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Trial by jury and newspaper reportage: re-writing women's stories from legal transcripts and contemporaneous journalism

Abstract:

High-profile criminal cases often pique intense public interest at the time they are being acted out in the courts, and some cases maintain a place in the popular imagination. A few cases will result in narratives that successfully re-narrate the protagonists' stories in what could be described as fully fleshed, satisfying biographical studies. This article examines the high profile cases of Mary Dean (poisoned by her husband in 1895) and Mary Jane Hicks (sexually assaulted by a gang of men in 1886) and how their stories, reduced to the facts distilled from copious legal documentation and newspaper reportage, have seen these women fade; their stories, though repeatedly re-told, contain both Dean and Hicks as unimagined and obscure.

Biographical notes:

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Introduction

Voltaire is widely reported as having remarked that ‘one important trial was more interesting than a thousand idle stories’ (qtd. in Stokes 1912: 4) and prominent historian Natalie Zemon Davis has written that ‘a remarkable dispute can sometimes uncover motivations and values that are lost in the welter of the everyday’ (1987: 5). High-profile criminal cases often pique intense public interest at the time they are being acted out in the courts, yet only the rare few persist in the popular imagination. Fewer still result in narratives that successfully re-narrate the protagonists’ stories in what could be described as fully fleshed, satisfying biographical studies. This is important, as such narratives not only have the potential to reveal much about crime, class and gender in late-nineteenth century Sydney and correct a gap in the historical record, but they also have many resonances today. Such biographical excursions offer important insights into ongoing issues around gendered and socialised expectations.

All writers who recount real lives – whether biographers, historians, or those who write true crime, historical fiction, or other fact-based fictional forms – construct their stories (at least in part) from the data they collect. Re-imagining the disordered and vast complexity of actual lives into a neat literary product; the life thus interpreted and narrated only appears authentic and life-like because readers (and writers) accept, and endorse, this literary convention. Kendall Walton argues that it is the function of all works of art ‘to serve as props in games of make-believe’ (1990: 53). Others have discussed various aspects of representing real lives in fiction and non-fiction, including the ethical dimensions and issues of genre and classification (Brien 2004a; 2006; 2009; 2014; 2015; Couser 2004; Franks 2011; 2012; Fassin 2014; McGill 2015; and many others). What makes the lives thus represented ‘authentic and life-like’ and, therefore, what makes this writing successful in these terms, while other examples are not, is much more rarely discussed. This exploration of the re-imagining of two nineteenth-century Australian women in various narratives seeks to contribute to this discussion.

Forgetting Mary Dean and Mary Jane Hicks

The stories of Mary Dean, the victim of a high profile poisoning in Sydney in the late 1890s, and Mary Jane Hicks, the victim of a gang rape at Mount Rennie (now Moore Park) in Sydney in 1886, have many commonalities with that of Lindy Chamberlain, who was accused of killing her baby daughter at Uluru (Ayers Rock) almost a century later. Although both Dean and Hicks were the survivors of serious crimes, and Chamberlain accused of one; all were ordinary Australian women of unprepossessing antecedents, each of whom was able to withstand and survive the vicious attentions of a chauvinistic justice system, a sexist press and public calls for her lynching. Although, too, as indicated above, these three cases are dramatically different, each woman stood accused by the public and was shamed for the circumstances in which she found herself. Chamberlain’s experiences have given rise to various popular written and cinematic narratives. These include the biographical (Bryson *Evil Angels* 2000, Chamberlain *Heart of Stone: Justice for Azaria* 2012, Crispin *Lindy Chamberlain* 1987), autobiographical (Chamberlain-Creighton *Through My Eyes:*

Lindy Chamberlain, An Autobiography 1990), academic (Staines et al. *The Chamberlain Case: Nation, Law, Memory* 2009), legal/judicial (Crispin *The Crown Versus Chamberlain* 1987; *The Chamberlain Case* 2012), those for young readers (Brown 2009) and even writing for musical entertainment (Henderson and Rodriguez *Lindy: The Opera*). A discussion of Chamberlain's tragedy was also a key exhibit of the new National Museum of Australia in 2001, and there continues to be considerable interest in her story (Howe 2005). There is not, however, as at the time of writing, any major published or significant televisual/filmic study of either Mary Dean's or Mary Jane Hicks' experiences. Both women remain, at best, footnotes in feminist accounts of Australian legal and parliamentary history (see, for Mary Dean: Allen 1990; Peers 1992; Hogan 1994; Brien 1999a, b; and, for Mary Jane Hicks: Peers 1993; Gleeson 2004; Gilling 2012; Franks 2016). Tellingly, there is an entry for Mary Dean's poisoner – her husband, George Dean – in the *Australian Dictionary of Biography (ADB)* (Rutledge 1981), but none for Mary Dean. Mary Jane Hicks, despite the importance of the case in Australian law, is also without an entry within the *ADB*. The man who sat in judgement at trials so central to the lives of Dean and Hicks, (Sir) William Charles Windeyer has a detailed listing (*ADB* 1976), and this appeared only a decade after the first volume of this prestigious publication was released. It is acknowledged that the stories of these women may not have broad, commercial appeal but it would, it is argued here, be appropriate for collections of biographical material to offer brief narratives of the victims in these cases as well as those who perpetrate and judge these crimes. This is exacerbated by the way most legal cases are known and named, that is, by reference to the accused.

Although there have been a number of accounts since the late-nineteenth century when what became known as “The Dean Case” and “The Mount Rennie Outrage” occurred, neither the facts, nor any sense, of the young women at the centres of these cases as real individuals currently occupies any meaningful place in public discourse or collective memory in Australia or elsewhere. This is despite numerous re-imaginings and re-tellings of the Deans' stories, and those of Hicks and her attackers. The below discussion argues that this is because, although court cases produce significant written records and journalists report on court proceedings and the materials facts of such cases, considerable specialist skill on the part of authors is necessary to re-imagine and produce a compelling narrative from even the most seemingly promising material. While it could be argued that the stories around such cases are lacking in narrative interest, this is certainly not the case in these examples – and their stories have been told and re-told – but the women at their centres continue to remain one-dimensional figures in these narratives. This remains true in terms of narratives about their experiences of the crimes and resulting trials in which they were involved, as well as their lives after the trials ended.

The Dean Case

The Dean Case caused a sensation across Australia in the mid-1890s. The ruckus began on the day of George Dean's first wedding anniversary when he was arrested for attempting to murder Mary, his 20-year-old wife and mother of his 10-week-old

baby girl. Dean was a Sydney ferry master, a handsome, moustached 27-year-old athlete who had rather spectacularly rescued a number of his women passengers from drowning. Accused of attempted murder, during the criminal trial it was not his actions and motivations that were probed; instead, the supposed behaviour and character of his wife, her mother and, by extrapolation, the entire female sex, were microscopically examined and analysed. This approach climaxed in defence counsel arguments that Mary had poisoned herself to frame her innocent husband. Nevertheless, George was found guilty and sentenced to hang, the mandatory punishment for attempted murder at that time (Brien 2004b).

Despite the persuasive prosecution evidence and the jury's unanimous verdict, three aspects of the trial – its length of only three days, the judge's leading addresses to the jury, and the death sentence (when the jury had requested leniency) – induced the Sydney press to initiate and then perpetuate a public outcry. This culminated in a call for an inquiry into the conduct and findings of the trial (Blackwell 1970). After a series of inflamed public meetings and with a general election approaching, these entreaties proved successful. The resulting Royal Commission into Dean's conviction came to the conclusion that:

the facts, as shown, are quite as compatible with the hypothesis that Mrs. Dean ... administered the arsenic to herself – possibly at the prompting of her mother and without any intention of taking a fatal dose – as that the poison was administered to her by her husband with an intent to kill' (*Regina v George Dean: Report of the Royal Commission*).

As a result, George was freed with a Royal Pardon and Mary was publicly reviled as a pariah of the lowest order. This unhappy situation continued even when it was revealed that her husband had confessed his guilt to his solicitor, and charges of conspiracy and perjury were brought against Dean and his lawyers, both of whom were not only prominent judicial figures, but also members of the New South Wales Parliament (Meagher 1920; Rutledge 1981).

There were voluminous (and often daily) accounts of the Dean case in a number of Sydney newspapers. This dossier includes detailed reports of the committal hearing and the two criminal trials George Dean faced, and the Royal Commission into his initial conviction as well as Parliamentary proceedings, summaries of other government publications, interviews with pertinent participants, as well as what we would now call "opinion pieces", fiery editorials and letters to editors. The newspapers which reported, commented upon, and reprised each development of the Dean case took varying approaches to their stories, expressing differing opinions regarding the issue of capital punishment; the various politicians, lawyers and judges involved in the scandal; and the role played by the Government itself. However, all – from the ostensibly restrained *The Sydney Morning Herald* and *Daily Telegraph* to the more sensational *Truth* and *Evening News* and highly opinionated *The Bulletin* – included a focus on the most prurient melodramatic aspects of the stories they reported. As might be expected, the 'Woman Question' (the then regularly asked question about women gaining independence and agency in Australia, with rights to make their own decisions, to work and to vote) obsessed the weekly *The Bulletin*,

which regularly devoted long articles to the case and capitalised on public interest with the publication of a summary history in 1895. Once George Dean was pardoned, moreover, almost all these publications continued to attack Mary Dean and her mother (Hogan 1994).

Local, state and national newspapers that covered the case while it was unfolding included the *The Argus*, *Australian Woman*, *Australian Workman*, *Australasian*, *Brisbane Courier*, *Cumberland Free Press*, *Daily Telegraph*, *Melbourne Punch*, *Sunday Times*, *The Sydney Mail and New South Wales Advertiser*, *Town and Country Journal* and the *Weekly Times*. Sporadic reports of significant events in the major characters' lives appeared in these and other newspapers and serials until George Dean's death in 1933. It was stated in the early 1890s, referring to Australia, that 'the newspaper is the best if not the greatest institution in the country' (Adams 1893: 48). Studies since then (including Mayer 1964, Altick 1970, Stuart 1979, Morrison 1992 and Hogan 1994) have reiterated the importance of this media in not only reflecting, but also shaping, Australian public opinion in the late-nineteenth century. A close reading of the material in these reports not only provides a strong sense of the escalating drama of events as the scandal developed but also supplies valuable insights into contemporary attitudes and opinions. It provides little insight, however, into Mary Dean in any aspect other than as a victim of, first, repeated attempts to poison her, and then, public opinion, which, from the beginning, seemed to be looking for reasons to blame her rather than find any other narrative to account for events. As newspapers reported on these events, they too enacted a further eradication of Mary Dean in attempts to focus on the more salacious elements of the case rather than on the real woman central to the narrative.

A series of case summaries, published since this time, although these do not provide any new factual material, similarly provide insights into public and personal concerns and behaviours of the era in which each was written. A celebratory song was, for instance, composed and published to commemorate George Dean's release from gaol (Burnham 1895). Popular histories of Australian crime have regularly included the case since Samuel T. Knagg's mention of Dean as a poisoner in his sensationalist *Human Fads, Foibles, Fallacies, Fallibilities* of 1898. Alan Balfour "rediscovered" and duly re-imagined the case in the tone of an Agatha Christie "cosy" in *The Home* in 1933, with later re-tellings in chapters in true crime anthology histories, including Frank Clune's *Scandals of Sydney Town* of 1957, Cyril Pearl's *Wild Men of Sydney* published the next year, George Blaikie's *Great Australian Scandals*, Alan Sharpe's *Australian Crimes: An Illustrated History* (both published in 1979) and Ann Atkinson's *Famous Court Cases* of 1987. Two major works have attempted to resurrect the case and re-imagine more fully the characters involved. The first of these, *Death Cell at Darlinghurst* (1970) was written by lawyer and Supreme Court judge, Leslie Blackwell, and, although released almost 50 years ago, remains the only published monograph-length study of Dean's crime and its aftermath. It uses a popular and dramatically sensationalist true crime style, as adopted by Clune and those following him. This text, however, firmly focuses on the men in the case, with long sections about Dean's lawyers. This was followed by the strangely emotionless

television movie-length docu-drama, *The Dean Case* (Burke) which, first broadcast in 1983, added little to the representation of Mary.

A number of lawyers, judges and political advisers have written about various legal aspects of the case (Jacobs 1943; Allen 1958; Gilbert 1993; Woods 2002). In his quest to be readmitted to the Sydney Bar, one of George Dean's lawyers wrote his version of events in *My Twenty-five Years' Battle: Still Fighting On*, which was published in 1920, some 25 years after the trial (Meagher). These all, however, concentrate closely on the intricacies of judicial procedure and process (and the men involved) and add little to the disappointing paucity of information relating directly to Mary Dean's life, thoughts and feelings – either during this time, before or after.

Mary Dean has been given a more central role in a small number of academic studies in the 1990s. These tended to take a gendered focus, as in Judith A. Allen's *Sex and Secrets: Crimes Involving Australian Women since 1880* (1990), Juliette Peers' work on the 1886 Mount Rennie rape case (1993), and A.L. Hogan's 1994 dissertation on poisoners and gender. Despite placing a new emphasis on Mary Dean, all continued the focus on the legal aspects of the case and George Dean, and none dealt with Mary in detail as an individual subject. Peter Rule's 1996 Honours dissertation makes an informed and original reading of the press and public reaction to the case, but provides no more information on Mary Dean. None of these re-tellings attempts to re-imagine Mary Dean as a woman of her time with a life or consciousness outside of the harmful ministrations and attentions of her husband, the courts, the public and the media.

The Hicks Case

Today, Moore Park in Sydney's prestigious eastern suburbs is a landscape famous for the silhouette of the Sydney Cricket Ground and for expensive commercial and residential real estate. In the late-nineteenth century the area was a 'poorly defined parkland situated on the borders of some of Sydney's working-class suburbs, the terrain in sharp contrast to the beautifully manicured gardens found in wealthier areas of the city' (Franks 2016: 5). It was within the loose boundaries of this bleak, undeveloped landscape that, on 9 September 1886, in a part of the park known as Mount Rennie, that Mary Jane Hicks would be set upon by a gang of attackers. *The Sydney Morning Herald* ran a story, on 11 September 1886, with the headline 'Terrible Outrage on a Girl' (Anon 1886a: 4), an 'outrage' being an especially demeaning euphemism for a gang rape, a term designed out of consideration for the reading public of the Victorian era rather than in recognition of a victim's trauma. A few days later, on 13 September, another story 'The Outrage Upon a Young Girl' – complete with a statement that had been made by the victim and the news that eight men who had been identified as being involved in the attack (which was a brutal rape) were in custody – was published (Anon 1886b: 4). These were the early efforts of an enthusiastic press to report on every aspect of what became known as "The Mount Rennie Outrage", also referred to as "The Waterloo Outrage", and the astonishing aftermath of this crime.

Mary Jane Hicks, a sixteen-year-old orphan, had received a basic education at a convent school in Bathurst before she moved to Sydney. In need of work, she was making her way to an employment registry in Castlereagh Street when a cab driver, Charles Sweetman, approached her and offered to take her into town. Reluctantly accepting what she believed to be a kind offer of assistance on a hot day, Hicks was taken not into the city but out to Moore Park. After his own attempt to rape the girl was interrupted, the cab driver abandoned Hicks in the area (Franks 2016: 5). It was here, at Mount Rennie, that the drawn out and violent crime was committed. Fifteen ‘men, most under the age of 20 were arrested for the assault, as was ... the cab driver. Eleven of the young men were tried for rape: nine were found guilty and two were acquitted’ (Gleeson 2004: 189).

Sydney newspaper writers salivated over the details of the crime and the action taking place in the courtroom. In a stark admission of the rate at which such invasive and terrifying crimes were committed against women, the Mount Rennie Outrage was not considered ‘an exceptional event’ but rather just one in a series of ‘similarly appalling crimes’ that could be traced from ‘Mount Rennie back to the Mount Carmel and Waterloo cases of 1883’ (Philadelphoff-Puren 2010: 3). Thus, it was argued by some contemporaneous commentators that the verdict was ‘cumulative’ and retribution for so many unpunished gang rapes at that time (see, Allen 1990: 54).

Within the courtroom, the case concentrated on the act of rape. The jury took just two and a half hours to return verdicts. The judge, (Sir) William Windeyer, commended the jury members for their ‘intelligence’ and assured the condemned that there would be no mercy and that ‘no weakness of the Executive, maudlin feeling of pity, will save you from the death you so richly deserve’ (qtd. in Gilling 2012: 124-125). Furthermore, the judge, when proclaiming the death sentence concluded: ‘and may God help you to repent of this crime’ (Anon 1886c: 5). This, instead of the more traditional ‘and may God have mercy on your soul’, which, essentially, is designed to convey the idea that criminals are not, ‘vermin, but our brothers and sisters gone terribly wrong’ (Gleeson 2006: 268).

As seen in the case of Mary Dean discussed above, dozens of local, state and national newspapers covered the case of the attack on Mary Jane Hicks as it unfolded, including the *Bowral Free Press and Berrima District Intelligencer*, *The Brisbane Courier*, *Clarence and Richmond Examiner* and *New England Advertiser*, *Evening News*, *Goulburn Herald*, *Hawkesbury Chronical and Farmers Advocate*, *Referee*, *The Shoalhaven Telegraph*, *The Sydney Morning Herald*, and the *Warwick Examiner and Times*. A significant amount of this printed material focused on the victim and while many newspapers were sympathetic, such sympathy was not universal. Indeed, *The Bulletin* openly criticised Hicks and many of the newspapers reporting her story (Gleeson 2004: 189). The case came to be understood along class lines and much was made of character. The young working-class men were pitted against the girl whom *The Bulletin* labelled an ‘unfortunate’ (another Victorian euphemism, this word utilised in lieu of prostitute). ‘In this way, *The Bulletin* ... worked to re-frame the events, in an astonishing example of victim blaming, that were central to the case – Mary Jane’s body was not *taken*; it was *given away*’ (Franks 2016: 5, emphasis original).

The Bulletin also had much to say about the young men charged with the crime, claiming the State would become known, not as New South Wales but as ‘Noose South Wales’ (Gleeson 2004: 195). This failure to acknowledge the plight of the victim has been described by Juliette Peers as showing ‘a lack of interest in engaging with the culpability of the working-class offenders and its slanderous representation of Mary Jane Hicks is indicative of a grander nationalist narrative of the late-nineteenth century that could not “accommodate the feminine”’ (in Gleeson 2004: 190). Again, as seen in the case of Mary Dean, little is communicated about Mary Jane Hicks. She is made into a double victim, both brutalised by her attackers and again through the male-dominated justice system and press gallery.

This motif of blaming the victim, instead of seeking to understand and thus attempt to recreate here as an individual of her time, would be revisited in 1950 in *Famous Detective Stories*, a popular true crime periodical published in Sydney. In this, Alan Sinclair, the author of the ‘The Mount Rennie Outrage’, acknowledges the seriousness of the crime, suggesting the details of the rape are ‘too revolting to even contemplate’ but not hesitating to hold Mary Jane Hicks accountable for her circumstances. The story reiterates the conservative contemporaneous coverage of the day, asserting that ‘fate must have selected Mary Jane’ before detailing how ‘the girl unwittingly co-operated’ (1950: 17) in the violence forced upon her. Sinclair, in a reflection of the narrative of blame presented by *The Bulletin*, summarises the case before concluding that many judges and juries might now ‘think twice before they convict young men for rape, particularly when the girl’s character is not all it should be’ (1950: 58).

More recently, historian Michael Cathcart presented Hicks as an innocent victim of a violent crime and a young girl deserving of great public sympathy in an episode of a three-part documentary *Australia on Trial* (ABC 2012). First broadcast in 2012, ‘The Mount Rennie Outrage’ was the debut episode in the short series, the next two episodes focusing on the ‘Eureka Stockade’ and the ‘Myall Creek Massacre’. A wide variety of creative practitioners, feminists and legal scholars have, over recent decades, also been drawn to the story of the sixteen-year-old Hicks. Much of this work focuses on feminist frameworks and social history, such as the impressive scholarship in this area undertaken by Juliette Peers (1993). Kate Gleeson, in her work ‘From Centenary to the Olympics, Gang Rape in Sydney’ (2004), explores the case through a lens of long-term rape culture in Sydney. This approach offers a detailed context for the crime committed against Hicks but does not present any new insights into who Mary Jane Hicks was and, critically for biography, who she aspired to be. More recently, Tom Gilling, in his doctoral thesis ‘Frenzy: The Story of the Mount Rennie Outrage’ (2012), looks at Mary Jane Hicks’ story as one in which there exists ‘two contradictory impulses – a desire to sensationalise the facts and a contrary desire to suppress them’ (Gilling 2012: Abstract). Reading these texts allows us to know *what* happened to Mary Jane Hicks but we are still left not knowing *her*.

Using trial transcripts as biographical evidence

The principal source of primary evidence which all these accounts drew on regarding these cases (and both Mary Dean’s and Mary Jane Hicks’ experiences of them) are the

records of the criminal trials. In Mary Dean's case, the Royal Commission into her husband's conviction and, as a notable subset of the above, the transcripts of these women's own testimonies and their depositions of evidence. This sounds promising for, as Karen Dubinsky has noted: 'At their richest court documents provide a window into instances of personal life ... we can hear people talking about love, emotional and sexual intimacy, power, betrayal and broken promises' (1993: 4). Yet, the results did not deliver in terms of either a re-imagined Mary Dean or a re-imagined Mary Jane Hicks.

Understanding these records, and their potential in terms of sources for biographical narratives, necessitates recognising these documents *as texts* in themselves, in order to gauge their possibilities, and limitations, as useful biographical evidence. It is also worth pointing out in this context that while European and American microhistorians and biographers have made extensive use of such documents since the 1970s, with Natalie Zemon Davis' *The Return of Martin Guerre* (1983) and other work on the figures involved in the Salem Witch trials (1983), perhaps the most acclaimed, many of these studies make only brief mention of the limitations of such records as biographical/historical evidence.

What has been left out of such records, for instance, has to be considered. Trial transcripts do not, for example, indicate the tone in which questions are asked or answers given, nor do they usually record the hesitations, pauses, false starts or accompanying gestures of the speaker, nor any interjections made by spectators to the proceedings. Unless noted in the press reports, such heckling jeers, cheers, cries, sighs, gasps, sobs, moans and groans are lost to history (Dayton 1995), as are many of the informal remarks of defendants, lawyers and judges. The Dean case transcripts also record many examples of what Lyndal Roper describes as 'forced discourse' (1994: 54), usually noting only Mary Dean's (often abbreviated) responses to specific questions, questions which no doubt often directed the tone, content and even the wording of her answers. She was frequently, for example, directed to answer complex questions with only a single word: 'Yes' or 'No'. When asked the same question again and again, some of her answers seem to express her struggling attempts to discover exactly what her interrogators wanted to know. It is clear from the transcripts that, under such pressure, Mary Dean sometimes became confused or upset and this may explain the instances when she contradicted herself. Mary Jane Hicks was also extremely upset throughout the processes for which she was the prosecutrix. In particular, much was made in court of the process in which she identified her attackers and how she was 'not in a fit condition to identify them' and that it was 'a cruel thing to bring Miller, the first one arrested, into the girl's presence when she was in an almost unconscious condition' (Anon 1886c: 5).

While the trauma of participating in a trial can obviously influence the responses given, in Mary Dean's case it is also possible that the debilitating after-effects of the poisoning with the corrosive arsenic and strychnine to which she had been subjected may have led to some of her more abbreviated and inconsistent answers. In Mary Jane Hicks' case the young girl was similarly posited as both accuser and accused, with multiple attacks made upon her character – attacks that continued unabated after the trial had come to its controversial conclusion. One of the more extraordinary

accusations is recorded in a memorandum from the Acting Under Secretary of the Department of Justice to the House Physician of Sydney Hospital, accompanying a statement that read:

These two things were known before the trial, first, when the girl Hicks was in the Infirmary just after the outrage the doctors had the greatest difficulty in keeping her from Wardsmen and other males to whom she went for immoral purposes (23 May 1887: Statement; 26 May 1887: Letter).

The response was firm:

I have read the statement enclosed in your letter with respect to the girl Mary Jane Hicks, while she was a patient in this Hospital, and beg to inform you that there is not the slightest foundation for such a statement; on the contrary her conduct was most exemplary (26 May 1887: Letter).

So vicious were the assaults upon the character of Mary Jane Hicks that one member of the public, Edwin R. Newling, was emboldened to write to the Members of the Executive Council of New South Wales:

Rape is a terrible offence to a pure woman, but worldly & physically unless the perpetrator be diseased, she receives not much greater injury than if under fright she had fallen on something which had inflicted a similar shock to nerve & physical tissues (2 December 1886: Letter).

As in Mary Dean's case, the law would also turn on Mary Jane Hicks. Senior Constable John Porteous – who, with his wife, was charged with her care – stated that, 'having had a favourable opportunity of observing her general behaviour', he felt confident to claim that 'she is of idle, uncleanly and untruthful habits' (1886).

Successful convictions for perjury also show that, no matter how many oaths to tell the truth are sworn, those testifying will often carefully construct their responses to answer the question directed at them and to also by what they judge is in their best interest to say. This is despite the fact that it is central to the Australian criminal justice system that, when a person gives evidence on oath but perjures themselves and this is proved, this crime will, in many cases, not only carry a gaol sentence, but may also involve charges of 'perverting' or 'subverting' the course of justice (Arenson and Bagaric 2007). Evidence given by the same person may also shift and change across the duration of a single trial or series of trials, hearings and appeals, as each unfolds and various narratives of events are suggested, teased out, and/or contested and disproved. This means that such evidentiary narratives are, by nature, disjointed and discontinuous, as those providing testimony are, like Mary Dean and Mary Jane Hicks, compelled to begin each narrative anew with each question. To prove that either of these women committed perjury would be an impossible task today. In contrast, the slanders and the untruths told about both women begin to unravel upon the most preliminary investigations.

The above comments relate to the evidence Mary Dean and Mary Jane Hicks *gave*, or reportedly gave, in court, but it is worth noting that their answers would not have been *heard* with any particular sympathy in the elitist and male-dominated Sydney courtrooms of a century ago. Natalie Zemon Davis' *The Return of Martin Guerre*

(1983), based on court and other accounts of a French trial in the 1540s, discusses how peasant subjects were separated from their judges by social class, wealth and ideology – their judges being aristocrats. Mary Dean and Mary Jane Hicks were working-class women, while many of the men who circulated around them during their trials were anything but: men representing the legal system and the newspapermen were educated, experienced and often well-travelled. Perhaps the man of most importance in both cases, Judge William Windeyer, lived a predominantly privileged life. He was one of the first undergraduates at the University of Sydney; he was very concerned about, and invested in, a variety of social causes; and he would be knighted for his many contributions to the community (*ADB* 1976). It is important to note, however, that wanting to improve the world of the working class is radically different from being a member of that class.

Nor would the testimonies of either young women have been accurately recorded and represented as they moved through the legal system. The nuances of their (classed) speech would not have been reproduced, for example, for at this time all court testimonies were largely rendered into standard English in legal transcripts. It is also doubtful if such transcripts could ever record verbatim testimony with any great accuracy, even if there was a will to do so, for the citations we now read in printed late-nineteenth century court transcripts passed through many hands before they were produced for community perusal and the public record, or reproduced in newspaper reports. Such testimonies would have been initially noted by the series of court stenographers who attended the trials, with much finally depending on their abilities to reproduce, in note form, what they heard. These notes were then usually transcribed, corrected, edited, typeset and then corrected again before being printed and bound, each stage in the process possibly, and probably, incorporating a multitude of inaccuracies, omissions and changes. There are also, of course, the various kinds of physical damage any surviving copies of such records can suffer across more than a century, whereby physical injury and mutilation can render some, or even all, of such a transcript illegible. Printed transcripts can also be vandalised, stolen, lost or discarded.¹

Using trial transcripts and legal documents in writing crime

Even taking these limitations into account, however, court and other legal records, as well as contemporary newspaper reports can be rich biographical resources, offering material rarely available elsewhere on how individuals from the past (and especially the so-called “lower orders” who do not otherwise usually occur in the historical record) understood themselves and their lives. Reading these records and reports, readers can eavesdrop on (while perhaps not perfect, but at least approximate versions of) the stories of long-dead people told about the most intimate parts of their lives. Following Mary Dean and Mary Jane Hicks in their court appearances via reading the reports of their answers to the questions put to them and the summaries of their appearances in court in the major daily and weekly newspapers and magazines of the day, it is difficult not to cringe at the various humiliations and bullying they were subjected to, as well as smile when they showed spirit and cheer when Mary Dean

was proven to have not been at fault in relation to the circumstances in which she found herself and was, finally, vindicated. Sadly, no such vocal support was afforded to Mary Jane Hicks who only escaped her trauma and the trial of the men responsible by leaving Australia, and died in obscurity in New Zealand. Despite this, it would be reported that she was sighted in Sydney in 1895. About this, Tom Gilling wrote: ‘So much about Mary Jane was based upon innuendo that this final rumour, unsourced and unsubstantiated, seems oddly fitting’ (2012: 235).

Responding to such texts with empathy and understanding can prompt an approximation of a real human connection across the century between these long-dead women. This opportunity is, of course, only afforded to readers because those printed trial transcripts and other legal documents were not only created more than a century ago, but also were, in the intervening decades, stored and catalogued and, thus, made accessible to interested researchers. From the 1970s, a series of mostly European and American microhistorians have demonstrated how useful such trial transcripts and other legal records are in fashioning dramatic stories. In doing so, these historians often focused on the lives of “ordinary” people, sharing this interest with the social historians of the so-called History from Below movement (Hobsbawm’s ‘grassroots historians’ [1988: 13]) who, since the 1960s, have also addressed the problems of dealing with scarce documentary evidence and the vagaries of memory in writing history and biographically inflected texts. Carlo Ginzburg’s *The Cheese and the Worms: The Cosmos of a Sixteenth Century Miller* (published in Italy in 1976, and influential on history writing in English once it was translated and published by the Johns Hopkins University Press in 1980) is based on, and includes extensive quotation from, the Inquisition records. Davis’ above-mentioned, and influential, *The Return of Martin Guerre* (1983) is a much more readable story of the re-imagined lives of historical characters; namely, Bertrande and the man who claimed to be her long-gone husband and who lived with her for four years until he was exposed as an imposter. Davis’ reading of the legal evidence was criticised for ignoring the facts in the pursuit of a good story (Finlay 1988), but this can be read as antipathy towards her attempt to relay some of the personality of the protagonists and their emotional responses to the situations in which they found themselves. Even one of Davis’ detractors admitted that her characters were ‘interesting, subtle, and complex’ (Finlay 1988). In her well-cast rebuttal in the *American Historical Review*, however, Davis described how she had used the trial records for these aspects of her story and why she made the narrative choices she did (see also: Davis 1986, 1986-87; Davis and Walkowitz 1992).

These works and an interest in reclaiming women’s histories (Lerner 1975) led to a number of prominent examples of such character-/biographically driven historical studies (some of which are also called “historical biographies” or “cultural histories”) based on legal and court records, which successfully re-imagined women’s lives. These texts include: Edward Berenson’s *The Trial of Madame Caillaux* (1992) about the French cabinet minister’s wife who shot her husband’s political enemy just before the outbreak of the First World War; Patricia Cohen’s *The Murder of Helen Jewett: The Life and Death of a Prostitute in Nineteenth-Century New York* (1998), which reconstructed the life story of a servant girl who became a highly paid prostitute who

was murdered in 1836; Michael Grossberg's *A Judgment for Solomon: The d'Hauteville Case and Legal Experience in Antebellum America* (1996) regarding a controversial American child custody case in the 1840s; and Judith Walkowitz's *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (1992), which was framed around the victims of Jack the Ripper. In Australia, recent examples are provided by Helen Garner's *Joe Cinque's Consolation* (2004), Anne Lovell's *Connie's Secret: The True Story of a Shocking Murder and a Family Mystery at a Time When Appearances Were Everything* (2008), Mark Tedeschi's *Eugenia* (2012) and Kiera Lindsey's *The Convict's Daughter* (2016), four studies which sensitively portray women characters through narratives that re-imagine legal evidence. Today, such documents are also supplemented by the mass digitisation of Australian newspapers, which makes the contemporaneous reporting of the events surrounding Mary Dean and Mary Jane Hicks easily accessible via the National Library of Australia's Trove portal. At the time of writing, Trove facilitates online access 'to over 20 million pages from over 1000 Australian newspapers' (Trove 2016).

Conclusion

Various aspects of both the Mary Dean and Mary Jane Hicks cases have encouraged numerous writers and researchers to re-imagine their stories for late-nineteenth-century and later readers. For more than a century, however, accounts of these cases have focused on the men (the perpetrators of the crimes) and the notable political and judicial figures involved in these scandals, while any biographical sense of the real lives of women at their centres have largely been ignored. In these re-imaginings, there is also no detailed information regarding what happened to Mary Dean and her child when her husband was finally gaoled, or if the family re-established contact after his release. Similarly, there are no details around how, or where, Mary Jane Hicks' short life ended after her relocation to New Zealand. The court, contemporary newspaper and other records that these narratives are based upon contain nothing regarding these women's opinions of, or feelings about, the various legal proceedings in which they participated or the public vilification to which they were subjected. Equally puzzling – and of great relevance today – is how the social order of the late-nineteenth century could have, so blindly and with so much bias, vilified these women, doubly punishing them.

The central puzzle of writing biography for biographer and theorist Leon Edel is that 'every life takes its own form and a biographer must find the ideal and unique literary form that will express it' (qtd. in Novarr 1986: 165); but as yet, writers have not been able to find a suitable literary form – ideal, unique or otherwise – which can compellingly re-imagine the stories of Mary Dean or Mary Jane Hicks. In reducing their stories to the facts distilled from the copious legal documentation and contemporaneous newspaper reporting, the reactions, responses, thoughts, imaginings and fears that made these women human have faded and disappeared as if they had never existed. Remaining in these texts is a chronicle of events, which, although compelling and dramatic, are unrepresentative of real lives as they are lived. As a

result, these women's stories – although repeatedly re-told – remain unimagined and obscure.

Endnote

1. There is anecdotal evidence that this situation has largely remained unchanged in more recent times. In 1999, Wendy Pogorzelski, who then worked for a non-profit centre for public defenders in New York, tested the rigor of court transcripts. After her organisation provided a stenographer plus an audio tape system to record a series of four hearings about State-provided legal aid, she stated that checking the transcript against the audio revealed that 'each of the four stenographers ... missed very significant portions of what witnesses were saying, to the point of altering the testimony in very substantive ways.' This was also, Pogorzelski suggested, deeply worrying, because 'to know individual liberty and life rest on court transcripts, and these transcripts ... are so inaccurate only makes one wonder with dread what is missing from other transcripts' (1999).

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