Unity or Disunity? The Trials of a Jury *R* v *John William Anderson*: Newcastle Winter Assizes 1875

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On 30 August 1875, in the crowded room of the *Durham Ox* public house in Clayton Street, the coroner for the town and borough of Newcastle upon Tyne held an inquest into the death of 29 year old Elizabeth Anderson. Her cause of death was 'stabs in the back and side'.[1] There were seven wounds to her back, chest, shoulder and near the hip.[2] This was not an inquest to identify an unknown assailant. The perpetrator, Elizabeth's husband, had presented himself at the Laurel Street police station two nights previously and informed the sergeant on duty that he had stabbed Elizabeth to death. On 22 December 1875, the same coroner held an inquest into the death of John William Anderson, pursuant to the 'Act to provide for carrying out Capital Punishment within prisons'. There was also no doubt as to the cause of death or the perpetrator. Anderson's cause of death was recorded as 'lawfully hanged for murder'.[3]

In the period between the two inquests, Anderson was tried and found guilty of the murder. Yet detailed examination of the trial reveal a disquieting series of events leading to his conviction and execution. Newspaper reports and the Home Office file demonstrate that many residents of Newcastle, despite the seeming brutality of the crime, were united in a vain attempt to obtain mercy for Anderson. There is an unusually comprehensive set of original documents in this case. Court papers for trials in the nineteenth century are often scantily preserved and spread across a number of archives. In this case, the Home Office file contains much material relevant to the trial and execution. The folder preserved in the National Archives contains the coroner's depositions, the judge's trial notes, newspaper cuttings, correspondence relating to the planning and carrying out of the execution, two petitions for

mercy, the judge's notes from the trial, and related correspondence.[4] The file reveals a complex scenario and illuminates contemporary debates about capital punishment, provocation, and the role of judge and jurors in murder trials.[5] An analysis of these papers reveals a complex dynamic in the jury's deliberations, unrevealed in contemporary reportage.[6] Did the noise of a crowded court; the timidity of a jury foreman; and a misunderstanding, lead to a miscarriage of justice? Alternatively, was this, as the judge, Mr Justice Denman, suggested, a very clear case of murder?

This chapter examines the legal process in the Anderson case and considers whether he was the victim of a miscarriage of justice. The theme of union and disunion is adopted in a micro-historical examination of the nineteenth-century interpretation of the law relating to murder and manslaughter in the context of a provincial trial.[7] The Home Office file offers a tantalising glimpse of usually sacrosanct deliberations by the jury and an opportunity to examine this case from perspectives that are rarely available. The sanctity of the jury room was breached in a very particular and mediated format. This case allows consideration of the dynamics of the relationship between judge, jury and the wider community, and offers a troubling insight into nineteenth-century justice.

United in matrimony and acrimony

In a last hurrah for the execution broadside genre, an unnamed poet wrote of the crime: 'The fearful executions | Shows the sad increase of crime, | The dreadful scene has been enacted | At […] Newcastle-on- Tyne.'[8] The doggerel told the cautionary tale of the crimes, trials, and executions of two men who killed their wives in the summer of 1875 in the North East of England.[9] One man, Richard Charlton, shot his estranged wife.[10] The other, the subject of this chapter, John William Anderson, stabbed his wife to death with a butcher's knife

following a quarrel and fight. Anderson and Charlton, united in the ballad, were executed on consecutive days in December. Neither crime generated much interest outside the immediate area. The *Manchester Evening News* classified the murders as 'smaller fry'.[11] In fact, Anderson was the first person hanged behind the walls of Newcastle gaol, following the abolition of public execution in England. The events that led to the gallows were short and brutal.

It difficult to reconstruct a clear picture of John and Elizabeth Anderson. They left scant details in the official records. Newcastle in the 1870s was a prosperous town with a population in the region of 140,000.[12] The events of 28 August 1875 took place in an area populated by the skilled working class. The Andersons lived alongside printers, boiler-smiths, coachbuilders and joiners.[13] However, John was not of the same class as his neighbours. He was born in Gateshead in 1843 to a middle-class family and 'once occupied a respectable position'.[14] He married Elizabeth Walker, the daughter of a stonemason from Cockermouth, at St John's Church, Newcastle, on the 31 March 1866.[15] Anderson was 'well educated' and literate; Elizabeth, by contrast, could not sign her name in the marriage certificate.[16] A former soldier, at the date of his marriage he was an 'agent'.[17] As a clerk he earned a reasonable wage because he was on the burgesses' roll for 1875 and could vote in local elections. However, at the time of the crime, John was out of work. The couple owned a small provisions shop, although contemporary newspaper reports suggest Elizabeth ran it. Perhaps the fall into unemployment was in part the catalyst for the murder.

The 1871 census records the Andersons living with Elizabeth's parents at 58 and 59 Mitford Street.[18] Mitford Street was one of a number of close-built terraces leading down to the industrial heartland of the river Tyne, dominated by Armstrong's Elswick armaments factory.

By 1875 the couple had moved with their youngest son to a house at the end of Mitford Street in which they inhabited one room.[19] An older boy lived with Anderson's father. A plan in the Assize file shows the layout of the premises. The front room was the shop and the back room was the living quarters.[20]

John Anderson had served with the 98th Regiment of Foot and when he appeared in court, sported a 'heavy military moustache' suggesting pride in his military background. However, Elizabeth's father gave evidence at trial that Anderson was bought out of the army by his wife.[21] The lure of a military life was obviously strong: Anderson was a member of the Northumberland Militia and trained with them in the summer of 1875.[22] Thus Anderson had been respectably employed and served his country, but at the time of the murder the newspapers described him as 'a man of idle and dissipated habits'.[23] Respectability was fundamental to Victorian society and involved 'maintaining a steady income, preserving the respect of the local community, and avoiding the workhouse and a pauper's funeral'.[24] Yet, in the words of Carolyn Conley, 'criminals were not respectable and respectable persons were not criminals'.[25] Evidence at the inquest and at trial showed Anderson was fond of a drink and on the evening of the murder he had been drinking, though it is unclear whether it was this that had meant he lost his job or drinking was a response to unemployment. Elizabeth's drinking habits are less clear. A number of witnesses suggested she too had been drinking but her father suggested she was 'never given to drink'.[26] Anderson was 'a good-looking man of middle height.'[27] The judge, Mr Justice Denman, notes him as 'a strong powerfully built man in the prime of life.'[28] Elizabeth was described as a 'delicate woman'.[29] Whether the union was happy or tempestuous was a matter for speculation amongst the couple's family and neighbours. Whatever the truth, any resentments and disagreements came to a head on 28 August 1875.

On the evening of 28 August, the Andersons were in good spirits and spent time with their neighbours Benjamin and Bridget Danskin. Benjamin was an ex-army colleague. The couple returned home at about 9.30 pm and John helped Elizabeth shutter the shop. For some reason he bolted the bottom half of the door to prevent his wife from leaving and his son from coming into the house.[30]A disagreement turned into a quarrel and Anderson accused his wife of being a 'dirty woman'.[31] Although the newspapers speculated that Elizabeth was physically abused by her husband and this was echoed by a comment from the judge, Elizabeth's father stated Anderson did not 'ill use her' and indicated during the trial that he had no idea the relationship had deteriorated.[32] Other witnesses testified that the couple quarrelled when they had both been drinking.

It was a warm summer evening and there were plenty of people around Mitford Street to hear a loud argument, the sound of a slap and, possibly, Anderson shouting 'you bitch if you hit me I will stab you'.[33] Anderson told the police that Elizabeth picked up a bacon knife from the counter and a fight ensued.[34] A local newspaper reported that the Andersons' son saw his mother pick up the knife.[35] However, the child gave no evidence at the inquest or the trial. Witnesses gave evidence of screams and something falling. As one of the petitions for mercy pleaded, no one except Anderson could explain exactly what happened and thus it was 'impossible for him to prove the whole of the provocation he had received'. Anderson did not try to cover up his deed and walked immediately to the police station in nearby Laurel Street. He showed the police officer a profusely bleeding wound on his hand and was 'excited' but not drunk, although he had clearly had a drink.[36] Sergeant Kennedy gave evidence at trial that Anderson explained: 'the knife I stabbed her with is the knife she struck me with'.[37] The facts seemed to be that Elizabeth had shouted at John, he had shouted back; she had hit him

and picked up the knife. He had taken the knife from her, cutting his hand on the blade, and then lost control and stabbed her. Whatever the catalyst, the evidence of the medical witnesses was stark that the injuries required immense violence. Anderson was right handed and possibly held the knife 'over hand' to stab Elizabeth, his army training perhaps coming into play to wield the knife like a bayonet. [38]

United in Condemnation

Anderson was indicted for murder. The trial lasted a full day at the Newcastle Winter Assizes on 1 December 1875. The public galleries of the court were packed to excess with the usual noisy and curious crowd. The law stated that the felony of murder required an intention to kill on the accused's part. Like most defendants on a charge of murder, Anderson pleaded not guilty, since murder carried a mandatory death sentence and there was always a chance a jury would return a 'not guilty' verdict. Anderson's barrister, Charles Skidmore, was confident that this was a case of manslaughter on the basis of provocation. Slovenly housekeeping, drunkenness and shrewish behaviour by wives, which pushed men to the limits, had been sufficient to prevent other homicides from being found to be murder. Skidmore hoped that the jurors would accept Anderson had been provoked by a drunken, lazy, 'wretched' and violent wife.[39]

The barristers David Steavenson and Thomas Granger worked hard to prosecute the case and Skidmore noted in court that the defence was ambushed by extra evidence in the hours leading up to the trial. The extent and nature of this evidence is unclear, but likely to have been the 'extra witness evidence (not called)' mentioned in the Home Office file. A number of witnesses gave evidence who had not been called at the preliminary hearing in the police

court.[40] Skidmore suggested that the defence had not been allowed time to adequately deal with the witnesses produced.[41]

Justice George Denman was a regular judge on the Northern Circuit.[42] His obituary suggests an undistinguished judge, but his judgments, correspondence, and evidence to parliamentary committees suggest a man who carefully considered his words and was unafraid to express unpopular opinions.[43] He opened his evidence to the 1864 – 66 Royal Commission on Capital Punishment by claiming a particular interest in capital punishment.[44] He did not believe the punishment provided a deterrent and thought that even murderers could be reformed and returned to society to lead useful lives.[45] His view was that the penalty was a strong weapon in the hands of defence barristers and inimical to certainty of punishment. He considered that the outcome of murder trials was most dependent upon the judge trying the case.[46]

Martin Wiener has written in detail about the development of the attitude of courts and juries to the law relating to provocation in the nineteenth century.[47] The raising of doubt in the Anderson case merits a mere footnote from Wiener.[48] However, closer examination of the Anderson case offers an interesting perspective on these issues. It is necessary to outline the law before analysing the treatment of provocation in the Anderson case.[49] Murder in the nineteenth century, as now, was a common law offence. [50] The classic definition is that of Lord Coke: 'Where a person of sound memory and discretion – unlawfully killeth – any reasonable creature in being – and under the Kings peace – with malice aforethought, either express or implied.'[51] The only sentence available to a judge following a verdict of murder was hanging.[52]

In the latter part of the nineteenth century, the appetite for executions was waning. From 1864 to 1866, the Royal Commission investigated whether those guilty of murder were often instead acquitted because of the jury's distaste for capital punishment. As *Archbold,* the leading legal manual, made clear, the law presumed 'every homicide to be murder, until the contrary appears'.[53] The defendant had to prove that the offence did not amount to murder. This was not straightforward because the defendant could not give evidence in their own defence. They were dependent upon the skill of defending counsel in cross-examination and the address to the jury at the end of the trial. Nor did the law accept any provocation could result in justifiable homicide.[54] So if it was not murder then it must be manslaughter. *Archbold* set out the position: 'If the provocation was great, and such as must have greatly excited [the defendant], the killing is manslaughter only'.[55] The police officer who first spoke to Anderson used this precise word and stated he was 'excited' at the police station.[56] Despite earlier decisions to the contrary, by 1875 it was judicially accepted that words, however inflammatory, were insufficient to amount to provocation.[57] However, as Wiener has established, many juries took a different view of verbal provocation.[58]

A complicating factor in Anderson's case was the butcher's knife. *Archbold* makes clear, if a deadly weapon was used, the provocation must be very great indeed to reduce murder to manslaughter. However, if the provocation itself was with a weapon, then that might be sufficient to lead to a manslaughter verdict. [59] The evidence, not strongly pressed at trial, but certainly raised by Anderson immediately after the killing, was that Elizabeth had been the first to pick up the knife and attack. A further criterion to reduce murder to manslaughter was that the violence must immediately follow the provocation with no 'cooling off' period. North East juries interpreted the cooling off period very widely but this was unnecessary in this case: Elizabeth was killed within minutes of the quarrel. Skidmore, on consulting *Archbold,*

must have felt confident that this was manslaughter.[60] There was provocation, with words, slap and knife, and all of the events took place in a short period.

At the trial, Skidmore attempted to establish that his wife had verbally and physically attacked John Anderson and suggested, when addressing the jury, that the multiple stabbing should be viewed as one event arising from a loss of control. The explanation for such a defence might be found in legal treatises setting out that degree of provocation necessary to reduce a homicide to manslaughter, heating the blood 'to a proportional degree of resentment, and keep[ing] it boiling to the moment of the fact; so that the party may rather be considered as having acted under a temporary suspension of reason than from any deliberate malicious motive.'[61] Skidmore told the jury that Anderson's mind had been affected by 'something …causing anger suddenly to arise against his wife'. Whether this was 'only a fancy' or not, this 'would enable them to reduce the crime from murder to the lesser one'. If Elizabeth Anderson had been about to strike him with a knife then 'he was so aggravated, that he lost, for the moment, control over his actions he would not be responsible for the amount of injury inflicted'.[62]

The judge's notes were detailed. He drew a picture in the margin showing how the knife had been held. In cross-examination, the physician who had stitched the cut agreed that the deep wound to Anderson's hand could have been caused by Elizabeth striking him. Denman, as he explained to the Home Secretary, did not accept this view.[63] Skidmore was unable to make any more of the point but could only hope that the jury had noted that the defendant was attacked first with the knife. After the witnesses had been examined and cross-examined, counsel for both sides addressed the jury. The prosecution presented their case dispassionately. Skidmore appealed to the jury's fairmindedness and common sense and

suggested that the correct verdict would be manslaughter. This appeal flattered the sensibilities of the jurors and thus encouraged them to see the truth of the defence's plea.[64]

After praising the barristers for their fairness and skill, Denman summed up the evidence and explained to the jury the legal difference between murder and manslaughter. This included a direction on provocation. Unfortunately, the precise direction is unrecorded in his notes, although to the Home Secretary Denman emphasised that he carefully explained the difference between the offences.[65] However, it is likely that Denman would have adopted a regular form of words. In 1872 in the murder case at Durham Assizes Denman explained the difference in full and this was reported in the newspapers.[66] He told the jury that if words spoken by his wife could have provoked anger and hot blood from John Grant then that would reduce the offence to manslaughter. If they had been mere words, and not a real threat, then it would be murder. In contrast, the *Newcastle Journal* noted some of Denman's summing up regarding the case, which seemed to leave no doubt as to his view:

> If they [the jury] were satisfied beyond reasonable doubt that with this knife the prisoner killed his wife and inflicted violence upon her, and that none of the evidence they had heard would enable them to say that what he did was short of **a brutal, a malignant, barbarous attack** upon her to kill her, he would be guilty of wilful murder. If upon the other hand they felt that upon all the facts of the case there was enough to warrant them in saying that there was enough to warrant them in saying that there was such provocation that he must be considered to be **absolved from that kind of barbarity, ferocity, determination, and malignity** which constituted the crime of wilful murder, it would be competent for them upon that indictment to find him guilty of manslaughter.[67]

This is a more strident direction than that reported in the Durham trial where the jury returned a verdict of manslaughter.[68] Perhaps Denman, who had sentenced Grant to penal servitude for life, decided to be less nuanced in Anderson's case. The jury had to decide whether words, and a slap and/or a threat with a knife, were sufficient provocation to reduce the crime to manslaughter.

A disunion of jurors

The jury room is a mysterious place and only the jurors are privy to the discussions, disagreements and grounds on which the verdict is reached. A jury is instructed by the judge to try the matter based only on the evidence in court but they are appointed from the local community with local knowledge and trusted to apply common sense. The choice between guilt and innocence in this case was a decision between life and death for the accused. Although the precise deliberations can never be known, the newspaper reports and surviving documents throw light on the jury decision-making.

The verdict of the jury, as now, save in the rarest circumstances, had to be unanimous as to guilt. The jury had to be united in their condemnation. Even in capital cases a nineteenth-century jury took little time to reach a verdict.[69] Denman himself noted, despite the speed of most decisions in most cases, for the sake of form and decorum, it was usual to retire for at least fifteen minutes.[70] Anderson's jury retired for much longer: there was clearly a problem. Approximately an hour after leaving the courtroom, the Court Bailiff returned and requested pens, ink and paper. There was no precedent for the fulfilment of such a request, and the judge called the jury back into court.

When they had taken their places in the jury box, the foreman indicated that they could not agree. This caused the judge a problem. He cut the foreman short and said that he did not want to know anything of the dispute in the jury room. The foreman asked for further explanation of the difference between 'aggravated manslaughter' (sic) and 'wilful murder'. Denman explained that there was no offence of aggravated manslaughter and once again, in relation to provocation, said that they had to consider the amount of provocation, the force used, and the number of wounds and whether there was an intention to kill.[71] The judge appeared exasperated and stated that he could not explain any more clearly without going through the evidence once more. The jury retired again and returned to the court after twelve minutes, at six forty-seven p.m. At this point, events took an odd turn. The official record notes that the jury found Anderson guilty with a recommendation to mercy due to provocation and lack of premeditation. The reports of the event and the judge's notes, suggest that Denman was careful to question the foreman about the recommendation to mercy, as to whether this was on grounds of provocation. Denman noted the reply: 'we think he intended to kill but it was not long premeditated.'[72] Denman had fulfilled his role of explaining the law and leaving the decision up to the jury.

The newspaper reports make clear that the court was in an uproar. The acoustics in the Moot Hall are poor and it is possible that the judge and the jury were speaking at cross-purposes. This is important to bear in mind when considering the letters in the Home Office file, discussed below.[73] The judge explained the verdict to Anderson who, as was his right, addressed the courtroom. He said that Elizabeth was his wife and he loved her. In a frenzy he had committed the rash act… he did not expect any mercy.[74]

Why did Anderson became the first man in Newcastle for twelve years to pay the ultimate penalty? The carrying out of the sentence was by no means a foregone conclusion. There was much local optimism that the sentence would be commuted, despite the fact, as Wiener has established, there was a general movement away from mercy for male-on-female violence. The *York Herald* reflected this optimism when, reporting the date of the execution it qualified it, '[s]hould it really take place.'[75]

The campaign to save Anderson began as soon as the verdict was known. Petitioning for mercy was common after a sentence of death. The government expected petitions in all capital cases and it was a notable fact when these were unforthcoming.[76] There was a particularly strong campaign for Anderson with two weighty petitions. One was co-ordinated by Jonathan Joel, Anderson's legal representative at the police court hearing. Signatures included local MPs, clergymen, coroner, and many other 'persons of position and influence in the neighbourhood as well as the grand and common juries who heard the case.' [77] The letter sending the petition emphasised that the coroner had signed, perhaps to underline the fact that his court had heard the evidence immediately after the crime. Coroner Hoyle's participation was uncommon and perhaps reflected a sense of the justice of the plea. The Earl of Ravensworth, erstwhile MP for Northumberland and North Durham in Parliament, sent the second petition. This referred to the 'influential position of the Parties whose names are attached to the petition coupled with the unanimous recommendation to mercy by the jury which tried the case'.[78] The letter also underlined the prisoner's good character and the 'great provocation' to which he was subjected.

The popular view was not wholly united, for not everyone was convinced that Anderson should be saved. The *Newcastle Journal* was unremitting and explained that Denman's

reasoning was ‘more cogent than the scruples that seem to have swayed the minds of some of those who united at last in this verdict.’[79] However, the *Journal* was mistaken in speaking of a united jury. The jury was *not* united. Noise in the court, the confusion and misunderstanding between the judge and the timid foreman, may have led to a miscarriage of justice and thus to Anderson’s death. The jury’s recommendation for mercy, and the pleas in the petitions, are supplemented by correspondence that gives a unique insight into events in the jury room. The impression given in reports of the trial and the official notes from Denman, is that the conclusion that Anderson was guilty of wilful murder was the unanimous verdict required by the law. The correspondence gives an alternative and troubling view.

The concluding exchange in court between the judge and the jury was not as simple as the official record suggests. When Denman wrote to the Home Secretary following the trial, he enclosed his detailed notes of the evidence. He put on record the care taken to explain to the jury the difference between murder and manslaughter and what could amount to provocation, as he had ‘seen a growing disposition, especially in these Northern Counties to believe that any the slightest provocation however feeble in the nature of a <u>defensive</u> blow given even by a woman to a man is enough to reduce the crime to manslaughter.’[80] He would have been aware that capital punishment was rarely carried out in Newcastle. From 1831 until 1875, there had only been three executions. There had been eighteen in the neighbouring assize court of Durham, a striking comparison since there was common legal personnel at these North East legal venues. Perhaps the jurymen of Newcastle reflected a local distaste for the death penalty.[81]

Denman’s notes, together with what he accepted was a ‘tolerably accurate’ newspaper account of the trial are retained in the Home Office file along with two letters addressed to the

Home Secretary. The first, from Christopher Anderson, a wine and spirits merchant from Gateshead, was 'on behalf of a juror'.[82] The second was from James Dellow, a member of the trial jury.[83] Dellow ran a hairdressing establishment on Northumberland Street, in the centre of Newcastle.[84] These letters alleged that one, or perhaps two, of the jury had doubts about the verdict and these doubts should have been acted upon the second time the jury returned to speak to the judge. Rather than leading to a verdict of guilty of murder, the conversation between the foreman and the judge should have led to further discussion before a final verdict. Dellow referred to 'an error by the jury or judge or both' and stated that the jury was not unanimous.[85]

It is unclear whether the man referred to in the letter from the wine merchant was Dellow, or whether there were two jurors worried that the verdict was wrongly returned. It is more likely that there were at least two dissenting jurors who felt compelled to contact the Home Secretary and sufficiently concerned to break the sanctity of the jury room. Both men explained that the foreman had misunderstood the judge's questions when he asked for the verdict. The foreman had not meant to indicate unanimity but to explain that the jury disagreed regarding provocation. After this conversation with the judge the foreman should have consulted the jury again and thus potentially returned a different verdict.

The word 'pressing', written in red on the face of these letters, is particularly poignant. Anderson was found guilty on 1 December, and executed on 22 December. The letters are each stamped 'received 20 December': the decision to be taken by the Home Secretary was indeed 'pressing'. The letter from Christopher Anderson asserted that there would be a miscarriage of justice if Anderson were hanged. Dellow explained he thought the verdict should be manslaughter and that the verdict was anything but unanimous. Dellow indicated

that he believed that the deed was unpremeditated and committed from 'one impulse only' and thus the verdict should have been manslaughter.[86] In order to clarify his point, Dellow explained in some detail what happened in the jury room. The first vote taken was five to seven – with seven votes for 'guilty of murder'. This division caused the jurors to request pens and paper and resulted in the foreman telling the judge that a verdict could not be agreed. Why were pens and paper required: to draw diagrams or ensure anonymity by ballot, or for a juryman to explain his view? The next time the jury came into court, the judge accepted the responses of the foreman as a guilty verdict. However, Dellow's letter suggests that this was a second attempt by the jury to obtain clarification on the distinction between murder and manslaughter, and to consider the nature of provocation and pre-meditation. When the foreman asked for clarification, he was nervous and agreed that the jury had unanimously agreed a verdict of murder when this was not the case. Denman specifically explained to the Home Secretary that he advised the jury that there was no offence of 'aggravated manslaughter' and asked questions to make sure it was a verdict of murder.[87] Denman does not indicate any uncertainty but in the light of the letters he may have been at cross-purposes with the foreman.

Christopher Anderson's letter makes clear that the juror 'was and is yet of opinion that it was manslaughter, so also are others of the jury, they had misunderstood the Judge in his question to them and their foreman instead of again consulting with the other jurymen answered and caused a miscarriage of justice.'[88] A horrifying revelation in the circumstances of a capital trial, yet the letters carried no weight with the Home Secretary, who turned down the mercy pleas.

Although Anderson stated that he had no expectation of mercy, he must have held out some hope. A paper read to the Statistical Society in March 1880 reviewed statistics relating to indictable offences in England and Wales, demonstrating that in the period 1872 – 1876 only 35% of those committed to trial for murder were convicted. The proportion of executions relative to the number of convictions in the same period was 51%.[89] In Anderson's case, with clear doubt as to the verdict and petitions for mercy signed by many important and influential citizens, why was there no mercy? One reason might be a political concern about domestic violence, especially in working-class communities.[90] Wiener has suggested that in this period mercy was withheld to bring the tendency to violence in the working classes under control. [91] Yet Anderson was not a working-class offender. The Home Secretary was Richard Assheton Cross, a liberal Conservative who had been a barrister on the Northern Circuit and had often appeared in the Newcastle Courts. He was concerned about violence in communities and in 1874 sent a circular to all police forces, courts and judges to seek views on flogging for brutal crimes.[92] There was a general appetite to enforce the ultimate punishment to help contain violence in the country.[93]

A further reason for mercy's absence in this case might be the judge's influence. Denman thought that the outcome of murder trials was most dependent upon the judge hearing the case. Although the petitions and correspondence did not sway Cross, the explanatory letter from the judge had great influence.[94] In addressing the court at the end of the trial, Denman had explained that if the law of England was to hold that Anderson's crime was not murder then a precedent endangering the protection of human life would be established. He dismissed any idea that the wound to Anderson's hand was defensive and asserted it was sustained when Anderson attacked Elizabeth. Denman's appraisal of the evidence as to Anderson's wound predated the communications revealing juror disunity. Would it have made any difference to

his appraisal had he read the letters from the hairdresser and the wine merchant? What had happened to Denman's view in 1864, that even a murderer could be rehabilitated and returned to society to live a useful life?[95] Perhaps the North East of England exasperated him in 1875. After Newcastle, he travelled to Durham Assizes where he delivered a blistering opening speech about the serious nature of the calendar he faced and emphasised the influence of liquor on the accused: he may well have had Anderson's drunkenness in mind.[96]

Conclusion

An appraisal of the case, with the benefit of hindsight, suggests that Anderson committed the murder: the provocation was insufficient to reduce the offence to manslaughter. Nevertheless, the impact of provocation was a matter of judgment reserved for a jury and it is clear that the certainty necessary for a proper verdict was compromised by inadequate communication between judge and jury. Although there was little official acknowledgment of the impact of provocation, the broadside ballad reflected a common view that murdered women were complicit in their deaths and 'it was hard words that brought these men to their unhappy end.'[97] An alternative interpretation offered here is that despite well-supported petitions, the views of clergymen, MPs, jurors, and the local coroner and magistrates, the trial judge could not support the recommendation to mercy. It was Denman's harsh words that ensured John Anderson was the first prisoner to be executed in the yard of the gaol in Newcastle. Jury recommendations to mercy fell on stony ground. Anderson's execution left an interesting legacy in the locality. The jurors of Newcastle, despite the failure to save Anderson, managed to ensure that there was no further execution in Newcastle until 1886 when Patrick Judge was executed for the murder of his wife.[98]

Endnotes

[1] Death Certificate: Elizabeth Anderson.

[2] The National Archives [hereafter TNA], HO 45/9395/49945. *R*. v. *Anderson*. Evidence of Dr May recorded in Mr Justice Denman's notes, 1 December 1875.

[3] Death Certificate: John William Anderson. The hangman was William Marwood.

[4] TNA HO 45/9395/49945. *R.* v. *Anderson* and TNA ASSI 44/192 Assizes: Northern and North-Eastern Circuits: Indictment Files (1875). The Home Office file contains depositions from the coroner's court and a note that the additional depositions taken before the magistrates were returned in February 1876 to the clerk of the Northern Circuit. They must have then been mislaid or misfiled, as neither these nor copies of the coroner's depositions that would normally also be kept by the clerk seem to have survived. Defendants could not testify in their own defence until the Criminal Evidence Act 1898 and therefore Anderson's voice is muted in the records. Defence counsel could cross examine witnesses, and the words are often recorded in newspaper accounts which provide information that cannot be obtained elsewhere.

[5] See M. J. Wiener, 'Judges v. Jurors: Courtroom Tensions', *Law and History Review* 17 (1999), pp.467-506.

[6] Newspaper accounts of the exchange between the judge and jury differ slightly but there is no indication of the turmoil revealed in the letters.

[7] For an examination of micro-histories in relation to law and crime, see essays in A.M. Kilday and D. Nash (eds) *Law, Crime and Deviance since 1700: Micro-studies in the History of Crime* (London: Bloomsbury, 2016).

[8] *Double Executions: John William Anderson, at Newcastle and Richard Charlton, at Morpeth, both for murdering their wives*, copy from Kenneth Goldstein Collection,

Special Collections, University of Mississippi Libraries. Crime broadsides, printed locally and often with woodcut illustrations, were an important means of recording and disseminating news about serious crimes and punishments. The increased availability of cheap newspapers after mid-century caused their decline: Anderson's is thus a late example. See R. Crone. *Violent Victorians: Popular entertainment in nineteenth-century London* (Manchester: Manchester University Press, 2012).

9 Wiener incorrectly suggests that broadsides relating to the earlier trial of Wainwright in 1875 were the last produced in a murder case, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge: Cambridge University Press, 2004), note 73, p.144.

10 On the Charlton case, see *Morpeth Herald*, 18 December 1875.

11 *Manchester Evening News*, 3 December 1875.

12 *A Vision of Britain through Time*, <http://www.visionofbritain.org.uk/unit/10139466/cube/TOT_POP> [Accessed 1 October 2018].

13 Census: Mitford Street.

14 *Sunderland Daily Echo*, 30 August 1875.

15 Marriage certificate of John William Anderson and Elizabeth Walker.

16 Gaol Calendar.

17 'John Anderson', census return for Jackson Street, Gateshead, 1851.

18 Census: Mitford Street.

19 Anderson is registered on the ward list of burgesses in 1875: Tyne and Wear Archives D.NC/D/2/1/1875.

20 TNA HO 45/9395/49945. Plan of the house at Mitford Street.

21 TNA HO 45/9395/49945. Inquest deposition of Ashley Walker, 31 August 1875.

[22] TNA HO 45/9395/49945. Inquest deposition of Ashley Walker, 31 August 1875.

[23] *York Herald*, 30 August 1875.

[24] J.F.C. Harrison, *The Common People: A History from the Norman Conquest to the Present* (London: Fontana, 1984), p.302.

[25] C.A. Conley, *The Unwritten Law: Criminal Justice in Victorian Kent* (Oxford: Oxford University Press, 1991), p.6.

[26] TNA HO 45/9395/49945. Inquest deposition of Ashley Walker, 31 August, 1875.

[27] *Newcastle Journal*, 21 December 1875.

[28] TNA HO 45/9395/49945. Denman to Home Secretary, 5 December 1875.

[29] TNA HO 45/9395/49945. Denman to Home Secretary, 5 December 1875.

[30] TNA HO 45/9395/49945. Evidence given by a number of witnesses.

[31] TNA HO 45/9395/49945. Benjamin Danskin, evidence at trial noted by judge.

[32] TNA HO 45/9395/49945. Walker's evidence at the inquest and trial was conflicting as to whether the relationship was violent.

[33] TNA HO 45/9395/49945. Evidence of a witness also named Elizabeth Anderson.

[34] *Morpeth Herald*, 4 September 1875.

[35] *Sunderland Daily Echo*, 30 August 1875.

[36] *Morpeth Herald*, 4 September 1875.

[37] TNA HO 45/9395/49945. Inquest deposition, 31 August 1875.

[38] TNA HO 45/9395/49945. Evidence of Dr May recorded in Denman's notes of the trial.

[39] *Double Executions* referred to Elizabeth as 'wretched'.

[40] TNA HO 45/9395/49945. Document headed 'Additional Evidence'.

[41] *Newcastle Journal*, 21 December 1875.

[42] A.B. Schofield, *Dictionary of Legal Biography 1845 – 1945* (London: Rose Publishing, 1998), p.120. The Northern Circuit, prior to 1876 when it divided into the Northern and

North Eastern Circuits, comprised all North England and included Assize courts in Yorkshire, Lancashire, County Durham, Westmoreland, Cumberland, and Northumberland.

[43] Denman's obituary notice, *The Times,* 22 September 1896.

[44] *Royal Commission on Capital Punishment. Report of the Capital Punishment Commission: Together with the Minutes of Evidence and Appendix* (London: Eyre and Spottiswoode, 1866), p.78.

[45] *Royal Commission on Capital Punishment*, p.99.

[46] *Royal Commission on Capital Punishment*, p.91.

[47] Wiener, *Men of Blood*, pp.170-200.

[48] Wiener, *Men of Blood*, p.183.

[49] On early and mid-nineteenth century judicial opinions of provocation in wife-murder cases see D. J. R. Grey 'Importing Gendered Legal Reasoning from England: Wife Murders in Early Colonial India, 1805–1857', *Cultural and Social History* 14: 4 (2017), pp.483-498.

[50] W. Bruce, *Archbold's Pleading and Evidence in Criminal Cases. With The Statutes, Precedents of Indictments, &c., And The Evidence Necessary To Support Them* (17th edn; London: H. Sweet, 1871). *Archbold* as the leading practitioner text would have been consulted by lawyers in this case.

[51] E. Coke, *The third part of the Institutes of the laws of England: concerning high treason, and other pleas of the crown, and criminal causes* (1628), p.47.

[52] Judges lost the power to merely record sentence of death when the Offences against the Person Act 1861 abolished the death penalty for all offences except murder and high treason.

[53] Bruce, *Archbold*, p.621.

[54] Bruce, *Archbold*, p.633.

[55] Bruce, *Archbold*, p.631.

[56] TNA HO 45/9395/49945. Deposition of P.C. Dixon to Coroner 30 August 1875.

[57] See discussion in Bruce, *Archbold*, pp.633-634.

[58] No provocation, however great, could extenuate or justify a homicide where there was evidence of express malice.

[59] Bruce, *Archbold*, p.631.

[60] Bruce, *Archbold*, p.623.

[61] E. H. East, *A Treatise of the Pleas of the Crown* (London: J. Butterworth, 1803), p.238.

[62] *Morpeth Herald*, 4 December 1875.

[63] TNA HO 45/9395/49945. Denman to Home Secretary, 5 December 1875.

[64] 'Common sense' is not value-neutral even if frequently claimed to be so. See T. Ward, 'Law, Common Sense and the Authority of Science: Expert Witnesses and Criminal Insanity in England, 1840-1940', *Social & Legal Studies* 6:3 (1997), pp.343–362.

[65] TNA HO 45/9395/49945. Denman to Home Secretary, 5 December 1875.

[66] On the Grant case, see *Newcastle Journal*, 17 December 1872.

[67] *Newcastle Journal*, 23 December 1875. My emphasis.

[68] See *The Times*, 18 December 1872.

[69] Denman mentioned this in his evidence to the Royal Commission in 1864, see *Royal Commission on Capital Punishment*, p.79.

[70] *Royal Commission on Capital Punishment*, p.79.

[71] TNA HO 45/9395/49945. Denman trial notes, 1 December 1875.

[72] TNA HO 45/9395/49945. Denman trial notes, 1 December 1875.

[73] TNA HO 45/9395/49945. Letter from James Dellow to Home Secretary, 18 December 1875, and letter from Christopher Anderson to Home Secretary, 19 December 1875.

[74] *Morpeth Herald*, 4 December 1875.

[75] *York Herald*, 10 December 1875.

[76] *Prerogative of mercy. Return of instances since 1869 in which appeal has been made on behalf of persons convicted of capital offences to the Home Secretary, for the exercise of the royal prerogative of pardon or mitigation of sentence; setting forth the names, dates of conviction, crimes, sentences, dates of appeal to the secretary, and the result; with summary of total number of such applications refused or granted in whole or part.* House of Commons Sessional Papers, 1881, vol. LXXVI, p.391. This includes reference to a petition in the 1863 murder case of *R.* v. *George Vass*, there was no petition.

[77] The first time a prisoner appeared in court to answer to a criminal charge was in the police court, where the magistrates decided if there was sufficient evidence to send the case to the assize court.

[78] TNA HO 45/9395/49945. Letter from the Earl of Ravensworth to Home Secretary, 6 December 1875.

[79] *Newcastle Journal*, 3 December 1875.

[80] TNA HO 45/9395/49945. Denman to Home Secretary, 5 December 1875.

[81] See the report of an exasperated judge informed by the foreman of a Newcastle jury that a recommendation to mercy was 'on account of an objection to capital punishments,' *Newcastle Journal*, 24 February 1849.

[82] TNA HO 45/9395/49945. Christopher Anderson to Home Secretary, 19 December 1875. There is no way of establishing whether he was a relation of the accused.

[83] TNA HO 45/9395/49945. James Dellow to Home Secretary, 18 December 1875.

[84] *Newcastle Journal*, 31 December 1872.

[85] TNA HO 45/9395/49945. Dellow to Home Secretary, 18 December 1875.

[86] TNA HO 45/9395/49945. Dellow to Home Secretary, 18 December 1875.

[87] TNA HO 45/9395/49945. Denman to Home Secretary, 5 December 1875.

[88] TNA HO 45/9395/49945. Christopher Anderson to Home Secretary, 19 December 1875.

[89] L. Levi, 'A Survey of Indictable and Summary Jurisdiction Offences in England and Wales, from 1857 to 1876, in Quinquennial Periods, and in 1877 and 1878', *Journal of the Statistical Society of London* 43: 3 (1880), pp. 423-461.

[90] For detailed consideration and discussion of 'expected' middle class behaviour see S. D'Cruze, *Crimes of Outrage: Sex, Violence and Victorian Working Women* (London: UCL Press, 1998) and B. Griffin, *The Politics of Gender in Victorian Britain: Masculinity, Political Culture and the Struggle for Women's Rights* (Cambridge: Cambridge University Press, 2014).

[91] Wiener, *Men of Blood*, p.194.

[92] *Reports to Secretary of State for Home Department on State of Law relating to Brutal Assaults*, 1875. Command Paper C.1138, vol. 61, p.29. On Cross, see J. P. Parry, 'Religion and the Collapse of Gladstone's First Government, 1870 – 1874', *The Historical Journal* 25 (1982) pp. 71–101.

[93] Wiener, *Men of Blood*. See also M. L. Shanley, *Feminism, Marriage, and the Law in Victorian England* (Princeton: Princeton University Press, 1993).

[94] On the reluctance of Home Secretaries to overrule judges, see R. Chadwick, *Bureaucratic Mercy. The Home Office and the Treatment of Capital Cases in Victorian Britain* (New York: Garland, 1992), p.151.

[95] *Royal Commission on Capital Punishment*, p.99.

[96] *Shields Daily Gazette*, 14 December 1875.

[97] *Double Executions*.

[98] For details of the crime and trial, *Newcastle Evening Chronicle*, 16 July 1886 and on the execution, *Newcastle Evening Chronicle*, 16 November 1886.

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