The criminal trial constitutes a drama performed by its leading actors (legal professionals) plus supporting actors (including spectators). How conscious and strategic are their performances? This article argues that conscious legal performativity is part of a sustained tradition of 'infotainment' with lasting implications for today's real-life courtroom dramas. The adoption of stereotypical conventions operating in the English criminal justice system during the Victorian period was a key aspect of law's performativity. Characters assumed, or had assigned to them, identities signifying to audiences in and out of the courtroom their status in terms of believability, innocence and culpability. Focusing on crimes of interpersonal and public violence, Victorian newspaper reportage is utilized to demonstrate the impact of coded language and stereotypical representations, radically affecting or distorting an individual's persona.

Keywords: Courtroom drama; Performance; Crime reportage; Violence; Stereotypes

INTRODUCTION

The current prevalence of dramas about aspects of the criminal justice system, from detection of the crime onwards, obscures the reality that the legal process itself has always been a public performance. This is particularly so for the Anglo-American versions of the adversarial criminal justice system, but it also holds for trials in an inquisitorial system. This article explores the establishment, in the Victorian English criminal justice system, of a popularly comprehensible and publicly appealing set of norms or codifications about the dramatis personae of the courts at various levels. It does so primarily via an examination of the public reportage of the criminal process, showing it to have been part of a conscious effort to educate the public in order to gain their support for the justice delivered by that process. The focus is on the period from 1850-1900, when the vast expansion of the summary justice process saw over 90% of all criminal proceedings (Emsley, 2005) concluded in the magistrates or police courts. We argue that comprehending such conventions is essential to understandings of the enduring nature of their consequent transportation into the realms of crime fiction, or should it be crime faction? The time period coincides largely with Queen Victoria's reign. In legal terms it is a key period in the establishment of the modern English criminal justice system. The USA also experienced similar urbanizing and industrializing pressures which molded its legal responses to this new social structure along broadly comparable lines (unsurprisingly, given the common legal heritage). In both countries increasingly literate mass audiences sought information through printed forms of entertainment, largely as a result of educational advances (Vincent, 1989). Favorited types of reading matter were those dealing with crime and the criminal justice process. Such fascination was partly due to its innate sensationalism and partly because of the increasing

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likelihood that members of the public would encounter that process in the course of their daily lives. The reality of its appeal to a working class audience is emphasized by the regular depiction in Victorian elite literature of the Victorian urban poor resorting to newspapers for an entertaining evening. For instance, Punch published a cartoon, Useful Sunday Literature for the Masses, or Murder Made Familiar, depicting a father reading from a newspaper to his wife and numerous children the gory details of a recent trial (reproduced Himmelfarb, 1984, facing p. 341). Mayhew also talked of the popularity of cheap literature amongst the London poor (as cited in Himmelfarb, 1984, p. 338), while Dickens (1865) represented the popularity of crime or police news amongst the working masses in Our Mutual Friend. There is also evidence of its appeal outside London as well (Walton & Wilcox, 1991).

Fiction, past and present, has readily sought to capitalize upon an aura of legal reality for its popular appeal when dealing with this topic (Schramm, 2000; Williams, 2002), something that has been recognized by many legal scholars. It is true that some, like Posner (1998, p. 11), are unequivocal in the view that “law in literature features more as a metaphor than an object of interest in itself,” and seek to downplay that aspect. But more share the viewpoints of West (1993) and Weisberg (1989), who point out that literary texts do have a value as a forum for jurisprudential debate. Literature draws on real life trials to inspire educative narratives with moral messages of guilt and innocence dependent upon the concepts of justice evolved by the official legal process. As Halttunen and Perry (1998, p. 2) assert, highly complex moral codes and experiences are often embedded in the artistic expression of everyday practices. This is exemplified by Wilkie Collins’ The Moonstone (1868), with its echoes of the actual Constance Kent murder drama, hitting newspaper headlines in 1861 and 1865. In both Collins’ narrative and the Constance Kent case, the issue of real guilt, and culpability for crime was core to contemporary debates about the operation of the criminal justice system (Occasional Notes, 1865b). Similar debates had been rehearsed in America two decades earlier in response to two brutal murders in New York; that of Helen Jewitt in 1836, fictionalized in works by Joseph H. Ingraham and George Wilkes, and that of Mary Rogers in 1841, later the subject of Edgar Allan Poe’s The Mystery of Marie Rouget (1843) (see Cohen, 1999; Srebnick, 1995). However, discourse about the realism of fiction in its invocation of the legal dimension can obscure the reality that various literary formats have found law a particularly sympathetic medium on which to draw because of its essentially dramatic character in practice. This is because traditionally, the law itself has sought to educate through its own internal edification value.

Consequently, instead of looking at how the law is depicted as performance in film or on stage, this article examines how the operation of the law itself constituted a performance. Because of its didactic intent, law’s own, self-conscious use of language communicated a set of cultural meanings. Performativity here is construed as the conveying by the criminal justice system of messages, both conscious and unconscious, about the ways that the system operated. The system is here comprehended as including not only the legal profession itself and its accoutrements such as the police, but also Parliament and the executive (both of which also contained substantial numbers of practicing lawyers). In accessing its audience, that system worked closely (almost incestuously), with the press and the wider publishing industry because it was barristers and other legal professionals who produced the majority of reporting from the courts at all levels in this period (Rowbotham & Stevenson, 2003; 2005). It was a performativity that depended, for its effects on its targeted audience, on a dramatic sensationalism. The presentation of material capable of engaging a primary interest, accompanied by a degree of detailed explanation, induced a high level of comprehension of the mechanics of the criminal justice process and its underpinnings in statute law.
Consequently it was heavily dependent upon the legal expertise of its chosen reporters, who clearly had, as individuals, both a sense of the personally dramatic and a willingness to explain the workings of the courts to their audience.

Such legal performativity has had profound and prolonged effects that not only made it attractive as a source for literature, but also established durable habits of understanding the ways in which justice has been, and still is, delivered. Our current focus refers to the drama of courtroom conduct acted out by the legal personnel (i.e., lawyers, judges) and other participants (i.e., defendants, witnesses, jurors, spectators) through their dramatizations, characterizations and interpretations of the trial experience. Their performances convey underlying moral codes and behaviors both consciously and sub-consciously, deliberately and inadvertently to audiences present in the courtroom and via the media. Compared to the English experience, such judicial theatricality in the United States has, (since the days of Jefferson), been far more informal and less restrained; “Advocates yell objections and roam from jury box to bench with a license which their English counterparts can only wonder ….” (Kadri, 2005, p. 288). This is reinforced in David Ball’s (2003) book, *Theater Tips and Strategies for Jury Trials*, which positively advocates that counsel should pursue in the interests of success for their clients. But if apparently less restrained, performances on the English legal stage were no less dramatic in terms of their public impact.

The English jurist, Fitzjames Stephen, observed that a criminal trial was “a combat” and that the law itself had to recognize this and accommodate appropriate conventions of combat “in every detail [if] the fight was to be fair” (Stephen, 1883, p. 547). But who was to judge the fairness of the combat? Essentially, it was the public that the law advertises itself as serving. The law has sought to demonstrate its delivery of justice by developing a conscious performativity that made the courtroom drama as accessible and compelling as possible. It is true that “legal validity cannot be brought in from outside: it can only be produced within the law” (Teubner, 1993, p. 2). It is also true that legal validity has to be exported for public consumption in ways in which an audience will support its justice and truth in order to retain that level of public support that an effective legal system demands (Rowbotham & Stevenson, 2003, intro.).

While cultural productions are often understood as relating to particular categories (appealing to a popular or mass audience, perhaps, or to an elite one) certain forms of cultural productions have long had appeal to both popular and elite consumers of culture, albeit for slightly different reasons. In the nineteenth century, there was a realization that, for the first time, the majority of the population was located in urban surroundings, thus, transforming contemporary understandings of the reality of poverty, making it an essentially urban manifestation for the demographic majority (Himmelfarb, 1992). The complexity of the Victorians’ own picture of the poor means it is not easy to articulate briefly what the term actually conveyed to contemporaries (Harris, 1993; Himmelfarb, 1992; Thompson, 1988). Here, though, it comprises those who, because of their limited incomes, were always vulnerable to fluctuations in the economic cycle or to accidents, regardless of whether that vulnerability was seen as self-induced or accidental.

The development, from the 1850s, of printing and transport technologies enabled a national distribution in printed form of news and ideas about its interpretation even to the Victorian poor. It thus becomes possible to use the term mass media, meaning that it reached all classes and places (Jones, 1996). The mass media spread news of sensational courtroom trials, providing the masses with a uniformity of information and interpretation that had never
before been possible. Doing it in an entertaining fashion boosted the public visibility and consequently, the performativity, of the law. Such transmission necessitated the establishment, within the actual criminal justice process, of a series of indicators and symbols, intended primarily to inform an audience about how to understand the roles of the various participants involved. However, the process also facilitated the communication of messages about the point and relevance of the criminal justice system. Law has thus long-established itself as a variety performance, one which still works as mediated popular entertainment today, in a variety of media formats from print to film. Newspapers and television documentaries as well as novels, plays and films all dramatize presentations of the law in action. Significantly the reality of such presentations does not depend on indicators and symbols that originated in the conventions and expectations of literature and its metaphors. Instead, they have emerged from within the law itself, primarily through the stereotyping and cultural type-casting of defendants and witnesses and the utilization by those actors of a form of coded language denoting their individual roles. Particularly in Britain, the use of legally trained reporters enabled a comprehension of these codes and type-casting, in ways that have facilitated the accessibility of the law.

At one level then, law is an abstruse, even an arcane and self-referential, affair; at another level, the law is the central player in populist scenarios of varying kinds, both fact and fiction. Yet at its core it remains the same. It is the prevailing cultural manifestations that make it appear different and that guide its performativity. Essentially, the law serves as a channel of communication between authority and the people, establishing the parameters of consent to the management of society through the legal process. It is, thus, crucial to realize the ways in which official representations of the criminal justice system and their popular reception by the public can intersect via performativity. Fundamentally, and irrespective of whether the criminal drama is staged in an actual courtroom or in a fictional depiction of one, common understandings of the criminal justice process operate at that juncture, so promoting community engagement with legally-inflected conclusions.

This article aims to demonstrate how mid-Victorian media reportage of actual criminal proceedings identified and reinforced such stereotypifications. It does so by exploring the impact and imposition that the resulting societal expectations exerted on both defendants and complainants in the drama of criminal justice in everyday life. It draws on examples of Victorian newspaper crime reports involving interpersonal contact and physical violence where court reporters utilized forms of coded language and representations. This range of easily recognized symbolic indicators, used to transmit messages about the nature and behavior of defendants and complainants, deliberately sought to influence public perceptions of types of incidents and participants in the courtroom drama. Their use as standard rhetorical tropes meant that they were easily assimilated as part of the audience expectation regardless of whether readers became actual spectators at real life or at theatrical courtroom spectacles.

In individual cases the public persona of victims and offenders could be dramatically recast through representations that transfigured what might retrospectively be seen as the reality of who was actually the wrongdoer and who the real victim. Essentially, an individual’s public presentation on the criminal justice stage was inextricably linked to his or her conformity, or non-conformity, with society’s expected stereotypical norms based on class, gender, race or age. It provided the baseline parameters for the social negotiation of what constituted justice. Where such expectations were not fulfilled positively, the equilibrium of the courtroom prosecutor-defendant dynamic could easily become disturbed.
Consequently, in the public presentation of the case, one party might appear to be portrayed in a more positive and advantageous light than the other in order to maintain the inherent balance supported by both legal and popular conceptions of justice. The discussion also highlights the modern implications and legacy that such historic norms and practices present to those courtroom participants today.

**METHOD**

This article arises out of extensive research undertaken by the authors into crime reportage and its reception in the period 1850-1914. The study led to the realization that crime reportage was an exceptional genre within the overall genre of press writing. There is much to be learned by paying close attention to textual sources. Srebnick and Levy (2005, pp. xiii-xiv) confirm that they provide key insights into the socio-legal contexts in which the history of crime must be located. It is, as they comment, not merely a matter of being aware of the informative content, it is also necessary to be conscious of the manner in which it is conveyed, of the intended audience, and of its purpose and use. Traditionally, legal history has relied upon the formal legal record, but that is problematic for scholars interested in the socio-legal dimension. British historians of crime and law know that the official criminal records of trials are scanty in terms of detail, providing only a limited picture, best suited to a broad-brush quantitative approach. However, newspaper coverage of court proceedings, including the police courts (i.e., summary or magistrates’ courts) potentially provided a richly detailed source for empirical analysis of the criminal justice system. In particular, it furthered understandings and conceptions of its operation, utility and effectiveness within its contemporary societal and cultural context. But that source was under-utilized, largely because of caveats about the scholarly validity of research into newsprint (Wiener, 1990, p. 155).

Research uncovered information about the newspaper production process, including information about authorship, editorial policy, etc. (Rowbotham & Stevenson, 2003). A position was established where newspapers could be used as a fruitful resource for empirical analysis from at least three perspectives. First, the provision of factual detail of events and proceedings, giving an understanding of what was actually going on in the courts. Secondly, in providing insights into the roles of those involved in the criminal justice system, whether as legal professionals or as lay persons. Thirdly, it could enable insights into the public reception and perceptions of the crimes committed, in terms of their impact and effect, as well as popularly accepted views on and attitudes towards particular types of criminal activity. In order to contextualize this effectively, a sound understanding of the process of production of crime reportage was needed, as well as an invocation of the forms of literary analysis pioneered by historians such as Judith Walkowitz (1992). Using ephemeral sources such as newsprint, as well as literature requires a conscious exploration of the context of production (Rowbotham, 1989). It also needs a focus on the text itself in order to locate the explorations in relation to the debates about first, the reliability, second, truth, and third, objectivity of such narrative texts (Srebnick & Levy, 2005).

**Procedure**

The aim of our project, to explore the process and importance of crime reportage, past and present, was not to single out any one type of bad behavior or crime. Instead, we sought an overview of the narratives provided by crime reporting. This involved identifying typical incidents as well as individuals or groups that featured in this genre of reporting (based on
cultural patterns of frequency of reportage and similarity of language codes used). As part of the research process, it was discovered that one reason why the reportage was, on the one hand, so detailed and thorough and, on the other, so homogenous, was that barristers (or other legal personnel) were the key providers of the discourse, acting as reporters in the police and higher courts throughout the land (Rowbotham & Stevenson, 2003). Titles were sampled every five years, on the basis of a study of every edition published in those years, with some exploration of other years in between on a less systematic basis.

Readership for the press was high by 1850, and rose steadily throughout the century. Circulation figures for individual titles were in the hundreds of thousands at least from the 1850s (the lowest circulation was for Reynolds News, which reached a peak of 350,000), but from the 1880s soared into the millions (Jones, 1996; Wiener, 1990). And throughout our period, readership was always wider than circulation, as particularly among the working classes, there were more readers than the purchaser to any copy (Jones, 1996, pp. 1-27).

**Materials**

Despite the substantial number of titles, it was possible to categorize and classify titles that were typical (Brown, 1985; Rowbotham & Stevenson, 2005; Srebnick & Levy, 2005). In addition, many of the provincial newspapers borrowed crime reportage from the national titles, and vice versa. The Times was used as a key critical base because of its acknowledged leadership of the press, which set standards for reporting in other titles. A selection of other, mainly national titles, were chosen because they regularly incorporated coverage of crime and trials at all levels in provincial locations as well as London. The capital certainly dominated reportage since its crime news also appeared in the local press, copied from national titles (Rowbotham & Stevenson, 2005). Such pre-eminence was natural because of the extent to which, statistically, London dominated the crime scene and set the standards by which the seriousness of crimes were likely to be judged (Emsley, 2005).

Besides The Times, other titles that have been most heavily researched were the Pall Mall Gazette, because of the quality of its legal reportage; and the Daily Telegraph, because of its core working class readership and sensationalist crime reporting that spread its appeal into the middle classes, making it probably the first mass media title (Brown, 1985; Rowbotham & Stevenson, 2005). However, a range of other titles, including weekly (usually Sunday) newspapers as well as provincial titles were regularly used, especially to cross-check reports in the most heavily used titles.

The commercial success of the papers chosen underlines their popular appeal, given that there was no compulsion to purchase, or constraint on title choice (Rowbotham & Stevenson, 2005; Wiener, 1988). It further emphasizes the attraction for readers of comprehensive coverage of crime, since the consistent element across the chosen titles was the density and high quality of that type of reportage. As the century progressed, cheap mass printing proliferated (distributed nationally via the railway network) and reading audiences expanded further, but the reliance on crime reportage as a draw was sustained (Vincent, 1989). One of the reasons for its appeal to producers as well as readers was that there was always material to hand. The expansion of summary justice, with trials in the police courts requiring only the outlay of a guinea, meant that ever more people (including the poor) were encouraged to seek redress of their grievances via the legal system (Davis, 1984; Emsley, 2005). For audiences who were also potential users of the courts reportage of the criminal
justice system in operation had a practical usefulness that accompanied its entertainment value.

From the mid-century, urban society’s work patterns permitted the working classes, as well as the middle classes, time for leisure. Reading comprised a leisure pastime, but it was not the only one available as a form of mass entertainment. Theatrical performances were also a staple format for men and women of all classes (Bailey, 1986). Theaters in towns and cities up and down the country provided cheap as well as the more expensive seats, and some, such as those in the East End of London, even relied entirely upon a mass audience paying little for their seats (Leech & Craik, 1875; Powell, 2003). Audiences were therefore both substantial and mixed, included the poorest and even, intriguingly, the criminal elements in society (Anonymous, 1871; Sessional Papers, 1892). As Lynn Voskuil (2002) has noted, Victorian playgoers favored dramas with an air of authenticity when it came to sensationalism and popular dramas regularly featured courtroom scenes with powerful moral messages, such as Boucicault’s acclaimed *The Trial of Effie Deans* (Walton & Wilcox, 1991).

THE REAL DRAMA OF CRIMINAL JUSTICE

The criminal trial as theatrical spectacle is a well-established analogy (Jackson, 1992; Kadri, 2005; Ost & Kerchove, 1998, p. 157) as the adversarial nature of the English system promotes a dramatic presentation of the conflicting truths as part of the competition to achieve believability for one side or the other. Cooper (1990, p. 381) describes it as a “clash of gladiatorial armies” highlighting the tension and excitement for those who either experience this drama directly in the courtroom, or indirectly through its reportage in the media (also see Cairns, 1998, p. 105). That analogy works in both a contemporary perspective and the lens provided by history. King (2000, p. 255) recognizes the early nineteenth century assize proceedings as being something more than just a staged drama produced by the authorities to dispense justice and the law, while being observed by the populace. It had become a form of “participatory theatre” that established and formalized social relations between the elite and its forms of authority and the population, exemplified by the crowd. The dramatic tradition dates back to the days of ancient Greek drama where dilemmas of justice and consequent legal strategies were played out in front of audiences, while the chorus frequently emulated their voices (Goodhill, 1986; Rapping, 2003, p. 98).

During the Victorian age, when that crowd became an even more ubiquitous presence at courtroom proceedings, it demanded that its interest be satisfied with ever more information about the criminal process. The mass thirst for knowledge was assuaged by packaging legal concepts in forms that were easily assimilable, for example, by adopting a presentational uniformity in a set of expectations about the links between character and appearance. The result was entertainingly educative for an interested public. The courts were more restricted in size than many of the theaters or music halls, but there was no entrance charge, ensuring that they were regularly packed. Such popularity also helps to explain the initiative to build the Royal Courts of Justice in London, as well as new and larger courts in places such as Manchester, Liverpool and Birmingham. Even the poor were willing to pay to witness theatrical performances that commented on real-life performances in the courts. Anstey (1891) mused on a popular music hall farce, *In the Law*, and remembered a much-sung ballad, *Called to the Bar*, that played on both the legal bar and the bar in the public house attesting to a relatively sophisticated comprehension of the legal process amongst an audience that was of the lowest class. As Weiner (1994, p. 15) confirms, “Popular crime
literature and theatre, particularly detailing real and imagined murders, proliferated.” Thus, Victorian theater clearly engaged in a quest for didactic reality, fusing theatricality and authenticity through performances that fascinated and compelled the public (Voskuil, 2004).

Factuality was also reinforced by the legal world itself. The involvement of lawyers in the production of media reportage from the courts ensured its authenticity enhancing the acceptance of its performativity. Media presentations of the cast of real characters from the courts generated public familiarity with legal personnel. Like those of Victorian actors, the public personae of Victorian lawyers was shaped by media publicity that characterized many of them as cult figures. Two of the best-known were Serjeant “Bally” Ballantine (a senior criminal barrister of repute in the Court of Common Pleas) and Judge “Hanging” Henry Hawkins (later Lord Brampton) who gained an understandably fearsome reputation. They were amongst the many lawyers whose photographs appeared under titles like the series of Portraits of Celebrities (1898) in the *Strand Magazine*. The dramatic dimension to crime reportage was not accidental. James Fitzjames Stephen commented on the theatrical nature of criminal justice trials in an Occasional Note on a Bill to extend the number of speeches by counsel for defense and prosecution to four, reflecting that it would improve the “performance” (Occasional Notes, 1865a).

Such legal professionals were acknowledged in the public gaze as actors in the drama of the criminal justice system (Ballantine, 1884, p. 247). Consequently, their courtroom speeches conveyed an authority enhanced by a belief in its reality. In this context, Threadgold (2002, p. 26) argues that popular culture, particularly as a social performative, can act as a mediator for the “powerful discursive formations” of the law by reformulating legal norms through the practices of everyday life. The authority assigned to the legal system ensures that its rhetoric, customarily and regularly rehearsed in the courtroom in front of one audience and disseminated to a wider audience via the media, become embodied in those practices of everyday life, impressing its performativity upon its audience. It is through such communication that the majority have not only learned to interpret legal proceedings, but are also enabled to assess whether the legal process has worked correctly in terms of delivering justice.

The public presentation of the legal system in action, therefore, emphasized a range of signifiers for the acceptability and unacceptability of various individual players on the basis of how they looked and behaved. This method of standardization acquired a power that stretches beyond the physical confines of the court theater. Such codes have entered the realms of wider societal cultural stereotyping, helping to define social, as well as legal, transgressors in the broad process of defining what the national community, in any period, accepts as justice. This process started, in the Victorian period, as an issue of prime importance, because mass perception in the earlier part of the nineteenth century of too many miscarriages of justice had profoundly affected public support for the legal system. While not so directly or expressly articulated today, such representations remain a key tool in maintaining public interest in the criminal justice drama, whether fact or fiction, ensuring the continuing importance of law’s performativity.

The dramatic tension inherent in the adversarial system has never, as Langbein (2005, p. 8) points out, been “satisfactorily resolved in the Anglo-American tradition … [providing] … an acute theoretical challenge” in the context of performativity. At one level, that system retains “truth-impairing tendencies” relying on the efforts of the opposing adversaries for the accumulation of evidence undermining “accurate adjudication.” The trial process is also
predicated on absolute judgments. A defendant cannot be a little guilty, or a little innocent, although magistrates, judges and juries may seek to hedge a verdict with qualifications of some kind, including recommendations to mercy that may affect the severity of a sentence. The verdict itself remains an absolute, but will be remembered for the majority of typical cases reported for public consumption rather than the true application of the law itself.

The advance of the adversarial tradition in the nineteenth century (see Cairns, 1998; Schramm, 2000) allowed the public dissemination of inherent signifiers attesting to the guilt and innocence of the parties involved. It afforded the means and the opportunity for the incubation and inculcation of societal stereotyping processes that were acceptable to the public in its capacity as audience. It also provided a basis for developing performances of justice in the courtroom that had nuances (especially when a jury was involved) that went beyond the letter of the law and the respective legal arguments of the case. Juries, then as now, took note of the stereotypes presented by prosecutors, defendants and witnesses. How else can apparently perverse jury conclusions past and present (including in modern times the acquittal of O.J. Simpson) be comprehended? While this process was not an entirely new phenomenon (cultural stereotypifications have always influenced the legal rationale) it acquired a much greater force and breadth of impact with the arrival of mass circulation newsprint from the Victorian period on (Neuberg, 1977; Vincent, 1989).

There was good reason for the constant presence of crime reporting in the press. Not only did it attract a regular readership, but there was a more subtle dimension, an unspoken reality that was acknowledged by the legal world. A legal system works effectively only when its operations have a firm basis in public consent. When that consent is diminished, especially because of actual or perceived suggestions of regular injustice, the system becomes practically dysfunctional (Rowbotham & Stevenson, 2000). Thus, the Victorian establishment portrayed the legal system in positive ways in order to enhance levels of popular support for its workings, and recruited the press as very useful collaborators in this exercise. The result was a mutually satisfactory dialogue. Newspaper editors and policymakers willingly accepted a considerable crime-related content, as its sensational edge consistently helped to sell their titles. Lawyers regarded it as in their self-interest to sustain an input. Acting as stakeholders in such a way resulted in a usefully informed audience, or at least informed according to the standards and agendas of legal professionals.

As a result, Victorian papers were packed with courtroom reportage that was, to a very substantial extent, produced by members of the legal profession. Jeaffreson (1867, p. 370), a London barrister, noted that “three out of every five journalists attached to our chief London newspapers are Inns of Court men.” Such involvement ensured both its accuracy in terms of the coverage of legalities and its generally positive tone toward the workings of the legal process. It also drew on the reporting talents of men who had a personal feel for the dramatic. It is not coincidence that a number of trained lawyers, notably William Schwenk Gilbert, Tom Taylor, and Arthur Wing Pinero, took to writing for the stage. As both court reportage and their own memoirs underline, men like Serjeant Ballantine and Frances Charles Philips (an actor and novelist turned barrister) had a talent for the dramatic when performing in the courts, a modern equivalent would be John Mortimer of Rumpole of the Bailey fame. As a caveat, Victorian audiences were no more supinely manipulable by the legal profession than those of today. As any group of spectators, they could and would naturally make judgments based on culturally-based norms of right and wrong within the courtroom. Such judgments would invoke generally approved patterns of socially acceptable versus socially offensive conduct. The role of legal professionals was to identify the appropriate legal
pathways for locating such cultural judgments. Thus, legal concepts of guilt and innocence were presented within those parameters in ways that enabled them to chime with popular comprehensions, so establishing a basis for mutual accord. It then became possible to negotiate appropriate courtroom verdicts to the satisfaction of both parties.

This aspect of didactic legal performativity involved processing the specialized language of the legal discourse into formats and rhetoric accessible to an audience generally not educated in the finer legal niceties. The trick was to mitigate possible criticism of the criminal justice system by emphasizing the particular human elements of the respective defendants and victims. Their depiction required conveyance in comprehensibly simple formats. An amount of interpretation and translation into lay terms of both human behavior and legal terminology was essential for the legal process to successfully engage with, and communicate its determinations and evaluations of violently criminal behavior to the general public. The same process continues to this day, through the same accepted conduit, the media, albeit modern forms of media communication are more diverse. The basis on which legal dramatic rhetoric, and its subsequent dissemination via the popular news media, has shaped public perceptions of crimes of violence have remained rooted in the Victorian period’s standards and expectations. As most Victorian newspaper courtroom reports were actually written by lawyers or trainee barristers, the legal establishment was able to send out very powerful (and accurate) messages about the relative merits and culpabilities of victims and defendants in the interests of maintaining support for the operation of the system (Rowbotham & Stevenson, 2003).

In high profile cases, such as murder trials, the promotion of a prior presumption of guilt or innocence often happened as the trial progressed and before the jury even made its determination, a version of what, today, is dubbed trial by media. Stereotypical conventions about appearance and demeanor became entrenched in the popular mind, not just via the immediate courtroom drama, but through these print productions conferring a uniformity that crossed the audience boundaries provided by class (Rowbotham & Stevenson, 2005). Consequently, elements in them have become so much part of the generally accepted cultural truisms about good and bad behavior that they have been little questioned by scholarship. The cases concluded in the summary courts, which generally dealt with minor offences without a jury as opposed to the jury trial of felonies in the assizes, are particularly informative. Though short in duration, the regular retrospective reportage of such cases could have durable effects on the social status of an affected individual, ensuring that after the delivery of any legal punishment, a social punishment would be likely to continue for those labeled as incorrigible or unredeemable (Rowbotham, Stevenson, & Pegg, 2003).

There is an assumption that such stereotypically based dramatic coding no longer operates in a modern criminal justice process that is apparently more sensitive to the potentially negative implications that flow from such classifications of human behavior. Equally, it is easy to recognize (and so to condemn) what are now perceived as the unfair stereotypes of the mid-Victorian period, particularly those rooted in a very blatant racism or class bias. These tend to be presented in language that is alien to modern expressions making them stand out in retrospective examination. We are blinder to our own prejudices and hypocrisies. However, there are ways in which other stereotypes that the Victorians supported have endured as part of cultural norms, and the lasting implications of these must serve as a warning to modern complacencies. Few things demonstrate this better than an examination of cases involving violent conduct of various kinds. To emphasize the typicality of such portrayals, high profile crimes such as murder have generally been eschewed. Instead,
the focus here is on a type of offending that was a staple in the summary or magistrates’ courts, and amongst the more minor offences (such as interpersonal physical violence) that were likely to be referred upwards to the Assize Courts. Such offending provided a substantial proportion of newspaper reports on crime, and offers a wealth of material for academic interrogation.

**ACTING OUT VIOLENT PASSIONS?**

As with twenty-first century English society, the Victorians were deeply disturbed about the violent society in which they lived, or at least about the visible levels of violence that occurred amongst the poor and perishing classes. As Weiner (2004) suggests, the decades after the 1820s saw a heightened concern with unregulated human behavior, both personal and collective. With the removal of the Bloody Code (a list of capital crimes), the law was increasingly perceived by respectable society as an asset in achieving the objective of a stable and orderly society. The criminal law was increasingly extended to cover forms of behavior that previously might have been regarded as rough, but were socially acceptable. With Victorian respectability demanding a reclassification of tolerable levels of aggression, the number of cases involving violence that featured in publicly accessible information, like the annual statistical returns, rose (Rowbotham, 2000a). The appearance in the public domain of such reports enhanced public fears about the threat of violence in the community and individual welfare (Emsley, 2005).

From a non-legal perspective, the point at which a form of physical force becomes violence, and then proceeds to unacceptable violence, is not easily identified because of the fluidity of the boundaries surrounding social acceptability of different types of force. From the legal perspective, the parameters are at least drawn. The Offences Against the Person Act 1861 was the defining moment in the nineteenth century, as it criminalized a wide range of acts of violence. In essence, violence involves an attack on the physical or mental integrity of another individual or group. Yet it was, and is, generally socially accepted that at times, such assaults are both justified and requisite, further underlining the complexities involved in negotiating where acceptable conduct ends and offensive behavior begins. At one level, what might be described as violence was a matter of largely unquestioned daily negotiation because force was employed as part of a power strategy in domestic and social dispute resolution. D’Cruze (1998, p. 21) asserts that male violence that defended patriarchal privilege intersected with such violent practices of dispute resolution positioned within a broader culture of physically aggressive masculinity involving alcohol, male sociability, and predatory sexualities.

Increasingly, as the nineteenth century progressed, physical force regulated by rules (such as those established in boxing or fox-hunting), or by national necessity (such as use of the army or militia in times of crisis), became seen as the only socially and legally acceptable expressions of violence (Archer, 2000; Rowbotham, 2000a). In the broadest terms, the theory was that the use of physical force to resolve power struggles within family or other relationships was no longer acceptable. Yet in practice, it was understood that there were circumstances when violence was at least comprehensible and even permissible. In drawing the fine line between acceptable and unacceptable interpersonal violence, the courtroom was the crucial arena, critiqued for a wider audience through newspaper reportage that was carefully designed to both inform and entertain. In both formats, the outward appearance of a person participating in the drama became of immense importance. As in so many dramatic performances, first impressions established by the nature of the initial appearance on the
stage typified the standards by which a character would be judged. Good or well-behaved men were expected to look, act and behave like Britons, to appear manly or, if social status warranted it, to be of gentlemanly appearance. Women were expected to be respectable and womanly, to be feminine and attractive, yet in a demure and modest, not provocative, fashion, and, if social status warranted it, to attract the symbolic attribution of being a lady or lady-like in conduct.

Signifiers indicating conformity to such standards were a constant in Victorian crime reportage, to such an extent that it is frequently easy to predict the outcome of a case from the first lines describing the prosecutors and defenders. The reactions of the courts and the public to individual cases depended heavily on how such cases were interpreted against the established stereotypes that the parameters of legal performativity relied on. These were then broadcast to the public to justify the decisions reached by the courts. The points made in the following discussions relate predominantly to cases that were concluded in the summary courts. As Weiner (2004) points out, violence that was sufficiently excessive to reach the higher courts was treated increasingly severely in the last half of the nineteenth century. However, the reality is that the majority of cases involving more moderate levels of violence involved a set of complex, highly nuanced stereotypes that underline the performativity of the law in everyday life. The summary courts, and to an extent the higher courts, have been, and still are, replete with cases suggesting that law’s performativity continues to impress the concept that justice is best served by negotiating the seriousness of violence against the stereotypes of class, age, race and gender. Often it is only through this process that the real victims of violence can be identified. Consider the modern echoes of the following cases.

“RESPECTABLE, HARDWORKING AND TIDILY DRESSED”: SIGNIFYING THE PARTICIPANTS IN DOMESTIC VIOLENCE

One major theme that was regularly featured in the real-life criminal justice dramas of the courts, particularly those performed in the magistrates’ courts, was that of domestic violence. Respectable Victorian society was deeply worried about levels of domestic violence, largely seen as a lower class phenomenon (Clark, 2000). It was also, stereotypically, difficult to control because of the reluctance of victims to initiate prosecutions and juries to convict. A leader in The Times in 1852 expressed concern at the brutality perpetrated upon women and children, making their lives a “daily hazard” for those in “the close courts and pent-up alleys” of the poor. To ameliorate such activities, the lower orders needed to be taught to respect themselves and others, and if unwilling to learn of their own accord, they would have to be taught by another kind of force: that of the law. Ultimately, “It is better that the manners of the people should be formed by education than by laws, but better that they should be formed by laws than left to form themselves” (Brutal Assaults on Women and Children, 1852). The law, thus, took it upon itself to educate the manners of the people through its invocation of popular stereotypes of acceptable and unacceptable behavior in crime reportage.

The enactment of the Aggravated Assaults on Women and Children Act 1853 (later consolidated into section 43 Offences Against the Person Act 1861) and the Matrimonial Causes Act 1857 (Divorce Act) must, therefore, be understood in the light of this desire to reform social attitudes through the educative dramas of the courtrooms. Despite such optimistic rhetoric and useful legislation, domestic violence remained a practical dilemma as evidenced by the regular episodes of matrimonial disputes played out and adjudicated in the Victorian courts. At the core of the problem lay the other key issue involved in judging cases
of violence, that of provocation and how to define genuine loss of self-control. It was accepted by society, and so implicitly by the criminal justice process, that there were certain degrees of provocation that excused unregulated outbursts of violence relieving the perpetrator of his guilt, morally and often legally as well. This in effect displaced the responsibility onto the victim and mediated the cases that were referred by the summary courts to the higher courts for judgment (Rowbotham, 2005; Weiner, 2004). Compare what might now be expected as a typical domestic violence case with one that was, in Victorian terms, equally common in respect of the language used and the outcome.

In November 1860, The Times reported the case of Thomas Saker, found guilty of a “brutal” assault on his wife and sentenced to three months with hard labor. This outcome was, at one level, predictable. The court and newspaper readers were informed that Saker was a “dissipated looking man,” intemperate and idle, while his wife was “a tidily-dressed and respectable person, though poor,” who kept herself and her husband by “her own industry.” Though Saker expressed remorse and claimed in exculpation that he had been tipsy and so had not intended to hurt her, it was agreed that “a mere expression of sorrow” was not “sufficient to atone” for his offence (R v Saker, 1860). However, this sentence was one of the harsher ones allotted in the summary or magistrates’ courts. The expectation raised by Weiner (2004) suggests that the magistrates would have referred the case to the higher courts. In reality, only cases that involved particularly clear-cut instances of excessive masculine violence reached the higher levels, and so became the type of case considered by Weiner. The daily diet in the magistrates’ courts reveal a much more subtle set of signifiers that magistrates took into account when reaching a decision and it was their conclusions that the public audiences relied on for this kind of crime.

That these were sets of judgments based on the social stereotyping of the protagonists is underlined by the case of George Heart. This was a more serious case, which was remanded to a higher court. Heart had appeared at Middlesex Quarter Sessions the previous week on a charge of assaulting his wife. He had beaten her so severely that her sight was jeopardized, and her right arm broken. Heart admitted the offence, but pleaded provocation. Opting for trial, at the sessions he clearly relied on the expected reaction of the jury to his impeccable credentials when compared to those of his wife, and was fearful that the stipendiary magistrate at Worship Street would be less susceptible to his performance.

Heart’s defense, eloquently pleaded by his barrister Mr. Sleigh, was that the assault had taken place when he was “exasperated to desperation” by his wife’s conduct in being regularly absent from home and so neglecting her husband’s comfort. According to Sleigh, this case was typical of those that were “too frequently” brought by women through “malice, vindictiveness and spite,” women whose sole object was “to humiliate, degrade and even incarcerate” some honest man. As the report indicated, the theme of the defense was Heart’s conformity to the expectations of a character that possessed the qualities of respectability and manliness versus the unfeminine depiction (including “aggressiveness”) of his wife. Her speech from the witness box was characterized by her unwomanly vehemence in stressing her “wrongs.” Against this, Heart was reported as “a very respectable-looking man,” who even his wife acknowledged as a “respectable, hard-working” individual who had behaved “like a man” when faced with this charge. He had “preferred to stake his character and liberty on the issue of the trial, confident that, under the circumstances, the manly good sense of an English jury would exonerate him” from his wife’s accusations.

Reading from the other signifiers, which also described Heart as “frugal” and “careful,” and from the evidence given by Mrs. Heart, it seems likely that he was a mean
bully who resented his wife visiting her neighbors, and used the excuse of her not having his dinner ready on the table on his return from work to assault her. However, the term respectable was ominously missing from the description of Mrs. Heart. Instead, her demeanor in court was described by the reporter and the judge as one of “bitter vindictiveness.” Thus, the not guilty verdict of the jury was hardly surprising. The cheers of the courtroom at this verdict were hushed by the judge, who expressed his sympathy with the impulse, but pointed out that the solemnity of the location made the demonstration “not appropriate” (R v Heart, 1860). The more informal theater of the magistrates’ courts allowed such effusions of audience approval. Thus, men who won the support of the legal system because of their respectability convinced both magistrate and audience. Such individuals were regularly cheered out of court (Bow Street Magistrates’ Court, 1870), again underlying the popular dimension to the law’s performativity in action, but also providing a better opportunity, arguably, for educating the public.

“OF GENTLEMANLY APPEARANCE”: SIGNIFYING THE REAL VICTIM AND OFFENDER

The point that the newspapers wished to communicate to their audience was that, depending on the circumstances and nature of a particular crime of violence, conformity, or non-conformity with Victorian society’s prevailing moral codes and mores could have devastating consequences. It could, in effect, reverse the cultural perception of who were respectively, victim and offender, despite their actual roles in the courtroom. The importance of this dynamic was that it served to mitigate any claims of miscarriage of justice that could undermine the reputation of the legal process for both justice and its effective delivery. The codes used to describe the protagonists communicated information about the acceptability of their physical appearance and demeanor, including the appropriateness of their appearance or conduct relative to the physical location in which an offence took place. Fundamental to this was the underlying respectability imperative that applied, at least in theory, equally to both men and women (Stevenson, 2000). Respectability was a concept that was presumed to be accessible to all, regardless of economic or social circumstances (Rowbotham, 2000b; Thompson, 1988). Consequently, it was expected that full responsibility for maintaining the outward factors indicating inward respectability must lie within an individual’s control as part of their personal domain. Of course, the practical realities of daily life meant that for many men and women this could never be the case. Something that in reality the law rarely took account of, though issues of class and gender were significant contributors to the process of communication of the real rights and wrongs of particular cases.

Representations in the press of victims and offenders often focused more on these stereotypical categorizations and conformity with gender norms than with whether that individual was de facto the perpetrator or injured person. For example, in September 1856, the middle-aged Alfred Adams, charged at Lambeth Police Court with “disgusting and indecent conduct towards three little girls” was described by The Times’ court reporter as being of “gentlemanly appearance.” Thus, at the beginning of the report his claim to positive labeling was established. As was typical for the time, details of the specific nature of the sexual assault were not expressed. This meant that any charge relating to sexual assault could refer to conduct as minor as indecent exposure to an actual physical sexual assault, even including rape. Such desexualized language was a common feature in the public discourse making it difficult for modern researchers to identify the true nature of such crimes. However, it is clear that the Victorians were well-equipped to interpret such codes through the nuances of the reporting of the actual court case (Stevenson, 2005).
The Adams case provides particularly interesting insights here. While, according to the report, Adams claimed he had been “indiscreet only” (implying that his behavior had not passed the line of decency that might be expected of a gentleman), the evidence provided by the girls’ father and a police officer who had witnessed the incident made it plain that his conduct was distinctly more serious, with a clear suggestion of physical interference. Given their reputations for respectability, also attested to in court, Adams’ conviction could be expected and justified in the press. Fortunately for him, he escaped more public condemnation because the magistrate, Mr. Norton, decided to deal with the case at a summary level, while clearly indicating the offence was of sufficient seriousness to merit a “public trial” at the assizes. The magistrate’s reasoning was that Adams’ previous “high character” merited this action to save him from “additional disgrace”, though he felt impelled to sentence him to six months hard labor. Adams’ public persona factored as a more significant influence than the serious nature of the actual crime, both in determining the ultimate outcome and in the thrust of the reporting of the case. Interestingly, the impact on the little girls was not even considered, nor was it described in the report to any significant extent. The focus was primarily on the male parties on both sides (R v Adams, 1856), indicating the nuanced nature of established conventions in such courtroom dramas.

Parallels can be drawn with the murders of Helen Jewett and Mary Rogers mentioned in the introduction. Jewett, a well-known courtesan to middle and upper class New Yorkers was knifed and burnt to death in a brothel in 1836. Cohen’s (1999, p. 17) comprehensive analysis describes how initially the New York Herald represented her as beautiful and erotic, reflecting her love of literature and the English romantic poet, Byron. Equally, the alleged perpetrator, Richard P. Robinson, a young, gentleman and respectable clerk “much esteemed by his employer” enjoyed a sympathetic press. However, as more personal details were exposed the press were forced to re-evaluate such stereotypical assumptions. Orphaned, Jewett was inherently respectable having been rescued by a judge in Connecticut, but later “abandoned herself” and actively sought out sexual adventure. Robinson’s media persona also changed when his diary revealed contempt for his employer and irreverence towards his mother. Cohen confirms that such trials were “like theatrical productions, events to be heard and judged by the jury on the standards of performance” (Cohen, 1999, p. 331). She also asserts that the “eagerly awaited theatre came not in the patient accumulation of evidence from witnesses, but in the lawyer’s closing speeches” (Cohen, 1999, p. 334). The performances of the defense lawyers (and the judge) were emotive. Having assumed Robinson’s guilt, the press were obliged to report his acquittal, only the New York Herald and The Sun refused to denounce the verdict.

Srebnick (1995) conducts a similar examination of the death of Mary Rogers, whose body was found in the Hudson River after an abortion went wrong. She argues that American crime reportage in the 1840s imposed cultural narratives and gender politics on feminine subjects that were highly misogynistic. An apparent distinction can be drawn between the Anglo-American experiences in that the involvement of US legal practitioners was much less influential at a national level due to the diversity caused by the federal system, and the lack of a truly national press.

Issues of class and social position were also important in the communication of the validity of the claims of defendants or victims to a particular verdict in the courts, and in the newspaper reporting of their cases (Stevenson, 2005). The importance of these signifiers in determining the outcome of a case and its public reception cannot be underestimated in this
period. An individual’s public persona could change, chameleon-like, according to shifts in perception of justifiable demeanor over the progress of a prosecution, especially if it involved a transferal to a higher court. Few incidents demonstrate this better than the case of Francisque Michel, who first appeared at Clerkenwell police court charged with rape and was remanded in custody as a strong presumption of his guilt was established by the reported cross-examination of him by the magistrate.

His accuser, Ellen Lyons, was “a respectable looking” fifteen-year-old servant in the house where Michel lodged. This gave her a higher social status than the defendant could apparently claim. At a time when French novels were synonymous with pornographic writing, he was described in the opening lines of the report as a “French Professor of foreign literature” who looked 45, a summary that established his moral dubiousness very effectively and comprehensively. The subsequent commentary damned him further. Ellen and Michel had been alone in the house overnight when he committed “the offence”, but she had complained to her employers on their return and had also told her mother. Michel had claimed not to “fully understand” the proceedings against him. Unadvisedly, perhaps, he commented in “very good English,” that he knew it was “the practice for English girls to play off their tricks upon foreigners.” Worse he offered, in court, payment in compensation for any upset and to prevent ruin to his reputation. His guilt seemed sealed. The magistrates had refused to give the foreign assaulter of British virtue bail, remanding him in custody to appear at the Central Criminal Court later that month (R v Michel, 1856, September 6).

Three days later he appeared at the Central Criminal Court, but this time the tone of The Times had changed markedly. Michel was presented in a radically different character because his social status was attested to in a way that confirmed his superiority over Ellen Lyon. He was now described as “a man of very gentlemanly appearance”, no longer a professor of foreign literature, but “a most honorable and moral man” on a mission on behalf of the French Minister of Instruction, collecting manuscripts from the British Museum, all confirmed by a number of British “highly respectable witnesses.” In other words, he himself was as respectable as any non-Briton could hope to be as reflected in the charge. Michel was indicted not, as in the lower court for rape, but for a “felonious assault.” His defending counsel, Serjeant Ballantine, managed to avoid any mention of the crime of rape in his “most eloquent address” on his client’s behalf. Whereas in the lower court, with Michel’s foreign dubiousness uppermost, Ellen had been the party who appeared “respectable” and whose testimony had been dubbed as clear, honest and unshakeable in reflection of her character. In the higher court this was entirely reversed. Ellen, now merely described as a “young girl”, appeared as the untrustworthy party, with “considerable grounds for doubting the accuracy of her statement with regard to the transaction.” The implication was that if intercourse had taken place, it had been consensual and that Ellen had merely objected afterwards, probably for financial motives.

The nature of the drama being acted out had changed radically. No longer was it nuanced by issues of race and ethnicity to create a hierarchy in which even a woman without social status (because British) scored higher than a man of higher social status (because not British). Instead, it became a more traditional drama, where class and gender triumphed as the governing factors in setting the contextual agenda. In the higher court the actuality of any physical connection between them was successfully blurred in the confused presentation put forward by Ballantine. It was the word of a man of status (endorsed by British men of status) versus a girl (not even a woman) of no status. Michel was acquitted by a British male jury. Ellen’s prosecution case was destroyed by the fictional imagery of a scenario where a lying
light-minded girl had falsely accused a respectable (if foreign) gentleman of sexual impropriety, and had deservedly been exposed, losing her own small claims to respectability in the process (R v Michel, 1856, September 9).

**“OF UNGAINLY DEMEANOUR AND COARSE MUSCULAR TYPES”: SIGNIFYING THE IRISH**

The issue of ungainly or unseemly demeanor related powerfully to those individuals who, in public communications through the legal system, stood accused of standing outside the norms of good conduct, whether voluntarily or involuntarily. In terms of the latter, there was a powerful presumption against those of Irish birth, especially where their class position suggested their Roman Catholic inclinations (Swift, 2005). In practice, the Irish always provided prime targets for negative labeling, often through the simple process of being racially stereotyped by their names or the parodying of their accents in any evidence they gave.

On 9 July 1875, a group of three “Irish laborers” stood accused of the murder of “a fellow countrymen,” James Kileran. According to evidence, a group of seven men, not all Irish, had chased Kileran through the streets of Darlington for “some cause which did not come out in court.” Kileran had been kicked and struck on the head, fracturing his skull. He had died without identifying his murderers. Only the three Irishmen had been arrested. One was charged with the murder and the other two were charged with being accessories. They protested their innocence but “admitted being present when the affair took place.” Michael Galligan, despite attestations from his employer and his priest that he possessed a “good character”, was found guilty of murder. His “accomplices,” James Durkin and James Flinn, were found guilty of manslaughter. Galligan was sentenced to death, and Durkin and Flinn awarded 15 years penal servitude, to the approval of the cheering court as well as the press (R v Galligan, 1875). As Irishmen, they stood in court already convicted of possessing an inborn inclination towards violence. They therefore seemed all too credible, despite the absence of hard corroborating evidence, their protestations of innocence and some testimony of good character, that they and not the other four British men had been the murderous perpetrators.

It was still harder for an Irish woman to gain an unbiased hearing, due to the messages constantly conveyed about their unfeminine propensity for consumption of alcohol and for physical violence on a scale matching that of their menfolk. Stereotypically it was Irishwomen who figured as the protagonists in street fights. They were generally labeled as the provoking party if other participants were English or Scottish, a phenomenon that related to their construction as disorderly on the grounds of race as well as class and gender (D’Cruze, 1998, p. 2).

The guilt of Elizabeth Macarthy, “a masculine-looking woman” but wearing “a huge crinoline” and “a good deal of tawdry finery” (descriptors that conjured up an image which testified to her negative female qualities, such as vanity) was readily imagined. Such imageries provided support for her conviction for hitting another Irishwoman with a beer glass and justification for a sentence of 14 days hard labor (R v Macarthy, 1861). Although somewhat lacking in feminine physical attributes, her tawdry clothing with its suggestions of crudity suggested she was a person of moral coarseness. Such apparent contradictions, relying on effective degendering of Irish working women by stressing their undesirable amalgamation of the masculine and the feminine in their physicality and appearance was a regular feature of gender stereotypification.
In 1872, the *News of the World* commented that everyone “knew” that certain types of Irish women were “of a coarse muscular type,” which manifested itself in behavior leading to “almost daily” charges of “assaults and drunkenness” (*The Weekly Glance*, 1872). Yet matching this, even men who placed themselves in an inappropriate location, defined by actual place or time, could find themselves effectively accused of unseemly conduct. There are more cases than space permits discussion of relating to *improper* behavior by women placing themselves in the wrong place at the wrong time (*Stevenson*, 2000). The following example, however, underlines the vulnerability of all who stepped out of their proper place in the eyes of the law. A stranger to the Ulverstone area in rural Cumbria, who was described as a “respectable-looking” man was attacked by “a well-known local ‘rough.’” Both men were arrested, charged and convicted of a breach of the peace. The latter for obvious reasons, but the former for coming to the area without due cause and at an unseasonable time of day, as a gentleman he should have known better (*Last Night’s Telegrams*, 1875).

“COWARDLY RUFFIANS OR MANLY HEROES”: SIGNIFYING THE PARTICIPANTS IN PUBLIC VIOLENCE

It might be argued that domestic and sexual violence can be distinguished from other forms of violence as any stereotypification is more likely given the gender issues involved. Even so, moving to less obviously contentious areas of violence, such as male on male, the Victorians established equally complex nuances around expressions of violence and its relative acceptability according to the social status of the participants and the type of force used (*Rowbotham*, 2000a; *Weiner*, 2004). As correspondence in the newspaper columns indicates, the reporting of legal cases helped to define the issues involved in the public consciousness with real effect on people’s expectations of how to conduct themselves. Brawling in the streets was, at one level, accepted as expected bad behavior on the part of members of the lower classes, especially if alcohol was involved and one or more of the protagonists was Irish (*Archer*, 2000; *Rowbotham*, 2000a; *Sindall*, 1990).

Not all “common instances of brutality” were reported by the media, but there were enough to establish the premise that a violent “quarrel” was “as natural to some of the lower classes as eating and drinking.” Saturday nights in poor neighborhoods were, therefore, often a “continued scene of rowdyism, fighting and drunkenness.” Such “savage” behavior was labeled as actually worse than that pertaining amongst absolute heathen savages in the British Empire (*Law and Police*, 1865). In the eighteenth century, by contrast, public brawling had been largely tolerated in daily life especially where there was no physical damage to property or individuals other than the protagonists (*Archer*, 2000, p. 42). As part of a more modern era, the dominant social and legal authorities, aided by the media, established a scenario where unrestrained public aggression was treated as warranting a stern social and legal response. A man (and even more certainly a woman) could lose social status, a job, or a home as a consequence of being hauled up in front of the authorities and accused of inappropriate expressions of violence (*Rowbotham*, 2005; *Stevenson*, 2000).

It may appear to be suggested that a clear line was drawn condemning all physical violence of which the public was aware, but in fact, this was not the full picture, as the following examples indicate. On 19 October 1870, as the *Daily Telegraph* reported, John Lloyd was charged with violent assault against Eliza Roach. The prosecution evidence was given by Alfred Reed who had thoroughly beaten up the defendant when hauling him off Eliza. The stipendiary magistrate, Mr. Newton, commented approvingly on Reed’s “manly”
conduct in assaulting the defendant, labeling it as “highly creditable” and regretting that there were not “more men like him who would fight against cowardly ruffians like the prisoner.” As a result, Reed’s violence was rewarded with money from the public purse (R v Lloyd, 1870). Arguably the use of force was entirely justifiable, but the key term of interest is the word “manly” implying that certain types of violence were entirely appropriate expressions of British masculinity (Archer, 2000; Rowbotham, 2000a).

This term was also crucial in the reporting of another incident followed by the *Daily Telegraph*, amongst other papers including *The Times*. Properly organized prize-fights were publicly acceptable because they operated under clearly defined rules and regulations associated with maintaining a gentleman’s honor. Any accidental death that may have occurred in bouts was, therefore, not automatically regarded as even manslaughter. In 1875, Mr. Justice Brett adopted what the paper termed a “bold” approach to a fight on Hackney Marshes, London. The combat was not properly organized or publicly advertised, but had, instead, all the marks of an illegal affair, including a grudge between the two fighters and the suspicion of gambling on the outcome. One of the participants died as a result of the encounter. The judge chose to ignore the illegal elements of the affair because of what he identified as the “manly” conduct of those involved. He accepted the defense that the six men charged with manslaughter had actually organized a “proper” bout, according to the established rules of prize-fighting, with a referee to ensure fair play. He asserted that there was a distinction between those incidents of public brawling that were characterized by “cowardice and unfairness”, and those (like this one) where care was taken to ensure a “fair fight.”

Quarrels fought fairly and under proper scrutiny that involved no weapons other than hands were “gentlemanly” and should be dealt with leniently. Justice Brett observed that the deceased must take some responsibility for his own demise, because he had willfully prolonged the bout by refusing to accept defeat. Of the six accused, four were imprisoned for one week for their close involvement in organizing the bout, while the two “onlookers” received nominal sentences of just three days. Unlike *The Times* with its more official stance (Weiner, 2004, pp. 53-54), the *Daily Telegraph* was most flattering in its assessments of the judge’s expressions, again invoking the concept of manliness, “Language more frank and manly has not often been heard on the bench.” The editorial considered that the conclusion was likely to have “a good effect” on those elements in society that were “prone to violence” (Editorial, 1875). It should, here, be stressed that the Victorian *Daily Telegraph* was a left-leaning penny daily aimed primarily at the working classes.

This example should not be taken as an indication that Justice Brett was lenient toward cases involving masculine aggression. In reality, where circumstances seemed to require it, he was not averse to taking a hard stance. If the violence was labeled “gratuitous,” he was vocal in his condemnation. In February 1880 at Liverpool Assizes, now promoted to the rank of Lord Justice, he sentenced two men described as “savages” by the *News of the World*. He imposed “twenty years penal servitude” for “atrocious” violence. Their offence had been to trip up a solicitor and kick him about the head for no apparent reason, leaving him fighting for his life for seven days. The men had also engaged in a quarrel with another passer-by on the same night, equally without any apparent cause, and had kicked him as well. Both were also found guilty of another similar attack. The *News of the World* was entirely supportive of this condemnation: “This is something like a sentence and is more likely to deter others from committing outrageous assaults than a few shillings and a ‘suitable admonition’” (Editorial, 1880). What these examples illustrate is the ways in which coded
language was central to the communication of ideas about what was, and what was not acceptable in terms of violent behavior. Once embedded in the public psyche little more was needed in press reports in terms of giving the background of defendants and victims than the right codes to indicate the categories into which they fitted.

PERFORMATIVITY’S IMPACTS, PAST AND PRESENT

It is easy, looking at the stereotypes established for the popular consumption of Victorian audiences, to critique them for a range of prejudiced assumptions, which were clearly shared by both the legal profession and the public as a whole. Despite sympathy expressed by the legal profession and juries for female victims of domestic violence, when that violence was identified as disproportionate and unprovoked, a widespread consent that masculine violence was normal ensured a set of enduring stereotypes about male and female conduct within domestic scenarios (Adam, 1908; Rowbotham, 2005). It is also true, as Weiner (2004) points out, that extremes of masculine violence were increasingly frowned upon by both the law and the public. Exploration of the newspaper reportage reveals that the law took an active role in educating the public into such views as a core element in its performativity in the Victorian age. In the UK today, however, there are worrying indications that law’s performativity has become a less mutually informative process. In the last 40 years in particular, sociologists and psychologists have identified a range of changing social attitudes towards right and wrong behavior in a variety of areas relating to human conduct, including sexual and domestic violence. Such change is not new, of course: the Victorian period also witnessed an evolution in ideas and attitudes (Weiner, 2004). In that era, though, changes of this nature were largely informed by input from the law. Today, society's conceptions of the boundaries between the socially and the legally offensive are not mediated to any noticeable effect by an informed and mutual debate in which the legal profession in all its manifestations is actively engaged. Rather, it is evident that equally observable changes within that profession distinguishing that which is criminally right or wrong are in fact occurring (Rowbotham & Stevenson, 2006).

As in the past, legal dramas remain a staple of popular entertainment and also sustain a potentially powerful educative dimension. Yet despite the advertised presence of legal advisors for the scripts and on the sets of popular television series such as The Bill, a long-running police drama, or Judge John Deed, a courtroom drama; informed legal comment frequently criticizes such modern dramas for their lack of reality in terms of the operation of the criminal justice process. Judge John Deed is predicated upon the figure of a maverick judge who, in the interests of justice and public approval manages to satisfy both by finding unconventional ways to challenge establishment practices and deliver the right outcome. The result is that the veracity of the law’s performativity in this popular fictional arena becomes divorced from what would actually happen in a real life trial.

Equally, though, fictional legal dramas remain perennially popular with audiences, potential members of such audiences rarely attend the courtrooms to witness the real thing. The need for the law to actively mediate such indirect experience is plain. Instead, detailed court reportage with a clear exploration of the legal dimensions involved in particular cases is lacking in the modern media. Summaries are provided, instead, in both newsprint and other media formats, which concentrate on the socio-cultural aspects of crime. Where the legal dimension is invoked, it is often presented in a hostile tone, indicating an expectation of legal performativity that is not matched in its reality. Characters like Deed reassure the audience of
the humanity of the judge and give the impression that with individuals of this caliber, the law can be on their side.

Such fictionalization shifts the conception of the adversarial nature of the criminal justice system to a contest between authority and the public, instead of one between the protagonists within the case. The invocation of dramatic sentimentality, without any mention of the necessary impartiality of the judicial process, provides a dangerously distorting presentation of the performance of the law. It is one that further underlines the distance in the UK between public and legal authority. Effectively, the media has chosen the side of the audience because it has had no incentive to do otherwise. However, the reality is that there should be no room for such dramatic sentimentality or bias in the demonstrable impartiality of the adversarial process. The website for the Deed series contains an interesting set of reactions, polarized between the legally trained and the ordinary viewers or spectators. The former tend to criticize the program for being unrealistic and misrepresentative (BBC, 2006). In law’s own eyes, its performativity is (rightly) compromised by such representations. Yet the majority of ordinary viewers clearly identify with the judge in his stance against the might of the legal machine, and while accepting that it may not represent reality, indicate a wish that it did.

For the legal profession in the UK, such perspectives send out messages that should alarm, instead of provoking hostility against a misinformed media. There is nothing new in judges and other legal figures being presented in ways that demonstrate their roles and participation in society more broadly. The last leading judge to be known by the British public in this way was, arguably, Lord Denning, who served on the bench for 38 years. His passion for gardening, and for cricket, were known and advertised through his judgments and contributions to the media in the shape of appearances on radio chat shows and so forth. As the BBC news report of his death commented, “In an age when judges shunned publicity, Lord Denning became the one judicial figure everybody had heard of” (BBC News Online, 1999). Like the fictional Deed, Denning was a controversial and outspoken legal figure who made judgments that at times alarmed the legal profession and upset the public. He managed to retain the affection and support of both sides by communicating with them via the media (including the publication of a number of legal commentaries that echo the great Victorian jurist Fitzjames Stephen’s works in their intent to educate the public in the law’s operation). Ultimately, he respected the law and sought to make the public understand and respect it too.

Denning, however, is dead. Contemporary public attitudes and standards in relation to right and wrong behavior do not equate with those of the legal profession. It is also noticeable that the law has largely withdrawn its participatory involvement in the media. Law’s own performativity is practiced by its exponents in ways that distances itself from popular appreciation, in stark contrast to the Victorian era. Yet it is the law’s own responsibility, through its own performativity, to ensure popular support; otherwise it stands to lose its claims to self-referentialism and self-determination. This problem has relevance outside the UK. After all, as Srebnik (2005) has pointed out, there are important continuities in the history of crime and its representations in modern culture, despite particularities of time and place.

In the USA, while the law is not always well-regarded publicly there is still a greater confidence in its ability to deliver justice demonstrated in media presentations of law’s performativity in film and on television. From the popularity of shows, such as Judge Judy and Boston Legal, there is a clear indication of a greater community engagement, via the
media, with the trial and the criminal justice process that is largely absent in the UK. Fortunately, there are signs that there are still members of the UK legal profession who wish to engage in a public dialogue that is mutually informative and educative of the priorities and agendas of both sides. The Sunday Telegraph has recently started a series to promote such dialogue in which lawyers are invited to inform its readership about legal muddles that waste taxpayers’ money (letters are already being published that indicate an appreciation of this addition; Letters, 2006; Sheppard & Goswami, 2006). Disappointingly, such concerns and apprehensions have failed to infiltrate and inform the higher echelons of the legal profession. Certainly the legal profession is not seeking to inform the public in an entertainingly educative way about the reasons why a range of social attitudes towards real victims in cases such as burglary or rape are not echoed by their institution.

For the law to work more effectively and to the satisfaction of both sides, law’s performativity needs again to be invoked by those administering justice to negotiate agreed norms that can signify guilt and innocence, while taking account of the more developed sense of law’s complexities in the modern age. Thus, law’s edutainment needs to be carefully negotiated with the media to ensure that the outcomes of cases cannot be unfairly prejudged even though the present level of public disaffection is replaced by renewed public confidence in, and understandings of, the trial process. For that to be done effectively, the media will need to be engaged by the legal profession as well as by its paying consumers, the public.

CONCLUSION

As the Victorian reporting of proceedings in the criminal courts underlines, the legal process involved conveying to the widest possible public ideas that went beyond the strict letter of the law in the interests of sustaining popular support for the criminal justice system. The key to comprehending the operation of this form of human communication requires a focus not so much on the law itself, as on the surrounding implications of the responsibility placed on individuals to conform to a range of cultural expectations based on the labeling of them according to class, gender, age and race. As the case of Francisque Michel (R v Michel, 1856) showed, the message was that it would be unjust to take the word of a foreign male whose attributes indicated a doubtful moral standing over the word of a good English girl. However, when the foreigner could be renegotiated as a good man of high social status (despite the disadvantage of his French nationality), the hierarchy of gendered credibility automatically devalued the testimony of the working class female. Consequently, justice required the acquittal of the man who was the real victim, despite (or because of) his humiliating position in the dock.

Such racially-nuanced conclusions would, today, no longer be acceptable to the legal system, but it must be admitted that the attitudes of the public are less readily predictable, as the rise in so-called hate crime with a racial bias indicates. In the UK, at least, there seems a less easy agreement between the media and the legal system, let alone the wider public, that justice is being reasonably and consistently delivered through the operations of the criminal justice system. The coded signifiers are still there, but arguably, they are currently being employed in ways that undermine public support for the process of the law because the law’s performativity is no longer managed to maximize its popular appeal.

In an attempt to reassure the public, the former Lord Chief Justice, Lord Woolf, commented via the Sunday newspapers, that overall there was not a huge public desire to see burglars who are relatively “minor” offenders sent to prison. Intended to invoke sympathy
and empathy with the legal profession and its management of the criminal justice system, the tactic backfired spectacularly. The pronouncement was used against Woolf and his colleagues to suggest that it was the law that was “out of touch” with popular conceptions of what constituted justice (Gavin, 2003; Hastings & Gavin, 2003). The very hostility towards the modern legal profession and its distance from ordinary comprehensions of right and wrong indicates that this form of human communication still needs to be a part of law’s performativity. To retain public confidence it is crucial to advance the process of a mutual comprehension of fairness and right in legal proceedings.

The rise of the internet and proliferation of television channels in Britain, mirroring the US experience, has undoubtedly led to a fragmentation of audiences in the modern age, as compared to that of the Victorian era. It is no longer, as newspapers with diminishing circulations find, easy to predict audiences (Rusbridger, 2006). Yet there is a considerable current unease visible in the press and media about the responsiveness of the criminal justice system to public concerns, providing a clear criticism of law’s current performativity in the UK. Consequently, there is a clear and present warning for legal systems, particularly adversarial ones, to consider carefully the nature of law’s performativity and its effectiveness in convincing its audiences of the law’s ability to deliver justice.

ENDNOTE

Judith Rowbotham and Kim Stevenson are the Co-founders and Co-directors of an inter-institutional research project SOLON: Interdisciplinary Studies in Crime and Bad Behavior adopting a historico-legal approach to examine the ways in which societies, past and present, utilize the concepts of law and punishment to identify and regulate conduct perceived as 'bad' behavior. In particular they have pioneered the use of Victorian press reports of cases heard in the summary courts. More details can be found at http://www.research.plymouth.ac.uk/solon/

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