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The 'Non-Criminal' Class: Wife-beating in Scotland (c. 1800-1949)

Annmarie Hughes¹

Le XIX^e siècle a été perçu à la fois comme une période d'émergence d'un «nouveau patriarcat plus doux» et d'un mariage empreint d'une plus grande camaraderie; une période acceptant plus largement certaines formes de violence domestique et manifestant davantage de dureté envers les hommes qui violentaient leurs épouses. Fondé sur l'examen des statistiques pénales, des réformes législatives, des modifications des pratiques et des débats transparents dans les médias écossais, cet article montre que, dans l'Écosse des années 1850-1950, la relation entre provocation, responsabilité pénale et atténuation de cette dernière garantissait davantage de continuité que de changement dans les attitudes à l'encontre des maris violents.

The nineteenth century has been identified as one in which a 'new softer patriarchy' emerged along with a more companionate marriage; a wider acceptance of forms of domestic violence and a hardening of attitudes towards men who inflicted violence on their wives. Using criminal statistics, changes in law and practice and the discursive debates which permeated the Scottish media, this article will highlight how the relationship between provocation, criminal liability and diminished responsibility ensured that attitudes towards men who inflicted violence on their wives reflected greater levels of continuity rather than change in Scotland in the period 1850-1950.

The Victorian era is associated with the dissemination and practice of a more chivalric form of masculinity that required men to exercise moral rather than physical control over their wives. Within these shifting terms of patriarchy, violence against wives came under considerable criticism and women were identified as 'victims' as the judiciary increasingly identified all forms of marital violence as unacceptable, even against the most 'recalcitrant' of wives. Indeed the penetration of the discourse that involved demonstrations of a more ordered, rational and non-violent masculinity ensured that men who failed to comply and acted violently towards women could expect harsh consequences within the justice system as well as the condemnation of the British press. Consequently, although there was considerable resistance to the attack on customary conceptions of masculinity, by the end of the

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Victorian era a 'reasonable non-violent male' had emerged in all strata of society². Although there is some evidence of change within the Scottish judicial system, Scottish sources suggest that these changes did not extend north of the border to the same extent as they did in England. Violence against wives continued to be superficially dealt in Scottish courts and the press continued to identify wives as the source of provocation throughout the nineteenth and into the twentieth century. Moreover, a consideration of the Scottish Summary courts, which dealt with 'everyday' marital violence, as well as the High Court, suggests that competing definitions of masculinity remained more prevalent throughout the period under review.

In the nineteenth and early twentieth century, Scottish attitudes to marital violence may have hardened as reflected in changes in the law, but this was not always replicated in public discourse or in the practices of the judiciary. Time, money and language are regarded as measurements of the 'civilizing process'; they are 'symbols' which 'transmit messages by which individual's structure and develop self and social regulation'³. These social symbols are intrinsically linked to the regulation of crime. Language, time and money were, and are, used to classify and signify the level of severity and condemnation attached to particular criminal activities. This takes the form of judicial discourse, the establishment of laws, the duration of prison sentences and the monetary imposition of fines. Wood also argues that the 'civilising process' and 'the individual psyche are developed through socialisation, education and social pressure' and that violent conduct results from a 'mental calculus' dependant on 'the interaction with an individual's environment in specific social contexts'. Violence is also undertaken in response to is 'perceived legitimacy' and with a 'consideration of the social costs' - that is the potential punishment, discursive and punitive⁴. Drawing on Scottish judicial sources and media reports on wife-beating this article will highlight how, the 'civilising process' as it relates to violence against Scottish wives was moderated by the discursive messages wife-beaters received from the Scotland's judiciary and the press in the nineteenth and early twentieth centuries⁵. Indeed, the relative legitimisation of wife-beating was evident in the minimal risk of punishment for wife-beating and in continuities in older practices of masculinity. It is also apparent in the Scottish press and the judiciary's discourses and in their backlash against feminists who demanded greater protection for wives. Violent men were identified as 'non-criminals' who were victims of the women they assaulted. By the late nineteenth century the discursive and legal framework was also influenced by the judiciary's concern to reconcile wives with their violent husbands, or what has been identified as 'marriage mending' and this was further facilitated by the introduction and extension of welfare sanctions, in particu-

² See, Wiener (2004, pp. 4-7 and passim); Dolan (1994). Although he talks about a justice system becoming more punitive to male offenders, Hammerton takes a more moderate approach to changing conceptions of masculinity. See, Hammerton (1995, p. 65).

³ Elias (1992, especially pp. 11-23 and p. 144).

⁴ Carter Wood (2007, pp. 95-110).

⁵ A range of local and national Scottish newspapers have been used reflecting the growth and rising popularity of the press in the nineteenth-century and covering the diversity of editorial positions and the broad spectrum of class perspectives. These were largely but not exclusively digitised sources, using key word searches. Exceptions included the *Govan Press* and *Glasgow Herald*. The media was used to explore cultural representations, public opinion and the dissemination of popular discourses. For a discussion on the uses of the press in history, See, Siindall (1990) and Bingham (2004).

lar the probation services. Probation provided the judiciary with the means of dealing with wife-beaters without criminalizing them and of promoting reconciliation between violent men and their wives rather than punishing men for their violent conduct. The lack of condemnation attached to wife-beating in the Scottish courts and media indicates the continuation of older attitudes to wife-beating both discursively and in legal practice rather than significant change.

THE LAW IN THEORY AND THE LAW IN PRACTICE IN SCOTLAND

In the first half of the nineteenth century Scotland appears to have followed the British pattern in relation to responses to crime. This was a period of sporadic anxiety amongst the propertied class in the context of the French revolution, revolutions across Europe in the 1840s, the rise of Chartism, and the social, economic and political effects of industrialisation and urbanisation⁶. The judicial system echoed this temperament through the utilization of harsh punishments for crime including the death sentence, corporal punishment, transportation overseas and heavy penal servitude sentences for a range of crimes which would come to be deemed 'petty' as the century progressed⁷. Although attitudes towards crime were a product of the anxieties of elites in a changing world, sensitivity towards the perceived causes of crime were emerging which would lead to a general reduction of the perceived severity of many offences and a lessening in punishments. In 1821 the *Scotsman* protested against a proposal for the establishment of a Society for the Protection of Property on the grounds that it would be expensive. However it was also suggested that if 'we were to recommend any change it would be to lessen not increase the number of prosecutions' because 'crimes arise from misery and bad passions', neither of which was expected to be 'alleviated by prosecution and punishment'. Instead prevention, kindness and the 'establishment of prosperity' were advocated to reduce the level of crime⁸.

Public opinion was also hardening against the death sentence, transportation and harsh prison sentences and the people charged with various crimes were gradually being identified 'as unfortunate victims of industrialisation and urbanisation'⁹. According to Lord Allison, the Lord Advocate of Scotland and Sheriff of Lanarkshire, this was due to 'altered tempers and increased humanity'¹⁰. Over time these discursive changes were reflected in Scottish law. For example, Scottish juries were often reluctant to return a guilty verdict in cases where severe punishments would ensue, particularly the death sentence. Thus juries were apt to return Scotland's unique 'not proven verdict' especially in homicide trials. To overcome this, the lesser crime of culpable homicide was introduced and firmly established in Scottish law by the 1840s.

⁶ Clark (*The Struggle for the Breeches*, p. 268-270; 2000, pp. 27-40).

⁷ Feeley, Little (1991, p. 742).

⁸ *Scotsman*, 23rd June 1821.

⁹ The Stair Society, *An Introduction To Scottish Legal History*, Edinburgh, 1958, pp. 445-447.

¹⁰ *Scotsman*, 16th February 1875.

Although public opinion hardened against severe punishments, Wiener highlights how, as the nineteenth century progressed, the judiciary began to shift its attention from crimes against property to inter-personal violence, especially violence that was directed at wives. Although property crime continued to constitute the largest number of prosecutions, the severity of punishments for such crimes declined whilst those for crimes against the person increased¹¹. Donnachie argues that between 1800 and 1850 there was a 'notable rise in prosecutions' in the High Court in Scotland, and that the rise was largely in prosecutions for crimes against property, especially theft. The precognitions of the High Court show that by 1810 over 50% of charges were for crimes against property and that this rose to around 75% by 1830 and almost 80% by 1850. Moreover, crimes against private property were frowned upon and 'pursued with diligence'¹². Although the rise in the number of prosecutions involving crimes against property need not be inconsistent with less tolerance of inter-personal violence and severer punishments for crimes against the person as the graph below indicates, the picture in Scotland was more complex in the later nineteenth century. Crimes that involved violence and property, namely robbery with violence, were harshly punished, but other property crime including theft and housebreaking were being less severely punished. Nonetheless, sentences for assault, which when tried in the High Court denoted serious assault involving the effusion of blood, the use of weapons and previous convictions, continued to merit the least severe punishments throughout the period 1840 to 1880. Indeed the number of individuals receiving penal servitude actually declined between 1870 and 1880. Yet, in 1870 when 88% of all serious assault convictions resulted in prison sentences of six months or less, 52% of those convicted of housebreaking were sentenced to more than six months in prison¹³. This suggests that there continued to be considerable concern over property crime in relation to inter-personal violence as well as the determination to 'pursue' crimes against property with 'diligence' in the later nineteenth century.

Furthermore, crimes against property came to be defined as premeditated and were therefore harshly penalised. By contrast, crimes against the person, especially where they did not threaten the state or the propertied classes, were identified with spontaneity, with the heat of passion, and with provocation. Alongside the perceptions of working-class men as less capable of exercising control, the discourse on the influences of crimes helps explain why when working-class men were convicted of spousal murder they received relatively light sentences in nineteenth-century Scotland¹⁴.

Moreover, by the second half of the nineteenth century wife-beating became 'more privatised' due to changes in the structure of the family, working practices and society more generally and this led to adjustments in the classification of assault in Scottish courts. The courts came to regard wife-beating as 'outside of the domain of legal sanction and reproach', unless the assault was 'extremely vicious and

¹¹ Wiener (2004, pp. 2-15, p. 187 et passim).

¹² Donnachie (1995, pp. 5-24).

¹³ House of Commons Parliamentary Papers, *Report on the Judicial Statistics of Scotland*, 1870.

¹⁴ Conley (2008, pp. 219-238).

Graph 1: Scottish High Court sentences for assault and selected crimes against property, 1840-1880

Sentence and year of conviction

Source: House of Commons Parliamentary Papers, Report on Judicial Statistics of Scotland, 1870 and 1880.

unwarranted' and that definition would prove extremely fluid¹⁵. Scottish rules of evidence also reduced the risk of prosecution and punishment for wife-beating, especially as this crime became more confined to the private sphere. English law required that a crime be corroborated or witnessed but for the entire period under review, Scottish rules of evidence dictated that every essential fact had to be proven by evidence from at least two sources. Only then was proof that a crime had been committed accepted and a prosecution could then take place¹⁶. Thus when Thomas McFarlane's wife approached a policeman after her husband had smashed her face with an iron grate, fracturing her jaw, she was asked if she had any witnesses. Because she did have witnesses the policemen refused to arrest her husband¹⁷. In addition to the problems caused by the rules of evidence in prosecuting wife-beaters, until the end of the century, as was the case in England, a Scottish wife was not regarded as a competent or 'credible' witness, one considered by the judiciary as being 'trustworthy' enough to corroborate a crime. Even after the 1898 Criminal

¹⁵ Kilday (2007 pp. 86-87). See also Bailey (2006, pp. 291-294).

¹⁶ Sheldon (2002, p. 80).

¹⁷ *Scotsman*, January 14th 1899.

Evidence Act [Scotland] which allowed wives to bear witness against their husbands they were not compelled to do so.

The rules of evidence also created difficulties for the prosecutor fiscal who had to decide which court to prosecute a case in because the crown did not reimburse the costs when there was not a successful conviction. Scotland's 'not proven' verdict made the situation more problematic. Thus many cases were discharged pre-trial or prosecuted in the summary courts to avoid the cost incurred by a not guilty or not proven verdict¹⁸. However, unlike their English counterparts, Scottish medical professionals could offer a professional opinion on the probable causes of death or injury and this was accepted as evidence in courts, but this was not always to the benefit of abused women¹⁹. For example, Robert Reid, 'a kind husband', attacked his wife with an axe while in a drunken rage, killing her. He confessed to the crime, but retracted his confession and offered 'extenuating' circumstances in mitigation which were supported by the court's medical witness. Seemingly his wife would not have died from her injuries had she not sustained a prior spinal injury. On this evidence the case was found not proven²⁰. Foyster also highlights how in England by the 1830s women could command greater protection marital violence because they could call on the new police, the clergy and the medical profession to provide witness of their abuse, but she also acknowledges how the economic power of the breadwinner meant that the police could be bribed and doctors were dependant on the household heads for payment of services thereby limiting women's protection²¹.

Demographic pressure on the Scottish High Courts also contributed to a shift in prosecution of crimes from higher to lower courts with a subsequent reduction in the level of punishment. Farmer argues that it was cheaper, faster and easier to gain a conviction in the summary courts because efficiency and economy were gained through the application of procedure rather than the consideration of the nature of the crime²². Shore also argues that from the eighteenth century the British judiciary sought out secondary punishments including the use of fines and short prison sentences to deal with crime²³. Additionally, the fine system acted as a means of paying for the prosecution services, alleviating the populace of this rateable 'burden'. By the 1850s the Sheriff, Burgh and Police Courts in Scotland were prosecuting a greater number of cases including wife-beating. Not only were these courts restricted in the penalties that they could impose, but they could also defer sentences, mete out cautions to be of good behaviour, have individuals bound over to keep the peace or admonish them²⁴. Throughout the period under review Scottish magistrates, justices and Sheriffs showed considerable mercy towards wife-beaters even for the most vicious attacks on wives through the use of non-custodial sentences, albeit this was often driven by the acknowledgement that these men were responsible for the economic well-being of the family unit. Nevertheless, the exten-

¹⁸ Sheldon (2002, p. 80).

¹⁹ See, Crowther (1988) and Foyster (2005, pp. 214-222).

²⁰ *Caledonian Mercury*, 2nd July 1835.

²¹ Foyster (2005, pp. 214-222).

²² Farmer (1997, pp. 73-74).

²³ Shore (2007, p. 390).

²⁴ See, Feeley and Little (1991, p. 725).

sion of summary justice guaranteed that violent men could find themselves shielded from the harsher sanctions the High Court could enforce which might have transmitted social messages to discourage marital violence and encourage self-regulation.

However, there was some movement towards discursive condemnation of domestic violence amongst members of the Scottish judiciary. In 1856 it was reported that the Scottish "law is at its wits' end to devise a suitable punishment" for wife-beating and that 'there is no want of will on the part of the legislature to put an end to this horrible evil'²⁵. Yet, the Aggravated Assaults Act for the Prevention and Punishment of Assaults on Wives and Children [1857], which is seen as symbolically significant of changing conceptions of masculinity, was not adopted into statute in Scotland as it was in England. It was not until the 1862 Police and Improvement Act [Scotland] that assault charges were codified. At this time the Police Act stipulated that magistrates could not prosecute an assault charge where the assault was to the danger of life; or where a limb has been fractured; or where a knife or lethal weapon was used to the effusion of blood; or where the assault was aggravated by three previous convictions for this crime. Moreover,

If it appeared during the investigation or in the opinion of the magistrate that the crime merited a greater punishment at any stage of the trial, the prosecutor fiscal was to be informed and the defendant committed to prison until disposed according to law²⁶.

Yet in the wake of this act William Gerrie appeared before the Justice of the Peace for having assaulted his wife and beating her with metal tongs, a charge aggravated by eight previous convictions for wife-beating. He was sentenced to thirty days in prison. In Dundee, Thomas Milne beat his wife with a poker and smashed her head through a window. The magistrate fined him £3.

John Lawrie appeared at Aberdeen Sheriff Court for assaulting his wife and baby to the effusion of blood. He had eight previous convictions for wife-beating and was sentenced to six months in prison. However, the Sheriff clearly took a dimmer view of wife-beating. According to the Sheriff, the Fiscal should have reported this case to the Crown and had it tried in the Circuit Court²⁷. Sheriff Hallard also demonstrated that he too could be intolerant of wife-beaters. In 1860, William White, a confectioner, came before Hallard at Glasgow Sheriff Court for 'brutally assaulting his wife to the effusion of blood by striking her with an earthenware basin severely cutting her head'. He then beat her over the head, face and arms with a piece of wood and was subsequently charged with 'assault' aggravated by previous convictions for wife-beating. He was sentenced to six months in prison. In summing up, Sheriff Hallard stated that if the Police Act had allowed it, he would have imposed a term of imprisonment six times as long²⁸.

Hallard's discourse does suggest a hardened approach towards violent men, but his subsequent behaviour, and that of other members of the judiciary, also indicates the diversity of competing discourses which shaped experience. In 1874 Mr Taylor,

²⁵ *Scotsman*, 20th February 1856.

²⁶ Parliamentary Papers, Vol. IV.199, *Police and Improvement Scotland Bill* [1862].

²⁷ *Scotsman*, 22nd May 1877.

²⁸ *Scotsman*, 15th December 1860.

a seaman, appeared before Sheriff Hallard charged with striking his wife with a wooden stool, trampling on her, and beating her repeatedly with his work boot. Hallard decided to show leniency because he determined that 'the wife's injuries were not too severe' and because Taylor, an ex-navy man, had discharge papers to show that 'he was of very good character'. He was sent to prison for thirty days²⁹. Archer maintains that although in 'specific historical situations prevailing gender identities will privilege one particular way of "being a man" as "natural", other forms of masculinity will have recognition as alternative ways of being a man'. Violence was deeply 'embedded in beliefs, attitudes and values' about manliness, thus acts of violence that did not undermine the state were regarded with some sympathy and identified as 'occasional lapses' often associated with alcohol consumption³⁰. This discursive construction of manliness and responses to it are also evident in Scotland and continued throughout the period under review. For example in 1884 a man who appeared before Glasgow Sheriff Court for beating his wife's 'face to a pulp and inflicted a head injury' was sentenced to four months in prison because he was of 'good character'³¹. The definition of what constituted a 'violent man' and the relationship between violence and masculinity were problematic, flexible and mutable.

This situation was aggravated by women's economic dependence on men which ensconce the potential to offer leniency to wife-beaters because the imposition of a prison sentence on the breadwinner meant families could suffer destitution. Alleviating destitution would impose costs on middle-class rate-payers. Thus the courts came to accept ideas about a 'self-sacrificing wife' allowing women to plead for mercy for their abusers³². Duncan Davidson received a one-month prison sentence for stabbing his wife when his wife claimed that it was accidental. However, the fact that the Sheriff imposed a punishment at all indicates that he was well aware that it was not an accident³³. Dependency on male earnings also ensured that many wives dropped the charges against their husbands or failed to give evidence in court. Because of this many wife-beaters were charged with drunk and disorderly conduct or the more elastic charge of Breach of the Peace which carried less severe punishment than assault but were easier to prosecute. Henry Harley was accused of being drunk and disorderly even though he was arrested whilst in the process of beating his wife³⁴.

Until changes in the law in 1949, Police Courts, Justice of the Peace Courts and the Sheriff Courts continued to have limited powers to impose harsh sentences. However, they were increasingly responsible for dealing with crimes which earlier in the century had been deemed 'serious' criminal offences, and in many cases under Scottish law, should have continued to have been classified as such under the Police Act Scotland [1862]. The High Court also continued to show considerable leniency towards violent men, especially if by the time the case came to trial the victim's health was restored or in the case of death it could be shown that some ailment

²⁹ *Glasgow Herald*, 4th September 1874.

³⁰ Archer (2000, pp. 41-69). See also, Bailey (2006, p. 291).

³¹ *Glasgow Herald*, 6th February 1884.

³² For the self-sacrificing wife see Rowbotham (2000, p. 160).

³³ *Aberdeen Weekly Journal*, 25th September 1883.

³⁴ *Ibid.*, 28th January 1881; 4th January 1888; 13th March 1890; 1st July 1886.

may have contributed or that the victim had not died immediately after an attack. This contradicted Scots law which in theory was based on the conduct of the accused rather than the consequence of action and therefore reveals a great deal about the judiciary's attitudes to the crime of marital violence.

CLASS, DRUNKENNESS, 'DIMINISHED RESPONSIBILITY' AND 'PROVOCATION'

In the nineteenth century violence against wives was seen as a product of working-class behaviour, identified as the 'animality of the poor' in both England and in Scotland. Violence was associated with the 'bad passions' of the working-classes, frequently attributed to drunkenness – a perception disseminated by social reformers and by the 'influence of the natural sciences and biologically determined explanations' about crime³⁵. Working-class male drunkenness was also considered normal and when it led to violence this was deemed to be 'unfortunate' but also predictable³⁶. In 1838 the Lord Advocate of Scotland expressed his opinion on the relationship between crime, violence and alcohol consumption. He stressed that 'people must be taken as they are placed before the judgement of the Courts with all their imperfections and some allowance should be made for the habit of a life'³⁷. However, as the nineteenth century progressed drunkenness was less likely to be accepted as mitigation in domestic homicide cases in either Scotland or England, although in Scotland by 1867 the legal definition of insanity could draw on the effects of alcohol consumption as a factor limiting legal responsibility³⁸. Drunkenness and the effects of alcohol consumption as a form of diminished responsibility also permeated domestic assault cases throughout the nineteenth century and into the twentieth century. For example, Bailie Young summed up a case of wife assault in 1857 stating, 'as usual in such cases the prisoner returned home the worse for liquor'³⁹. In 1872 John Tarbet, 'in a state of intoxication', attacked his wife with a poker and, after having been released from the police station, he assaulted her a second time. Bailie Howden sentenced him to thirty days in prison in the hope that 'the sentence would keep him' – not from attacking his wife – but from the 'whiskey bottle'⁴⁰. Sheriff Guthrie was of the same opinion: in 1887 Alex McLagan dragged his wife by the hair, jumped on her repeatedly and attacked her with a poker splitting her head open because she refused to give him more money to spend on alcohol. Guthrie summed up the case by stating, 'it is one of those melancholy cases that frequently come before juries due to the drinking habits of part of the population. One could not help having the impression that those who supply drink should also be placed in the dock'⁴¹.

³⁵ See, Clark (*The Struggle for the Breeches*, pp. 268-270); Hughes (2004, pp. 169-184) and Rowbotham (2000, pp. 155-169).

³⁶ Rowbotham (2000, pp. 155-169); Clark (*The Struggle for the Breeches*, pp. 78-87).

³⁷ *Scotsman*, 29th December 1838.

³⁸ Conley (2008, pp. 219-238).

³⁹ *Glasgow Herald*, 20th August 1857.

⁴⁰ *Scotsman*, 3rd February 1872 and 13th October 1871.

⁴¹ *Ibid.*, 1st July 1884.

In Scotland the belief that drunkenness led to violence resulted in intoxication being accepted by the judiciary and juries as a form of diminished responsibility defined, as 'unconscious by reason of alcohol automatism'. Farmer highlights how as the nineteenth century progressed there was a shift towards seeing action as evidence of a state of mind⁴². This permeated the entire judicial system. For example, when Dennis Hickey, who had previous convictions for wife-beating, appeared at the magistrate's court after he had attacked his wife and threw a kettle of boiling water over her it was accepted in his defence that, 'when I'm drunk I don't know what I'm doing'. He received a two-month prison sentence⁴³. Thomas Hughes appeared in the High Court after he attacked his wife with his fists and a brush. He threw her to the ground, trampled on her, kicked her repeatedly and fractured six of her ribs – an assault amounting to her 'severe injury'. The medical evidence showed the woman had 'received a severe thrashing'. On being found guilty, Lord Young imposed a prison sentence of one year and stated that the 'accused would not have done this had he been sober'. The sentence therefore would 'put him out of the way of temptation of liquor', not wife-beating⁴⁴.

Members of the Scottish judiciary were also reluctant to use the penalties at their disposal. Sheriff Lees 'who had tried a great many cases of wife-beating' found the most effective sentence was 'to order the prisoner to find security for their good behaviour in the future'. He claimed that out of nearly 100 cases only three individuals had forfeited money lodged with the court, although he added that he was 'sorry to say that several' of the men 'appeared before him immediately after the period of caution expired'⁴⁵. This is unsurprising because a wife was unlikely to call for police protection when she could lose, not only the caution lodged with the court, but also the breadwinner's income if he was imprisoned for breaching the terms of his bond. Some members of the judiciary felt that the system of fining was inadequate in dealing with wife-beating. In a letter to the *Scotsman* from a Sheriff-substitute the writer stated, 'I am of the opinion that much of the wife-beating that goes on in Scotland is due to the system of fining rather than prison sentences which are "dreaded" whereas fines are little regarded and raised by a man's friends very much with the idea that "It's you today, it may be me tomorrow"'⁴⁶. It was not only friends who supported wife-beaters. A plumber appeared in court because, while he was 'intoxicated', he had attacked his wife for which he was fined of twenty-one shillings. The plumber's employer, either out of sympathy, empathy, self-interest or a combination of these factors, immediately paid the fine⁴⁷. Although there was some condemnation of wife-beating, evidently there was also considerable public sympathy towards a man's right to 'chastise' his wife.

Provocation was also used as a defence in Scotland more frequently than has been identified by Wiener for England, where seemingly aggravation by word or

⁴² *H. M. Advocate v Dingwall* (1867) 5 Irvine 466; Farmer, (1997, p. 28) and Conley, 'Atonement and domestic homicide', pp. 219-238.

⁴³ *Caledonian Mercury*, 5th May 1857.

⁴⁴ *Glasgow Herald*, 10th May 1900.

⁴⁵ *Ibid*, 12th April 1878.

⁴⁶ *Scotsman*, 27th October 1874.

⁴⁷ *Glasgow Herald*, 28th May 1864.

manner or poor housekeeping skills was not accepted as a defence for assault⁴⁸. Provocation by a 'shrew' by word or manner and the lack of women's domestic skills continued to be offered in Scottish courts in the nineteenth and early twentieth century as 'extenuating circumstances' in wife-beating cases⁴⁹. Conley demonstrates that between 1867-1892 'no man in Scotland was convicted of murdering a wife who had been drunk or had provoked him', instead they were accused of the lesser charge of culpable homicide⁵⁰.

The Scottish press' response to cases of wife murder and wife-beating also highlights that they were not at the vanguard of condemnation influencing public opinion as Weiner suggests was the case in England. The press embarked on a process of educating and advising victims in ways to reform men and thereby avoid abuse rather than disseminating ideas to men about moral authority and self-restraint. Victims were blamed for the violence they endured because of their perceived inability to demonstrate the dominant conception of femininity and this provided acceptable provocations for the press to justify male violence. The *Scotsman* reported on the case of Daniel Briant who beat his wife to 'within an inch of her life', and asked, 'has the wife anything to do with it? There can be no doubt that in many cases if the women managed better they would not fare so badly'⁵¹. Abused wives were demonised as 'slatterns, stupid, permanent vixens and intermittent viragos'. Men who beat their spouses were identified as 'victims' who were 'neglected, defied or domineered' by a person 'who ought in duty and fairness to behave very differently'. Violence towards wives was thus identified as an 'unavailing series of efforts to assert... leadership and superiority', and, 'what does the law do, it steps in to prevent the forcible establishment of Home Rule' and the 'Taming of the Shrew'⁵². In a letter to the *Aberdeen Weekly Journal* signed 'Pity the Poor Husbands' it was claimed that, 'Unless wives hold their tongues and tempers and their conduct they will continue to be beaten and some might say deservedly so'⁵³.

Wiener accepts that there was considerable resistance to attacks on customary notions of masculinity and these are clearly evident in Scotland⁵⁴. Although there is some evidence of growing intolerance to wife-assault, the law in practice and the law in theory diverged significantly, while the discursive practices of the judiciary and the media continued to favour female provocation rather than contributing to a discourse that promoted the adoption of a reasonable non-violent masculine identity⁵⁵. The dissemination of a discourse promoting non-violent masculinity was further impeded from the 1860s when feminists began to challenge men's sexual and violent behaviour towards women in Scotland.

⁴⁸ Wiener (2004, pp. 2-15 *et passim*).

⁴⁹ Hughes (2004, pp. 169-184).

⁵⁰ Conley (2008, p. 228).

⁵¹ *Scotsman*, 13th October 1871.

⁵² *Ibid.*

⁵³ *Aberdeen Weekly Journal*, 13th March 1899.

⁵⁴ Wiener (2004, pp. 2-3 and p. 37).

⁵⁵ *Ibid.* (pp. 4-7 *et passim*).

CHALLENGES TO CUSTOMARY MASCULINITY AND MALE RESPONSES TO FEMINISM

From the 1860s discussions about wife-beating were stimulated by reactions to the ways in which feminists questioned male sexual behaviour and male violence towards women across Britain. Feminists demanded the vote for women so that they might effect legislative change that would offer women greater protection within marriage and from marital violence⁵⁶. In response, middle-class men intensified the dissemination of the discourse that identified wife-beating with working-class men. Not only did this discourse absolve middle-class men from complicity and condemnation, but it also helped to silence middle-class victims because wife-beating was associated with the 'animality' of the poor and the shame of inadequate feminine skills. Moreover, the discourse also helped shore up the political hegemony of middle-class men by moderating challenges from feminists and additionally it offset threats to the 'legitimacy of the law' as it related to wife-beating. Furthermore, feminists were compelled to accept the preface that wife-beating was a working-class problem in return for male support for their demands for legislative changes to improve the position of women within marriage⁵⁷.

In addition to these factors, feminist condemnation of wife assault and responses to this were important in cementing older conceptions of masculinity in Scotland. In 1860 the *Scotsman* responded to feminist demands to have the lash used on men who beat their wives by demonising the wives rather than the wife beaters. They reported that,

Every poor man's wife is not an angel. Many are cursed with drunken shrews whose reckless waste, rough tongue and ever-ready arm provoke him to strike. These are the loving ladies who will shelter behind the lash. Such sluts would be ready enough to avail themselves of the proposed amendment⁵⁸.

In 1871 the *Glasgow Herald* discussed John Stuart Mill's mandate for a reversal of the unequal marriage laws and his demand for votes for women. The report maintained that enfranchising women would not deter a 'brutal husband' or the 'provoking tongues of women', and in reply to condemnation that theft was punished more severely in Scotland than wife-beating the report also claimed that wife-beating was not a premeditated crime, but conducted in the 'heat of the moment and under great provocation'. Thus the penalties incurred by those found guilty 'were not unreasonable'⁵⁹. Indeed, the Reverend Alexander Webster was unusual when he argued that wife-beating was caused by the under-valuation of women, that it was not confined to one class, and that drunkenness was no excuse, but he too identified women's 'nagging and bad tempers' as a causal factor in wife-beating⁶⁰. At this time feminist renewed demands for the vote to redress wife-abuse through protective legislation and for the use of the lash against violent husbands. In 1872 the *Scotsman* acknowledged that society is entitled to use 'shame and disgrace as well as terror for its own

⁵⁶ See Pleck (1983); Bauer, Ritt (1985, pp. 188-189).

⁵⁷ Clark (2000, pp. 27-40); Lambertz (Feminists and wife-beating, p. 30).

⁵⁸ *Scotsman*, 12th May 1860.

⁵⁹ *Glasgow Herald*, 17th January 1871.

⁶⁰ *Aberdeen Weekly Journal*, 27th March 1899.

protection' but argued that 'this should be used for notoriously degraded offenders' not wife-beaters who are 'apt to suffer provocation from wives'⁶¹.

After the publication of an article by Frances Power Cobbe, 'Wife Torture in England', there was a significant backlash from the press and the Scottish public including a correspondent signed 'Benedict' who was aroused by the way that she made out that 'women are angels, men devils'. The writer argued that 'bad wives trouble many good men'⁶². The *Scotsman* also responded to the publication and her suggestion that magistrate's courts should be empowered to grant separation and maintenance orders to wives whose husbands had been convicted of physical violence by arguing that the law did not need to be amended. The *Scotsman* also claimed that Cobbe's article, ('Wife Torture'), was sensational. The report claimed that it was ludicrous to suggest that granting women the vote or flogging wife-beaters would alleviate this offence and reminded readers that there 'was such a thing as bad wives who make homes places of torture'. Female drunkenness, the report maintained, 'is too often the cause' of provocation and although the 'stronger party, a man cannot rid himself of his torment so that he too turns to drink and in a moment of sudden exasperation beats her and ends up in police custody'. The article continues, 'Anyone who knows anything about Criminal Courts from the 'Police Magistrates to the Assizes courts' is 'well aware that such cases are not uncommon. It may be right to show no mercy, but as evidenced by the proceedings both of judges and juries this is not the general opinion'⁶³.

At this time magistrates and municipal representatives from Scottish Local Councils began to consider the use of the lash against men convicted of robbery with violence, knife crimes, theft and wife-beaters. In 1874 Glasgow City Council voted to memorialise the Government to grant Scotland the power to use the lash for these purposes, suggesting that there was a hardened approach to inter-personal violence. However, the only category of crime which was deemed to require previous convictions before the lash would be used, in this case three previous convictions, was wife-beating⁶⁴. What is also significant is that when Glasgow, Dundee, Edinburgh and Aberdeen City Councils debated the use of the lash the only disagreement over its use was on whether it should be used against men convicted of wife-beating at all⁶⁵. The actions of the Councils also caused considerable controversy amongst the public, the press and members of the judiciary. A Sheriff wrote to express the view that the lash would provide 'shrews' with a weapon and that,

No man who is a man becomes the ruffianly husband and father at once... Nor does he become a beastly drunkard as soon as he is married... We have the holy writ for authority as to the terrors of a foolish woman's tongue... the ducking stool.

The correspondent continued, 'Let us then take the "male victim" who marries in hope of a happy home and gets a slatternly unthrifty scold', what can he do? The answer was that all that such a husband could do was 'escape to the public house'.

⁶¹ *Scotsman*, 1st June 1872.

⁶² *Ibid.*, 12th April 1878.

⁶³ *Ibid.*

⁶⁴ *Scotsman*, 11th November; 23rd December 1874.

⁶⁵ *Aberdeen Weekly Journal*, 9th December 1874; 6th January 1875.

The writer then demonised abused wives as drunken women before detailing the recent case where a jury, who to the 'applause of a sympathetic audience', found a man who killed his drunken wife not guilty of murder or of culpable homicide. A postscript was added,

It would be interesting to ascertain whether the practice of wife-beating is on the increase and if it is whether conjugal discussions as to the 'rights of women' have had any share in developing the argument, especially if the discussion takes the shape of 'remonstrance' on the part of the wife⁶⁶.

In 1875 according to the *Scotsman*, Lord Aberdare, the Chief law officer of the crown in Scotland effectively killed demands for the use of the lash on wife-beaters when he stated that justices were against any further extension of punishment by flogging because they knew that 'wives had tongues which justly irritated their husbands'⁶⁷. There was evidence of considerable opposition to new conceptions of masculinity from within the ranks of the Scottish press, members of the judiciary and the press' readership as well as individuals who sat on juries and the judiciary. Indeed a Sheriff-substitute wrote to the *Scotsman* expressing the view that the class with which the legislation would deal with, that is to say the working-class, was a 'non-criminal class' and if the lash 'were to be used it should not be awarded to Police Court magistrates for use in usual or ordinary cases of wife-beating'⁶⁸. However he failed to define 'usual or ordinary' and in the Scottish context at least this could include extremely vicious attacks.

Although there were sporadic discussions about the use of flogging for wife-beaters, by 1875 the *Scotsman* had adopted a satirising approach to the issue of wife-beating. The newspaper suggested that they might dedicate a column to wife-beaters entitled 'Manly Exercises'. They also indicated that wife-beating was generally engaged in whilst men were 'rendered hilarious by alcohol' and on a 'more serious note' they questioned whether the 'beaten wife may not have something to do in bringing about the condition of her Lord and beater'. This article continued, a man, 'on his way home from a public house has any number of individuals to fight with', from those who left the public house with him through to passers-by and his neighbours, so why then, the *Scotsman* asked, was it the wife who was beaten. Rhetorically the answer was that it is 'our suspicion that she has a great deal to do with it' because rather than waiting until her husband is sober, she provokes him by nagging him while he is intoxicated. In addition abused wives were accused of being unable to make a comfortable refuge for their husbands and of having the 'cooking skills of a chimpanzee'. Seemingly victims also brought on the wrath of their spouses because they 'avoided soap and combs' and ignored the adage that 'a stitch in time saves nine'. The home of a wife-beater was identified as 'a little piggery' because his wife spent her day with 'other like women gossiping at the mouth of tenements'⁶⁹. Thus advice was again provided for victims; they were told that they 'could do a great deal to diminish this evil. Nearly all wife-beaters drink and if man-aged a little better' they would not embark on violence. Women were asked 'not to

⁶⁶ *Scotsman*, 15th September 1874.

⁶⁷ *Scotsman*, 11th January 1875.

⁶⁸ *Scotsman*, 29th October 1872.

⁶⁹ *Scotsman*, 28th July 1876.

fly at his throat when he comes home drunk' or to aggravate him by 'looks, words or acts' because by doing so you 'virtually begin the attack. Nine out of ten cases could be avoided if wives exercised skill and patience. The principle occupation of a woman is to be a good wife'. Wives were also advised that they should persuade their husbands not to consume alcohol⁷⁰. This particular discourse indicates that there were some attempts to disseminate the middle-class construction of gender identities but that the discourse which circulated reflected earlier Victorian conduct literature aimed at women on how to reform a husband rather than at men on how to reform their own behaviour⁷¹.

After the Matrimonial Causes Act [1878] was passed which allowed magistrates to grant a writ of separation to wives whose husbands had been convicted of aggravated assault, feminist demands for the protection of victims of marital violence are seen to have been directed into other causes⁷². However, the perceived provocation by the shrew, slattern, or drunken wife who drove her spouse to drink prevailed in Scotland and was made worse by the psychology which identified male drunkenness with a form of diminished responsibility ensuring that in a considerable number of assault cases it was alcohol or the victim that was blamed rather than the perpetrator. In 1902 it was reported that the vast majority of crime in Scotland was due to drink and in 1909 it was estimated that 80% of all prosecutions for culpable homicide and murder crimes were caused by drunkenness⁷³. While the statistics are questionable, clearly there existed a widespread belief that the problem of violent behaviour was alcohol consumption and these perceptions influenced judicial discourse and the penalties violent men received. James McDonald pled guilty to culpable homicide when charged with the murder of his wife and his plea was accepted because the judge identified his 'dissipated habits' as the 'cause of the death of his wife' rather than condemning him for attacking his wife with a weapon⁷⁴. James Monaghan stood trial for assaulting his wife with a sweeping brush causing her death. However, Monaghan was convicted of assault because he had 'suffered great provocation'. Although his wife was sober on the day she was killed it was claimed that she was of drunken habits. This was sufficient evidence for the medical examiner to argue that the victim's careless treatment of her head wound had caused her death. In other words had she not been a 'drunkard' she would not have dressed the wound herself and would have instead sought medical treatment. As the medical examiner explained to the jury, 'he had seen people with worse wounds survive'. Based on this evidence the judge decided that the culpability lay with the deceased women not the accused. Monaghan was sentenced to nine months in prison⁷⁵. However, had the women sought medical treatment then under Scottish law the doctor would have been required to notify the police that an assault had taken place and her husband would have been charged, something, other than her 'drunkenness that may have determined her actions. In 1915 at the High Court, Lord Salvesen presided over the case of a man who was found guilty of beating his wife to death in a sustained

⁷⁰ *Scotsman*, 6th December 1878.

⁷¹ Hammerton (1995, p. 73).

⁷² Lambert (Feminists and wife-beating, pp. 25-43).

⁷³ *Scotsman*, 15th February 1902; 30th November 1909.

⁷⁴ *Glasgow Herald*, 23rd January 1899.

⁷⁵ *Scotsman*, 6th October 1910.

all-night attack. His defence was provocation and diminished responsibility due to drunkenness. The defendant maintained that he had attacked his wife because he had found her drunk. The accused also admitted to being drunk and when a seventy-eight-year-old woman remonstrated him for ill-treating his wife he attacked her breaking her breast bone. In Lord Salvesen's view this was a 'sordid tragedy' that was due to alcohol as evidenced by the perpetrator's previous good character; thus Salvesen accepted a plea of culpable homicide and assault and imposed a sentence of three years penal servitude⁷⁶. Indeed by the early twentieth century assault cases that did not involve the defence of alcohol consumption were identified as 'extraordinary'⁷⁷. Defences of drunkenness and a wife's provocations were used significantly and accepted widely, particularly but not exclusively in the summary courts, as mitigating factors in the behaviour of violent men in Scotland's courts. This suggests the Scottish judiciary did not promote the more ordered, rational and non-violent masculinity by their reluctance to accept provocation and drunkenness as mitigating in the crime of wife-beating.

SENTENCING FOR 'AN ASSAULT BY A HUSBAND ON A WIFE' IN SCOTLAND

The 1898 Criminal Evidence Act (Scotland) that determined that a wife could be regarded as a credible witness resulted in the establishment of a new category of crime, 'assaults by husbands on wives' which was tabulated separately in the criminal statistics from those of assault, sexual assault and police assault for the years 1889 until the First World War which disrupted the collection of statistics. Between 1914 and 1920 the annual reports of the Prison Commissioners provide statistics on the number of men sent to prison having been convicted of wife assault but thereafter cutbacks due to the post-war recession resulted in all assaults being grouped into one category. Nevertheless the separation of assault cases provides a window of opportunity to evaluate how 'harshly' Scottish men who were convicted of beating their wives were sentenced, particularly in relation to other forms of assault.

The charge of an assault by a husband on a wife included actual assault, Breach of the Peace and Drunk and Disorderly Behaviour when these were directed at a wife. Breach of the Peace and Drunk and Disorderly Behaviour were used as alternatives to assault charges because it was easier to obtain a conviction and this possibility was extended after the Summary Jurisdiction Act 1908 (Scotland). The Act consolidated and codified common law and extended a Sheriff's summary powers to prosecute defendants without a jury. It also gave Sheriffs greater powers of mitigation including the right to allow persons found guilty of crimes to be dismissed or admonished. Regardless of changes in the law the graph below indicates that the level of prosecution for wife-beating remained relatively stable and that changes in the law had a more profound effect on the rate of prosecution of men who assaulted individuals other than their spouse.

⁷⁶ *Scotsman*, 24th February 1915.

⁷⁷ See for example, *Scotsman*, 6th October 1910.

Graph 2: Percentage of the total number of individuals imprisoned after conviction for assault and assault on wives by husbands at the Scottish Summary Courts, 1898-1914

Source: Parliamentary Papers, *Report on Judicial Statistics of Scotland, 1898-1914*.

Consistently, around two-thirds of all men convicted in Scotland's summary courts of assaulting their wives did not receive prison sentences. Moreover, prosecutions for wife-beating also differ significantly from the pattern of prosecutions for male assaults on individuals other than their wives. Although generally men who assaulted individuals other than their wives were dealt with more severely the pattern is more variable. A range of factors may explain this including the influence economic factors, the possibility of responses to media panics, especially over youth in the wake of the Boer War as well as concerns over public rather private violence as wife-beating had increasingly become.

Men who assaulted their wives were less likely to receive prison sentences, and when prison sentences were imposed between 60 to 80 percent were for the duration of less than one month. By 1913 of all assaults on wives by husbands known to the police only 4% of the total resulted in convictions with prison sentences. This occurred at all levels of the court system. In the years 1900, 1910 and 1914, a total of seventy-seven men were convicted for wife assault in the Scottish High Courts, 68% received sentences of six months or less, many others were admonished, cautioned or fined. In 1914 18% of all convictions for wife assault resulted in non-

Graph 3: Percentage of individuals convicted and sentenced to 30 days in prison or less for assault and assault by husbands on wives at the Scottish Summary Courts, 1889-1914

Source: Parliamentary Papers, *Report on Judicial Statistics of Scotland*, 1889-1914.

custodial sentences.⁷⁸ Thus it would seem that the Scottish judiciary was not using harsh penalties as a means of expressing condemnation of wife-beating or of promoting a more ordered and rational non-violent masculinity.

MARRIAGE MENDING AND THE DEVELOPMENT OF WELFARE SANCTIONS

By the twentieth century wife-beating was penalised less harshly through due to the introduction of payment of fines by instalment, the use of probation and the extension of the probation services. For example, to address the rising number of men in prisons for beating their wives between 1910 and 1914 because they had failed to pay the fine imposed the Scottish Prison Commissioners suggested that probation sentences should be used more and that there should be an extension in the use of the 'payment by instalment system for fines'.⁷⁹ This was extended in the 1920s and 1930s at a time the Scottish press identified an increase in extreme vio-

⁷⁸ Parliamentary Papers, *Report on Judicial Statistics for Scotland*, 1913, *Annual Report of the Prison Commissioners for Scotland for the Year 1911-1914*.

⁷⁹ Parliamentary Papers, *Annual Report of the Prison Commissioners for Scotland*, 1914.

lence directed at wives. In 1930 the *Govan Press* discussed how 'more serious cases' of wife-beating were taking place and the increasingly use of open razors by wife-beaters as well as more severe beatings⁸⁰. Yet, as Lambertz shows, by the early twentieth century, men of the working-classes had become part of the political nation with voting power. Corresponding with the rise of the labour movement and the return of war veterans this ensured a new discursive approach to class emerged which mediated representations of the working-class 'brute' who beat his wife⁸¹. This discursive change moderated what little condemnation there had been of wife-beating, that which had been embedded in ideas about working-class 'animality'. Concern about wife-beating in the inter-war years was also displaced because of media panics about youth and in particular 'gang' culture in Scotland and judicial responses to this⁸².

Of equal importance, from the late nineteenth century there was also a greater emphasis placed on marriage. Rising foreign and military competition and the effects of the Boer War which highlighted the poor condition of Britain's population combined to cause anxiety about Britain's ability to maintain its political and economic supremacy. World War I reinforced concerns about the quality and quantity of the race and resulted in marriage being actively promoted⁸³. The promotion of marriage could moderate condemnation of wife-beating but preventing the breakdown of the family was a priority that arguably could also have resulted in more condemnation of wife-beaters. However as Jones highlights 'marriage and motherhood' were being 'upheld as the ideal for which all women should strive' thus the violent side of marriage was not something that the inter-war 'social scientist or social commentators' chose to focus on⁸⁴. Rather than condemning wife-beating, the agencies of social welfare in Scotland continued to contribute to the discourse that drunkenness was the cause of marital conflict and this corresponded with attempts by the judiciary and the social services to downplay wife-beating and to mend broken marriages⁸⁵. For example the Scottish National Society for the Prevention of Cruelty to Children dealt with the victims of domestic violence including wives, but they made it clear that their principle aim was to safeguard the family from breakdown⁸⁶. In 1931 The Scottish Justices and Magistrates Association called for the establishment of family courts because the number of women seeking separation orders on the grounds of physical cruelty alarmed them. They believed that Family Courts could mediate this by allowing magistrates to deal with 'intimate domestic problems'. The proposed courts would facilitate reconciliation through the use of social workers which could not be done in the criminal courts because the judiciary were unable to go beyond the strictly legal definition of the law⁸⁷.

⁸⁰ *Govan Press*, 21st March 1930.

⁸¹ Lambertz (Feminists and wife-beating, pp. 25-43).

⁸² Davies (2007, pp. 511-527).

⁸³ Hughes (2004, pp. 171-173).

⁸⁴ Jones (1994, p. 128).

⁸⁵ Hughes (2004, pp. 169-184).

⁸⁶ Glasgow Caledonian University, CHILDREN 1st (RSSPCC) Archive, GB 1847 *RSSPCC Annual Reports, Branches*, 1896-1914.

⁸⁷ *Glasgow Herald*, 18th October 1931.

The ability to mend marriages was extended when magistrates and justices were given the power to use the Probation of Offenders Act [Scotland] 1907 as an alternative to prison sentences for men who assaulted their wives. McNeill highlights how the Scottish probation service was a class-based provision used to justify the 'existing social order' by defending the use of prison sentences for 'serious' offences. Probation was also part of the development of 'individual psychology', the 'individuation of punishment'; and of the 'diagnosing of offending'⁸⁸. Thus it could be used to prevent family breakdown by reducing the number of wife-beating given prison sentences. Probation allowed some defendants to be identified as 'deserving and others as undeserving of mercy'; the defendant's age, social background, character and 'any extenuating circumstance' were significant in determining whether probation was regarded as an appropriate punishment for an offence committed⁸⁹. Under this system wife-beaters could use the range of provocations available to them as 'extenuating circumstances' and they could exploit their work reputations to moderate their violent reputation being presented in court. Thus the adoption of what Garland identifies as welfare sanctions, policing through 'penal welfarism', reduced what little legal redress victims of marital had and encouraged them to see themselves as part of the problem⁹⁰.

The Probation Act was extended in 1931 and probation was beginning to be seen as a form of marriage mending. In an article on 'Broken Marriages' by a probation officer it was argued that the young men and women who entered the "marriage state with little preparation and less knowledge of the demands which matrimony makes upon each party to the contract" will inevitably "suffer difficulties in the settling down period and quite frequently 'wife assaults' will occur – the result of faulty adjustments". Probation could help by offering "training in citizenship": young men were to be taught the "privileges and responsibilities of being a husband" and young wives the "arts of home-making"⁹¹. However, it was not merely the young offenders who benefited from probation. Clause II of the act allowed probation to be given to first offenders whose crime warranted a sentence of less than two years. graph 4 below indicates how, in relation to a range of crimes, the only adult men who were deemed deserving of 'mercy' in significant numbers were men who committed assaults and press reports and judicial demands indicate that the adult men who were more likely to be given probation were those who assaulted their wives.

In 1923 when Mrs McNeil took her husband to court for assaulting her, the magistrate lamented that 'It is unfortunate to see husband and wife living like cat and dog.' He asked the defendant and his victim, 'Are you willing to try to make a happier life?' He then went on to tell the husband, 'I will put you on probation for twelve months and see if you can come to some happier way of living'⁹². In the 1920s a Glasgow wife-beater had received probation twice amongst the punishment he had accrued for his five convictions for wife-beating. He was sentenced to thirty days in prison on his sixth appearance in court, because after spending his wages on

⁸⁸ McNeill (2005, pp. 23-32).

⁸⁹ *Scotsman*, 30th November 1905.

⁹⁰ See, Garland (1981, pp. 29-45). See also, Smart, (1992).

⁹¹ *Scotsman*, 24th March 1938.

⁹² *Govan Press*, 28th September 1923.

Graph 4: Adult men [over 21 years] as a percentage of all individuals who were given probation orders for assault, housebreaking and theft in Scotland, 1930-1936

Source: Parliamentary Papers, *Report on Judicial Statistics of Scotland*, 1930, 1932, 1934 and 1936.

alcohol he attacked his wife and assaulted a police officer⁹³. In effect probation added a further layer to the number of prosecutions needed to ensure the imprisonment of a wife-beater who continued to receive either non-custodial sentences or sentences of less than one month in prison and less than 5% received sentences in excess of three months.

Drunkenness, 'good character' and female provocation also continued to be regarded as mitigating factors in wife-beating cases into the twentieth century. William Davie was sentenced to six months in prison after he appeared at Glasgow High Court having killed his wife by cutting her throat with a razor and attacking her with a metal pan. However, she had brought another man home and thirty neighbours had signed a petition testifying to his previous good behaviour⁹⁴. Thomas Cameron was sentenced to thirty days in prison when he was found guilty of striking his wife over the head with a hatchet while intoxicated. Henry Burton, whilst 'drunk and disorderly' struck his wife with a stool and tried to strangle her – he was fined £2 and William Herd, who had five previous convictions for assault, three of them on his wife, received forty days in prison for stabbing and beating his wife⁹⁵. Farmer maintains that at the 'centre of Scottish law there was an ill-defined notion of reasonableness based on shared or community attitudes towards wrong'⁹⁶. If this was the case then the criminal statistics, the penalties imposed on men who

⁹³ *Ibid.*, 5th October 1923.

⁹⁴ *Scotsman*, 24th October 1934; 5th August 1938.

⁹⁵ *Scotsman*, 24th October 1934; 18th Jan 1935; 30th June 1938.

⁹⁶ Farmer (1997, p. 28). Contemporaries including the Chief Constable of Glasgow attributed the rise in the number of assault prosecutions in 1908 to the 'youth problem'. See, Tawney (1909, p. 533).

assaulted their wives and judicial discourses and media reports all highlight the perceptions of the 'legitimacy of violence' towards wives in Scottish society. This in turn influenced considerations of the social costs of wife-beating and contributed to continuities in older conceptions of masculinity.

CONCLUSION

Middle-class civic humanism and the 'civilising offensive' were moderated in the Scottish legal system as it related to violence against women in the nineteenth and early twentieth centuries. There is some evidence of discursive disapproval of wife-beating but changes in the law in theory that should have offered women greater protection from violent men were not applied in practice. In addition, a range of provocations from a wife were open to violent men that reduced the risk of harsh punishment and this mitigated considerations of the social costs of wife-beating throughout the period. The excuse of drunkenness may have featured less as a defence in homicide cases, but the use of intoxication as a mitigating factor in crimes of violence against women increased as it was incorporated into with the defence of diminished responsibility or 'unconscious by reason of alcohol automatism'. Exacerbating this situation were the changes in the judicial approach to wife-beating in the later nineteenth and early twentieth centuries which added further layers of procedure before men were convicted and imprisoned for wife-beating. This was aggravated by women's dependence on men and by the state's emphasis on the importance of marriage. These factors ensured significant numbers of men from all classes in Scotland fiercely upheld traditional conceptions of masculinity based on violence and workplace reputations rather than family and community ones. These men included offenders from all classes of society; they also included members of the press, juries, employers and the judiciary because to beat a wife was all too often seen as either a 'non-criminal' act or an unpremeditated minor infringement of the law brought about by extenuating circumstances and the provocation by the 'victim'.

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