

«INNOCENT» RECIDIVISTS?: Contested presentations of women and girls ca1850-1900

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The English system (unlike that operating in many continental states) had no tradition of legal categorisation of the repeat offender, though by the middle of the nineteenth century (an age of declining crime, according to the overall statistics) the concept and the problem posed by the individual recidivist had become identified as elements in the intractable core of criminality, where significant numbers of crimes were committed by the hardened villains who made up this category. While historians have demonstrated that there was little evidence for the existence of a genuinely hereditary criminal class in Britain, both popular and informed opinion at the time did not seriously question the existence of such¹. As the end of the century approached, there even seemed evidence that the total of habitual criminals was increasing: the Metropolitan Police's Convict Supervision Office recorded that in 1880, the numbers of such individuals stood at 15,000, but in 1886 it stood at 32,000 «or more than double the number to be supervised»². Such statistics were not often subjected to a genuinely critical scrutiny, which might have revealed the lack of substance to them, but instead became the stuff of nightmares. In these nightmares, the stereotypical recidivist was a masculine bogey – but what of female recidivists and the stereotypes associated with them?

Thinking about female recidivism was convoluted, because of a reality where a moral sin, one that had not constituted an actual previous legal offence, could in practice count as such when women or girls appeared before a court, because the majority of «crimes» for which females were arraigned were essentially moral crimes, relating predominantly to drunkenness and prostitution. This could mean that first-time offenders in the courts might not always be treated as such, with serious

¹ Clive Emsley, *Crime and Society in England 1750-1900*, London, 1996, pp. 23-24.

² James Monro, *A Report on the History of the Department of the Metropolitan Police known as the Convict Supervision Office: detailing system and showing results and effects generally on the habitual criminal population*, London, 1886, p. 17.

effects on their chances of escaping conviction and a prison sentence, since being identified as a second-time offender or worse had the effect of magnifying the actual offence being prosecuted. As contemporaries recognised, and Lucia Zedner has pointed out, a majority of women offenders were recidivists, but (unlike typical male recidivists) their patterns of offending related to petty crime, dealt with predominantly in the summary courts and resulting in multitudinous short sentences³.

The spectre of female recidivism was further complicated by ideas about the extent to which it was, and was not, possible to redeem and reform female transgressors, in both the legal and the moral sense, and of the kinds of treatment which should be meted out even to first-time offenders who were identified as «unrespectable». It was agreed that any transgression which resulted in a conviction deserved punishment – but what was the most appropriate way of dealing with women transgressors? The reality was that a woman who had once been to prison for even a brief period for a petty offence was tainted thereafter, if only because of the difficulties she subsequently faced in supporting herself and any dependants by honest means. It was acknowledged that the major difficulty in preventing recidivism in either sex was finding ways to enable discharged convicts to «live by honest means». As such individuals generally obtained work «in employments where previous character is not strictly enquired into», this provided a particular problem for women, since employment of this nature open to women was likely to be of a kind to tempt them into further wrong-doing, if for nothing else than through a combination of poor wages, dubious company and the solace of cheap alcohol⁴. For those concerned with the social aftermath of legal punishment, this promoted development of a broad conception of women as vulnerable «criminals», formed the model for the concept of the «innocent» recidivist, and so fuelled debate over representations of female offenders. Was prison a useful tool for the petty female «criminal»? Was it necessary to give particular and special support to women prisoners on release to prevent inflation of a habitual criminal class by unnecessarily adding women who would rear a generation of criminally inclined offspring?

This was the dilemma behind one popular Victorian novel, *Maggie's Mistake*, telling the tale of Maggie Wilson, a girl who, by the end of the first quarter of the book, was in prison. It appeared in 1886, the same

³ Lady Hope, «Mission to Discharged Prisoners», *Loving Work in the Highways and Byways*, London, 1888, pp. 184-207; Lucia Zedner, *Women, Crime and Custody in Victorian England*, Oxford, 1991, p. 282.

⁴ Lady Hope, «Mission to Discharged Prisoners», *op. cit.*, p. 187.

year as the indications given above that there had been a rapid expansion in the numbers of hardened or professional criminals⁵. It was thus produced in an atmosphere of fear which anticipated a reversal in the decline in crime, focused particularly powerfully on the dilemma of dealing with women as criminals, where the concern was their potential for recruiting extra numbers to the criminal core. Recognition had come that the presence and evolution of the supposed class of habitual criminals was not easily explained by contextual factors from lack of education, to poverty or parental neglect. Lacking such clearly invoked distinguishing factors, commentators looked to the moral dimension, and individual failures in this area, to explain persistent criminality. At a general level this was linked to the concept of pauperism, that there was an element which was wilfully poor, preferring to rely on Poor Law handouts, instead of working hard for even minimal benefits as the «respectable» poor did⁶. Paupers were considered morally defective, as were habitual criminals, and the gap between the two groups was dangerously narrow, in Victorian conceptions, because it was widely accepted that the latter category had the power to tempt those on the margins of respectability and poverty into paths of lawlessness because of the lack of safeguard provided by a well-trained conscience. However, if offending was linked to women's experiences of poverty, it was still more strongly linked to the temptations to evil they encountered in daily life. The moral dimension was a reality to Victorians and it was generally accepted that the daily guardians of moral standards were women. Thus the female criminal was a particularly fearful stereotype because her offending was both legal and cultural. It was almost a truism that her first fall from virtue would result in a career of offending which would affect all around her, above all any children she might raise.

There were well-established expectations of women relating to their role in society, based on their presumed ability to influence not just adults (especially men) around them, but also children, particularly their own offspring. Virtuous women supposedly used this power to better society through their positive moral effect on the people they mixed with: vicious women employed their arts and influence to worsen things for society. It was thus even more important to prevent women from straying from the paths of «good» behaviour than men, since one woman gone to the «bad» had the power to drag so many down with her. But candid commentators, including those actually involved in administering

⁵ Mrs Lucas Shadwell, *Maggie's Mistake, or Bright Light in the Clouds*, London, 1886.

⁶ F. M. L. Thompson, *The Rise of Respectable Society*, London, 1988; Gertrude Himmelfarb, *The Idea of Poverty*, London, 1984.

justice (especially at summary levels), were aware that an honest reflection of the reality facing women was that, while officially «evidence of previous bad character cannot, generally speaking, be given» since while evidence of good character was «relevant to the issue» being tried, «the other is not», in a woman's case, her established character might be sufficient to identify her as a «recidivist» even if she was actually «innocent» of previous legal transgressions⁷.

The complexity of the problem facing those who sought to warn of the dangers of falling «innocently» into crime, to reflect the awfulness of a female falling into criminality and to explore the potential for ameliorating that awfulness for the petty, almost accidental woman offender, helps to explain the tensions within *Maggie's Mistake*. This tale sought to provide its readers with a heroine who was both erroneous and (because she had to be redeemable to *be* a heroine) sympathetic to respectable society as well as to an ideal target audience of vulnerable young women. It was therefore a novel designed to help diminish feminine criminality through a multiple didactic purpose, to be «useful» to a wide readership. It sought to warn a working class female readership that even a small slip from the paths of righteousness could land them in prison, and that once there, not only would their short-term experience be deeply distressing to themselves and their families and friends, but also that they would continue to suffer after release, since their social punishment would continue after completion of their legal sentence. The story also sought to alert respectable society to very real problems faced by fundamentally decent women (but forced into «crime» by circumstance) in defending themselves in the courts, as well as the fate of the female convict after she had completed her sentence and needed to return to society and find respectable work to prevent her from going astray again. The literary merit of the story undoubtedly suffered from such tensions, but the moral purpose shone through clearly. Consequently, it is a useful historical source because it reflects newspaper and social commentary at the time, including their confusions and contradictions. Maggie remained the key figure in the novel, achieving the requisite happy outcome, simply because her «offence» was not one which irredeemably jeopardises her moral standing. Her sexual virtue was never in doubt; she was teetotal; and so her «fault» was redeemable, on the scale of moral turpitude.

In service, Maggie Wilson had allowed herself to be swayed by plausible tongues and flattery into giving information about the movements of her employers, with no more original evil intent than gossip in her

⁷ Archibald Henry Bodkin, *The Justice's Notebook, containing the Jurisdiction and Duties of Justices and an Epitome of Criminal Law*, London, 1892, p. 143.

leisure hours. But she knew that gossip was morally unacceptable, and also that her parents would have disapproved (as did her employers) of the company she was keeping. She had let herself be encouraged into discontent with her work, though she knew she had no real cause for complaint. The result was Maggie located herself in an equivocal position leading to her conviction for being an accessory to burglary. Her sentence was six months imprisonment (added to her six months awaiting trial at the assizes). Innocent of actual complicity, but unable to prove this, she was severely punished for self-indulgence. Approximately a third of the novel recounted her prison experiences, depicting the mental and moral horror of incarceration, not just for a girl such as Maggie but also for the more genuinely guilty (but not yet hardened) women she met there. Subsequently the book dealt with her difficulties after release, including the clear message that only a fictional heroine such as Maggie would be likely to be fortunate enough to have family support to help her through.

A key concern was the almost inevitable recidivism associated with the first fall into illegality for women. The narrative's messages clearly indicated the contradictions at the core of definitions of what constituted female recidivism, as well as of preventive strategies. Consequently, it demonstrated also a recognition (superseding the stereotypical allotting of moral blame) that numbers of the women or girls who came before the courts, whether at summary and higher levels, were actually undeserving of the infliction of a legal penalty: that they were effectively «innocent». Maggie's example is instructive. Her arrest and conviction made her, effectively, a fallen woman – fallen from standards of respectability and so employability. The author showed that even though the Judge who sentenced her had believed her essentially innocent, he had no choice but to treat her harshly according to the law because «unfortunately» there was «no evidence to prove» her innocence⁸. The resources of fiction meant Maggie could be unusually fortunate, in having her childhood vicar interesting the prison chaplain in her welfare: for her family's sake as much as her own sake. But this is married to recognition of the likelihood that Maggie, like so many of her fellow girl prisoners, would be drawn into recidivism unless she exited from prison in a humbled and repentant state AND her family was in a position to support her. On release, Maggie, now a chastened girl, returned to be a burden to her family (they moved to London to hide the shame of the episode). She had little or no prospect of further employment except for home contract work acquired through her older sister. Serendipitously, events then cleared her name in the eyes of the law, and, through the intercession of

⁸ Mrs Lucas Shadwell, *Maggie's Mistake*, *op. cit.*, p. 105.

a kindly lady philanthropist, Miss Lennox, she became reconciled to her former sweetheart Frank. No longer lying under «such a brand» of «shame» (it had become merely sorrow!), it was possible for her to marry respectably and to settle down to a life of permanent atonement and gratitude⁹.

Tales aimed primarily at a working class or petty middle class readership regularly featured women and even child law-breakers experiencing gaol, though it was rarer for these characters to be actually innocent. In Hesba Stretton's *The Storm of Life*, for example, there was no doubting Rachel Trevor's guilt. She had actively aided the burglary for which she had been condemned to seven year's imprisonment¹⁰. The best-known depictions of the female criminal in this fictional genre swing between those like Rachel Trevor, repentant and reflective over the immoral influences (including drink, their own vanity and greed, or foolish love for a sweetheart or husband) which had led them into wrongdoing, to that found in *City Sparrows*¹¹. These women were depicted as born bad, drunken, and influencing others, particularly men or their own children, into evil paths. Across this spectrum of feminine transgression, the underlying fear was the temptations facing women after their release to return to criminal ways would be stronger than the opportunities offered to keep honest. These fictional representations flesh out both commentators like Henry Mayhew or Mary Carpenter and newspaper crime reports. The fiction underlines the extent to which the presentation of the female criminal, whether child or woman, was hotly contested. There was no questioning in them of the judgement that a truly bad woman was irredeemable, but there was debate about reasons for recidivism and the criminalisation of women. These works had contemporary significance which resonates today because, as a reading of annual reports and records of societies like the London Police Court Mission and the Society for the Protection of Women and Children underline, their narratives were frequently expansions of cases dealt with by the societies. Indeed, this claim was regularly made by the authors, many of whom (like Hesba Stretton and Silas Hocking) were themselves very active philanthropists in daily life. Their «fiction» reflected fears that the type of case featuring Maggie Wilson was no mere stylistic device but echoed a reality where the criminal justice system was condemning women to habitual criminality for relatively trivial breaches of the justice code.

⁹ *Ibid.*, pp. 182-183, 188-190.

¹⁰ Hesba Stretton, *The Storm of Life*, London, 1876.

¹¹ Ruth Lynn, *City Sparrows, and Who Fed Them*, London, 1878.

For girls or women condemned for minor offences, the punishment accorded was unquestionably harsh as recompense. In theory, prison was seen as a tool for individual rehabilitation, where females in particular learned, or relearned, the moral lessons which should have controlled their behaviour from childhood. But, learnt in prison surroundings, these salutary lessons were not easily been sustained in daily life and employment. It was this which drove Stretton to write *The Storm of Life*, where literally, Rachel Trevor's determination to avoid recidivism killed her. After even a short sentence, women were unlikely, without philanthropic intercession, to be able to take up adequately paid and respectable employment, above all in domestic service, that major employer of Victorian women. For the majority, the prospect of life after prison was all too likely to be a downward spiral they were helpless to arrest. Unable to get reasonable employment after leaving prison, they were, in order to survive, practically condemned to recidivism (including attempted suicide which was, after all, a crime). As James Monro commented, recognition of the results of stigmatisation of women as released prisoners ensured most were treated differently on release, being «exempted from reporting monthly» and simply required to «give their addresses» to enable periodic anonymous visits. By 1886, female convicts were supervised by «two female visitors whose appointment has been authorised by the Secretary of State», a move met with «hearty unanimous approval» from philanthropic institutions. Even the women concerned seemed to support this – probably because of the possible recommendations for assistance these visitors could give. But Monro also noted revealingly that «the acquaintance with female criminals gained by visitors is [...] useful» to detect relapses into crime¹².

Returning to Maggie Wilson, the author's own confusion is plain. If her punishment was harsh, it was salutary for her personally, bringing her to her senses. Readers were encouraged to realise that her arrest before she had been seduced into actually criminal acts was a kindness, since she was too lacking in principle, too fond of enjoyment and gossip, to be aware of how easily girls in her position could be led into crime. In real life, too many girls in Maggie's position would not have had her advantages and, on release, would have faced a distinctly dark prospect. Maggie's own tale was contrasted with that of Rose Lee, whom she met in prison. Abandoned, and «left to her own resources», Rose had «knocked about from one hard situation to another» until «she was led astray». If precise details of her actual offence were not spelt out, the contribution of drink and immorality were made plain: Mrs Shadwell stated that «In

¹² James Monro, *A Report*, *op. cit.*, pp. 11-12.

her forlorn condition, her three months' term was a real kindness, giving her a safe asylum and furnishing opportunity for those who walked in the Master's footprints to seek out the lost»¹³. As the end of her term approaches, repentant Rose was alarmed, «having no home to go to». The book descanted on the problem of the taint of criminality for women «in a cold world alone, where suspicion abounds». Rose was ultimately fortunate in that «a good Christian lady» of limited means who «are in the habit of taking up some poor creature who may be friendless to help and do good to»¹⁴. Too many of the others who shared Woodborough Gaol (modelled on Shrewsbury) had no such support to look to on release – and how had their time in prison helped them, even where they had heard the word of the Lord, to live better lives afterwards?

This demonstrates the reasoning behind Victorian unease over female recidivism and the presentations of «guilty» women and girls. The moral role assigned to women within society ensured that their bad behaviour, their crimes, were ranked as worse than those of men, because the moral contagion that stereotypically clung to criminal or deviant women was worse. It was more societally infectious than the moral contagion associated with the criminal male. Female moral influence, for good or bad, was seen as a major factor in estimating the health of the nation and individual units within it:

The subject of the relative positions of the sexes has a good deal, in manifold ways, to do with the crime of the country [...]. In considering the moral responsibility of women throughout the social system – and one is called upon to do so in order to arrive at an adequate and comprehensive conclusion concerning her criminal culpability – it is necessary to ascertain what are the true relations existing at the present time between the sexes¹⁵.

Thus a first fall from grace was likely to damn them more completely than might be the case for a masculine breach. Men were generally particularly harsh on feminine fallability. Henry Butter in his homily for «the Lads and Lasses of the Working Classes» argued that

Doubtless there are some hopeful cases – but I fear they are extremely rare – where a girl having borne a child has good principle enough to see the wickedness and folly of her conduct, and to repent and do her

¹³ Mrs Lucas Shadwell, *Maggie's Mistake*, *op. cit.*, pp. 116-117.

¹⁴ *Ibid.*, pp. 128, 134-135.

¹⁵ L. Adam Hargrave, *Police Work from Within, With Some Reflections upon Women, the Law and Lawyers*, London, pp. 16-17.

best to make amends for her sin [...] it is far more common for those who have once fallen never to be able to become respectable...they continue a life of vice, swarming in our streets, corrupting young men [...]. How great is the power of women over men [for]. When once a man get it into his head that you [women] are not better than we are [there is] nothing for a poor fellow to look up to and hold fast by in this wicked contemptible world – it's all over with him. If he does not respect women, he respects nothing. he goes down, down, to the bottomless pit¹⁶.

Equally, Isaac Holmes of the Liverpool Female Penitentiary was blunt in his exposition of the evils associated with even petty female criminality, due to its wider social effects, as he supported stern measures to eradicate such law-breaking. In *Thieves, Beggars and Prostitutes*, he railed against female beggars, and pleaded with the public «refuse to listen to their wailings and to look [clearly] at their mock-miserable appearance – women with three or four children», since «Many of them now going about on their rounds have their husbands at work» while «Others who are not married, but who ought to be, hire children for threepence, fourpence or sixpence per day, according to the miserableness of the appearance of the children»¹⁷. Worse, such women were repeatedly brought before the courts, and despite a small number of hopeful cases, most refused to reform, explaining why the public needed to refuse to listen to their «pathetic» appeals.

Holmes' diatribe related to the dilemma rooted in the Victorian truism that the sight of a woman in the dock, especially a physically presentable one, was likely to arouse sympathy in the watching male public and so undermine the cause of justice. A *Daily Telegraph* leader in February 1870 underlined male fears that good-looking women were getting away with crimes, and leaving their menfolk to bear the main odium: «No call for public sympathy is presented by the case of Alice Grantham». Alice was sentenced for «abetting William Gregory Davies in his robberies of silk from Messrs Leaf and Co.», and, according to the leader, Davies had stolen silk not for himself but to «meet the expense of her extravagant ways». Worse, she had pawned the dresses he brought her. Her plea of youth and ill-health, of ignorance of the dresses being stolen, were derided as either «wholly false or singularly weak». It was bluntly stated that «Although Alice Grantham herself did not steal the

¹⁶ Henry Butter, *Marriage for the Million: for the Lads and Lasses of the Working Classes*, London, 1872, pp. 11-12, 15.

¹⁷ Isaac Holmes, *Thieves, Beggars and Prostitutes*, published at the request of the Committee of the Liverpool Female Penitentiary, Liverpool, 1858, p. 25.

silk dresses, she lured on Davies to ruin, and is hardly less guilty therefore than the man whose protection she repaid by betrayal. Hence the Common Serjeant has done no more than his duty in sentencing her to be kept in penal servitude for five years»¹⁸.

Despite such diatribes and the unchallenged conviction that a truly bad woman was worse than a bad man, there was continuing unease over the wisdom of exposing women to the full rigours of the criminal justice system, and also over the rightness of a number of female convictions, especially in view of the links between first offences and recidivism. The unease was fuelled by a mix of practical and moral concerns. Overall, the female habitual offender was part of a smaller cohort than that of the repeat male offender, but (with the possible exception of juvenile boys) masculine habitual criminality was seen as less socially threatening¹⁹. For many, as Harriet Martineau commented, the core of the debate was the concept that «the treatment of the Guilty is all important as an index to the moral notions of a society», especially when the issue was the depth and nature of that guilt²⁰. As early as the 1850s, there were those who argued that numbers of the girls and women brought up before the courts, especially for first offences, were more sinned against than sinning, and concern that their conviction was then instrumental in condemning them to future bad behaviour, especially amongst younger convicts. Again, Zedner identified a link between mental incapacity and recidivism in women which was far more noticeable than in the case of men, something which Victorian commentators also noted with concern – if it was not fair, as in the case of Lady Mordaunt, that a woman be divorced for what her husband claimed were her peccadillos when all medical opinion agreed that she was not fit to defend herself, then was it not equally unjust to condemn women in less fortunate situations than she?²¹

The core of apparently «hardened» women repeat offenders were generally those on the social margins despatched to local prisons for relatively short sentences for relatively minor offences. Hesba Stretton commented in her powerful tale, *In Prison and Out*, based on *The Gaol Cradle: Who Rocks It?*, on the class differential that was involved here. Many economically vulnerable working class girls found themselves condemned to a «gulf from which there was no clear escape in this life»

¹⁸ *Daily Telegraph*, 4 February 1870.

¹⁹ Lucia Zedner, *Women, Crime and Custody*, *op. cit.*, p. 282.

²⁰ H. G. Atkinson, Harriet Martineau, *Letters on the Laws of Man's Nature and Development*, London, 1851.

²¹ Lucia Zedner, *Women, Crime and Custody*, *op. cit.*, p. 282.

through getting involved in what was accounted law-breaking in them but which, for their counterparts in a better social position, would have been invisible. Gossip, mischief, stealing the jam for nursery tea, uttering the odd lie within the family circle or school were punished «in house», so to speak (at least in well-regulated establishments), and salutary lessons learned for the future without the need to invoke the criminal justice system. But for working class children – «He had known [...] girls under 15 years of age sent to gaol for [...] throwing a stone and unintentionally breaking a window; for snatching an apple off a stall or a penny loaf out of a baker's shop». In terms of the real seriousness of the offences there was little to choose between them, but in terms of likely consequences, there was much. Middle class children «were not cast, in the name of law and justice, into a gulf from which there was no clear escape in this life»²². They were also unlikely to suffer the fate of children trained up by uncaring parents, step-parents, or their counterparts, into ways of criminality. The girl beggar was a particular worry here, because of the ease with which recidivism could be demonstrated against them, as the case against Charlotte Gagett and Bridget Smith in March 1870 underlined. The Marquis Townsend, a well-known philanthropist, preferred the charge against these two little girls, aged 10 and 11, who he had found begging. Finding out they were habitual offenders, he had given them into police custody in order to get at their mothers who were «making a living out of their unfortunate children». The magistrate, Sir Thomas Gabriel, sent the children to industrial school, instead of to gaol, in order to prevent them being tainted with criminality, though he told the mothers that «they were undeserving of any sympathy» for their plight²³. The reporting made plain acceptance that, without this action, the girls would have shortly become prostitutes and so associates of confirmed thieves, if not thieves themselves. If they had then appeared before the court, there would have been little option but gaol. Yet their offence had not been their fault: responsibility lay with their unnatural mothers. The use, even the hiring, of children for begging purposes was a classic Victorian nightmare. As its exploration in *Pilgrim Street*, another of Hesba Stretton's «fact-based» popular novels, sought to demonstrate, children (predominantly female) were literally forced into it by adult authority and, once established in this character, were only too likely to become hardened offenders by their teenage years. It was for this reason that men like Townshend and Sir Robert Carden, Bow Street's well-known police magistrate, particularly interested themselves in this

²² Hesba Stretton, *In Prison and Out*, London, 1887, pp. 110-111.

²³ *Daily Telegraph*, 25 March 1870.

problematic area of child abuse²⁴. But where industrial schools were not available, the dilemma was whether to leave them to continue their downward path until older, and arrested for more serious «crimes», or to send them to prison, and hope thereby to wean them from wrongdoing, despite the knowledge of what prison led to for most females!

Allied with this was a growing fear, associated with concerns about the role and performance of the police as they took on increasing authority for pursuing prosecutions, that some women arrested for minor offences were sentenced undeservedly harshly because they were mistakenly identified as repeat offenders as a result of prejudiced testimony. Carden, for example, worried about the role of the police and the extent to which their carelessness in identification of defendants as «known» to them was likely to result in more serious sentences being handed out by less experienced or less canny and overworked magistrates to women who were, in fact, appearing in court for the first time. The extent of «justices' justice» as it was dubbed in crime reports was a recurrent, if low-level, Victorian scandal, but one that worried the paid magistrates considerably, on the evidence of their comments. While Carden valued the police, he showed himself aware that a variety of pressures often conspired to make it convenient for them to insist that a woman taken up, say, for a breach of the peace connected with prostitution was also known to them as a guilty party in other cases, generally in a different court²⁵. Female difficulties in asserting their innocence is underlined by the case of Margaret Smith, accused by James Parker of being in the company of a woman of known bad character, and of causing a disturbance. She had «struck him a violent blow» and cut the skin of his eyebrow. Admitting she had not been sober, Margaret claimed that the woman was no friend but a chance-met fellow traveller, and insisted that she had no previous record of misbehaviour, and «was quite certain that she did not hit the complainant», asking for other witnesses. Dismissing this, taking the word of Parker, the respectable railway servant, and indicating that he believed that her propensity for drink meant she had been fortunate if not previously convicted, «Mr. D'Eyncourt said that it was a serious assault, and sentenced the prisoner to pay a fine of 20s or in default of payment, to twenty-one days imprisonment in the House of Correction. The prisoner was locked up in default», despite her cries of innocence²⁶. There was also real concern that juries were not always fair to women – as in the case of Maggie Wilson where, though «the Judge had summed up in

²⁴ See *Daily Telegraph*, 28 March 1870, for example.

²⁵ *Lloyds Weekly*, 3 April 1853; *News of the World*, 11 January 1880.

²⁶ *Pall Mall Gazette*, 2 June 1865.

her favour», a jury comprised of employers similar to her aggrieved master convicted her without even a recommendation to mercy: a verdict which «took very many by surprise»²⁷.

With prisoners not able to speak in their own defence, and a heavy reliance on character witnesses to dispute a prosecution case, working class women and girls were at an acute disadvantage, as the editor of the *Pall Mall Gazette*, the noted jurist Fitzjames Stephen, commented in relation to a case reported two days before that of Margaret Smith, noted above – a case which «certainly bears the awkward aspect of “one law for the poor and another for the rich”». Louisa Smith, described as «a well-dressed married woman of fifty who refused her address», was charged with theft of a mutton chop. According to the prosecutor, the butcher, he «had lost much meat in a similar way, and had known her on previous occasions to have stolen from his neighbours». It was not a question of desperation, as she had £1 16s 9½d on her. She was committed to prison for 14 days, but «towards evening, this larcenous lady’s solicitor, accompanied by “persons of most respectable appearance”» interceded, claiming that «she was very weak-minded, not exactly insane – because, if she had been shown to be insane the case must have been sent for trial – but odd» and that «she took the chop “without any felonious intent”», and «could scarcely “be considered responsible for her actions”». It was noted that the prisoner and her respectable companions «began to cry very bitterly», while «the magistrate, moved by their apparent respectability and grief, replied that he had no doubt of the culprit’s guilt; but that as these interesting mourners wished him to convert the sentence of imprisonment into a slight fine, he would oblige them». The sentence was converted to a 20 shillings fine, immediately paid, even though the magistrate, Mr. Cooke, expressed at the same time a doubt over the correctness of his action. As the supposedly misogynistic Stephen added,

Had Mrs. Louisa Smith not had plenty of money, and a solicitor, and a son and daughter of most respectable appearance, and two female friends in deep mourning to plead and weep for her – had she been a poor ragged creature without a friend or a sixpence, driven by hunger to theft, we cannot help suspecting that the magistrate would have been inexorable, and that she would have been employed in oakum-picking for the next fortnight²⁸.

²⁷ Mrs Lucas Shadwell, *Maggie’s Mistake*, *op. cit.*, p. 100.

²⁸ *Pall Mall Gazette*, 31 May 1865.

Had that been her fate, her chances of not appearing again in front of Mr. Cooke or one of his co-fraternity would have been slight.

Plainly, «innocence» of criminality for women and girls related quite as much to their moral status and reputations as to any actual offences committed by them. Female recidivism in the legal sense, despite disquiet amongst many including legal practitioners, was effectively promoted by acceptance of the importance of feminine conformity to moral «norms» and the consequent belief that «sinners» appearing before the courts were also transgressors in a legal sense, almost regardless of the intrinsic merits of any case brought against them. Thus women who were vulnerable because of their moral failings were too readily convicted and sentenced to punishments which practically condemned them to carry on re-offending. Release from prison gave them «no welcome, except of wickedness» in the majority experience²⁹. Despite comment attempting to reclassify such recidivists as «feeble-minded» rather than actually evil, women with dubious reputations continued to be convicted on relatively flimsy evidence, and punished socially in the long term as well as legally in the short term. Reform of the legal system and improved help for discharged offenders could not achieve an improvement. It was not until modification of the moral core of ideal womanhood was established in the twentieth century that «innocent» recidivism could cease to be a topic to concerned commentators.

²⁹ James Hope, «Mission to Discharged Prisoners», *op. cit.*, p. 186.