‘The Defence, as Usual, is Insanity’: Cultural Precedent and the Construction of the Insanity Defence in Nineteenth-Century America

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ABSTRACT

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Stephany Chevalier-Crockett

The United States first saw the introduction of a medicalized insanity test in its courtrooms in the mid-nineteenth century. From 1843 onwards, numerous sensational insanity trials entrenched the test in the common law of the country. Scholarly analyses of the defence primarily focus on the role of medical specialists and jurists in its construction. This thesis proposes that a cultural history of the insanity defence offers a fundamentally different vision of the defence as it emerged in the 1840s. My reading of media sources, such as trial transcripts, newspapers, and other public-oriented work, shows that the informal relationships the public drew between cases influenced perceptions of the plea which in turn shaped how jurists and doctors approached the plea in the courtroom. Consequently, as the defence upheld popular cultural perceptions regarding mental illness, criminality, race, and gender in its use, the insanity plea became constructed as a cultural defence in the law, one imbued with the subjectivity of those who used it in the courts. The cultural constructions of the defence during the nineteenth century illustrates the continuing dialectical relationship that has informed the use of the plea into contemporary times. Ultimately, these trials offer valuable insights for future research regarding public constructions of legal defences such as the insanity plea, and their impact on juror behaviour.

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Introduction: A Distressed Public Mind

In October of 1840, unprovoked, the weekly newspaper *The New World* declared that

> This [insanity] plea has often of late years been set up in our criminal courts, and it is frequently available to the release and acquittal of the accused. It will be remembered that Wood whose recent murder of his daughter, in Philadelphia, exasperated and distressed the public mind, was pronounced *not guilty* on this plea, though the evidences of guilt were as plain as if the blood tragedy had been enacted before the eyes of the jurors. […] It is to be feared that it has proved effective in many instances, where it has been set up by advocates as the only ground of defence, and the only chance of escape for the accused.[1]

Despite no reference to a trial that directly inspired the opinion piece, the article echoes sentiments towards the insanity defence that might seem startlingly familiar to contemporary observers: that the plea is *too* frequently used in criminal courts, that the defendants that use the plea are often successful in their use, and that the plea is 'set up' by defence lawyers in order to allow their clients to escape punishment. In the early nineteenth century, negative perceptions of the insanity plea appeared across media accounts of trials in which it was used. However, by the 1840s, the advent and spread of popular media coincided with the introduction of a reimagined insanity test proposed in England. While negative perceptions existed prior to the introduction of the test in the United States, it is significant that they were increasingly spreading at a time when jurors would encounter an entirely new conception of the plea — one which turned on medicalized — and moral — explanations for criminal responsibility. Consequently, this thesis explores how popular perceptions guided not only the outcome of certain trials, but the construction of the insanity defence itself.

The sources of this thesis are primarily popular media accounts of insanity defence trials from the early to mid-nineteenth century. A conscious decision was made to focus on how the

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[1] *The Plea of Insanity*, The New World, October 17, 1840, 316.

community, jurors, and public at large were discussed in trial transcripts especially. Trial transcripts, at minimum, captured the narratives of trials by reporting almost verbatim the proceedings of a trial: this included opening and closing arguments by both sides, as well as all witness and expert witness testimony. They were typically published as physical copies following a trial, relying either on the direct newspaper coverage of the trial (which also captured almost exact testimony in many cases), or on records provided by the Recorder of the court/other members of the court. They follow the words of the court closely; some may paraphrase trials, but those chosen for this thesis did not. As a result, they represent incredibly valuable sources in exploring the many narratives that entered the courtroom. The length of these trials, and past studies of some, have already offered valuable insights regarding how both jurists and medical experts constructed and made sense of insanity within the courts. This is not the focus of this thesis. Instead, these sources are mined for insights into how jurists and medical experts were attuned to the perceptions of the public at the time. Judges regularly cautioned juries to cast away their preconceived notions concerning a case, due to popular perceptions of the defence and to contemporary reporting of a trial. Jurists wrestled with constructing narratives that gave great attention to the negative public perceptions of the plea, while defence lawyers argued that these perceptions were often not grounded in reality and prosecutors illustrated the multidimensional nature of perceptions of Antebellum society. As various actors within the courts wrestled with public perceptions of the plea, they revealed that these perceptions did not simply influence the outcome of certain trials. Broadly, these perceptions upheld various cultural attitudes regarding mental illness and deviant behaviour, as well as broader cultural perceptions of medicine and law. Consequently, the public was far more than a passive observer in the construction of the

insanity defence, and it played an equally active role in its construction than experts alone. While expert negotiations may have given a veneer of objectivity to the negotiations of the plea, incorporating the active role of public perceptions into an analysis of the insanity defence reveals how much it further upheld contemporary cultural attitudes. Ultimately, a cultural history of the plea illustrates that expert negotiations of the plea did not exist in a medico-legal vacuum, and these ideas were regularly informed by broader sociocultural attitudes.

Historiography and Contribution

Insights into how communities, and public opinion expressed in newspapers, made sense of trials using the insanity defence can be garnered from specific analyses of these trials. Often, these deep reads offered by scholars illuminate the various relationships these trials shared with the communities and media at large at this specific moment. What is notable concerning these connections is that they frequently did not exist as legal precedent in the trial at hand; they shared no formal connections, and technically, they did not exist as precedent for any future insanity trials. Consequently, connections, perhaps unseen before, can be drawn between cases seemingly unrelated in legal precedent. Jurists, journalists, and members of the public consistently referenced either local, or popular, trials which saw the use of the insanity defence in trial transcripts and newspapers. In the case of this thesis, popular is used to refer to the prominent status of a trial; typically, these trials received extensive newspaper coverage and attention across popular media sources.

As this thesis argues, it is these informal connections forged between cases that influenced the construction of the insanity defence not simply in the public mind, but in the

courts themselves. Cultural precedent, rather than legal precedent alone, shaped the plea as it emerged in American courtrooms of the nineteenth century. Ultimately, this thesis argues that public perceptions of the insanity defence had a fundamental and significant impact on the construction of the defence itself, as evidenced by the ways actors within and outside the courtroom discussed the defence. Rather than consider the public as a passive actor in relation to the plea, this thesis considers the perceptions of the plea by laypersons to be a central force in how it was understood and enacted. At its heart, this study endeavours to disrupt narratives which have consistently focused on the construction of the defence by lawyers and doctors alone. Given the persistence of the very same negative perceptions of the plea today, it is fundamental to the understand the origins — and power — that these perceptions have held over the past one hundred and fifty years.

The emergence of a medicalized insanity test in the United States in the nineteenth-century has been well-documented by American legal and medical historians. Beyond this period of time, the majority of scholarship has focused on the sensational trials which occurred at the end of the nineteenth century; as some scholars have argued, this time represented a peak in negative attitudes towards the plea. [2] The introduction of the McNaughten Rules in England during 1843, and their subsequent introduction in American criminal and common law, represents the most significant case in the legal scholarship of the insanity defence. These rules emerged as a result of the trial of Daniel McNaughten for the murder of Edward Drummond, the

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[2] In part, the latter half of the century represents a period for especially rife debate concerning the plea, due to the association of the defence in sensational cases involving two American presidents at the time. See Charles Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age* (Chicago, University of Chicago, 1968); Candace Millard, *Destiny of the Republic: A Tale of Madness, Medicine, and the Murder of. President* (New York City: Anchor Books, 2012); Eric Rauchway, *Murdering McKinley: The Making of Theodore Roosevelt's America* (New York City: Hill and Wang, 2003)

Secretary to then Prime Minister Robert Peel.[3] McNaughten was found not guilty by reason of insanity by his jury, but negative public and political reactions — including a condemnation from Queen Victoria — led the House of Lords to submit clarifying questions regarding how to consider criminal insanity in the courts. The judge's responses to the questions formed the McNaughten Rules.[4]

However, the introduction of McNaughten as a new formulation of the insanity test in the United States did not represent a firm and linear shift in the legal and public constructions of the insanity test from the outset. Rather, the introduction of the test in states such as New Jersey, Massachusetts, and New York represented a moment when the insanity test itself was in flux; definitions by jurists and medical experts alike continued to differ, at a time when medical experts were increasingly present in the courts. As some scholars have argued, the competing understandings and definitions of the plea led the public to rely their own moral intuition, as well as their own understandings of insanity, when evaluating the plea.[5] Furthermore, the introduction of McNaughten coincided with a shift in popular conceptions of insanity: here, medical and cultural conceptions of insanity shifted from a depravity/deviance narrative used to explain behaviour to a disease/medicalized narrative.[6] However, this shift was not perfectly linear, and

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[3] Jacques M. Quen, "Anglo-American Criminal Insanity: An Historical Perspective." *Journal of the American Academy of Psychiatry and the Law* 2 no. 2 (1974): 119.

[4] Quen, "Anglo-American Criminal Insanity," 119.

[5] Andrea L. Hibbard and John T. Parry, "Law, Seduction, and the Sentimental Heroine The Case of Amelia Norman." *American Literature* 78, no. 2 (June 1, 2006): 335.

[6] Karen Halttunen's *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge, MA: Harvard University Press, 1998), and Peter Conrad and Joseph W. Schneider's *Deviance and Medicalization: From Badness to Sickness* (Philadelphia: Temple University Press, 1992) both argue this shift regarding deviant/depraved narratives used to explain criminal's behaviour to a more medicalized/disease-oriented explanation. In both cases, previous depravity narratives used religious and moral explanations to illustrate the origins of criminal behaviour, especially madness. With the rise of scientific medicine, and specialties such as psychiatry (as we would understand it today), these explanations of madness shifted to a focus on biological explanations of behaviour.

trial transcripts from the period indicate that frequent overlap in the depravity/disease narratives occurred in media sources; even experts could, and would, seamlessly infuse their definitions with the language of both disease and sin.[7] Consequently, both expert and public understandings reflected a lack of consensus regarding the causes of criminal behaviour. Despite this, literature on the plea rarely touches on the origins of the negative perceptions of the plea, and their potential impact within the court. Public conceptions of insanity remained at odds with explanations offered by legal and medical experts, and these differences were especially apparent in the most popular trials to use the plea.[8]

Experts cultivated their knowledge amid an atmosphere of 'romantic reform,' which characterized the impetus behind popular humanitarian and reform movements gaining popularity in the United States during the early nineteenth century. Many of these reform movements influenced the ideas supporting a more sympathetic treatment of the mentally ill in American society. The emergence, and later reform, of asylums were especially connected to such developments. These romantic ideas were intimately associated with a shift in theology in America during this very moment, which rejected Calvinistic determinism. Instead, salvation, and the idea that the individual could be improved and saved, gained popularity.[9] It was under the backdrop of these ideas that medical specialists began to conceptualize of a more humane treatment of the insane in the courts of the country.

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[7] Jodie Boyer's work is especially useful for understanding the relationship between psychiatry and religion in nineteenth-century America, both of which were fundamental to expert and public understandings of criminal responsibility; see Jodie Boyer, "Religion, 'Moral Insanity,' and Psychiatry in Nineteenth-Century America." *Religion and American Culture: A Journal of Interpretation* 24, no. 1 (2014): 70–99.

[8] Brendan D. Kelly, "Criminal insanity in 19th-century Ireland, Europe and the United States: Cases, contexts and controversies," *International Journal of Law and Psychiatry* 32 (2009): 364.

[9] John L. Thomas, "Romantic Reform in America, 1815-1865," *American Quarterly* 17, no. 4 (1965): 658.

The emergence of psychiatry, or the study of the brain generally, as a medical specialty facilitated the increasing presence of medical experts within the courtroom during the nineteenth century as well.[10] Medical experts were already present in courtroom proceedings prior to this period, but their involvement did not extend to professional evaluations of the behaviour of defendants. Scholars of the history of psychiatry evaluating this period note that, prior to the 1830s, medical experts were rarely called as expert witnesses on the matter of criminal insanity.[11] Popular and significant literature on the subject of medical jurisprudence, even with an eye to medical jurisprudence as it related to insanity, has focused primarily on simply identifying institutional and expert discourses concerning insanity in the nineteenth-century.[12] However, even in this literature, experts were forced to wrestle with public perceptions of the insanity defence: they remained acutely aware of the perception that insanity could be feigned, and thus, abused. Many experts even asserted that the most common reason for insanity being feigned was to avoid conviction for a crime, thus doubly reinforcing negative perceptions of it.[13]

Experts also wrestled with contested definitions of insanity, with the public and experts alike questioning the line that separated madness and deviance. Extensive scholarly attention has been given on the subject of the many types of insanity that emerged in the nineteenth century.

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[10] For the purpose of this thesis, the study of brain and its behaviour will be referred to as the field of psychiatry and those who specialize in this field as psychiatrists.

[11] Norman Dain, *Concepts of Insanity in the United States 1789-1865* (New Brunswick, NJ: Rutgers University Press, 1964): 46.

[12] Many historical treatments of medical jurisprudence in nineteenth-century America emerged in the late twentieth-century. James C. Mohr's *Doctors and the* Law (New York: Oxford University Press, 1993) represents one of the most comprehensive examinations of the history of medical jurisprudence from the period this study is concerned with; however, as he notes, his monograph is concerned with tracing the interactions between the medical and legal professions solely.

[13] In particular, the authors asserted that the examination of medical literature in the 1823 to 1849 period tackled the problem of insanity being feigned to avoid criminal charges. Geller et al.,"Feigned Insanity in Nineteenth-Century America: Tactics, Trials, and Truth." *Behavioral Sciences and the Law* 8 (1990): 3-26.

Scholars such as Cristina Hanganu-Bresch have argued, definitions such as moral insanity represented an effort by the medico-legal communities to begin medicalizing morality.[14] However, as discourses among medical experts surrounding these terms illustrate, their meaning and interpretation were imbued with the cultural mores, and meanings, attached to them at the time. Michel Foucault's work on the 'dangerous individual' defined by medical jurisprudence touches this relationship between medicalization and deviance. As Foucault argues, psychiatrists' use of the insanity plea in the most violent of crimes stigmatized both the plea and the mentally ill.[15] As medical experts exhibited attempts to medicalize deviance, they illustrated the slippery nature of defining and identifying insanity at the time. Ultimately, those who have investigated the use of insanity definitions revealed the limitations of inward-looking and insulated medical histories of the insanity plea. The construction of medical knowledge was firmly rooted in cultural ideas concerning deviance and morality.

However, the persistent focus of historical treatment of the insanity defence is its constant negotiations between either medical and legal experts, and the larger institutions under which they fall under at any given time. Consequently, while negative reactions and sensational attacks of the plea help colour examinations of its history, they are often relegated to a secondary and tertiary role to the larger discourses emerging from experts. Many contemporary studies appear solely in legal or medical journals, and they illustrate a very real staking of claims over the defence by medico-legal professionals. The public was an active force in these legal proceedings,

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[14] For an extensive discussion on the origins of moral insanity as a definition, see:. Cristina Hanganu-Bresch "Public Perceptions of Moral Insanity in the 19th Century" *Journal of Nervous and Mental Disease* 207 no. 9 (September 2019): 805-814.

[15] Michel Foucault, "About the Concept of the "Dangerous Individual" in 19th-Century Legal Psychiatry," trans. by Alain Baudot and Jane Couchman. *International Journal of Law and Psychiatry*, No. 1 (1978): 4

both as consumers and jurors, and these perceptions had a pervasive influence on the construction of the plea itself in media and various communities.

Responding to this dominant trend in scholarship of the insanity defence, the most significant theories for the purposes of this thesis make sense of the complex, and meaningful, interactions between the public and the law. Contemporary legal-historical scholarship has also illustrated the dialectical relationship between popular culture and the law, especially in the nineteenth century. As Susanna Blumenthal argues, the courtroom is especially likened to a "cultural arena," and those trials that take place within it as "cultural events;" it is here that "the wider world beyond the courthouse figures as more than merely the backdrop […]"[16] In this sense, trials act as a microcosm of negotiations and conflicts of American society that can extend far beyond the courtroom's reach. Similarly, other cultural legal historians have encouraged bringing together both elite and lay sources to best understand the dialectical relationship between law and popular culture.[17] Ultimately, these works rightfully challenge the perception of the objectivity of the courtroom, and those that function within it. As this thesis seeks to challenge the focus on elite, 'expert' discussions by jurists and medical experts alike in the construction of the insanity defences, they are essential in its approach to reorientating our

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[16] Susanna L. Blumenthal, "Of Mandarins, Legal Consciousness, and the Cultural Turn in US Legal History: Robert W. Gordon. 1984. Critical Legal Histories. Stanford Law Review 36:57–125." *Law & Social Inquiry* 37, no. 1 (2012): 167–86. 180.

[17] The following works of Nan Goodman, Hendrik Hartog, and Susanna Blumenthal are especially significant as works to understand the dialectical relationship shared between law and culture in the nineteenth-century. See Nan Goodman, "Law in Popular Culture, 1790-1920: The People and the Law," in *The Cambridge History of Law in America*, ed. by Michael Grossberg and Christopher Tomlins (Cambridge: Cambridge University Press, 2008): 387-416; Hendrik Hartog,"Pigs and Positivism," *Wisconsin Law Review* 1985): 899-935; and Susanna L. Blumenthal, "Of Mandarins, Legal Consciousness, and the Cultural Turn in US Legal History: Robert W. Gordon. 1984. Critical Legal Histories. Stanford Law Review 36:57–125." *Law & Social Inquiry* 37, no. 1 (2012): 167–86.

evaluation of the plea's history. The public was not simply at the periphery of the construction of the insanity defence, but an equal force in the courtroom.

Many scholars have used the analysis of singular trials to explore the multifaceted ways in which spectacular trials were influenced by — and influenced — popular culture of their time. In an evaluation of the 1843 trial of Amelia Norman, Andrea L. Hibbard and John T. Parry offer a compelling examination of the interplay between formal and informal law. As they argue, the spectacular nature of trials offer an opportunity to expose how legal change is influenced by broader cultural forces.[18] Relying on the insightful theory of Martha Umphrey, all of these scholars argue that "trials mediate the tensions between these different ideas of law, between 'formal legal rules' and the unofficial world of norms, customs, common sense, and social codes:" it is the relationship between formal law and informal understandings of it that make law in the courtroom.[19] Ultimately, both approaches are infinitely useful to understanding the rich history of the insanity defence in the United States.

While the recognition of negative attitudes towards the plea has long existed, there has been a significant lack of discussion regarding where, why, or how these negative attitudes manifested specifically. Broadly speaking, many have attributed negative perceptions of medicine as one significant source, which it no doubt was. However, in broader scholarship of the plea, few attempts have been made at reconciling negative perceptions of the plea with the reality that the plea was rarely used, and even more rarely successful. Given that the medicalized form of the insanity defence known today emerged at this time in the nineteenth century, it is

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[18] Hibbard and Parry, "Law, Seduction, and the Sentimental Heroine: 326-327.

[19] Here, Hibbard and Parry rely on the argument put forth by Martha Umphrey in her work "The Dialogics of Legal Meaning" : Hibbard and Parry, "Law, Seduction and the Sentimental Heroine," 326-327.

notable that these perceptions existed readily as the plea was introduced in this form.

Then, and now, there remains remarkably little consensus as to how to define insanity medically, and how to apply any test systematically to test it within the courts. Experts offer competing definitions when called to give testimony in the court. States choose one out of a handful of insanity tests to apply in their courts, and the differences between the tests can be remarkably difficult to tease out. In part, that is why this study insists that the public perceptions of the plea be made more central in assessments of its construction: how insanity was conceived of within the courts, and responses to it outside the courts, can be equally meaningful to historical assessments of the insanity defence. It is outside the purview of this thesis to offer any specific recommendations regarding legal approaches to the insanity defence; however, it instead argues that historicizing this animosity towards the plea, beyond solely legal and medical knowledge, is vital to understanding its total construction. Public backlash has so long helped influence the shape of the plea that it necessitates a serious discussion of the cultural dimensions of the plea. In the case of this thesis, it is useful to consider culture according to some of the definitions offered by Bryan Wagner regarding law and culture, especially as an "aspect of analysis concerned with the creation and circulation of meaning."[20] As is suggested in this thesis, how the public at large made sense of the plea should be analyzed alongside and in conjunction with experts' meaning making. This is not to suggest both should be considered entirely separate; rather, it suggests that the culture of experts has dominated discussions of the plea. As a result, this thesis insists on considering how the public and culture beyond experts constructed the meaning of the plea.

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[20] Bryan Wagner, "Historical Method in the Study of Law and Culture" in *The Oxford Handbook of Legal History* eds. Dubber and Tomlins (New York: Oxford University Press, 2018): 202.

Overview

This thesis is structured around three main themes: law, medicine, and gender. All chapters make use of trial transcripts and newspaper articles as the foundation of analysis, alongside contemporary professional journal articles. Many of these trial transcripts were discovered in the digitized, on-site collections of various American archives; this includes the American Antiquarian Society (Worcester, MA), the Oskar Diethelm Library at the Weill Cornell Medical College's DeWitt Wallace Institute of Psychiatry (New York City, NY), and the New York Municipal Archives (New York City, NY). The first chapter examines how cultural precedent influenced the most significant insanity trials to emerge in the 1840s amid the emergence of a medicalized insanity test. The trials of William Freeman (1846), Eliphalet M.C. Spencer (1846) and Andrew Kleim (1844) form the basis of analysis regarding the 'cultural precedent' that shaped the public's perception of the use of the insanity plea. By bringing these trial transcripts into conversation with broader coverage of the cases in local and national newspapers, it is possibly to observe the complex interplay between courtroom narratives and public opinion regarding the use of the plea. Given the rising popularity of print media in Antebellum America, it is equally notable that newspapers became a serious subject of discussion among both lawyers and judges in the courtroom; both parties publicly acknowledged the influence of newspapers on jurors and the legal rhetoric regarding the insanity defence. As this chapter shows, expert legal knowledge and formal precedent were actively contested by public understandings of popular insanity trials. Consequently, by giving significant attention to popular and public media coverage of these cases alongside the narratives of these trial

transcripts, this chapter sets the stage for the constant renegotiation of the defence between laypersons and experts.

The second chapter builds on these trials to illustrate how popular perceptions of medical experts intersected with negative attitudes towards the insanity defence within the courtroom and in the press. Public ambivalence towards the increasingly professionalized medical profession, as well as public doubt in the specialization of psychiatry, frequently appeared in condemnations of the plea in the courtroom and in popular media. Consequently, while also analyzing trial transcripts, this chapter examines the specific perception of medical experts in relation to the use of the insanity defence. Early professional journals, such as the *American Journal of Insanity*, frequently offered commentary from experts on sensational trials which saw the use of an insanity defence. In many cases, this commentary illustrated that medical experts were actively preoccupied with combatting negative perceptions of the defence itself. In this case, examining experts' own opinions regarding perceptions of the insanity defence provides a fruitful opportunity to explore the influence that these perceptions held beyond popular media sources — indeed, they frequently informed how experts tackled addressing insanity within the courtroom. As professional engagement with negative perceptions of the plea show — in courtroom transcripts, in newspapers, and professional journals — it is clear that both expert and lay opinions of the insanity defence were not entirely separate. Ultimately, contextualizing the power dynamic between consuming public and emerging experts paints a vastly different narrative regarding the insanity defence, one in which both parties share a much more dialectal relationship than has been depicted in the past.

The third chapter demonstrates how cultural perceptions of medicine and law were enacted in cases of intimate murder which saw the use of the insanity defence. A close reading of two sensational trials featuring women who used an insanity defence reveals how early cases relied on broader cultural attitudes to convincingly argue for an insanity defence. In this case too, a close reading of trial transcripts, brought into conversation with newspaper coverage and contemporary expert literature, illustrates that these cases represented the many ways in which a public followed the law in spirit, and not as it was written. Ultimately, both cultural precedent and a medical discipline espousing the biological determinism of women's insanity came together to make for one of the only collection of cases which illustrate an odd number of successful uses of the insanity defence by women. As these cases show, the plea was readily used as a cultural defence in these cases which saw women use the defence alongside more obvious references to 'unwritten law.' These cases highlight that the insanity defence had taken on a cultural valence in its use by men and women in intimate murder cases. Ultimately, these cases illustrate the difficult task of attempting to separate the plea from the cultural perceptions attached to it in Antebellum society.

Chapter One

Law:
The Making of Cultural Precedent in Insanity Defence Trials Post-1843

The concept of criminal responsibility has been central to proceedings of the common law since at least the thirteenth century. The English common law held that a crime was composed of two parts: *mens rea* (a guilty mind) and *actus reus* (a voluntary act); those who were mad were incapable of forming criminal intent, and thus could not be held responsible for crimes they committed.[21] Prior to the nineteenth century, the rehabilitation of the insane had only recently become an idea gaining traction among the foremost medical experts in Europe and America, due to the popular emergence of moral treatment of the insane to the late eighteenth century; concurrently, these ideas led to the rise of asylums as a site for psychiatrists to practice treating insane individuals.[22] Given the absence of a medicalized test, and the rarity of asylums in the United States, the successful use of a plea of not guilty by reason of insanity would have entailed an acquittal. However, the emergence of a medicalized test for insanity in the mid-nineteenth century led to new conceptualizations of criminal responsibility centered around the question of mental capacity. As jurists wrestled with the introduction of medical testimony supporting insanity pleas, many state courts in the United States found themselves struggling to define an insanity test which incorporated these emerging medical ideas — most did, but it remained an uphill battle. Previous iterations of the insanity test in the Anglo-American sphere did not see such a number of medical experts enter the court to testify to a defendant's state of mind.

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[21] Haltunnen, *Murder Most Foul*, 210.

[22] Dain, *Concepts of Insanity,* 3-5; Carla Yanni, *The Architecture of Madness: Insane Asylums in the United States* (Minneapolis: University of Minnesota, 2007): 5-6.

Consequently, the test introduced by Daniel McNaughten's trial in 1843 resulted in the introduction of a medicalized test across the Anglo-American sphere, as it converged with broader changes within the legal and medical communities. Scholars have rightly pointed to the professionalization of both psychiatry and law during the nineteenth century as an animating force in the construction and perception of the insanity plea within American courts. Psychiatrists attempted to argue that new understandings of the brain meant that the mentally ill should be offered rehabilitation instead of punishment for their crimes. Lawyers and judges argued that medical definitions of insanity could excuse almost any criminal for their crimes and a strict legal definition had to be used.[23] In the trials examined in this chapter, I argue that it is significant to delineate between trials which had legal precedent and trials which had cultural precedent. While the two are not mutually exclusive, delineating between the two is useful for understanding the varied significance of certain trials. As seen in some cases, the "cultural" precedent of a trial could carry an equal amount of influence within the courtroom as any traditional legal precedent.

Many scholarly works of the insanity defence have primarily focused on its conceptualization and implementation by medical and legal experts, with popular cultural sources often being used to illustrate the hostility towards the plea. However, medico-legal narratives of the construction of the plea differ from cultural narratives of the plea; they are useful documents for understanding how experts understood the use of the defence at the time. Centering popular sources such as trial transcripts and newspapers, and using medico-legal sources as a means of examining what preoccupations experts had with public feelings towards

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[23] Harry Oosterhuis and Arlie Loughnan, "Madness and Crime: Historical Perspectives on Forensic Psychiatry," *International Journal of Law and Psychiatry* 37, no. 1 (2014): 5-8.

the plea, allows scholars to draw out the fundamental ways in which individuals and communities understood the insanity defence. Contrary to the more formal conceptualization of the law, the concept of 'legalities,' or "an array of ideas and practices that spilled over the boundaries of state institutions and into daily life" functions to help us understand the more informal ways through which law was made and expressed in the nineteenth century.[24] This is especially true with the construction of the insanity defence in the 1840s, as it helps explain both the formal and informal ways in which the plea was made within the courtroom and outside of it in the broader public. This chapter will argue that cultural perceptions of the insanity defence, as expressed by the public, jurors, and jurists, were a significant preoccupation of all actors within and outside the courtroom involved in notable insanity defence trials during the nineteenth century. Ultimately, this cultural history of the insanity defence may offer a fundamentally different perspective and timeline of the construction of the plea during its infancy.

Often, discussion of medical jurisprudence in the nineteenth century has focused on the conceptualization of insanity by experts alone. Theorists such as Michel Foucault have argued medical experts represented "subsidiary judges" within the courts when assessing possibly insane defendants. According to this analysis, medical expertise existed only to offer a moral judgment of defendants.[25] While it is not incorrect to acknowledge the role of culture in shaping ideas of criminality within the courtroom, it is incorrect to assume that medical experts simply

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[24] The concept was first introduced by Christopher Tomlins and Bruce Mann in *The Many Legalities of Early America* (Chapel Hill, NC: University of North Carolina Press, 2001); however, the quote presented here is an elaboration of the concept of 'legalities' offered by Laura F. Edwards in her work: see, Laura F. Edwards, "Sarah Allingham's Sheet and Other Lessons from Legal History," *Journal of the Early Republic* vol. 38 no. 1 (Spring 2018): 130.

[25] Per Foucault, medical experts only offered only "judgements of normality, attributions of causality, assessments of possible changes, anticipations as to the offender's future." Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1995): 21.

confirmed all cultural ideas of deviancy through their testimony. As Norman Dain describes, many medical experts wrestled with offering expert testimony that may have upset popular judgements of a defendant. If medical experts were in the process of carving out a legitimate and respected specialization for themselves in psychiatry, they could not risk any testimony that could be seen as conforming to popular judgement instead of medical expertise.[26] As such, medical experts positioned themselves in the awkward position against both legal experts and the communities in which they offered their professional opinions — they could not be the subsidiary judges they are assumed to be. On the subject of cultural ideas of punishment entering the court, it is more useful to consider how communities, and the public itself, played a role in shaping the construction, and perceptions, of the insanity plea. Communities often consumed trial transcripts of popular cases, attended trials, and often entered the courtroom as witnesses to a crime. We must move beyond discussion of the public simply as consumers and voyeurs of these insanity trials, but as very real actors who were integral in the construction of the insanity plea.

Legal scholars concerned with the relationship between law and culture have illustrated that the nineteenth century was rife with examples that the law was not simply enforced but instead made by laypersons. Hendrik Hartog's classic article on pig-keeping in New York City in the nineteenth-century best exemplifies this approach; as he illustrates, though the courts deemed the practice of pig-keeping to be prohibited, their owners continued to keep pigs in public streets well after the challenge.[27] Hartog's approach illustrated that the making of law was not confined

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[26] Norman Dain, *Concepts of Insanity,* 155.

[27] Hendrik Hartog, "Pigs and Positivism," *Wisconsin Law Review* 4 (July 1985), 920-935.

to institutions, and that people's practice of the law was an equally notable form in which it was made (and remade.) Other scholars have broadened this approach in significant and notable ways in recent decades. As Laura F. Edwards argues, of particular note concerning the law in nineteenth-century America is the fact that its complexity did not limit its availability to everyday individuals; much to the contrary, she argues that the complexity of the law in this period was the very thing that allowed many individuals to interact with it in sometimes surprising and unexpected ways.[28] As she observes, legal scholarship which focuses primarily on the law as it was written, and not practiced, obscures the matter of its complexity and the many interactions which showcase its reality on the ground. Consequently, this approach has illustrated how the law was practiced, and accessed, by the many Americans who attempted to "access [law's] power, even if they could not claim the full array of rights."[29]

This access was not simply restricted to one all-encompassing, formal version of the law, however. Legal pluralism, or "the simultaneous operation of different legal frameworks," has operated as a popular notion within legal history to displace notions that only one, capital-L, Law regulated society, especially in the case of nineteenth-century America.[30] As some legal scholars have shown, it is necessary to broaden the study of formal law as it is embedded at the state and institutional level by incorporating the concept of 'legalities' which existed in America.[31] Though

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[28] Laura F. Edwards, "Sarah Allingham's Sheet and Other Lessons from Legal History," *Journal of the Early Republic,* vol. 38. No. 1 (Spring 2018): 124.

[29] Ibid, 126.

[30] Ibid, 128.

[31] Per Edward's description, the term 'legalities,' used in the context of American legal history, was coined by Christopher Tomlins and Bruce Mann in the 2001 work *The Many Legalities of Early America* (Chapel HIll, NC: University of North Carolina Press, 2001): Edwards, "Sarah Allingham's Sheet [...], 131.

the term is broad, it offers an appropriate consideration for sheer breadth and width in which the law operated at the time.

Notably, Edwards illustrates what is the crux of the arguments regarding law in the nineteenth century: that "legal principles were not the same as popular conceptions of either race or individual capacity, but the relationship between them ultimately described the process of the law."[32] Similarly, as this work aims to show, the making of the insanity defence in the mid-nineteenth century was not limited to its construction within treatises by medical experts and high mandarin legal sources. The defence was just as much a product and process of the jurors and laypersons as it was a product of experts. These recent works are useful for illustrating how a cultural approach to the insanity defence might offer a different perspective than the one offered simply by an examination of expert discussions surrounding the plea. While these might highlight a specific context of anxieties concerning the plea in medicine and law, these were not manifestly the same problem imagined by jurors and not the same problem illustrated in the perceptions of the plea at the time.

As some scholars have argued, the penny papers that covered these trials "inserted themselves between the crime and the audience, mediating between the principals in the case and a public that, ultimately, would stand in judgment" — whether as jurors in the courtroom, or in the court of public opinion.[33] Consequently, for the first time, newspaper editors were forced to consider that what they printed might impact the integrity of upcoming judicial proceedings. However, this too would be balanced against the vested interest of these newspapers, which were

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[32] Edwards, "Sarah Allingham's Sheet [...]," 142.

[33] Patricia Cline Cohen, *The Murder of Helen Jewett: The Life and Death of A Prostitute in Nineteenth-Century New York* (New York: Vintage, 1998): 28.

seeing an explosion in circulation numbers unlike any previous point in U.S. history. The explosion of popular press coverage also converged with the introduction of a new insanity test in the United States. Consequently, tests of old were challenged, and caused the defence to be in a state of flux. As scholars have illustrated in their analysis of trials which saw the use of the insanity defence, this state of malleability for the insanity test allowed for both broad, and narrow considerations of the plea within the courts. Given the uncertainty and lack of clear guidance, these same scholars have argued that "juries tended to decide insanity issues according to their moral intuitions."[34]

Some difficulties arise in attempting to locate the vast array of trials which saw the use of an insanity defence in the 19th century. In some cases, formal insanity defences were not put forth to the courts; insanity may have been a topic discussed in the case, but a guilty/not guilty verdict would result without any formal insanity defence. In the case of a not guilty plea, a verdict may have not specified that it was "not guilty by reason of insanity." In the case of a guilty plea, even less is known. Furthermore, identifying cases which saw the formal use of an insanity defence remains a difficult goal. Many cases did not extend beyond a trial in a local court, which would make them difficult to identify: some cases remained popular only on a local, community level. As seen in John Lawson's work on insanity defences invoked in Great Britain and the United States, many of these trials made their way beyond local courts; it is these trials in the higher courts which are significantly more likely to be recorded in various law journals and

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[34] Hibbard and , "Law, Seduction, and the Sentimental Heroine," 335.

periodicals.[35] Consequently, the visibility of insanity trials in lower courts relies much more on whether these trials became popular or sensational in local press, and perhaps beyond.

However, Lawson's collection of trials which invoked an insanity defence in the Anglo-American courts during the 18th and 19th centuries nevertheless remains especially useful for a quantitative overview of the outcome of these trials at the time. Lawson's compendium of insanity defence trials functions as an important illustration of the gulf between the perceptions of the success of the insanity defence and the reality of its outcomes during the nineteenth century. A sample of twenty-two of the most-cited trials — as precedents in other American courts — in Lawson's compendium reveals that almost a majority of trials which invoked an insanity defence resulted in a guilty verdict: out of twenty-two cases, twenty cases resulted in a guilty verdict, and only two resulted in a not guilty verdict. Four defendants who had initially been found guilty saw their judgments reversed and/or new trials ordered, while one defendant who had been sentenced to death saw their sentence commuted. The outcomes of these trials beyond their verdicts also illustrated their stakes: with the inclusion of only one sentence that had been commuted, thirteen defendants were sentenced to death.[36] While these trials only represent a sample of the most-cited trials invoking the insanity defence during the nineteenth century,

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[35] Trials can be found in: John D. Lawson, *The adjudged cases on insanity as a defence to crime: with notes.* St. Louis: F. H. Thomas, 1884.

[36] These 22 cases were identified by recording all cases captured in Lawson's work, as listed in the index of the book. Cases were first eliminated if they did not take place in the United States (as the compendium collected both English and American cases.) After American cases were identified, cases were categorized according to how many other cases they were cited in, as Lawson's index records every case alongside the other cases in which they were cited. Any trial that was referenced less than five times was eliminated. Any non-murder trials were subsequently eliminated. Lastly, any trial which relied on an insanity defence related to alcohol use was subsequently eliminated, as this form of the insanity defence is beyond the scope of this paper. This process resulted in a total of 22 murder trials which saw the use of an insanity defence. See: John D. Lawson, *The adjudged cases on insanity as a defence to crime: with notes.* St. Louis: F. H. Thomas, 1884.

they nonetheless represent a vast shift away from contemporary perceptions regarding the high success rate of the plea alongside perceptions of its widespread use. Ultimately, these statistics illustrate the extreme gulf between the reality of the plea's use in Antebellum courts and popular perceptions of it in American society.

Popular Insanity Defence Trials and Their Verdicts, as Recorded in John D. Lawson's *The adjudged cases on insanity as a defence to crime: with notes*	
Verdict	
Guilty	20 (Chase v. People, 40 Ill, 852 (1866); Clark v. State, 12 Ohio 483 (1843); Flanagan v. People, 52 N. Y. 467; 11 Am. Rep. 781. (1873); Graham v. Com., 16 B. Mon. 587. (1855); Loeffner v. State, 10 Ohio St. 598. (1857); Ortwein v. Com., 76 Pa. St. 414. (1875); People v. Myers, 20 Cal. 518. (1862); Polk v. State, 19 Ind. 170. (1862)*; State v. Brinyea, 5 Ala. 241. (1843); State v. Huting, 21 Mo. 464. (1855); State v. Klinger, 43 Mo. 127. (1868)*; State v. Lawrence, 57 Me. 574. (1870); State v. McCoy, 34 Mo. 531. (1864); Walter v. People, 32 N. Y. 147. (1865); Willis v. People, 32 N. Y. 715 (1865); Com v. Eddy, 7 Gray, 588, 19 Law Rep. 611. (1856); Com. v. Mosler, 4 Pa. St. 264. (1846); Hopps v. People, 31 Ill. 885. (1863)*; People v. McCann, 16 N. Y. 58. (1857)*; Freeman v. People, 4 Denio, 9 (47 Am. Dec. 216) (1846))
Not Guilty	2 (State v. Spencer, 21 N. J. (L.) 196. (1846); Com. v. Rogers, 7 Metc. 500 (51 Am. Dec. 458) (1844))
Total	22 (* - Cases marked with an asterisk later saw their verdicts reversed upon appeal; judgments after these appeals were not recorded in this compendium)

While Lawson's work captures a wide swath of cases whose significance lay with their role in establishing legal precedent, it does not capture them all. Notably, the exclusions of some sensational trials raise some valuable points concerning the use of the insanity defence during the

nineteenth century. For instance, Lawson's compendium functions as a useful source for capturing trials that were deemed to hold legal precedence; the same cannot be said for trials that were excluded but either received extensive attention in the popular press or had a trial transcript published on them.

Before the introduction of the disease narrative in the courts, the assumption of total depravity of humanity had already directed British and American courts in their decisions regarding the insane. English common law defined a crime in two parts: *actus reus* and *mens rea*. *Actus reus* defined the act, and *mens rea* defined the guilty mind. One prominent test of insanity, before the rise of those defined by the disease narrative, was the 'wild beast' test. Upon elaboration by the jurist Mathew Hale in the seventeenth century, the courts had decided that criminal exculpability based on the absence of *mens rea* required a complete deprivation of memory, reason, and understanding in the offender. Early cases in the nineteenth century courts of America showcase the reliance on a total deprivation of mental faculties to qualify for criminal exculpability — a higher bar for proving insanity than later iterations of the plea which focused on proving the presence of delusion. Thomas Erskine, a barrister defending James Hadfield on insanity charges in the 19th century, later challenged the 'wild beast' test by pushing for the presence of delusion, as opposed to the absence of reason and all mental faculties, but the courts regularly followed Hale's standard.[37] However, this concept of the presence of delusion marked itself as a precursor to the later shift towards the disease narrative that would argue the presence of physical symptoms of insanity in medical jurisprudence.

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[37] Karen Halttunen, "Murder Most Foul," 211, 213, 215.

The McNaughten trial of 1843 served as the first major case to exemplify some of the new conceptualizations of insanity offered by the disease narrative proposed by Isaac Ray, particularly in sparking a creation of a new insanity test to be tried in British and American courts. As one of the most prominent psychiatrists in the United States, and among the first to establish forensic psychiatry as a discipline, his inclusion could not be underestimated. The attorney of McNaughten primarily called upon Ray's text on medical jurisprudence of the insane to defend the actions of McNaughten. In this case, McNaughten had killed the secretary to British Prime Minister Robert Peel, mistaking the secretary as the Prime Minister while suffering from severe delusions.[38] Thus, McNaughten's attorney called numerous expert witnesses to the stand to testify on McNaughten's insanity. These medical witnesses affirmed Ray's proposed disease narrative in two ways primarily: by proposing disease of the brain was the primary source of insane behaviour, and by dismissing moral depravity as the sole source of insanity. Even though much of McNaughten's defence rested on the definitions of insanity offered by the esteemed American psychiatrist Isaac Ray, the judge's charge to the jury made almost no reference to these ideas.[39] After McNaughten was found not guilty by reason of insanity, the House of Lords put several questions to the Queen's Bench in order to clarify and explain the rules regarding insanity and the law. In response to the question on how to define insanity, the fifteen judges — save for one — stated the definition that would become the McNaughten rules:

> that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature

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[38] Jacques M. Quen, "Anglo American Criminal Insanity: An Historical Perspective," 119-120.

[39] Jacques M. Quen, "An Historical View of the M'Naghten Trial." *Bulletin of the History of Medicine* 42, no. 1 (1968): 43.

> and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.[40]

As the definition showcases, both the absence of reason and knowledge regarding the "nature and quality of the act" played in a significant role in shifting the definition away from simply a presence of delusion. Equally notable was the aspect of the test which evaluated whether a defendant knew right from wrong at the commission of the crime; it was this part of the test that has led to it frequently being referred to as the "right versus wrong" insanity test. By making a direct reference to a 'disease of the mind,' the definition entrenched a medicalized version of the test to be used in England and abroad in the United States.

Several of the earliest trials to invoke insanity defences in the United States after the McNaghten ruling of 1843 saw themselves united by a common factor. Despite the overwhelming expert negotiations of insanity in these cases by both jurists and medical experts alike, both cases equally show the influence of the popular press and local communities in the deliberations and outcomes of the trials. Notably, these trials best exemplify the role that perceptions of the plea in the public mind played in the deliberations and outcomes of trials, alongside the weight that cultural precedent held in the courts. The 1846 trial of People v. Freeman in New York best illustrates the cultural precedent that some criminal trials had on subsequent ones. Notably, the trial of Freeman is typically recognized for its legal precedent both in the state of New York and in the United States, due to the fact that it is one of the first trials to have invoked the newly introduced "right versus wrong" insanity test offered by English judges in the trial of McNaughten in 1843. Freeman's trial remains a focal point in the history of the

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[40] The McNaughten rules given by the Queen's Bench can be found here: [1843] UKHL J16 (19 June 1843) https://www.bailii.org/uk/cases/UKHL/1843/J16.html. Clarification regarding the process of the House of Lords putting these questions to the Bench is found in Quen's historical survey of the trial: Quen, "A Historical View […]", 43.

insanity defence due to its introduction of the rules within the courts of the United States at the time, as well as due to the role of politics and race in the discussion of the defendant's insanity. As these discussions illustrate, it is difficult to ignore the cultural components of these trials and how they may have influenced their outcomes.

William Freeman's 1846 Murder Trial and Cultural Precedent

The trial of William Freeman in 1846 is often pointed to as one of the most significant, if not the most significant, insanity trial to have occurred in the nineteenth century. A native of Cayuga, New York, Freeman was a free Black and Native American man who had a "buoyancy of spirit" which made him a good errand boy, but "he was inclined to wander and rove," a problem that was attributed by the local community to be an expression of "Indian maternity," and not any mental deprivation.[41] Altogether, prior to his imprisonment, Freeman seemed to be of sound mind. In 1840, Freeman was arrested after being accused of stealing a horse from a Mrs. Martha Godfrey while residing with his brother-in-law in Auburn, NY. Freeman was soon discharged, and another Black man by the name of Jack Furman was arrested after the horse was found and a description of the man who sold it was acquired. However, Furman accused Freeman of committing the crime despite his arrest based on the description; ultimately, both were arrested and detained for the crime. Freeman protested the arrest throughout his stay at the jail, even attempting to escape on one occasion. Ultimately, Freeman would stand trial and be found guilty; he was sentenced to five years imprisonment at the State Prison in Auburn.

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[41] Benjamin F. Hall, *The Trial of William Freeman: for the murder of John G. Van Nest, including the evidence and the arguments of counsel, with the decision of the Supreme Court granting a new trial, and an account of the death of the prisoner, and of the post-mortem examination of his body by Amariah Brigham, M.D., and others* (Auburn: Derby, Miller & Co., 1848): 17-18.

Evidence of Freeman's innocence based on his alibi only emerged after the sentencing was complete. Even the account of Freeman's trial acknowledged that "the conviction of Freeman, therefore, appears to have been unjust, and to have had a powerful influence upon his mind when in prison."[42] At the time of his sentence, Freeman was approximately sixteen years old; his mother testified that he was turning twenty-two at the time of his trial.[43] While Freeman was imprisoned, he attacked the keeper of the shop he was placed in with a knife, causing the keeper to pick up a piece of basswood board: "When I came in reach of him, *I STRUCK HIM ON THE HEAD,* flatwise — split the board, and left a piece in my hand four inches wide."[44] The emphasis placed in the trial transcript illustrates that this injury was a significant detail in the trial, likely due to the fact it caused another traumatic brain injury for Freeman and could be used to explain his mental state after leaving prison. After his release from prison, the transcript noted that he was described as "generally sluggish, stupid and indolent."[45] In 1846, a washer-woman for whom Freeman worked said that he had trouble hearing and only communicated in brief sentences - a sentiment that was shared by other witnesses as well.[46]

On March 12th, 1846, Freeman travelled to the town of Fleming, located only a few miles away from his dwelling in Auburn, NY. The house that Freeman visited was that of the Van Nest family, consisting of: John G. Van Nest, a respected farmer in the town; Sarah Van Nest, his wife; Phebe Wyckoff, his mother-in-law, Julia Van Nest, Peter Van Nest, and George W. Van

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[42] Hall, *The Trial of William Freeman*, 19.

[43] Hall, *The Trial of William Freeman*, 44.

[44] Ibid, 20.

[45] Ibid, 21.

[46] Ibid, 22.

Nest, his children; Helen Holmes, a servant; and one visitor, Mr. Van Arsdale.[47] On the evening of March 12th, as the family was retiring for the night, Freeman arrived at their property. In a short span, he stabbed all members of the family and the other two residents on site. Only the visitor and the servant, Mr. Van Arsdale and Helen Holmes, survived.[48] The trial transcript furnishes its account of the case with multiple reiterations of the respectability of the family within the community, illustrating the community fervor surrounding the murders. Afterwards, the transcript notes that it was due to this fervor that "an irrepressible and tumultuous indignation burst forth from every mouth, and nearly overbore the authorities who had in charge the wretched assassin."[49] Soon after Freeman's capture, the community unsuccessfully attempted to lynch him. He was quickly brought to a county jail, where he awaited trial. As the matter of insanity was brought up, the community response indicated that the defence was "rebuked as presumptuous, and dangerous to the safety of the community."[50]

Both the format of proceedings and the individuals involved in the Freeman trial made it a novel case at the time. Unlike other insanity trials, Freeman's trial occurred in two parts. The proceedings began with a trial on the question of Freeman's insanity, and then was followed with a trial to determine guilt or innocence.[51] Both trials were conducted in a similar manner; new juries were chosen for each and verdicts were rendered on both questions of insanity and guilt.[52]

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[47] Ibid, 22.

[48] Hall, *The Trial of William Freeman*, 23.

[49] Ibid, 23

[50] Ibid, 24.

[51] Ibid, 34.

[52] Ibid, 27-28, 144, 149, 473.

Furthermore, the attorney general and defence counsel involved in the trial further heightened its popularity: John Van Buren, son of former president Martin van Buren, acted as attorney general, and William H. Seward, rising Whig politician, represented Freeman.[53] Consequently, the trial reached new heights; not only did Freeman's acts elevate its popularity but the inclusion of popular political actors at the time helped it reach notoriety in the public mind.

The appearance of such high-profile political actors raises interesting questions about the significance attributed to Freeman's case by these individuals. Seward's willingness to take Freeman's case, as well as Wyatt's, was primarily rooted in his own personal interest in defending the mentally ill at the time. While some might primarily attribute Seward's abolitionist leanings in his decision to take Freeman's trial, scholars of the trial have illustrated that his political leanings were not as central to the case as previously suggested. While both his abolitionist leanings, as well as partisan politics involving Seward's wing of the Whig Party, played a role in the decision, other explanations offered through Seward's correspondence concerning the trial are more compelling.[54] The most substantial and detailed work of Freeman's trial has highlighted that Seward's correspondence at the time pointed to his sympathy for the insane as one of the primary reasons for his choice to act as counsel for Freeman in his trial.[55] Notably, Seward had criticized Van Buren, the attorney general prosecuting Freeman, for his

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[53] Ibid, 27-28.

[54] Andrew W. Arpey, *The William Freeman Murder Trial: insanity, Politics, and Race* (Syracuse, NY: Syracuse University Press, 2003): 51-52.

[55] Arpey, *The William Freeman Murder Trial,* 55-56.

inability to do what was 'right' — in this case, his inability to reject public outcry over Freeman's trial in order to give a fair trial to an individual such as Freeman.[56]

The trial of Henry Wyatt proved to be a small, but significant case, due to its role in Freeman's trial and its timeliness in the Auburn community. While the trial received only scant attention in local newspapers, its infamy seemed to lie in the verdict given in the first trial of Wyatt. In February of 1845, Henry Wyatt, a convict at the State Prison in Auburn, murdered his fellow inmate, James Gordon.[57] Seward acted as counsel for Wyatt, and submitted a plea of not guilty by reason of insanity on his behalf, claiming that Wyatt suffered from moral insanity and that it was clear that "the crime was committed in a morbid state of mind."[58] Newspaper coverage by the New York Herald noted that even Wyatt's trial faced some difficulties in securing a jury initially; press coverage from the first day of proceedings stated that "we are likely to have a renewal of the Polly Bodine mode of choosing jurors. Ever since ten o'clock this morning, an attempt has been made to form a pannel [sp] of jurors; and, as yet, only four have been accepted."[59] Much like Freeman's trial, Wyatt's trial also struggled initially with the problem of jury bias, as well as apprehension about the use of an insanity defence in his trial. Noting the use of the plea, the *Herald* stated that "an attempt has been made, and very

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[56] Ibid, 57.

[57] William H. Seward, *The Life of William H. Seward with Selections from His Works,* New York: Redfield (1855): 99. Additional details (date of trial, and the name of Wyatt's victim) are included in Andrew W. Arpey's work on the William Freeman trial: see Arpey, *The William Freeman Murder Trial,* 2.

[58] William H. Seward, *The Life of William H. Seward with Selections from His Works,* New York: Redfield (1855): 99

[59] *The New York Herald*, February 17, 1846, 1. The trial of Polly Bodine, referred to by the newspaper here, is likely used in order to allude to the trouble of finding an unbiased jury for Wyatt's trial. Bodine's sensational trial in 1844 went through three trials; issues with empaneling an unbiased jury in her first two trials led to a change of venue in upstate New York, where she was finally found not guilty for her crimes: see Henry L. Clinton, *Extraordinary Cases* (New York: Harper & Brothers Publishers, 1896): 15-23.

ingeniously too, by the prisoner's counsel [...] to establish insanity; but how far that position will be sustained remains to be seen."[60] Allusions to an 'attempt' to use the plea 'ingeniously' suggests that the use of the plea was more an intentional legal tactic than a legitimate use for a potentially mentally ill defendant. Wyatt's first trial resulted in a hung trial, and so a retrial was scheduled for the summer of 1846; it was in this interim period, while the trial of Wyatt was still a matter of discussion in the Auburn community, that Freeman murdered the Van Nest family.[61]

Discussions of attitudes of capital punishment often appeared in conjunction with discussions of insanity defence in both trial transcripts and newspaper articles of the Antebellum era. As contemporary observers noted, both shared an uneasy relationship in the eyes of juries in particular. As some newspaper commentary noted, murder trials exposed this tension. In the face of potential death sentence, and with a plea of not guilty by reason of insanity, jurors were accused of being too sympathetic towards defendants: in the face of a mentally ill defendant facing capital punishment, jurors sided with defendants out of a fear of condemning them to an overly harsh sentence. Out of other legal topics brought up in relation to the insanity defence, the role of capital punishment in swaying jury decisions in these cases was the most prevalent. As one writer in the weekly newspaper Brother Jonathan argued in an article concerning a recent trial invoking an insanity defence, "Why not abolish the law of capital punishment altogether, if it be repugnant to the feelings of the community, and frame such an one, as juries will not shrink from carrying out — let there at least be a punishment for the crime, and let it follow as its

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[60] *The New York Herald,* February 21st, 1846, 1.

[61] William H. Seward, *The Life of William H. Seward with Selections from His Works,* New York: Redfield (1855): 99; for elaboration of the timeline of Wyatt and Freeman's trial, Jeannine Marie DeLombard, *In the Shadow of the Gallows: Race, Crime, and American Civic Identity*, Philadelphia, PA: University of Pennsylvania (2012): 215.

immediate consequence."[62] Other writers in the North American Review even went as far to assert that the abolition of capital punishment was the only way to fix the current problems in the justice system.[63] It was their view too that eliminating capital punishment would also mend any issues with the use of the insanity defence: then, "if the plea of insanity be brought forward, the only question will be, whether the accused ought to be incarcerated for life in a prison or a lunatic asylum [...] the jury will come to the consideration of it with minds entirely free from bias or prejudice."[64] Ultimately, the threat of capital punishment was seen as sharing an intricate, and influential, relationship with jury behaviour in insanity defence trials. Reformers who expressed their opinions in periodicals, newspapers, and other media sources believed that juries were forced to find the defendant in insanity defence trials not guilty due to the threat of capital punishment that awaited them. While juries had seemingly little issue issuing guilty verdicts in cases which would inevitably see a death sentence, popular discourse instead focused on the allegedly coercive nature that capital punishment played in insanity defence trials. Consequently, beliefs concerning capital punishment fed into popular perceptions that juries were unfairly lenient on defendants who used an insanity defence.

Of note in Freeman's trial is that the trial of Wyatt remains one of its focal points, despite it never being invoked as legal precedent in the trial. It is evident that Wyatt's trial carried weight in the local community due to its proximity in both time and space. Newspaper reports from the *Auburn Journal and Advertiser* on June 3rd, 1846, show that the first day of Freeman's trial was

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62 "More Insanity," *Brother Jonathan*, August 5, 1843.

63 *North American Review*, January, 1845, 35.

64 *North American Review,* January, 1845, 36.

a special session in order to decide on how to proceed with both Freeman's first trial and Wyatt's second trial. As proceedings began, Seward presented a petition from Wyatt to the court, in which he addressed the perceived connections between his trial and Freeman's murders:

> This horrible deed, following so quickly on the discharge of the Jury in my case, was supposed, by the People at large, to be connected with it: and the Press, and the Pulpit, and the political assemblage, and every social circle, eagerly believed and thoughtlessly published, that my partial escape from justice had excited Freeman to commit his crime, by diminishing the salutary effect of the fear of capital punishment upon his mind [...][65]

Evidently, much of the public perceived that a lack of punishment — specifically, capital punishment — in Wyatt's trial meant that there was no deterrence to dissuade Freeman from committing his crimes. Quite the opposite, Wyatt's hung jury is constructed as a direct influence that "excited" Freeman enough to commit the crimes by the parties mentioned by Wyatt. While unproven, it is impossible to ignore the influence that such a narrative had in the community at large in linking both men together, and ultimately the role that this narrative played in shaping perceptions of Freeman before his trial had even commenced. The primary fear of Wyatt's petition was that various parties in the community would ignore any expert testimony on insanity, due to their focus on finding retribution through both Wyatt's trial and Freeman's trial. Wyatt stated specifically that it was "The Clergy and the Press, disdaining scientific examination, have combined with the advocates of vindictive retaliation as a sound principle of justice [...];" no doubt, he was here pointing to negative press on Freeman's trial, and the calls for retaliation against him at the sermon given at the Van Nest family funeral.[66] Wyatt's petition concluded that these parties had "rendered the very name and nature of my [insanity] defence, a *mockery* and a

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[65] *Auburn Journal and Advertiser,* June 3rd, 1846.

[66] *Auburn Journal and Advertiser,* June 3rd, 1846.

by-word."[67] Consequently, Wyatt's petition illustrates the many forces in the community that were shaping, and would continue to shape, not only negative perceptions of Freeman, but negative perceptions of the insanity defence itself.

The two cases were also invoked together due to the literal relationship between Wyatt's trial and Freeman himself. Wyatt's case is frequently referred to not only by the defence counsel and the state counsel, but also by witnesses testifying in the court. Freeman himself attended Wyatt's trial, which also saw the use of an insanity defence, and thus many testified to the fact that this is the only place that they had ever seen him. However, it was the 1846 trial of Kleim in New York which was invoked as the only recent legal case based in New York that guided precedent on judging the insanity of Freeman. Kleim's case was presented in the judge's charge to the jury, in which he instructed the jury to consider "whether the acts of the prisoner were the effect of delusion, or of unsound and erroneous judgment."[68] Consequently, references to Kleim's trial as legal precedent mainly informed the judge's charges to the jury in how to evaluate the insanity of the defendant at the time of the commission of the crime. Despite the reference to Kleim's trial as legal precedent, it is clear that Wyatt's trial carried a certain cultural precedent Freeman's trial due to its association with him, and the sheer number of times that Wyatt's trial was invoked in the transcript of the case.[69]

Discussions of Wyatt's case in the trial of Freeman illustrates the integral role of the "community feelings" in the legal negotiations of the insanity defence. As Freeman's defence

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[67] *Auburn Journal and Advertiser,* June 3rd, 1846.

[68] Hall, *The Trial of William Freeman*, 141.

[69] Ibid. References to Wyatt's trial can be found on: 24,26, 37, 53, 59, 63-64, 75-76, 80, 86, 104, 115, 119, 130, 163, 176, 231, 235, 247, 259, 268, 271, 282, 324, 327-328, 422-423, 442, 460-461.

argued in the beginning of the second portion of his trial, it was nearly impossible to have a fair trial in the community where the murder had occurred; this was evidenced by both the attempt to murder Freeman, with jurors stating that they had been present at the attempted lynching, and the frequent references to the Wyatt trial. Consequently, a motion to postpone the trial was presented before the court by Seward immediately. In this application to the court, Seward included a sermon given by the local priest condemning Freeman, alongside, notably, multiple articles covering the cases of Freeman and Wyatt. As the *Auburn Journal and Advertiser* noted in its coverage, the application used these local sources in order to illustrate "the prejudice and feeling existing in the community."[70]

One of the primary issues argued in Freeman's trial was the matter of whether he had been influenced by Wyatt's trial in committing his own crimes. Several witnesses, and Seward himself, testified that they had witnessed Freeman in attendance at the back of the courtroom for Wyatt's trial.[71] However, opinion differed vastly on the impact that his attendance at Wyatt's trial on his own. Both the prosecution and the defence argued whether or not Freeman understood what was happening at previous trial, given his conduct in his own. As the prosecution suggested in their closing argument, it was entirely possible that Freeman witnessed the outcome of Wyatt's trial and that he "may have caught from the theories broached on Wyatt's trial, and from the result, an impression that he could commit this crime with impunity?"[72] Arguments such as these touched on broader perceptions that the mere success of the insanity defence in trials would

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[70] *Auburn Journal and Advertiser, June 3, 1846.*

[71] Hall, *The Trial of William Freeman*, 53, 59, 75, 80, 86, 213, 259, 324, 327, 422. Only one witness, Robert Freeman, stated that he did not remember seeing William Freeman at the trial of Wyatt; see The Trial of William Freeman (1846): 282.

[72] Ibid, 460.

result in its abuse, and subsequently, an increase in violent crimes. However, the defence quickly countered this perception in the context of the current trial, though their argument hinged on denigrating Freeman's intelligence to the court.

Seward's defence of Freeman, his very own client, relied on a harsh, dehumanizing characterization of Freeman's behaviour from his youth to his very presence in the courtroom. It was impossible for Seward to remove himself from the contemporary discussions in the United States concerning "potential" citizenship of Black individuals, and the ways that these discussions focused, in part, on their alleged mental capacity. Conversations concerning citizenship were framed by contemporary statistics that allegedly illustrated that African-American in free states were more likely to be mentally ill than those in slave states.[73] Consequently, these arguments played into larger narratives which concerned the allegedly corrupting forces of modernity and civilization, and insanity. As a result, Seward's defence of Freeman was forced to reckon with the (lack of) legal personhood held by African-Americans with the fact that "the punitive attribution of criminal responsibility necessitated recognition of legal personhood."[74] Seward's closing remarks emphasized that his defence of Freeman would ultimately rely on a complete degradation of his client:

> But gentlemen, how gross is the credulity implied by this charge! This stupid idiot, who cannot take into his ears, deaf as death, the words which I am speaking to you, though I stand within three feet of him, and who even now is exchanging smiles with his and my accusers, regardless of the deep anxiety depicted in your countenances, was standing at yonder post, sixty feet distance from me, when he was here, if he was here at all, on the trial of Henry Wyatt [...] and certain it is, that since the Prisoner does

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[73] DeLombard, *In the Shadow of the Gallows: Race Crime and American Civic Identity*, 216-17.

[74] DeLombard, *In the Shadow of the Gallows: Race, Crime, and American Civic Identity,* 219.

> not comprehend the object of his attendance here now, he could not have understood anything that occurred on the trial of Wyatt.[75]

Even to his own defence lawyer, Freeman's innocence rested on primarily on the matter that his lack of intelligence eroded his ability to understand the crime he had committed. In the case of the prosecution, Freeman's understanding of the trial was also best understood in the examination of one witness who interviewed him concerning his knowledge of Wyatt. The prosecution chose to use Freeman's denial of knowing Wyatt or attending his trial to highlight his inclination to lie, and thus pointing to his depravity, rather than associate it with his intelligence.[76] Ultimately, the defence effectively chose to denigrate Freeman's intelligence and character in order to navigate the tensions between recognizing his legal personhood, and acknowledging his responsibility for the crime he committed.

Often referred to only as the "excitement" surrounding the murders of the Van Nest family, the attempt to lynch Freeman was frequently associated with, and said to be spurred on, by the initial acquittal of Wyatt due to a hung jury. Under cross-examination by the defence, one witness stated that the reasons stated for the vigilante justice was "the result of the Wyatt trial was the reason uniformly assigned. It was said that justice had been denied, and the community would not consent to have their wives and children butchered."[77] Other witnesses confirmed this view when asked what seemed to be motivating factors for the crowd attempting to murder Freeman. When asked if it had been the "enormity of the crime" that had "excited" the crowd, one witness responded that "there were folks who seemed to carry the idea that this had

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[75] Hall, *The Trial of William Freeman*, 422-423.

[76] Hall, *The Trial of William Freeman*, 442 and 460.

[77] Ibid, 64.

something to do with the trial of Henry Wyatt."[78] While these witnesses do not ever expand on what aspects of Wyatt's trial had caused them to attempt to lynch Freeman, it is likely that it is linked to several factors. Namely, as indicated by previous testimony, Freeman's presence at Wyatt's trial was seen by the defence as a potential motivation for his crime; here, the reasoning is that Freeman was inspired by Wyatt's successful use of the insanity plea as a defence for his crimes. The perception of the community, as indicated by the witnesses testifying to the reason for the excitement surrounding Freeman's crimes, also points to an opinion that local criminals were not being adequately punished for their crimes, and that they could freely commit them without fear of punishment. From the outset of the murders, Freeman's trial became indelibly linked with the trial of Henry Wyatt. The mere introduction of the trial transcript of Freeman's trial states that "a jury in another capital case (that of Henry Wyatt) having disagreed about the sanity of a prisoner, that was brought into the excitement and vehemently discussed in connection with this." Public feelings on Freeman's crime were fueled deeply by Wyatt's trial, pointing to the necessity for understanding how public opinion could shape and influence the deliberations of a significant insanity trial such as William Freeman's trial. Ultimately, unlike Wyatt, Freeman would be found guilty by the jury and sentenced to death.[79] An appeal to the Supreme Court of New York would result in his judgment being reversed and a new trial being called. However, before the trial could take place, Freeman's health quickly deteriorated as he was held in the Cayuga County Jail. On August 21st, 1847, he died in his cell.[80] Given the

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[78] Ibid, 271.

[79] Hall, *The Trial of William Freeman*, 473-475.

[80] Ibid, 494-495.

question of insanity in his trial, an appendix in the trial transcript featured the post-mortem evaluation of his brain by six doctors involved in the trial, including Dr. Amariah Brigham of the Utica State Asylum. Brigham, and other doctors, noted the diseased state of parts of Freeman's brain left no question regarding the cause of Freeman's behaviour: "Freeman had disease of the brain, and was deranged in mind, from a period some time previous to his leaving prison, until the time of his death."[81]

The 1846 Trial of Eliphalet Spencer and Trial By Press

The trial of Eliphalet M.C. Spencer for the murder of his wife, Adeline Dobbins, on July 14th, 1846, further illustrated the convoluted circumstances under which some of the first murder trials to import the McNaughten rules took place. Both Spencer and his wife had moved between Ohio and New York before coming to settle in Jersey City, New Jersey. According to the press, Spencer had left for a year and returned to live with his wife in June of 1846; it was around this time that witnesses reported that Spencer began physically abusing his wife and wielding a pistol at her.[82] After a warrant was issued for his arrest that summer, a constable was summoned to the house to serve the warrant. While in the house, Spencer asked both his brother-in-law and the constable to accompany him to the room his wife was in in order to ask her to accompany him to the jail. When she said no, Spencer pulled out his pistol and shot her twice.[83] Both the initial press coverage of the shooting and the proceedings of the trial recorded in the *New York Herald*

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[81] Hall, *The Trial of William Freeman*, 499.

[82] *New York Herald,* September 11, 1846.

[83] *New York Herald,* September 11, 1846.

focused on Spencer's jealousy as a motive for the crime.[84] The defence alleged that Mrs. Spencer had been "the victim of a libertine;" Mr. Richardson, a mutual acquaintance of both of the Spencers, was accused of committing adultery with Mrs. Spencer.[85] Spencer's jealousy was confirmed by his statement after the murder, in which he told officers he had murdered his wife "in order that no other person may enjoy her."[86] However, while jealousy was pointed to as a motivating factor for the crime, Spencer's defence argued that this jealousy was a symptom of his insanity, along with other behaviour and consequently put forth a plea of not guilty by reason of insanity.[87] The defence had numerous witnesses testify to Spencer's odd behaviour and character over the years, and his family — including an uncle who was a Senator from New York — testified to the fact that insanity was hereditary in the Spencer family.[88] Ultimately, after twenty-four hours of deliberation, the jury returned a verdict of not guilty for Spencer.[89]

Much like Freeman's trial, the transcript of *State v. Spencer* echoed concerns regarding the influence of the press and community on juror's opinions of the trial. As highlighted by Chief Justice Hornblower, the presiding judge in the case, the matter of a principal challenge to a juror was a significant question in the case: a principal challenge could be made on the basis of a juror being related to one of the parties involved in the trial, or having already been a juror for a case

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[84] See *The Port-Gibson Correspondent* (August 8, 1846) for initial coverage of the murder. The New York Herald covered the trial extensively as it took place in September of 1846.

[85] *New York Herald*, September 25, 1846.

[86] *New York Herald,* September 11, 1846.

[87] *New York Herald*, September 16, 1846.

[88] His father, grandfather, sister, and uncle had all either shown signs of insanity and/or had been institutionalized in an asylum. See testimony of Hon. Joshua L. Spencer recorded in the *New York Herald* (September 17, 1846).

[89] *New York Herald*, September 28, 1846.

deciding on the same cause or matter, or most importantly, "that he [the juror] has declared his opinion of the case beforehand."[90] However, the presence of an opinion concerning the case was not evidence enough to disqualify a juror; in this case, similar to Freeman's trial, only an expressed opinion of "ill-will or malice towards the party" was enough to support a principal challenge to a juror on the basis of forming an opinion on the case.[91] The judge of Spencer's trial dismissed concerns that any juror who had formed an opinion based on "newspapers reports, or other information, or personal knowledge," could not be a competent juror: the law had already found that this was not an impediment.[92] However, though the law was unwilling to recognize this as a cause for challenge, it nonetheless points to the influence of the larger community and press that permeated the discussions of these trials. Deeming that newspapers and personal knowledge were not a cause for challenge did not change the fact that pretrial publicity could very well impact the outcome of a trial.

Much of the coverage of Spencer's trial was featured on the front page of the *New York Herald* throughout September, with coverage of the trial proceedings appearing in consecutive daily editions of the newspaper. Despite the relative obscurity of the case in contemporary analyses of the insanity defence, it appears to have been one of the earliest sensational trials invoking an insanity defence. As evidenced in one opinion piece run by the New York Herald on September 18th, Spencer's trial and Freeman's trial were seen as equals in the eyes of those

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[90] State v. Spencer, 21 N. J. L. 196 (1846): 3.

[91] State v. Spencer, 21 N. J. L. 196 (1846): 3.

[92] Mann v. Glover (date) is cited as the law that had already established this precedent concerning principal challenges. Notably, both Spencer's trial and Freeman's appeal relied on the same case to support this claim, as the judge noted in his own footnotes of Spencer's trial. State v. Spencer, 21 N. J. L. 196 (1846): 3.

looking to condemn the defence at the time. While the judges of Freeman's trial had finished and resulted in a guilty plea, Spencer's trial was still in the midst of its proceeding. Despite the ongoing trial, and the potential influence that an opinion piece on such a trial might wield in a newspaper such as the *Herald*, the writers of the article did not pay much concern to the matter. As they stated:

> We do not desire, in any way, to prejudice public opinion in this or other cases; but, we do say, that these pleas of insanity and somnambulism are, generally, frauds upon the administration of public justice.[93]

While the *Herald* writers attempted to counter the potential prejudice their statements might cause by balancing it with an appeal to the threat the plea posed to the administration of justice, it is impossible to ignore the audience these statements were reaching. As one of the most widely read daily newspapers in the United States, such statements would have found a broad audience at the time of the proceedings of Spencer's trial.[94]

In the case of Freeman, the *Herald* condemned those attempting to appeal the verdict. Notably, the *Herald's* own retelling of the alleged arguments defending Freeman illustrated the problems of invoking the defence within the courts. Mockingly paraphrasing the defence, the Herald criticized the claim that his intellectual disability impaired his ability to intentionally commit "half a dozen murders," as well as the claim that "it is contrary to the feelings of a man; therefore he is instigated by the devil, and must not be held responsible for his acts."[95] The *Herald's* comments illustrate the struggle to separate whether it was depravity, or insanity, that was alleged to be the root of Freeman's actions. Were these actions so atrocious that they must

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[93] "Crime and Insanity," *The New York Herald*, September 18th, 1846.

[94] Crouthamel, *Bennett's New York Herald […],* 4.

[95] "Crime and Insanity," *The New York Herald,* September 18th, 1846.

have suggested insanity, or was Freeman's intellectual disability the clearer cause? By blurring the lines between the two, the *Herald* could effectively paint the potential danger of the plea. Ultimately, if the appeal to Freeman's case was successful, the *Herald* claimed that "murder after murder would increased [sic] throughout our country, till a committee of safety would be appointed as in olden time, and a summary justice be meted out according to the deserts of the offenders."[96] This was the threat of the insanity defence in the eyes of this newspaper: the alleged blurred lines of what constituted insanity would effectively lead to an increase in violence. While a slippery slope like this may have not existed in reality, it became a popular concern among some detractors of the plea.

In the case of Spencer, the *Herald* accepted that it was indeed likely he was insane but they decided to take aim at the lack of preventative action taken with Spencer. In the narrative of this press, both Spencer's insanity was apparent before the murder, as well as his violent feelings towards his wife. Accordingly, the *Herald's* perception was that the coupling of Spencer's apparent insanity and the "worst of feelings, jealousy," were feelings that could have possibly been prevented by either the community, or by legal mechanisms - the *Herald* does not specify. However, the proposition that the circumstances of intimate murder, in this case, were apparent beforehand and that they were therefore preventable is a unique proposition. In this case, it is unclear whether the *Herald*'s issue lies as much with Spencer's insanity as much as it does with

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[96] "Crime and Insanity," *The New York Herald,* September 18th, 1846.

condemning an allegedly preventable instance of domestic violence. In either case, the actions that could be taken by the state or community in preventing such a crime were limited.[97]

Consequently, the coverage of these cases in the public domain can offer insight regarding the influence of newspapers on public opinion in the courts. Similar insanity trials engaged with the penny press explicitly during courtroom testimony. Newspaper coverage of Singleton Mercer's murder trial in 1843 noted that the defence had explicitly taken issue with articles published on Mercer throughout the trial. As he argued, the "portraits" of those on trial in popular cases threatened the integrity of the jury. Ultimately, it seems the 'trial by press' that occurred could interfere with jury perceptions.[98] While the accusation was openly mocked by the newspaper in question, cases such as that of Pike support that these interferences was very much present.

In 1844, Andrew Kleim, who was tried for the murder of his neighbour, Catharine Hanlin, had pled not guilty by reason of insanity. The trial featured many of the common issues illustrated in previous insanity trials — namely, troubles in securing unbiased jury, as illustrated by jury members being struck due to their "scruples" with capital punishment, or due to opinions already being formed on the case based on newspaper coverage of the murder.[99] The jury instructions given by the judge, Hon. John W. Edmonds, in Kleim's trial illustrates another example of how the matter of cultural precedent could present itself within the courts. As

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[97] The matter of intimate murder in Antebellum America receives extensive discussion in chapter following this, as it focuses on the intersections between intimate murder and the use of the insanity defence; consequently, the discussion on the subject will remain brief here.

[98] Singleton Mercer, *The Trial of Singleton Mercer for the murder of M. Hutchinson Heberton, at Camden, N.J., on Friday, 10th February, 1843 (*New York: Herald Office, 1843): 8.

[99] "Article VI. Homicidal Insanity." *American Journal of Insanity* vol. 1-2 (1844-1845): 245.

Edmonds spoke to the jury, he cautioned them to carefully examine their feelings towards both the plea, and the defendant, in the trial. As he acknowledged the negative feelings towards the plea, Edmonds told the jury that while he believed that insanity could be feigned at times, it was "almost, if not quite, impossible" that such feigning would go undetected by a medical expert examining a prisoner.[100] However, while Edmonds illustrated the negative perceptions towards both prisoner and plea with these statements, he also observed the other ways in which the plea was misused. Notably, Edmonds argued that:

> cases had occurred — *that of Amelia Norman,* and a recent occurrence at Philadelphia, were familiar instances — where popular feeling ran so strong in favor of the criminal on trial as to induce juries to seize with avidity upon this as an excuse for indulging their predilections for the prisoners.[101]

The matter at hand was not that the jury would be biased towards the plea and the prisoner in a negative sense, but also in a positive sense. The inclusion of these cautionary words recognized that juries saw fit to find a defendant not guilty by reason of insanity — when the plea was made in a case — as a means of also recognizing that popular feeling *for* a defendant's case could be channeled through the plea as a means of finding them not guilty, even if they had committed a crime. Furthermore, the inclusion of a mention of Amelia Norman's trial, as well as others, illustrates that legal precedent cited in a case did not always capture the breadth of context for a trial. While Norman's case is not formally cited in the trial, and does not appear anywhere in Lawson's work, it nonetheless forms the basis of a relatively significant caution by the judge to the jury.

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[100] People v. Kleim (1845) in Lawson, *The Adjudged Cases [...],* 33.

[101] People v. Kleim (1845) in Lawson, *The Adjudged Cases [...],* 33.

Trials such as *State v. Pike*, a significant case which saw the use of the insanity defence in New Hampshire, exemplifies the complications that coincided with juries learning of trials through newspapers and other popular mediums. During jury selection, a juror stated that he had seen newspaper articles on the case and that he would think the defendant (Pike) was guilty based on them. However, he stated he could try the defendant without prejudice despite this; the court agreed, and allowed him to be sworn in as a juror.[102] Even in the composition of the jury, consideration needs to be given to how these juries were built. While ultimately a legal black box, the juror in State v. Pike exemplifies the mediums that juries would have accessed to learn about popular trials. Trials such as that of Franklin B. Evans in 1872 exemplified how the court had to address the influence of newspapers within the courtroom. The report of Evans' trial notes that the judge did not only warn juries that their minds be "uninfluenced by aught else than the testimony" but pointedly stated that "he was particular in reminding them that newspapers must be thrown aside."[103] In spectacular trials, of which insanity cases often were, jurists had to contend with the undue influence that newspapers may have had on a jury pool.

As these trials show, the concept of cultural precedent played an integral role in many stages of the trial process. Even if cases were not explicitly connected through formal legal precedent, connections were formed between them in a variety of ways; in the community, in newspapers, and even through cases discussed, but not cited, by jurists involved in a trial. While the ideal circumstances of these trials would be that jurors entered the court untouched by

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[102] I. F. R, "Supreme Judicial Court of New Hampshire. State v. Pike." *The American Law Register* (1852-1891) 20, no. 4 (1872): 234.

[103] John B. Clarke, T*he Northwood murder: a complete report of the trial of Franklin B. Evans for the murder of Georgianna Lovering at Northwood, October 25th 1872, together with a portrait and sketch and the career of the murderer (*Manchester, N.H.: Mirror Counting-Room, 1872): 7.

circulating opinions regarding a case, this was obviously an impossible task in the media landscape of Antebellum America. Jurists and judges had to contend with a public — including jurors —who were entering the courts with preconceived judgments regarding the trial at hand. Prosecution and defence alike, as well as judge, were forced to tackle the matter of public perceptions of the insanity plea head-on in the courts. Ultimately, the length at which jurists engaged with these perceptions showcases the influence that they held in trial proceedings. Legal precedent in these trials does not showcase the sheer breadth, and depth, that cultural perceptions of the insanity defence held in shaping the outcome of the earliest trials to establish a newfound insanity test in the United States.

Chapter Two

Medicine:
Perceptions of Medical Expertise in the Making of the Insanity Defence

As he opened in his petition to the Court of Oyer and Terminer in Auburn, New York, Henry Wyatt asserted, with regard to his use of the insanity defence in 1846, "that the science of the diseases of the human mind had been developed much during the last forty or fifty years before the said trial [...]"[104] While Wyatt's timeline may have been slightly off, his comment illustrates that the medical discipline at the center of constructing the insanity defence, that medical specialization most concerned with the human mind and its behaviours, was a relatively new discipline in Anglo-American society. While this branch of medicine, alongside the law, played a fundamental role in the construction of the insanity defence within the courts, public perceptions of the role of expert witnesses in the courts were also widespread in newspapers, trial transcripts, and medical journals. Newspapers and other popular print sources played a significant role in public constructions of the insanity defence. It would prove difficult to tease apart the distrust of scientific medicine in the broader marketplace of medical ideas in the Antebellum era, and consequently, distrust of scientific medical expertise presented itself frequently in discourses concerning the insanity defence. In the cultural arena of the courtroom, expert witnesses are simply one more legal character of the court whose perceptions should be scrutinized both within and outside the court in order to best understand the cultural dimensions in which a medicalized insanity defence emerged in the United States. Consequently, the subject of this chapter will tilt towards exploring perceptions of medical witnesses in the court, as expressed by the public or as

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[104] *Auburn Journal and Advertiser,* June 3, 1846.

described by medical experts themselves, as a means of exploring the sources of animosity towards the insanity defence.

By the early 1800s, American doctors increasingly viewed disease as a primary cause of abnormal behavior.[105] Prior to this, crime narratives often characterized depravity as the cause of criminal responsibility. This explanation relied on moral and/or religious reasoning in contemporary print sources, such as execution sermons. Prior to the early nineteenth century, "execution sermons," print sources of sermons directed at criminals prior to their hanging, represented one of the most significant sources in crime literature.[106] However, as Karen Halttunen argues, it was not simply a shift from deviance to disease but rather one from moral/ religious depravity to medicalized deviance that captured explanations of criminality by the nineteenth century.[107] Halttunen traces this shift in popular nonfiction and literature, thus highlighting how media grappled with medical explanations of criminal responsibility. But, as this chapter illustrates, public conceptions did not proceed in a linear fashion when processing new explanations for insanity in the courts. Often, overlap between depravity and disease narratives were observed, alongside an ambivalence towards the medical professionals attempting to advance these medicalized explanations of insanity. Consequently, public understanding(s) of insanity were distinct from those of specialists in the court. At the same time, questions concerning the perceptions of the mentally ill within the judicial system presented themselves in popular print sources. "It is a matter of importance as well as of singular interest to

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[105] Joseph W. Schneider and Peter Conrad, Deviance and Medicalization: From Badness to Medicalization (Philadelphia: Temple University Press, 1992), 51.

[106] Jodi Schorb, "Punishment's Prisms: Execution and Eighteenth-Century Print Culture," *Early American Literature,* vol. 47, no. 2 (2012): 467.

[107] Halttunen, *Murder Most Foul*, 210.

investigate the sources from whence the popular feeling and intelligence concerning madness have been derived" noted one doctor in the *Boston Medical Intelligencer* in 1824.[108] Of course, these perceptions were a foremost concern to doctors when any defendant would face a jury of their male peers. Juries now incorporated their perceptions of experts into their judgments of both insane men and women in the courts.

By the mid-nineteenth century, medical experts routinely entered the courtroom to speak on matters of insanity in criminal trials. As medico-legal historians have shown, doctors had long offered forensic testimony in the courts prior to the nineteenth century; however, what was novel for this time period was their enlistment to speak specifically on issues of mental illness. Furthermore, after 1825, an explosive trend in medical experts testifying on matters of insanity in the courtroom began in English courts. While medical experts only appeared in a tenth of insanity trials involving property offences in 1760, they appeared in half by 1840.[109] A similar timeline can be observed in the American context. Prior to 1840, medical experts were rarely called into courts to speak to matters of insanity; the need for doctors to provide guidance and assistance to jurors in insanity trials was of little concern to jurists.[110]

In part, this hesitancy to introduce medical experts in the courtroom was linked to broader attitudes towards medicine. The popular albeit limited democracy of the Jacksonian era translated into an ambivalence towards experts and authority. Jacksonian democracy prized the "common sense" of the white male individual over learned authority, and these sentiments

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[108] "Insanity as Connected with Judicial Proceedings," *Boston Medical Intelligencer,* May 18, 1824, 5.

[109] Joel Peter Eigen and Gregory Andoll, "From Mad-Doctor to Forensic Witness: The Evolution of Early English Court Psychiatry," *International Journal of Law and Psychiatry*, vol 9. (1986): 159.

[110] Dain, *Concepts of Insanity*, 46; Halttunen, *Murder Most Foul*, 218.

extended to both law and medicine.[111] The repeal of state medical licensing laws in New York, Massachusetts, and Connecticut reflected this democratizing impulse as practitioners of alternative and scientific medicine competed on equal footing in the medical marketplace.[112] Ultimately, this meant that medical experts could not rely on reputation alone to carry them into the courts, nor could they rely on their evidence to be taken on reputation alone either. Public mistrust of scientific medicine, alongside public perceptions of insanity, made for an uphill battle for experts in the courtroom

The increased specialization of doctors in the field of psychiatry revealed some of the tensions that existed between the public and the expert. It was no easy task to show the obvious signs of "madness." One anonymous doctor writing in the *Boston Medical Intelligencer* drew on the prominent example of London's Bethlem Hospital to illustrate public perceptions of insanity. Asylum visitors were "most eager to penetrate into the recesses of the furious and naked maniac; the hideous howlings of these violently affected, forcibly arrested their attention. With the insane of a milder case, they were but slightly interested."[113] While the "violently affected" captured the public's attention, they also shaped the public's perception of mental illness as something that was easily observable. The public's fascination with more extreme, and thus observable, cases of insanity lent a certain legitimacy to them, but obscured the existence of "milder" forms of mental illness from public view. Specializing in the field of mental health granted doctors the supposed

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[111] Owen Whooley, *Knowledge in the Time of Cholera: The Struggle over American Medicine in the Nineteenth Century* (Chicago: University of Chicago Press, 2013): 62; James C. Mohr, *Doctors and the Law: Medical Jurisprudence in Nineteenth-Century America* (New York: Oxford University Press, 1996): 88.

[112] On the "democratization" of medicine in the 1830s and 1830s: Howe, *What Hath God Wrought*, 471; Mohr, *Doctors and the Law*, 88; Whooley, *Knowledge in the Time of Cholera*, 69.

[113] "Insanity as Connected," 5.

ability to identify these most covert forms of mental illness, even "the insane of a milder case." While they claimed that this specialized knowledge helped to illustrate all forms of insanity — both mild and severe — it was still difficult to demonstrate this to a wider audience. The public expected insanity to be immediately recognizable and obvious, even if this was not always the case.

Physicians rarely acted as expert witnesses in the courts with regards to insanity trials before the mid-nineteenth century: Norman Dain attributes the relative obscurity of medical experts in insanity trials prior to the 1840s to the idea that jurists did not need expert testimony on insanity.[114] The most frequent arena for medical experts to appear during the first few decades of the 1800s was that of commercial and related civil cases.[115] Beginning in the 1830s, some important shifts regarding insanity, the courts, and medical experts began to animate the circumstances in which expert witnesses in insanity cases would later appear. Notably, the number of individuals housed in asylums and related institutions seemed to increase consistently throughout the 1830s.[116] At the same time, courts in states such as Massachusetts continuously illustrated that the medicalization of madness had not fully penetrated the courts of the country, still believing the line between depravity and disease was a thin one, and that medical opinions were not entirely helpful on the matter. In part, this was due to the lack of consistency in definitions of insanity offered by doctors, which could be read as equally confusing for the

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[114] Dain, *Concepts of Insanity,* 64.

[115] Mohr, *Doctors and the Law,* 96.

[116] As Jimenez also suggests, this increase was likely associated with the inclusion of broader definitions of insanity emerging during the same time period: Mary Ann Jimenez, *Changing Faces of Madness: Early American Attitudes and Treatment of the Insane (*Hanover, NH: University Press of New England, 1987): 124.

public receiving these ideas.[117] Subsequently, the many definitions of insanity, and who stood by what definition(s) became a hotly contested topic in both medical circles and in the courts. Indeed, James C. Mohr argues that negative perceptions of doctors emerged in the 1830s due to their frequent clashes over medical matters in court; as he illustrates, the arena in which doctors had the "greatest visibility" was the one in which they appeared the most "unprofessional" based on their frequent disagreement with each other.[118] Others, such as Norman Dain, have characterized the opinions of doctors as that of relatively strong agreement on major issues in the field at least up into the 1840s.[119]

What these discourses indicated was the presence of various and broad definitions of insanity emerging throughout the 1830s. However, while the hope among doctors may have been that these definitions would be considered seriously by jurists, it was not quite the case. By 1843, the trial of McNaughten in England had introduced a "convenient and conveniently formulaic" insanity test by which criminal responsibility could be measured.[120] Ultimately, the test represented a relatively narrow definition of insanity based on a defendant's 'knowledge of right and wrong' at the commission of a crime. However, the introduction of the test in the United States courts was not straightforward and ushered in a moment when the plea was in a state of flux. As Hibbard and Parry argue in their assessment of the trial of Amelia Norman in 1843, the changes to the insanity plea in the 1840s led to a period when "the defence became temporarily

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[117] Jimenez, *Changing Faces of Madness*, 79.

[118] Mohr, *Doctors and the Law*, 100.

[119] Dain, *Concepts of Insanity*, 57.

[120] Mohr, *Doctors and the Law*, 146.

elastic enough to accommodate the broad and amorphous range of other categories and causes."[121] The complex, broad definitions of insanity caused confusion, leading juries to "decide insanity issues according to their moral intuitions."[122] Public understanding of the insanity defence and its use varied considerably from expert — both legal and medical — understandings of the defence as it began to take new shape in the United States. Ultimately, the complexity of the defence allowed for these cultural understandings of the plea to colour how juries tended to decide, which is especially illustrated in cases which relied on cultural precedent.

From the 1820s to the 1840s, condemnation of the insanity defence in the press focused on the difficulty of assessing the insanity of individuals who used the defence. How could any expert say with certainty that a criminal was insane? In 1829, one anonymous professor asserted of the insane that "frequently, their feelings are of a malignant character, whilst, at the same time, they are extremely cunning, and deceive and throw off their guard those whose duty it is to attend to them."[123] Public opinion saw mental illness as something that *could* be feigned, with experts unable to judge the case correctly. In 1842, another anonymous writer for a New York-based penny press claimed that "we find a man named John Buchanan, applying to a physician for a certificate of insanity, obtaining it, and then posting off with the document in his pocket, and attempting to kill his wife."[124] While showing a certificate of insanity after attempting a murder was not quite how the insanity plea was used in reality, the story reflected a view that

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[121] Hibbard and Parry, "Law, Seduction, and the Sentimental Heroine," 335.

[122] Ibid, 335.

[123] "Insanity," *The Virginia Literary Museum and Journal of Belles Lettres, Arts, Sciences &c.*, August 12, 1829, 134.

[124] "How It Works," *Brother Jonathan,* April 16, 1842.

doctors helped facilitate the use and "abuse" of the plea. As a result, public doubt in doctors' abilities to identify insanity went hand in hand with their doubt of the insanity defence.

As the insanity defence became increasingly prevalent in criminal court cases, both the law and medicine vied to mold an understanding of insanity to their own vision. While this relationship between the two specializations is much more nuanced than a simple clash of contradicting visions, one fundamental point of contradiction emerged. As Dain and others argue, antebellum criminal courts "were designed essentially as institutions for punishment and revenge, not as agencies for determining psychological health."[125] Furthermore, changes in both medical and legal thought did not translate into public thought immediately. In many ways, public attitudes and conceptions of insanity did not exist in tandem with medical interpretations on the subject.[126] Consequently, given that the public has often existed as a secondary afterthought to the constructions of the insanity defence, their own cultural and social understandings of the insanity defence merit a closer inspection. After all, these understandings would ultimately be the closest understandings to jury perceptions of these cases.

However, the perception that insanity was becoming increasingly prevalent in American society was not one that was wholly accepted. While a popular perception, some writers already aptly rejected the notion that insanity was increasingly being diagnosed in American society. In a review aimed at analyzing several works on the insanity defence, the writers from the *North American Review* asserted that the apparent increase in insanity was "because it is quite certain,

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[125] Dain, *Concepts of Insanity,* 49.

[126] Dain, *Concepts of Insanity,* 50.

that the progress of science, or a change in the system of classifying diseases, has recently brought many cases under this category."[127] Consequently, some already understood that the increasing medicalization of behaviour by specialists contributed to the perception of a greater prevalence of insanity. However, this could not be reconciled with the perception of the supposed success of the insanity defence by the very same reviewers; as they later stated, "the frequency with which the plea of insanity has been successfully put forward of late, in criminal cases, is quite remarkable, and tends to agitate the community with contradictory fears." Ultimately, these perceptions illustrated that while some parts of the community acknowledged that intellectual advances in scientific medicine had led to the increased ability to identify cases of insanity, they could not always be reconciled with pre-existing ambivalence towards this form of medicine. As later trial transcripts, as well as medical publications, would show, these perceptions of the medical community would play a central role in discussions concerning the use of the insanity defence by the mid-century.

The trial coverage of William Freeman also showcased similarly negative perceptions of the role of medical expertise in the court, with a particular focus concerning the danger of broad, and allegedly new, insanity definitions offered by doctors. As the article was published after Freeman's conviction, journalists were responding to calls for an appeal of Freeman's conviction, particularly those critiques coming from medical experts concerning Freeman's apparent insanity. Psychiatrists especially believed that Freeman's insanity had been overlooked due to the preliminary trial on his insanity, and due to the definition offered by the court. Notably, these

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[127] *North American Review*, January, 1845, 1.

were also two of the main points raised in the bill of exceptions submitted to appeal Freeman's sentence. Seward argued the court had erred in both the preliminary trial regarding Freeman's insanity specifically, and that Judge Whiting — the presiding judge in Freeman's case — had erred in his charge to the jury.[128] Journalists responded that the medical experts wanted too much. Freeman had been found both sane and guilty according to the right versus wrong test introduced in the McNaughten trial. An editorial in the *Commercial Advertiser* insisted the right versus wrong test was the only test that could be used in the courts, no matter "whatever theories learned men may create, there is no other which can be safely introduced into a court of justice."[129] Consequently, these comments on Freeman's trial tied to broader discussions concerning the appropriate test to use in various courts at the time. In this case, the press covering Freeman's trial alluded to the danger of any broader insanity test being applied in the courts. Much in the same vein of larger discussions concerning defining insanity in Antebellum America, laypersons and experts alike were concerned with discerning between crimes originating in moral depravity and crimes caused by mental illness. Ultimately, these concerns over the alleged overlap between depravity and disease became equally apparent in the coverage of insanity defence trials such as Freeman's. As the *Advertiser* also illustrated in their comments concerning the jury of Freeman's trial, the jurors who had found Freeman guilty were capable enough in their ability "to discriminate between acts originating in moral depravity and

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[128] Arpey, *The William Freeman Murder Trial*, 138.

[129] *Commercial Advertiser,* July 27, 1846.

ignorance, and those which proceed from the impulse of disease."[130] Not all of the public was confident that the definitions of medical experts' should be followed closely in the courts.

In the case of Freeman, lawyers for the defence played on this negative perception of medical experts by illustrating the supposed power that these experts wielded over the courts. While this is certainly an integral part of understanding expert negotiations of the insanity defence within the courtroom, what is of particular interest here is the relationship these comments share with similar comments expressed by the community concerning the alleged power of medical experts in Freeman's trial. Much like the sentiments in newspaper coverage of the Freeman trial, jurists understood, and may have felt themselves, that these expert witnesses were upsetting the boundaries between medicine and law in the courtroom. Jurists knowingly used this perception in the community that many felt medical experts were attempting to bend the law to their will. As Van Buren, the prosecuting lawyer in William Freeman's trial stated:

> Our families cannot walk the streets in safety till they have been swept by a squadron of Doctors; and if the punishment of crime is to be determined by medical rules, the Professors should sit upon the bench and fill the jury box. This prosecution is unsuitably conducted. The Executive of the State should have sent the Surgeon General instead of the Attorney General to assist at this trial. But no, gentlemen! The law allows no such absurdities.[131]

Consequently, jurists in Freeman's trial dismissed any assertions concerning the authority of medical experts in the courtroom. As the defence asserted, the courtroom was the domain of law, not medicine. Even if medical experts were invited only to give their evaluation of a defendant and their subsequent opinion on the matter of insanity of the court, the prosecution nonetheless

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[130] *Commercial Advertiser,* July 27, 1846.

[131] Hall, *The Trial of William Freeman,* 428.

perceived their presence in the courtroom as an attempt to usurp the power of the law in the courtroom.

Press coverage of the trial further illustrated the animosity towards expert witnesses in Freeman's trial. Namely, the *Commercial Advertiser* took aim with the inherent contradictions between expert testimony, and other witness testimony, in Freeman's trial. As they noted " [T] he attendance of medical men from Albany and Utica procured to testify as to his [Freeman's] insanity. A large number of respectable men, some of whom had known him from childhood, both in and out of the prison, have testified that they never have discovered or suspected anything like insanity in his conduct before the murder."[132] While doctors supported claims of Freeman's insanity with their testimony, newspaper coverage nonetheless implied that the knowledge and opinion of these "respectable men" from the community outweighed any evaluation made by a medical expert. Given that medical experts occasionally only evaluated defendants' in a trial for a short period of time, at times not even evaluating a defendant in person, and still were allowed to offer expert testimony, it is not entirely unsurprising to note that the community were wary of their opinion in the court.[133] Consequently, these contradictions in Freeman's trial highlighted debates concerning who could adequately identify insanity in a defendant and how to do so.

Defence lawyers engaged directly with public perceptions of the insanity defence, as seen in the trial of Abner Rogers Jr. An inmate at Massachusetts State Prison, the thirty-year old

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[132] *Commercial Advertiser,* July 27, 1846.

[133] As Karen Halttunen notes in her monograph, not all expert witnesses based their testimony on a face-to-face, "immediate" evaluation of a defendant; notably, in the 1855 trial of Willard Clark, Dr. Isaac Ray based his testimony on the previous testimony offered in the trial; see Halttunen, *Murder Most Foul*, 217.

Rogers had been convicted twice of separate crimes — for intent to use a counterfeit bank bill, and breaking and entering — and had been in the process of serving his sentence at the state prison when he committed homicide.[134] The family of Rogers had a history of mental illness, and Rogers himself had suffered "violent fits" as a child, which continued at night for much of his life.[135] His brother, who his father described as being "deficient in understanding," had struck Rogers as a child with a piece of a scythe — a description likely mentioned to support claims of any traumatic brain injuries.[136] As his lawyers argued, Rogers had indicated three days before the homicide that he heard the voices of other convicts at night, telling him the warden would place him in solitary confinement and that he would never leave the prison alive. These voices continued for days, growing to the greatest degree of distress the day before the murder.[137]

On June 15th, 1843, Rogers murdered Charles Lincoln Jr, a warden, with a shoe-knife in the shoe shop of the prison.[138] His lawyers, George T. Bigelow and George Bemis, put forth a plea of not guilty by reason of insanity.[139] Mr. Bemis offered the opening arguments for the defence, where he quickly addressed the perceptions of the insanity defence within the public mind. In his observation of his client's plea he noted that, "the newspapers had, indeed, hinted,

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[134]George Tyler Bigelow and George Bemis, *Report of the trial of Abner Rogers Jr: indicted for the murder of Charles Lincoln, Jr., late warden of the Massachusetts State Prison: before the Supreme Judicial Court of Massachusetts, holden at Boston, on Tuesday, January 30, 1844* (Boston: Charles C. Little and James Brown, 1844): 24.

[135] Bigelow and Bemis, *Report of the trial of Abner Rogers Jr,* 92.

[136] Ibid,143.

[137] Ibid, 83-88.

[138] Ibid, 6.

[139] Ibid,8.

that his counsel would *set up* for him the plea of insanity."[140] Bemis' arguments illustrated the need to address both the jury and the public, and the need to tackle public perceptions of the plea from the outset of proceedings. Consequently, many post-McNaughten test trials saw the defence tackle public perceptions of the plea and of the insane in their opening remarks to the courtroom. Bemis' arguments highlight one of the most substantial discussions concerning the perceptions of the plea at the time, and are all the more significant given that Rogers' trial would serve as the first official introduction of the McNaughten test by a state in the United States. As he constructed his argument, Bemis opened his remarks by addressing the various negative perceptions of the insanity defence expressed by both communities and newspapers:

> The common opinion has it, that this plea is abused — that it has become so common, that it should hardly be listened to with patience — that it is little else, in fact, than a general pretext for the worst crimes. If this were so, indeed, we should have before us, at the outset, an almost hopeless task, to gain a hearing for our cause. [141]

Jurists for the defence of those using an insanity defence did not simply address the specific perceptions of a defendant or their crime. They had to anticipate — and deconstruct — broad perceptions of the plea put forth as well. Consequently, jurists were tasked with two goals: defending their client and defending a mechanism of the law.

As evidenced by arguments by the defence in Rogers' trial, cultural precedent was also alluded to as playing a role in shaping public perceptions of the insanity defence. Rogers' lawyer, George Bemis addressed the public as he inquired into where the popular distrust of the plea had emerged:

> Where are the cases of those who have evaded justice under its cover? Am I pointed to recent trials, such as have occurred in New York, in the instance of an unfortunate, and deeply to be pitied young woman, by the name of Norman? — or to that in

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[140] Ibid, 42.

[141] Bigelow and Bemis, *Report of the trial of Abner Rogers Jr,* 45.

> Philadelphia, where a person named Singleton Mercer, was tried for the murder of Hutchinson Heberton? — Who can fairly say, that these are cases at all connected with the point in question?[142]

In this case, the point in question is the matter of those who feigned insanity to evade justice; as Bemis believes, neither Mercer's nor Norman's case represent cases of feigned insanity. While both plead not guilty by reason of insanity, and both were found not guilty, Bemis' remarks point to the underlying point of each trial: both were seen as examples of (rightful) provocation, and both were implied to be abiding by unwritten law governing intimate relationships. Norman murdered a lover who promised to marry and had not done so (thus ruining her reputation); Mercer murdered the man who had sexually assaulted his sister, thereby avenging both her and his family's reputations. Given the circumstances, popular sympathy sided with both Norman and Mercer in their respective trials. While Bemis notes that he does believes that both were likely insane, he nonetheless considers these cases not to fall under the umbrella of feigned insanity cases being plead successfully. As he further argues, "Who doubts that any other plea to which a decent name could have been given [...] would not have availed as well as that of insanity, with the respective juries who sat upon them?"[143] Inevitably, per these statements, some clearly understood that the insanity defence was sometimes being used as the most appropriate stand-in for a 'cultural defence' to a crime.

Arguments for the defence further addressed the potential sources that may have influenced public perceptions, especially the perception of an increased use of the insanity defence. Firstly, he argues that the reason the plea is perceived as being used frequently is due to the increase in the population of the United States; more people would invite more cases by

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[142] Ibid, 46.

[143] Bigelow and Bemis, *Report of the trial of Abner Rogers Jr,* 45-46.

virtue of proportion. Secondly, he notes that the increased knowledge of "medical men" has allowed them to diagnose more cases that may have been missed — and never mentioned in the court before — and has thus resulted in more cases appearing before the courts.[144] However, Bemis does not simply confine the perception of increased use of the insanity defence to the increased medicalization of deviance. Bemis further points to the argument that perceptions may be influenced by "an exaggerated idea abroad in the community, of the actual number of instances of acquittal, on the ground of insanity, arising from every such case being made the subject of comment and notoriety."[145] Consequently, Bemis attempts to argue throughout his opening remarks, the fact that the increased identification of cases of insanity by doctors, alongside the cultural notoriety of these cases, did not render them all successful. In the case of the insanity defence, Bemis challenged the faulty notion that the sheer use of the defence guaranteed its success.

Rogers' defence further supported the position that medical experts were well-positioned to combat perceptions that insanity could be easily feigned in the court. Of course, such arguments by the defence are inherently biased, as they had a vested interest in ensuring the testimony to support their client was considered legitimate. However, these comments nonetheless offer significant insights concerning the perceptions of expert witnesses in the court and the role they played in combating perceptions of the insanity defence both inside and outside the courtroom. As Bemis illustrated, the expert witnesses summoned to the court in Rogers' trial were primarily superintendents of various asylums in New England and the north-east region of

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[144] Bigelow and Bemis, *Report of the trial of Abner Rogers Jr,* 46.

[145] Ibid, 46.

the U.S; given their day-to-day activities with mentally ill individuals, they were well-acquainted with identifying cases of insanity.[146] Consequently, these superintendents were quoted in their support that it was only in the rarest cases, if any at all, where an individual who had pled not guilty by reason of insanity arrived at their respective asylums showing no symptoms of insanity. Dr. Amariah Brigham, superintendent of the New York State Lunatic Asylum, stated as much in a quote from his Annual Report on the hospital when he asserted that,

> I know it is a common, but frequently, I suspect, a careless remark, that the plea of insanity is too often successfully adduced as an excuse of crime. So far as I have any knowledge, this is not the case. I do not know of a single instance where the insanity of an individual has been certified to by those well informed and well qualified by experience with the insane to judge on such a subject, that time and public opinion has decided to be incorrect.[147]

Consequently, the defence of Rogers continued to focus on challenging the alleged abuse of the insanity defence by highlighting the lack of individuals in asylums to support this argument. Of course, as Bemis would later note, some might argue that the "professional zeal" of doctors led them to identify insanity in any potentially deviant, or morally wrong, action committed by an individual.[148] However, as he quoted a judge's charge to a jury in New Hampshire, he rightly highlight that some jurists were already rejecting the allegation that professional zeal alone caused doctors to support any insanity defence plea; as their own reputations were on the line in such court cases, the accusation held little, if no, water.[149]

By the early nineteenth century, the emergence of some of the most notable monographs to focus on medical jurisprudence appeared in the Anglo-American sphere. Notably, a common

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[146] Bigelow and Bemis, *Report of the trial of Abner Rogers Jr,* 47.

[147] Ibid, 48.

[148] Ibid, 57.

[149] Ibid, 57.

theme of these works was instructions on how to detect feigned insanity. While the sections themselves could differentiate in the supposed tell-tale signs of an individual feigning insanity, their discussion of the perceptions of the insanity defence, as well as the role of medical experts in its use, offer significant insights concerning the use of the defence at the time. In 1823, one of the first, and most significant American works on medical jurisprudence by Theodric Romeyn Beck captured the attitudes of medical experts concerning the insanity defence. As he outlines the role of the medical expert in the court, he illustrates that doctors should be acquainted with both the symptoms of insanity, as well as the individual being examined, in order to properly detect feigned, or concealed, insanity. Notably, he states that "madness is most commonly feigned for the purpose of escaping punishment due to crime, and the responsibility of the medical examiner is consequently great," already capturing doctors' perceptions of the gravity of their own role in the court in safeguarding the 'proper' use of the insanity defence.[150]

The creation of the *American Journal of Insanity* in 1844 signaled the increasing professionalization of medical experts specializing in the study of mental illness, and their collective efforts to establish the legitimacy of their specialty. The first American medical journal to focus on the study of mental illness, the journal came under the purview of Dr. Amariah Brigham at the State Lunatic Asylum in Utica NY. The journal emerged after the creation of the Association of Medical Superintendents of American Institutions for the Insane. As Dain notes, the journal acted as a source for the association to express its opinions unofficially and also

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[150] Theodric Romeyn Beck, *Elements of Medical Jurisprudence. vol. 1.* (Albany, NY: Websters and Skinners): 1823.
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captured the sources that formed the basis of psychiatric opinions at the time.[151] Consequently, the association stated in the first published volume of the journal that "[t]he object of this Journal is to popularize the study of insanity, to acquaint the general reader with the nature and varieties of this disease, methods of prevention and cure. We also hope to make it useful and interesting to members of the medical and legal profession, and to all those engaged in the study of the phenomena of mind." While the goal of popularizing psychiatric knowledge at the time may have been difficult, given the expert audience the journal was aimed at, it nonetheless captures the concern of psychiatrists in translating their knowledge for more lay audiences. As observed in some facets of the journal's publications, psychiatrists showed a keen awareness of public perceptions of the insanity plea, and regularly attempted to correct these negative perceptions in the journal.

Often, doctors reviewing various articles and trial transcripts in the American Journal of Insanity took the opportunity to counter popular critiques of the insanity defence. In one review of a work on medical jurisprudence published by a lecturer at Guy's Hospital in London, the reviewers of the *American Journal of Insanity* noted the claims that "the plea of insanity is too frequently made, and also that medical witnesses "lose sight of their true position" and testify improperly."[152] Reviewers quickly noted that the author had "furnishe[d] no proof of these assertions," and that the claim was supported only by a judge's comment in the trial of *King v. Reynolds* that "the defence of insanity had lately grown to a fearful height, and the security of the

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[151] Notably, the journal would later become the *American Journal of Psychiatry*, one of the most significant sources for psychiatric opinion in contemporary times. See: Norman Dain, *Concepts of Insanity*, 56.

[152] "Review of "A Manual of Medical Jurisprudence" by Alfred S. Taylor, Lecturer on Medical Jurisprudence, and Chemistry, in Guy's Hospital, London, 1844. P. 679." *American Journal of Insanity* vol. 1 (1844-45): 282.

public required that it should be watched."[153] Without evidence to back this claim, reviewers rejected the assertion that the defence was being abused. Instead, they insisted that the opposite was true. Rather, they insisted that the plea was "not so often successfully made," in contrast to assertions concerning its alleged success. Furthermore, rather than the plea being a threat to the public, reviewers stated that "many deplorable madmen have perished on the scaffold," alluding to the literal threat that negative perceptions of the insanity defence posed to innocent, mentally-ill defendants.[154] Subsequently, reviewers took issue with the author's further assertions that only sensational and popular cases saw the use of an insanity defence, which allegedly construed "the most trivial points of character into proofs of insanity," with an acquittal to follow, while less known cases ignored any evidence of insanity in a defendant in order to convict or execute them.[155] In their response to the author's assertions, reviewers insisted that each and every case deserved the same scrutiny for proof, or lack thereof, of insanity. However, the same reviewers' anxieties focused on urging jurists to "not neglect collecting the proof of it [insanity], in consequence of the popular cry" that the plea was being abused. Ultimately, reviews often served as the site for medical experts to challenge the lack of evidence backing the negative perceptions of the plea, and to outright state the potential threat(s) that these perceptions posed in the constructions of the defence within court. While their audience is limited by the audience that subscribed to the journal, these responses indicate that soon after the emergence of a medicalized

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153 "Review of "A Manual of Medical Jurisprudence" *American Journal of Insanity*, 282-283.

154 "Review of "A Manual of Medical Jurisprudence" *American Journal of Insanity*, 283.

155 Ibid.

insanity defence, medical experts were quickly critiquing popular perceptions of the insanity defence.

The content of trial transcripts featured in the journal also proved to be a useful site for investigating the perceptions of medical experts in courtroom narratives. In an article titled "Homicidal Insanity," the journal had published the trial transcript of Andrew Kleim. Kleim, who was tried for the murder of his neighbour, Catharine Hanlin, had pled not guilty by reason of insanity. The trial featured many of the common issues illustrated in previous insanity trials — namely, troubles in securing unbiased jury, as illustrated by jury members being struck due to their "scruples" with capital punishment, or due to opinions already being formed on the case based on newspaper coverage of the murder.[156] However, Kleim's trial is especially notable due to the comments defending the psychiatric profession by the presiding judge. Speaking to the matter of insanity, Judge J.W. Edmonds noted that while insanity could occasionally be feigned, the level of knowledge of experts countered the ability for criminals to feign successfully; the knowledge of doctors would ultimately render any feigned attempt at insanity futile in the courts.[157] Consequently, Edmonds' charge to the jury acted almost as a defence for Kleim, as he assured the jury that this was not a case of feigned insanity, thus rejecting any notion that even the insanity of the defendant could be questioned in the trial. While the clash between legal and medical experts in cases of the insanity defence often illustrates the distrust of medical experts' support of the insanity defence by lawyers, jurists did sometimes offer support, and trust, of doctor's knowledge in the court. As Edmonds continued in his charge, the knowledge of experts

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[156] "Article VI. Homicidal Insanity," *American Journal of Insanity* vol. 1-2 (1844-1845): 245.

[157] "Article VI. "Homicidal Insanity," 261.

" could never be safely disregarded by courts and juries."[158] However, his statement came with a significant stipulation: these opinions were only valuable when given by doctors who specialized, or had experience, with mentally ill patients; the opinions of doctors with no experience in these matters did not carry the same weight.[159] Despite this warning, Edmonds still acknowledged that while both law and medicine were reconstructing conceptualizations of insanity within the courtroom it was "*the law in its slow and cautious progress [that] still lags far behind the advance of true knowledge.*"[160] Ultimately, Kleim would be found not guilty by reason of insanity, and would be sent to the State Lunatic Asylum at Utica.[161]

Such defences on the part of judges were not entirely surprising or isolated, as evidenced by a similar defence of expert witnesses' opinions occurring in other early insanity defence trials. Only a year after Kleim's trial, and one state away in New Jersey, the presiding judge in the trial of Eliphelet Spencer made an almost identical charge to the jury. As the *New York Herald* reported:

> Before entering upon this, he felt it due to the counsel for the defence, to state that there was not the least grounds to say, that the defence of insanity was feigned in any degree in this case, on the contrary, if ever it was set up in good faith upon any trial, it was on the present one. The painful history of the family as unfolded in evidence, was sufficient to show that the defence on this point was set up in good faith. In saying this, he was not to be supposed to indicate an opinion, whether the defence had or had not been sustained. That was a question for the jury, and he did not feel himself called upon to assume any responsibility, which the faith discharge of his official duty did not impose upon him.[162]

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[158] Ibid, 263.

[159] "Article VI. "Homicidal Insanity," *American Journal of Insanity* vol. 1-2 (1844-1845): 263.

[160] Ibid, 264.

[161] Italics used in original text; "Article VI. Homicidal Insanity," *American Journal of Insanity* vol. 1-2 (1844-1845): 266.

[162] "Trial of Spencer for the Murder of his Wife in Jersey City," *New York Herald,* September 27, 1846, 2.

While Chief Justice Hornblower does not reference the trial of Kleim in his charge to the jury, the similarities between two such early, and sensational, insanity defence trials do raise interesting questions on the potential dialogue of judges concerning the use of the plea at the time. As Kleim's trial and Spencer's trial had not been explicitly linked in either trial as well, these comments further allude to the informal connections being made in the legal sphere during the construction of the insanity defence after the introduction of the right versus wrong test in the United States. Regardless of any explicit relationship formed between the two trials, it is noteworthy that both judges defended both the use of an insanity plea in the given trials, and the expertise of medical specialists in the court. In the case of the positive support of the plea, jurists asserted that given the difficulty of identifying feigned insanity, the opinion of medical experts was key in judging the use of the plea. However, comments such as these signaled only one side of the support jurists lent to the "legitimate" use of an insanity defence — and what constituted a legitimate use.

However, by 1870, eminent judges expressed worries that the law concerning insanity remained as unclear as it did thirty years prior. In *State v. Pike*, Judge Charles Doe responded to the appeal of the case in an elaborate opinion supporting the charge of the court. Initially, the court's charge to the jury, on the matter of insanity, was that

> if they found that the prisoner killed Brown in a manner that would be criminal and unlawful if he was sane, their verdict should be 'not guilty by reason of insanity,' if the killing was the offspring or product of mental disease in the defendant; that neither delusion nor knowledge of right and wrong, nor design or cunning in planning and executing the killing and escaping or avoiding detection, nor ability to recognize acquaintance or to labor or transact business or manage affairs, is, as a matter of law, a test of mental disease, but that all symptoms and all tests of mental disease are purely matters of fact to be determined by the jury.[163]

[163] Lawson, *The Adjudged Cases on Insanity*, 311.

As noted in Lawson's inclusion of the case, the trial represented the "New Hampshire Rule," which called for no insanity test; the jury, in this case, was asked only to consider whether the killing was the "offspring or product" of mental illness. Given that states had begun to follow other popular tests in the 1840s, and that only two other primary tests existed at the time, the rejection of all tests was a notable one by the court. However, Doe's elaboration on his support of the call for no test illustrates that this reasoning was based partly on a rejection of the law's ability to judge insanity in the courts. As Doe stated,

> The legal profession, in profound ignorance of mental disease, have assailed the superintendents of asylums — who knew all that was known on the subject, and to whom the world owes an incalculable debt — as visionary theorists and sentimental philosophers, attempting to overturn settled principles of law; whereas, in fact, the legal profession were invading the province of medicine, and attempting to install old, exploded medical theories in the place of facts established in the progress of scientific knowledge.

Often, the question of juries' understanding of expert knowledge was raised within the court. The presence of expert witnesses in insanity trials was seen as necessary in some ways, but some jurists stated that their expertise was a bias in the courtroom. In the case of People v. Montgomery (1871), extensive discussions took place on the matter of jury and expert knowledge in the courtroom. While the state acknowledged that expert testimony was necessary, they criticized the power that lay in any kind of expert knowledge. Here, the state argued that "juries are inclined a great degree, perhaps, to take the opinion of a physician of good reputation and standing as to the insanity of an individual (and none will be called for the accused unless he will so testify)."[164] To the state, the danger of specialization was that it may go unchecked in the minds of jurors.

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[164] Austin Abbott, *The People against Montgomery: Oyer and Terminer of Monroe County, 1871.: Again, Supreme Court, Fourth Department, Eighth District; general term, January, 1872.* In "Reports of practice cases, determined in the courts of the state of New York […] New Series. Vol. XIII" eds. Austin Abbott. New York: Diossy & Company, 1873. 257.

The question of public trust in medical expertise was at the forefront of discourses regarding the insanity defence. In the face of public ambivalence towards scientific medicine, doctors and jurists alike were forced to reckon with public perceptions of the insanity defence. As these discussions show, medical authorities were well aware of these perceptions, and their impact within the court: doctors regularly addressed negative public perceptions of the insanity defence in medical literature at the time. Furthermore, jurists openly pointed to potential juror feelings regarding medicine, and their potential impact in evaluating the medical expertise of expert witnesses on insanity in the court. Regardless of whether jurists explicitly condemned, or supported, medical expertise, their focus on evaluating the authority of such expertise reflected the influence of broader public feelings towards psychiatrists entering the court. As these discussions across trial coverage and medical literature show, doctors were constantly engaging with public perceptions of the insanity defence, and the medical profession. Ultimately, medical expertise became a lightning rod for criticism due to doubt in newfound medical explanations for criminal responsibility: then, and now, it remains one of the main prongs for criticism launched against the insanity defence. It was an impossible task to use the defence without openly acknowledging and engaging with public perceptions of medical experts in the courtroom, thus illustrating the grasp that these perceptions had as the insanity defence was constructed at the moment it was medicalized.

Chapter Three

Gender:
Women, Intimate Murder, and the Cultural Constructions of the Insanity Plea

The opening statements of the defence for Mary Harris did not focus on the immediate circumstances surrounding the murder of her lover, Adoniram J. Burroughs, but rather on the intricacies of their relationship. Her lawyer, Joshua H. Bradley, began his testimony with an account of their relationship, which, in Bradley's narrative, explained Harris' state of mind when she shot Burroughs as he walked through the halls of the Treasury Department on January 30th, 1865.[165] Ultimately, both Mary Harris and Margaret Howard — a woman who would murder her husband's female lover in 1849 — would be found not guilty by reason of insanity, acquitted of the charge of first-degree murder and free to return home.[166] Compared to the slim number of cases that saw an insanity defence used, followed by the even slimmer numbers of those who were found not guilty by reason of insanity, the following trials of Mary Harris and Margaret Howard are notable due to the similarity of their circumstances and their final verdicts. Other cases further exemplify this overlap between intimate murder committed by women, and their use of the insanity defence. As the similarities in the narratives used to explain their crimes demonstrate, perceptions of gender permeated discussions within and outside the courtroom.

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[165] James O. Clephane, O*fficial report of the trial of Mary Harris: indicted for the murder of Adoniram J. Burroughs, before the Supreme Court of the District of Columbia (sitting as a criminal court), Monday, July 3, 1865* (Washington D.C. : W.H. & O.H. Morrison, 1865): 10; Margaret Seely Howard, *Trial of Mrs. Margaret Howard, for the murder of Miss Mary Ellen Smith, her husband's paramour, in Cincinnati, on the 2d of February last. Prefixed to the trial of Mrs. Howard may be found a memoir of her life, by Judge Brough, by which it will be seen that she has suffered all the indignities and cruelties which an inhuman husband could inflict* (Cincinnati: Barclay, 1849): 63.

[166] Within the context of this thesis, "intimate murder" refers to the murder of a romantic partner, or the extramarital lover of a romantic partner.

This chapter argues that the successful use of the insanity plea by women in cases of intimate murder reflected how much cultural perceptions of gender and the law permeated the construction of the plea in its infancy. Women's behaviour was frequently associated with their biology; of course, women were cast as the 'weaker' sex based on this supposedly inherent relationship between mind and body. Especially in trials where insanity pleas were invoked by women, the mind's susceptibility to insanity was increasingly associated with the impact of any extreme emotions experienced by defendants, especially emotions related to romantic relationships. These perceptions of gender often informed the use of the insanity plea for women in the courts, and prevailing medical knowledge frequently supported claims concerning women's susceptibility to insanity in these cases of intimate murder. Consequently, the odd 'success' of the insanity defence in these trials engendered anxiety about the use of the plea, as well as questions concerning the legitimacy of definitions of insanity at the time. Ultimately, these trials further challenged our contemporary notions that law and medicine could be objective, as these trials seemingly upheld and confirmed cultural attitudes of the Antebellum era.

While not formalized, "unwritten law" typically refers to cases in which men in patriarchal roles — husbands, brothers, fathers — murdered men who seduced their wives, sisters, or daughters. The acts committed by men in these cases were often justified by their patriarchal position within their family, with the claim that these acts were legitimized by men's right to defend their honour; consequently, men in these cases could receive lighter sentences or

acquittals based on this cultural, rather than legal, right.[167] While the concept of unwritten law was not a new one within the courts of the Antebellum era, legal scholars have argued that the popular use of this plea peaked from the mid-nineteenth century onwards.[168] Hendrik Hartog further argues that these unwritten law trials reveal the underlying "social, cultural, and political history" of the era. In this context, these particular trials offer important insights into the cultural landscape of popular morality in nineteenth-century America. It is worth noting that not only did the application of unwritten law in the trials of male defendants specifically peak at this point, but many were also accompanied by the formal use of an insanity defence. These trials illustrate that an odd, and notable, relationship was shared between the two pleas: one formal (insanity plea), and one informal (unwritten law).

The intersection between the insanity defence and arguing unwritten law in the trials of men emerged due in part to previous limitations on testimony and evidence that could be offered in the courts. As Ireland notes regarding several infamous unwritten law trials of men, the insanity defence offered a solution to the limits of the common law principle of provocation. Defence attorneys struggled to offer accounts of sexual or romantic history between defendants, as provocation was only justified by a reaction to catching a lover *in flagrante delicto*.[169] However, proof of sexual infidelity and other evidence that typically supported narratives of unwritten law in the court could enter the court record through the use of an insanity defence.

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[167] For discussions of definitions of unwritten law, see: Robert Ireland, "Insanity and the Unwritten Law," *The American Journal of Legal History* 32, no. 2 (April 1988): 157; Hendrik Hartog, "Lawyering, Husbands' Rights, and 'the Unwritten Law' in Nineteenth-Century America," *The Journal of American History* 84, no. 1 (1997): 67.

[168] Robert Ireland, "Frenzied and Fallen Females: Women and Sexual Dishonor in the Nineteenth-Century United States," *Journal of Women's History* 3, no. 3 (1992): 97.

[169] *In flagrante delicto* applies here to catching a lover in the act of sexual misconduct.

Here, an insanity defence allowed for the informal unwritten law to be argued in the court, and to be substantiated by arguing the male defendant had been temporarily insane when he had committed the crime.[170] As situations involving a romantic partner or a female family member triggered the 'temporary insanity,' of these men by means beyond immediate provocation, they could be brought up in the courtroom. Consequently, in significant cases, the insanity defence could be used to put forth the 'cultural defence' of unwritten law within the courts.

The use of the insanity defence alongside the invocation of unwritten law in trials of men reveal the significance of shifting conceptions of disease and criminal responsibility within the culture of Antebellum America. Namely, the introduction of a medicalized insanity test, in which medical expertise could support claims of madness in the courtroom, presented a new avenue for courts to consider legal responsibility. As definitions of insanity within the courts blended both legal and cultural knowledge, the insanity defence itself could be customized to the case in which it was invoked. As Hartog argues, the "fuzzy and undeveloped terms of nineteenth-century psychiatry" offered a certain malleability to the use of the insanity plea by defence lawyers. Claims of 'temporary insanity' were frequently used in these cases that involved both unwritten law and the insanity plea. Several scholars have argued that the popular — due to the prominent positions of both men in government — 1859 trial of Daniel Sickles, for the murder of Philip Barton Key, represented the first successful use of a temporary insanity plea. Sickles, a Congressman, shot and killed Key, the United States District Attorney at the time, outside of

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[170] Robert Ireland, "The Libertine Must Die: Sexual Dishonor and the Unwritten Law in the Nineteenth-century United States," *Journal of Social History* vol 32. No. 1 (Autumn 1989): 31-32.

Sickles' home after learning of Key's affair with his wife.[171] Furthermore, the case is often held as the start of the blending of unwritten law and the insanity defence.[172] Indeed, the continuing significance, and allure, of Sickles' trial is the assertion that it represents the first successful use of 'temporary insanity' as a defence to a crime.[173] As this literatures illustrates, this is an assertion that has gone relatively uncontested to this day. However, as this chapter argues, the use of temporary insanity as a plea — blending both the language of psychiatry and unwritten law— was used by women who preceded Sickles' case by over a decade.

It is important to note that while cases of unwritten law used by men frequently saw them defend their honour by killing the third party who had inflicted the moral wrong, this was not the case for women. Women who invoked narratives of unwritten law by defending their honour typically murdered their own partners who had ruined either their reputation or honour, not the individual whom their partners shared a relationship with. Men killed the lovers of their wives, not their wives. Women killed their lovers, not lovers' partners. Notably, in both scenarios, it is a male wrongdoer who is killed. Only one woman appears to have killed the mistress of her husband, and in this case, she too was acquitted on grounds of insanity.[174] These are fundamental

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171 Dawn Keetley, "From Anger to Jealousy: Explaining Domestic Homicide in Antebellum America," *Journal of Social History* vol. 42 no. 2 (Winter 2008): 269.

172 Three works focus on discussing the case of Sickles in relation to the history of unwritten law, to the history of the domestic homicide and jealousy, and to the history of the insanity defence. See: Hendrik Hartog, "Lawyering Husbands," 84; Dawn Keetley, "From Anger to Jealousy," 282; Robert Ireland, "Insanity and Unwritten Law," 157.

173 Along with the above three cases by Hartog, Keetley, and Ireland, most academic and popular literature to the trial of Sickles in 1859 refer to it as the first successful use of a plea of temporary insanity specifically. A small sample of this literature includes: Spiegel, Allen D, and Peter B Suskind. "Uncontrollable Frenzy and a Unique Temporary Insanity Plea." *Journal of community health* vol. 25 no. 2 (2000): 157–179; Nat Brandt, *The Congressman Who Got Away With Murder* (Syracuse: Syracuse University Press, 1991); Alexis Coe, "By Reason of Insanity," *Lapham's Quarterly*, May 21, 2015.

174 The case of Margaret Howard, referred to here, will be explored in-depth later in this chapter.

differences that must be considered in these cases. Not only are women's cases representative of how unwritten law was treated in the courts, but they also illustrated how intimate murder, committed by women, was treated: women shared a different dynamic and history with their victims, as they themselves were often the victim of their partner's behaviour — whether it be a broken promise of marriage, or domestic violence. Comparisons of notable cases in which both men and women invoked unwritten law have drawn conclusions that women receive harsher sentences than men in the nineteenth century. According to one of the studies of popular nineteenth-century unwritten cases for men and women, nine out of twelve women were acquitted, and all twelve men were acquitted.[175] However, it is worth noting that in this study, all twelve of the men's cases involved the murder of the lover of a wife or sister; in all twelve of the women's cases, it was their male lover who was murdered.[176] As these cases highlight, the dynamic between murderer and victim may also encourage us to also draw different conclusions regarding the 'harshness' of verdicts and sentences. Nonetheless, as both cases illustrate, women and men were acquitted in the majority of these unwritten law cases.

Consequently, the discussion and comparison of cases of unwritten law for both men and women necessitates discussion of its frequent overlap with intimate murder. While studies of intimate violence are often difficult to tabulate due to cases going unreported and unprosecuted, some significant studies on the subject have emerged regarding the rise in violence during the

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[175] Ireland also concludes that women's cases were treated more harshly as their sentences were not concluded as swiftly as that of men's. He notes that two were convicted, but eventually had their sentences overturned (Fair and Barberi). One other was sentenced to an asylum (Stoddart) and another was acquitted due to a hung jury (Hyde). Of the twelve men, 11 were acquitted, with one being sentenced and later acquitted; see Robert Ireland, "Frenzied and Fallen Females," 98-99.

[176] Ireland, "Frenzied and Fallen Females, 98-99.

nineteenth century. Between the early 1800s and the American Civil War, intimate murder — and specifically the murder of women in romantic relationships — increased ten-fold in northern New England.[177] The rise in intimate murder between spouses has been linked to shifts in the power dynamics in the relationships of men and women at the time, as well as shifting conceptions of spousal responsibilities in romantic relationships.[178] A broad survey of published nineteenth-century trial transcripts confirm that cases of intimate murder committed by men were five times larger than the number of cases of intimate murder committed by women.[179] Furthermore, these cases illustrate that men were punished for intimate murder much more harshly than women: men received 43 guilty verdicts in these cases, alongside eight verdicts of not guilty.[180] Women indicted in cases of intimate murder received five guilty verdicts and seven not guilty verdicts.[181]

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[177] Randolph Roth, "Spousal Murder in Northern New England, 1791-1865," in *Over the Threshold: Intimate Violence in Early America, 1640-1865,* ed. Christine Daniels (New York: Routledge Press, 1999): 65 and 67.

[178] Carolyn Strange, "Femininities and Masculinities: Looking Backward and Moving Forward in Criminal Legal Historical Gender Research," in *The Oxford Handbook of Legal History*, ed.Markus D. Dubber and Christopher Tomlins (New York: Oxford University Press): 226-227; Christine Stansell, *City of Women: Sex and Class in New York, 1789-1860* (Champaign: University of Illinois Press, 1987): 81.

[179] Thomas McDade's *Annals of Murder: A bibliography of books and pamphlets on American murders from colonial times to 1900* (Norman, OK: University of Oklahoma Press, 1961) offers an extensive bibliography of popular trial pamphlets. Examining cases which occurred between 1815 and 1880, I noted all cases of intimate murder (defined as the murder of a romantic partner, by a romantic partner, either alone or with an accomplice). Based on this criteria, 86 cases were noted. Of those 86, 71 represented cases of intimate murder committed by men (either alone with an accomplice), and 15 represented cases of intimate murder committed by women (either alone or with an accomplice).

[180] In the cases reported in McDade's bibliography, the twenty cases not included represent those which, for the most part, had no verdict or sentence reported in their respective trial transcript. However, some of these cases have no verdict, due to the fact that the men reported as the offenders in these cases committed suicide either immediately after the crime was committed (and in the same space in which it occurred), or while in prison after being arrested in suspicion of killing their romantic partners. Consequently, no verdict can be reported for these cases.

[181] The three cases not included represent only 1 case in which no sentence was reported. The other two consist of women who were named as accomplices in the murder of their husbands with a male accomplice. However, for whatever reason, they received no indictments despite their role in the crimes.

The harsher punishment of men in cases of intimate murder has also been observed in studies of the Gilded Age and Progressive era. Caroline Ramsey's study of intimate murder in Colorado and New York from the 1880s onwards argues the men who committed intimate murder faced much harsher consequences than women; not only could they receive a guilty verdict, but often they were more likely to receive sentences of life in prison, or a sentence of death in capital cases. Conversely, women were treated much more leniently in murder trials, contrary to popular portrayals of both men and women in nineteenth century courtrooms.[182] Even men who attempted to argue that they were provoked — and thus mimicking some of the language occasionally used in cases of unwritten law which invoked insanity defences — failed to defend their actions successfully within the courts. As Ramsey illustrates, "the common-law provocation doctrine mitigated the punishment of male defendants whose deadly behaviour fell within its narrow parameters, but as both a doctrinal and a cultural matter, it offered a smaller safety net than is often assumed."[183] Most importantly, Ramsey's evaluation of the murder trials of women at the time argues that even in cases where an insanity plea was invoked, cultural defences to the crime were seen as the primary reason for acquittal.[184] Consequently, by the end of the century, women benefitted from cultural narratives which painted them as a victim of their lover. These conclusions prove useful for delving into the treatment of women in the courts in similar cases, which also saw the use of an insanity defence, in the Antebellum era.

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[182] Carolyn Ramsey, "Intimate Homicide: Gender and Crime Control, 1880-1920," *University of Colorado Law Review* 77, no. 1 (2006): 141-142.

[183] Ramsey, "Intimate Homicide," 141-142.

[184] Notably, Ramsey argues that many of these cases of intimate murder where women killed their lovers were justified by a court narrative of a 'wronged' woman avenging themselves against the actions of a 'bad' man; see Ramsey, "Intimate Homicide," 120 and 123.

As these studies highlight, cases which blended both unwritten law and the insanity defence exemplify the ways that gender shaped conceptions of legal responsibility within the courts. Based on popular conceptions of gender roles in cases of unwritten law, there was a certain recognition that these cases were finding formal legal exceptions for unwritten law through the insanity defence. To a certain degree, this may have entailed perceptions of it as a 'cultural' defence in the courts. However, these perceptions functioned differently for both men and women. While men's use of both defences upheld cultural ideas of masculinity, women's use of both defences relied on cultural ideas of femininity. As cultural perceptions of gender and honour became entrenched in these cases of unwritten law, women could effectively use cultural perceptions of femininity to their apparent advantage by invoking the insanity defence. Ultimately, as these differences highlight the wider disparities between the treatment of both men and women in the court and public eye, they beg for a closer examination of how women blended both unwritten law and insanity defences during the nineteenth century.

Numerous cases from the nineteenth century saw primarily white women put forth insanity defences in cases in which they had murdered their romantic partners. The defence counsel for these women argued that these women had killed to defend their honour, using much the same language used for men in cases of unwritten law. This array of trials thus highlights these rare, yet notable, cases in which the language of unwritten law was employed for the benefit of female defendants invoking an insanity defence within the courts. As previously discussed, treatment of men's use of unwritten law, and its intersections with the use of the insanity defence, has received significant scholarly attention; however, there has been a lack of discussion of the same types of cases for women, especially in the Antebellum era. Close

analysis of the trials of Mary Harris and Margaret Howard, alongside other trials, reveal the complicated ways in which gender, law, and medicine interacted during this period. As this chapter argues, the trials of these women serve as a microcosm for a larger legal phenomenon in which the insanity defence functioned to uphold cultural norms and attitudes of its time. These cases offer insights into how the broader community's moral codes may have been enforced within the courts via unwritten law and the insanity defence, guided by popular conceptions of gender. Furthermore, the trials of these women illustrate the ways in which popular knowledge concerning women and their behaviour was reinforced by the specialized knowledge of doctors and lawyers within the narratives of these trials. Ultimately, these cases present an opportunity to consider how the insanity defence may have acted as both a legal, and cultural, loophole for women in a time when they had almost no independent legal rights. Not only do the successes of these women's trials point to the multidimensional nature of the defence, but they also raise important questions regarding how the plea may have reinforced moral attitudes regarding criminal responsibility in the Antebellum era.

Mary Harris, 'Disappointment in Love," and the Gendered Making of an Insanity Defence

The sensational 1865 trial of Mary Harris exemplified the complex blending of the insanity defence, alongside the language of unwritten law, in the intimate murder case of a woman killing her lover. Harris came from an Irish family in Burlington, Iowa; as a child, she was afforded "few advantages of early education and moral culture."[185] Despite this, the defence emphasized that work at a young age afforded her the opportunity to refine herself. Quickly,

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[185] Clephane, *Official report of the trial of Mary Harris,* 10.

Joshua H. Bradley — one of her defence lawyers' — turned his opening statements from Harris's early life to her first encounter with Adoniram J. Burroughs. Bradley's opening statement for Harris's defence depict both the growth of Burroughs's relationship and Harris's role, revealing not only a contemporary depiction of romantic love, but sympathy for Harris's position in the relationship. At the age of thirty-two, Burroughs initiated contact with Harris when she was ten year old and employed in a Burlington millinery. Burroughs, a local business owner, frequented the shop for fine men's clothing. It was here that the two became acquainted; after several years, Burroughs left the city for work and the two began to exchange letters.[186] Burroughs allegedly wrote to Harris that he intended to marry her, though he never did. The moral character of both Harris and Burroughs, alongside their age difference, became a focal point for the defence, as they emphasized that "she [was] a young girl, 17 years of age, pure and spotless; he [was] a man well known in society, with a long experience in the ways of the world — a man of education and refinement."[187] According to Harris' defence, it was impossible to circumvent that the experienced Burroughs had led on the innocent Harris. While a seemingly small issue to a contemporary audience, the seriousness of the relationship was of the utmost importance to the defence lawyers of Harris — ultimately, it formed the crux of the argument for the defence of Harris' murder of Burroughs.

With the absence of a legitimate marriage between Harris and Burroughs, Bradley's narrative relies primarily on the ninety-two letters exchanged between the two over a period of five years to illustrate the legitimacy of the romantic relationship they shared. Furthermore,

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[186] Clephane, *Official report of the trial of Mary Harris,* 10 and 28.

[187] Ibid, 11.

proving the existence of the relationship was key to supporting an insanity defence for Harris. As a result, introducing the letters as evidence quickly became a contentious issue within the court.[188] In response, the prosecution primarily attacked the legitimacy of the letters exchanged between Harris and Burroughs to undermine the legitimacy of their relationship. If it could be argued that "no meaningful agreement" of marriage had existed, the supporting evidence for Harris' plea of insanity would be severely undermined.[189] However, once admitted, the letters clearly illustrated an intimate relationship shared between Burroughs and Harris. Notably, Burroughs' affectionate letters also frequently included discussions of future marriage between the two and specified his intention to marry her in June of 1863.[190] Two months later, he would marry another woman.[191] Even in the absence of a formal marriage, the defence could effectively show the serious nature of the relationship through the letters.

Based on the intimate nature of Harris and Burroughs' relationship, the defence then sought to prove Burroughs' active and deliberate deception of Harris in the relationship as a means of proving his role in 'disturbing' her mental state. The presentation of this evidence played on conceptualizations of both male and female honour. Burroughs' deception of Harris also served to depict him as a less sympathetic victim, while Harris was poised as a more sympathetic offender. The primary evidence of this deception was two letters sent by 'J.B Greenwood' to Harris in early September — mere weeks after Burroughs had written her —

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[188] Clephane, *Official report of the trial of Mary Harris*, 27-28.

[189] Ibid, 30.

[190] Ibid, 11.

[191] Ibid, 28.

stating that he wanted to meet her and make her acquaintance in hopes that a "mutual friendship may result from it."[192] However, the matter discussed in court was whether Burroughs was in fact the author of these letters, using a false name, in order to mislead Harris. Given that the letters were received around the time when Burroughs had married another woman, suspicion was cast on them. The witness for the prosecution — Burroughs' boss — stated the handwriting of the two letters was clearly not Burroughs. Nonetheless, as the defence interrupted, it was possible he had simply written it in a "disguised and fictitious hand."[193]

Subsequently, the defence used their own eyewitness testimony to counter evaluations of the handwriting. The postal clerk who had received Greenwood's second letter confirmed to the Devlin sisters — Harris' bosses at the millinery with whom she also boarded — that the man who had sent the letters strongly resembled Burroughs upon seeing a photograph. The clerk also identified the man as Burroughs due to the fact that he had a ring on his little finger — as Burroughs also wore a ring on the same finger.[194] Furthermore, the woman at the assignation house at which Greenwood wanted to meet at confirmed she was "certain" it had been a man resembling Burroughs waiting in the house on the day of the proposed meeting. Notably, the assignation house was known to be of 'bad' reputation.[195] The suggestion that Burroughs had knowingly deceived Harris, while also leading her to a house of bad reputation, led the defence to condemn him for attempting to ruin her reputation and honour:

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[192] Clephane, *Official report of the trial of Mary Harris*, 12 and 42.

[193] Ibid,81.

[194] Ibid, 43.

[195] Ibid, 45.

> It was not her soul that he expected to pollute, but her name. [...] If she struggled and cried out against her cruel fate, he could silence her. Or if she refused to be still in her sufferings he could close the ears and steel the hearts of all virtuous people against her. If she entered that house she could come out covered with an everlasting mildew. Her heart might be as pure as before, for she was unconscious of its character, but her name would be spotted with an incurable leprosy.[196]

The vivid description of Burroughs' attempts to diminish Harris' reputation by the defence highlighted the many ways that gendered conceptions of honour were woven into the cases. As other scholars have argued, the defence of one's honour legitimized some crimes — often in cases of intimate violence.[197] In these cases, jurists once again relied on the law in "spirit" rather than the law of the books. As the extent of these arguments show, playing to these moral expectations of both femininity and masculinity were essential to both the prosecution and defence's arguments regarding whether Harris had been justified in her avenging her own honour.

Previous discussions of Harris' trial have given significant attention to the use of a temporary insanity defence by Harris. Of the few scholarly works on the trial, discussions have focused primarily on the conflict between law and medicine concerning the use of a plea of temporary insanity and conflicts between psychiatrists concerning the definitions of insanity.[198] Notably, only one scholar has approached the case as an example of feigned insanity - though no

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[196] Clephane, *Official report of the trial of Mary Harris*, 148.

[197] The invocation of unwritten law typically relied heavily on conceptualizations of defending one's honour; see Hartog, "Lawyering, Husbands' Rights," 70; Ireland, "Insanity and the Unwritten Law," 164; Ramsey, "Intimate Homicide," 120. However, as Ramsey illustrates in a rare analysis of women committing intimate murder in cases after 1880, dishonoured women could benefit within courts by playing to norms that affirmed an individual's right to defend their honour in the 19th century; see Ramsey, "Intimate Homicide," 120-121.

[198] Carson and Spiegel et al. focus on "mad doctors" and "common-sense" doctors to highlight conflict between and within professions at the time: see A. Cheree Carson,T*he Crimes of Womanhood: Defining Femininity in a Court of Law (*Champaign, IL: University of Illinois Press, 2010); Allen D. Spiegel, and Merrill S. Spiegel, "Not Guilty of Murder by Reason of Paroxysmal Insanity: The 'Mad' Doctor vs. 'Common-Sense' Doctors in an 1865 Trial," *Psychiatric Quarterly* 62, no. 1 (March 1991): 51-66.

evidence exists to show that Harris had feigned her insanity.[199] Rather than challenge the alleged objectivity of experts who upheld Harris' use of an insanity defence according to medicalized notions of femininity and insanity, Geller's work has simply asserted that Harris herself deceived a courtroom by feigning her insanity. Historian Cheree Carson instead directs our attention to gendered narratives of insanity in Harris' trial. Medical experts, Carson argues, legitimized narratives concerning women's honour and physical biology. She effectively illustrates this as she offers a deep analysis of the narratives concerning moral insanity and women's biology argued by psychiatrists within the courtroom. However, while these narratives broaden our understanding of the way narratives of gender were weaponized within the trial, these works lack a broader discussion of the intertwined context of the legal, medical, and cultural realms of Antebellum America. Namely, there is a continued silence in the literature regarding the overlap between unwritten law and the use of the insanity plea within Mary Harris' trial. Based on my own analysis, it is the broader yet essential context of unwritten law that helps us to understand how Harris' trial was situated within the legal-cultural context of the nineteenth century. One key component of this context was cultural narratives regarding femininity and insanity that were frequently substantiated by courtroom testimony and media surrounding Harris' trial.

Central to the trial, both in the arguments contained in the court and the perceptions of the case outside of it, was the conflation between women's physical biology and their behaviour.

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[199] Harris is listed as a criminal court case in which insanity was feigned. However, as other works illustrate, it is unlikely that Harris' insanity was feigned, despite the contested nature of the trial. See for discussion of feigned insanity: Jeffrey Geller et al., "Feigned Insanity in Nineteenth-Century America: Tactics, Trials, and Truth." *Behavioral Sciences & the Law* 8, no. 1 (Winter 1990): 20. Spiegel notes that after the trial, Harris was institutionalized on several occasions, thus challenging the notion of her feigned insanity. See Allen Spiegel and Merrill Spiegel, "Not guilty of murder by reason of paroxysmal insanity: The 'mad' doctor vs. 'common-sense' doctors in an 1865 trial." *Psychiatric Quarterly* vol. 62, no. 1 (March 1991): 60.

Female sexuality, both within and outside the confines of marriage, invited concern from all aspects of nineteenth-century society. As traditional gender roles were challenged by the shifting economy of the nineteenth-century, alongside the changing legal context of families and marriage, women saw an opportunity to "question — and a few to challenge overtly — their constricted place in society."[200] Beginning in the Antebellum era, significant changes in both marital law, custody law, and divorce law reflected the formal changes which signaled the small, yet increasing, appearance of legal rights for women. Even if these changes did not lead to significant victories within the courts, the symbolism remained: a husbands' power in the home was being threatened.[201] Within white middle-class culture, the role of women as wife and mother first also dictated that it was these roles that predominantly governed their behaviour. These cultural perceptions of femininity only became further entrenched in nineteenth-century medicine. In an effort to curb women's efforts to break out of traditional roles in a changing social landscape, both medical and scientific knowledge began to assert that these roles were ingrained in women's physiology.[202] These claims further supported perceptions that saw men as governed by rationality, whereas women were governed by emotions.[203] Naturally, both medical and popular perceptions further supported claims of women's susceptibility to insanity. Per

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[200] Carroll Smith-Rosenberg and Charles Rosenberg, "The Female Animal: Medical and Biological Views of Woman and Her Role in Nineteenth-Century America," *The Journal of American History* 60, no. 2 (1973): 333.

[201] Hartog, "Lawyering Husbands, " 94-95.

[202] Smith-Rosenberg and Rosenberg, "The Female Animal," 333.

[203] Lynn Gamwell and Nancy Tomes, *Madness in America: Cultural and Medical Perceptions of Mental Illness before 1914* (Ithaca, NY: Cornell University Press, 1995): 109.

nineteenth-century doctors, women's nervous systems were weak, and thus any over-stimulation could provoke their feelings to overtake their 'reason.'[204]

Consequently, the medical experts for the defence relied primarily on two causes to explain — and justify — Mary Harris' insanity: "painful dysmenorrhoea and disappointment in love."[205] Broadly imagined, both of these causes encapsulated a definition of "paroxysmal insanity from moral causes."[206] In other words, Harris had suffered from a bout of temporary insanity stemming from her menstrual cycle and from the breakdown of her relationship with Burroughs. Joseph H. Bradley, Esq, the lead defence lawyer for Harris' counsel, contributed a notable strength to her case as he argued for her case before the court: Bradley was a lawyer and a doctor, much to the advantage of Harris and her case.[207] Initially, Bradley had declined to act as her defence, but he agreed to visit her in order to evaluate her condition.[208] As a result of his multiple visits to Harris where he evaluated her symptoms and behaviour, he acted not only as counsel for the defence, but also as a witness.[209] Alongside his testimony, other doctors helped confirm and define Harris' insanity. Dr. Calvin M. Fitch, the personal doctor of Harris cited cases in which the periodic — or paroxysmal — physical pain of menstruation caused women to

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[204] Smith-Rosenberg and Rosenberg, "The Female Animal," 334.

[205] Clephane, *Official report of the trial of Mary Harris*, 74.

[206] Ibid, 17.

[207] As other authors have indicated, it is not uncommon that Bradley was able to practice within both professions in nineteenth-century America. As Carson noted, a lack of need for formal education in both professions made such an endeavour possible; see Carson, *The Crimes of Womanhood*, 44.

[208] Clephane, *Official report of the trial of Mary Harris*, 17.

[209] Ibid, 61.

experience "what is termed 'emotional insanity,' or a 'homicidal insanity.'"[210] Subsequently, the contributing physical explanation for Harris' state was dysmenorrhoea, or menstrual cramps. In this case, paroxysmal insanity alluded to the insanity that could accompany the periodic intervals of pain caused by menstrual cramps. Mary Harris was suffering from dysmenorrhoea soon after she committed her murder, and as Dr. Fitch explained, it was integral to understanding her mental state at the time of the crime. "Uterine irritation always affects the nervous system [...] in some instances it develops into insanity; and, indeed, a disturbance of the uterus — uterine irritability — is with females one of the most frequent causes of insanity." Per this theory suggested by medical experts at the time, as the pain wore off, women would no longer experience paroxysmal insanity. Thus, Harris' form of temporary insanity was upheld by these physical descriptions of her menstrual cycle, and its impact on her state of mind.

Both physical and mental states were intricately linked in the acute event of menstruation, and they were further supported as Fitch expanded on the contributing role of disappointed affection in the case. As mentioned earlier, the moral causes of Harris' insanity referred to the role of 'disappointment in love' in triggering insanity in women specifically. In this case, Fitch confirmed his view that the mental state of women was greatly affected by any disappointment in love, stating that "We know that among the moral causes of insanity, disappointed affection is one of the most frequent."[211] Undoubtedly, even medical definitions were couched in prevailing ideas concerning the morals of Antebellum society. However, it was not only 'disappointed affection' that impacted women's mental state. Ultimately, these medicalized explanations of

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[210] Clephane, *Official report of the trial of Mary Harris*, 52.

[211] Ibid, 51.

female behaviour supported not only one, but two, causes of Harris' insanity. Inevitably, as Fitch remarked, "The combination of these two causes we should naturally expect to product a very much greater effect than either would inducc [sic] alone."[212] Under the given circumstances and medical diagnoses offered by physicians at the time, it seemed that Mary Harris' insanity was the inescapable culmination events seemingly out of her control.

As cultural perceptions shaped medical and moral ideas concerning Mary Harris' guilt, the prosecution attempted to rebut these ideas. The prosecution understood the influence that public attitudes and morals — especially regarding an individual's honour — could have within the courts. However, the defence recognized the similarities between previous iterations of unwritten law — as it applied to men — and Mary Harris's actions. Furthermore, the defence's version of unwritten law, as it might be applied to women such as Mary Harris, also had medical knowledge to lend it legitimacy both in the court and in the public eye. Despite this, the defence still chose to further substantiate their arguments regarding the legitimacy of Harris's actions by invoking unwritten law. The defence elaborated on the similarity between Harris's actions and previous iterations of 'unwritten law' invoked by men in other trials of the Antebellum era. As the defence argued, the law did state that "to shoot down an adulterer in the act is manslaughter," rather than an act of first degree murder; in essence, acting upon unwritten law downplayed the seriousness of the charge. However, as the defence remarked, while a punishment should be given in such cases, "I do not believe that a single jury has ever found a man guilty in such a case."[213]. The recent, and popular, trial of Daniel E. Sickles in 1859 also invoked this unwritten

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[212] Clephane, *Official report of the trial of Mary Harris*, 51.

[213] Ibid, 134.

law alongside the use of the insanity plea, and it reminded the jury that it was within their power to rule in such a way. Harris's defence referred to the infamous trial of Daniel E. Sickles to illustrate the most recent and popular example of the insanity plea being used in a case which also invoked unwritten law. As the defence noted in Harris' trial, "[I]t is said that the jury acquitted him because they thought he did right. I presume there was enough evidence thrown into the case upon the question of insanity to authorize them to acquit him […]" [214] In this case, there was an implicit understanding amongst these juries that the unwritten law referred to in Sickles and other recent court cases, endorsed the nullification of the law as it was written. As the defence highlighted the relationship between these cases and their own, they framed their own version of unwritten law for women such as Mary Harris.

The reference to previous iterations of unwritten law by Harris's lawyers illustrate how jurists were acutely aware of how to appeal to the Antebellum values of Harris' jury, especially in the shadow of Jacksonian "democracy". Juries were not beholden to following the instructions of the court to the letter. The defence emphasized the power of the individual, stating that the jurymen embodied "the spirit and the manners of his country" and that they could apply the law contrary to what was instructed to them by the court. These statements echoed attitudes which empowered the "common sense" of the white, male jury, much in step with values of the Jacksonian era. The defence further enabled the jury by reminding them that they could offer a more lenient punishment, as "they in the application of the law will relieve any harsh or oppressive features."[215] As the defence appealed to its audience — a white, all male jury — it

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[214] Clephane, *Official report of the trial of Mary Harris*,137.

[215] Ibid, 134.

aptly reminded them of the treatment of unwritten law within the court. Caroline Ramsey has also noted that while public criticisms of cases of intimate murder and unwritten law in the 1880s often blamed the prosecution for being too lenient, it was ultimately the jury who expressed the most leniency in verdicts and sentences handed to female defendants.[216] The Antebellum-era defence lawyers of Mary Harris' defence also understood that it was the jury who might understand the moral decisions that lay behind these cases of unwritten law. The insanity plea was legitimate, but also a technicality that could be used by the jury to impose recognition of unwritten law.

However, popular perceptions of the Harris' case throughout the trial were not consistent, and these perceptions vacillated between supportive and condemnatory. Much in the same vein of the general reactions to the use of the insanity defence in a criminal trial, newspaper articles quickly articulated negative public opinions about the case of Harris. Soon after Harris had murdered Burroughs, one newspaper stated that "public opinion is strongly against the prisoner.[217] Without the details of the case, such as the history of the relationship between Burroughs and Harris, or his deception of her, it is understandable that this may have been the initial reaction to the case. However, as the case proceeded, reactions to the case vastly shifted to a much more positive and sympathetic opinion. As closing arguments were quickly approaching, newspapers reported that "[...] some [were] predicting that the jury will not even leave the box to render their verdict."[218] While the report of Harris' trial simply states that the jury returned with a

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[216] Ramsey, "Intimate Murder," 117.

[217] *Boston Traveler*, February 20, 1865.

[218] *Daily Albany Argus*, July 16, 1865.

not guilty plea, newspapers were able to capture the sheer magnitude of the reactions within the courtroom at the time:

> The jury retired to their room and in about ten minutes returned with a verdict of "Not Guilty." The announcement was received with loud applause. Some women cried with joy and handkerchiefs were waved and hats thrown up. A large number of spectators rushed towards Miss Harris to congratulate her on her acquittal, the words of which had scarcely been announced when she fainted and was taken from the Court room in the arms of Mr. Bradley, her senior counsel.[219]

By the end of the case, both the jury, the courtroom audience, and the media firmly agreed in their opinion of Harris: she was not guilty of any real crime.

Many of the trials of women who blended narratives of unwritten law with the use of the insanity defence inspired support from some of the most well-known suffragettes at the time. Accordingly, some suffragettes argued that these cases exemplified the poor treatment of women by men within nineteenth-century society. As Ireland argues, these cases illustrated the effects of an "epidemic of male libertinism that was undermining American womanhood and the republic itself."[220] Consequently, the women who supported the use of unwritten law, and the insanity defence, framed these crimes as tragic, yet understandable, reactions by women whose reputations had been potentially ruined by dishonest men. Hayden's survey of imprisoned women in Antebellum Pennsylvania further illustrates that women who committed violent crimes often had few other options for legal redress.[221]

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[219] *Boston Evening Transcript*, July 20,1865.

[220] Ireland's research demonstrates that often suffragettes lent their support to the women involved in these unwritten law trials, which often saw the use of an insanity plea as well. These suffragettes include: Lydia Maria Child (for Amelia Norman); Jane Grey Swisshelm (for Mary Harris); and Susan B. Anthony, Elizabeth Cady Stanton and Emily Pitt Stevens (for Laura D. Fair): Ireland, "Frenzied and Fallen Women," 106-107. See also Carole Haber's work for discussion of these suffragettes support of Fair: Carole Haber, *The Trials of Laura Fair: Sex, Murder, and Insanity in the Victorian Wes*t (Chapel Hill: University of North Carolina Press, 2013): 134.

[221] Erica Rhodes Hayden, *Troublesome Women: Gender, Crime, and Punishment in Antebellum Pennsylvania* (University Park, PA: Penn State University, 2019): 46.

Furthermore, Ireland's survey of Postbellum unwritten law cases illustrates a trend of 'success' for women who blended the language of unwritten law with the use of an insanity defence. Out of a sample of fourteen women who committed intimate murder, three women were found guilty and did not have this sentence overturned and/or had a new trial ordered: Caroline Vreeland (1870), Kate Southern (1878) and Theresa Sturla (1882).[222] Two women were found guilty of murder in their initial trails, but upon court orders of a retrial, were found not guilty: Laura D. Fair (1872) and Maria Barberi (1895).[223] One woman, Fanny Hyde, was acquitted due to a hung jury.[224] Eight women would be found not guilty in their respective cases, including Margaret Howard and Mary Harris: Lucretia Chapman (1831); Hannah Kinney (1840); Amelia Norman (1843); Margaret Garrity (1851); Mary Moriarty (1855); Mary Jane Sebastian (1857); Kate Stoddart/Lizzie King (1873); and Emma Norment (1886).[225] However, these cases of unwritten law are of particular interest due to how many saw the use of insanity defences. Out of fourteen cases, ten women put forth a defence of not guilty by reason of insanity. Only Theresa

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[222] Vreeland murdered her daughter's lover (Robert Schroeder), after he got her pregnant out of wedlock and subsequently convinced her to get an abortion. Vreeland was found guilty and sentenced to "five years of hard labor." Kate Southern was found guilty for the murder of her husband's mistress. Theresa Sturla was found guilty of manslaughter in the murder of her partner, Charles Stiles. See: Ireland, "Frenzied and Fallen Women," 98 and 100.

[223] Laura D. Fair murdered Alexander Crittenden, her longtime lover, when she discovered he had no intention of leaving his wife and family. Maria Barberi murdered her lover after she discovered he had no intention of marrying her. For discussion of both cases, see Ireland, "Frenzied and Fallen Women," 98.

[224] Hyde murdered her employer, George W. Watson, after he had seduced her and impregnated her. See: Ireland, "Frenzied and Fallen Females, 98; Ann Jones, *Women Who Kill* (Boston: Beacon Press): 153-155.

[225] The cases of Norman, Garrity, Moriarty, Stoddart, and Norment are discussed in Ireland, "Frenzied and Fallen Women." Ireland also discusses the case of Harris, but not Howard. For further discussion of Norman, see Jones, *Women Who Kill*; and Hibbard and Parry, "Law, Seduction, and the Sentimental Heroine: The Case of Amelia Norman." For further discussion of Moriarty, see: Jones, *Women Who Kill*, 153-154. For Sebastian, see: Hayden, *Troublesome Women*, 25-28. For Stoddart, see: Jones, *Women Who Kill*, 153-156.

Sturla invoked the plea unsuccessfully in her trial for the murder of her lover, Charles Stiles.[226] However, eight other women would plead not guilty by reason of insanity and would see these pleas affirmed by the juries in their respective trials.[227] Consequently, not only did 10 out of 14 unwritten law trials have an insanity defence used in their proceedings, but 9 out of 10 of these uses were successful. As case studies have shown, there is significant overlap between unwritten law and the use of an insanity defence, and there is much we can learn about cultural constructions of the insanity defence by placing these trials in conversation with each other. As we see, the use of an insanity plea in cases where a woman committed intimate murder significantly affected whether or not the plea would be successful; unlike many trials which saw the use of an insanity plea, trials with these shared characteristics were consistently successful. All these cases merit a closer examination altogether. However, even broadly examined, they reveal an integral relationship between the gender of defendant in criminal trials, the use of an insanity plea, and the commission of intimate murder.

Margaret Howard, Domestic Abuse, and the Insanity Defence

As the case of 1849 trial of Margaret Howard also illustrates, it was not simply matters of romantic love that illustrated gendered conceptions of insanity within the courts — familial relationships were equally significant. While the case of Margaret Howard and Mary Harris share important similarities, the trial of Howard also illustrates how motherhood, and maternal

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[226] Ireland, 'Frenzied and Fallen Women," 105.

[227] The eight other women who were found not guilty by reason of insanity are (in chronological order): Amelia Norman (1843); Margaret Howard (1849); Margaret Garrity (1851); Mary Jane Sebestain (1857); Mary Harris (1865); Laura D. Fair (1872); Kate Stoddart/Lizzie King (1873); and Maria Barberi (1895).

love, influenced discussions concerning gender and insanity within the courts. Furthermore, the trial of Howard also exemplifies one of the few cases in which a woman who invoked unwritten law killed the lover of her partner, and not her partner himself. Much like other cases of intimate murder, Margaret Howard's case demonstrates how discussions of physical, mental, and/or emotional abuse by male partners supported the use of the insanity defence in these cases where it was invoked. Both Harris and Howards' cases illustrate that the blending of the language of unwritten law in cases where an insanity defence was invoked by a women complicated the meaning of the defence to a contemporary audience. Ultimately, the use of the plea in these cases were especially influential in showcasing that the plea functioned as a 'cultural' defence at times, as it upheld and substantiated the values of Antebellum society.

The beginning of Margaret Howard's life offers many similarities to Mary Harris'; however, the circumstances leading up to the murder she committed are notably different. Much like Mary Harris, Howard met John Howard while she was still in school in Peoria, Illinois at approximately fourteen years old, while he was in the "prime of manhood." Soon after meeting they eloped from Peoria to Cincinnati.[228] The couple had two children together, but the relationship quickly took a turn for the worst when John began to abuse Margaret.[229] In 1849, John began boarding with another woman, Mary Ellen Smith, who claimed to be his wife; the two planned to move to New Orleans with both of Margaret Howard's children.[230] When

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[228] Margaret Seely Howard, *Trial of Mrs. Margaret Howard, for the murder of Miss Mary Ellen Smith, her husband's paramour, in Cincinnati, on the 2d of February last. Prefixed to the trial of Mrs. Howard may be found a memoir of her life, by Judge Brough, by which it will be seen that she has suffered all the indignities and cruelties which an inhuman husband could inflict* (Cincinnati: Barclay, 1849): 5.

[229] Howard, *Trial of Mrs. Margaret Howard*, 6.

[230] At this time, witnesses estimated that Mary Ellen Smith was approximately twenty-three years old, and John Howard was approximately forty; see Howard, *Trial of Mrs. Margaret Howard*, 23-24.

Margaret learned of her husband's plan to leave with her children, she asked her landlord in a "very wild" manner if she had a knife she could borrow, implying she needed it to protect herself against Mr. Howard when she went to go meet him. After being given a dull knife, which she would sharpen afterwards, she left the house with "her eyes [...] glazing: words incoherent: sentences disconnected: she acted like a person who didn't know what they were doing or saying."[231] Knife in hand, newly sharpened, Margaret made her way to find John. Upon finding John Howard's boarding house, Margaret asked for him. When she was told only Mrs. Howard was in, she agreed to see her instead.[232] When she asked Mary Ellen Smith if she was Mrs. Howard, and she affirmed that she was, she "roused all the demon that was in me [Margaret Howard], and I sprang at her, and said to her, you wretch you, *I am Mrs. Howard*."[233] Margaret Howard then stabbed Mary Ellen Smith, and quickly ran out of the home.[234] Upon meeting a witness in the street after the crime, she exclaimed in shock, "Oh my God, what crimes has that man made me commit!"[235] As witness testimony began to show, John Howard was held equally responsible for Margaret's actions.

The abuse inflicted on Margaret Howard by her husband formed a significant component of her defence. Not only did the extent of the abuse elicit sympathy for her case, but it also appealed once again to conceptualizations of male and female honour in nineteenth-century America; in this case, the defence narrative painted John as the dishonourable husband, and

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[231] Howard, *Trial of Mrs. Margaret Howard*, 35.

[232] Ibid, 24.

[233] Ibid, 29.

[234] Ibid, 21.

[235] Ibid, 25.

Margaret the honourable wife. Furthermore, the physical, mental and emotional violence inflicted on Mrs. Howard underscored the defence's assertion that it was her husband who was responsible for causing her insanity. Witnesses reported that it was well-known that Howard was both a gambler and an alcoholic, further encouraging harsh judgment of his actions as a husband and father. Mary Langsing, who also lived in a boarding house with the family, reported that Mr Howard had repeatedly abused and threatened his wife with violence in their home. Physical abuse consisted of attacking her with a bowie knife, as well as striking her with a chair. On another occasion, it was reported that he shot his gun through the window in order to threaten her. His abuse also targeted both Margaret and the children:

> When the aforesaid child was not more than three weeks old, on one occasion he came home, went into her room, took from her all the bedclothes, then locked himself with them in another room, and left his wife and child to freeze, for the weather was very cold; it was December."[236]

Despite the violent conditions, Mrs. Howard attempted legal redress for her abusive situation. After being whipped by her husband in an attack five years prior to the murder, she sought advice from a local judge on what to do. He advised that she plead her case to the Court of Common Pleas, but it never came to be.[237] At the advice of her attorney, she attempted both to file for divorce, as well as petition the courts for custody of her children. These were dismissed without trial in the court of Clermont County.[238] Despite her attempts to protect both herself and her children, Margaret Howard was unable to escape her husband. Ultimately, it was his constant snatching of her children that formed a significant aspect of the defence's claims for what had

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[236] Howard, *Trial of Mrs. Margaret Howard,* 7.

[237] Ibid, 31.

[238] Ibid, 43.

caused her insanity. One witness explained that Howard had once shown up at the boarding house with his armed friends, who sought to take the children from Mrs. Howard. After beating her with a pistol, he left with one of the children. After this abuse, Mrs. Howard cried, "My God! My God! What shall I do? This villain has robbed me of my character, and now he has robbed me of my child."[239] As the witness stated, "It was her child she felt."[240]

Alongside the abuse inflicted by her husband, the second, and main, component of Margaret Howard's legal defence was the mental distress caused by the frequent kidnapping of her own children by her husband. As her defence argued, it was the pain of potentially losing her children which contributed to her insanity. Much in the same way as 'disappointment in love' acted as the moral cause of Mary Harris' insanity, so did the loss of Mrs. Howard's children act as a moral cause for her own madness. Contemporary medical experts asserted that the loss of a woman's partner or her children "could bring on uncontrollable grief and drive her insane," exemplifying the perception of the essential nature of women as both mother and wife.[241] Both John Howard and Margaret Howard did live separately for a time; during this period, John Howard paid for the room and board of his wife and children. However, the women with whom Margaret boarded reported to her that John had asked to take the children for a bit. Airing her anxieties concerning her husband, she told the women that she was "uneasy that he would take the children away, because, said she, he is a bad man in every way, and wants to take them not so

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[239] This quote is also the quote that accompanies the only illustration included in the trial transcript; Howard, *Trial of Mrs. Margaret Howard*, 51.

[240] Ibid, 51.

[241] Gamwell and Tomes, *Madness in America*, 109.

much for love to them as to punish me."[242] Mr. Howard knew that taking the children from their mother was one more method to abuse her, and subsequently, this became one of Margaret Howard's main fears. Unfortunately, John Howard proved that these fears were well-founded, as he would steal the children from Margaret on several occasions. During one incident, Mrs. Howard stated that "she would not eat or sleep until she had got the children. She went out and ran down to Mr Scott's, and ran back and forth like a crazy woman. [...] This state of mind continued for a week or two or three, until she got her children."[243] Many witnesses associated both the Howard's abuse, alongside the kidnapping of the children, as proof of her insanity on the night of the murder.[244] As one remarked, "No one knew what she had suffered: she had lived fifty years in four; she had suffered so much her mind was gone; that at times, when her children were mentioned, she did not know what she was doing."[245] As witnesses described her behaviour, it was often the topic of her children that sparked behaviour which confirmed her insanity regarding the topic. Any reference to them "set her brain on fire;" often, it was this very phrase she used to describe her feelings when the topic of her children was broached.[246] As one doctor noted, this comment in itself was "a common remark of persons in incipient stages of insanity."[247]

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[242] Howard, *Trial of Mrs. Margaret Howard*, 33.

[243] Ibid, 33.

[244] Ibid, 32.

[245] Ibid,39.

[246] Ibid, 39.

[247] Ibid, 47.

Consequently, motherhood and maternal love became a cornerstone of explaining Margaret Howard's insanity. Once again, the moral causes of insanity were also accompanied by a conflation of women's biology with their behaviour. Doctors also noted the role of marital violence, as one doctor noted that "Domestic discordance is certainly a very fruitful source of insanity [...] presume hers was under the general head of moral insanity."[248] However, narratives within the court were primarily concerned with the effects that a loss of children had on Howard's state of mind. Some doctors went as far to say that the effects of taking a mother's children from her, while living, could produce a greater effect on her mind than their deaths.[249] Another doctor affirmed to the court that he had witnessed similar cases to Howard's where "all those feelings connected with the maternal" had affected the "moral affections" of similar mothers.[250] These assertions were explicitly connected to conceptions of femininity, as well as motherhood. Here, it was also stated that:

> [W]omen are subject to states of constitution intimately connected with excitement of the mind, rendering them at times peculiarly subject to perversion of intellect, but most commonly to irritable temper. [...] The forcible tearing away from the mother a child suckling at the breast. It has been further stated that the feelings of the prisoner have been frequently highly wrought upon in reference to her children.[251]

Narratives within the court were effective at using Margaret Howard's maternal attachment to her children as one of the major explanations behind the cause of her insanity. However, it was not this cause alone which explained her behaviour. Various family members, including one who was a doctor, confirmed that Howard's family had a history of mental illness.[252] With current

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[248] Ibid, 44.

[249] Howard, *Trial of Mrs. Margaret Howard*, 44.

[250] Ibid, 47.

[251] Ibid, 46.

[252] Ibid, 52.

behaviour taken into account, supported by potential hereditary origins of insanity, the defence made a compelling case for the legitimacy of Howard's insanity. While the judge in the case cautioned the jury that "apprehension of losing forever the society of her children [...] is not insanity," the jury would ultimately disagree.[253]

From the outset, Margaret Howard's trial gathered sympathy from both those who attended the trial and the press. Individuals who covered the trial noted that the crowd quietly applauded when "any remark out of the usual course of the case was made favourable to the prisoner."[254] While this conveyed the sympathy for Howard expressed in the courtroom, it also illustrated to the public reading these trial accounts that Howard was a sympathetic character in the courtroom. While it took several hours for the jury to return with the verdict for the case, they did conclude that they had found Howard not guilty by reason of insanity. The reaction in the courtroom was that of

> loud and continued cheers and applause [...] After receiving the congratulations of many persons present, Mrs. Howard then left the courtroom in charge of the sheriff [...] The crowd followed her for some squares, cheering her on her happy deliverance from the peril which she was threatened.[255]

The elation of the crowd, and of Howard herself, in the midst of her verdict showcases it as a moment of undeniable celebration. In the face of premeditated circumstances — after all, witnesses confirmed she received a dull knife and got it sharpened prior to the murder — Howard was nonetheless found not guilty by reason of insanity. However, explanations of her insanity blended both moral and medical reasoning for her insanity; rather than showcase the objectivity of psychiatric knowledge, expert witnesses and the defence instead revealed how

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[253] Ibid, 62.

[254] Ibid, 14.

[255] Ibid, 63.

much this knowledge embedded cultural ideas regarding motherhood and femininity in its definitions. It was a mother's devotion to her children, and being robbed of them by a cruel husband, that pushed Howard over the brink to kill her husband's mistress. The mere fact that such a moral explanation could be upheld by medical knowledge and supported by a jury reveals just how much the insanity plea blended cultural attitudes with legal and medical knowledge of the time.

While many of these 'unwritten law' cases, such as that of Mary Harris' and Margaret Howard, have been discussed independently, with a select few grouped together, they have never been brought together as a whole. With such significant, and similar, cases exploring the intersections between unwritten law and the insanity defence within the nineteenth-century, they can be observed as a broader trend which merits the attention of both sociocultural and legal historians. These cases reveal, on a broad scale, the many ways in which gender, medicine, and the law intersected in some of the most popular uses of the insanity plea. Furthermore, these intersections illustrate the context in which many popular cases invoking the insanity defence took place, and they offer another avenue in which to consider popular constructions, and perceptions, of the plea soon after the introduction of the McNaughten test in America. The use of the insanity defence in these cases, in conjunction with its use by lawyers and the ambivalent (and conflicting) definitions of insanity offered by the newfound discipline of psychiatry illustrate that it had been constructed as a cultural defence whose legitimacy was often questioned as a result.

The cases of Mary Harris and Margaret Howard were not unique. While they are significant in their respective ways, many other trials illustrate the frequent overlap between

intimate murder, unwritten law, and the use of the insanity defence. Fourteen other cases, similar to both Howard and Harris' case, appeared in the nineteenth century. Taken together, these trials illustrate that women were frequently found not guilty by reason of insanity in these cases which invoked unwritten law. Contrary to arguments that women were treated more harshly in these cases of unwritten law and intimate murder, these cases complicate our understandings of women's treatment within the courts. To some, these trials may represent an opportunity to examine how modern defences such as battered women's syndrome (BWS) may have been enacted in the court before they existed. However, this avenue of interrogation is not the focus of this thesis. Rather, the analysis presented here seeks to understand how, and why, the insanity defence proved to be uncharacteristically successful when invoked by women in these circumstances. The shared characteristics of these trials, as well as their differences, offer further insight into how cultural perceptions of gender, mental illness, and criminality were interrogated within the courts. Ultimately, these cases offer a compelling example of the many ways in which those who invoked the insanity defence within the courts of the nineteenth century waived any claim to neutrality or objectivity in their use of it. Instead, the use of the defence in the trials of these women showcases the insanity defence was not only actively shaped by the cultural ideas of its time, but that it also upheld and confirmed these ideas during its many uses.

Conclusion:
The Continued Impact of Public (Mis)Perceptions of the Insanity Defence

As these trials from the nineteenth century illustrate, cultural ideas of morality and criminal responsibility were expressed differently by experts and laypersons alike, and they frequently affected how the insanity defence was understood by both parties. More to the point, it is clear from these cases that a cultural history of the insanity defence reveals a far different tale of the plea than what has been explored up until this point. In many ways, the defence has been intricately tied up in the cultural context of its time and this frequently informed how the plea was enacted and understood. Most notably, these persistent perceptions continue to inform the use of the plea even in contemporary times. Shifting perceptions of the plea, then, can be mined for what they reveal about the public's persistent power to shape legal practice. More than anything, popular backlash *has* shaped the plea, to the degree that it is now been a matter before the Supreme Court. As June 2019, legal historians and sociologists submitted a brief as *amici curiae* in support of James Kahler, the petitioner in the Supreme Court case of *Kansas v. Kahler*.[256]James Kahler murdered his two daughters, ex-wife, and grandmother in Kansas on Thanksgiving in 2009. Kahler's defense team wanted to use an insanity plea, but Kansas is one of only four states that does not allow for this defense. Quickly, the focus of his trial shifted from the question of his mental health to a constitutional challenge concerning his right to use a "not guilty by reason of insanity" (NGRI) plea. Kahler's attorneys argued that the inability to use the insanity defense violated Kahler's 8th and 14th Amendment rights to protection from cruel and unusual punishment and due process. As legal historians and sociologists rightfully point out, the

[256] Brief of Amici Curiae Legal Historians and Sociologists in Support of Petitioner, Kahler v. Kansas, 140 S. Ct. 1038 (2020): 1-24.

legal history of the defence is essential to understanding its enduring role within the courts. However, it is just as vital to understand the origins of public perceptions of the insanity defence and their potential influence in the courts. As doubts about medical expertise within the courts continue alongside a criminal justice system that often serves as an unwelcome space for the mentally ill, the insanity defence remains a fundamental protection.[257]

However, since the 1980s, several states have reformed and repealed insanity defences. Thirteen states allow "guilty but mentally ill" (GBMI) pleas for criminal charges.[258] Alaska, Kansas, Idaho, Montana, and Utah do not allow for an insanity plea to stand in as a defence to criminal charges. The repeal of the insanity plea in these states dates to a flurry of insanity defence reforms in the 1980s inspired by John Hinckley Jr.'s attempted assassination of Ronald Reagan in 1981. Public backlash to the insanity defence was swift when the court found Hinckley, who claimed he wanted to impress actress Jodie Foster, not guilty by reason of insanity.[259] Timed with this public condemnation was the reform of the insanity defence in several states' legislatures in the years immediately following Hinckley's trial. Soon after, a study on public opinion of Hinckley's trial showed the extent to which medical professionals influenced the public's reactions to the trial. The public's increased trust in psychiatrists

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[257] For commentary on potential impact of Kahler decision on mentally ill individuals in the court system, see Roxana Hegeman, "Kansas Death Penalty Case has Implications for Mentally Ill," *AP News*, March 23, 2019.

[258] The states that currently offer the GBMI defense are Michigan, Indiana, Illinois, Alaska, Delaware, Georgia, Kentucky, New Mexico, Pennsylvania, South Dakota, Utah, South Carolina, and Nevada. Erin E. Cotrone, "The Guilty But Mentally Ill Verdict: Assessing the Impact of Informing Jurors of Verdict Consequences" (Ph.D diss., University of South Florida, 2016), 19–21

[259] Natalie Jacewicz "After Hinckley, States Tightened Use Of The Insanity Plea," *National Public Radio*, July 28 2016. https://www.npr.org/sections/health-shots/2016/07/28/486607183/after-hinckley-states-tightened-use-of-the-insanity-plea

correlated with opinions that Hinckley's sentence of institutionalization was fair. However, only 12.5% of participants were "very confident" in psychiatric testimony given in court; 87.1% still saw the insanity defence as a loophole to exploit.[260] Underlying the public's negative response to Hinckley's trial was the persistence of misconceptions surrounding the use of the insanity plea: that it is a means to escape punishment, that it is overused, and ultimately, that it is feigned.[261] Such perceptions of the plea are no contemporary construction, as shown in this thesis.

In 2020, the Supreme Court of the United States handed down their significant decision regarding the insanity defence in the case of *Kansas v. Kahler*, once again raising important concerns regarding its use in the twenty-first century. The main constitutional questions raised by *Kahler* concerned with whether the absence of an insanity defence in Kansas violated Kahler's 4th and 8th Amendment rights: in a 6-3 decision, the court held that the Eighth and Fourteenth Amendments did not require Kansas to rely on an insanity test "that turns on a defendant's ability to recognize that his crime was morally wrong."[262] The problem of Kahler's trial is primarily the focus on due process and calling for a specific test to be adopted by Kansas, and the court's opinion is primarily concerned with these issues. Consequently, the majority failed to both recognize and address that Kansas had, effectively, abolished an affirmative form of the insanity defence. Ultimately, the narrative of the court illustrates that while cultural perceptions of the

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[260] Valerie P. Hans and Dan Slater, "John Hinckley, Jr. and the Insanity Defense: The Public's Verdict," *The Public Opinion Quarterly* 47, no. 2 (Summer, 1983): 206–208.

[261] Michael L. Perlin, "Myths, Realities, and the Political World: The Anthropology of Insanity Defense Attitudes," *The Bulletin of The American Academy of Psychiatry and the Law* 24, no. 1 (1996): 11–12.

[262] Syllabus, Kahler v. Kansas, 140 S. Ct. 1038 (2020), 2.

plea continue to colour decisions made concerning it, any real consideration of cultural understandings of the plea consistently fall by the wayside. This matter is of particular concern to this thesis; expert negotiations of the defence have consistently proven to neglect how the public influences the construction of the defence.

While the court's decisions raise many questions concerning the present and future use of the insanity defence in the law, the framing of the history of the plea is of particular interest. Precedent itself carries its own historical weight into the future; the circumstances of a past trial, of course, influence future related decisions. In the case of Kansas, the Supreme Court explicitly states that their "primary guide" for applying the standard of evaluating whether a "state rule about criminal liability […] violates due process" was "historical practice."[263] In the case of the majority opinion, this instrumentalization of history, without context, is concerning. The arguments offered by the majority, and rightly criticized by the dissenting judges, illustrate a fundamental misunderstanding; historical practice as a guide is limited if decontextualized. As Justice Stephen Breyer notes in his dissent, supported by Justice Ginsburg and Justice Sotamayor, the majority opinion's evaluation of the historical use of the plea fails to delineate between their own modern understanding of *mens rea*, and how it may have been understood in the nineteenth century:

> When common-law writers speak of intent or mens rea, we cannot simply assume that they use those terms in the modern sense. That is an anachronism. Instead, we must examine the context to understand what meaning they ascribed to those terms. And when we do so, we see that, over and over again, they link criminal intent to the presence of free will and moral understanding.[264]

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[263] Majority Opinion, Kahler v. Kansas, 140 S. Ct. 1038 (2020), 6.

[264] Dissent, Kahler v. Kansas, 140 S. Ct. 1038 (2020), 9.

The majority opinion's evaluation serves to illustrate the real consequences of decontextualizing the historical nature of the insanity defence. Furthermore, the failure to consider the circumstances of Kansas' most recent changes, and other states employing the *mens rea* approach, serves only to place future defendants' attempting to use the plea in an even more precarious position. Scholars commenting on the case recognize that the most recent changes to the defence occurred due to a "groundswell of support for limiting insanity claims" after the Hinckley trial in 1982, and that it is unlikely any further changes would occur without similar circumstances being present.[265] However, in the face of a decision endorsing these limitations on insanity defences, limitations which first emerged only due to popular backlash, who is to say it will not happen again in the future? The defence remains even more vulnerable to changes in the face of the court's decision.

Kansas' (lack of) insanity defence illustrates the increased tightening and elimination of the plea in recent decades. While Kansas had relied on the McNaughten test up until 1995, it effectively abolished the defence at this time. Instead, it, and several other states (Alaska, Montana, Idaho, Utah) replaced their insanity defences with a *mens rea* approach: here, "under section 21-5209 of the Kansas Statutes, it is a defence to prosecution under any statute, if, "as a result of mental disease or defect, the defendant lacked the culpable mental state required as an element of the crime charged."[266] Furthermore, in the penalty phase of the trial, a defendant may

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[265] Paul S. Appelbaum, "*Kahler v. Kansas*: The Constitutionality of Abolishing the Insanity Defence," *Psychiatric Services* vol. 72. no. 1 (January 2021): 106.

Emily R. Brandt, "Am I Going Insane or Did Kansas Abolish the Insanity Defence? [Kahler v. Kansas, 150 S. Ct. 1021 (2020).] *Washburn Law Journal Online* vol. 60 (2021): 49. [266] For states that employ the *mens rea* approach for an insanity plea: see Kahler v. Kansas, 140 S. Ct. 1038 (2020), 3 footnote 3.

use evidence of mental illness to argue for a mitigation of their sentence.[267] Legal scholars have criticized the *mens rea* approach since its introduction in the 1990s, and many consider the defence to be effectively abolished in states using this approach. Like other states who recently adapted legislation surrounding the insanity defence, the decision by Kansas to change the insanity test followed a flurry of legislative changes in the 1980s. In the case of Kansas, Marc Rosen argues that it was indeed public backlash, supported by popular misconceptions of the insanity plea, that pushed legislators into changing the plea.[268] Consequently, the legislative circumstances of the questions of Kahler's case were very much shaped by popular condemnations of the plea decades prior, context that remained absent in both oral arguments and the opinion of the court. States have clearly stated which iterations of the test they rely on, as seen in the appendix of the Supreme Court opinion of *Kansas v. Kahler*.[269] However, the rejection of a specific version of the test embedded in the Constitution — on the basis that legal and medical knowledge regarding insanity is constantly evolving and should thus be left to individual states to evaluate — harkens back to similar attitudes expressed in the Antebellum era. Here too, the emphasis remains on allowing states leeway in determining what insanity test will be applied in their courts.

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[267] Kahler v. Kansas, 140 S. Ct. 1038 (2020)

[268] Marc Rosen, "Insanity Denied: Abolition of the Insanity Defence in Kansas," *Kansas Journal of Law & Public Policy* vol. 8, no. 2 (1998-1999): 253, 255-256.

[269] Justice Breyer compiled a list of current iterations of insanity tests being used in the United States. They are broken down into five categories: M'Naghten, M'Naghten plus volitional incapacity, moral incapacity, Moral Penal Code, and unique formulation. The list is the most comprehensive and updated regarding the current test and its definition in each state. Kahler v. Kansas, 140 S. Ct. 1038 (2020), Appendix to the opinion of Breyer, J., 24-32.

However, considerable differences do still exist between the perceptions of the insanity plea in the Antebellum era and its perceptions in contemporary times. As seen in the trials presented in this thesis, considerable doubt lay in the medical specialization of psychiatry due to its emergence in the nineteenth century. Conceptions of mental illness still frequently strayed into moral/religious explanations of deviant behaviour; today, conceptions of mental illness are understood within a much more medicalized framework by the larger public. Furthermore, as medical specializations have expanded far beyond their birth in the nineteenth century, so too has public trust in medical expertise — though, this trust is not always a constant. Ultimately, early and sensational insanity defence trials remind scholars that the plea was far more than a negotiation between lawyers and medical experts competing for professional prestige in the Antebellum era. A legal defence, newly imagined, was shaped by a convergence of expert understandings of the plea and public perceptions. The circumstances, negotiations, and final verdicts of these trials beckon legal historians of the plea to consider how communities and the public itself played a formative role in the construction of the plea.

Bibliography

Archives Consulted

Materials consulted include: trial transcripts, newspaper articles, periodicals, published books, and professional journal articles.

American Antiquarian Society (Worcester, MA)
Lloyd Sealy Library at the John Jay College of Criminal Justice (New York City, NY)
Oskar Diethelm Library at the Weill Cornell Medical College's DeWitt Wallace Institute of Psychiatry (New York City, NY)
New York City Municipal Archives (New York City, NY)

Primary Sources

Newspapers

"Crime and Insanity," *The New York Herald*, September 18, 1846

"How It Works." *Brother Jonathan*, April 16, 1842.

"More Insanity," *Brother Jonathan*, August 5, 1843.

"The Plea of Insanity." *The New World*, October 17, 1840, 316.

Auburn Journal and Advertiser, June 3, 1846

Boston Evening Transcript, July 20,1865.

Boston Traveler, February 20, 1865

Commercial Advertiser, July 27, 1846.

Daily Albany Argus, July 16, 1865.

The New York Herald, February 17, 1846.

The New York Herald, February 21, 1846.

New York Herald, September 11, 1846.

New York Herald, September 16, 1846.

New York Herald, September 17, 1846.

New York Herald, September 25, 1846

New York Herald, September 27, 1846

New York Herald, September 28, 1846.

North American Review (No. CXXVI) January, 1845.

The Port-Gibson Correspondent, August 8, 1846.

Trial Transcripts

Abbott, Austin. The People against Montgomery: Oyer and Terminer of Monroe County, 1871.: Again, Supreme Court, Fourth Department, Eighth District; general term, January, 1872. In *Reports of practice cases, determined in the courts of the state of New York […] New Series. Vol. XIII* eds. Austin Abbott. New York: Diossy & Company, 1873.

Bigelow, George Tyler, and George Bemis. *Report of the trial of Abner Rogers Jr: indicted for the murder of Charles Lincoln, Jr., late warden of the Massachusetts State Prison: before the Supreme Judicial Court of Massachusetts, holden at Boston, on Tuesday, January 30, 1844.* Boston: Charles C. Little and James Brown, 1844.

Clarke, John B. *The Northwood murder: a complete report of the trial of Franklin B. Evans for the murder of Georgianna Lovering at Northwood, October 25th 1872, together with a portrait and sketch and the career of the murderer.* Manchester, N.H.: Mirror Counting-Room, 1872.

Clephane, James O. O*fficial report of the trial of Mary Harris: indicted for the murder of Adoniram J. Burroughs, before the Supreme Court of the District of Columbia (sitting as a criminal court), Monday, July 3, 1865.* Washington D.C. : W.H. & O.H. Morrison, 1865.

Hall, Benjamin F. *The Trial of William Freeman: for the murder of John G. Van Nest, including the evidence and the arguments of counsel, with the decision of the Supreme Court granting a new trial, and an account of the death of the prisoner, and of the post-mortem examination of his body by Amariah Brigham, M.D., and others.* Auburn: Derby, Miller & Co., 1848.

Howard, Margaret Seely. *Trial of Mrs. Margaret Howard, for the murder of Miss Mary Ellen Smith, her husband's paramour, in Cincinnati, on the 2d of February last. Prefixed to the trial of Mrs. Howard may be found a memoir of her life, by Judge Brough, by which it will be seen that she has suffered all the indignities and cruelties which an inhuman husband could inflict.* Cincinnati: Barclay, 1849.

I. F. R. "Supreme Judicial Court of New Hampshire. State v. Pike." *The American Law Register (1852-1891)* 20, no. 4 (1872): 233-59.

Kahler v. Kansas, 140 S. Ct. 1038 (2020)

Mercer, Singleton. *The Trial of Singleton Mercer for the murder of M. Hutchinson Heberton, at Camden, N.J., on Friday, 10th February, 1843*. New York: Herald Office, 1843.

State v. Spencer, 21 N. J. L. 196 (1846)

[1843] UKHL J16 (19 June 1843) https://www.bailii.org/uk/cases/UKHL/1843/J16.html.

Professional Journal Articles

"Article VI. Homicidal Insanity." American Journal of Insanity vol. 2 (1844-1845): 245-266.

"Insanity as Connected with Judicial Proceedings." *Boston Medical Intelligencer*, May 18, 1824, 5-6.

"Review of "A Manual of Medical Jurisprudence" by Alfred S. Taylor, Lecturer on Medical Jurisprudence, and Chemistry, in Guy's Hospital, London, 1844. P. 679." *American Journal of Insanity* vol. 1 (1844-45): 281-283.

Periodicals

"Insanity." *The Virginia Literary Museum and Journal of Belles Lettres, Arts, Sciences &c.* August 12, 1829, 133-136.

Published Books

Beck, Theodric Romeyn. *Elements of Medical Jurisprudence.* vol. 1. Albany, NY: Websters and Skinners, 1823.

Lawson, John D. *The adjudged cases on insanity as a defence to crime: with notes.* St. Louis: F. H. Thomas, 1884

Seward, William H. *The Life of William H. Seward with Selections from His Works,* New York: Redfield, 1855.

Secondary Sources

Appelbaum, Paul S. "*Kahler v. Kansas*: The Constitutionality of Abolishing the Insanity Defence," *Psychiatric Services* 72, no. 1 (January 2021): 253-264.

Arpey, Andrew W. *The William Freeman Murder Trial: Insanity, Politics, and Race*. Syracuse, NY: Syracuse University Press, 2004.

Blumenthal, Susanna. *Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture*. Cambridge: Harvard University Press, 2016.

Brandt, Emily R. "Am I Going Insane or Did Kansas Abolish the Insanity Defence? [Kahler v. Kansas, 150 S. Ct. 1021 (2020).] *Washburn Law Journal Online* 60 (2021): 45-56.

Blumenthal, Susanna L. "Of Mandarins, Legal Consciousness, and the Cultural Turn in US Legal History: Robert W. Gordon. 1984. Critical Legal Histories. Stanford Law Review 36:57–125." *Law & Social Inquiry* 37, no. 1 (2012): 167–86.

Boyer, Jodie. "Religion, 'Moral Insanity,' and Psychology in Nineteenth-Century America." *Religion and American Culture: A Journal of Interpretation* 24, no. 1 (2014): 70–99.

Carson, A. Cheree. *The Crimes of Womanhood: Defining Femininity in a Court of Law*. Champaign, IL: University of Illinois Press, 2010.

Cohen, Patricia Cline. *The Murder of Helen Jewett: The Life and Death of A Prostitute in Nineteenth-Century New York.* New York: Vintage, 1998.

Crouthamel, James L. *Bennett's New York Herald and the Rise of the Popular Press*. Syracuse, NY: Syracuse University Press, 1989.

Dain, Norman. *Concepts of Insanity in the United States 1789-1865.* New Brunswick, NJ: Rutgers University Press, 1964.

DeLombard, Jeannine Marie. *In the Shadow of the Gallows: Race, Crime, and American Civic Identity*, Philadelphia, PA: University of Pennsylvania, 2012.

Edwards, Laura F. "Sarah Allingham's Sheet and Other Lessons from Legal History," *Journal of the Early Republic* 38, no. 1 (Spring 2018): 121-147.

Eigen Joel Peter, and Gregory Andoll. "From Mad-Doctor to Forensic Witness: The Evolution of Early English Court Psychiatry." *International Journal of Law and Psychiatry* 9, no. 2 (1986): 159-169.

Foucault, Michel *Discipline and Punish: The Birth of the Prison.* Translated by Alan Sheridan. New York: Vintage, 1995.

Foucault, Michel, Alain Baudot, and Jane Couchman. "About the Concept of the 'Dangerous Individual' in 19th-Century Legal Psychiatry." *International Journal of Law and Psychiatry* 1, no. 1 (1978): 1-18. https://doi.org/10.1016/0160-2527(78)90020-1.

Gamwell, Lynn, and Nancy Tomes. *Madness in America: Cultural and Medical Perceptions of Mental Illness before 1914.* Ithaca, NY: Cornell University Press, 1995.

Geller, Jeffrey L, Jonathon Erlen, and William H Fisher. "Feigned Insanity in Nineteenth Century America: Tactics, Trials, and Truth." *Behavioral Sciences and the Law* 8, no. 1 (1990): 3-26.

Goodman, Nan. "Law in Popular Culture, 1790-1920: The People and the Law," in *The Cambridge History of Law in America*, ed. by Michael Grossberg and Christopher Tomlins, 387-416. Cambridge: Cambridge University Press, 2008.

Halttunen, Karen. *Murder Most Foul: The Killer and the American Gothic Imagination.* Cambridge, MA: Harvard University Press, 1998.

Hanganu-Bresch, Cristina. "Public Perceptions of Moral Insanity in the 19th Century:" *The Journal of Nervous and Mental Disease* 207, no. 9 (September 2019): 805–814.

Hartog, Hendrik. "Lawyering, Husbands' Rights, and 'the Unwritten Law' in Nineteenth-Century America." *The Journal of American History* 84, no. 1 (1997): 67–96.

———. "Pigs and Positivism." *Wisconsin Law Review* 899, no. 899–935 (1985).

Hayden, Erica Rhodes. *Troublesome Women: Gender, Crime, and Punishment in Antebellum Pennsylvania.* University Park, PA: Penn State University, 2019.

Hibbard, Andrea L., and John T. Parry. "*Law, Seduction, and the Sentimental Heroine: The Case of Amelia Norman." American Literature* 78, no. 2 (June 1, 2006): 325–55.

Howe, Daniel Walker. *What Hath God Wrought: The Transformation of America, 1815-1848.* New York: Oxford University Press, 2007.

Ireland, R. M. "The Libertine Must Die: Sexual Dishonor and the Unwritten Law in the Nineteenth- Century United States." *Journal of Social History* 23, no. 1 (September 1, 1989): 27–44.

Ireland, Robert M. "Frenzied and Fallen Females: Women and Sexual Dishonor in the Nineteenth- Century United States." *Journal of Women's History* 3, no. 3 (1992): 95-117.

Ireland, Robert M. "Insanity and the Unwritten Law." *The American Journal of Legal History* 32, no. 2 (April 1988): 157-172.

Jimenez, Mary Ann. *Changing Faces of Madness: Early American Attitudes and Treatment of the Insane.* Hanover, NH: University Press of New England, 1987.

Jones, Ann. *Women Who Kill.* Boston: Beacon Press, 1996.

Keetley, D. "From Anger to Jealousy: Explaining Domestic Homicide in Antebellum America." *Journal of Social History* 42, no. 2 (December 1, 2008): 269–97. https://doi.org/10.1353 / jsh.0.0079.

Kelly, Brendan D. "Criminal Insanity in 19th-Century Ireland, Europe and the United States: Cases, Contexts and Controversies." *International Journal of Law and Psychiatry* 32, no. 6 (2009): 362-368. https://doi.org/10.1016/j.ijlp.2009.09.005

McDade, Thomas M. The Annals of Murder: A Bibliography of Books and Pamphlets on American Murders from Colonial Times to 1900. Norman, OK: University of Oklahoma Press, 1961.

Millard, Candace. *Destiny of the Republic: A Tale of Madness, Medicine, and the Murder of a President*. New York City: Anchor Books, 2012.

Mohr, James C. *Doctors and the Law: Medical Jurisprudence in Nineteenth-Century America.* New York: Oxford University Press, 1996.

Oosterhuis Harry, and Arlie Loughnan. "Madness and Crime: Historical Perspectives on Forensic Psychiatry." International Journal of Law and Psychiatry 37, no. 1 (2014): 1–16.

Quen, Jacques M. "An Historical View of the M'Naghten Trial." *Bulletin of the History of Medicine* 42, no. 1 (January 1, 1968): 43-51.

Quen, Jacques M. "Anglo-American Criminal Insanity: An Historical Perspective." Journal of the American Academy of Psychiatry and the Law 2 no. 2 (1974): 115-123.

Ramsey, Carolyn B. "Intimate Homicide: Gender and Crime Control, 1880-1920." *University of Colorado Law Review* 77, no. 1 (2006): 101-192

Rauchway, Eric. *Murdering McKinley: The Making of Theodore Roosevelt's America*. New York City: Hill and Wang, 2003.

Rosen, Marc. "Insanity Denied: Abolition of the Insanity Defence in Kansas." *Kansas Journal of Law & Public Policy* 8, no. 2 (1998-1999): 253-264.

Rosenberg, Charles. *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age.* Chicago: University of Chicago Press, 1968.

Roth, Randolph. "Spousal Murder in Northern New England, 1791-1865." In *Over the Threshold: Intimate Violence in Early America, 1640-1865,* edited by Christine Daniels, 65-93. New York: Routledge Press, 1999.

Schneider Joseph W., and Peter Conrad. *Deviance and Medicalization: From Badness to Medicalization.* Philadelphia: Temple University Press, 1992.

Schorb, Jodi. "Punishment's prisms: execution and eighteenth-century print culture." *Early American Literature* 47, no. 2 (2012): 461-476.

Smith-Rosenberg, Carroll, and Charles Rosenberg. "The Female Animal: Medical and Biological Views of Woman and Her Role in Nineteenth-Century America." *The Journal of American History* 60, no. 2 (1973): 332–56.

Spiegel, Allen D., and Merrill S. Spiegel. "Not Guilty of Murder by Reason of Paroxysmal Insanity: The 'Mad' Doctor vs. 'Common-Sense' Doctors in an 1865 Trial." *Psychiatric Quarterly* 62, no. 1 (March 1991): 51–66. https://doi.org/10.1007/BF01958838.

Stansell, Christine. *City of Women: Sex and Class in New York, 1789-1860*. Champaign: University of Illinois Press, 1987.

Strange, Carolyn. "Femininities and Masculinities: Looking Backward and Moving Forward in Criminal Legal Historical Gender Research." In *The Oxford Handbook of Legal History,* edited by Markus D. Dubber and Christopher Tomlins, 221-241. New York: Oxford University Press, 2018.

Thomas, John L. "Romantic Reform in America, 1815-1865." *American Quarterly* 17, no. 4 (1965): 656-81.

Umphrey, Martha Merrill. "The Dialogics of Legal Meaning: Spectacular Trials, the Unwritten Law, and Narratives of Criminal Responsibility." *Law & Society Review* 33, no. 2 (1999): 393-423.

Wagner, Bryan. "Historical Method in the Study of Law and Culture. " In *The Oxford Handbook of Legal History,* edited by Markus D. Dubber and Christopher Tomlins, 193-205. New York: Oxford University Press, 2018.

Weiss, Kenneth J, and Neha Gupta. "America's First M'Naghten Defence and the Origin of the Black Rage Syndrome." The Journal of the American Academy of Psychiatry and the Law 46, no. 4 (2018): 503-512.

Whooley, Owen. *Knowledge in the Time of Cholera: The Struggle over American Medicine in the Nineteenth Century.* Chicago: University of Chicago Press, 2013.

Yanni, Carla. *The Architecture of Madness: Insane Asylums in the United States.* Minneapolis: University of Minnesota, 2007.