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# The Murderous Insanity of Love: Sex, Madness, and the Law In the 19th Century

Russell M. Franks, *Providence College*



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*The Murderous Insanity of Love:  
Sex, Madness, and the Law  
In the 19<sup>th</sup> Century*

*Russell M. Franks  
11 May 2005*

The late 19<sup>th</sup> century was a time of dynamic change for the United States. High ideals, progressive reform movements, accelerated industrial expansion, explosive immigration rates, and an increase in urban growth all characterized the Gilded Age of America. Social reform movements such as women's suffrage, temperance, and campaigns to reform labor laws were beginning to transform the American social and cultural landscape. Empirical science and the theory of evolution, along with the new disciplines of physics and psychology, revolutionized the way people perceived the world and thought about themselves. New technological advances allowed people access to news events – information that previously took days to reach all parts of the nation – in just a few hours.

During this time of major changes within American society, traditional attitudes continued to play a role in the daily lives of many people. In addition, institutional forces were central proponents in dictating established attitudes and values regarding social conduct, acceptable sexual relations, and the clearly defined gender roles that governed people's behavior. Among the middle and upper classes, and especially among women, sex was regarded as a taboo subject for conversation. Ironically, although the topic of sex was avoided in polite company, proper sexual – and gender – appropriate behavior was reinforced from the pulpit. The medical community also supported religious doctrine by declaring that nonconformist sexual behavior was a form of insanity. The religious establishment stood upon nearly 2,000 years of biblical doctrine, insisting that sex was for procreation only, while the medical community struggled to understand the inner workings of the mind.

Throughout the 19<sup>th</sup> century, leading medical experts debated the causes of mental disorders while struggling over how to apply their clinical findings in the courtroom. Despite the M'Naughten Rule of 1843, which defined criminal responsibility, the American judicial system found it difficult to apply the rule evenly in all insanity cases, particularly when inappropriate sexual or gender behaviors were involved. Cultural misunderstanding of the meaning of insanity by juries, the hesitancy of judges to accept a medical rather than a legal definition of insanity, and the inability of the medical community to agree as to what causes insanity all combined to created widespread discrepancies in the outcomes of criminal insanity trials. The problem lay in the fact that since there were conflicting medical opinions on the origins of insanity, the judicial

system and the medical experts could not agree on how a defendant should be adjudicated. Often in similar cases, one defendant would be acquitted and another convicted, while others were judged insane and confined to an institution.

This paper will examine the factors and social conditions that revolutionized how abnormal sexual and gender behavior was interpreted as insanity in and out of the courtroom. While the American judicial system continued to be committed to holding defendants legally responsible for their crimes despite the presence of unrecognized mental illness, misperceptions of insanity found their way into the courtroom through the juries who sat in judgment of a defendant. Both the jury and the court looked to the medical experts for answers to unexplainable behavior. Their answers, however, were often inconsistent and confusing. Secondly, the American press was not blind to this confusion and often took advantage of the situation to further its own agenda. When defendants were accused of deviant sexual or gender behavior in criminal cases, newspapers sensationalized the cases and extolled the importance of maintaining established social values. Juries holding traditional ideas of what constituted appropriate gender behavior, along with the refusal of the judicial system to accept a medical definition of insanity, prompted many medical professionals to seek new theories on the meaning of insanity.

As a result, there was an explosion of articles in the medical literature during the 1890's that debated the causes of insanity. While all forms of insanity were written about in the medical journals, the origins of insanity among women, and in particular deviant sexual behavior, were of great interest to the leading alienists. In the search to uncover the true origins of insanity, the previously held concept that "moral" insanity was a form of mental illness came to be regarded as invalid. In its place, the theory that physiological origins, and not psychic malfunction, were the root causes of mental disorders gained greater acceptance within the medical community. The belief that mental illnesses had physical causes, and were perhaps hereditary, would not only be tested in the laboratory, but before the American public through the court system and the press as well.

One such test case, which a noted medical journal characterized as the first time sexual perversion had been used as the basis for a plea of criminal insanity, occurred in 1892.<sup>1</sup> Alice Mitchell and Freda Ward, both from Memphis, Tennessee, had been engaged in a love affair. Tragically however, Alice publicly slit Freda's throat shortly after Freda was forced by her parents to end the relationship. The ensuing case made headline news nationwide. Later that year the nation was shocked by the arrest of Lizzie Borden for the double homicide of her parents, and just a few years later the Oscar Wilde trials in England rocked the English-speaking world. The nation struggled to understand the sexual and gender issues raised by these trials. These and other prominent criminal cases fueled the debate in the growing field of psychology regarding the origins of what was considered abnormal gender-related behavior. The debate centered on whether these behaviors were a degenerative sickness, as Richard von Krafft-Ebing described in his book *Psychopathia Sexualis* (1889) or – as Freud would come to argue – were inborn rather than the result of disease or immorality.<sup>2</sup> While the nation had long been accustomed to violence, the incidence of murder committed by women had begun to rise during the late 19<sup>th</sup> century. Society at large did not understand this alarming trend or the motives of women who committed sex-related crimes. Female insanity came to be the only means both to defend and to explain these crimes, since the nature of the crimes challenged society's concepts of what constituted the normally accepted reasons for committing murder.

The use of the insanity defense was not an entirely new feature in American jurisprudence, the roots of which are grounded in English law. One case that helped set English precedent dates to 1760. The defendant, the Earl of Ferrers, accused of murdering one of his servants, alleged that his derangement amounted to “occasional” insanity. Dr. John Monro, a well known “mad-doctor” at that time, supported his argument. The Earl, however, was convicted on the grounds that only complete insanity – a total lack of memory and understanding – could be the basis for an acquittal on the grounds of mental derangement. The House of Lords rejected the occasional insanity argument as a condition that was too likely to leave the afflicted in a “lucid interval,” in which the defendant was as culpable for his wrongdoing as any person. The ruling set the legal precedent for determining criminal insanity in England and her colonies in America. And until

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<sup>1</sup> American Journal of Insanity, *Notes and Comment*, (Utica, NY: State Lunatic Asylum), Vol. 49, 1892. 344.

<sup>2</sup> R. von Krafft-Ebing, *Psychopathia sexualis, with especial reference to the antipathic sexual instinct: a medico-forensic study*, Authorized English adaptation of the twelfth German edition by F. J. Rebman, (New York: Physicians and Surgeons Book Co., 1930), 6.

the early 19<sup>th</sup> century, the courts held that only if a “total want of memory and understanding” could be proven would the law consider insanity as grounds for acquittal.<sup>3</sup> However, this did not prevent defendants from attempting to use the insanity strategy, both in England and America. In Boston, for example, a random sampling of the Police Court during the first half of the 1800’s suggests that not only was the insanity defense used occasionally, but that defense counsels had a limited understanding of how to effectively employ the insanity tactic.

**Table 1.** Caseload Composition of the Boston Police Court, 1830-1860 (Random Sample)<sup>4</sup>

	1830	1840	1850	1860
<b>Insanity</b>	1	4	5	2
<b>Total Cases</b>	98	100	102	98

One case, in 1816, in New York City illustrates the ineffectiveness of the insanity defense further. Diana Sellick, a freed African American, poisoned a neighbor’s child to death. Sellick claimed that she had been possessed of the devil and her defense counsel entered a plea of insanity. Before the jury retired to render their verdict however, the judge noted that insanity was a defense often used when all other grounds had failed – just because the motive could not be ascertained does not mean that the poisoning was a result of insanity.<sup>5</sup> The jury agreed with the judge despite Sellick’s plea and found her guilty. Here again, the court required the defendant to have a total want of memory and understanding of her actions in order to qualify for acquittal on the grounds of insanity. Since the medical community had not yet formally recognized the category of moral insanity as a type of mental illness, the defense did not have a secondary argument to fall back on and the jury had no other alternative but to convict Sellick.

As the use of the insanity defense in regular murder cases had been proving ineffectual, defense teams began to realize that to successfully apply the tactic, the case had to challenge the conventional notions society held of acceptable gender-related behavior. Their defense had to

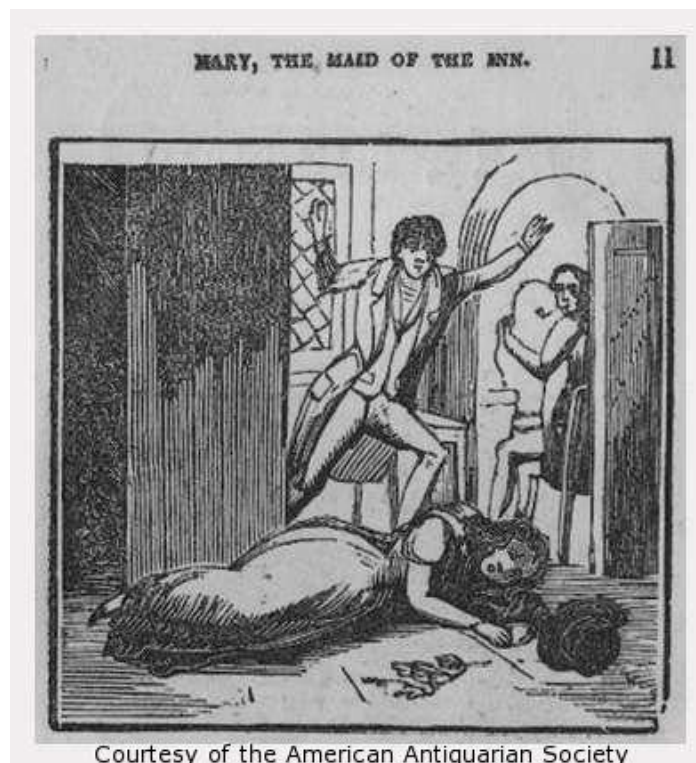
<sup>3</sup> Joel Peter Eigen, “Lesion of the will: Medical resolve and criminal responsibility in Victorian insanity trials,” *Law and Society Review* 33 (1999): 425.

<sup>4</sup> Mary E. Vogel, “The Social Origins of Plea Bargaining: Conflict and the Law in the Process of State Formation, 1830-1860,” *Law and Society Review* 33 (1999): 161.

<sup>5</sup> *American State Trials*, vol. 11, *The Trial of Diana Sellick*, ed. John Lawson (St. Louis: Thomas Law Book, 1914-1936). Reprint by (Delaware: Scholarly Resources, Inc., 1972), 849.

focus on controversial behavior. One consequence in this change of legal strategy, particularly in high profile cases, would be to highlight – through the press – what society believed was appropriate sexual behavior for women. For example, New Yorkers were scandalized when the 1836 murder of Helen Jewett, a New York City prostitute, was widely publicized. The accused, Richard P. Robinson, was promptly brought to trial, but the prosecution's use of testimony by women of "questionable" moral character hampered the case. The defense suggested that such witnesses were unreliable – that their lack of morals prevented them from telling the truth. At the end of the trial, the presiding judge reminded the jury that the testimony of a prostitute "is not to be credited unless corroborated by more creditable sources."<sup>6</sup> Robinson's acquittal was a direct reflection of the court's, and society's, attitude towards women who were considered to have low moral character.

Women who engaged in unacceptable promiscuous behavior, especially prostitutes, although not considered insane, were not to be trusted by society – a view still held by some people today. The respectability of a woman was a major foundation of society that rested, in part, upon the ideal that a women's sexuality was only to be used for procreation and the nurturing of domestic life. For a woman to step out of this role was to break the Judeo-Christian covenant between men and women established centuries before, and to challenge the dominance men exercised over women's bodies.



Courtesy of the American Antiquarian Society

Mary, The Maid Of The Inn – 1846.

Illustrations were often used to portray the consequences women suffered for engaging in immoral behavior.<sup>7</sup>

<sup>6</sup> Andie Tucher, *Froth and Scum: truth, beauty, goodness, and the ax murder in America's first mass medium* (Chapel Hill: University of North Carolina Press), 1994: 24.

<sup>7</sup> T.W. Strong, *Mary, The Maid Of The Inn – Figure 11*, American Antiquarian Society,

*"Remember, son, many a good story has been ruined by over-verification."*

James Gordon Bennett

While the Jewett case did not involve insanity, it was a springboard for the penny press to publicly discuss the perils that single young women faced in society. Jewett's life was examined in lurid detail, but not all newspapers could agree as to what the facts were, nor did they always get them right. Much as today, newspapers during the 19<sup>th</sup> century attempted to sway their readers' perception over public issues, including those involved in criminal cases. Oftentimes editors and reporters would exaggerate or distort the facts, either intentionally or through careless reporting, to heighten the emotions of their readers. A newspaper's economic survival – in many instances – depended upon sensationalizing a story when the opportunity arose. Since homicide wasn't as prevalent as today, murder was a favorite topic of reporting, which prompted newspapers to give so much color and attention to it. As a matter of course, no detail or speculation was too small or outlandish to report. The perception newspapermen held towards their readership, however, was one of "public duty."

The Jewett case was the perfect platform, particularly for the penny press, for a newspaper to exercise its public duty by bringing discourse into the public arena over the questionable behavior and trustworthiness of "immoral" women. The penny press, selling for only two or three cents a copy, came about in the 1830's and was primarily read by the working classes. Some early publishers – particularly James Gordon Bennett, the founder of the *New York Herald* – were "untroubled by ideological rigor and believed that a newspaper editor ought to make a great deal of money."<sup>8</sup> To this end, manipulation of the facts of a particular case made for better copy than promoting high ideals. Granted, Bennett may have been atypical of the early publishers, but nearly all of his rivals also succumbed to reporting on the evils of the day rather than reinforcing established social values. Publishers gave their readers the news they – the public – demanded, and reassured them that the world operated as expected – this was their "public duty."<sup>9</sup>

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<http://www.disabilitymuseum.org/lib/permissions.php>, Disability History Museum, [www.disabilitymuseum.org](http://www.disabilitymuseum.org),

<sup>8</sup> Tucher, 16.

<sup>9</sup> Tucher, 75.



Sixty years later, “yellow journalism” would replace “public duty” as the catch phrase for a newspaper’s responsibility towards the public. By the late 19<sup>th</sup> century, the sensationalized reporting of scandalous events had become a well-entrenched practice. The method was widely practiced by New York *World* publisher Joseph Pulitzer, and was soon perfected by William Randolph Hearst, Pulitzer’s key competitor. Fascinated with crime, Hearst formed the “Murder Squad,” a group of reporters whose sole purpose was to outwit the police in their investigations and to report every gruesome detail of a murder, with illustrations if possible, to the public.<sup>10</sup> The public, which associated Pulitzer with sensationalized news stories, quickly extended that view to Hearst, especially with his press coverage of the events leading up to the Spanish-American war of 1898. Although the wire services gave individual newspapers equal access to news events from all across the nation, the stake for the larger news consortiums, such as the Hearst and Pulitzer organizations, was dominance of the industry.

The English press also vigorously promoted public debate and sensationalism when it came to performing its public duty. In the courtrooms of England, however, advocates for the insanity defense were fighting an uphill battle. The most commonly used defense tactic in murder trials of the early 19<sup>th</sup> century was the provocation and drunkenness argument. Provocation rested on personal insult or injury as grounds to commit murder, and the drunkenness defense was based upon murderers being unable to control their actions because of the effects of too much alcohol. As judicial resistance to these types of defenses increased, English barristers began testing the insanity legal plea more frequently.<sup>11</sup> But it was the M’Naughten case of 1843 that set the new standard for defining legal insanity. Widely publicized in England, the case established the legal principle that a defendant is criminally insane if the defendant was unable to discern between right and wrong at the time a crime was committed. Furthermore, a defendant must not be able to understand the wrongfulness of his acts or – if he understands he has committed the act, he must be unable to distinguish right from wrong. A criminally insane person cannot be convicted of a crime since criminal conduct involves the conscious intent to do wrong – a choice that the criminally insane cannot meaningfully make. The ruling was hotly debated in some quarters,

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<sup>10</sup> Ben Procter, “William Randolph Hearst, The Early Years, 1863-1910,” (New York: Oxford University Press 1998), 99.

<sup>11</sup> Martin J. Wiener, “Judges v. Jurors: Courtroom Tensions in Murder Trials and the Law of Criminal Responsibility in Nineteenth-Century England,” *Law and History Review* Fall, 1999: 497.

mainly because – as one authority insisted – the M’Naughten rule did not provide for degrees of criminal responsibility, nor did the new ruling embrace the “total lack of memory and understanding” concept, but most courts in England and America accepted it.<sup>12</sup>

*“Years of love have been forgot, in the hatred of a minute.”*

Edgar Allan Poe

The 1859 trial of Daniel E. Sickles for murder attempted, to some extent, to address this deficiency. Sickles, who later went on to Civil War fame, publicly gunned down Phillip Barton Key in Washington, D.C.’s Lafayette Square. Key was the grandson of Francis Scott Key, the author of the *Star Spangled Banner*, which later would come to be adopted as the national anthem. Key and Sickles had been friends for many years. But for some months prior to his murder, Key and Sickles’ wife had been having a desperate and passionate affair and in a moment of jealous rage Sickles took his revenge. During the trial a number of complex issues arose, among them the question of Sickles’ sanity. The defense argued that Sickles was rendered temporarily insane by rage and grief and that he was justified by the “unwritten law” of seeking justice upon “the defiler of his marriage bed.”<sup>13</sup>

As in the Sellick case, the cause of insanity was not in question, only the question of insanity itself.<sup>14</sup> The jury was instructed on a number of points of law before deliberations began. Among them: that the prisoner is presumed to be of sound mind until proved contrary; if the jury believed the prisoner’s mind was diseased or incapacitated at the time of the murder he must be acquitted; and that the law only required that insanity exist at the time of the murder.<sup>15</sup> The judge additionally advised the jury on the nuances of intent, manslaughter, 1<sup>st</sup> degree murder, and the varying degrees of responsibility associated with each legal definition. While Sickles was acquitted, Judge Crawford in his closing remarks noted that when there was conflicting testimony on a prisoner’s sanity, doubt of guilt is presumed to exist. Therefore the jury, in deciding sanity as a point of fact, must believe the evidence supports the conclusion that insanity

<sup>12</sup> Charles E. Rosenberg, *The Trial of the assassin Guiteau* (Chicago: University of Chicago Press, 1968), 56.

<sup>13</sup> W. A. Swanberg, *Sickles the Incredible*, (New York: Scribner’s Sons, 1956), 64.

<sup>14</sup> *American State Trials* vol. 12, *The Trial of Dan E. Sickles*, ed. John Lawson (St. Louis: Thomas Law Book, 1914-1936). Reprinted by, (Delaware: Scholarly Resources, Inc., 1972), 654.

<sup>15</sup> *The Trial of Dan E. Sickles*, 756 – 760.

existed at the moment the murder occurred. In referring to the M’Naughten case, the prosecution also acknowledged that since the defendant is presumed to be sane, the defense was required to prove insanity beyond a reasonable doubt for an acquittal.<sup>16</sup>

An important factor for the defense in this case was that they did not have to prove complete insanity, but only a temporary suspension of moral reasonability or responsibility brought on by uncontrollable grief during the moment of the crime. In this instance, even though Sickles’ momentary lapse of self-control was not called moral insanity, the defense rested part of its case on the concept. Although the term moral insanity had only been in use for a few years and not was widely known outside of the medical community, Sickles’ lawyers were shrewd enough to realize they could not convince the jury that Sickles was completely mad. Nor could the lawyers point to Sickles’ reproductive organs as the source of his distraught mental state at the time of the murder. This illustrates one of the key differences in how society, the medical profession, and the legal system interpreted the differences of insanity between in men and women. Men went insane because of overwhelming grief, while a women’s insanity was attributable to her reproductive system.

Reference to English law was made in both the Sellick and Sickles cases, but in neither case was expert medical opinion sought to evaluate the mental condition of the defendants. Nor did the court in the Sickles case formally address the unwritten law of seeking self-imposed justice upon “the defiler of his marriage bed.” This unwritten code of honor, which was expounded upon by the defense during the course of the trial and greatly swayed the jury, reflected a common attitude in antebellum America – that a man could protect his property and possessions, which included his wife. In the years following the Civil War however, with the rise of progressive agitation for women’s rights, the idea that women were property became politically incorrect and untenable in more enlightened social circles.

The Civil War not only disrupted the economic and political landscape of America, but also threw the social fabric of the nation into disarray. The war in some instances had muddled the boundaries of the roles women were thought to have in society. As the men went off to fight,

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<sup>16</sup> *The Trial of Dan E. Sickles*, 754, 760.

women on both sides of the conflict often assumed roles generally held by men. Women in the South took on responsibility for agricultural production and other home-front duties in support of their men and the war effort. And in the North, a limited number of war production opportunities – which traditionally were reserved for men – became available for white women. During the conflict, large numbers of women on both sides found employment as clerks in business and government, were involved in fund raising, and served as nurses on the battlefield. At the end of the war, newspaper accounts of women disguising themselves as men to enlist in the army blurred the gender boundary even further. And while the country had been desensitized to violence by the war, concern over the role of women in society was a cause of much debate among American citizens.<sup>17</sup>

In the wake of the trials of the Lincoln assassins, the murder of a thirty-three year old Treasury Department clerk in Washington would, for a short time, become the focus of much of this debate. In January of 1865, 19-year-old Mary Harris of Chicago traveled to Washington, D. C., where she publicly shot Adoniram J. Burroughs on the steps of the Treasury house. Burroughs, who had promised matrimony to Harris, had recently married another woman. The affair between Burroughs and Harris had been a long-standing one. Harris discovered Burroughs' betrayal through a newspaper announcement, and the shock left her in a deteriorating state of depression and agitation. At a time of personal and national uncertainty, Mary Harris had pinned the hopes of her future security on entering into marriage with the only man she trusted and believed loved her. Originally from Iowa, Mary was an unsophisticated small town girl, and now that her future had been destroyed she did not know where or who to turn to for help. Out of desperation, fear, and panic she armed herself, and traveled to Washington without really understanding what she would do next.

Harris was immediately taken into custody after the shooting and her lawyers entered a plea of insanity before the court. The press closely followed the case, as in the trials of Lincoln's assassins, with commentaries and transcripts of the day's court proceedings published daily. Comparisons were made between Mary Harris and Mary Surratt, one of the Lincoln

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<sup>17</sup> Lee Chamber-Schiller, "Seduced, Betrayed, and Revenged: The Murder Trial of Mary Harris," in *Lethal imagination: violence and brutality in American history*, ed. Michael A. Bellesiles (New York: New York University Press, 1999), 187.

assassination conspirators, as how Surratt was the epitome of evil and the Harris “a tribute to the purity of women.”<sup>18</sup>

As in the Jewett case, Harris’ sanity, while hotly debated in the courtroom, became a public podium for discussion of the post-war dangers facing the social and domestic life of the nation. Divorce proceedings, husbands abandoning their spouses, wives marrying other men while their husbands were off fighting the war, and cases of rape and prostitution, daily assaulted the general public through the press. Harris’ pre-marital troubles and current confusion was portrayed by the defense as an example of one of the tragic consequences of the war. With the uncertainty of life so self evident all around us, the defense argued, it was no wonder young Mary Harris went insane over the loss of her betrothed to another woman.



“Crazy Girl By Stream”

Circa 1850

An example of a popular mid-19<sup>th</sup> century image of a woman lost to society due to insanity.<sup>19</sup>

At least eight doctors testified in the Harris trial, although not all of them agreed that Mary was suffering from the effects of a mental disease. The most prominent and qualified physician to take the stand, Dr. Charles H. Nichols – Superintendent of the Government Hospital for the Insane – testified at great length about Mary’s mental state. Nichols noted that Harris did not have “much moral or mental training,” meaning that she had a weak mind; and that her physical, mental, and moral constitution also made Mary “unusually susceptible to either a physical or moral cause of insanity.”<sup>20</sup> His diagnosis was that Harris was experiencing painful *dysmenorrhea* and disappointment in love at the time of the killing. Furthermore, the shock Harris suffered upon learning

<sup>18</sup> Chamber-Schiller, 192.

<sup>19</sup> American Antiquarian Society, “Crazy Girl By Stream, *Country Scenes and Characters*, <http://www.disabilitymuseum.org/lib/stills/204card.htm>, Disability History Museum, [www.disabilitymuseum.org](http://www.disabilitymuseum.org).

<sup>20</sup> *American State Trials* vol. 17, *The Trial of Mary Harris*, ed. John Lawson (St. Louis: Thomas Law Book, 1914-1936). Reprinted by, (Delaware: Scholarly Resources, Inc., 1972), 276.

of her betrayal by Burroughs brought about such a material change in her spirits and health that she was unquestionably from that time forward, until the murder, insane. Upon cross-examination, Nichols testified that Harris also suffered from *paroxysmal mania*, episodic bouts of emotional outbursts, which are characterized by violent uncontrollable impulses.<sup>21</sup> As far as Nichols was concerned, Harris was definitely insane when she killed Burroughs. The judge instructed the jury that if Harris could not control herself by reason of physical disease or *moral* cause, then a verdict of not guilty should be returned. The jury – after less than five minutes of deliberations – did just that.

The fact that Nichols linked Harris' difficulty to her reproductive cycle was not unusual. The medical community believed that a woman's energy was centered in her reproductive organs. When a woman suffered a medical problem, doctors often diagnosed the problem as a misdirection of energy. The reproductive system was considered to be the cause of almost every physical and mental problem a woman incurred. In 1869, Dr. M. E. Dirix, who made the recommended book of the week reading list of the February 18, 1869 edition of the *Nation*, attempted to describe the plight of women as such:

Thus, women are treated for diseases of the stomach, liver, kidneys, heart, lungs, etc.; yet, in most instances, these diseases will be found on due investigation, to be, in reality, no diseases at all, but merely the sympathetic reactions or the symptoms of one disease, namely, a disease of the womb.<sup>22</sup>

Years later, when Alice Mitchell would come to trial, the same argument, although by then less credible, would persist. In the late 1880's, the leading opponents to the theory that insanity was related to the reproductive organs were mainly female doctors. Physicians Margaret A. Cleaves and Alice May Farnham, who both conducted separate research on this subject, arrived at the same doubtful conclusions. While their results were not accepted as conclusive, the *Weekly Medical Review* echoed their findings and the research of other alienists as evidence that the relationship between the uterus and mental illness "has no other foundation than conjecture."<sup>23</sup>

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<sup>21</sup> *The Trial of Mary Harris*, 276, 277.

<sup>22</sup> Barbara Ehrenreich and Diedre English, *For Her Own good: 150 Years of the Experts Advice to Women* (Garden city: Anchor Press 1978), 122.

<sup>23</sup> *American Journal of Insanity, Abstracts and Extracts*, (Utica, NY: State Lunatic Asylum), vol. 45, July, 1889:162

Despite this shift in medical thinking, women were still advised to cease intellectual and physical pursuits and to live as domestic a life as possible, keep their children close, rest after each meal, and, as one late 19<sup>th</sup> century expert advised a despairing female novelist, “never touch pen, brush, or pencil as long as you live.”<sup>24</sup> The attitude that the sanctity of the home was the best cure would persist well into the next century. Social commentaries, when discussing the mental attributes of men and women, would praise the modest inroads women had made in the business world, but continued to extol how important domestic harmony was to a woman’s health.<sup>25</sup>

*“I wish we were married.”*

Alice Mitchell to Freda Ward, Letter – August 1, 1891

The 1892 trial of Alice Mitchell for the murder of Freda Ward would stretch the imagination of the press, the public, the court, and the medical world in attempting to understand the meaning of insanity. As Freda was about to board a Mississippi River steamboat for the fifty-mile trip to her home in Goldust, Tennessee, Alice cut her throat in full view of a number of witnesses. Although the case made news in the big eastern newspapers, it was the local papers that capitalized on the crime the most to increase their sales. The day after the killing, the headline of one newspaper, the *Memphis Appeal Avalanche*, screamed, “The Most Singular and Shocking Murder Ever Done in Memphis.”<sup>26</sup> There were extensive discussions in the Memphis papers regarding Alice Mitchell’s motivations and her moral character. The newspapers printed stories reporting that Alice was afflicted with erotomania, which was caused by her “unnatural and unholy love” of Freda. “Hereditary influence,” based upon the fact that Alice’s mother had been treated for dementia at one time, had also been proposed as an explanation for Alice’s behavior.<sup>27</sup> The *Public Ledger* published interviews of Mitchell’s neighbors who “never considered her (Alice) mentally strong” and believed “her act was that of an insane woman.”<sup>28</sup> The prosecution naturally tried to debunk these theories in its efforts to obtain a conviction, and

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<sup>24</sup> Ehrenreich, 102.

<sup>25</sup> C. A. Bartol, “Sex in Mind,” *The Arena* 2, November (1890): 658.

<sup>26</sup> Lisa Duggan, *Sapphic Slashers* (Durham: Duke University Press, 2000), 11.

<sup>27</sup> Duggan, 49.

<sup>28</sup> Duggan, 54-55.

according to the *Avalanche*, circumstances in the case justified the belief that the murder was the act of a sane women with a violent and vindictive temper and morbidly sensitive.”<sup>29</sup>

These examples of newspaper speculation, which attempted to sway public opinion, clearly support the contentions of some historians that the motives of the newspaper industry weren’t just about making profits. The role of newspapers in the public domain was three-fold. First, newspapers promoted the ideology of mass consumption through mass advertising. Secondly, publishers had a hand in shaping the national identity – what it meant to be an American. Thirdly, newspapers helped define the public’s belief systems and “behaviors that governed the boundaries of private and public life” through repetitive articles.<sup>30</sup>

These arguments reinforce a central finding of Michel Foucault’s analysis of society – that institutional control of the population was needed to support the economic and political purposes of capitalism. As one historian of the Mitchell case pointed out, the leading white business elite who owned the Memphis newspapers were interested in expanding regional trade and municipal control of the large numbers of African-Americans and Irish immigrants who had moved into the Memphis area during the 1880’s and 90’s.<sup>31</sup> Another function newspapers performed was the reinforcement of gender roles by publishing non-news articles that “extolled Victorian ideals of women and women’s behavior based on ideas of fundamental differences from men.”<sup>32</sup>

Nor were social commentaries published during the 1890’s silent on the public duty of a newspaper. For example, one publication maintained that the press, and in particular the newspaper editor, reigned supreme in American society. The role of the press was to educate the public and to provide a platform for debate in the public arena. With the advent of the penny press, newspapers were free, as Bennett expressed it, to publish opinions independent of “the interest of some party, or persons, or some agitation.”<sup>33</sup> Many papers still had party affiliations, but newspapers now had a higher calling, which included reporting on all subjects of interest. In fact, the newspaper’s ability to influence so many people by its opinions could be devastating in

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<sup>29</sup> Duggan, 50.

<sup>30</sup> Lisa Duggan, 33-34.

<sup>31</sup> Duggan, 37.

<sup>32</sup> Lisa Lindquist, “Images of Alice: Gender, Deviancy, and a Love Murder in Memphis,” *Journal of the History of Sexuality* 6, no. 1 (1995):40.



a criminal defense. One case involving political corruption in New York City had been so widely reported on that when the case came to trial, not one juror could be found expressing a reasonable doubt of the guilt of the accused.<sup>34</sup>

Other historians have pointed out however, that some editors did not give much thought to the ideological role of their newspaper. Writing to his father in 1885, William Randolph Hearst pleaded with him to turn the San Francisco *Examiner* over to him. In addition to outlining a number of technical changes, Hearst's emphasis was on the possibility of being able to match or exceed the *New York World's* "net profit of one thousand dollars a day."<sup>35</sup> George Hearst may have purchased the *Examiner* to further his political aims in California, but his son was much more interested in creating a profit and becoming a competitive force to be reckoned with in the newspaper world.

Publishers such as Bennett – and Hearst earlier in his career – were not motivated by a grand design to mold the future of the national identity or to support the economic and political purposes of capitalism as a system. For them, newspaper publishing was first and foremost a business – one that allowed them to advance their own economic and political purposes. Some publishers may have attempted to guide the morals of their readers, but the press oft-times was merely a reflection of society itself. Hearst and Bennett did not necessarily believe their "public duty" included sacrificing profits for the sake of accuracy or ideology. William Makepeace Thackeray (1811 – 1863), the famed editor of *Vanity Fair*, understood this when he said that "a newspaper is typical of the community; it tells its character as well as its condition."<sup>36</sup> And that reflection, as a matter of course, included defining and portraying what society generally believed was the proper role for each of the sexes.

Under Tennessee law in the 1890's, there were no pre-trial hearings. As in the Harris trial thirty years earlier, the burden of proving the defendant insane was the defense's responsibility. The defense counsel for Alice Mitchell, rather than pleading "not guilty of murder by reason of insanity," chose to plead "guilty of present insanity," which meant that if Alice were found to be

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<sup>33</sup> Habberton, 269.

<sup>34</sup> Habberton, 273.

<sup>35</sup> Procter, 42.

insane, she would be committed to a state hospital until such time as she was declared fit to be tried for the murder.<sup>37</sup>

Alice had maintained from the outset that she killed Freda because she loved her and wanted to elope with her. The idea of two women marrying each other more than challenged the public's standards of cultural normalcy. News stories tried to ascribe less culturally threatening motives for the murder. One speculation argued that Alice killed Freda for revenge due to jealousy over a man. Another popular theory was that a mysterious man was directly involved in the murder since the nature of the crime was considered too heinous to have been committed by a woman. The Memphis newspapers did their best to downplay the possibility that this was a case of sexual deviance, even though Alice's own testimony ran counter to their speculations about the possible motives for the crime.<sup>38</sup> As Alice continued her testimony, however, it became clear that she had a history of engaging in what was considered inappropriate gender behavior – in other words, Alice had been a tomboy and later planned on living her life as a man after marrying Freda. According to the July 27<sup>th</sup>, 1892 issue of the *Nashville Banner*, it was Alice's testimony that “did more to convince the jury of her insanity than all the expert testimony.”<sup>39</sup> Three days later the jury judged Alice insane, and she was committed to the Tennessee State Insane Asylum at Bolivar.

The principal physicians, who examined Alice, were Dr. Frank L. Sims, Dean of the Faculty of the Memphis Hospital Medical College, and Dr. John Hill Callender, superintendent of the Central Hospital for the Insane in Nashville. While they and a number of other doctors who examined Alice all ultimately agreed that she was insane – in fact the prosecution could not find one doctor who would testify on their behalf – they did debate the cause, nature, and a possible cure for Alice's “illness.”

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<sup>36</sup> Habberton, 268.

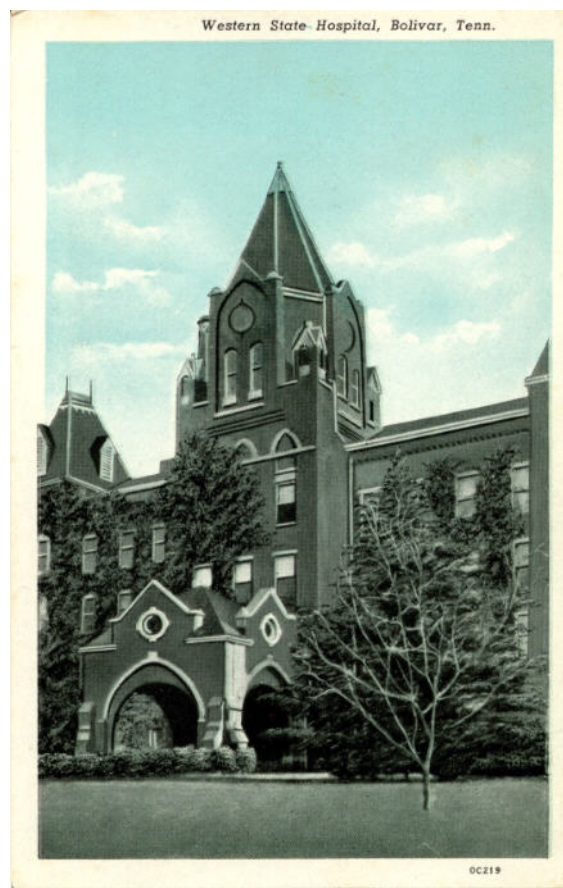
<sup>37</sup> Duggan, 88-89.

<sup>38</sup> Lindquist, 33 - 34.

<sup>39</sup> Lindquist, 47.

In discussing a cure for Alice, Callender noted that her uterine system should not be neglected as part of her treatment.<sup>41</sup> While it is not known whether Callender actually advocated removal of Mitchell's ovaries, literally days prior to Freda's murder, Dr. Thomas G. Morton published his findings on this type of treatment in the *American Journal of Insanity*. Morton observed that insanity was quite often a side effect of ovarian removal and that it should only be used as a last resort. "The castration of women as a cure for mental illness," Morton opined, is not appropriate, nor is "insanity a direct and sole result of disease of the ovaries."<sup>42</sup>

Another point of contention in the Mitchell case centered in particular on whether love between two members of the same sex qualified as insanity, or if such love was only pathological when becoming obsessive or leading to murder.<sup>43</sup> Subtle differences like this were lost on the press. The *Memphis Appeal Avalanche* claimed that Alice's sisterly love for Freda was "admitted by all the experts to be no indication of insanity per se," and preferred to focus on Alice's "insane delusion...that she could marry Freda, and live with her as a husband."<sup>44</sup> The newspaper coverage was so extensive that the *Jackson (TN) Tribune Sun* called the case "the subject of more newspaper comment than any other crime that was committed in the South."<sup>45</sup>



A picture postcard of  
The Tennessee State Insane Asylum at Bolivar.<sup>40</sup>

Alice Mitchell spent the last days of her life here.  
She was only 25 years old when she died of  
"consumption" on March 31, 1898.

<sup>40</sup> Robert W. Foster, "Western State Hospital, Bolivar, Tennessee," *Welcome to Asylum Postcards*, <http://www.abandonedasylum.com/miscshpc.html>. *Abandoned Asylum*, <http://www.abandonedasylum.com/>.

<sup>41</sup> Duggan, 103.

<sup>42</sup> Thomas D. Morton, "Removal of the Ovaries as a Cure for Insanity," *American Journal of Insanity* 49 (1893): 398-399.

<sup>43</sup> Duggan, 105.

<sup>44</sup> Duggan, 105.

<sup>45</sup> Lindquist, 40.

In the mind of the public, it wasn't necessarily Alice's love for Freda, or even the murder itself, that offended the 65,000 residents of Memphis, but rather that Alice could presume to transgress her role as a woman by wanting to take on a masculine persona. The newspapers and the public struggled with this because, according to one letter to the editor of the *Nashville Banner*, "there were no facts of reason by which to solve the problem of one woman wanting to marry another," therefore Alice must be insane.<sup>46</sup> In order to not compromise the Victorian ideals of womanhood, society found it much safer to judge Alice insane than to convict her for murder.

As in previous cases, insanity was thought to be a disease with hereditary roots, but crime was also considered by many to be a disease with physical causes. Prominent books during the late 19<sup>th</sup> century that were aimed at instructing young ladies on the virtues of good morals and how to attain physical beauty, often included a chapter equating poor health and hygiene with crime. One such book found in many homes plainly declared, "Crime is quite as much a disease as insanity."<sup>47</sup> Such pronouncements indicate how widespread the belief was among the general population that crime and insanity were a disease, with physical and possibly hereditary causes. Furthermore, readers were advised that those who live out of harmony with high moral law would find the sin of their excesses literally stamped upon their faces. In other words, one could only be physically beautiful and sane by maintaining the strictest moral standards.

Morality, crime, and insanity had been linked together for decades. J.C. Prichard (1786-1848) of England first used the term moral insanity in 1835. He maintained that while the intellectual faculties are uninjured, a patient's disorder stems principally from their feelings and learned habits. "The moral...principles of the mind...are depraved or perverted, the power of self-government is lost or greatly impaired, and the individual is...incapable...of conducting himself with decency and propriety in the business of life."<sup>48</sup> Prichard's medical definition merely reflected the religious doctrine of moral agency. As one theologian sermonized:

"...man retains his intellectual powers unimpaired, but he sets his heart fully to evil. He refuses to yield to the demands of his conscience. He practically discards the obligations of moral responsibility. He has the powers of free moral agency, but persistently abuses

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<sup>46</sup> Lindquist, 36.

<sup>47</sup> Annie Jenness Miller, *Physical Beauty, How to obtain and how to preserve it* (New York: Charles L. Webster & Co., 1891), 21.

<sup>48</sup> Lucy Ozarin, "Moral Insanity: A Brief History," *Psychiatric News*, 36 no.10 (May 18, 2001):21.

them. He has a reason, which affirms obligation, but he refuses obedience to its affirmations. In this form of insanity, the reason remains unimpaired; but the heart deliberately disobeys.”<sup>49</sup>

By the 1890’s, the definition of moral insanity had undergone slight revisions to indicate that a patient experienced, not complete insanity, but paroxysmal or episodic periods in which the patient lacked moral feelings.<sup>50</sup> Contrary to the argument Sickles’ lawyers made, to be judged as morally insane a person must now have not just one episode, but re-occurring bouts of insanity.

Although, the notion moral insanity was losing creditability with the judicial system, the linking of morality to insanity continued to find its way into the courtroom. In April of 1892, 15 year-old Charley Miller went on trial in Cheyenne, Wyoming for murdering two men in cold-blood. During the course of the proceedings, the defense team paraded a string of local doctors through the courtroom in an attempt to prove Miller’s actions had been influenced by his excessive masturbation habits. While each of the doctors freely admitted they were not experts on insanity, they all agreed that such an “unclean habit” could possibly lead to mental instability.

The possibility that Charley’s parents, particularly his father, had been mentally ill was also raised, pointing to hereditary origins for his condition along with his lack of moral training in the orphanages as a child. Unfortunately for Charley, because his memory was not affected – that is, the doctors could not state that the debilitating effects of the disease progressed to the point where his judgment or memory was impaired – the jury found Charley guilty. Ironically, the “memory” aspect of the physicians’ diagnosis was reminiscent of the 18<sup>th</sup> century English view towards criminal responsibility. With swift Western justice, Charley Miller, on a warm spring morning in early April, was taken out behind the Cheyenne courthouse and hung by the neck until dead for his crimes.<sup>51</sup> The idea that immoral habits, in this case masturbation, could lead to a degenerate disease of the mind was debated. The case briefly made headlines across the country, illustrating that the question of whether “immoral” sexual behavior could cause insanity

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<sup>49</sup> Charles G. Finney, “Moral Insanity,” *The Oberlin Evangelist*, September 10, 1856, [http://www.gospeltruth.net/1856OE/560910\\_moral\\_insanity.htm](http://www.gospeltruth.net/1856OE/560910_moral_insanity.htm) The Gospel Truth, <http://www.gospeltruth.net/index.htm>.

<sup>50</sup> American Journal of Insanity, *Abstracts and Extracts*, (Utica, NY: State Lunatic Asylum), vol. 47, October, 1891:246.

<sup>51</sup> Joan Jacobs Brumberg, *Kansas Charley, The Story of a Nineteenth Century Boy Murder* (Lincoln: University of Nebraska Press, 2003), 141–150.

was widely debated – even though medical papers published on insanity argued for organic origins for the condition.

One prominent specialist in the field ascribed insanity and criminality to defective brain tissues. Just two years after the sensational Mitchell case, Sanger Brown published his views on the causes of criminal insanity in the December issue of *The Popular Science Monthly*. Quoting the English psychiatrist Henry Maudsley (1835-1918) who also defined insanity as “a disease of the brain,” Sanger reasoned that non-criminal individuals had brains in which their functional processes are normal.<sup>52</sup> The learning pathways of these persons, while influenced by their environment, were dependent upon the presence of cell processes within the brain that were not corrupted through hereditary defects, or the lack of proper training as a child. Criminals, on the other hand, were burdened with “defective brain tissues” that interfered with the learning centers of the brain that permitted an individual to conform to society’s normal social constraints.<sup>53</sup> Sanger postulated that it was the quality of the neural pathways and the cerebral tissues that determined how well an individual conformed to acceptable behavior as defined by society. Therefore, criminals had inferior cerebral tissues. The evidence for this lay in the fact that the repetitive training and societal conditioning these individuals received as children failed to produce productive members of society by the time they reached maturity.

Additionally, Sanger maintained that the medical community had a role in determining the legal status of criminal defendants. In determining criminal insanity, Sanger theorized, the alienist must explore what the previous environment of the defendant was, how he or she habitually interacted with it, then make a comparison between that and the current circumstances surrounding the evidence of alleged insanity before arriving at any conclusions. While examination of a patient’s past had been, and still is, crucial to formulating diagnoses, it was the shift in identifying the brain – and not the reproductive organs – as the source for female insanity that was new. This was a major development that also reflected the struggle to move away from the concept of moral insanity.

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<sup>52</sup> Sanger Brown, “Responsibility in Crime from the Medical Standpoint.” *The Popular Science Monthly* 48, December (1894): 162.

<sup>53</sup> Sanger, 160.

In the 19<sup>th</sup> century, because it was impossible to inspect the brain for physical abnormalities without harm to the patient, the only avenue of investigation for the alienist was to study the life-behavior of the patient. In the case of Alice Mitchell – two years before Sanger published his views – this was the course Dr. John H. Callender and his colleagues pursued. The anecdotal evidence presented at Alice’s trial, and the fact that she had spent the majority of her teenage years engaging in tomboy activities, provided convincing evidence – in the minds of the doctors, lawyers, and jurors – that pointed towards Alice’s mental instability. More importantly however, it was Alice’s own testimony during her trial that left no doubt in the minds of everyone involved with her case that she was indeed insane.

In a parallel case that was detailed in the 1894 June issue of the *Review of Insanity and Nervous Diseases*, the female patient was described as having many of the same characteristics as Alice. Except for the murder, the unnamed subject was diagnosed as “hereditarily neurotic with congenital inclinations for her own sex, which were indulged by mutual onanism.”<sup>54</sup> Like Alice, this patient had no sexual desire for men and managed to stay close to the object of her interest through mutual musical and literary activities. Apparently the girl’s love for her female friend, although returned with warm affection, went unrequited. However, instead of resorting to murder, the subject married her friend’s brother, who was described as looking similar to the sister, and eventually had a child by him. But the subject’s love for the husband was superficial as she continued her devotion to the sister. What the feelings of the husband were are not recorded. However, after the unexpected death of the sister from pneumonia and the birth of their baby girl, the situation changed. As the subject’s maternal feelings for her daughter grew, she transferred that love towards her husband as well. When the doctors recognized this shift in the relationship between the patient and her husband, they declared her “cured.”

Ironically, there were two factors that led to this patient’s recovery. First, the patient’s ovaries were not removed, which allowed her to give birth to her daughter. Secondly, the role and responsibilities of motherhood seemed to confirm the long held tenet that the sanctity of the home and domestic harmony was the best cure for many female ailments. Perhaps had life circumstances been different for Alice and she had not insisted on living her life as a man, Alice

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<sup>54</sup> American Journal of Insanity, *Abstracts and Extracts*, (Utica, NY: State Lunatic Asylum), vol. 51, July, 1894: 88.

also might have had a less tragic ending. But the fact that Alice was unable to channel her sapphic love in a way that 19<sup>th</sup> century Memphis society could accept also, ironically, saved her from the gallows when she murdered Freda in broad daylight.

The use of the insanity defense in criminal trials has had a long and checkered history. As the justice system began to narrow and define the meaning of personal responsibility for a crime, defense advocates, with help of the medical community, looked for new ways to have their clients acquitted. In each case, the successful or unsuccessful use of the insanity tactic was dependent upon a number of factors. Much of the outcome was dependent on the court's understanding of insanity, the persuasiveness of the defense counsel's ability to define the criminal acts against cultural norms, and the expertise of the medical experts. Alice Mitchell, as well as Mary Harris, survived their indictments because of the cultural norms and expectations society had about the place of women in the world.

The assumption by society that women were the "weaker" sex permitted all male juries who sat in judgment of Harris and Mitchell to afford them lenience. The Mitchell case had been, up to that date, one of the most difficult cases for the legal and medical communities in which to define criminal responsibility. Alice's repeated declarations on the stand of her intent to kill Freda and desire to be a man were baffling. Proper society could and did tolerate those women who discreetly chose to live alternative lifestyles as long as they did not draw attention to themselves, and in return society did not judge them insane.

There were many cases however, where the insanity plea was unsuccessful for various reasons as in the Sellick and Miller cases. Clearly, something is wrong with anyone who purposefully takes another person's life. It is the duty of the courts, however, to define criminal responsibility and determine whether a defendant can tell the difference between right and wrong, regardless of the circumstances. Towards the turn of the last century, members of the medical profession began to decry the inequities criminally insane defendants suffered under the judicial system and call for a reform of criminal law as it was applied to the insane.<sup>55</sup> The dichotomy of the law was such that

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<sup>55</sup> F. E. Daniel, "Criminal responsibility of the insane; with special reference to the case of Eugene Burt," *The Arena* 20, August (1898): 168.



if one is insane, there is no crime, however if there is a crime, there is no insanity. Insanity cannot be an excuse for crime because if one is insane, then there is no crime to excuse.<sup>56</sup>

Despite the then recent advances in understanding the mind, there was much confusion among the courts, jurors, and even the medical community itself, as to what constituted insanity as well as the degree of evidence required to prove insanity. The complexity of the issue was compounded even further by the fact that psychological decisions were being left in the hands of uneducated juries.<sup>57</sup> In the Miller case, the local doctors who testified were unable to enlighten the jury or categorically define the mental state of Charley Miller. This failure on the part of the physicians brought about Charley's conviction and ultimate death.

The issue of moral insanity – defined, as a condition between insanity and depravity with congenital origins – was even more complicated.<sup>58</sup> The medical experts for Alice Mitchell introduced hereditary and behavioral evidence attesting to her mental condition. Her mother had spent time in an asylum and Alice's behavior prior to the killing of Freda demonstrated her agitated state. However, there remained in some medical circles those who questioned the validity of such arguments. The terminology "moral insanity" would come to be replaced by "psychopathic inferiority," which was defined as persons "who conform to a certain intellectual standard, but who throughout their lives exhibit disorders of conduct of an antisocial or asocial nature."<sup>59</sup> Alice could have fit into this definition, but her desire to be a man, which exceeded society's norms, caused her to be judged morally depraved.

The Mitchell case took place within the larger framework of the changing social dynamics of the late 19<sup>th</sup> century. Society could grudgingly absorb the social changes placed upon it by social reformers, but for a woman to openly declare her persona as a man was beyond comprehension. The traditional trappings of womanhood were not to be discarded in their quest for equality. The occasional appearance in society of such a person – usually noticed only when a public crime, such as murder, had been committed – demanded an explanation. And since there was no reasonable explanation for a person to change their public persona, that person must be

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<sup>56</sup> Daniel, 186.

<sup>57</sup> H. S. Williams, "Social Relationships of the Insane," *The North American Review* 157, November (1893): 618.

<sup>58</sup> Daniel, 180.

<sup>59</sup> Ozarin, 21.

considered as living outside the bounds of normal mental health. While society has become more accepting of people choosing alternative lifestyles during the past twenty or so years, and no longer institutionalizes them, many people still find transgendering a difficult concept to accept on a personal level.

In one final note, it must be remembered that social position and the gender of the defendant also played an important role in the mind of juries. For example, following on the heels of the Mitchell case was the Lizzie Borden trial. Within days of Lizzie's arrest, local newspapers were quick to suggest that insanity had a role in the deaths of Andrew and Abby Borden. One editorial characterized the murders as "the deed of a woman who is unconscious," and another newspaper reported that it was an open secret within the police department that they believed Lizzie was insane.<sup>60</sup> *The Fall River Herald* opined that the case had now become a psychological question.<sup>61</sup> However, because of Lizzie's involvement with her church and the Temperance League, she had numerous supporters throughout the community – many of whom publicly testified to Lizzie's good character. The fact that Lizzie's reputation within the community was above reproach and that she came from one of Fall River's oldest and leading families worked in her favor, much the same as Sickles' reputation helped him. Lizzie was examined by local doctors, found fit to stand trial, and acquitted of the crime partially because her lawyers skillfully exploited her family reputation and spotless record of community service.

In the Sickles case, the eloquent appeal of the defense allowed the jurors to acquit Sickles on the basis of provocation – avenging the "defiler of his marriage bed" – under the guise of temporary insanity. Sickles, by all accounts, could be a difficult and passionate man, but he was no more insane than the average person. His ability to rise in society and secure a seat in Congress, coupled with his associations with socially prominent friends, were a testament to his skillful manipulation of the system. Upon his release from the court, Sickles is reputed to have commented – as he walked past the very spot Phillip Barton Key had been shot – that:

"Of course I intended to kill him. He deserved it."<sup>62</sup>

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<sup>60</sup> Kent, 126.

<sup>61</sup> Kent, 128.

<sup>62</sup> Swanberg, 67.

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