others she got away from him and went home”; he followed and “struck her repeatedly with all his force on various parts of her body.” The
following morning he again went to her room, seized her by the hair, drew a knife from his pocket, and attempted to cut her throat. In trying to defend herself she was badly injured. The magistrate suspected that (motivated by fear) she would not appear at the sessions if Bennett were committed for trial on a charge of attempted murder, and instead, concluded the case by fining him five shillings for assault. It was a commonplace occurrence that once women were in the witness box, they recanted their earlier complaints or remained silent. Cox commented:

> When in the witness box the wife refuses to convict her husband. She denies all she had stated to the Magistrate while under the influence of her anger. . . . What can be done in such a case? Her deposition tells quite another story. She was beaten, bruised, stabbed, without provocation, without resistance.

Furthermore, men frequently frightened and intimidated female witnesses in court. As the *Illustrated Police News* demonstrated through a series of front-page court sketches, husbands routinely threatened wives in court.

### Domestic Violence in the Courtroom—
#### Mitigatory Accounts and Sentencing

The higher courts in particular often condoned male violence as a reasonable response to a woman’s unreasonable provocation. More, even on conviction, sentence and sentencing practice in summary and higher courts was very much influenced by mitigating pleas accusing women of being aggravators, naggers, and provokers. One defendant convicted before Warrington County Police Court in 1880 of brutally assaulting his wife (repeatedly kicking her in the head and ribs as she lay barely conscious) was reported as claiming “he was aggravated.” His sentence was fourteen days’ hard labor. Such “aggravation” of husbandly feelings regularly formed the attempted justification for male violence, as in the case headlined “An Aggravating Wife.” William Miller was charged with assaulting his wife, a “delicate young woman” who had irritated him by suggesting that, when he returned home drunk on Saturday night, he go to bed and she bring him his supper there. But this was one case where even the neighbors “complained of his general conduct to her,” and so the mitigation did not exonerate him totally. Mr. D’Eyncourt insisted on punishing him for his brutality—by three months’ imprisonment.

Defense counsel regularly relied on narratives of provocation/aggravation, invoking stereotypes of nagging or drunken wives to provide the necessary
exoneration for their clients. Even wives could show themselves complicit in this defense, especially in the lower courts and where the police, not the wife, brought the prosecution. John Green, charged with wounding with intent to do his wife grievous bodily harm, was aided by his wife’s evidence that “they were singing a song and I joined in the chorus, which aggravated him.” This echoed his admission upon arrest that he had done it, was “very sorry” but had had “great provocation.” He was found not guilty. At the Old Bailey in 1885, Mr. Justice Grove held that one offender who had killed his wife had been “grievously provoked” and should be pitied. When William Norman killed his wife in 1879, Mr. Justice Manisty at the Old Bailey said one should pity the prisoner on account of the wife’s conduct in passing a sentence of three years’ imprisonment. In 1885 the *Illustrated Police News* reported a wife as addicted to drink and frequently misbehaving, while portraying the husband as a sober and hard-working man who, on the “fatal” night, had been provoked to the point of frenzy, upon which he had an epileptic seizure and killed her. The jury found the prisoner guilty, but the judge sentenced him to five years rather than pronouncing the capital sentence. Thomas Quigly, thirty-five, who killed his wife by drunkenly beating her with a poker, had the capital sentence commuted when further evidence about her behavior was provided: “She was drunk and unchaste and had given him provocation.” As this underlines, all-male juries were reluctant to convict fellow men in domestic violence cases, though if perpetrators appeared in the higher courts in the character of repeat offenders, this reticence was partially overcome. For instance, John Thomas was found not guilty of feloniously wounding his wife by causing a broken leg (he said she fell and broke it), but on being again indicted for unlawfully assaulting her, he was found guilty and received fifteen months’ imprisonment. Similarly, Louis Droz, a habitual wife abuser, was acquitted of throwing corrosive fluid on his wife but was convicted for a subsequent assault upon her. However the sentences meted out were hardly deterrent, despite press reporting of pious hopes that they would be, which helped to keep up the illusion of legal protection for women.

Examples of executions of wife murderers can be found, but generally speaking men were rarely convicted of murder in cases involving fatal assaults on women. Manslaughter was commonly substituted with perceived feminine provocation being used in mitigation. Dr. Thomas Smethurst was sentenced to death in 1859 for poisoning his wife, but her bigamy facilitated his later reprieve. Martin Doyle, who tried to batter a woman companion to death, was executed, but Radzinowicz notes he was “the first to suffer death for attempted murder in twenty-one years and also the last.” The *Woman’s Suffrage Journal* satirically noted:
From a Plymouth paper we learn that a man named THOMAS ELLIOT, who had been drinking, found his wife in a public house. THOMAS ELLIOT struck and pushed his wife; she fell, and received a FATAL BLOW. The judge, though he appeared to sympathise with the injured husband in his domestic troubles, said violence was not the way to remedy them, and that he would “make a serious example” of the prisoner, which he did by awarding him six months’ imprisonment. . . . At the Lincolnshire summer assizes MARTIN PINCHBECK, chimney sweeper, was indicted for attempting to kill and slay CATHERINE PINCHBECK by throwing her out of a railway carriage on the Hull-Grimsby line. The woman remained for weeks insensible, and is now a confirmed idiot. The jury found the prisoner guilty of common assault, and he was sentenced by Mr. Justice MELLOR to twelve months’ hard labour.75

Newspapers headlined a regular litany of cases such as these which fuelled understandable feminist indignation. Typical examples include reports of Michael O’Donnell’s trial at the Central Criminal Court. During a supposed epileptic fit he had seized his wife by the throat and stabbed her in the thigh, being consequently convicted of manslaughter and sentenced to five years’ penal servitude. In 1867 John Daley was charged with attempted murder by throwing his wife out of a first floor window. He was discharged, and the court said if the wife wished to pursue the case by summons she could!76

Emphasizing the negative influence on Victorian sentencing practice of the stereotypes of good and bad womanhood, barrister and influential penologist Edward Cox argued:

In the vast majority of these cases, the suffering angel of the sensational “leader” is found to be rather an angel of the fallen class, who has made her husband’s home an earthly hell, who spends his earnings in drink, pawns his furniture, starves her children, provides for him no meals, lashes him with her tongue when sober and with her fists when drunk, and if he tries to restrain her fits of passion, resists with a fierceness and a strength for which he is no match. He is labouring all day to feed and clothe her and his children and when he returns home at night, this is his greeting.77

In 1889 Walter McLaren, MP, presented an official return to Parliament on the question of assaults against females. The return showed assaults, murders, and manslaughters committed upon females and sheds some important light on sentencing practice.
In 293 cases where charges of murder were involved, the sentences were of two years and above in 43 cases; 25 men were sentenced for between one and two years; 158 men were imprisoned for between 3 months and one year; 67 were imprisoned for less than three months. Of aggravated and common assaults on women, 7,782 men were convicted; with 4,079 defendants being fined; 2,800 being sentenced to up to one month's imprisonment; 756 for between one and three months; and 146 for between three and six months.

### Table 3. McClaren Return of Sentencing in Violence against Women for 1889

<table>
<thead>
<tr>
<th>Offenses determined summarily</th>
<th>Over six months and under 1 year</th>
<th>3–6 months</th>
<th>2–3 months</th>
<th>1–2 months</th>
<th>14–28 days</th>
<th>1–14 days</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>England / Wales</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common assault</td>
<td>-</td>
<td>4</td>
<td>2</td>
<td>244</td>
<td>425</td>
<td>249</td>
<td></td>
</tr>
<tr>
<td>Aggravated assault</td>
<td>-</td>
<td>109</td>
<td>117</td>
<td>34</td>
<td>31</td>
<td>68</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>-</td>
<td>113</td>
<td>119</td>
<td>278</td>
<td>456</td>
<td>317</td>
<td>1,183</td>
</tr>
<tr>
<td><strong>Scotland</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common assault</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>106</td>
<td>430</td>
<td>934</td>
<td></td>
</tr>
<tr>
<td>Aggravated assault</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>101</td>
<td>112</td>
<td>184</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>207</td>
<td>542</td>
<td>1,118</td>
<td>1,867</td>
</tr>
<tr>
<td><strong>Ireland</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common assault</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>12</td>
<td>29</td>
<td>62</td>
<td></td>
</tr>
<tr>
<td>Aggravated assault</td>
<td>1</td>
<td>32</td>
<td>49</td>
<td>90</td>
<td>167</td>
<td>57</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>1</td>
<td>33</td>
<td>50</td>
<td>102</td>
<td>196</td>
<td>119</td>
<td>501</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1</td>
<td>146</td>
<td>169</td>
<td>587</td>
<td>1,194</td>
<td>1,554</td>
<td>3,551</td>
</tr>
</tbody>
</table>

*Source: McClaren Return 1889, Parliamentary Papers*

In 293 cases where charges of murder were involved, the sentences were of two years and above in 43 cases; 25 men were sentenced for between one and two years; 158 men were imprisoned for between 3 months and one year; 67 were imprisoned for less than three months. Of aggravated and common assaults on women, 7,782 men were convicted; with 4,079 defendants being fined; 2,800 being sentenced to up to one month's imprisonment; 756 for between one and three months; and 146 for between three and six months.

**Challenging the Violence of the Law**

Mid-Victorian legislative reform did little to prevent the “Wife Torture” so
meticulously documented by Cobbe. By the end of the century the wheels of reform had begun to grind, albeit slowly. The so-called lady of the law was to receive some protection and freedom from her domestic slavery and servitude as when Jackson tried forcibly to repossess his wife, under the terms of *habeas corpus*. In a widely reported judgment it was established as a principle that a husband had no right to use violence of any kind on his wife’s person, nor to imprison her, and that such rights had never existed. Lord Esher, Master of the Rolls, declared in his judgment:

In this case it is really admitted that this lady is confined by the husband physically so as to take away her liberty. The only question for us to determine is whether in this case we can allow that to continue. The husband declares his intention to continue it. He justifies such detention; and the proposition laid down on his behalf is that a husband has a right to take the person of his wife by force and keep her in confinement, in order to prevent her from absenting herself from him so as to deprive him of her society. A series of propositions have been quoted which, if true, make an English wife the slave, the abject slave, of her husband. . . . I should say that confining a person to one house was imprisonment. . . . I do not believe that this contention is the law or ever was. It was said that by the law of England the husband has the custody of his wife. What must be meant by “custody” in that proposition so used to us? It must mean the same sort of custody as a gaoler has of a prisoner. I protest that there is no such law in England.

That wholly indefensible law dubbed by Coleridge as more worthy of barbarism than a civilized country (an interesting echo of Rowbotham and of recent work by Martin Wiener) seemed in retreat.

But it was a false dawn: the criminal conversation on the reality of violence against women, the purveying of rhymes and reasons, exculpations and mitigations defining and articulating such violence, have continued to inform the public and legal minds of the twentieth century and beyond, though the challenges have become more vociferous and the excuse of provocation and aggravation is now being challenged.

Notes

4. Ibid., 364.
5. Pall Mall Gazette, 11 May 1865.
10. A. Fitzherbert, La Graunde Abridgment, c1514 (Richardi Tottelli, 1577).
12. Nicholas Brady, The Law’s Resolution of Women’s Rights (1632). It was rare for men to be legally identified as exceeding their lawful prerogative; for example see Bradley v Wife (1663) 1 Keble 637; 83 English Reports 1152.
16. Cobbe, “Wife-Torture,” 222. This provides an interesting echo with Swift’s chapter in this volume.
19. Pall Mall Gazette, 2 October 1888.
26. Nancy Tomes, “A ‘Torrent of Abuse’: Crimes of Violence between Working Class Men and Women in London, 1840–1875,” Journal of Social History (1978): 328–45, describes an “aggravated assault” as one attended with circumstances of peculiar outrage or atrocity. This, with respect, can hardly be the case if the act designed to prosecute such assaults confined such cases to the courts of summary jurisdiction where the maximum sentence was a fine or six months’ imprisonment.


29. Ibid., col. 519.

30. Tomes, Torrent of Abuse.

31. Ibid., 330.

32. The first continuous series of criminal statistics for the whole of England and Wales dates from 1835. From that year to 1856, the Criminal Statistics published each year gathered together figures about those tried on indictment in the higher courts. From 1857 the enlarged series known as the Judicial Statistics included information about those dealt with summarily in the magistrates’ courts as well. J. J. Tobias, Nineteenth Century Crime and Punishment: Prevention and Punishment (Newman Abbot: David and Charles, 1972), 82.

33. See cases on the SOLON database.

34. PP, Report to the Secretary of State for the Home Department, on the State of Law relating to Brutal Assaults, 1874.

35. Illustrated Police News, 22 May 1880.

36. Tomes, Torrent of Abuse, 329.


44. R v Jackson [1891] 1 QBD 671.

45. Morning Chronicle, 28 August 1851.

46. R v Hetherington (1887) PD XX.


48. Broad v Broad (1889) LT 687.


50. Tomes, Torrent of Abuse, 333.

51. Daily Telegraph, 1 October 1870.


53. Women’s Suffrage Journal, 1 August 1879, 132.

54. Cited in “Outrages on Women,” Women’s Suffrage Journal, 1 August 1879, 234.
56. Tomes, Torrent of Abuse, 333.
58. Women’s Suffrage Journal, 1882.
60. The Illustrated Police News, 9 April 1898.
63. Daily Telegraph, 14 May 1856. Mrs. Miller was not grateful, having requested only a separation order.
64. PP, XI Session 1879–80 611.
65. Illustrated Police News, 8 August 1885.
66. Women’s Suffrage Journal, 1 October 1879, 166.
67. Illustrated Police News, 8 August 1885. Lawyers might care to examine the parallel of this case with contemporary law on automatism and epilepsy.
69. PP, X Session 1879–80, 535.
70. Ibid., XII Session 1869–70, 649.
71. For example, Daily Telegraph, 14 May 1856.
72. Those convicted of wife murder and executed usually had wives who fulfilled the expected Victorian stereotypes of good womanhood. See, for example, the case of William Corrigan, Daily Telegraph, 18 February 1856.
73. PP IV, 341.
74. Ibid., 342.
75. Women’s Suffrage Journal, 1 August 1876, 112.
76. Illustrated Police News, 19 October 1867, 3.
77. Cox, Principles of Punishment.
80. Ibid., 308h.