

CHAPTER 21



Legal Myth-Making

Medea and the Legal Representation of the Feminine 'Other'

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Introduction: Legal Myth-Making

The Law operates by, and through, the creation of ideal benchmarks of conduct that are deemed to be representative of the behavioural norm. It is in this sense that it could be contended that the Law utilizes, and relies on, myths in the same way as do other disciplines, notably psychoanalysis. It is possible to go even further and argue that the use of a created narrative mythology is essential to the establishment of a defined legal benchmark of behaviour by which female defendants are assessed, judged and punished. While mythology expresses and symbolizes cultural and political behaviour, it is the Law that embodies and prescribes punitive sanctions. This element represents a powerful literary strand in classical mythology. This may be seen, for instance, in Antigone's appeal to the Law as justification for her conduct, as much as in Medea's challenge to the Law through her desire for vengeance. Despite its image of neutral, objective rationality, the Law, in creating and sustaining the ideals of legally sanctioned conduct, engages in the same literary processes of imagination, reason and emotion that are central to the creation and re-creation of myth.

The (re-)presentation of the Medea myth in literature (especially in theatre) and in art finds its echo in the theatre of the courtroom where wronged women who have refused passively to accept their place have, instead, responded with violence. Consequently, the Medea myth, in its depiction of the (un)feminine, serves as a template for the Law's judgment of 'conventional' feminine conduct in the roles of wife and mother. Medea is an image of deviant femininity, as are Lady Macbeth and the countless other un-feminine literary and mythological women who challenge the power of the dominant culture and its ally, the Law. These women stand opposed to the other dominant theme of both literature and Law, the conformist woman, the passive dupe, who are victims of male oppression — women such as Ariadne and Tess of the d'Urbervilles — and who are subsequently consumed by the Law, much as Semele is consumed by the fire of Jupiter's gaze upon her. All these women, the former as well as the latter, have their real-life counterparts in

the pages of the Law Reports. As Fox puts it, 'These women have come to bear the weight of the cultural stereotypes and preconceptions about women who kill.'¹

Feminine Archetypes

The stories about women defendants told in the Law Reports are essentially that: stories. Their narratives are manipulated to fit pre-existent scripts: the inappropriately dressed, misbehaving wild-child; the wife; the mother; the mother-in-law; the nagging slattern; the lunatic depressive; the jealous scorned lover. The case histories of the women-who-kill represent attempts to fit women into these stereotypes or archetypes. The problem with these case histories is that the Law has, frequently, little interest in the underlying narratives that have shaped these women defendants. The women open to the Law's masculine gaze are rarely anything other than single-dimensional. Their stories, if they are ever to be told, must be extra-curial, told outside the confines of the Law and the courtroom. The 'True Crime' stories of defendants such as Myra Hindley and Ruth Ellis are told extra-judicially.² Women in fictional narrative, and in mythology, have their stories told differently.

One of the many reasons for Medea's fascinating hold on the imagination is that she evolves and develops, even within the confines of her own narrative. When we first see her, through Jason's eyes, she is the alluring temptress transfixed in Frederick Sandys's imaginative portrait; the alluring *femme fatale* of the Pre-Raphaelite feminine archetype. Moreover, and this is an essential part of her fascination, she is desirable but also sinister. To Jason she promises the erotic but she is also essential to the success of his endeavour. She is also, therefore, this man's helpmeet and conspirator, setting aside the blood-nexus of her family for the man who claims her. Mythology gives us other such beautiful helpmeets enticed by love. There is Ariadne, daughter of the Cretan king, who uses her wits to help Theseus escape from the Minotaur's labyrinth and who, like Medea, forsakes kith and kin. So far so stereotypical; but Medea now undergoes the transformation from desirable seductress to wife and mother; and suffers the fate of now being supplanted by that other archetype, the new trophy-wife. Ariadne, too, is abandoned on the island of Naxos by her conquering hero (who, like Jason, would not have accomplished very much without her wit and skill).

Now emerges the next transformation and the next archetype: the woman driven insane by jealousy and impotence. Medea mutates from vamp to a murderous image of destructive fury, the soul sister of the implacable Furies of classical mythology. There are echoes here of the case history of Sara Thornton (see below), who is described by the court as rebellious and quarrelsome: after one row with her husband she pointed a knife at him, called him a bastard and threatened to kill him. On the fateful night that she killed her husband, the case history records her as going out to drink with her stepson (possible echoes of Phaedra).³ She quarrels with the barmaid, argues with the taxi-driver taking her home and fights with her husband. This is a woman who does not fit into the archetypal image of how women should behave and thus challenges the (masculine) structures upon which edifice of the Law is based.

It is an inescapable fact that the Law utilizes gender-based archetypes and the work of feminist lawyers has sought to excavate and to deconstruct the deep-seated structures of the Criminal Law in particular. As Nicholson puts it:

Crime and society's response to it, like virtually all social phenomena, are heavily influenced by issues of gender. Gender distinctions are made in deciding what activities are criminal. Gender significantly affects who commits crimes and what crimes they commit. [...] Only in the last 30 or so years have feminists begun to uncover the 'maleness' of criminal law and the way in which it frequently discriminates against women as defendants or fails to provide adequate protection against male violence and sexual abuse. [...] [E]ven when ostensibly gender-neutral, the formulation or actual application of criminal law may, in fact, discriminate against women defendants or, even when they do not, reinforce sexist stereotypes about appropriate female and male behaviour. [...] Even more subtly, it was discovered that, behind the apparent gender neutrality of core criminal concepts [...] a complex process occurs whereby actors in the criminal justice system make different assumptions about female criminal behaviour. Thus, in her path-breaking book, *Justice Unbalanced*, Hilary Allen demonstrated how such actors concentrate on the external appearance of male criminal behaviour — on the assumption that it is rationally chosen — whereas with women, the focus is on their internal motivations — on the assumption that their criminality emanates from pathological states of mind.⁴

Consequently, Sara Thornton and Medea, like all the women who challenge the female archetypes of wife and mother, *must* be either mad or bad. This is even more the case with the female defendants charged with the most inexplicable of all killings, whether in mythology or in the law reports: the murder of their own children. It remains the fact that male defendants who kill their children, although rightly reviled, rarely face the opprobrium meted out by the popular media. Instead, their legal narratives focus on their motivations — revenge, jealousy — as emanating from the women in their lives and their 'betrayal' by these women. The legal endeavour therefore, is concentrated on identifying some 'rational' explanation for their crimes. In the face of women who kill their children, the response is one of inexplicable horror: no explanation can be, or is, possible.

Telling Stories

The dominant discourse within the legal process and the criminal justice system is shaped by a masculine ethos. Further, the reconstruction of the factual events leading up to the crime, as told in the courtroom, is shaped by an unconscious (and in extreme cases, a conscious) selection of 'facts' to fit the narrative. More damaging to the female defendant, however, is that the telling of the narrative is outside her control. It is a story not just *about* her, but told *to* her. Her credibility — her very guilt or innocence — as in any staged production of classical drama, depends not so much on what she herself might or might not say but on the already written script that the actor / actress is called upon to perform. According to Bennet and Feldman:

[The] ways in which stories represent the incidents in legal disputes produce often radical transformations of 'reality' that are hard to reconcile with

commonsense understandings about objectivity. Judgments based on story construction are, in many important respects, unverifiable in terms of the situation that the story represents. Adjudicators judge the plausibility of a story according to certain structural relations among symbols in the story [...]. Therefore, stories are judged in terms of a combination of the documentary or 'empirical' warrants for symbols and the internal structural relations among the collection of symbols presented in the story. In other words, we judge stories according to a dual standard of 'did it happen that way?' and 'could it have happened that way?'⁵

To the question 'Did it happen that way' the criminal adjudicator's response is 'No it could not have happened that way because of how we *know* and *expect* women to behave'.

The Legal Re-Imaging of Women

The Law's response to women defendants who commit homicide begins with their re-imaging. These women must be either innocent dupes, the victims of male exploitation and brutality, or else they must be mentally aberrant. In order, however, for the Law to grind towards its ultimate adjudication, it is first necessary to fit these women into their allocated roles. A comparison may be made at this point between the Law's treatment of two women defendants, Sara Thornton and Karanjit Ahluwalia.

R v Ahluwalia [1992] 4 All ER 889

Karanjit Ahluwalia was an Asian woman who had entered into an arranged marriage. The marriage was marked by years of violence and abuse. Her husband regularly assaulted her; he threatened to kill her; he taunted her with his affair with another woman. On the evening of 8 May 1989 there was yet another violent argument in which he threatened to beat her up and to brand her face with a hot iron. When he fell asleep, she poured some petrol into a bucket, threw it over him and set him on fire using a candle she had lit from the gas stove. He died from the severe burns he suffered. She was charged with murder and, at her trial, attempted to plead the defence of provocation under s.3 of the Homicide Act 1957.⁶ This defence was rejected and she was convicted of murder. At her appeal it was held that the trial judge's directions to the jury had been entirely proper; a properly directed jury had been entitled to reject the defence of provocation. However, an alternative defence of diminished responsibility (see below), which had not been advocated at the trial, was put forward. In the light of this, a re-trial was ordered. At the subsequent re-trial the prosecution accepted the evidence of diminished responsibility and the charge of murder was reduced to a conviction for voluntary manslaughter instead.

R v Thornton [1992] 1 All ER 306; *R v Thornton (Number 2)* [1996] 2 All ER 1023

Sara Thornton had left her first husband after he had been violent towards her. She married her second husband in 1988. There was a history of domestic violence and assaults. In May 1989 he committed a serious assault against her which led to him

being charged. In June she told a colleague at work that she would kill him. Later that month, after a series of rows, during which he called her a whore, she picked up a carving knife, sharpened it and went back to where her husband was lying on a sofa. There was a further argument during which he threatened to kill her when she was asleep. She replied that she would kill him first. When he suggested that she should go ahead, she stabbed him in the stomach, killing him. She was charged with his murder and pleaded diminished responsibility. The trial judge also put the defence of provocation to the jury (as he was bound to do). The jury rejected the defences and she was convicted of murder. Her appeal to the Court of Appeal was rejected. However, due to lurking doubts of the safety of her conviction, her case was referred back to the Court of Appeal a second time. At the second appeal, the Court of Appeal, taking a very different approach, quashed the conviction for murder and substituted that of voluntary manslaughter.

Both these cases, and the subsequent case law, raise interesting questions relating to the substantive Criminal Law and the differential manner of its application to men and women defendants.⁷ What is relevant here, however, is the manner in which the Court of Appeal told these women's stories. It would not be an exaggeration to submit that this involved both a highly selective use of the facts surrounding the women's histories as well as a prejudiced interpretation of those facts, used to justify the eventual judicial findings:⁸

The Court of Appeal's judgments of Sara Thornton and Karanjit Ahluwalia as women emerge from its descriptions of 'the facts' of their cases. These 'facts' did not exist pre-packaged for judicial recital. 'Reality' is unbounded, multi-faceted, and subject to varying interpretations. Facts have to be selected, interpreted and communicated. This process is neither mechanical, nor neutral, but is aimed at persuading the reader of the logical and emotional force of the judge's decision in much the same way that advocates attempt to persuade courts [...]. [The analyses of the judgments] show how fact organisation and rhetoric were used to construct the two women at opposite ends of the scale of appropriate femininity, as having killed in very different circumstances, and hence as having different claims to sympathetic treatment. In other words, the judicial description of 'the facts' were partial reconstructions of 'what really happened': partial in the sense of being biased.⁹

Consider the following excerpts taken from the judgment of Lord Justice Beldam in relation to Sara Thornton:¹⁰

Her parents were in comfortable circumstances and the appellant went to a public school in Somerset. Whilst at school she began to suffer from a personality disorder. At 16 she was asked to leave. After several relationships with young men which did not work out she met her first husband. She was then aged 23 [...]. On several occasions she attempted suicide, but it is questionable whether she actually intended to take her own life. (at p. 308, *para* h-j)

In the course of efforts to save the life of the deceased she is said to have remarked: 'I don't know why you are bothering. Let him die.' At that the police officer said: 'Do you understand what you are saying?' And she said: 'yes, I know exactly what I am saying. I sharpened up the knife so I could kill him.' (at p. 310, *para* h)

It is apparent from the start of the judgment that there is very little judicial sympathy for the defendant. As Nicholson points out, Lord Justice Beldam emphasizes the fact that although Sara started with many of life's advantages (the comfortable circumstances of her home life, her public school education), she throws these away. There are also references to facts which are not just irrelevant but also highly prejudicial (several relationships with young men; false suicide attempts). There is also a selective emphasis in the facts which focuses on what she said to the police ('Let him die.'). Nicholson points out that only the more negative characteristics of appropriate femininity were attributed to Sara Thornton. Moreover, the judgment downplays the most important aspect of Sara's narrative as a woman who had suffered from her husband's violence. To quote Nicholson again:

The most striking and significant aspect of the judgment is that it drastically downplayed the single most important feature of the case: Sara's experience as a battered woman. Whereas a total of 161 lines were devoted to describing 'the facts which led to the deceased's death', only five dealt directly with his violence and abusive behaviour. Moreover, their tone is so impassive as to completely understate Sara's pain and misery and their influence over her actions.¹¹

There is a very clear echo here of the Law's treatment of Myra Hindley and the manner in which her subjection to Ian Brady's dominating influence was treated in a wholly negligible fashion (see below).

The contrast with Lord Taylor's judgment of Karanjit Ahluwalia could not have been greater, as is made clear by the following excerpts:¹²

This is a tragic case which has aroused much public opinion (at p. 891, *para g*)

She completed an arts degree and then began a law course, but came under pressure from her family to marry. (at p. 891, *para j*)

A marriage was arranged between her and the deceased. They had not previously met. (at p. 892, *para a*)

The appellant had suffered violence and abuse from the deceased from the outset of the marriage. He was a big man; she is slight. (at p. 892, *para b*)

[After she had set her husband on fire] Other neighbours rushed to the house. They found the door locked and saw the appellant standing at a ground-floor window clutching her son, just staring and looking calm. They shouted to her to get out of the house. She opened a window and said, 'I am waiting for my husband', and closed the window again. She was prevailed upon to hand the child out and later emerged herself. She stood staring at the blazing window with a glazed expression. (at p. 893, *paras d-e*)

The defining characteristic of this narrative is Karanjit's passivity: things are done *to* her (the arranged marriage to a man she had never met; the violence done to her). Even her actions in setting fire to her husband and the aftermath are described in passive terms (she just stands there; she has a glazed expression). Even at this ultimate point she plays the part of dutiful wife ('I am waiting for my husband' — with its echoes of the cultural practice of *suttee*, with flames in the background).¹³ Moreover, Lord Taylor's view of where the judicial sympathies ought to lie is made abundantly clear in the very first line of his judgment ('This is a tragic case.').

What are the reasons for the marked contrast in the treatment of Sara Thornton and Karanjit Ahluwalia? Much of the answer lies in the fact that Sara has behaved in a manner which the Law's preconceived archetypes regard as wholly unfeminine, while Karanjit behaves in an appropriately passive-victim mode, even to the extent of self-abasement. Lord Taylor goes so far as to quote extensively from a letter written to her husband, marked by the most utter self-degradation:

Deepak [her husband], if you come back I promise you — I won't touch black coffee again, I won't go town every week, I won't eat green chilli, I ready to leave Chandikah and all my friends, I won't go near Der Goodie Mohan's house again, Even I am not going to attend Bully's wedding, I eat too much or all the time so I can get fat, I won't laugh if you don't like, I won't dye my hair even, I don't go to my neighbour's house, I won't ask you for any help. (*sic*, at p. 892, *para h*)

This must be recognized for what it is: a narrative device designed and intended solely for the purpose of engaging our sympathy. Further, this appeal to our emotions is justified because Karanjit is behaving in an appropriately feminine manner. She is a wife who will make any promise, even of the most self-denying abject nature, to win her man back. Literature abounds in such narratives. Consider, for instance, the manner in which Thomas Hardy re-affirms the reader's sympathy for his central character in the letter written by Tess to her husband, Angel Clare, who has abandoned her:

MY OWN HUSBAND, — Let me call you so — I must even if it makes you angry to think of such an unworthy wife as I [...]. The punishment you have measured out to me is deserved — I do know that — well deserved — and you are right and just to be angry with me. But, Angel, please, please, not to be just — only a little kind to me, even if I do not deserve it, and come to me! [...]

Think — think how it do hurt my heart not to see you ever — ever! Ah, if I could only make your dear heart ache one little minute of each day as mine does every day and all day long, it might lead you to show pity to your poor lonely one. [...]

I would be content, ay, glad to live with you as your servant, if I may not as your wife; so that I could only be near you, and get glimpses of you, and think of you as mine.¹⁴

Sara Thornton, however, does not conform to the legal, judicial and societal norms. On the contrary, Sara is no passive victim; she gives as good as she gets. In recounting an earlier row Lord Justice Beldam tells us that when her husband had picked up a guitar and threatened her with it, she had, for her part, picked up a knife and pointed it at him, saying 'you bastard ... I'll kill you' (at p. 309, *para g*). Moreover, the image painted of Sara in the Court of Appeal is that of a woman who has rejected appropriate femininity and is both rebellious and aggressive; who goes out drinking without her husband and who becomes embroiled in fights with strangers (at the re-hearing of her appeal in the Court of Appeal, evidence was given of a statement from the taxi driver who had driven her home from the pub on the night of the killing in which she was described as 'arrogant and quarrelsome'). In other words, this is a woman who, since she behaves in a masculine manner, has un-gendered herself.

As does Medea. She is not passive and powerless in the face of Jason's betrayal. She arms herself and she strikes back, utilizing the destructive power that is available to her. She kills what is most precious to Jason, his children, as well as his new wife, Glauce. She, too, chooses to abandon the role marked out for her as a woman and acts in a manner characterized by an activist masculinity.

Monster-Women

Women such as Karanjit Ahluwalia, as much as Tess of the d'Urbervilles, the dupes as well as the victims of male misfeasance, have one defining characteristic: they are 'quiet women': 'These women are all "quiet women" in the sense that their individual wills are mastered by men using one method of mastery or another: physical violence, restraint and imprisonment, psychological domination, or in some cases all three'.¹⁵ Society, as much as culture and the Law, has an established script for the quiet woman. While she is deserving of punishment (and it must not be forgotten that Karanjit Ahluwalia was convicted of voluntary manslaughter), she also deserves our sympathy and our pity. What, however, of the monstrous woman? When our archetypal hero decapitates Medusa, does the de-feminized she-monster elicit any sympathy? Do Medea's actions deprive her of any sympathy as the abandoned wife, cast-off in a strange land?

The hold that Medea has on popular imagination, her very image as a monstrous creature who perverts and subverts everything that is feminine, including the destruction of her maternal instincts, has many echoes in literature. Lady Macbeth is a perfect illustration of the literary value of such a figure. Her invocation to the creatures of the night for her 'un-sexing' and her stated preparedness to commit infanticide and regicide (both 'unnatural' crimes) calls out also to the utterly primeval fear that such women may destroy the natural order:

Come you Spirits
That tend on mortal thoughts, unsex me here
And fill me from the crown to the toe, top full
Of direst cruelty. (Act I, scene 5)

I have given suck, and know
How tender 'tis to love the babe that milks me,
I would, while it was smiling in my face
Have plucked my nipple from his boneless gums
And dashed the brains out. (Act I, Scene 7)

Such female monsters have their real-life counterparts in women such as Ruth Ellis (the last woman to be hanged in Britain) and, more significantly, Myra Hindley.¹⁶

In contemporary legal and popular culture, nurtured and sustained by the tabloid media, no woman has disturbed our society's preconception of women more than did Myra Hindley. More than any other female criminal in recent history, she has been singled out for vilification and represented as the embodiment of evil.¹⁷ Hindley and her lover, Ian Brady, were convicted in 1966 of the murder of a ten-year-old girl and a seventeen-year-old youth. Hindley was also convicted of being an accomplice to Brady's killing of another twelve-year-old boy. She received two

life sentences and a further sentence of seven years. In addition, in 1987, after intense speculation, Hindley confessed to the fact that she and Brady had also murdered two other young people and, in a detail out of a Gothic crime novel, had buried their bodies on the dark moors outside Manchester. In the years since her trial the 'real' Myra Hindley has become submerged under the weight of the mythology spawned by the need both to explain her criminality and to demonize her. As Cameron and Fraser put it:

More and more she is depicted as the arch-female sadist — even by writers who doubt that she herself killed the pair's victims [...] Few male sexual killers — whose pleasure lies not in watching, but in doing — attract the virulent hatred Myra Hindley does (even Brady is not so viciously and constantly reviled). Whatever other crimes she may have committed Myra Hindley has offended against standards of femininity and has been punished accordingly.¹⁸

With Hindley the ultimate stage in demonization has taken place; Brady, the more criminally culpable of the two, has been shifted into the background. In the foreground stands the woman, Myra Hindley, in the form that popular culture represents her, and continues to remember, in the iconic photograph taken at her trial:

On the whole [Ian Brady] looks ordinary. Myra Hindley does not. Sturdy in build and broad-buttocked [...] she could have served a nineteenth-century Academy painter as a model for Clytemnestra; but sometimes she looks more terrible, like one of Fuseli's nightmare women drawn giant-sized, elaborately coiffured [...]. Her hair is styled into a huge puff-ball, with a fringe across her brows. At the beginning of the trial it was rinsed to a lilac shade, now it is melon-yellow. The style is far too massive for the wedge-shaped face; in itself it bears an uneasy suggestion of fetishism. But it is the lines of this porcelained face which are extraordinary. Brows, eyes, mouth are all quite straight, precisely parallel. The fine nose is straight, too, except for a very faint downward turn at the tip, just as the chin turns very faintly upward. She will have a nutcracker face one day [...] Now, in the dock, she has a great strangeness, and the kind of authority one might expect to find in a woman guard of a concentration camp.¹⁹

Thus may an Athenian scribe in the fifth century BC have described Medea had she failed to evade Jason's vengeance and been put on trial. Thus, too, the many images and re-imaginings of Medea down the ages. However, this is an extraordinary piece of invective, made even worse by the fact that it was not unique in the media reporting of the trial. Moreover, Brady is not described in such terms; and it is difficult to think of any other male killer whose physical characteristics are described in such a manner. A comparison may be made with Ian Huntley, the perpetrator of the 'Soham murders' of two young girls.²⁰ Even he was not thus treated by the popular media, although, of course, his female accomplice, Helen Carr, was. The depth of the invented invective directed at Myra Hindley is clear in the comparison of her with the guard of a concentration camp and the conscious attempt to link her in imaginative revulsion with those other crimes against humanity.

Given such a re-imagining, it comes as no surprise that in the intervening period, the hatred of the victims' relatives, nurtured by the tabloid media, has come to

be directed at Hindley rather than Brady, at her (perceived) evil and monstrous nature. Brady's behaviour has served only to heighten the contrast. While Hindley's campaign for parole, and the ill-advised actions of Lord Longford on her behalf, contributed to her demonization, Brady had always accepted his fate and acknowledged that he would die in prison. Moreover, popular mythology has come to accept his mental illness (he was transferred to Park Lane secure hospital for psychiatric treatment) as an explanation of his crimes. This has not been an option available to explain *her* actions.

Behind the demonization of Hindley, there lies another powerful primeval strain that characterizes the re-imaging of Hindley as worse than Brady and is also reflected in the response to Medea: that of fear. It is this fear that underlies the anxiety about the behaviour of women who kill and especially women who kill children. Since they are capable of this horrific crime against nature, they are capable of anything, including, as in a number of recent cases before the courts, the most appalling acts of sexual abuse.²¹ The Medea myth, therefore, is a narrative that threatens the male domination of law, politics and power. Responses such as that expressed in popular culture towards Myra Hindley must be understood in this context.

Mad or Bad

One way in which Law and society may deal with the fear engendered by women who commit the ultimate crime is to remove from them the attribute of rationality: to contend that the only possible explanation for their actions lies in the unhinging of their minds. For instance, Lady Macbeth, one of Shakespeare's most memorable she-monsters, who commits the ultimate crime of regicide, is driven mad as a consequence. Her insanity (the absence of rationality) may be contrasted with that of Macbeth himself. He sees ghosts, it is true, and converses with witches and spirits, but nonetheless retains his masculine rationality and power of action. The ultimate crime committed by Medea is not so much the murder of her children as that she does not do the morally decent thing and go insane. This is equally true of Myra Hindley, who, unlike Ian Brady, is not touched by any self-explanatory or self-justifying mental disorder.

The women defendants who appear in the Law reports are often characterized by one legal feature: the defences they rely on are inherently based upon mental disorder. The plea of insanity²² itself is relatively rare. Instead it is much more likely that the female defendant will rely on either the pleas of infanticide or the defence of diminished responsibility. The main advantage flowing from this is that while the crime of murder will result in a mandatory sentence of life imprisonment, for infanticide the sentence is at the judge's discretion and may even be non-custodial in nature. With regard to diminished responsibility, if this is successful the conviction of murder is reduced to one of voluntary manslaughter. Again, this means that the mandatory life sentence is avoided in those situations in which the defence of diminished responsibility is accepted.

Infanticide

Infanticide, in which a mother kills her child, is the most serious outcome of post-natal illness. This can occur when the mother is in such an 'abnormal' mental state that there is a total absence of 'normal' maternal instincts and of maternal bonding. Very often this is accompanied by hallucinatory voices telling her to harm her child.²³ Although the Infanticide Act 1938 characterizes infanticide as an offence, for practical purposes it, in effect, operates as an alternative to murder. The Act provides in s.1 (1):

Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission *the balance of her mind was disturbed* by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, [...] she shall be guilty of felony, to wit of infanticide. [emphasis added]

A number of points may be noted at this stage. First, it is noteworthy how early the mental state underlying infanticide was accorded recognition in English law. In fact, the concept was first introduced in statutory form in 1922. As Dalton and Holton put it, 'It was lawyers, rather than doctors, who first appreciated that the mother who killed her own baby was temporarily, mentally abnormal'.²⁴ Secondly, the Act is law only in England and Wales, not Scotland, and is relatively absent in the other common-law jurisdictions, including the United States. Thirdly, the Act only extends to the killing of a child under twelve months, not to the killing of a child over that age (which must be case with Medea's own children) and not to the killing of anyone else (certainly not to the killing of Glauce). Finally, and obviously, the requirements of the Act exclude the possibility of its application to a father who kills. The legislative discourse, rather than being gender neutral, positively compels the judicial application of gender specificity.

The context in which infanticide is discussed in the Law has been largely favourable: the Criminal Law is lauded for its ability to adapt its structures to women defendants suffering from post-natal illness. It is possible, however, to deconstruct this in postmodernist terms. The Infanticide Act 1938 is 'a good example of the construction of a legal category from a socially created expectation about women's role as carers of babies'.²⁵ What the Law is doing, in effect, is utilizing the mythology surrounding motherhood and the mother as the archetypal protector of her young.²⁶ A mother who kills *must* be mentally unhinged: 'an isolated and biologically determined phenomenon, an unfortunate product of woman's "nature"'.²⁷

Diminished responsibility

In statistical terms, and due to the narrowness of the definition of infanticide, it is the defence of diminished responsibility which is more commonly relied upon by women defendants. This defence was unknown to the English common law and was imported from Scots law via the Homicide Act 1957. Section 2(1) provides:

Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such *abnormality of mind* (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) *as substantially impaired his mental responsibility* for his acts or omissions in doing or being a party to the killing. [emphasis added]²⁸

There is a vast literature in relation to the defence of diminished responsibility and its particular application to women who kill.²⁹ It only needs to be noted that the murder convictions of both Karanjit Ahluwalia and Sara Thornton were eventually reduced to convictions for voluntary manslaughter instead. Here, again, the Law's explanation for their crimes was located in their 'abnormality of mind'. There is little doubt that if Tess were to be put on trial today, she would escape the hangman's noose. In this connection, however, it may be noted that Medea and Myra Hindley share one thing in common: it would be unlikely that either would be able to rely on this defence. It was not canvassed at Myra Hindley's trial and, surely, one of the many reasons for Medea's continuing fascination for our culture and our literary and artistic imagination is that her actions, and her challenge to male power, have not been diminished by any hint of mental abnormality.

Conclusions: Medea's Gaze

It is possible to apply the narrative of the Medea myth as a device to explore the jurisprudence and practical application of legal norms. Medea's gaze forces the Law to see what it may prefer to keep hidden. To the extent, if at all, that the Medea-Woman is punished by the Law she is the embodiment of the female victim of the Law's masculinity. The Medea myth may be read as re-enforcing stereotypical views of the proper role of women, who may *advise* and *counsel* (Jason succeeds entirely through Medea's advice) but who may not *act*; positive action is a male prerogative.

What choices are open to Medea? She may passively accept her fate and by passive submission collude in Jason's treatment of her. Classical mythology provides numerous instances of such victims of male transgression and unfaithfulness. A case in point is Ariadne: Ariadne's wit helps Theseus defeat the Minotaur and escape from the Labyrinth, but her reward is to be abandoned by him on the island of Naxos until Bacchus (a god, but masculine nonetheless) takes pity on her. After her initial act of wit and courage, she falls back into the role of passive victim. In Richard Strauss's opera, *Ariadne auf Naxos*, the curtain rises in the second act to reveal Ariadne tastefully draped over a rock, bemoaning her state; all the wit and courage she has shown earlier are gone.

So what is a woman to do? To be more precise, what is a woman who complains justifiably of her maltreatment in a situation in which society and its legal system offer her no remedy to do? She may do what other women have done: take the law into her own hands. If her choice of remedy involves murder, this is one way in which she draws attention to her maltreatment. Is this not what battered women who kill their partners do? The problem here, of course, is that Medea exacts revenge not directly on Jason but on their children. Does this put her out

of the reach of our sympathy? This, therefore, is the feminist lawyers' problem: to acknowledge maternity may be to collude in the Law's use of gender archetypes and yet to deny the maternal impulse may be a step too far for legal feminism.

Medea is a story our civilization tells; it is part of the fabric of the long, slow evolution of Western culture, of all cultures that are the inheritors of the classical tradition. Equally, it is also a story that lawyers tell; it is a story of the taming of instinct and impulse and their ultimate subjection to the Law. The case law on battered women (Sara Thornton; Karanjit Ahluwalia), as well as their fictional equivalents (Emma Bovary; Tess of the d'Urbervilles), are stories of the postmodern Medea. At the heart of the judicial decisions in these cases lie both a failure and a refusal: there is a failure of a male-centric legal system to recognize the response of the feminine 'Other' with sympathy and understanding; and there is also a refusal to accept that response as capable of meeting the benchmark standards of behaviour recognized as reasonable by the legal system and its Laws.

Finally, Medea is a justice figure, too: not the justice figure that serves as a prototype of our supposedly enlightened, rational legal system but a figure that represents the alter ego of the blind and robed figure bearing a pair of balancing scales. She is not Antigone, arguing for the application of the Natural Law as being superior to Positive Law. She is, instead, the justice figure of wide-eyed screaming rage, demanding vengeance. She is just as much an archetype of a justice figure that is equally relevant to our contemporary society and culture; a culture and a society that have not yet evolved beyond a desire for revenge and retribution.

Notes to Chapter 21

1. Marie Fox, 'Crime and Punishment: Representations of Female Killers in Law and Literature', in *Tall Stories? Reading Law and Literature*, ed. by John Morrison and Christine Bell (Aldershot: Dartmouth, 1996), pp. 145–78 (p. 148).
2. Helen Birch, *Moving Targets: Women, Murder and Representation* (London: Virago, 1993); Fred Harrison, *Brady and Hindley: Genesis of the Moors Murders* (London: Harper Collins, 1987); Robert Hancock, *Ruth Ellis: The Last Woman to be Hanged* (London: Orion, 1993).
3. In classical mythology Phaedra, as in Racine's retelling of her story in *Phèdre*, falls in love with her stepson, subsequently accusing him of rape when he rejects her, with fatal consequences.
4. Donald Nicholson, 'Criminal Law and Feminism', in *Feminist Perspectives on Criminal Law*, ed. by Donald Nicholson and Lois Bibbings (London: Cavendish, 2000), pp. 1–26 (pp. 1–2).
5. W. Lance Bennet and Martha S. Feldman, *Reconstructing Reality in the Courtroom* (London: Tavistock, 1981), pp. 32–33.
6. Homicide Act 1957, s.3: 'Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.'
7. For a further discussion of the relevant law, and in particular a discussion of the gender issues inherent in the defence of provocation, reference may be made to Nicola Lacey, Celia Wells, and Oliver Quick, *Reconstructing Criminal Law*, 3rd edn [1st edn 1990] (London: Lexis Nexis Butterworths, 2003), Chapter 6.
8. This essay is indebted to the following article for its analysis of the two cases described here: Donald Nicholson, 'Telling Tales: Gender Discrimination, Gender Construction and Battered Women Who Kill', *Feminist Legal Studies*, 3 (1995), 185–206.

9. Ibid.
10. The page and paragraph references are to the law report of the first appeal.
11. Ibid.
12. The references are from the report of the appeal before the Court of Appeal.
13. *Suttee* was a cultural practice observed in pre-colonial India whereby Hindu widows joined the bodies of their dead husband on the funeral pyre in an act of self-immolation.
14. Thomas Hardy, *Tess of the d'Urbervilles: A Pure Woman* [1891] (London: Macmillan, 1974), pp. 359–60.
15. William A. Davis, *Thomas Hardy and the Law: Legal Presences in Hardy's Life and Fiction* (Newark: University of Delaware Press, 2003), p. 116.
16. See Fox.
17. Ibid., p. 152.
18. Deborah Cameron and Elizabeth Fraser, *The Lust to Kill: Feminist Investigation of Sexual Murder* (Cambridge: Polity Press, 1987), p. 25.
19. Ibid., p. 145.
20. In August 2002 two ten-year-old girls, Holly Wells and Jessica Chapman, were murdered in Soham, Cambridgeshire, by a local school caretaker, Ian Huntley.
21. For details of the *Vanessa George* case (involving acts of sexual abuse against children) refer to *The Times*, 13 October 2009.
22. The common-law definition of insanity is that set out in the so-called *M'Naghten Rules* (1843) 10 Cl & F 200: 'To establish a defence of insanity it must be clearly proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as (a) not to know the nature and quality of the act he was doing; or (b) if he did know it, not to know that what he was doing was wrong'.
23. For further reference see Katharina Dalton and Wendy Holton, *Depression After Childbirth*, 4th edn (Oxford: Oxford University Press, 2003).
24. Ibid., p. 92.
25. Lacey, Wells, and Quick, p. 775.
26. See, for instance, the discussion in Sibylle Birkhäuser-Oeri, *The Mother: Archetypal Image in Fairy Tales*, trans. by Michael Mitchell (Toronto: Inner City Books, 1988); originally published in German as *Die Mutter im Märchen* (Stuttgart: Bonz, 1977).
27. Elaine Showalter, *Women, Madness and English Culture, 1830–1980* (London: Virago, 1987), p. 58.
28. There has since been an amendment to the definition and operation of the defence of diminished responsibility, introduced by the Coroners and Justice Act 2009. It has not been possible to include the details of these changes. However, this amendment does not affect the substance of the submissions made in this chapter.
29. See, for instance, Nicholson, *supra*, at footnote 8.

Unbinding Medea

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