

Social History of Scottish Homicide, 1836-1869

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This project is a qualitative examination of homicide in Scotland during the period 1836-1869, putting homicide in geographical, environmental and social context. Using the quantitative research in the history of crime in nineteenth-century Scotland as a point of departure, and engaging with the Scottish criminal justice system, the Lord Advocate's Precognitions, consisting of declarations of the accused and witness statements for homicide cases reaching Scotland's High Court of Justiciary, are used to demonstrate the ways in which specific social structures and social interactions provided greater opportunity for conflict and higher propensity for unlawful killing. It is argued that these scenarios were more likely during the period of rapid industrialization and social dislocation occurring in Scotland in the mid-nineteenth century.

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Abbreviations

NRS National Records of Scotland.

Glossary of Scottish Legal Terms.¹

Absconding from Justice

Failure to appear for trial.

Acts of Adjournal

Acts which contain rules for regulating court procedure.

Advocate Depute

Assistant to the Lord Advocate.

Aggravated assault

Examples include:

- Assault to injury/severe injury/to injury of the person/to permanent disfigurement/to the effusion of blood/to the danger of life/by cutting and stabbing.
- Indecent assault.
- Assault with intent to ravish.

Art and part.

Accessory or accomplice.

Assault.

Act of violence or attack on the person.

Assoilzied (Assoilzied simpliciter)

To free, or to be absolved of guilt.

Bail.

When a person charged with a crime applies to the court for liberation on bail.

Bail bond forfeited.

Failure of the accused to appear for trial and bail bond retained by court.

Banishment.

Banishment, either from Scotland or from a county, was a sentencing option available to the courts until the early nineteenth-century.

Burden of proof (see Proven and Not Proven).

The onus, or burden, of proving the case against an accused. The prosecution (Crown) has to prove the guilt beyond reasonable doubt.

Capital punishment.

The death penalty, or death by hanging. Until 1834 there were almost fifty capital crimes in Scotland, but the numbers were reduced by statute.

¹ 'Index of Legal Terms', <http://www.nrscotland.gov.uk/research/research-guides/research-guides-a-z/court-and-legal-records/index-of-legal-terms> [accessed 27/10/2014].

Eventually the death penalty was restricted to cases of murder, attempted murder and treason until its abolition in 1964.

Child murder, or concealment of pregnancy (Contravention of Concealment of Birth (Scotland) Act 1809; Con. 49 Geo. III, c. 14)

When a woman concealed her pregnancy during its course and did not seek help or assistance at the birth, and the child was found dead or missing. Concealment meant non-disclosure not merely active deception.

Committal

A person charged with a serious crime may be committed to remain in an institution pending trial on indictment.

Conspiracy

Where two or more persons agree to carry out a criminal purpose.

Culpable and reckless conduct (also: Culpable violation and neglect of duty)

Culpable and reckless acts which cause injury or death to others.

Culpable homicide (voluntary/ involuntary)

Intentional/ reckless act with some diminishing factor/ death caused unintentionally by criminal act or culpable negligence

Diet

A sitting, or meeting of the court for the purpose of taking steps in the proceedings in any prosecution.

Diet deserted

A sitting abandoned.

Diet deserted pro loco et tempore

A sitting abandoned for another time and place.

Escheat

The reversion of property to the state.

Habit and repute

A criminal by habit and repute; an habitual criminal. Husband or wife by habit and repute: a man and woman known to be living together as man and wife for a period of time.

High Court of Justiciary

The supreme criminal court in Scotland.

Inferior court

A court of lesser jurisdiction. In Scotland these would be sheriff courts, justice of the peace courts, burgh courts and police courts.

Indictment

Served on the accused. It lays down the charges about the commission of a serious offence or charge.

Jurisdiction

A power to hear and decide. The High Court is a court of 'first instance' and has the power to hear and decide cases coming before it directly.

Libel

The written instrument containing the details of the charge with which the pannel is accused.

Lord Advocate

The senior law officer of the Crown in Scotland responsible for the taking of criminal proceedings.

Mobbing and rioting

Forming part of a mob engaged in disorderly, criminal behaviour. The crime consists in combining to the alarm of the lieges (public) for an illegal purpose, or in order to carry out a legal purpose by illegal means, e.g. violence or intimidation. It is the common purpose which distinguishes it from Breach of the Peace.

Murder

Unlawful killing of another with intent to kill, or with wicked recklessness to life.

Not proven

The Crown has failed to prove the case against the accused beyond reasonable doubt. It is the equivalent of a 'not guilty' verdict. Both verdicts are acquittals, and have the effect that the accused cannot be tried again for the same offence.

Outlaw, fugitive and put to the horn.

When an accused failed to appear at trial his bail is declared forfeited and he is outlawed, declared fugitive and may be put to the horn. The effect of this being that the accused forfeits his person in law and, if put to the horn, his movable estate escheats to the crown.²

Pannel (see Accused)

Person brought to trial; the accused.

Procurator fiscal

The public prosecutor in inferior courts.

Proven

The Crown has proven the case against an accused beyond reasonable doubt.

² A. Alison, *Practice of the Criminal Law of Scotland*, (Edinburgh, 1883), p.349.

Robbery

Felonious appropriation of property by means of personal violence. The property does not require to be upon the owner at the time.

Solemn procedure

Procedure in the criminal courts in which a person is charged on indictment, and the trial is heard before a judge and a jury of 15 persons.

Chapter 1. Introduction.

Homicide is the act which, either directly, or by natural consequence, takes away the life of another ... The act of producing homicide may be considered in two lights: with reference to the intention of the killer, and the circumstances under which the fatal injury is inflicted; and with reference to the effects upon the sufferer, and the circumstances under which it is received.¹

Scottish advocate and author of standard works on the criminal law of Scotland, Archibald Alison, is alluding here to the degree of culpability of the perpetrator in mid-nineteenth-century Scotland, of what, at a broad level can be defined as justifiable and unjustifiable homicide. At a more detailed level it includes contemporary notions of acceptable levels of violence, self-defence and accidents.² What he is also alluding to is the evaluation of the evidence required by the Scottish legal professionals in order to establish if a homicide charge against the accused is valid or justified, and the degree of culpability or responsibility to be attributed: evaluation which leaves scope for legal and judicial discretion based on prevailing values. For the historian wishing to better understand homicide in a social context, it suggests the need for a detailed qualitative evaluation of the records it created. However, qualitative research decisions result from longitudinal quantitative research, which can indicate trends in the incidence and geographic dispersal of homicide and which raises research questions.

Peter King's quantitative analysis of Scottish crime statistics has indicated a rise in homicide rates during the first half of the nineteenth-century and demonstrates that the greatest increase of homicide was in industrial and urban

¹ A. Alison, *Principles of the Criminal Law of Scotland* (Edinburgh, 1832), p.1.

² Ibid. pp.1-144.

regions, and corresponded with phases of industrialization.³ Using King's findings as a point of departure, this project aims to take Archibald Alison's lead and look more closely at the surviving Scottish homicide records for the period 1836-69 in an attempt to identify the intentions of, and effects on, the parties involved, and the circumstances in which the injury was inflicted, in order to establish the degree to which a link can be made between homicide and the processes of industrialization and urbanization: a qualitative study of the evidence collated shortly after the incident was reported, in order to put mid-nineteenth-century Scottish homicide into the social context in which it occurred.

Literature review.

The history of murder in Europe, as an act of personal violence by one human being on another and distinct from state or collective violence such as revolutions and wars, has been traced back to the thirteenth-century and its criminalization mapped from complex reconciliation ceremonies between parties to state monopolization of prosecution and punishment. This process of criminalization presupposes a process of civilization, in which state formation was an important factor in a gradual pacification of everyday interactions and helped lead to a lower level of violence. In a stateless society grievances against the person were private affairs and privately settled, but as a state controlled judicial system emerged such grievances were increasingly

³ P. King, 'Urbanization, rising homicide rates and the geography of lethal violence in Scotland, 1800-1860', *History*, 96, no. 323 (2011), pp. 231-59; P. King, 'Exploring and explaining the geography of homicide: patterns of lethal violence in Britain and Europe 1805-1900', *European Review of History*, 20 (2013), pp.967-87.

perceived to be a wrong against the wider community and the public peace, and increasingly dealt with by the nation state.⁴

Testing the decline in lethal violence against Norbert Elias's 'civilizing process' framework, Manuel Eisner argues that, while quantitative research on homicide rates appear to support this theory, other factors were equally important in the decline of violent behaviour: cultural, political and economic forces, such as religious zeal, expansion of literacy, and early capitalist organization combined and resulted in more orderly conduct. Thus the decline of lethal violence began in the sixteenth-century with England and Holland, the 'pioneers of the modernization process'⁵, and by the beginning of the nineteenth-century homicide rates were lower in highly industrialized states than in rural, more illiterate regions.⁶ However, this pan-European long term view obscures regional variations and, paradoxically, ignores the cultural, political and economic forces through which, according to Eisner, these variations have developed.

Shani D'Cruze argues that the cultural and political forces behind the civilising process paradigm are difficult to substantiate historically, and that using homicide as an accurate indicator of levels of violence is problematic. However, while there has been significant change in the rates of lethal violence and historical circumstances during the last 500 years, the 'scenarios' or circumstances leading to homicide have endured over time. Given the similarities in scenarios in which lethal violence has occurred over the period

⁴ P. Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge, 2008), pp. 43-64.

⁵ M. Eisner, 'Modernization, self-control and lethal violence: the long-term dynamics of European homicide rates in theoretical perspective', *British Journal of Criminology*, 41 (2001), 618-38.

⁶ M. Eisner, 'Long-term historical trends in violent crime', *Crime and Justice: A Review of Research* (2003), pp. 103-106.

of 200 years in spite of the changes in historical context and homicide rates, D'Cruze asks whether the processes of modernization resulted in changes in behaviour so that individuals resorted to extreme violence less often.

According to D'Cruze, viewed historically, homicide should be understood as a social interaction, and can thus be associated with situations in which those involved consider their options to be limited through disadvantage or because the prevailing culture determines that the escalation of violence is the appropriate response. D'Cruze examines similar cases from the eighteenth, nineteenth and twentieth centuries and has identified 'historical persistence' in the situations and scenarios in which fatal violence occurred in male on male, domestic, and child homicides. A culture of violence, she argues, is evident where men resort to extreme violence to address affronts to honour through insult, challenge or jealousy, and to exert power and control in domestic situations. There are also enduring patterns in scenarios in which women killed children. Murder, it is argued, is an exceptional social action, experienced by comparatively few, and while women do kill, it is largely a male phenomenon and is linked today, as well as historically, to an enduring culture of interpersonal violence either in confrontation with other men or to exert control at home. The historiography of homicide has, according to D'Cruze, explained the phenomenon in terms of the growth of the state and the coercive effect of the criminal justice system, resulting in a reduction of lethal violence.⁷

⁷ S. D'Cruze, 'Murder and fatality: the changing face of homicide', in A.M. Kilday and D. Nash (eds), *Histories of Crime: Britain 1600-2000* (Basingstoke, 2010), pp.100-115. See also M.J. Wiener, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England* (Cambridge, 2004); R. Shoemaker, 'Male honour and the decline of public violence in eighteenth-century London', *Social History*, 26 (2001), pp.190-208; J. C. Wood 'It's a small world after all? Reflections on violence in

Martin Wiener posits one such explanation. He argues that broad cultural and political changes were taking place in nineteenth-century England, and that a shift in the way masculinity was viewed impacted on decision making within the criminal justice system. Homicide, he argues, is a gendered behaviour and the way homicide is treated by society can tell us much about notions of masculinity. On average, he argues, men tend to be more aggressive and violent than women and that, with the exception of infanticide, perpetrators of homicide have been overwhelmingly male. The problem of this male propensity to violence, he suggests, has increased with the emergence of a way of life which is inconsistent with the need for aggression and violence, therefore, has lost its former functionality.⁸

According to Wiener changes in the law and its administration, a widening definition and scope of the criminal justice system, and a shift in 'criminal anxieties' away from fear of property crime towards a fear of crime against the person culminated in the first half of the nineteenth-century resulting in a shift towards greater punishment of interpersonal violence, especially by men against women, and amounted to a criminalization of masculinity. Legal tolerance toward violence and fatal violence was decreasing from the late eighteenth century both in practice and in principle: the maximum sentences for property crime were being reduced, the maximum penalties for violent behaviour were becoming harsher, and courts were increasingly willing to impose custodial sentences. There was, furthermore, a widening definition of violent crimes against the person and an increase in the scope of the criminal

comparative perspectives', in B. Godfrey, C. Emsley and G. Dunstall (eds), *Comparative Histories of Crime* (Collumpton, 2003), pp. 36-52.

⁸ M. Wiener, *Men of Blood*, pp. 1-3. See also V.A.C. Gatrell, 'The decline of theft and violence in Victorian and Edwardian England', in V.A.C. Gatrell, B. Lenman and G. Parker (eds), *Crime and the Law: The Social History of Crime in Western Europe since 1500* (London, 1980), pp.238-337.

justice system. Cases in which death resulted from recklessness and occupational deaths, such as accidents on roads, railways or in industrial settings, were increasingly being prosecuted as manslaughter to the assizes, the penalties for which were becoming harsher, and the Offences Against the Person Act of 1828 empowered British authorities to investigate and bring charges in cases of homicide by or against British subjects.⁹

There was also, according to Wiener, a shift in the way in which society viewed violence. The increase in the number of prosecutions for violent offences against the person during the first half of the nineteenth century can largely be attributed to male on male homicides. Violence arose from particular social situations as a way in which to settle disputes, to defend honour, status or reputation and as popular entertainment or for money. However, while hostility toward interpersonal violence was not yet universal, such violent acts were increasingly proscribed and drunkenness was becoming less likely to be accepted as a mitigating factor.¹⁰ While Wiener illustrates the inter-relationship between the development of statute and case law relating to male violence in England, and changes in ideas of manliness and acceptable behaviour, there remain several aspects of nineteenth-century, industrializing society to be explored before higher rates of homicide in industrial and urban regions can be better understood.

Carolyn Conley argues that homicide trials can reveal a lot about the values of the society in which they occur. The focus of her study is on late-nineteenth-century homicide trials and outcomes, and on the rhetoric surrounding them in England, Wales, Scotland and Ireland. Her study offers a

⁹ Wiener, *Men of Blood*, pp.19-28.

¹⁰ Ibid. pp.28, 41-2.

qualitative rather than quantitative approach looking at the social and cultural context of homicide rather than its rate of incidence. Homicide trials, she argues, provided a forum for discussion of gender roles, class, insanity, respectability and the cost of industrialization, and, given that each nation's experience was markedly different, it is possible to identify cultural variations between them from their respective responses to homicide. Differences in the way in which class, gender, the use of alcohol, and ethnicity were perceived by each nation are identified at a broad level. While the English were concerned with upholding patriarchal values, the Scottish courts were more lenient towards a native Scot than toward an Irish immigrant, but insisted women should be held accountable for their actions. The Irish, it is argued, were more tolerant of violence and made little distinction between male and female killers.¹¹

Given that the focus of Conley's research was the outcome of trials to identify attitudes toward, and rhetoric around homicide and its perpetrators, it provides useful insight into a crucial aspect of nineteenth-century criminal justice and the values of the society in which it operated. However, it tells us little about the social context of the act of the homicide itself, the intentions of the killer and the circumstances in which it occurred.

Nevertheless, both Conley and Wiener identify gender as being a key factor in the way in which homicide was viewed and dealt with by society. Certainly, the question of gender is inherent in any social history research project, and the types of scenarios and interactions involving women are a key part of this project. The use of the term 'gender' is problematic. While initially used as a

¹¹ C.A. Conley, *Certain Other Countries: Homicide, Gender and National Identity in Late Nineteenth-Century England, Ireland, Scotland and Wales* (Ohio, 2007), pp.1-4, 99-101, 80-82, 206-209.

substitute for 'women', it later came to be used as an analytic tool for studying both women and men and in relation to each other.'¹² For Joan Wallach Scott gender is the understanding of relationships produced by cultures and societies: the way in which sexual difference is organised by society and reflected in institutions, everyday practices and rituals. The assumption that women and men have predictable and inherent characteristics implies that sexual difference is a natural phenomenon but, Scott argues, the place of a woman in society is not determined by what she does but by the way in which what she does is understood by that society. This understanding involves culturally available symbols, normative concepts that provide meanings for these symbols, political and social institutions and organisations, and subjective identity. Symbols such as Eve and Mary, myths of light and dark, purification and pollution, innocence and corruption are normalized within religious, educational, legal and political discourse and social institutions.¹³

Historians of crime largely concur that the extent to which particular behaviour was perceived as criminal in the nineteenth century differed according to the sex of the offender and largely reflected the patriarchal values dominant within society. Victorian notions of masculinity and femininity determined which behaviour was acceptable and which was considered criminal. Divisions between the separate spheres of men and women were clearly defined at an ideological level, and certain characteristics later considered to be central to criminal behaviour, such as aggression, were

¹² J. Boydston, 'Gender as a question of historical analysis', *Gender & History*, 20, No. 3 (2008), 559-564, 576.

¹³ J. Wallach Scott, *Gender and the Politics of History* (New York, 1999), pp. 2-44.

considered normal masculine qualities while the female poisoner represented a total negation of ideal womanhood.¹⁴

That Victorian notions of femininity and masculinity influenced how wrong doing was perceived is a fundamental presupposition of Lucia Zedner's examination of attitudes toward female crime. Criminal woman was the anti-thesis of ideal womanhood. While the Victorian feminine ideal was the moral bulwark defending her family against the social evils of industrial life, the deviant woman was corrupt, fallen from innocence and she contaminated everyone around her. City slums were breeding grounds for disorder in the Victorian imagination and the perceived role of the working class woman was to curb the demoralizing effects on the family. The degree of non-conformity to this role was the benchmark for acceptable behaviour, and given that female criminality was equated to the inadequacy of their performance as wives and mothers, women were felt to be responsible for juvenile delinquency.¹⁵

Anne-Marie Kilday has explored the phenomenon of Scottish women's involvement in homicide in the later eighteenth and early nineteenth centuries. She argues that infanticidal mothers in the south west of Scotland were far more brutal and violent in their methods than their English counter-parts.¹⁶ Challenging the traditional view that violent behaviour was a male phenomenon, Kilday argues, through an exhaustive study of the High Court Indictments between 1750 and 1815, that a higher proportion of female crime was of a violent nature than was the case for male crime and that the Scottish women's experience of committing serious crime was distinct from the rest of

¹⁴ C. Emsley, *Crime and Society in England 1750-1900* (Harlow, 3rd ed., 2005), pp. 92-108

¹⁵ L. Zedner, *Women, Crime, and Custody in Victorian England*, (Oxford: Clarendon Press, 1991).

¹⁶ A.M. Kilday, 'Maternal monsters: murdering mothers in south-west Scotland, 1750-1815', in Y. Galloway Brown and R. Ferguson (eds), *Twisted Sisters: Women, Crime and Deviance in Scotland Since 1400* (East Lothian, 2002), pp. 156-179.

Britain. While the focus of historians has been explaining the absence of women in the criminal statistics or on women as the victims, rather than the perpetrators of crime, Kilday illustrates that women habitually stepped outside the confines of femininity, which, she argues may never have been wholly manifest, and resorted to overt aggression in Scotland during the eighteenth-century. Certainly, she argues, female violence was an act of self-defence but women could also be as violent as men and were prepared to resort to homicide.¹⁷

Kilday's research is an important contribution to the field and demonstrates the value of homicide records for better understanding the intentions of female perpetrators, the circumstances in which homicide occurs and especially the experiences of women. However, as Kilday acknowledges, her chosen primary sources have their limitations. Books of Adjournal contain only the Indictment, detailing the charge against the accused, and a brief summary of the trial and do not provide the social background or context to the case. Furthermore, by limiting the sample to Lowland Scotland, the 'hub of economic and social modernisation' and the most populous region of Scotland during that time,¹⁸ cause and effect is not clear. Did women conform less to gender norms and the confines of femininity, and were they more overtly violent as a result of being in an industrial and populous environment? Or were gender norms less ingrained in Scottish society than previously thought?

Anna Clark argues that the process of industrialization and urbanization undermined accepted gender norms and resulted in an increased likelihood of

¹⁷ A.M. Kilday, 'Women and crime in south west Scotland: a study of the Justiciary Court records, 1750-1815', Ph.D thesis (Strathclyde University, 1998); A.M. Kilday, *Women and Violent Crime in Enlightenment Scotland* (Woodbridge, 2007), pp. 147, 22-3, 39-58.

¹⁸ Ibid. p.5.

drunken behaviour among working class men, and an increased likelihood of domestic violence against their wives. Clark contrasts the gender relations of artisans and textile workers in London, Lancashire and Glasgow, and argues that conflict within marriage, while not unique to urban industrial environments, was a result of tension over money and attempts by men to assert their authority. In an urban context the greatest conflict arose from artisan males who, being unable to follow the pre-industrial route of apprentice to craftsman, indulged in a bachelor lifestyle focussed on the public house and male solidarity. Growing opportunities for female employment and the necessity of women's financial contributions to the household resulted in conflict and domestic violence. Textile workers, however, were more likely to accept women's financial contributions to household finances and were less likely to commit violence against their wives.¹⁹ According to Clark, then, while domestic violence by men against their wives is an historically enduring scenario, the urban and industrial environment altered the dynamics of interactions between husbands and wives and created greater opportunities for violent conflict and homicide.

The focus on overt aggression and homicide reveals some important administrative and cultural factors for consideration and highlights the role of gender and gender norms in incidences of fatal violence in nineteenth-century Scotland. However, a study of the more covert *modus operandi* of poisoning can also reveal much about the motives of the perpetrators and the society in which they lived.

¹⁹ A. Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (London, 1997), pp.5-7

Katherine Watson's work on English poisoning cases between 1752 and 1914 does just this. While traditionally considered to be largely a female crime, Watson demonstrates that men as well as women resorted to poisoning their victims,²⁰ for reasons of jealousy, financial gain, or to be rid of an inconvenient child or partner,²¹ and records of poisoning cases provide valuable insight into the lives of those involved. As well as demonstrating the social context of what was a pre-meditated and covert way of killing, Watson also argues that poverty and economic hardship, especially during the economic slump of the 1840s, was a factor in a significant number of cases.²²

While current understanding of the history of homicide is largely quantitative and focussed on the longer-term trends in prosecution of and trials for violence and fatal violence, valuable qualitative research demonstrates some of the ways in which, as Eisner suggests, factors such as culture and economic forces, as well as changes in the criminal justice system, may have impacted on homicide rates. Wiener has demonstrated the inter-relationship between changes to, and widening scope of, the criminal justice system, and a decline in the acceptability of male aggression which increased the rates of prosecution and impacted on the severity of punishments; Conley's work on trial outcomes has highlighted national variations on how gender, class, ethnicity and the use of alcohol were perceived in relation to homicide; Clark has demonstrated the ways in which industrialization and urbanization increased the likelihood of domestic violence by men against their wives; Kilday and Watson have challenged earlier views that violence and poisoning

²⁰ K. Watson, *Poisoned Lives: English Poisoners and their Victims* (London, 2004), pp.45-52.

²¹ *Ibid.* pp.53-122.

²² *Ibid.* pp.80-90.

were male and female phenomena respectively, and provided valuable insight into the social context of violent women and poisoning cases.

Clark, then, has suggested a likely scenario in which lethal domestic violence might be greater in an urban context. However, the limited scope of Kilday's research to the industrial and urban southern regions of Scotland, and Watson's focus on cases of poisoning, do not address the apparent contradiction in the conclusions of Eisner and King. That is to say that while Eisner asserts that homicide rates were lower in highly industrial states, King's quantitative work on homicide rates for both England and Wales, and for Scotland clearly illustrates that the opposite is the case: that homicide rates were greater in urban industrialized regions than in rural counties. Conley's comparative study on homicide, however, has indicated that further research of Scottish homicide records will provide valuable insight into the circumstances in which these killings occurred, in order to explore the inter-relationship between homicide and industrialization and urbanization in Scotland during the period 1836-69.

While the body of research into Scottish crime is not, as yet, as comprehensive as that for England, some valuable work has, nevertheless, been done in recent years. Studies on the transportation of Scottish criminals and a more recent survey of Scottish crime in the first half of the nineteenth-century has suggested that the trends from 1786 to the mid-nineteenth-century suggest a clear correlation between population density, urbanisation, economic factors and criminality; typical offenders were young and poor; male offenders outnumbered female; and the majority of indictments and convictions that led to transportation were for property crime. Although Scottish transportees

represented only a small proportion of the total transported from Britain as a whole, the typicality of offence and offender largely mirrored that of the English experience. Donnachie's 1994 article, stemming from a Scottish Records Association conference on the history of crime in Scotland, considered a 'clarion call for action', set out to suggest the way in which Justiciary records and Criminal Returns could be interpreted to illustrate the aforementioned trends in Scottish crime. It was noted moreover, that there was a large void in nineteenth-century Scottish history and research into the geography of Scottish crime would enrich our understanding of the way in which urbanisation and industrialisation impacted on society.²³

More recent studies on Scottish crime focus primarily on gender and the development of policing. However, Christine Urquhart has completed a study of juvenile crime in Dundee; Suki Haider recently completed a Ph.D. on female crime in Dundee during the period 1865-1925 and in a Ph.D. research project running concurrently with this study, Tim Siddons has looked at Child Murder in Scotland from 1812 to 1930. Other valuable work includes a Ph.D. thesis on the criminal defence of insanity in northern England and southern Scotland and a number of studies on the development of policing in Scotland.²⁴

²³I. Donnachie, 'The convicts of 1830: Scottish criminals transported to New South Wales', *Scottish Historical Review*, LXV (1986), 34-47.; I. Donnachie, "'The Darker Side': a speculative survey of Scottish crime during the first half of the nineteenth century", *Scottish Economic and Social History*, 15 (1995), pp. 5-24.; Other papers presented at the Scottish Records Association conference include M. Stewart, "'In Durance Vile": crime and punishment in seventeenth and eighteenth century records of Dumfries', *Scottish Archives*, 1 (1995), pp.63-74.; M. A. Crowther, 'The criminal precognitions and their value for the historian', *Scottish Archives*, 1 (1995), pp.75-84.; I. Donnachie, 'Profiling criminal offences: the evidence of the Lord Advocate's Papers during the first half of the nineteenth century in Scotland', *Scottish Archives*, 1 (1995), pp. 85-92, Donnachie's later article 'The Darker Side' is based on this earlier version presented to the conference.

²⁴ C. Urquhart, 'Juvenile and criminal correction in Victorian Dundee and Forfarshire', Ph.D thesis (University of Dundee, 2004); S. Haider, 'Prisons, pubs and pawnshops: female crime in Dundee 1865-1925', Ph.D. thesis (University of St Andrews, 2012); T. Siddons, 'Suspicion, surveillance and discovery in cases of suspected new-born child murder in Scotland 1812-1930', Ph.D. thesis (University of Edinburgh, 2013); D. Adamson, 'Insanity,

Research Questions

Quantitative work on Scottish homicide has demonstrated a link with industrialization, urbanization and crime and more detailed and focussed research has indicated the potential value of an in-depth study of Scottish homicide records in developing a better understanding of this field. This project is a response to Donnachie's call for action and seeks to investigate the intentions of mid-nineteenth-century perpetrators of homicide, and to place their actions in the social context in which the homicide occurred. At a broad level the questions raised by current research of gaps in that research are: to what degree did the processes of industrialization and urbanization change behaviour so that individuals resorted to homicide more or less often? What were the social interactions that led to homicide and to what degree were culture and disadvantage factors? More detailed questions arise from the breakdown of homicide into the types of scenarios and relationships in which they occur, and explore in more depth the social interactions that ended in unlawful killing, and the types of scenarios that led to mass protest and

idiocy, and responsibility: criminal defences in northern England and southern Scotland, 1600-1830', Ph.D. thesis (University of St Andrews, 2005); A. Dinsmore, and Urquhart, R.H.J., 'The origin of modern policing in Scotland', *Scottish Archives*, vol.7 (2001), pp.36-40; J.G. Harrison, 'Policing the Stirling area', *Scottish Archives*, vol. 7 (2001), pp.16-24; W.G. Carson, 'Policing the periphery: the development of Scottish policing 1795-1900', part 1, *Australian and New Zealand Journal of Criminology*, 17 (1984), pp.207-232; W.G. Carson, 'Policing the periphery: the development of Scottish policing 1795-1900', part 2, *Australian and New Zealand Journal of Criminology*, 18 (1985), pp. 3-16; D. Smale, 'The development of new police in the Scottish Borders 1840-1899', Ph.D thesis (Open University, 2008); A.Goldsmith, 'The development of the city of Glasgow police c1800-1939', Ph.D. thesis (Strathclyde, 2002); D. Barrie, 'Britain's oldest police? a history of policing in Glasgow 1779-1846', M.Phil.thesis (Strathclyde, 2001); J. MacGowan, 'The emergence of modern civil police and systems of police in Scotland: a case study of the police and systems of police in Edinburghshire 1800-1833', Ph.D. thesis (Open University, 1997).

homicidal violence. Did the movement of population affect behaviour of and relationships between young men and women in a way in which the homicide of children was more or less likely? Did the emerging urban environment present opportunities for other social interactions or scenarios that could impact on the likelihood of a mother resorting to unlawful killing of a child, or in creating conflict between other individuals living in close proximity to one another? Was there an existing culture of violence against wives, and as an accepted way of settling disputes in nineteenth-century Scotland, making homicide more likely? What were the social interactions that were likely to result in unlawful killing and to what degree did the bringing together of large numbers of men from diverse cultural and religious backgrounds make lethal violence more likely?

The period 1836-69 was chosen for a number of reasons. A qualitative research project such as this must focus on a sample large enough to be robust, small enough to be manageable, and should facilitate meaningful comparison to previous work as well as making sense historically. While the period chosen is too short to infer meaningful conclusions about trends over time, it yielded a sample of 744 cases over 44 years, and included enough homicides to facilitate meaningful and detailed analysis. The research questions above are eclectic in derivation but the point of departure in the following thesis is King's quantitative work on Scottish homicide rates during two sample periods: 1805-14 and 1836-56. In order to facilitate meaningful juxtaposition of the quantitative with the qualitative evidence the period chosen for this research starts from the earliest date of King's second sample. However, to ensure the sample size was robust, the period covered was extended to 1869. The series

of Criminal Returns which began in 1834 remained constant until it was revised in England in 1857, after which the returns were reorganised under three main headings of Police, Criminal Proceedings, and Prisons. However, this reorganisation did not actually occur in Scotland until 1870 and it has been possible to collate data for Scottish indictments from 1836-69 without loss of continuity. Furthermore, according to King's quantitative analysis of the recorded homicide rates in late-nineteenth-century Britain, while rural homicide rates had flat lined, urban rates increased before declining after mid-century. King's tentative explanations for the change in the relationships between rural and urban homicide rates are the stabilisation of society after a period of crisis and an, albeit slower, rise in living conditions. Higher homicide rates, it is argued, occur during periods of social dislocation, such as industrial expansion and rapid urbanisation, and as the period of upheaval levels out, so do rates of recorded homicide.²⁵

The period is of particular historical interest for this project because it was a time of agrarian transformation that saw the development of the railway network through rural as well as more populous regions.²⁶ Urban areas were expanding rapidly as were industrial settlements around mining and heavy industry in previously rural areas. The processes of industrialization and urbanization in Scotland generated new work opportunities, resulted in the movement of population and large scale immigration, and impacted on social interactions and behaviour.²⁷

²⁵ King, 'geography of homicide'.

²⁶ For a map of the developing railway network in Britain during the nineteenth century see M. Freeman, 'Transport' in J. Langton and R.J. Morris (eds), *Atlas of Industrializing Britain 1780-1914* (London, 1986), p.89.

²⁷ For surveys of Scotland's economic and social history see R.H. Campbell, *Scotland since 1707: The Rise of Industrial Society* (Edinburgh, 1985); C.A. Whatley, *The Industrial Revolution in*

Furthermore, rapid industrialization and urban growth was concentrated in the central belt while its northern most counties remained largely rural, resulting in a 'polarized economic geography', which, King argues makes Scotland an ideal case study to challenge Eisner's conclusions that homicide rates were lower in areas of urbanization and industrialization.²⁸ In order to evaluate Scottish homicides in a social context, and to identify the characteristics of the social change propagated by the processes of industrialization and urbanization, a brief overview, or snapshot of that society is needed.

Scottish society in mid-nineteenth century.

Industrialization in Scotland was tied to, and part of, a wider British and European experience. After the union of parliaments in 1707 Scotland had access to English markets, both domestic and colonial, as well as English capital and technology. Scotland in turn made significant contributions in civil and mechanical engineering. Furthermore cultural and political links pre-dated 1707 and the two nations shared several social characteristics. Nevertheless, the Scottish phenomenon was distinct from the British and European experience in terms of timing, nature and causes.²⁹

Scotland (Cambridge, 1997); R.J. Morris, 'Urbanisation and Scotland', in W.H. Fraser and R.J. Morris (eds), *People and Society in Scotland: 1830-1914* (Edinburgh, 2000), pp.73-102.; T.M. Devine, *The Scottish Nation 1700-2000* (London, 2000); T.C. Smout, *A Century of the Scottish People 1830-1950* (London, 1997); for immigration see T.M. Devine, 'Temporary migration and the Scottish Highlands in the nineteenth century', *Economic History Review*, new series, 32 (1979), pp.344-59; I. Donnachie and M. Nicolson 'The New Lanark Highlanders: migration, community and language 1785- c1850', *Family and Community History*, 6 (2003), pp.19-32; T. McBride, *The Experience of Irish Immigrants to Glasgow, Scotland 1863-1891: A New Way of being Irish* (Ceredigion, 2006); for the development of the Scottish rail network see J. McGregor, *The West Highland Railway: Plans, Politics and People* (Edinburgh, 2005); J.E. Handley, *The Navy in Scotland* (Cork, 1970); C.J.A. Robertson, 'Early Scottish Railways and the Observance of the Sabbath', in *Scottish Historical Review*, 47 (1978).

²⁸ King, 'Lethal Violence', pp. 233-234.

²⁹ Whatley, *Industrial Revolution*, pp.4-5.

Certainly, the general trends were similar to the United Kingdom as a whole, manifested by a decline in the number employed in agriculture and an increase in employment in heavy industry, which included mineral extraction, metal manufacture, mechanical engineering and ship building. The central belt of Scotland in mid-nineteenth-century Scotland was dominated by three urban-industrial regions. Agriculture was the second largest means of employment in central Fife, the smallest of these regions, followed by textiles, transport services and coalmining. Lothian, the second largest, contained the city of Edinburgh and port of Leith as well as mineral deposits and agricultural land. The largest of these was Strathclyde, incorporating Glasgow, the Clyde shipyards, textile towns, the engineering centre of Greenock and the iron and coal producing parishes of Old and New Monkland. By 1851 the Strathclyde region was Scotland's industrial core and the dominance of heavy industry depended on and attracted strong, skilled male workers.³⁰

The process of industrialization and urbanization were interdependent, and were, in turn, dependent on migration and immigration of population facilitated by, but not necessarily as a result of, agrarian change and economic need. In the mid-eighteenth-century Scotland was the seventh most urbanised society in western Europe but by 1850 it was second only to England and Wales. While almost one third of its population lived in towns of 10,000 or more, others lived in quasi-urban settlements and a new social order was clearly in the process of formation.³¹

Broadly, industrialization and urbanization occur as the result of the same economic forces and both commercialization and the expansion of

³⁰ T.C. Smout, 'Scotland 1850-1950', in F.M.L. Thompson (ed.), *The Cambridge Social History of Britain 1750-1950*, vol.1 (Cambridge, 1990), pp.210-15.

³¹ Devine, *Scottish Nation*, pp.153-4.

manufacturing were crucial factors in this process: urban centres provided easy access to labour, producers and consumers, and maximised transport opportunities. Two distinctly Scottish characteristics, however, were that, firstly, its western ports were well placed to take advantage of contemporary international trade, and, secondly, that the process of industrialization and urbanization was more rapid than anywhere else in western Europe, far exceeding the rate of growth of supporting structures such as sanitation and amenity.³²

While international trade was crucial in the development of Scotland's port towns, especially in the Clyde basin, the expansion of manufacturing was crucial for urbanization. However, in addition to urban settlements that developed around industry, there were also several local centres performing marketing and service functions for their catchment areas, such as historic burghs and fishing ports. Of the four major Scottish cities, Edinburgh and Aberdeen provided key legal, professional and financial services while Glasgow and Dundee were dependent on textiles and industry. While Edinburgh had a high proportion of professionals and domestic servants, urban centres that depended on industry were more vulnerable to economic fluctuation and the adverse effects of rapid urbanisation such as overcrowding, poor sanitation and poverty.³³ Urbanization and industrial expansion increased opportunities for employment and, while the movement of population for economic reasons was not unique to this period, agrarian change in Scotland was characterized by its rapidity, by regional variation, and by the cultural and social impact on the population involved.

³² Devine, *Scottish Nation*, pp.156, 167-8.

³³ Devine, *Scottish Nation*, pp.156-9, 166-7.

The Highland counties were, like other British regions, undergoing transformation during a time in which Scotland was industrializing and increasing its population on an unprecedented scale. The geography of the Highlands set limits to the possibilities of opportunity, and in a process that became known as the Highland Clearances, that is to say the removal of Highlanders from their traditional lands to make way for agricultural improvement, such as sheep farming, landlords increasingly made decisions about land use based purely on economic terms in order to maximise estate income. During the second half of the eighteenth century much of the Highland population lived precarious lives, and, while the region exported black cattle and illicit whisky to southern markets, living standards remained low. Survival was eked out on the margins of subsistence and rural communities were vulnerable to failing harvests and population pressures. Historians differ on the importance of the Highland counties' vulnerability to subsistence, but it was, in reality, the last region of mainland Britain to remain prone to famine.³⁴ However, while the Highland Clearances impacted on a large proportion of the small tenantry of the Highlands, Islands and Aberdeenshire, the process of agrarian change was much more widely felt and had significant implications in generating the movement of young men and women of marriageable age, which, in turn, facilitated changes in behaviour that were incompatible with pre-industrial attitudes and practices.

Two divergent social and economic systems had emerged in the highland counties by 1840. In the eastern parts of Ross and Cromarty and Inverness-shire, a consolidation of land among fewer tenants had created a farming

³⁴ E. Richards, *Highland Clearances* (Edinburgh, 2000), pp.32-51.

society in which the greater proportion of the population were dependent on employment as farm servants and labourers. The type and extent of farming varied between districts, and demand for labour could be continuous where the area of cultivation and productivity per acre had increased in un-mechanised farming methods. While some of those dependent on employment in this way were completely landless, the most common was semi-landless crofters or cottars, whose small holdings provided some subsistence which was supplemented by wage labour.³⁵

A significant problem faced by Highlanders during the period 1750-1850 was the strain on resources resulting from an increasing population attempting to live off infertile land. Although the development of a potato economy provided basic subsistence, it did not strengthen the Highland economy and the area remained vulnerable to crises throughout the period.³⁶ The western parts of Ross-shire, Inverness-shire and Sutherland were predominantly crofting regions, in which there was little in the way of major manufacturing industry, and the inhabitants of which depended mainly on the produce of the land and sea for subsistence. There could be significant differences in the levels of subsistence but most were vulnerable to climate, and the quality and quantity of natural resources within the crofting areas. While crofters were recognised as tenants, and had, at least officially, adequate resources to subsist, cottars were sub-tenants or even squatters and could be completely landless and dependent on outside employment: they were often those who had previously been dispossessed of land, or were the sons or sons-in-law of

³⁵ T.M. Devine, *The Great Highland Famine: Hunger, Emigration and the Scottish Highlands in the Nineteenth Century* (Edinburgh, 1988), pp.1-2.

³⁶ R. Mitchison, 'Scotland 1750-1850', in F.M.L. Thompson (ed.), *The Cambridge Social History of Britain 1750-1950*, vol.1 (Cambridge, 1990), pp.180-181.

crofters who built their houses on the land of their kinsmen. The latter in particular resulted in the sub-division of land and a situation in which the same quantity and quality of resources had to support a greater number of people: the existence of both crofter and cottar could, therefore, be precarious and insecure.³⁷

The income earned from employment as farm labourers and servants became increasingly important for crofters and cottars during a time when the growing industrial and urban economy was creating greater opportunities and an expansion of the jobs available for those prepared to migrate. Migrants who travelled to the Scottish lowlands for work were largely the poorest tenants and cottars with limited land available to them, and so had fewer demands for cultivating their own land and had access to fewer resources. While migration initially appealed more to young unmarried males and females, heads of cottar households increasingly migrated to find employment elsewhere. Regional variation notwithstanding, the incentive to migrate in search of employment was induced by the pressure of want and the absence of alternative local resources for income.³⁸

There was, however, considerable regional diversity, and some patterns of migration were related more closely to seasonable availability than want or lack of local resources. The fishing of herring, for example, was a major source of income, had a very short season in which it was available, and generated significant seasonal migration. The fishing town of Wick, in Caithness, attracted large numbers of migrant workers from the Hebridean islands, many of whom travelled across country. The importance of the

³⁷ Devine, *Highland Famine*, pp.3-8.

³⁸ Devine, *Highland Famine*, pp. 146-150.

fisheries in Wick is emphasised in the contemporary Statistical Accounts, which claim approximately 10,000 people were employed for the short season starting in July.³⁹ The movement of population between regions had important implications in terms of this project, such as the transference of attitudes toward and acceptance of pre-marital sex and illegitimacy, to new environments. The social structures of which did not necessarily support the potential outcome.

The introduction of statutory registration of births, deaths and marriages in Scotland in 1855 drew attention to the anomaly of the rate of illegitimacy, which was higher in rural areas than in towns, and it was noted that this was not necessarily the result of vice. T.C. Smout argues that, regional variation between rural areas where crofting was predominant and areas that were more dependent on waged labour notwithstanding, illegitimacy had a degree of acceptance in rural areas, and was even expected or preferred in some circumstances.⁴⁰ This phenomenon will be explored in greater depth in chapter three, but it highlights a significant consequence of the migration of peoples from one distinct area to another: that migrants continued to observe, or cling to, traditional values in a new and very different social order with unexpected outcomes. What is also significant is that men in particular could find waged employment as itinerant labourers with even less accountability for the illegitimate offspring of casual encounters.

The process of industrialization across Scotland created its own significant opportunities for migrant and itinerant workers. Mid-nineteenth-century Scotland saw a boom in the construction of the Scottish railway network and

³⁹ Rev. C. Thomson, 'Parish of Wick' in *New Statistical Account of Scotland, 1835-45*, vol.15 (Edinburgh, 1845), p.145.

⁴⁰ Smout, *Scottish People*, pp. 167-173.

during the 1840s no fewer than 27 companies were employing around 29,000 men, creating a huge demand for labour. In the autumn of 1845 a stream of migrants left Ross-shire for work on the Caledonian, Central and Scottish Midland railways, and in 1846 the Inverness Courier advertised for 2000 – 3000 labourers to work on the development of the Aberdeen line.⁴¹ The police Daily Occurrence Book for the crofting parish of Rogart, in Sutherland, from 1865-1867, a period during which a railway line was under construction, suggests that itinerant, all male workforces could pose problems for local, and otherwise rural communities. According to the parish constable, 149 men were employed in the construction of the railway line through the parish of Rogart during this period. There was concern that the absence of signal boards on a section of the line could result in an accident, but several entries referred to the potential for and actual trouble caused by the railway workers. On 11 January, for example, a dispute arose between the workers and the employer about not being paid, and on 13 January the constable was called to the local public house where ‘the railway men had indulged in strong drink and threatened a quarrel’.⁴² On 13 February 1866 it was noted that a railway labourer was ‘drunk and disorderly and rioting’ in Pittentrail Inn, and on 6 and 7 April, immediately following pay day for the railwaymen, the workers threatened violence and attacked a Police Constable.⁴³

There is no reference to, nor do any records survive for, any homicides resulting from drunken railway workers in Rogart during this period but the surviving police diary illustrates the extent to which itinerant workers in the

⁴¹ Devine, *Highland Famine*, pp.160-1.

⁴² HCA, Records of the Northern Constabulary, Rogart Occurrence Book 1865-1867, R90/B/5/16/1.

⁴³ Ibid.

construction of the railway network specifically, and industrialization generally, could impact on rural regions.

Employment opportunities created by the building of railways Scotland-wide attracted an itinerant workforce from within Scotland as well as a significant number from Ireland, many of whom had fled the potato famine. However, other industrial developments created opportunities for migrants, immigrants and the local population, and these were largely concentrated in the central and south-western regions of Scotland and especially Lanarkshire.

The mining of coal and manufacture of pig iron in the countryside helps explain why, by 1830, only one third of Scotland's population lived in large towns and cities. Steam power in cotton spinning and other textile industries stimulated coal production, encouraging industrial settlements around areas of production, and urban development spread to coal and iron towns such as Coatbridge, Airdrie and Wishaw in Lanarkshire.⁴⁴

Furthermore, trade with Ireland, coastal commerce and connections with Europe stimulated port development, especially in the Clyde basin and it is no coincidence that four of the five fastest growing towns in Scotland were in the Clyde basin, as commercial success generated the need for high concentration of labour. Greenock, for example, mushroomed in size to become one of the largest towns in Scotland between 1700 and 1831. An obvious advantage of industrial concentration in such towns, in addition to the benefits of access to external economies, was that employers did not need to provide accommodation for their readily available pool of labour.⁴⁵

⁴⁴ Devine, *Scottish Nation*, pp.157-68.

⁴⁵ Devine, *Scottish Nation*, pp. 156-7.

The south-western region and the surrounding areas in the mid-nineteenth-century can, therefore, be said to have embodied the characteristics of urbanized and industrialized society. Lanarkshire had an average population of 588,512 for the period 1840-1869 in a geographical area of approximately 926 square miles, which equates to an average of 635.5 people per square mile. However, a large part of the county was described as bleak and mountainous,⁴⁶ and 77 per cent of its population was concentrated in the city of Glasgow and the industrial parishes of New and Old Monkland at 405,141; 21,754; and 27,664 respectively.⁴⁷ There was also an increasing concentration of iron and coal production on the south bank of the Clyde,⁴⁸ and a growing number of textile factories in the city of Glasgow itself, which created a variety of supporting trades working out of small workshops in the overcrowded city centre areas.⁴⁹

H.S. Tremenheere, commissioner for mines, having previously held the position of Assistant Poor Law Commissioner, compiled 15 reports on enquiring on the state of the population in mining districts between 1844 and 1858. After 1843 it became unlawful for women and children to be employed in mines and Tremenheere was tasked with visiting Scottish mining districts, among others, to establish the extent of non-compliance. Other abuses to be reported on included the continued practice of paying wages in public houses,

⁴⁶ 'General Observations on Lanarkshire', *Statistical Account*, vol. 6, p.935.

⁴⁷ 'Population (Scotland). Return, showing the number of the population of Scotland at each decennial period from 1801 to 1881 inclusive, and showing the increase or decrease at 1841 compared with 1801, and the increase or decrease in 1881 as compared with 1841, -1. for the whole of the kingdom; 2. for each of the several counties; 3. for each parish in each of the several counties respectively; 4. a list giving, as far as practicable, the above particulars for each of the royal and parliamentary burghs, and other towns or populous places.', *British Parliamentary Papers*[hereafter *P.P.*], 1883, liv.315.

⁴⁸ R.J. Morris, 'Urbanisation and Scotland', p.75.

⁴⁹ W.F. Fraser, 'The working class', in F.W. Hamish and I. Maver (eds), *Glasgow*, vol.ii (Manchester, 1996), p.304.

with a view to protecting mining populations. In the first of these reports on the mining population in Lanarkshire, he noted that

the population, as might be expected from the rapidity with which it has increased, is of a very mixed character. Persons have been brought together from all parts of the country, and from a variety of other occupations, attracted by the demand for labour. Many of them are Irish.⁵⁰

Tremenheere also cited Mr Robertson, a surgeon in Airdrie, as saying that

‘The conduct of the collier population is most disorderly. When they have high wages they work a few days and then drink away until they have spent all they have earned. The more their wages rise the more dissipated are their habits.’⁵¹

According to Tremeneheere, the ‘dull and depressing nature’ of mining predisposed colliers to ‘seek excitement’ after work was over, and that such a population lacked the restraint that ‘may naturally be supposed to be exercised by the supervision, authority, and example of the class of society of a higher grade ... The low animal habits ... receive little check from a superior presence’. He goes on to argue that the situation was aggravated by ‘the want of an efficient police, and the unlimited facilities for obtaining ardent spirits.’

⁵² While alcohol consumption was only one part of Tremeneheere’s terms of reference, the tone of the report on this particular issue reflects contemporary attitudes toward drunkenness and associated immorality, especially in densely populated areas, rather than the actual scale of the problem.

Population increase in Ayrshire parishes was attributed to the development of industry and the formulation of railways, and the number of public houses was believed to have had ‘the most pernicious effect on the morals of the

⁵⁰ H.S. Tremeneheere, ‘Report of the commissioner appointed under the provisions of the act 5 & 6 Vict. c. 99, to inquire into the operation of that act, and into the state of the population in the mining districts.’, *P.P.*, 1844, xvi, p.16.

⁵¹ *Ibid.*, p.17.

⁵² *Ibid.* p.18.

people'.⁵³ In Greenock parish, Renfrewshire, out of a population of more than 29,000 only 600 resided in the landward part of the parish, the remainder living in the towns of Greenock and Crawfordsdike. It was noted that 'where the population was dense, intemperance and licentiousness were often the vices of persons of all ranks, and sea port towns are more than others exposed to that moral contagion.'⁵⁴ A more direct link between the development of industry, population increase and an increase in crime was made by Reverends MacNair and Burns of Paisley, an area noted for its weaving and spinning industries, who claimed that 'The increase of population and of manufactures was accompanied with the increase of crimes and irregularities'.⁵⁵

The south-west, more than any other region of Scotland, was where the majority of Irish immigrants settled. Prior to the crisis migration from Ireland as a result of the Great Irish Famine during the 1840s, a significant number of Irish migrants were Protestants who were able to integrate reasonably inconspicuously into Presbyterian Scottish society. However, the majority of the 120,000 Irish arriving in Glasgow during the mid-nineteenth-century crisis period were from the worst affected, Catholic areas of Ireland. The percentage of Irish born living in Scotland in 1841 was 4.8, rising to 7.2 in 1851: the majority of these immigrants settled in the south-west and south-east amounting to 16.8 per cent of the population in Lanarkshire as a whole, and nearly one fifth of the population of Glasgow.⁵⁶ Nineteenth-century Scottish perceptions of the poor Irish immigrants was that they were 'much addicted to drink, to lying, and to swearing, and that 'their great ignorance, both

⁵³ 'Ayrshire' in *Statistical Account*, vol. 5. pp. 199, 209.

⁵⁴ 'Greenock' in *Statistical Account*, vol. 7, pp.428-9.

⁵⁵ 'Paisley' in *Statistical Account*, vol. 7, p.186.

⁵⁶ T.M. Devine, 'The Great Irish Famine and Scottish history', in M.J. Mitchell (ed.), *New Perspectives on The Irish in Scotland* (Edinburgh, 2008), pp.21-3.

intellectual and religious, their morality is inferior, and this has a tendency to lower the Scotch'.⁵⁷

Historians have argued that the occurrence of sectarian riots and disturbances in nineteenth-century Scotland is evidence of Scottish protestant working class hostility toward the Catholic Irish community.⁵⁸ Certainly, a contemporary newspaper claimed that the population of Airdrie in 1854 was comprised largely of miners from a mixture of Scottish, Irish and English backgrounds, 'who profess to hold decided opinions on Protestantism and Roman Catholicism':⁵⁹ Irish workers were also used as strike breakers and blackleg labour, causing resentment from Scottish workers.⁶⁰

Christopher Whatley argues that public crimes, including strikes, disturbances, riots and other forms of disorder that occurred during the first half of the nineteenth century can be linked directly or indirectly with changes associated with the extension of market relations and with industrialization. Cotton spinners, coal miners and others were involved in a series of riots and disturbances in Glasgow and the west of Scotland over a variety of grievances and provoked fears of chaos and insurrection among the authorities.⁶¹ Furthermore, according to W. H. Fraser, while working-class existence had never been particularly secure, industrialization caused a fundamental transformation of the environment inside and outside the workplace, changing the structure of many industries and the relationship between employers and workers. Skilled trades were finding it increasingly difficult to control the

⁵⁷ As cited in M.J. Mitchell, 'Irish Catholics in the west of Scotland in the nineteenth century: despised by Scottish workers and controlled by the church?', in Mitchell, *The Irish in Scotland*, p.9.

⁵⁸ Mitchell, 'Irish Catholics', p.7.

⁵⁹ 'Riot at Airdrie and Loss of Life', *The Scotsman* (9 August 1854).

⁶⁰ Mitchell, 'Irish Catholics', pp.3-8.

⁶¹ C.A. Whatley, *Industrial Revolution*, pp.86-9.

entry of new workers into the workplace in the face of an increase in piece work, a surplus of labour, competition for work and the increasing threat of mechanisation. The pace of change from the 1820s was rapid, and attempts by workers to push up wages and control entry into trades, as well as resisting changes in the unit and timing of payment became the most common topics for dispute.⁶² Other areas of industrial growth had less direct implications, however.

The development of the whisky distilling industry during the eighteenth- and early-nineteenth centuries was a significant factor in the Scottish industrialization process. While it stimulated agricultural production of grain for market consumption and commerce, the widespread availability of cheap spirit that it produced for the domestic market had a significant social impact. The history of the industry up to mid-nineteenth-century can be defined as continual negotiation and re-negotiation between the distillers and the Excise office. The focus of the distillers was to remain commercially viable while the Excise office saw opportunities for raising revenue, in general and also specifically for funding the Royalist army in 1644 and later wars in the Colonies and in France. Both parties were also keen to combat the huge problem of illicit distilling and smuggling.⁶³

Aqua vitae, an early form of whisky flavoured with berries and seeds, had been distilled in Scotland on a large scale since mid-sixteenth-century, and was increasingly being consumed as a drink in its own right, as well as for its more traditional use as a medicinal tonic. Until 1781 it was legal, and common practice, for private individuals to distil spirits for their own consumption and

⁶² W.H. Fraser, 'working class', pp. 301-306.

⁶³ M.S. Moss and J.R. Hume, *The Making of Scotch Whisky: A History of the Scotch Whisky Distilling Industry* (Edinburgh, 1981), pp31-83.

to turn surplus produce from the croft or farm into a useable, and perhaps saleable, product, and aqua vitae was being drunk in great quantities as early as the mid-sixteenth-century. However, it was the attempts by Lowland distillers to compete with the English market, and the measures they adopted to minimize the level of duty they paid, such as rapid distillation, flooding the market with cheap, harsh spirit, that contributed significantly to Scotland's problem of excessive drinking by mid-nineteenth-century.⁶⁴

Certainly, whisky was associated with all nineteenth-century Scottish social, work, and life events: the coming of seasons was marked with it; it was the currency of entry fees into trades, and fines for neglect of duty. The drinking of it was also common among women as well as men.⁶⁵ To escape the bleakness of home life, women and children congregated in communal areas and wynds, and men visited public houses. For working class men, the public house served as employment exchanges where someone looking for work could hear about employment opportunities, but drinking was also very much a part of the working class community.⁶⁶ Archibald Alison, as a social critic who was quite vociferous in the campaign against alcohol, was of the view that, not only had the reduction of duty on spirits been particularly ruinous to the lower orders by bringing the 'means of intoxication ... to every man's door', but also that working classes living in industrial environments were especially susceptible to intemperance. According to Alison 'four-fifths [sic], probably seven-eighths of the crimes which are committed originate in the

⁶⁴ Moss and Hume, *The Making of Scotch Whisky*, pp.31-84.

⁶⁵ *Ibid.*, p.303.

⁶⁶ Fraser, 'Working Class', p.302-303, 237-328.

effects of, or the desire for whisky', and the 'danger of demoralization from this cause ... rises to the highest pitch in manufacturing towns.'⁶⁷

The suppression of the illicit trade in whisky resulted in a focus on, and the recording of, the consumption of whisky, which was shown to have increased significantly in the first half of the nineteenth century, although it is thought unlikely that actual consumption was any greater than it had been in the eighteenth. Contemporaries, such as Alison, increasingly spoke out against the negative effects of alcohol and the campaign gained pace in the late 1820s when the first Scottish anti-spirits society was formed in Greenock.⁶⁸ It was, however, particularly problematic in urban centres: even after 20 years of the Temperance movement, there were still, in 1850, 2000 licenced premises in Glasgow ranging from back rooms of private houses to taverns.⁶⁹ The opportunities created by the industrialization process therefore generated a labour force of largely migrant and itinerant workers, prone to the harsh, cheap produce of the growing distilling industry. However, the characteristics of the quasi-urban industrial centres applied equally to the growing Scottish towns and cities.

Economic growth and migration directly contributed to Scottish urbanization. The process of agrarian reform contributed directly to urban growth in smaller as well as larger urban centres, by increasing production toward the market and by generating the need for centres of exchange, legal and financial services. Perth, Ayr and Haddington, for example, expanded as a result of commercialization of agriculture, and Inverness became an important

⁶⁷ A. Alison, *The Principles of Population, and their Connection with Human Happiness*, vol.ii (Edinburgh, 1840), pp.112-18.

⁶⁸ Moss and Hume, *The Making of Scotch Whisky*, pp.84-85.

⁶⁹ Fraser, 'working class', p.303.

mart, or market, for sheep's wool. Furthermore, all large towns created opportunities for casual unskilled wage labourers for supporting tasks such as carriage, loading and building.⁷⁰

However, Scottish urbanization was mainly concentrated in a narrow belt of land across the western and eastern lowlands. By 1841, 83 per cent of Scots lived in this region, and especially in the areas around the two major cities of Edinburgh and Glasgow. Scottish urban development, compared to the English experience, was rapid and more likely to result in pressure on urban relationships and infrastructure. It is estimated that 25 per cent of Glasgow's labour force in 1831 were casual workers, for whom existence meant poor wages, insecure employment, and living in the over-crowded tenements of the city's wynds.⁷¹

By the mid-nineteenth century Glasgow exemplified the rapidly urbanising Scottish city, attracting migrant workers to the employment opportunities that expanding industry offered. There was insufficient housing for the growing population and what accommodation was available was largely high-rise tenements of three to four storeys, with 20, or as many as 70 'houses' in each block. Each house could be up to five apartments but Glasgow in particular was notorious for the single-end, one room apartment and the average number of occupants per 'house' in 1841 was 5.2.⁷² The expansion of the transportation network associated with and necessary for the process of industrialization also exacerbated existing problems of overcrowding in

⁷⁰ Devine, *Scottish Nation*, pp.153-168.

⁷¹ Devine, *Scottish Nation*, p.168.

⁷² W.H. Fraser and I. Maver, 'The social problems of the city', in W.H. Fraser and I. Maver (eds), *Glasgow 130-1912*, vol. ii (Manchester, 1996), pp.363-364.

Glasgow as large numbers of families were cleared to facilitate the building of railway lines and stations,⁷³

The high rise, multi-occupant tenement block was the most common type of Scottish urban, working class housing. The strict Scottish building regulations, small-scale and inexperienced builders, and the Scottish system of land tenure in which the annual rent was fixed resulted in the preference for tenement developments to house as many tenants as possible. However, while the phenomenon of multi-tenancy working-class housing was not peculiar to Scotland, this type of dense tenement development was dominant in Edinburgh and Glasgow. Furthermore, it was the social impact of these buildings as much as the architecture that is important for the historian. The social use of space could manifest itself in the segregation between social groups, as well as impact on the sharing of facilities within buildings and the differentiation of space within individual dwellings. There were limits to the way in which space could be developed within the Scottish tenement and facilities such as stairways, the privy and laundry and drying areas were all shared. The one or two rooms of each flat, or 'house', were used for cooking, sleeping, and family life; and there was little privacy within or between apartments.⁷⁴

Patterns and types of housing could also be reflected in the historical record of violence. Domestic space, where families slept, ate and lived in varying degrees of privacy, was placed within wider neighbourhood spaces, such as the street, court or alleyway. Neighbourhood spaces were key locations for interaction with, and support for inhabitants. However, within the

⁷³ C.R. Baird, 'On the general and sanitary condition of the working classes and the poor in the city of Glasgow', in Poor Commissioners (eds), *Reports on the Sanitary Condition of the Labouring Population of Scotland* (London, 1842), p165.

⁷⁴ M.J.Daunton, 'Introduction', in M.J. Daunton (ed.), *Housing the Workers, 1850-1914: A Comparative Perspective* (Leicester, 1990), pp.2-16.

neighbourhood space, between the houses and alleyways, were marginal areas such as waste ground, which tended to hold greater uncertainties and dangers for women.⁷⁵

Housing in the working and poorer class districts was described in a report on the condition of the working class poor of Glasgow in 1842 as ‘unwholesome, damp, and ill-ventilated’.⁷⁶ Urban overcrowding was widespread with as many as three families in a one or two roomed house in a tenement building, and with roughly half of Glasgow’s population in 1861 being unmarried or widowed, boarding or lodging with other families was common.⁷⁷ According to the 1842 report, lodging houses were the ‘great foci of poverty, vice, and crime’ and were ‘generally of a wretched description ... frequently crowded to excess, it being no uncommon thing to find eight, ten, and 12 persons in one small apartment, as nine feet by eight or 11 by eight.’ It was also noted that to lessen rents, ‘if a house is not crowded with a large family, there is sure to be a host of single or married lodgers’ and that ‘families and young girls employed at factories [crowded] together in lodgings where the rooms are small, the houses ill-aired, and the beds, if any, very indifferent.’⁷⁸

Glasgow had become the second most populous and most rapidly expanding city outside London,⁷⁹ and conditions of domestic life could be squalid. It was the ‘shock city’ of nineteenth-century Scotland and has been of particular interest to contemporary observers as well as historians, as the embodiment of

⁷⁵ S. D’Cruze *Crimes of Outrage: Sex, Violence and Victorian Working Women* (Manchester, 1998), pp.30-35.

⁷⁶ Baird, *Sanitary Inquiry*, p.181.

⁷⁷ Fraser, ‘working class’, p.302-3.

⁷⁸ Baird, *Sanitary Inquiry*, p.182, 98.

⁷⁹ Whatley, *Industrial Revolution*, p. 65.

urban squalor. However, other urban centres shared similar experiences. According to William H. Forrest, surgeon and President of the Stirling Medical Association, writing for the *Sanitary Enquiry* of 1842, ‘all the houses [in Stirling] inhabited by the poor are unduly crowded’ and ‘there are numerous lodging houses, of the very worst description ... that harbour the lowest description of mendicants and vagrants’.⁸⁰ Aberdeen had, according to Doctors Kilgour and Galen, ‘like most other towns ... been very closely built’ with narrow streets, lanes and closes of around seven feet in breadth, ill-ventilated and filthy, and occupied by ‘a much inferior description of tenantry’.⁸¹ Edinburgh Old Town was built ‘in a compact manner within walls: storey was piled on storey, with a view of saving room, and so closely were jammed the numerous closes or alleys diverging from the main thoroughfare, that in many cases a person might step from the window of one house to the window of the house opposite.’⁸²

Other types of nineteenth-century accommodation that provided locations for interaction between those living within them were institutions of control. Nineteenth-century thinking around ways of asserting and reasserting control over individuals in an age of population expansion led to the growth of the institution. The conventional wisdom behind the nineteenth-century institution was of restraint and deterrence for defined groups of individuals who were subjected to the power of the expert, who inflicted routine, discipline and uniformity in the belief that people could be made fit for society through

⁸⁰ W.H. Forrest, ‘Report on the Sanitary Condition of the Labouring Classes of the town of Stirling’, in *Sanitary Enquiry*, p.265.

⁸¹ Dr. A. Kilgour and Dr. J. Galen, ‘On the Sanitary Condition of the Poor of Aberdeen’, in *Sanitary Enquiry*, p.293.

⁸² W. Chambers, ‘On the Sanitary Condition of the Old Town of Edinburgh’, in *Sanitary Enquiry*, p. 153.

institutional means.⁸³ Two examples for this period were asylums and reform schools.

One of the main justifications for restraining the insane in an asylum was to prevent them causing harm to others.⁸⁴ ‘An Act to alter and amend certain Acts regulating Madhouses in Scotland; and to provide for the Custody of dangerous Lunatics’ of 1841 required that where any ‘furious or fatuous person or lunatic, being in a state threatening danger’, he or she should be committed ‘unto some place of safe custody’.⁸⁵ The rationale for the reform school was an increase in concern about juvenile crime during the first part of the nineteenth-century, which gave rise to the idea that the young offender was a victim of circumstance rather than a culpable criminal. While two distinct types of school evolved as a result, the Industrial School for destitute children who, it was believed would inevitably turn to crime if left unchecked, and the Reformatory School for convicted young offenders, there was a blurring between the two. While some institutions were day schools that fed destitute children as an incentive to attend, others provided dormitory accommodation: some institutions provided both.⁸⁶ While initially intended to address particular social concerns, these institutions created scenarios and unique opportunities for social interactions that could result in conflict and fatal violence.

Policing in Scotland developed according to regional requirements during the first half of the nineteenth-century and more quickly in some areas than others. W.G. Carson shows that the idea of an institutional police force in

⁸³ E. Royle, *Modern Britain: A Social History 1750-1997* (1987, London, 2003), pp.224-231.

⁸⁴ R.A. Houston, *Madness and Society in Eighteenth-Century Scotland* (Oxford, 2000), p.217.

⁸⁵ J. Lees, *A Treatise on the Poor Laws of Scotland as now regulated by The Poor Law Amendment Act and the Instructions of the Board of Supervision* (Edinburgh, 1847), pp.91-92.

⁸⁶ A.G. Ralston, ‘The development of Reformatory and Industrial Schools in Scotland, 1832-1872’, *Scottish Economic and Social History*, 8 (1988), p.40-48.

Scotland can be traced to the late eighteenth-century and this began to manifest itself in Private Police Acts in the burghs, from 1795 in Aberdeen, and continued throughout the first three decades until the first public Act: An Act to Enable Burghs in Scotland to Establish a General System of Police of 1833. The development of a recognizable 'police force' developed in the counties in response to concern over population movement and vagrancy, funded illicitly from Rogue Money, and it did so ahead of its urban counterparts. An enabling Act for the counties was passed in 1839. These enabling Acts authorized, rather than required, burghs and counties to affect a system of police and neither Act resulted in universal adoption, although twelve of the one hundred and eighty three Scottish burghs had fully adopted the 1833 Act by 1847 and 22 of the thirty-three counties had adopted the Rogue Money Act by 1842.⁸⁷

David Barrie argues that the development of policing in towns during the first three decades of the nineteenth century differed according to local circumstances, could vary considerably from one town or burgh to the next, and resulted in greater regulation and control of street behaviour and the built environment. The larger towns in particular were becoming increasingly disorderly, facing problems of large scale immigration, anti-social behaviour, industrial militancy and a perceived increase in criminality, which prompted demands for reforms in policing. As the population increased, so did the problems of effectively handling and managing the movements and behaviour of the itinerant and urban poor, which became the primary aim for police in Glasgow during the first half of the nineteenth-century. There was a growing

⁸⁷ W. G. Carson, 'Policing the periphery', part 1, pp.207-214. See also K. Carson and H. Idzikowska, 'The social production of Scottish policing 1795-1900', in D. Hay and F. Snyder (eds), *Policing and Prosecution in Britain 1750-1850* (Oxford, 1989), pp.265-297.

demand for greater levels of urban order and, in consequence, a significant increase in the number of summary prosecutions for relatively minor offences such as disorderly conduct and assault.⁸⁸ This would suggest an increased level of, although not necessarily greater efficiency in policing in the built, urban environment, especially Glasgow. This increase in policing of public order offences in urban centres, especially those involving drunkenness, may have flooded the system and impacted on the level of recorded crime, potentially increasing the number of suspected culpable homicide offences committed, but not prosecuted.

While the development of urban police may have impacted on the number of offenders being committed, but not being tried for homicide in the central belt in nineteenth-century Scotland, the enrolment of police from the communities that legitimated certain types and levels of violence may also have provided opportunity for conflict and lethal violence between those employed to maintain the peace and those they were meant to be policing. The imposition of uniformed police in working-class and industrial districts of northern England was a symptom of profound social change during the first half of the nineteenth century and resulted in a violent response. Fear of the ‘dangerous classes’, especially during periods of social and political tension, was growing in the 1830s and 1840s, and the propertied classes increasingly argued for new agencies of social discipline to monitor and control working-class communities. The function of the ‘new police’ was to detect and prevent crime as well as watching and reporting on popular leisure activities such as

⁸⁸ D. Barrie, *Police in the Age of Improvement: Police Development and the Civic Tradition in Scotland, 1775-1865* (Cullompton, 2008), pp.48-82, 192-99.

drinking, sports, fairs and feasts. Their presence was an offensive and unwelcome intrusion into all aspects of urban neighbourhood life.⁸⁹

Other institutions whose aim it was to control the behaviour of the individual, especially the behaviour of husbands and wives, were also affected by urbanization and industrialization during the nineteenth-century. The post-Reformation Scottish Kirk placed a high value on marriage as the foundation of the household, and as a means by which the ideal environment of peace and security could be achieved in order to facilitate religious instruction. On-going supervision of married couples permitted Kirk elders and Kirk Sessions the roles of counsellor and conciliator in cases of alcohol abuse, quarrelling, and spousal abuse.⁹⁰ Callum Brown points out that the alienation of the poor has been a recurrent theme in the social history of religion in industrial society.⁹¹ However, while the growth of factories, economic equality and large anonymous cities created social problems that affected church attendance of the lower classes, generating a need for more churches to cater for the rapidly growing population, he argues that the church adapted to the new environment by changing its role and the ways in which it operated and organised. An increase in voluntary organisations and evangelicalism, which provided Sunday schools, bible classes, improved the quality of urban life, and widened the scope of religious organisation. Religion became more, not less, popular by appealing to diverse social groups and their work and life experiences. There

⁸⁹ R.D. Storch, 'The plague of blue locusts: police reform and popular resistance in northern England, 1840-57', in M. Fitzgerald, G. McLennan and J. Pawson (eds), *Crime and Society: Readings in History and Theory* (London, 1981), pp.86-103. See also R.D. Storch, 'The policeman as domestic missionary: urban discipline and popular culture in northern England 1850-1880', *Journal of Social History*, 9, no. 4 (1976), pp.481-509; W.W.J. Knox and A. McKinlay 'Crime, protest and policing in nineteenth-century Scotland', in T. Griffiths & G. Morton (eds), *A History of Everyday Life in Scotland 1800 to 1900* (Edinburgh, 2010), pp.212-217.

⁹⁰ M.Todd, *The Culture of Protestantism in Early Modern Scotland* (London, 2002), pp.266-67, 275.

⁹¹ C. Brown, *Religion and Society in Scotland since 1707* (Edinburgh, 1997), p. 6.

had also existed a fundamental link between the established kirk and burghs in pre-industrial Scotland, making councils responsible for provision of churches and employment of clergy, and early attempts at adapting to changes in society brought about by industrialization and urbanization were co-ordinated through town councils. Councils were able to adapt to the changing environment during the early stages of urban and industrial growth by bringing together ecclesiastical, educational, philanthropic and medical functions.⁹²

However, there remained a large number of people who did not subscribe to any religion and the building of churches did not always keep up with the rapid population growth in cities.⁹³ Husbands and wives faced increased threats to and opportunities for conflict within their household as a result of the process of industrialization and urbanization. There was also a change the role of, and eroded the earlier dependence on, the Kirk, community and family that is associated with controlling behaviour in pre-industrial Scottish society.

This broad overview of Scottish society during the nineteenth century illustrates that the dual economy model of rural and urban is, while useful at a broad level, too simplistic for a detailed analysis: there were regional variations in the industrial south as well as in the rural north. However, the movement and mixing of populations with significantly diverse cultural backgrounds and belief systems could also impact in diverse ways on the social environment, relationships and behaviour, creating a number of potential areas for conflict.

⁹² C. Brown, *Religion and Society*, pp.95-121

⁹³ C. Brown 'Religion, class and church growth', in W.H. Fraser and R.J.Morris (eds), *People and Society in Scotland 1830-1914* (Edinburgh, 1990), pp.310-35.

Omissions.

Given that homicide should be understood in terms of social interactions in the context of the circumstances in which it occurred, there are two important aspects of homicide in mid-nineteenth-century Scotland that are not included here, the first of which is the *nomina juris*⁹⁴ crime of Child Murder. Child Murder is the Scottish equivalent to the English charge of infanticide, and can be defined as neonaticide. Archibald Alison defined the crime of Child Murder as ‘The extreme facility of extinguishing the infant life, at the time, or shortly after birth’. If it were proven that the pregnancy went full term and that a living child was possible, and if no assistance had been sought, the mother would be charged with the *nomina juris* crime of Concealment of Pregnancy, which was a non-capital crime. Only where there was evidence of intentional violence would the charge amount to definitive crime of Child Murder. Even here, Alison made further distinctions, noting that ‘in cases of illegitimate birth, the mother, in the agonies of pain or despair, is sometimes the cause of the death of her offspring, without any intention of committing such a crime... various accidents attending such a delivery may give the appearance of premeditated violence where none such had been used.’ Only where evidence existed to indicate the violence had been knowingly and intentionally used could a charge of Child Murder be brought.⁹⁵

One of the key factors in this type of crime was that the majority of victims were illegitimate and, it is argued, that the motivation was that mothers wished to remove the source of their shame in a society in which pregnancy outside

⁹⁴ According to Alison, *Principles*, p.624, is a crime that, due to its frequency and severity of consequences has acquired a distinct legal term.

⁹⁵ As cited in Alison, *Principles*, pp.153-159

marriage was seen as sinful and dishonourable.⁹⁶ Neonaticide is a particularly heinous and emotive crime, and one that is almost overwhelmingly committed by women. It is a topic that deserves, and has attracted specialist historians to explain changes in perception of the crime itself over time, and what this can tell us about the story of women and how they were viewed and treated through time.⁹⁷ Lyn Abrams has studied the phenomenon in Shetland where, she argues, women committed neonaticide to avoid condemnation and as an attempt to conform to the feminine ideal of a virtuous woman in what was still, in the nineteenth century, a primarily rural society.⁹⁸ While a close examination of precognitions relating to neonaticide would reveal much about the lives of the alleged offenders, and the circumstances in which they became pregnant, this project is concerned with conflict arising from interactions and relationships between individuals and a decision was made to exclude Neonaticide. Particularly because, in addition to Kilday's work on infanticide in south-west Scotland referred to earlier, during the writing of this thesis, Tim Siddons has conducted parallel work which explores the way in which new-born child murder in Scotland was gendered and the way in which suspicion fell on women believed to have committed this crime.⁹⁹

The second notable omission is that of homicides resulting from accidents or negligence. It is likely that increasing numbers of accidental deaths may

⁹⁶ Kilday, *Women and Violent Crime*, pp. 59-79

⁹⁷ For the ways in which suspicion fell on certain women, the ways in which those women were viewed and treated by family, friends and neighbours, and contemporary attitudes towards single women and illegitimacy during the eighteenth-century see M. Jackson, *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (Manchester, 1996); for attitudes toward infanticide over time see Anne-Marie Kilday's article, 'Desperate measures of cruel intentions? Infanticide in Britain since 1600', in Kilday and Nash (eds), *Histories of Crime in Britain 1600-2000* (Basingstoke, 2010), pp.60-79; see also L. Rose *Massacre of the Innocents: Infanticide in Great Britain 1800-1939* (London, 1986) for infanticide as the story of illegitimacy and poverty.

⁹⁸ L. Abrams, 'From demon to victim: the infanticidal mother in Shetland, 1699-1899', in Brown and Ferguson (eds), *Twisted Sisters*, pp. 180-203.

⁹⁹ T. Siddons, 'Suspicion, surveillance'.

have contributed to the rise in recorded homicide rates, and the phenomenon is discussed in more depth in chapter two. Accidental deaths during this period in Scotland occurred as a result of individuals furiously riding horses or driving carts, especially through towns and villages, riders or drivers not being properly in control of their horses or carts, and from unsafe practices or equipment in mining, and the building of railways or other industrial developments. These cases are best studied within a separate and detailed examination of industrial or transport change and labour relations and are therefore not included in this study.

Sources and Approaches.

Records created by the criminal justice system are some of the most socially inclusive available to historians and often provide detailed information about individuals involved in an event or chain of events leading to a crime as well as about the crime itself. Witness statements and declarations of those accused of a crime in particular purport to be the voices, if not the exact words, of individuals for whom little else would otherwise be known. However, as Stephen Robertson has pointed out, information in criminal records can be distorted in a number of ways. A focus on criminal records as a source for social history, it is argued, is a focus on abnormal rather than normal people and events. Legal professionals ask questions to extract particular information to serve their professional needs and an alleged perpetrator might have good reason to lie, and witnesses may also have their own prejudices and give biased evidence. While the approach of reading the records for purposes other than originally intended, or ‘reading against the grain’ can mitigate against these distortions, the seamless narratives that result makes it difficult for the

reader to identify and assess the author's own filters. The approach that Robertson suggests is to engage with the law and understand the context in which the records were created.¹⁰⁰

Unlike England, where a national criminal justice system had developed since the Church withdrew its support from the Ordeal in 1215, Scotland did not have a centralised system of justice before the middle of the eighteenth century and as many as two hundred heritable jurisdictions and offices existed and were preserved by Article XX of the Act of Union. However, despite the apparently disparate and numerous courts in operation in Scotland before the Heritable Jurisdictions (Scotland) Act of 1746,¹⁰¹ there existed a complex and tightly knit system to deal with unwanted behaviour. Furthermore, an examination of six of the most important types of court that dealt with criminality in Stirlingshire before 1747 illustrates both the functions of each court and its jurisdiction, and that this system was actually in decay by the time the Act formally brought it to an end.¹⁰² Although in theory it would have been possible for a murderer to be tried at Sheriff Court, or a minor court within a Sheriffdom, even after the Heritable Jurisdictions Act, in practice such cases were the business of the High Court of Justiciary.

The Scottish Court of Justiciary sat permanently in Edinburgh. Circuit courts were held twice yearly, in spring and autumn, in nine towns and cities. The Northern Circuit, covered Aberdeen, Inverness, and Perth; the Western Circuit, covered Glasgow, Inveraray, and Stirling; and the Southern Circuit sat

¹⁰⁰ S. Robertson, 'What's law got to do with it? Legal records and sexual histories', *Journal of the History of Sexuality*, 14 (2005), pp.161-85.

¹⁰¹ An Act of the British Parliament to abolish traditional rights of Scottish Clan Chiefs to judge in civil and criminal cases within their jurisdictions and thus extending royal jurisdiction throughout Scotland.

¹⁰² S. J. Davies, 'The Courts and the Scottish Legal System 1600-1747: the case of Stirlingshire', in Gatrell, Lenman and Parker (eds) *Crime and the Law*, pp.120-54.

in Ayr, Dumfries and Jedburgh. The process of prosecution in Scotland was initiated by an investigation conducted on behalf of the Crown into a crime and gathering of evidence against the accused. This process generated the Lord Advocate's precognition series of records, catalogued as AD14. A copy of the Indictment, either in its final printed format or as a hand-written draft was usually included giving details about the charge, the location of and the ways in which the perpetrator allegedly committed the crime. Few of these records survive from before 1812 but from the mid-nineteenth century they are quite comprehensive. Copies of the documents relating to each case were made and have been preserved in the separate series, 'sitting papers' and referenced JC26. These bundles, where they survive, usually include the Indictment, witness statements and the declaration of the accused, and were collated and presented at to those who sat in court. Accounts of the actual trial are recorded in the Books of Adjournal and court Minute Books. The Books of Adjournal contain copies of papers, such as the Indictment, and a summary of proceedings while the Minute Books are the official record of the trial and its outcome.¹⁰³

Scottish law is often referred to by historians and lawyers as being a mixed system, combining characteristics of both the continental civil law and the English common law. Christopher Gane illustrates the classification of Scottish criminal law by distinguishing between the Inquisitorial model, an inquiry by legal professionals in the search for an 'objective truth' by looking at all evidence, and the adversarial model, which Gane equates to a 'contest' between the prosecutor and accused in a trial at which only selected evidence

¹⁰³ B. Longmore, 'The High Court of Justiciary databases: a 'Solemn Path' through crime', *Scottish Archives*, 10 (2004), pp.43-4.

is heard. To clarify the distinction further Gane cites the hierarchical and co-ordinate models of criminal procedure: the former refers to the exclusion of laymen and the use only of professional judges at all levels, while the latter refers to lay participation, the jury, in the decision making process. Gane argues that although the Scottish criminal justice system may have shown characteristics of both inquisitorial and hierarchical models, it is essentially closer to the adversarial and co-ordinate models.¹⁰⁴ Thus Scottish criminal justice system resembles that of the English. However, two significant differences between Scots and English are the pre-trial judicial examination of the accused, offering the opportunity to address the accusation and suspicions against them, and the tradition of public prosecution.

Until the seventeenth-century it was common practice in Scotland for a victim or his kin to prosecute those who had wronged them by the passing of Criminal Letters under the signet of the Court of Session. The practice of maliciously starting these proceedings and later withdrawing them was increasingly seen as a problem, and as early as the sixteenth-century fines and penalties were imposed on those who failed to proceed or show up in court. Public prosecution in Scotland developed from the office of King's Advocate, which dates from around the fifteenth-century. The Advocate represented the Crown in all civil matters and increasingly in criminal matters. Until the mid-sixteenth-century he was directed by the Privy Council to prosecute where kin and family did not, and then an 1587 Act required him to pursue 'slaughters and utheris crimes' though 'the parties be silent or would utherways privily

¹⁰⁴ C. Gane, 'Classifying Scottish criminal procedure', in P. Duff and N. Hutton (eds), *Criminal Justice in Scotland* (Dartmouth, 1999), pp.57-69.

agree'. By the nineteenth-century the Advocate, as public prosecutor, had full powers of accusation and private prosecutions had virtually disappeared.¹⁰⁵

The gathering of evidence from, or the precognosing of witnesses, was initially the responsibility of the Sheriff although the Procurator Fiscal, the court official responsible for collecting fines, increasingly performed the duty. 'Rules to be observed in Taking Precognitions and Making Presentments for Trial of Crimes Before the Circuit Courts', were drawn up by the Crown Agent in 1765, later revised in 1824 by Lord Hailes, for circuit Courts and stated that:

when a murder is committed, as soon as it comes to the knowledge of the Judge-ordinary, he and the clerk should repair immediately to the place where it is said to have been committed, and take a precognitions of what appears at that place, as of the marks or impressions of feet upon the ground, the blood, or other particulars which may appear there, and of the whole other circumstances which may ascertain the crime, and point out the guilty person.¹⁰⁶

A decision by the Sheriff, and later, as the responsibilities were officially transferred, by the Procurator Fiscal, was then made on the strength of the evidence of the precognitions whether to drop the case, prosecute in the Sheriff Court, or pass it to the Higher Court for prosecution. It has been argued that the discretionary power of the Procurator Fiscal in deciding which cases should be prosecuted may have impacted on the level of convictions for serious crime in Scotland. Until the second half of the nineteenth-century Fiscals were not paid a salary. If a case was tried at the High Court or at the Sheriff Court with a jury, the treasury would pay the Fiscal's fees. If the case was dropped or passed to a lower court his fees would be paid by the local

¹⁰⁵ J.I. Smith, 'Criminal procedure', in Stair Society (ed.), *Introduction to Scottish Legal History* (Edinburgh, 1958), pp. 432-6.

¹⁰⁶ D. Hume, *Commentaries on the Law of Scotland Respecting Crimes*, vol.ii (Edinburgh, 1844), pp. 535-537

authority out of Rogue Money collected from heritors. Where evidence was weak and there was some doubt over a death being the result of murder or accident, the Fiscal might not want to risk not being paid by a disgruntled or impecunious local authority and take the decision not to pass the case to the High Court.¹⁰⁷

Lord Advocate's Precognitions typically comprised of the indictment, witness statements, declarations from the accused and medical reports, and provide detailed information about the parties involved and the circumstances in which these homicides occurred. They are, therefore, a rich source of detailed evidence for the social historian and historian of crime and punishment and are the principal source of evidence for this project. While representing only one side of a dialogue between interrogators and interrogated, the Precognitions provide a snapshot of the time and place at which the crime took place, giving information about ordinary individuals and their day to day experiences and relationships not otherwise represented in the archives. The narratives provided by those giving their versions of events are clues to the questions being asked and provide insight into contemporaneous concerns about crime and disorder, such as drunkenness. Statements attesting to whether or not an individual had been drinking were responses to a probable question reflecting the concerns, common in the mid-nineteenth century, of the person taking the precognition. Although not necessarily written in their own hand, the statements can reveal what the accused perceived to have been, or at least what they remembered or were prepared to admit to have been the cause of each incidence, and witness statements add interesting perspectives on

¹⁰⁷ M. A. Crowther, 'Crime, prosecution and mercy: English influence and Scottish practice in the early nineteenth century', in S.J. Connolly (ed.), *Kingdoms United? Great Britain and Ireland since 1500, Integration and Diversity* (Dublin, 1999), pp. 230-231.

people and events, and fill gaps in, and often contradict or clarify, the statements of the accused.

High Court records have been deposited with the National Records of Scotland since 1934 but only records of cases that the Crown pursued were retained. Given that the records of any given case that was pursued could be represented in four separate series of records, any one of which in isolation would provide only part of the story, archivists at the National Records of Scotland were faced with the challenge of making these records accessible for research while maintaining their historical context. The way in which an electronic finding aid, or index into High Court records was eventually compiled focussed on the accused and reflected the way in which he or she was recorded while passing through the judicial system.¹⁰⁸ There are also online item level catalogues available for the AD14 and JC26 series providing details about the perpetrator and the alleged crime.

Given the fairly comprehensive coverage of the AD14 series for the period of this study, and to ensure a reliable sample, the online catalogue for AD14 was used to identify all murder and culpable homicide cases from 1836-69. The sample was then cross-referenced against the item level catalogue for surviving sitting papers in JC26 series, which complement the Precognitions, to mitigate against potential gaps in AD14. This process revealed 50 cases that were missing from the precognition records. While it is possible that there may have been cases for which no records have survived, the use of complimentary records series created for and used during the course of two separate processes, has, it is believed, provided a reliable and comprehensive sample.

¹⁰⁸ Longmore, 'Solemn Path', pp.41-2.

While the principal source was the Lord Advocate's Precognitions, High Court trial records, typically comprising copies of witness statements and declarations found in the precognitions, were examined where precognitions were unavailable, and newspaper reports provided valuable supporting information. It has been suggested that, from a historical point of view, the selection criteria and processes for determining what newspapers considered newsworthy, and who actually wrote the stories, are unknowable variables.¹⁰⁹ Peter King has pointed out that selection, interpretation, writing and editing are highly creative processes and, furthermore, what is published may in turn shape what is reported to them, distorting the process even further. However King has demonstrated, by comparing late eighteenth-century Old Bailey Sessions Papers with the coverage of selected trials in London newspapers, that it is possible to identify some core ideas about what was considered newsworthy.¹¹⁰ Newspaper reports of crimes in Scotland were largely limited to reports on the trial. Investigations into crimes in Scotland were conducted in private by the Procurator Fiscal and, unless the crime itself had generated enough public interest to attract the attention of the press, the first public airing of a prosecution was in the court room. A similar comparison between High Court records and Scottish newspaper reporting on crime is needed to better understand the level of subjectivity in selection and reporting processes in Scotland. Certainly, while newspaper reports of some murder trials provided what were apparently verbatim accounts of witness testimonies and questions asked by the court, reports on other trials amounted to a few lines summarising

¹⁰⁹ E. Foyster, 'Introduction: newspaper reporting of crime and justice', *Continuity and Change*, 22, no.1, (2007), p.11.

¹¹⁰ P. King, 'Making crime news: newspapers, violent crime and the selective reporting of Old Bailey trials in the late eighteenth century', *Crime, History & Societies*, 13, no.1, (2009), pp.92-114.

the charge and outcome. The inconsistency in reporting on crimes in Scottish newspapers, and the geographic dispersal of surviving regional editions for this period, precludes newspaper reports from being a principal resource for this particular project. However, although press reports on crimes varied in length and detail, and largely focussed on witness evidence, they also very often reported on the summing up of evidence by prosecution and defence counsel as well as the Advocate's charge to the jury and opinion on the verdict. Where available, therefore, these reports provided valuable supplementary evidence in support of the precognitions.

Records of 744 cases of murder and culpable homicide were investigated in conducting this piece of research. The data for each pannel was recorded in a database, with a field in which to indicate if the pannel was being tried alone or with other defendants for the same homicide, facilitating quantification of crimes and criminals. Free text fields were used to capture brief descriptive details about the accused and victim, about where the homicide took place, the *modus operandi* and the circumstances in which it occurred. This information was then further classified into defined types of homicide, regional divisions, and a defined classification of location. The database was designed to be searched by document reference number, the name of the pannel or victim, and could be sorted according to region and location or type of homicide or both. The design provided the flexibility of manipulating the data in order to create a variety of reports and queries.

The project started by broadly classifying homicide into four types, of inter-familial, inter-household, extra-household and homicides as a result of committing another offence, which provided a useful starting point in terms of

defining human interactions from which conflict and unlawful killing was likely to occur. However, it quickly became apparent that this typology was too simplistic and a revised classification is reflected in the chapter structure of this thesis which is based on the homicide of children by their parents; the homicide of spouses and other adult family members; homicides resulting from conflict over shared space and shared resources; extra-household homicides; and mobbing, rioting and strikes. Each chapter poses more detailed questions about the ways in which the processes of industrialization and urbanization may have changed or impacted on behaviour and social interactions, and may have made unlawful killing more or less likely.

Firstly, however, the workings of the Scottish criminal justice system, and its unique characteristics should be explored and understood before evidence derived from it can be properly evaluated. Chapter two looks briefly at the unique characteristics of Scottish criminal justice system before placing the statistical evidence for mid-nineteenth-century Scotland in an administrative context, and attempting to demonstrate the relationship between recorded homicide, as indicated by the Criminal Returns and the extant homicide records held by the National Records of Scotland. Quantitative and qualitative historical sources, even when created by official bodies and relating to the same state function, can be subject to discretionary reporting and inconsistent recording, and these variables need to be identified and understood before evaluating either as a source of historical evidence.

Having established that evidence derived from extant homicide records supports the hypothesis, based on criminal statistics, that there was a higher rate of homicide in the more industrial and populous regions of mid-

nineteenth-century Scotland, chapter two goes on to establish the types of homicide being committed in each region. To better understand the apparent link between geography and homicide in mid-nineteenth-century Scotland, the types of human interactions and relationships leading to unlawful killing in each region needs to be identified and categorised according to the framework referred to above.

The processes of industrialization and urbanization were interdependent and, in turn, relied upon the migration and immigration of waged labourers. This resulted in overcrowding in new or alien environments, impacting on the way in which individuals interacted and created or changed scenarios, as well as providing the circumstances in which these interactions took place. The ways in which these factors may have resulted in conflict or changed behaviour and was likely to end in unlawful killing is explored, providing some context in which the circumstances of each type of homicide in the following chapters can be better understood.

Shani D'Cruze points out that while there are enduring patterns in the historical killing of infants, some mention is needed of the more exceptional cases.¹¹¹ The cases explored in chapter three, that is to say cases in which a parent attempted to provide some level of care for their offspring before the alleged homicide, demonstrates her point. This research has revealed attitudes and practices around illegitimacy in Scotland which have been otherwise overlooked. Reports derived from decennial census data collated during the mid-nineteenth century highlighted a high rate of illegitimacy in Scotland compared to other nineteenth-century European states and suggested that this

¹¹¹ D'Cruze, 'changing face of homicide', p.103.

was not entirely attributable to vice. Chapter three explores the impact of population movement on attitudes toward pre-marital sex in mid-nineteenth-century Scotland and evaluates the extent to which migration changed the behaviour and circumstances of men and women, and the ways in which this may have resulted in unlawful killing.

If the processes of industrialization and urbanization were to alter the behaviour of individuals and create scenarios or circumstances in which conflict could erupt, the impact would have affected the dynamic of spousal and other family relationships. Chapter four evaluates the ways in which the dynamics of family life in mid-nineteenth-century Scotland altered as a result of industrialization and urbanization. Pre-industrial notions of family hierarchy were being challenged by the changing social structure, pre-industrial mechanisms for controlling unwanted behaviour were being eroded, and the urban environment presented an increasing range of scenarios in which behaviour was likely to change and lead to unlawful killing. The first part of the chapter looks at unlawful killing within conjugal relationships, with a particular focus on lethal violence and the degree to which pre-industrial notions of provocation and acceptable levels of chastisement had been legitimated in a culture of violence. The second part of chapter four explores the unlawful killing of parents and other adult kin, and the scenarios likely to lead to conflict and lethal violence or more covert methods of homicide such as poisoning. While parallels can be drawn between the former, violent *modus operandi*, and unlawful killing in other types of relationships examined in this thesis, a close examination of covert, more exceptional or unusual homicides,

also reveals a snapshot of calculated killing of relatives for financial gain in mid-nineteenth-century Scotland.

Chapter five explores the way in which the built urban environment in mid-nineteenth-century Scotland, epitomised by high-rise multi-occupancy, overcrowded dwellings, often with several families sharing one or two room apartments, could be a factor in unlawful killing. The close proximity of one house or apartment to another resulted in communal areas such as stairs, landings and courtyards becoming the focus of social and community interaction as well as becoming arenas for disputes. The sharing of space and resources in an overcrowded urban environment created scenarios in which individuals may have been more likely to resort to lethal violence. However, cases of homicide of or by members of the same household and neighbours committed in a rural setting suggest that some patterns of behaviour were likely to lead to unlawful killing, existed in rural Scotland.

Chapter six explores the phenomenon of extra-household homicide, a largely, although not exclusively, male-on-male type of homicide taking the form of public or street brawls. This type of unlawful killing often pertained to enduring scenarios involving a legitimated culture of violence resorted to for recreation as well as dispute settlement, and urban and industrial environments became the legitimated arenas for playing out these disputes. Competition for employment and cultural differences among migrants and immigrants also created scenarios in which individuals resorted to lethal violence. Furthermore, while extra-household homicide was largely a male phenomenon, an examination of the more unusual cases in which females were the perpetrators

explores whether or not Scottish women could, in mid-nineteenth-century Scotland at least, be as violent as men in their own right and to their own ends.

Thus the first six chapters will focus on the behaviour of individuals and the way in which their behaviour may have changed, and homicide made more or less likely by the urban industrial environment during the period 1836-69.

However, the movement of population as a result of the processes of industrialization and urbanization, which brought together large numbers of individuals from diverse cultural or religious backgrounds, facilitated the formation of cohesive groups which had the potential to come into conflict with other groups or factions. Furthermore, the forces of industrialization required innovation and changes in methods of production that impacted on the livelihood of skilled labourers and craftsmen, while competition from unskilled migrants created scenarios in which workers were in conflict with employers as well as those with whom they competed for work. Chapter seven looks closely at cases in which cohesive groups, brought together as a result of mid-nineteenth-century processes of industrialization exhibited patterns of behaviour likely to end in unlawful killing.

Homicide represents an extreme consequence of individual, or atypical behaviour or actions. For each of the possible scenarios which led to unlawful killing explored in this thesis there is likely to be a significant number of cases involving similar actions that did not result in death and were dealt with by lower courts. Indeed, only a relatively small number of violent exchanges between individuals resulted in death: in 1868 alone, for example, the number of arrests for minor assaults and breeches of the peace tried at Sheriff or Burgh courts in Scotland amounted to just over 42,000 and of the major categories,

there were more than 6,700 arrests for assault. Only a very small proportion of these assault cases ended up being heard at the High Court, largely comprising those for aggravated assault. Aggravations were referred to in the Libel as, for example, to the effusion of blood; to the fracture of bones; to the danger of life, and previous convictions.¹¹² For each type of homicide discussed in this thesis, therefore, new research questions are likely to be raised about non-fatal scenarios, relationships and interactions.

By viewing mid-nineteenth-century Scottish homicide according to the type of social interaction from which it resulted, and the scenario in which occurred, this project attempts to explain the apparent contradiction between Eisner and King's hypotheses, and to demonstrate the way in which the forces of modernity, specifically the processes of industrialization and urbanization during the period 1836-69, impacted on social interactions and behaviour that may have made unlawful killing more or less likely.

¹¹² L. Farmer, *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law, 1747 to the Present* (Cambridge, 1997), p.110.

Chapter 2. Homicide Rates in Social and Geographical Context.

Introduction.

Peter King's quantitative analysis of homicide rates in nineteenth-century Scotland has illustrated that there was a higher number of offenders indicted for lethal violence in urban industrial areas of Scotland than for the predominantly rural agricultural regions and it is suggested that administrative, demographic and social factors might go some way to explaining this phenomenon.¹ More recent work on the British and European homicide rates during the second half of the nineteenth century also demonstrates that, while homicide rates in Britain rose sharply during the first half of the century, they began to fall again after mid-century. There was also a convergence of rural and urban homicide rates during the period 1805-56 and again from 1878-92.² King's work on the quantitative evidence highlights some important points about the geographical dispersal of the incidence of homicide in Scotland during this period. The aim of this chapter is to take King's analysis further by juxtaposing his quantitative results with the surviving records for Scottish homicide, in order to explore the relationship between the quantitative and qualitative evidence, and to test King's assertion that homicide rates were indeed higher in industrial and more densely populated areas of mid-nineteenth-century Scotland.

The first part of the chapter will attempt to place the statistical sources into some degree of administrative context, and then, secondly, to establish whether the correlation between higher homicide rates with industrialized and

¹ P. King, 'Urbanization, rising homicide rates and the geography of lethal violence in Scotland, 1800-1860', *History*, 96, no. 323 (2011), pp.241-3.

² P. King 'Exploring and explaining the geography of homicide: patterns of lethal violence in Britain and Europe 1805-1900', *European Review of History*, 20 (2013), pp.967-87.

urbanized areas of Scotland, demonstrated by King, is evident in the extant Precognition records. The third part of the chapter will then attempt to place the geographical dispersal of each type of homicide during this period into social context.

Quantitative analysis of Scottish Homicide.

The use of criminal statistics as a historical source is problematic and the degree to which they can be of use at all in the measurement of nineteenth-century crime is a topic of debate. Given the variables prevalent during the nineteenth century, such as sentencing policies, judicial and magisterial discretion, administrative change, diminishing informal justice and the difficulties surrounding inconsistencies in the recording of data, it has been argued that criminal statistics are of little use to the historian of nineteenth-century crime and criminals.³ Nevertheless, it has been pointed out that literary sources are often loaded with assumptions and moral judgements, and potentially equally misleading. Indeed, historian's early work on statistics has illustrated that literary sources on several aspects of nineteenth-century crime were oversimplified or inaccurate. Used cautiously, it is argued, statistics can provide useful evidence of the incidence of crime. In an analysis of the short term, for example, where fluctuations are known not to be due to legal or administrative change, it is likely that these fluctuations are meaningful reflections of real trends and may occasionally be explained by economic or social circumstances. However, the further the statistical event is from the

³ V.A.C. Gatrell, 'The decline of theft and violence in Victorian and Edwardian England', in V.A.C. Gatrell, B. Lenman and G. Parker (eds), *Crime and the Law: The Social History of Crime in Western Europe since 1500* (London, 1980), pp.238-337; See also Howard Taylor, 'Rationing crime: the political economy of criminal statistics since the 1850s', *Economic History Review*, LI (1998), 569-90.

criminal behaviour it quantifies, and the smaller the district it represents, the greater the likelihood of distortion.⁴

While Gatrell and Hadden's interpretation of nineteenth-century statistics suggests a link to economic fluctuations and the impact of the new police, Howard Taylor's focus on the 20 per cent fluctuation of the figures around a constant average over a 70 year period has led him to conclude that the statistics merely reflect the 'supply-side policies' of the criminal justice system. Between the 1840s and the 1860s the focus of punishment shifted from elimination of the offender either by execution or transportation, to expensive incarceration, the justification of which was as a deterrent and, Taylor argues, the focus of criminal policy was to create this deterrence through a limited number of specimen examples. Moreover, it was the imposition of restrictions on financial and manpower resources permitted for prosecution expenses that explains why prosecution levels did not increase in accordance with higher numbers of police. The figures then, reflect the balance between police taking credit for keeping crime levels low, maintaining the bluff of deterrence, and staying within a strict budget.⁵ Although it has been argued that Taylor mistook the debate about how prosecution costs should be shared between local and central government as an argument over how often they should be incurred, that the statistics reflect the experience and decisions of the society that created them for their own ends remains a valid consideration.⁶

⁴ V.A.C. Gatrell and T.B. Hadden, 'Criminal statistics and their interpretations', in E.A. Wrigley (ed.), *Nineteenth Century Society: Essays in the Use of Quantitative Methods for the Study of Social Data* (Cambridge, 1972), pp. 336-96; see also Gatrell, 'theft and violence', pp.238-337.

⁵ Taylor, 'Rationing Crime', pp. 572-583.

⁶ Robert Morris, 'Lies, damned lies, and criminal statistics: reinterpreting the criminal statistics in England and Wales', *Crime, History and Societies*, 5 (2001), 120-125.

There are identifiable areas of potential inconsistencies in both quantitative and qualitative sources for mid-nineteenth-century homicide in Scotland. A direct comparison between the statistical evidence for King's sample period 1836-1857,⁷ and the extant High Court records of homicide cases for the period is, therefore, not straightforward. The categories of murder and culpable homicide, used in the Criminal Returns, include the crime of child murder, while concealment of pregnancy was counted separately. In practice, however, the charge defined on the indictment often included both, or even other charges. Mary Brown, for example was indicted for the crime of child murder, or concealment in 1844, but found guilty, in terms of her own confession, of concealment of pregnancy and sentenced to 12 months imprisonment.⁸ Mary Ann Blackstock was indicted for the crime of child murder or culpable homicide the same year, and found guilty, in terms of her own confession, of culpable homicide and sentenced to two years imprisonment.⁹

Mary Brown and Mary Ann Blackstock committed similar crimes. Brown had concealed her condition, denying it when challenged. She gave birth alone without asking for assistance and a new-born corpse, with a stab wound to its neck, was found hidden in her trunk among bloodied clothes. Blackstock had also concealed her condition and denied it when asked. She gave birth alone without calling for help and the infant's body was found in her room with a piece of string tied tightly around its neck. Each case could, arguably, meet

⁷ 'Tables of Criminal Returns', *P.P.* 1867, xlvi; 1837-8, xliii; 1839, xxxviii; 1841, Session 1, xviii; 1842, xxxii; 1843, xlii; 1844, xxxix; 1845, xxxvii; 1846, xxxiv; 1847, xlvii; 1847-8, lii; 1849, xlv; 1850, xlv; 1851, xlvi; 1852, xli; 1852-3, lxxxi; 1854, liv; 1854-5, xliii; 1856, xlix; 1857, xlii; 1857-8, xlvii.

⁸ NRS, JC26/1844/26, Trial Papers relating to Mary Brown for the crime of child murder, or concealment of pregnancy, 1844.

⁹ NRS, JC26/1844/144, Trial Papers relating to Mary Ann Blackstock for the crime of child murder or culpable homicide, 1844.

Alison's criteria for a charge of the *nomina juris* crime of Child Murder but a close examination of the records reveals the nuances in the circumstances that resulted in the different charges in the libel.

Mary Brown declared that her child had been stillborn and that she had inflicted no injury upon it. However, according to the medical report, the child had been born alive. The stab wound to the neck had been inflicted soon after birth, while the child was alive, and was the cause of death. It was the testimony of Andrew Law, Sheriff Officer of New Deer in Aberdeenshire that appears to have been the mitigating factor. On searching Brown's room Law, and Brown's employer George Fowlie, found three nails jutting out of the bed in which Brown gave birth.¹⁰ The Advocate Depute felt justified in accepting Brown's plea of guilty to the lesser charge of Concealment of Pregnancy because 'there were nails in the box-bed in which the prisoner was in at the time of giving birth, and it is possible that the death of the child might have been caused thereby.'¹¹ By attributing the death to an accident, the accused was not held to be culpable.

Mary Ann Blackstock declared that she was standing when the child fell from her and hit the ground, and that when she picked up the child to put it on a chair, and in a scared and confused state she tied a piece of string around its neck. According to the medical report there was haemorrhaging caused by the tearing of the umbilical cord as well as injury to the head caused by the fall and 'the child not quite dead from the manner the cord was tied [the string]

¹⁰ NRS, AD14/44/3, Precognition against Mary Brown for the crime of child murder, or concealment of pregnancy, 1844.

¹¹ 'Circuit Court of Justiciary' *Aberdeen Journal*, 1 May 1844.

was sufficient to have produced strangulation'.¹² While tying a piece of string around the child's neck was a deliberate act for which the accused was culpable, Blackstock's distressed state of mind was the mitigating factor that resulted in the acceptance of her plea of guilty to the lesser charge of culpable homicide. According to the counsel for the defence, Blackstock, 'consequent on the suddenness of violence of her labour and the lonely helpless position in which she was overtaken with it which almost entirely deprived her of the faculties of thought and reflection'.¹³

A notable distinction between the quantitative and qualitative evidence highlighted here is that at a statistical level the emphasis on quantification requires classification, while in practice, the workings of the criminal justice system defies such classification. The Libels against Brown and Blackstock clearly refer to and define the capital crime of Child Murder. However, the gathering of evidence from witnesses and the accused, and the opportunity for the pannel to plead guilty to a lesser charge or appeal to mitigating circumstances in the court room facilitated a level of judicial discretion that is not evident in the statistics.

There was a similar blurring of distinctions between murder and culpable homicide charges. This appears to have been to ensure, firstly, that the guilty were convicted and, secondly, that the conviction was appropriate for the crime, and this is illustrated by the care with which the Libel was compiled. The Libel is the written instrument which is delivered to the accused, detailing all the particulars of the charge against them and, in the High Court of Justiciary during this period, usually took the form of an Indictment. The

¹² NRS, AD14/44/23, Precognition against Mary Ann Blackstock for the crime of child murder, or culpable homicide, 1844.

¹³ NRS, JC12/46, High Court Minute Book, 1844, f.107r.

accuracy of this document was paramount and any errors could have a detrimental effect on the prosecution or prove prejudicial to the fair administration of justice. To ensure against objections to the Libel it was often the case that various degrees of aggravation of an offence would be specified separately, such as ‘Murder or Culpable Homicide’, or ‘Murder and Assault to the Danger of Life’. There was, however, room for inconsistency. According to Archibald Alison, if the most severe charge was that of murder, it was not necessary to specify lesser denominations. A charge of murder implied the possibility of culpable homicide and a jury could quite appropriately convict on the lesser charge even where it was not specified. Alison further asserted that if murder was the more likely, the Libel should specify just that charge. However, if the crime was perceived to be of the lesser denomination, it would be ‘unfair to run the chance of exciting a prejudice against the prisoner, by charging him with a heavier offence than ... can be substantiated.’¹⁴ There was also a potential for the charge to be changed after committal. Walter Wilson was initially indicted in 1839 for culpable homicide after a fellow farm servant with whom he was working was killed while loading sheaves of oats onto a cart. A handwritten note on a copy of the printed Indictment suggested that the charge should be one of murder, and an accompanying letter expressed considerable interest in the circumstances leading to the victim’s death and further suggested that the medical witnesses should visit the scene to ascertain if the injuries sustained could be attributed to the accused.¹⁵

Comparisons between the Returns and the extant criminal records are problematic. The precise classification of offences in the Returns does not

¹⁴ A. Alison, *Practice of the Criminal Law of Scotland* (Edinburgh, 1832), pp.211-37.

¹⁵ NRS, AD14/39/251, Precognition against Walter Wilson for the crime of murder or culpable homicide, 1839.

reflect the degree of discretion that the process of charging allows. This is complicated further by the uncertainty around the survival rate of the records themselves.

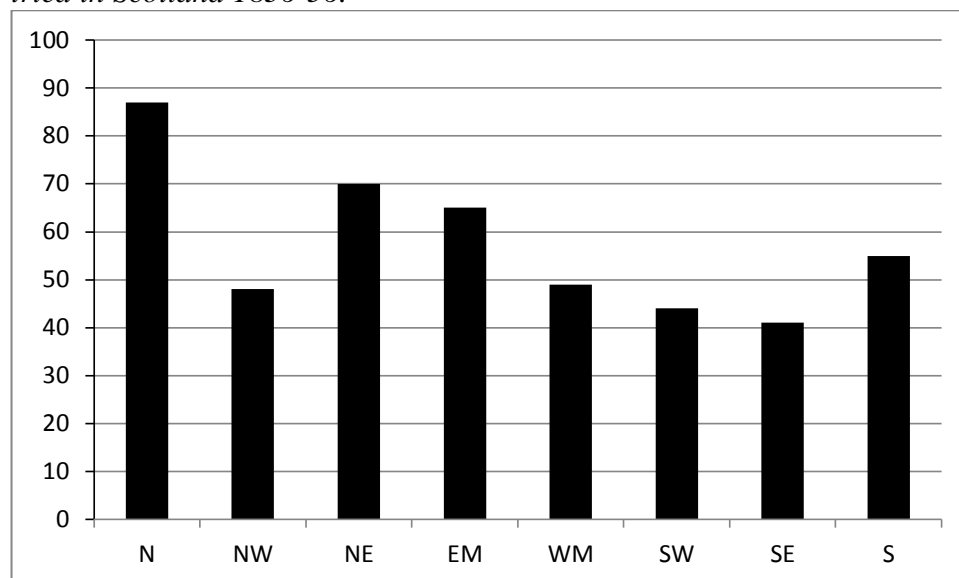
Once an accused person had been committed to stand trial by the Sheriff or Magistrate, the precognition was transmitted to Crown Council in Edinburgh where the Advocate-depute made a decision on the ‘propriety of a prosecution’. Scottish rules of evidence require the evidence of two witnesses for a conviction, and one of the principles on which the criminal institutions of Scotland are founded is that ‘the grounds of commitment should immediately be submitted to responsible persons, qualified to judge of the evidence adduced; and if it does not afford a reasonable prospect of a conviction, the accused should forthwith be set at liberty.’ According to Alison in 1833, between 800 and 1000 cases were put before the Crown every year, several hundred of which were discharged immediately.¹⁶ It is not clear if Precognitions for cases that were rejected were returned to the Procurator Fiscal’s office and, given that Procurator Fiscal records have not been within the collecting policy of the NRS, it may not be possible to determine the volume of rejected cases or the relationship between the quantitative evidence of the Criminal Returns with a corresponding analysis of the extant criminal records. However, a closer examination of these records may suggest some of the administrative factors that impacted on the likelihood of an individual accused of some form of homicide actually coming to trial.

King based his analysis of lethal violence in Scotland on the Criminal Returns entitled ‘Total Number of Persons Committed for Trial or Bailed and

¹⁶ Alison, *Practice*, pp.xi – xvii.

the Result of the Proceedings', which give the numbers of offenders, in each Scottish county, recorded as being apprehended and committed for 15 specified offences against the person, including murder and culpable homicide. These figures include cases sent to the Lord Advocate which did not go to trial, as well as those cases for which the offender was actually tried. The Returns also include 'Tables Showing the Courts in which Persons Committed for Trial or Bailed were Tried' which give the total number of persons actually tried in each county for specific offences. For the majority of counties during King's 21 year period, the number of persons committed for murder and culpable homicide was significantly greater than the number of persons actually tried. Only Caithness tried all committed offenders over the sample period, and Sutherland had the next highest number reaching trial stage at 80 per cent. Figure 2:1 below demonstrates, over the 21 year sample period, that the percentage of offenders charged with murder or culpable homicide, or both, who were actually tried, was significantly less in the more industrialised south-west and south-east than in the north.

Figure 2:1. *Percentage of offenders charged with homicide who were actually tried in Scotland 1836-56.*



N - northern SE – south-eastern SW –south-western
 NW - north-west EM- east-midland S – southern
 NE - north-east WM –west-midland

Source: House of Commons Parliamentary Papers, Criminal Returns 1836-1856.

After the Northern (N) region, those charged with murder or culpable homicide in the North-eastern (NE) region stood the greatest chance of being tried at 70 per cent: the region in which an offender was least likely to reach trial stage during this period was the South-eastern (SE) at 41 per cent. The number of offenders reaching trial for the three South-western (SW) region, which incorporated the counties of Renfrew, Ayr and Lanark was 44 per cent. Nationally, offenders in the central belt, the south-west and south-east regions were least likely to be tried.

Three sample years of figures from the Returns for the County of Lanark illustrate this phenomenon particularly well: in 1844 seven offenders were committed or bailed for murder and culpable homicide, none of which were

tried; in 1847 27 offenders were committed or bailed and only 10 were tried, and 1854 when only six out of 34 were tried: the most likely reason for an offender not being tried was a decision by the Lord Advocate or his Depute.¹⁷

The Returns themselves give some clues to the reasons why some offenders never reached trial. The pannel may have been discharged by the Lord Advocate and his Depute or from other causes, or they may be found Insane on Arraignment, the point at which they appeared in court. However, the extant court records for all murder and culpable homicide cases for King's second sample period, 1836-1856, provide more detail about why some cases were not pursued by the Lord Advocate. The 'diet', a meeting of the court, may have been 'Deserted', or abandoned, although reasons for not pursuing the case were not always recorded.¹⁸ Nevertheless, we do know that four trials were deserted because the pannels were insane, and the diet for Donald McIntyre, who was charged with culpable homicide, was deserted when one of the jurymen was seized by an epileptic fit, and the jury were discharged. McIntyre was recommitted on a new warrant but not charged.¹⁹ The diet against Robert Mudie was deserted in 1842, because the material witness was absent. Although the diet was recorded as being deserted 'pro loco et tempore', meaning another charge could be brought against Mudie at a later date, there are no references to a subsequent trial.²⁰ Elizabeth Mullen's name was deleted from the Minute Book in 1836 because she had already been in jail for nearly

¹⁷ *P.P.*, 1845, xxxvii; 1847-8, lii; 1854-5, xliii.

¹⁸ *P.P.*, 1837, xlv; 1837-8, xliii; 1839, xxxviii; 1841 Session 1, xviii; 1842, xxxii; xlii; 1844, xxxix; 1845, xxxvii; 1846, xxxiv; 1847, xlvii; 1847-8, lii; 1849, xlv; 1850, xlv; 1851, xlv; 1852, xli; 1852-3, lxxxi; 1854, liv; 1854-5, xliii; 1856, xlix; 1857, xlii.

¹⁹ NRS, JC26/1843/394, Trial papers relating to Donald McIntyre for the crime of culpable homicide, 1843; JC26/1844/241, Trial papers relating to Donald McIntyre, 1844.

²⁰ NRS, C26/1842/111 Trial papers relating to Robert Mudie for the crime of culpable homicide, 1842.

three months before trial and it was ‘thought it right not to insist further in the case’.²¹

Where two or more individuals were indicted for the same offence, it was often the case that one or more of the individuals were ‘not called’. This would suggest that, while these individuals were implicated during the initial investigation by the Procurator Fiscal, the Scottish requirement of evidence from two witnesses were not met, and without reasonable prospect of a conviction, the accused was set at liberty. In 1848, for example, five men were indicted for mobbing and rioting, malicious mischief, assault and murder in Kincardine but only two were convicted for the lesser charge of culpable homicide.²² Four men were initially indicted for culpable homicide and assault after a drunken brawl on a public road in 1853: two of those accused were convicted of assault, the Advocate Depute having passed from the charge of culpable homicide, and two were not called.²³

The distinctions between murder and culpable homicide were blurred and negotiable at times and could change over time. The definition of culpable homicide was certainly blurred and, as King points out, its widening use, to cover other circumstances and activities resulting in death, may help explain the increase in homicide rates in Scotland during this period.²⁴

Archibald Alison differentiated between three types of culpable homicide:

1. By the intentional infliction of death, in circumstances which law deems blameable, though not so much so as to amount to murder; 2.

²¹ NRS, AD14/36/267, Precognition against Elizabeth Mullen for the crime of culpable homicide or assault, 1836.

²² NRS, AD14/48/201, Precognition against Colin Munro, John McKinnon, William McDonald, Donald Davidson, Donald McKenzie for the crime of mobbing and rioting, malicious mischief, assault and murder, 1848.

²³ NRS, AD14/53/195, Precognition against James Hastings, Hugh Wilson, James Lindsay, Alexander Miller for the crime of culpable homicide, or assault to the effusion of blood and injury of the person, 1853.

²⁴ King, ‘lethal violence’, pp241-42.

By the intentional deprivation of life, in pursuance of an intention not to kill, but to do some inferior bodily injury, from which it was not probable that death would follow; 3. By undue negligence, or want of attention, in the performance of a lawful act.²⁵

Alison's third category of homicide, deaths resulting from accidents or from negligence, were increasingly prosecuted as culpable homicide and, it has been suggested, that by the late 1860s made up 14 per cent of Scottish homicide trials.²⁶ Non-fatal offences relating to furious driving, negligent steering of a vessel and neglect of duty had, by 1832, been recognised as 'innominate offences', that is to say, recognisable as having serious consequences or as being on the increase as a result of the 'progress of society, [and] which were altogether unknown previously', but not so frequent as to have become *nomina juris*.²⁷ Indeed, there were as few as 24 cases of non-fatal accidents resulting from negligence and furious driving that reached trial stage at the High Court during the period 1836-69, charging a total of 33 individuals, which amounts to less than one quarter of one per cent of all Scottish precognitions for the period. Nevertheless, an increase in the use of machines in mining and other industries, and large scale projects such as the building of canals and railways were inevitable factors of the industrialization process, and where evolving technology was in the hands of inexperienced or careless waged labourers, mistakes could be fatal. Indeed, Alison noted in 1832 that:

cases of this description are the most numerous which occur under this branch of our law. They have in late years received a great increase from the common use of steam-vessels on friths [sic] of the sea and navigable rivers; and it is probable they will be still farther increased by the application of the power of steam to land-carriages.²⁸

²⁵ Alison, *Principles*, p.92.

²⁶ C.A. Conley, *Certain Other Countries: Homicide, Gender and National Identity in Late-Nineteenth-Century England, Ireland, Scotland and Wales* (Ohio, 2007), p.27.

²⁷ A. Alison, *Principles of the Criminal Law of Scotland* (Edinburgh, 1832), p.624-35.

²⁸ *Ibid.*, p.113.

There are extant records for as many as 165 defendants who were indicted for this particular category of culpable homicide during King's sample period 1836-1856: this amounts to 46 per cent of all pannels charged with culpable homicide, and the various degrees and aggravations of that crime, for which records have survived for the 21 year period. The majority were accused of causing death as a result of a road traffic accident, such as driving a horse or a cart furiously along the road, or as a result of negligence while in command of equipment, vessels or locomotives.

Alexander Malcolm, for example, was charged with culpable homicide and culpable, negligent and reckless management of a train of waggons in 1839;²⁹ Robert MacLean was accused of culpable homicide and reckless direction, managing and steering of a steam vessel near Dumbarton Castle in 1842;³⁰ and George Strichen was alleged to have recklessly driven a waggon of gravel and other materials, used for the construction of the Aberdeen railway, across the road and hit and killed an old woman.³¹ Robert Young was accused of culpable homicide in the negligent management of a diving bell at Portpatrick Harbour in Wigtonshire, by allowing divers to enter the bell while the counterbalance had not been shifted, causing loss of life and injury to the workmen.³²

However, while the concept of causing death by negligence was recognised as being culpable in law, it could still be a moot point in court and could also

²⁹ NRS, AD14/36/351, Precognition against Alexander Malcolm for the crime of culpable homicide, 1839.

³⁰ NRS, AD14/42/148, Precognition against Robert MacLean for the crime of culpable homicide, 1842.

³¹ NRS, AD14/46/426, Precognition against George Strichen for the crime of culpable homicide, 1846.

³² NRS, AD14/39/231 Precognition against Robert Young for the crime of culpable homicide, 1839.

account for why some cases might not reach trial stage. William Gray was indicted for culpable homicide in 1836 for:

having, while in charge of a steam-engine, tender [the carriage used for conveying the fuel for the engine], and train of carriages on the Railway, in violation of the regulations of the Company, permitted a person to ride on the tender, by means of which he lost his life, from the tender being accidentally upset.³³

The legal discussion of Gray's case provides valuable insight into how cases that fell into Alison's third category of culpable homicide were viewed by legal professionals in mid-nineteenth-century Scotland.

Counsel for the defence argued that, while the accused had been made aware of his responsibility to prevent the deceased from putting himself in a situation of danger, death was the result of an intervening accident: in this case the wheels of the tender coming into contact with a projecting stone and being driven off the rails as a result. 'The wrong [was] of too subtle a nature to be ranked under any distinctive class of crime, or to fall within the principles which regulate a Criminal Court'.³⁴

The prosecution argued that culpability could rest in an act of omission as well as a positive act of commission. A carter, for example, would be as culpable for a death resulting from an unattended horse taking fright as for a death resulting from riding a horse furiously; similarly, a steam boat master would be responsible for death resulting from a collision occurring in the dark because he did not put up a light.³⁵ The opinion of

³³ NRS, AD14/36/89, Precognition against William Gran, James Pirrie for the crime of culpable homicide, 1836.

³⁴ A. Swinton, *Reports of Cases Before the High Court and Circuit Courts of Justiciary in Scotland from November 1836 to December 1837*, vol. 1. (Edinburgh, 1838), pp.328-31.

³⁵ *Ibid.*, pp.333-7.

the bench was that the Libel, as presented, was not relevant and the Lord Advocate declined to proceed against the pannel.³⁶

While culpability for deaths resulting from ‘undue negligence, or want of attention, in the performance of a lawful act’ was recognised in law, and, by the mid-nineteenth-century prosecutions for this were on the increase, Gray’s case suggests that the finer details were still being debated by legal professionals.³⁷ However, the survey of extant High Court records for King’s sample period 1836-1856 suggests that the increase in the culpable homicide rates was a significant driver behind the overall rise in homicide rates for the period. Alison certainly perceived that deaths resulting from accidents were increasingly being prosecuted as culpable homicide, and this is supported by the qualitative evidence.

The widening scope of definition of culpable homicide suggests one potential reason for a lower number of offenders reaching trial in the more industrialized and populous regions of mid-nineteenth-century Scotland. An increase in indictments brought against individuals believed by local Procurator Fiscals to have been negligent in their work and being the cause of a fatal accident may have overwhelmed the existing criminal justice system. Similarly, the development of policing in more urbanized areas, with a focus on cleaning up the streets and disorderly behaviour, increased the burden on lower courts and may have had a similar effect on the High Court of Justiciary, resulting in more acquittals.

³⁶ Ibid., p.339.

³⁷ See also L. Farmer, *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law, 1747 to the Present* (Cambridge, 1997), pp.155-6.

The complexity of the actual practice of charging offenders in Scotland during this period, the potential for inconsistency in differentiating between murder and culpable homicide, and between the capital charge of child murder and the lesser charge of concealment could, therefore, lead to inconsistencies. Archibald Alison's *Principles and Practice*, based on and drawing from David Hume's *Commentaries on the Law of Scotland Respecting Crimes* published in 1819, were held to be the authority on Scottish law in mid-nineteenth-century Scotland, but his discussions on preparing the Libel leave room for discretion on the part of Procurator Fiscals and those responsible for committing offenders. However, while the Criminal Returns cannot provide the historian of crime with reliable detailed quantitative evidence of the actual incidence of each category of homicide, they are a valuable source of evidence of trends in the incidence of unlawful killing, and raise important questions about the ways in which the processes of industrialization may have impacted on recorded homicide rates.

While a broad survey of the extant records has been useful for identifying some of the administrative factors behind the compilation of, and potential anomalies in, the Scottish Criminal Returns, and suggested one possible factor in the rise in homicide rates identified by King, a closer look at the geographical dispersal of homicides, for which records have survived, in mid-nineteenth-century Scotland will assist in assessing the validity of the Criminal Returns as evidence that homicide rates were higher in industrial and urban areas.

Scottish Homicide in a Geographical Context.

King's analysis of the Criminal Returns for the periods 1805-1814 and 1836-1856 illustrates that the Scottish homicide rate increased significantly during the first half of the nineteenth-century but then fall again after 1850, and that the two periods of this increase covered by his sample corresponded with the two key phases of Scotland's industrialization: the first textile-based phase and the second coal, iron and engineering/shipbuilding phase. Furthermore, the highest homicide rates, at 2.4 per 100,000 and over, were concentrated in the South-western and South-eastern regions which included the industrial areas of Lanarkshire, incorporating Glasgow, Renfrewshire and Ayrshire, which were areas of industrial growth, as well as the city of Edinburgh. It is also demonstrated that these areas were also those of the greatest population density.³⁸ Offenders in these regions were the least likely to reach trial stage.

Records survive for the precognition or trial, or both, of 744 individuals accused of homicide, in Scotland during the period 1836-69. The regional breakdown of these records shown in table 2:1 below indicates that the regions with the highest number of offenders were the south-western and south-eastern areas, corresponding with King's findings, as well as the east-midland region incorporating the industrialized market town of Dundee and the royal burgh of Perth, where textile manufacture was a principle industry by mid-nineteenth-century.

³⁸ King, 'lethal violence', pp.244-7; King, 'geography of homicide'.

Table 2.1: *Number of Offenders per Region in Scotland 1836-69.*

Region	Number of Offenders	Percentage of National Total	Rate per 100,000 population
Northern	9	1.2	0.4
North-eastern	40	5.4	0.32
North-western	21	2.8	0.35
Southern	58	7.8	0.81
South-western	304	40.9	0.93
South-eastern	129	17.3	0.94
East-midland	125	16.8	0.71
West-midland	58	7.8	0.7

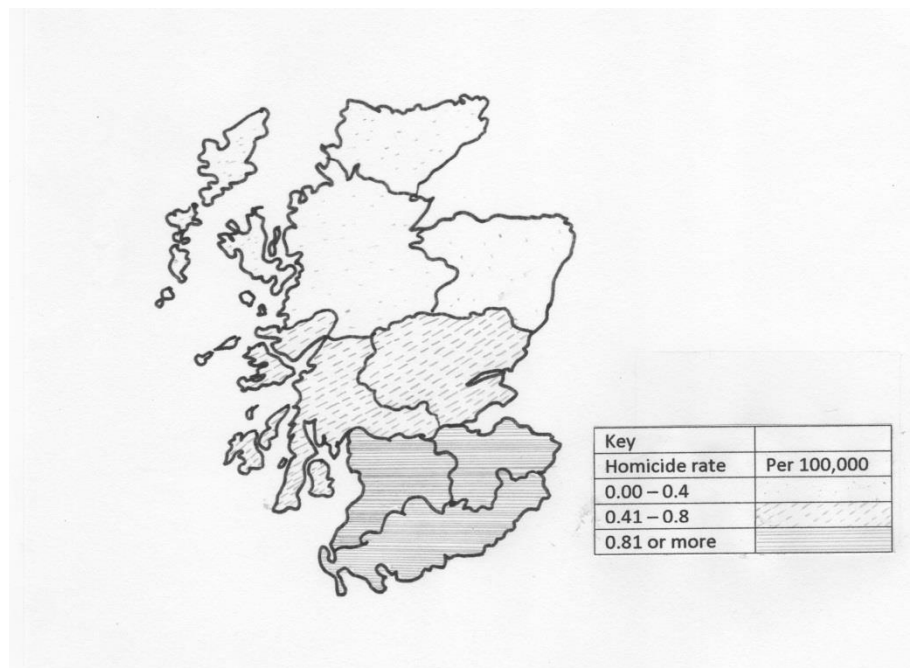
Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69.

Figure 2:2 below shows the regional dispersal of homicide rates, based on surviving records, which, although the differentiation between regions is less marked,³⁹ largely corresponds with King's findings based on the statistical evidence of the Criminal Returns.⁴⁰

³⁹ Given that King's recent work on homicide rates in the second half of the nineteenth century, 'geography of homicide', this may be partly explained by the beginning of the convergence of rural and urban homicide rates.

⁴⁰ King, 'lethal violence', p.244

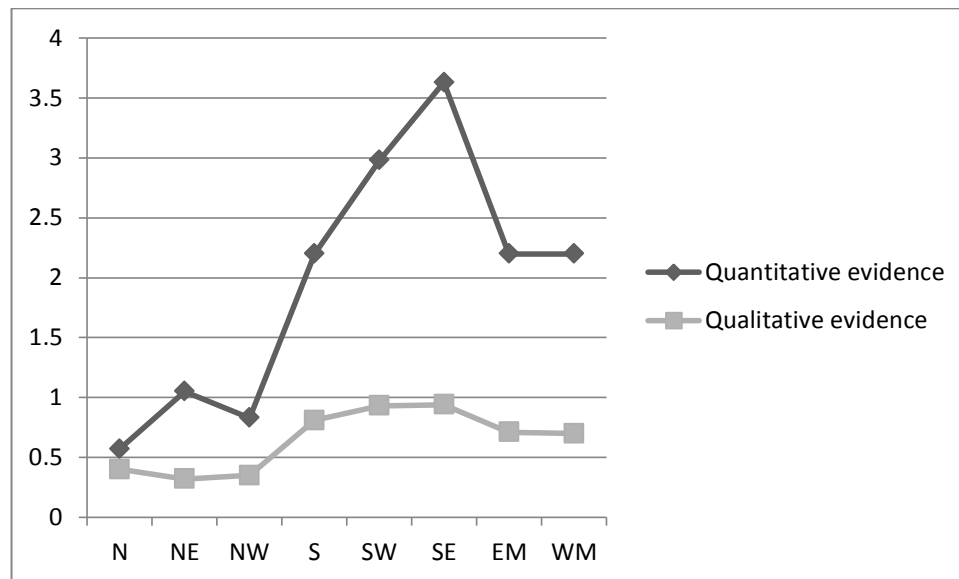
Figure 2:2 Homicide rates per 100,000 in Scottish Regions 1836-69.



Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69.

Furthermore, there is a strong positive correlation between the two sets of homicide rates: those based on statistics and those based on surviving records. Even allowing for the increase in committals for culpable homicide as a result of accidents, and for the unquantifiable number of cases that, according to Alison, were rejected during the initial stages of the solemn procedure, a link between higher homicide rates and urban and industrial areas of mid-nineteenth-century Scotland is evident.

Figure 2:3: Comparison of Scottish Homicide Rates according to Quantitative and Qualitative Sources, 1836-1857.



Northern Regions – north, north-east, north-west
 S – southern
 SW – south-western
 SE – south-eastern
 EM – east-midland
 WM – west-midland

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69; House of Commons Parliamentary Papers, Criminal Returns 1836-56.

To better understand what made homicide more likely in these regions, and to identify the social interactions and scenarios that led to conflict and unlawful killing, there needs to be a breakdown of types of homicide being committed per region. Table 2.2 below gives an overview of the homicide rate for each type of homicide, for which records survive, in Scotland during this period.

Table 2.2: Breakdown of types of homicide per region (rate per 100,000), Scotland 1836-69.

Region	Northern Regions	S	SW	SE	EM	WM
Total per Region	0.26	0.63	0.72	0.72	0.54	0.54
Extra-household	0.14	0.21	0.38	0.27	0.26	0.28
Intra-familial – Children	0.01	0.09	0.05	0.11	0.08	0.08
Intra-familial – Spouses	0.04	0.07	0.12	0.2	0.06	0.11
Intra-familial – Other family	0.02	0.03	0.02	0.04	0.05	0.01
Intra-household and neighbours	0.01	0.03	0.05	0.05	0.07	0.04
Mobbing, Rioting and Protest	0.01	0.17	0.08	0.03	0	0

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69

As Table 2.2 demonstrates, the most common type of homicide in all regions was extra-household. The unlawful killing of spouses was second most common in the northern, south-western and west-midland regions, but the least common in the south-east. The killing of children by a parent was most likely in the south east but the least likely in northern areas, and the highest rates intra-household homicide and unlawful killing of neighbours were in the most populous south-eastern, south-western and midland regions. It is also interesting to note that with the exception of an incident in the north, homicides resulting from mobbing and rioting were concentrated in the three southern regions.

The broad overview of Scottish society during the nineteenth century in chapter one demonstrates that the dual economy model of urban and rural is, while useful at a broad level, too simplistic for a more detailed analysis. There

were regional variations in the industrial south as well as in the rural north, and the movement and mixing of populations with significantly diverse cultural backgrounds and belief systems could also impact in diverse ways on the social environment and relationships, creating a number of potential areas for conflict. To what degree, then, is it possible to identify possible links between the characteristics of mid-nineteenth-century Scottish society outlined in chapter one and the types of homicide reaching trial stage in each region?

Extra-household homicide was the most common type of unlawful killing in all areas of Scotland during this period and accounted for a significant proportion of cases in the industrial and urban regions. While largely a male phenomenon, it was not exclusively so, but was most often a result of drunken pub or street brawls between men. The employment opportunities that arose from the process of industrialization brought together large numbers of migrants and immigrants, from diverse cultural and economic backgrounds and concentrated them around burgeoning industry, either in large urban centres or in settlements around mines or metal working plants. If, as D'Cruze, Wood and Wiener argue for England, a culture of violence existed and the escalation of violence was an accepted way of settling disputes, and considered an acceptable form of entertainment, the gathering of large numbers of men interacting socially or as a result of work, and many holding different religious views, increased the likelihood of conflict and those involved resorting to violence. Furthermore, while there was already an enduring culture of whisky drinking that effected all aspects of Scottish daily life, one consequence of the development of the distilling industry up to the

nineteenth century was an increase in the availability of cheap harsh whisky, exacerbating an already volatile situation .

Opportunities for drinking in public houses increased in urban centres and the street became the legitimate arena for violence and dispute settlement. However, there was also an increase in city policing, with a focus on clearing the streets and on drunken and disorderly behaviour, often by policemen who subscribed to the existing culture of violence, and were expected to resort to it in pursuance of their duty.⁴¹

The unlawful killing of children by a parent, after some attempt had been made to provide some level care was most common in the south east, followed by the midland regions. While larger consolidated farms employed waged labourers and servants, urban centres and industry were increasing, and the railway network was being developed. Agrarian transformation created a landless or semi-landless class who were able to take advantage of the opportunities for waged labour available in the south-west, south-east and midland regions. Large numbers single men and women of childbearing age migrated from rural areas, where sex before marriage and illegitimacy may have had some degree of acceptance, and where support systems were in place to care for an illegitimate child, to a more impersonal, transient environment. It is possible, therefore, that the failure to adapt traditionally acceptable behaviour and expectations to the new surroundings had the potential to leave new mothers with no means of support for themselves or their offspring.

Although such scenarios existed in Scotland before the nineteenth century, and migration of population for economic reasons had also been a factor of

⁴¹ For violence by police see C. Emsley, *The Great British Bobby: A History of Policing from the 18th Century to the Present* (London, 2009).

rural life in pre-industrial Scotland, larger scale migration increased the likelihood of this scenario. Given that the first decade of this period, at least, was one of economic hardship and poverty, as well as there being an increased likelihood of sexual interactions with itinerant partners, there is a possible link between the processes of industrialization and this particular type of homicide.

Spousal homicide was also most common in the south-west and south-east: areas of the greatest population density in mid-nineteenth-century Scotland, and incorporating the cities of Edinburgh and Glasgow as well as urban centres that developed around industrial areas. Edinburgh and Glasgow, with their ancient universities and intellectual societies, were open to Enlightenment ideas and cultural change,⁴² and it has been argued that in such environments of learned and popular culture a ‘revolution in love’ occurred. During the second half of the eighteenth century there was a shift from judging individuals in terms of morality to judging the quality of their innermost feelings. While this was manifested by an increasing opposition to judicial torture and greater sensitivity toward human suffering, it also valued feelings of pity, friendship and altruistic love. There was, consequently, a shift from marriage based on duty to marriage based on love. However, accompanying this ‘revolution in love’ was a shift in the nature of interpersonal violence from knife fighting to violence against intimates.⁴³

Furthermore, industrialization and the new urban environment during the mid-nineteenth century increased employment opportunities for women as well as men, altering the dynamic between husband and wife. Wives found

⁴² A. Broadie ‘Introduction’, in A Broadie (ed.), *The Cambridge Companion to the Scottish Enlightenment* (Cambridge, 2003), pp.1-7.

⁴³ P. Spierenburg, *Written in Blood: Fatal Attraction in Enlightenment Amsterdam* (Ohio, 2004), pp.1-13.

greater independence outside the domestic sphere while men had greater opportunity to visit public houses and drink. The culture of violence, or at least the notion of physical chastisement of wives by their husbands, may already have existed, but the new urban environments and changed behaviours were a potential factor in spousal homicide during this period. Furthermore, the existing culture of whisky drinking in the public house became central to urban male solidarity and exacerbated conflict between husbands and wives.⁴⁴

Overcrowding, lack of privacy and the necessity of sharing space and resources in city tenements had the potential to create or exacerbate tension between other inhabitants and neighbours, and where tension existed there would be little escape. There was often a blurring between private and public space in the built environment and communal areas had the potential to become arenas for dispute settlement as well as the subject of dispute. The social impact of the built environment was the creation of conflict arising from social interaction between fellow householders sharing overcrowded accommodation, and between neighbours living in close proximity. In a society in which violence had become an acceptable and legitimate way of settling disputes, and the drinking of whisky inherent in everyday culture, conflict between people living in such close proximity had the potential to escalate to violence and result in unlawful killing.

The number of offenders indicted for homicide as a result of mobbing, rioting and protest were concentrated in the industrial, urban regions of the south-west and east-midlands, where the likelihood of large numbers of individuals, potentially from diverse backgrounds, coming together to protest,

⁴⁴ A. Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (London, 1995), p.5.

or who clashed with opposing factions. The increasing mechanisation of industry created additional conflict over the de-skilling of, and competition for, labour and resulted in mass protest and fatal violence. Furthermore, the indictment of five individuals in the north-east, where the railway was under development during this period, suggests that the process and spread of industrialization could create its own areas of conflict in otherwise unindustrialized, rural regions. Disorder involving large numbers of individuals was not a new phenomenon to nineteenth-century Scotland but its characteristics during this period can be directly attributed to the process of industrialization and the social interactions that these processes made more likely.

The geographical breakdown of types of homicide reaching trial stage during the period 1836-69, and the possible links with mid-nineteenth-century Scotland suggested above, supports King's assertion that homicide rates were higher in areas of industrial development and population density than in rural areas, as well as providing some clues as to why this may be so, and will be further tested in the following chapters.

Conclusion.

This chapter has demonstrated that there is some degree of correlation between the homicide rates based on statistical evidence and those based on extant records for King's sample period 1836-1857. This suggests that, while the Criminal Returns for Scotland during this period are not an accurate guide to the level of lethal violence being prosecuted, they can give some indication of regional variations in the number of offenders being apprehended and committed, and of trends over time. However, given that the Returns counted

offenders, and surviving records demonstrate that multiple offenders could be indicted for a single homicide, and that recording and reporting of homicide allowed a degree of discretion, their value as evidence of the actual level of lethal violence or type of homicide in mid-nineteenth-century Scotland should be used with a degree of caution.

While the objectives of this chapter were to test the correlation between industrialization, urbanization and homicide rates, the process of analysis has raised the question of why the proportion of offenders reaching trial was greater in northern regions and significantly less in the urbanized and industrialized south-west. Given that the precognitions for rejected cases have not survived, this is not a question that can be answered by the qualitative analysis of High Court records examined in this study. However, it is possible to speculate on two possible lines of enquiry.

It has been suggested that the concept of industrial accident during this period was being increasingly considered as culpable homicide but, as has been demonstrated, was perhaps still a contested point with the judiciary. Given that the south-west was an area of intense and rapid industrialization, the number of cases rejected as a result of the Crown deciding that the wrong was not criminally culpable, may account, to some degree, for the number of cases not reaching trial stage. Furthermore, as Barrie points out,⁴⁵ the focus of Glasgow police during this period was on urban order. The high level of apprehension of urban disorder offences may have flooded the system with cases that did not reach the required level of evidence and which were then

⁴⁵ D. Barrie, *Police in the age of Improvement: Police Development and the Civic Tradition in Scotland, 1775-1865* (Cullompton, 2008), pp.48-82, 192-99.

rejected, suggesting a correlation between levels and efficiency of policing with recorded numbers of offenders.

Urban and industrial areas of Scotland during this period could be overcrowded, and inharmonious: alcohol exacerbated ethnic, cultural, religious or familial tensions, and a fundamental characteristic of Scottish cities was the condition in which the poor, working class lived. By exploring the characteristics of Scottish society during the nineteenth century, and identifying the geographical context of each type of homicide, it has been possible to give substance to King's findings, and to suggest potential links between homicide and the characteristics of industrialization, urbanization and other possible factors of significance. These links will be further explored in more detail in the following chapters.

Chapter 3: Intra-familial Homicide: Child Victims.

Introduction.

There were 77 individuals indicted for intra-familial homicides involving 75 child victims in Scotland during the period 1836-69. The highest number of these, a total of 58 offenders, was in the south-east, south-west and east-midland regions: areas of industrial growth and dense population comprising people from diverse cultural backgrounds. A new social order was evolving, in rural areas as well as urban centres, as a result of industrialization, and an increasingly transient population of young men and women of child-bearing and marriageable age became dislocated from traditional community and familial support, which impacted on one of the most fundamental human relationships: that of parent and child. The aim of this chapter is to look more closely at the surviving High Court records of cases where a parent was indicted for the homicide of a child after attempting, to some degree, to provide some level of care, in order to establish if the apparent link between this type of homicide, and characteristics of industrializing and urbanizing society in mid-nineteenth-century Scotland, identified in chapter two, is also apparent at a more detailed level. Did the movement of population change the behaviour of men and women during this period in a way that made this type of homicide more or less likely? Did the emerging urban environment present opportunities for other social interactions or scenarios that could impact on the likelihood of a mother resorting to unlawful killing?

There is no clear legal definition of a child during the mid-nineteenth century. According to Archibald Alison, both girls and boys were minors, and

therefore not liable to any punishment, up to the age of 14.¹ However, a girl under 12 years old and a boy under 14 were considered ‘nonage’ and incapable of giving consent to marriage, while, in terms of rights to maintenance and guardianship, children were defined as those entitled to support until able to earn their own livelihood.² For the purpose of this study a child will be defined as being dependent on its parents for survival and care, and the victims of homicide in the cases included in this 1836-69 sample were as young as a few days up to 12 years old.

Intra-familial homicides involving child victims studied here are, furthermore, differentiated from the crime of Child Murder which Alison defined as ‘the extreme facility of extinguishing the infant life, at the time, or shortly after birth’,³ which equates to neonaticide, the killing of a recently born infant, especially one less than 24 hours old. Although some of the victims in homicide cases explored in this chapter were defined as infants and others said to be only a few days old, they are included because the parent had attempted some level of care which suggests an intention, initially at least, to rear the child. Nevertheless, while cases of neonaticide are not within the scope of this project, it is possible to draw some parallels between that phenomenon and the intra-familial homicide of children explored here, in terms of circumstances and motivation.

Katherine Watson argues that the English phenomenon of infanticide has been defined as the story of illegitimate babies and the root of the problem has been identified as the English Poor Law, which attempted to address perceived

¹ A. Alison, *Principles of the Criminal Law of Scotland* (Edinburgh, 1832), p.663.

² G. J. Bell, *Principles of the Law of Scotland* (Edinburgh, 1839), pp. 562, 596-597.

³ Alison, *Principles*, 153.

female immorality and illegitimacy.⁴ Before the English Poor Law Amendment Acts of 1834 and 1844, fathers were held responsible for the maintenance of their illegitimate children and the framework existed to enforce this responsibility. The new legislation post 1834 made proving the paternity of the father more difficult and expensive, and mothers were made to be responsible for supporting themselves and their offspring or enter the workhouse. The underlying assumption was that a mother would not kill her child through poverty and that the rate of illegitimacy would fall. Nevertheless, the illegitimacy rates did not fall and a subsequent rise in infanticide was publicly linked to the New Poor Laws. The factors of poverty, high infant mortality, restrictive laws and ignorance, Watson argues, resulted in inadequate bonds between parent and child and it was a relatively easy step to take from caring little for a child to hoping for and bringing about its death.⁵

Nineteenth-century Scottish Poor Law evolved differently to that of England. While approaches to and motivations for addressing poverty in Scotland initially mimicked the English, Scotland lacked a centralised system of administration: heritors, landowners with obligations for church support in mid-nineteenth-century Scotland, were reluctant to impose a tax, or ‘assessment’, on themselves for the purpose of poor relief and the practicalities of and responsibilities for this took on its own dynamic. Under the old Scottish system of poor relief the Kirk assumed responsibility for the allocation of the funds raised, according to its own values and prejudices. Funds were raised from voluntary contributions as well as fines for misbehaviour, hire of church seats, sale of burial plots and charging for the use of a mortcloth, a piece of

⁴ K. Watson, *Poisoned Lives: English Poisoners and their Victims* (London, 2004), pp. 80-2.

⁵ *Ibid.*, pp.80-3.

velvet to drape over a coffin at a funeral, and they often fell short of what was required. However, by the first part of the nineteenth century the processes of industrialization and urbanization, and population growth was impacting on Scottish society, and the old approach to poor relief was becoming increasingly inadequate.

Although compulsory assessment, or taxation, of the wealthy to meet the requirements of poor relief had featured in the founding statutes of the Scottish Poor Law, by the seventeenth century it had come to be understood that assessment was only necessary when the funds raised by voluntary means were inadequate. Parishes that relied wholly on voluntary contributions therefore allocated relief to the most needy, keeping the list of eligible recipients to a level supportable by the money available, and there remained a dependency on outdoor charitable relief. Increased industrialization and urbanization, and the consequent social and economic change reduced the effectiveness of community support. Increasing unemployment, famine and depression in the late 1830s and early 1840s put pressure on resources at a time when congregations were increasingly dissenting from the established Kirk; the latter culminated in the Disruption of 1843, which decimated membership of the established Kirk and severely affected the level of voluntary funds that could be raised.⁶

While the Poor Law Amendment (Scotland) Act of 1845 once again addressed the issue of raising funds for poor relief by assessment, and required Parochial Boards to take control of the administration of poor relief, several characteristics of the old system endured. This included the principle of

⁶ R. Mitchison, *The Old Poor Law in Scotland: The Experience of Poverty 1574-1845* (Edinburgh, 2000), pp.45-186.

residency, where a pauper was only entitled to relief in the parish of their birth or long-term residence. Relief continued to be administered according to funds available rather than the required amount being determined and then raised. Parochial Board members had strong links to the Kirk, and their values, prejudices and strict moral code continued to influence who received poor relief.

Illegitimacy and the homicide of children in Scotland.

The sample of cases studied here suggests that the killing of children was largely a gendered crime and committed mainly, though not exclusively by women. Of the 77 cases of children being killed by a parent during this period, at least 40 were illegitimate and 67 of the perpetrators were women. Of the 67 women indicted, where ages are given, 18 were in the 20-24 age group, 19 were aged 25-29 years and 14 were 30-39 years old. Six women were older than 40, the oldest being 68 and the youngest was 19 years old. Establishing the occupations of the women accused is problematic. It was common for women to be referred to as the wife or daughter of the husband or father and it was often his occupation that was cited in the records. However, while an occupation was not given for just over 13 per cent of the women indicted for this type of homicide during this period, it is possible to establish from information available that approximately 45 per cent of these women were from the unskilled, servant group, 22 per cent from a skilled background, just over four per cent were from textile manufacturing backgrounds and just under nine per cent were categorised as a widow, pauper or as unemployed.

The age of the victim was not always specified in the High Court records, it could however be estimated to the nearest week, month or even year. However

it is possible to estimate the approximate ages of the victims, which are shown in Table 3.1 below.

Table 3.1: Ages of child victims by female and male perpetrators compared, Scotland 1836-69.

Age of Victim	Female Perpetrators	Male Perpetrators
0-1 month	33	4
1 – 2 months	6	0
2 - 3 months	3	1
3 – 6 months	4	0
6 months – 1 year	8	2
1 – 2 years	3	1
2 – 4 years	7	1
4 – 6 years	3	0
6 – 12 years	4	0

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69.

The period of this study covers the administration of the old and new Scottish poor law systems, and it could be argued that poverty was a contributory factor in the homicide of children. The majority of Scottish cases in which women killed young children after attempting to provide care during the period 1836-69, the women themselves were in low waged occupations and a significant number of the victims were illegitimate. If then, as Watson suggests, illegitimacy is another significant factor in cases of English infanticide, to what degree was it also a factor in the unlawful killing of

Scottish children in mid-nineteenth century? To begin to answer this, however, the way in which pre-marital sex and illegitimacy were viewed in mid-nineteenth-century Scotland needs to be explored and understood.

There was no systematic recording or analysis of births, deaths and marriages in Scotland until Statutory Registration came into force in 1855. An apparent anomaly of regional differences in illegitimacy rates was recognised in the first Detailed Report of 1861, based on the 1855 Returns, where it was noted that in contrast to almost all the Continental states, the rate of illegitimacy in Scotland was more prevalent in the rural districts than in the towns.⁷ This anomaly is discussed further in the Second Detailed Annual Report of 1862 which goes on to suggest that illegitimate births were almost solely confined to the labouring classes and twice as common in the north-eastern and southern divisions than among corresponding classes of the great manufacturing and mining counties of the south-western division. Mainland and Rural Districts had a rate of 9.4 per cent illegitimacy while for the Town Districts it was 7.5 per cent. An explanation for this anomaly was that there were higher numbers of improvident marriages in areas of lower illegitimacy rates, and fewer marriages per head of population in areas of high illegitimacy. Furthermore, it is noted that illegitimacy in the rural districts was not necessarily a result of 'vice': parents of many illegitimate children were actually cohabitating as married parties.⁸ While the birth of children before marriage was commonplace, even desirable, in some agricultural areas where proof that a potential wife was fertile was an economic necessity, illegitimacy

⁷ Registrar General, *First Detailed Report of the Registrar General of Births, Deaths, and Marriages in Scotland, P.P.*, 1861, xviii.

⁸ Registrar General, *Second Detailed Annual Report of the Registrar General of Births, Deaths, and Marriages in Scotland, P.P.*, 1862, xviii.

appears to have had some level of acceptance Scotland-wide. Indeed, illegitimate children were legitimised by subsequent marriage under Scottish law and girls may have seen this as a way of securing a husband.⁹

However, it has been pointed out that during the period 1660-1780 the rate of illegitimacy was a fraction of its nineteenth-century level: bridal pregnancies were less than two per cent of total births and fornicators coming before Kirk Sessions were a minority. The reasons for this rise in overall illegitimacy rates are the subject of unresolved debate. But, it is argued, where rates of illegitimacy are high, there needs to be an effective structure of support, without which mothers of illegitimate offspring would have an unbearable burden and illegitimacy rates would fall.¹⁰

The Scottish Poor Law systems did not consistently provide this support and the absence of illegitimate children on the Poor Rolls is a significant difference between the Scottish and English systems. The Kirk usually elicited the identity of the father and expected him to take responsibility and where relief was given to mothers, it was generally only while they were nursing the baby. The Kirk's prevailing attitude to the phenomenon of illegitimacy is suggested by a report of 1844, derived from a questionnaire circulated to all Scottish parishes. The report asserted that, in response to the question 'Is relief given to single women, mothers of illegitimate children?' authorities generally resisted such claims 'so to avoid encouragement of vice by too ready advances at public expense.'¹¹

⁹ T.C. Smout, *A Century of the Scottish People 1830-1950* (London, 1997), pp. 165-173.

¹⁰ A. Blaikie, *Illegitimacy, Sex, and Society: Northeast Scotland 1750-1900* (Oxford, 1993), pp.117-120.

¹¹ *Ibid.*, pp.158-161.

Andrew Blaikie argues that there are two explanations for the phenomenon of illegitimacy, the first of which is the Courtship Hypothesis. The strength of the Courtship Hypothesis, he argues, is in evidence of extra-marital fertility and bridal pregnancies. In Rothiemay in Aberdeenshire between 1857 and 1900, 44.1 per cent of women marrying were pregnant at the time of the marriage and, it is pointed out, that by no means all brides who arrived at the altar who were not pregnant would have been virgins. However, it is not possible to ascertain if marriage was the result of the woman being pregnant or if the pregnancy occurred because marriage was imminent. There may also have been intercourse where no marriage was intended, regardless of the outcome.¹²

The second explanation is that there was an increase in casual encounters. Blaikie argues that patterns of courtship corresponded with dislocating effects of marriage postponement and that the practice of fertility testing declined as the number of transient men who passed through communities increased. Given that during the period 1660-1780 the majority of infants conceived out of wedlock were born out of wedlock, it is unlikely that any significant section of the Scottish population considered sexual intercourse a normal prelude to marriage. After 1850 the number of fathers admitting paternity fell and, Blaikie argues, if this can be used as an index of male promiscuity, the implication is that casual encounters were becoming the norm. In Rothiemay parish, Aberdeenshire, mothers of more than one illegitimate child tended to bear children to more than one man and of those women who subsequently

¹² Ibid., pp.99-111.

married, nearly half did not marry the father of her first child.¹³ While some sections of Scottish society continued to hold traditional attitudes to courtship, the industrializing process was creating a more transient population and facilitating more casual, short-term sexual encounters.

In chapter two it was suggested that intra-familial homicides involving child victims may potentially have been linked to the phenomenon of industrialization and urbanization through the migration of people who continued to hold traditional attitudes to premarital sex and illegitimacy in a new environment where support networks were not in place. This supports Blaikie's argument that the Courtship Hypothesis (or the traditional attitude toward pre-marital sex and the birth of children out of wedlock), and the increase of male promiscuity as a result of an increasingly transient workforce created by the industrializing process, were two explanations for high rates of illegitimacy in some areas of Scotland.

Certainly, neither the old nor new systems of poor relief during mid-nineteenth-century Scotland would, or could, consistently provide financial support to mothers of illegitimate children and, according to the 1861 Report by the Registrar General, while rates of illegitimacy were high in some rural districts, the parents were often cohabitating as man and wife and thus offspring could be legitimised on subsequent marriage. However, a closer look at the court records is needed before it can be established if and how this contributed to, or was a causal factor in the intra-familial homicides of child victims after the parent had attempted to provide some level of care.

¹³ Ibid., pp.111-119.

While the poor relief systems in England and Scotland evolved along different lines, the consequences were similar: little or no consistent support or assistance for mothers of illegitimate children, and, as Watson argues, in difficult circumstances, disposing of a child may have been an easy step to take.

Anne-Marie Kilday argues that, in disposing of unwanted infants, Scottish women were more violent than their English counter-parts and this greater propensity to violence in killing their infants contributed to a higher rate of indictments for child murder during the second half of the eighteenth-century than was the case for England. She argues that the most common method being the use of a knife or a razor, with 63 per cent of the Child Murder indictments brought to trial between 1750 and 1815 involving violence by battering or the use of a sharp instrument. Even in those cases which infants were asphyxiated, some mothers allegedly used such force that marks of violence were clearly evident on the victims' bodies. One of the key factors in this type of crime was that the majority of victims were illegitimate and, it is argued, the motivation was that mothers wished to remove the source of their shame in a society in which pregnancy outside marriage was sinful and dishonourable.¹⁴

Kilday focuses on cases of Child Murder, or neonaticide, during an earlier period to that of this study, and of the lowland regions of Scotland specifically, her findings are therefore not directly comparable to this Scotland-wide, mid-nineteenth century study. However, as Kilday points out, the Indictment, on which she based her conclusions, is problematic as an historical source as it

¹⁴ A.M. Kilday, *Women and Violent Crime in Enlightenment Scotland* (Woodbridge, 2007), pp. 59-79

does not provide much information about the perpetrator.¹⁵ It should also be considered that the indictment was carefully worded to ensure a conviction and can, in terms of the alleged crime, be misleading by overstating its severity. Furthermore, while the Kirk and Parochial Boards evidently excluded mothers of illegitimate children from their lists of deserving poor, there is evidence that child-birth outside of marriage did have some level of acceptance in mid-nineteenth-century Scotland and that women may not, necessarily, experienced the shame and stigma attached to illegitimacy.

Table 3.2 below shows the breakdown of methods by which males and females killed their offspring during the period 1836-69.

Table 3.2: *Modus Operandi*: Female and Male Offenders Compared, Scotland, 1836-69.¹⁶

Method	Female	Male
Violence/Assault	26	6
Poisoning	16	0
Desertion	6	2
Drowning	19	2

Source: NRS, *Lord Advocate Precognitions, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69*.

The majority of children within the scope of this study, who were killed by a parent died as a result of some form of violence. If violence is defined as the use of physical force intended to cause harm, it could also be argued that, in contrast to the more passive *modus operandi* of poisoning or desertion, drowning could involve violence if the victim was forcibly held under the water until dead. This certainly suggests that Scottish women were capable of using violence against their offspring. However, the focus on how the victim died is far less instructive for the purpose of this study than why.

¹⁵ Ibid., p.2.

¹⁶ It should be noted that the two male offenders indicted for desertion were the co-accused of a female offender.

Poisoning.

The actual number of children poisoned by a parent during this period was less than those who died as a result of violence or drowning, but the records for these cases are rich sources of background evidence to assist in answering the above questions. Of the various types of poisons available in Scotland during this period, laudanum, a preparation consisting of opium dissolved in alcohol, was one of the most accessible. It was an everyday household substance and widely used to relieve pain, check diarrhoea, induce sleep and calm fussy infants. Opium preparations were numerous and included opium pills, powders, enemas, plasters and liniments. Although ready-made and long established children's preparations were available, laudanum, at around 25 drops for a penny, was the most popular among the poorer customers. It was often a child's errand to go to the grocer or other outlet to buy laudanum and often no questions were asked,¹⁷ and as primary care givers, women had the opportunity to discreetly administer this readily available poison to be rid of a child they did not have the means to support.

Evidence suggests that Janet Stewart, who was described as a domestic servant in the Abeyhill area of Edinburgh, expected the father of her illegitimate daughter to marry her. Stewart already had a four year old illegitimate son and she had found a situation as a nurse to pay for his care. However, she had left that situation, she claimed, to get married. The lodging house keeper with whom she lodged after leaving her employment declared that Stewart had been in the company of a man by the name of Robert Gould, and she understood that he was to find them a room. It is possible that Stewart

¹⁷ V. Berridge and G. Edwards, *Opium and the People: Opiate Use in Nineteenth-Century England* (London, 1987), pp.24-29.

believed they were to marry but after the birth of this second child there was some inference that Gould was not the father and she was found to be crying and in much distress. Stewart declared she had bought four penny-worth of laudanum for the infant and for herself, but had asked what the dose for a four year old should be: she then administered this amount to her infant of a few days.¹⁸ Stewart had been a domestic servant and had had two illegitimate offspring by different fathers, and it was implied that she had been intimate with more than one man around the approximate time of conception. Stewart had apparently had previous casual pre-marital sexual encounters, and regardless of whether marriage was intended by either party at the time of intercourse, had expected, or hoped that the child would be legitimised by subsequent marriage.

Sarah Gregg, a domestic servant in Ayr, claimed that she had been promised marriage by the father of her illegitimate child. She had been in the habit of giving her 11-day-old infant laudanum to induce sleep and her narrative gave the impression that she was taking steps to provide care for the child. An acquaintance had offered to nurse the child so Gregg could go into service, and she had said she would speak to the child's father about some financial help. She had also approached the Kirk Session Clerk about getting the child baptised. A closer examination of this case illustrates how complex the phenomenon of illegitimacy was by the nineteenth century in Scotland. Gregg and John Muir had a 'connexion' [sic] while in service together at Littleton farm in Kirkoswald parish, Ayrshire, but there had been no intention of marriage at the time of intercourse nor was marriage mentioned when

¹⁸ NRS, Ad14/59/358, Precognition against Janet Stewart for the crime of murder, 1859.

Gregg first told Muir that she was pregnant. Marriage was later discussed but was postponed twice because Muir did not have enough money. However, Muir learned that Gregg had another child for which ‘she had not got a father for’ and talk of marriage ceased. Muir became more suspicious when the second child arrived six weeks sooner than expected and he refused to have anything to do with the child until it had been proven that he was the father. Gregg had talked of the expense of rearing the child and had been heard to say that ‘if it was God’s will it would be better if it was taken away’: she later asked the lodging house keeper’s young daughter to go out and buy laudanum for her, and Gregg then administered a lethal dose to the second illegitimate infant.¹⁹

Margaret Spears was the daughter of a blacksmith and living with her parents in Stranraer, a sea port town in Wigtonshire. Her case illustrates the ubiquity of laudanum as a cure-all and the ease with which its use could potentially lead to criminal charges. Spears’ case also suggests that support structures were available to mothers of illegitimate offspring. Spears had been in the habit of giving her two year old son a quarter penny’s worth of laudanum every day, and had done so since his birth, to keep him quiet so she could work. She claimed she had an older child, still living, to whom she also gave daily doses and, she argued, had she intended to harm the child she would have done when he was first born as there was no one with her. The mother of the accused declared that the laudanum was administered regularly

¹⁹ NRS, AD14/47/219, Precognition against Sarah Gregg for the crime of murder, or culpable homicide, 1847.

at five o'clock every afternoon, and that the child would cry bitterly when it was kept from him.²⁰

Laudanum, then, was potentially a readily available method of taking life with a medically and socially acceptable reason, and therefore justification for, its use. For the potential murderess, however, it was a discreet, easily explained *modus operandi* confined mainly to private space. However, Katherine Watson suggests that, in England, an undeterminable proportion of the 15 per cent infant death rate between 1830 and 1900 was caused by opiate poisoning although relatively few resulted in proven homicides: while illegitimate babies faced the greater risk of violent death as a consequence of them being a burden on the parent, infants generally were the least likely members of society to be the subject of an English inquest.²¹ Why did the cases referred to above, in particular, end in prosecution?

According to Archibald Alison, in the event of a crime occurring information is lodged, by the injured party, with the Procurator Fiscal and an initial examination of all evidence takes place. A decision then has to be made, on the strength of this evidence, whether there are sufficient grounds for prosecution.²² For homicide this meant the direct testimony of two witnesses or of one witness and a train of circumstances or of circumstances that by themselves leave no reasonable doubt of guilt.²³

Neither Stewart nor Gregg was married, nor did marriage seem to be a possibility, and an illegitimate child would be a financial burden. Although Stewart's infant had, according to the landlady, been fractious at night and had

²⁰ NRS, AD14/56/369, Precognition against Margaret Spears for the crime of culpable homicide, 1856.

²¹ Watson, *Poisoned Lives*, p.77.

²² A. Alison, *Practice of the Criminal Law of Scotland* (Edinburgh, 1832), pp. xiv - xv

²³ Alison, *Principles*, p. 73

disturbed their sleep, thus supporting the assertion by the accused that the laudanum was only intended to induce sleep, Stewart aroused the suspicion of the landlady and neighbours by lying about leaving the house for a short period during which she was later said to have purchased laudanum. She was also said to have been reluctant to call a doctor.²⁴ While Gregg's testimony suggested that she planned to care for the child, she had also expressed concern about the expense involved in rearing the child, and had allegedly hinted at its demise. It is interesting to note, too, that the testimony from two Kirk officials referred to Gregg's lack of regret or what they perceived to be shamelessness: the Session Clerk declared that 'she did not appear at all dull and did not appear ashamed' and the Reverend McLuthae observed that 'she did not appear either excited or vexed like as most people are coming in similar circumstances.'²⁵

The indictments against Stewart and Gregg both included the charge of murder, suggesting their actions had been perceived to be deliberate. Spears, however, was indicted for Culpable Homicide. There was a great deal of attention paid to the amount of laudanum administered and most witnesses testified that the child was regularly given one quarter penny's worth, and that it was Margaret's mother who had provided the money to buy the substance that day. The Surgeon, however, deduced that the fatal dose may have been double that which was usually administered in such circumstances. While death had not been the intended outcome, Spears was certainly perceived to be culpable in law.

Drowning and desertion.

²⁴ 'High Court of Justiciary', *Caledonian Mercury*, (10 November 1859).

²⁵ NRS, Precognition, Sarah Gregg.

Laudanum poisoning was not the only method by which mothers disposed of unwanted illegitimate children. Drowning and deserting collectively accounted for 25 of the cases of child victims' deaths, and these were invariably in public space: the harbour, canal, or pond being the favoured locations for drowning, and victims of desertion were found hidden in ditches by the side of the road. Circumstances of the mothers, however, could be similar to those accused of unlawful killing by poisoning.

Elizabeth Yates, who had been a pottery worker in the town of Leith, declared that the alleged father of her ten-month-old son denied paternity and any financial responsibility for the child, although he had paid her 1 shilling 6 pence per week for the first three weeks. Yates lodged with her sister and brother-in-law and continued to support the child herself by labouring in a pottery works, but when work became slack she was paid off. South Leith Parochial Board had provided some assistance but this had been inadequate and, unable to regularly pay her board and lodgings, she faced being turned out by her brother-in-law. Yates once again approached the child's father for support but following another rejection she went to the canal, removed the child's clothes and held him under the water. She thought it would be 'as well to put the child out of this world'.²⁶

This case illustrates in particular the complexity of the phenomenon of illegitimacy in Scotland during this period. Having been denied support from the alleged father, Yates had maintained the child and herself with the assistance of informal support structures. She had lodged with family, found work and had an acquaintance nurse the child. When work was not available

²⁶ NRS, AD14/47/514, Precognition against Elizabeth Yates for the crime of murder, 1847.

the support network crumbled. The parish allocated one shilling and six pence per week but board and lodgings amounted to two shillings, and when this could not be paid she was evicted.

However, not all cases were the result of unrealised expectations of marriage. Elizabeth Scott lived in the parish of Forfar, seven miles north of Dundee, and was pregnant with another man's child when she married her husband, who was unaware of this until after the child was born. When the paternity of the child was exposed, both the natural father and Scott's husband refused to maintain it and, having no means of maintaining the five month old child herself, Scott threw it into a burning coal pit.²⁷

Some narratives alluded to the prevalence of the arrangement of paying for childcare, as a lump sum for longer term care and perhaps on the unspoken understanding that the child would not survive, or on a daily basis so the mother could work. As Margaret L. Arnot's research shows, the term Baby-farming by the 1860s had come to mean any arrangement by which money was paid for child care, had become synonymous with infanticide and central in debates about the inviolability of women's maternal roles and the protection of infant life. The fact of employment of married women was considered, by nineteenth-century observers, to be responsible for high infant mortality, and as having a negative impact on the provision of a healthy population to colonise the empire. When viewed within the context of widening the political franchise, and women increasingly using their natural roles as justification for entering the public sphere, and in terms of the transition in child care arrangements from the private arena to an economic transaction, the baby-

²⁷ NRS, AD14/55/248, Precognition against Elizabeth Scott for the crime of murder, 1855.

farming debates can be understood as integral to the negotiation of gender relations and the reassertion of women as lacking the characteristics that defined a rational political citizen. While medical men and philanthropists argued for greater policing of child care arrangements and greater state responsibility for child life, paternalists argued that the family was the bastion of male dominion and those critical of Victorian patriarchy resented interference into a key area of female responsibility.²⁸

However, the childcare arrangements that so concerned the various factions of the middle classes can also be viewed as an essential element of women's self-help and survival networks in which women and their neighbours became involved in exchanges of services for money. During a period when men's employment was precarious, and in the absence of adequate state support, the only safety net available to many poor working-class women was neighbourhood support. Child care, maternity and nursing services were often compensated by money payments which contributed significantly to the survival of widows or old women who made a living by providing such services.²⁹

Sarah Gregg declared that an acquaintance would care for her child so she could find a position as a nurse; Margaret Spears apparently had the support of her mother so she could work, and Elizabeth Yates had family and community assistance, albeit conditional on paying her way. Agnes Ritchie, living in Newhills parish, five miles north-west of Aberdeen, however, told a rather more elaborate story, describing an unknown woman, who turned up to take

²⁸ M. L. Arnot, 'Infant death, child care and the state: the baby-farming scandal and the first infant life protection legislation of 1872', *Continuity and Change*, 2, no. 9 (1994), pp.271-311.

²⁹ E. Ross, 'Survival networks: women's neighbourhood sharing in London before World War 1', *History Workshop*, 15 (1983), pp.4-12.

her illegitimate child away, as having red hair, and even added that an acquaintance, Andrew Gardiner, had witnessed the woman with the child. Gardiner declared that he knew Ritchie but had never had a conversation with her about the child nor did he see the woman and child as Ritchie claimed.³⁰

Four men during the period 1836-69 were indicted for killing illegitimate children under the age of ten months having been given custody of the child by impoverished mothers. Thomas Crosbie, indicted for murder at Duddingtons's Loch, Edinburgh, declared he had offered to pay the mother of his illegitimate child half a Crown per week but this was said to be too little and he was asked to take the child. He declined but declared that he found a nurse for the child to whom, he claimed, the child was delivered.³¹

Alexander Anderson already had a wife when Jean Watson appealed to him to him take their illegitimate offspring into his care. Watson declared that she and Anderson had been in service together, in Newhills, Aberdeenshire, during which time they had had a 'casual connection', she claimed, under the promise of marriage, and which resulted in pregnancy. Watson declared that she contacted Anderson, told him of her predicament and reminded him of his promise. Anderson initially made excuses about not having the means, but later told Watson that he would not marry her. He did, however, agree to take the child and find a nurse for it. When Watson met Anderson to hand over the child he had a heavily pregnant woman with him who, Anderson claimed at the time, was a distant relative: she was in fact his wife, who was said to have been present at the drowning of the child.³²

³⁰ NRS, AD14/67/187, Precognition against Agnes Ritchie for the crime of murder, 1867.

³¹ NRS, JC26/1841/433, Trial Papers relating to Thomas Crosbie for the crime of murder, 1841.

³² NRS, AD14/49/244 Precognition against Alexander Anderson for the crime of murder, 1849.

James Robertson, a farm servant in a rural parish in Forfarshire, was accused of having suffocated his three-week-old daughter, the second illegitimate child that he had had with Jean Dugold, the first of which was five years old. Dugold sent word to Robertson that she was unable to support the youngest child and asked him to take her away. Although Robertson claimed to have arranged for a woman to nurse the child, he also declared that his intention in rolling the clothes about her face was to smother her, and he anticipated she would be dead before they reached their destination.³³

Three impoverished Irish immigrants were indicted for the murder and desertion of an eight-year-old boy who was very ill. Mary Morran, her two sons James and Michael and a family friend, Francis Connel, had landed at Glasgow from Ireland and were destitute. According to James Morran, the victim's surviving brother, Michael had been very ill with a bowel complaint before leaving Ireland and had died on the road. Being strangers to the area, they did not know where to go for assistance and so left the body of the deceased in a ditch. However, according to the medical report, while the victim had obviously been in a state of debility before death, he died from an 'obstruction to respiration' believed to have been the consequence of being left in the ditch.³⁴

Ridding themselves of inconvenient illegitimate offspring was not the only motive for parents to kill their children. Isabella Rae, a widowed mother of four children and living in the village of Camelon in Stirlingshire, was unable to cope after her husband's accidental drowning shortly before her youngest son, and victim, had been born. The humiliation of being in debt was, she

³³ NRS, AD14/48/239 Precognition against James Robertson for the crime of murder, 1848.

³⁴ NRS, AD14/47/139, Precognition against Mary Morran, James Morran, Francis Connel for the crime of murder, 1847.

declared, too much for her and she no longer wanted to live. She told her daughter that she would be 'none feared to die, if it was not for leaving her dear bairn behind her to be ill guided after she was awa'. She subsequently took her two year old son's life in the canal before attempting to take her own.³⁵

The murder charge against Rae was not proven but in a similar case in 1860 the accused was found to be insane. Elizabeth Morrison attempted to take her own life as well as the lives of two of her nine children. Morrison, a mason's wife living in the village of Laurieston, Stirlingshire, declared that she intended 'to go to the canal with [the children] and to fling myself into the canal', and she added that she did not then know which of the bairns she was to take into the canal with her; She felt that she 'could not go a fighting and working with the bairns as I had been doing. I thought we were all to be burned, both my bairns and myself and that it would be better that we should be drowned.'³⁶

Insanity and the homicide of children.

In mid-nineteenth-century Scotland legal terms Insanity, or 'the excuses for crimes arising from the state of the Pannel', may infer that the pannel was insane at the time of the act or at the time of the trial: either unable to distinguish between right and wrong, or not a fit object for punishment, or both. If insanity was of that 'perfect kind', which removed all reason and ability to tell right from wrong, there was a complete bar to any criminal prosecution and the pannel would be disposed of in a way that prevented any

³⁵ NRS, AD14/45/372, Precognition against Isabella Rae for the crime of murder, or culpable homicide, 1845.

³⁶ NRS, AD14/60/108, Precognition against Elizabeth Morrison for the crime of murder, 1860.

future harm to others.³⁷ In 1859 an article in *The Journal of Jurisprudence* noted that the plea of insanity is one of the most difficult to deal with and baffles the wisest medical Jurists, although it was generally agreed that insanity frequently manifested itself in an overruling desire to commit suicide or to shed the blood of a friend or relative.³⁸

The court refused to allow Morrison's declaration to be read as they considered it had not been proven that she was in sound mind at the time it was emitted. The trial concluded with the Jury unanimously finding the pannel not guilty, but that she was insane at the time of committing the act and although acquitted, Morrison was to be detained in strict custody.³⁹

A study of madness and society in eighteenth-century Scotland has illustrated that explanations for, and causes of insanity originated with and were derived from the afflicted and the relatives of the afflicted rather than from the medical profession. Manifestations of madness can, therefore, provide valuable social insight. Contemporary observers, he argues, attempted to link mental conditions to physical events such as accidents or disease and emotional explanations included broken or unhappy marriages, bereavement, grief and disappointment. It is in this context that, by the end of the eighteenth-century, a suicidal personality and the act of self-murder had become to be viewed as an indication of, and as something that could be explained by insanity.⁴⁰

Women were thought to be particularly prone to insanity. The idea of women as being the weaker sex permeated religious and medical thought: the

³⁷ Alison, *Principles*, pp.644-661

³⁸ 'Insanity as a Legal Plea' *Journal of Jurisprudence*, 3 (1859), pp. 567-571.

³⁹ NRS, JC13/99 High Court Minute Book 1860, f. 119r

⁴⁰ R.A. Houston, *Madness and Society in Eighteenth-Century Scotland* (Oxford, 2000), pp.220, 271-284.

sixteenth-century translation of the New Testament into English referred to a wife as the ‘weaker vessel’,⁴¹ and the Hippocratic humoral medical theory, which defined women as being governed by cold and moist humours suggested they were particularly susceptible to ‘feeble-mindedness’.⁴²

The evidence of the Civil Courts and Asylum admission records, Rab Houston argues, indicates that many attributed causes of insanity were gendered. While some causes could apply equally to men and women, such as loss of livelihood, others, including emotional causes, such as bereavement, were more likely to be used as an explanation for female insanity. Significant stages in a woman’s reproductive life-cycle such as puberty, childbirth and menopause were also attributed causes.⁴³

Marion McLean, the wife of a fireman with the Caledonian Railway Company, and living in Glasgow, cut the throat of her eight month old son with a razor and also attempted to cut her own. McLean admitted to cutting her child’s throat and complained of labouring under bodily weakness. The Jury found that McLean had committed murder but had been insane at the time and she was found not to be a fit object for punishment.⁴⁴

Margaret Beaton, a labourer’s wife and living two miles south-west of Glasgow, was indicted for murder in 1867 by cutting the throat of her three month old son. A certificate to the effect that the accused was labouring under physical weakness and was unable to be examined was produced, and Beaton

⁴¹ *Bible*, 1. Peter, 3:7.

⁴² L. Zedner, *Women, Crime and Custody in Victorian England* (Oxford, 1991), pp.264-96; R. Porter, *Mind-Forg’d Manacles: A History of Madness in England from the Restoration to the Regency* (Harmondsworth, 1987), pp.105-9; E. Showalter, *The Female Malady: Women, Madness, and English Culture, 1830-1980* (London, 1985), pp.101-44. For a discussion of the association with mental illness, the reproductive functions and kleptomania see S. D’Cruze and L. Jackson *Women, Crime and Justice in England since 1660* (London, 2009), pp.40-41, 45.

⁴³ Houston, *Madness and Society*, pp.220, 271-284.

⁴⁴ NRS, AD14/56/68, Precognition against Marion McLean for the crime of murder, 1856.

was found not guilty. She was especially found to have been insane at the time of committing the crime. Her husband declared that since the death of her mother, Beaton's mind had been affected and she was sometimes quiet and sometimes outrageous but he had not thought of seeking help as he had thought she would get better.⁴⁵

Mary Luke, a carpenter's wife living in a rural parish in Roxburghshire, had seemed quite sound in mind until after she had given birth to her son. After the birth she became 'greatly depressed in spirits' and was said to have been incoherent in conversation, but she was not considered to be a danger to herself or others until she administered a lethal dose of laudanum to her two month old son.⁴⁶

The case of Marjory McGregor, who was indicted for killing her four-year-old son by stabbing him in the back of the neck with a razor, illustrates the religious origins of explanations for and attributed causes of insanity.⁴⁷ Houston argues that the significance of religious manifestations of insanity lie in the way observers reported them and it was by those holding the most strongly religious views, and during periods of heightened religious feeling that they can be observed. Although belief in diabolical possession was in decline by the end of the eighteenth-century, the experience of madness continued to be linked to religious turmoil and doubt, and was still perceived to be a cause, as well as a symptom of insanity.⁴⁸

Certainly, there had been a decline in church connection in Scotland between 1750 and 1840, but from the 1843 Disruption until the end of the

⁴⁵ NRS, AD14/67/51, Precognition against Margaret Beaton for the crime of murder, 1867.

⁴⁶ NRS, AD14/68/203, Precognition against Mary Luke for the crime of murder, 1868.

⁴⁷ NRS, AD14/61/7, Precognition against Marjory McGregor for the crime of murder, 1861.

⁴⁸ Houston, *Madness and Society*, pp.293-330.

nineteenth-century church membership increased at a greater rate than population growth and despite industrialisation and urbanisation. It has been argued that church going in Scotland did not decrease as town size grew, and only diminished when church building could not keep pace with rapid migration into urban areas.⁴⁹ Furthermore, secession churches had welcomed the arrival of Urban Revivalism from America from 1859 and prayer meetings were held in major industrial areas of Scotland and the wynds of Glasgow and Edinburgh, taking evangelical religious influence to the classes to whom access was previously limited.⁵⁰ Revival meetings were often emotional, involving impassioned preaching with reference to death and judgement and often occurred during times of social or economic uncertainty.⁵¹ There was, then, a growth of religious adherence during the period studied here.

Marjory McGregor had, according to her brother-in-law, been a loose character, had two illegitimate children, and had lived with other men before marriage to her current husband. McGregor had apparently been attending revival prayer meetings and had recently started singing hymns, praying, declaring that she was a lost sinner and had talked ‘incessantly of scripture and of her soul’. When asked why she had killed the child she answered ‘the devil tempted me and I know I will hang for it’.⁵² The jury found the pannel was insane and she was acquitted.⁵³

Men could also be susceptible to religious manifestations of insanity.

Donald Cameron, a gardener in the village of Muthill, Perthshire, was found to

⁴⁹ C. Brown, ‘Religion, class and church growth’, in W.H. Fraser and R.J. Morris (eds), *People and Society in Scotland 1830-1914* (Edinburgh, 1990), pp. 310-335.

⁵⁰ C. Brown, *Religion and Society in Scotland since 1707* (Edinburgh, 1997), p.105.

⁵¹ S.J. Brown, ‘Beliefs and religions’, in T. Griffiths and T. Morton (eds), *History of Everyday Life in Scotland 1800-1900* (Edinburgh, 2010), pp.135-136.

⁵² NRS, Precognition, Marjory McGregor.

⁵³ NRS, JC11/101, High Court Minute Book, Northern Circuit, f.54v

be insane, and not a fit object for trial, after he seized hold of his two year old son by the ankles, swung him round and dashed his head against the ground. Cameron declared that he did this to get rid of a spirit that he claimed was sitting on his son's head.⁵⁴

Religion may not have been the only recognised cause or manifestation of insanity, and other causes or circumstances may have been significant contributory factors, such as alcohol.⁵⁵ David Henderson, a fisherman in Wick, Caithness, was, according to his wife, seldom the worse of drink but when he had had a dram he could speak roughly and scold. Henderson had had a small quantity of alcohol after work on the Tuesday and on the Wednesday night killed his eight month old daughter by striking her head against the walls or floor of the house, fracturing her skull and breaking her arm. Henderson's wife declared that she awoke during the night to find her husband holding their two older children and crying that the devil would get them. Mrs Henderson was able to escape from the house with the two older children, leaving their daughter Catherine, the victim, inside with her father.⁵⁶

Explanations for Jane Rutherford's insanity encompass bereavement, child bearing and alcohol as well as religion. Rutherford's husband, a spirit dealer in Edinburgh, declared that she had been given to periodic fits of drinking for nine years. She had lost a daughter which, he claimed, had had an injurious effect on her mind. After periods of heavy drinking Rutherford would experience a state of low melancholy or become violent and vicious. She had given birth to a daughter to whom she had shown great affection, but when the child was seven weeks old Rutherford perceived that 'the day of judgement

⁵⁴ NRS, AD14/58/99, Precognition against Donald Cameron for the crime of murder, 1858.

⁵⁵ Houston, *Madness in Society*, pp.326, 279-281.

⁵⁶ NRS, AD14/69/243, Precognition against David Henderson for the crime of murder, 1869.

was proclaimed, and [she] saw a great crowd of people and heard cries of fire': she believed that monsters were going to devour the child and she thought it best to kill it herself.⁵⁷

The effects of excessive drinking had increasingly been linked to madness from the later eighteenth-century but, according to Houston, were generally perceived to be an appropriate explanation for male, rather than female insanity.⁵⁸ Robert Pattison, for example, an assistant inspector of the poor in Glasgow, who cut his 19-month-old daughter's throat with a razor, was much addicted to drink, and for four months prior to, and since his wife's death, was seldom sober. Pattison's ten-year-old step-daughter declared that he used to beat her and she was often afraid to go home. However, a medical examination concluded that Pattison was in a confused and perplexed state, that his eyes were rolling and symptoms pointed to temporary insanity. He was nervous, had a scared look, and his tongue was furred. When informed of which child he had murdered Pattison replied that she was the one that he loved the most. He was found not guilty, but insane at the time the act was committed.⁵⁹

Neglect and abuse.

Male perpetrators indicted for the homicide of children by violent means in Scotland during this period were a minority. For the alleged homicide of children by violence the ratio was one male to nearly five females, and for homicide as a result of long-term neglect the ratio was one male for every two females.

⁵⁷ NRS, AD14/49/157, Precognition against Jane Rutherford for the crime of murder, 1849.

⁵⁸ Houston, *Madness in Society*, pp.280-281.

⁵⁹ NRS, AD14/61/193, Precognition against Robert Pattison for the crime of murder, 1861.

Lynn Abrams argues that, in the eyes of the growing body of institutions tackling the maltreatment of children, child abuse and child neglect were gendered and, predominantly, viewed as a working class phenomenon. While women were the primary care givers, and held responsible for neglect, men were not associated with the domestic more intimate sphere and abuse from the father more frequently took the form of physical abuse outside the home. Neglect and starvation, it was believed, were a result of poverty, ignorance, incompetence and bad habits, such as drinking.⁶⁰

The historiography of child abuse, Abrams argues, is the history of the state's recognition of abuse, and its attempts to legislate to protect victims and prosecute offenders, which starts during the last quarter of the nineteenth century with the Prevention of Cruelty to Children Act of 1880. However, while legislation gave the issue of child abuse a high profile, and redefined the relationship between parent and state and parent and child by increasing interference, it was not absent beforehand, but existed within contemporary cultural beliefs and practices. Nevertheless, the paucity of records relating to the child's experience means that research into the history of child abuse has had to rely on official documents and the voice of the victim is absent.⁶¹

Abrams points out that, in Scotland the wilful neglect and cruel treatment of a child was already a crime punishable by imprisonment before the implementation of legislation.⁶² The item level descriptions of the Lord Advocate's Precognitions for cases that did not end in death suggest that this was an aggravation of assault, although a charge of assault was not always

⁶⁰ L. Abrams, *The Orphan Country: Children of Scotland's Broken Homes from 1845 to the Present Day* (Edinburgh, 1998), pp.207-17.

⁶¹ Ibid., pp.203-7.

⁶² Ibid., p. 207.

explicitly referred to in the Libel. The wording of the charge could vary and included ‘assault by a mother upon a child’; ‘assault, cruel treatment of a child by a parent’; ‘cruel and unnatural treatment of an infant child, with intent to destroy its life’.⁶³ According to Archibald Alison, in Scottish common law, as a wrongful act which is hurtful to people or property increasingly arises, it becomes the object of punishment. While such crimes as murder, culpable homicide, and assault, for example, were by the mid-nineteenth century embedded in law and had acquired separate names the physical abuse or assault of a child by its parent had not, by this time, however, been considered serious enough, or occurred so frequently that it should have acquired a separate legal term. Nevertheless, it was increasingly recognised that children were being assaulted by their parents in Scotland during this period, and while the surviving High Court records for cases which caused the death of the victim are created by adults for legal purposes, it is possible to glean some insight into the circumstances of such abuse.

There were four cases of the death of a child resulting from violence or neglect or both by a mother or step-mother in Scotland during this period. Barbara MacKillop and her son John were digging and gathering potatoes at Ferfergus Farm in Campbeltown parish in Argyllshire, in October 1845, but they were not making as much progress as McKillop had expected. Blaming her son for not working hard enough she beat him on the face and back with a grape or a spade and threatened that he would get no dinner. He died two weeks later from the injuries sustained to his back.⁶⁴ Jane Tweedle, a labourer on Lochlands Farm, Stirlingshire, had been digging potatoes and got into a

⁶³ NRS, ‘NAS Catalogue’ <http://www.nas.gov.uk/onlineCatalogue> [accessed 17th June 2013].

⁶⁴ NRS, AD14/45/245, Precognition against Barbara Mackillop for the crime of murder, 1845.

passion when her six-year-old son brought her nothing more substantial than a flask of tea for her lunch, kicking him several times with stout leather shoes.⁶⁵

Other incidents of abuse were sustained over longer periods of time. Two-year-old Mary Farrally died of starvation in the care of her step-mother, Catherine McGavin, in the village of Broxburn, Linlithgowshire, and had also been daily maltreated and kept dirty. McGavin had had custody of the child for roughly one year, was pregnant herself, and according to the lodging house keeper had ‘seemed to have some malice toward [the child] on account of its being the child of her husband’s former wife’.⁶⁶

Catherine Ann Gray was the three-year-old illegitimate daughter of Helen Wilson, and living in the largely rural parish of Kirkmaiden in Wigtownshire, who had married a man other than the child’s father. While Wilson claimed only to have chastised the child occasionally with her open hand, the child had allegedly been beaten with a whip, scolded with boiling water, had her head submerged in a tub of water, and her head dashed against the sides of the tub, until she was breathless and exhausted.⁶⁷

Although the sample size of homicides of children by a parent is too small to be conclusive, the gender distinction between the types of physical abuse children suffered at the hands of mothers and at the hands of fathers, referred to by Abrams, is not apparent in the above cases. Certainly, women were capable of the physical abuse, as well as the neglect of the children for whom they were responsible, and men could be equally capable of neglect. William

⁶⁵ NRS, AD14/58/107, Precognition against Jane Tweedle for the crime of culpable homicide, or assault to the injury of the person, 1858.

⁶⁶ NRS, AD14/46/296, Precognition against Catherine McGavin for the crime of murder, or culpable homicide, or cruel and unnatural treatment of a child of tender years, 1846.

⁶⁷ NRS, JC26/1847/206, Trial Papers relating to Helen Wilson for the crime of culpable homicide, 1847.

Henderson, a labourer in the parish of Ancrum, Roxburghshire, was initially charged with barbarous neglect and homicide of his 15-month-old son, although the aggravation was dropped and he admitted culpable homicide. Henderson declared that his wife had died a year previous and he had three children: the oldest being little more than three years and the youngest three months at the time of her death. A servant to Henderson declared that she often saw him whip the child with a leather strap, and that the child was very frightened of his father, and began to suffer fits as a result of the beatings.⁶⁸

Conclusion.

The study of homicide cases in which women were charged with killing children after caring for them, even for a short time, has illustrated how complex the phenomenon of illegitimacy could be in mid nineteenth-century Scotland, and that, while it is impossible to determine the intentions of young men and women at the outset of their intimacies, when pregnancy resulted expectations of marriage were acknowledged as well as denied by men, and women's narratives certainly suggested that marriage was an expected outcome. While the small number of cases studied here appear to support Smout's argument that, by the middle of the nineteenth century at least, casual sexual encounters had some level of acceptance, and that farm servants represented a significant proportion of perpetrators during this period, it is not possible to determine here if the phenomena can be attributed to the rural practice of fertility testing.

What is also apparent from the small sample studied here is that formal and informal support networks were available to women in the form of paid nurses

⁶⁸ NRS, AD14/44/108, Precognition against William Henderson for the crime of culpable homicide, 1844.

or from immediate family, and, as James Robertson's testimony suggests, some fathers, where paternity was not in doubt, were prepared to contribute financially toward this.

As Blaikie suggests, some sort of support network would need to be in place may in order for society to sustain high levels of illegitimacy, and, while this sample size is too small to be conclusive, this appears to have been a factor in some of the cases of this type of homicide studied here. This qualitative analysis of homicide cases where parents allegedly killed their children has provided valuable insight into the complex relationships between men and women and has suggested that, despite the strict moral code of the Scottish Kirk, casual sexual relationships and premarital pregnancies were not uncommon, and several of the child victims had older, illegitimate siblings for which formal and informal support networks existed. It is interesting too, that while the surviving records suggest that some fathers appeared willing to legitimise their children by marrying the mother, all support was withdrawn or denied when paternity was questioned. It was when these relationships broke down and expectations were not met, causing or threatening greater poverty, that suspicion came to rest on mothers whose children had died, resulting in indictments for murder and culpable homicide.

While at first glance this study supports Kilday's assertion that Scottish women were violent in the ways in which they killed their offspring, a more detailed examination of the cases problematizes her conclusions which were based on potentially misleading sources. Although the majority of victims were killed as a result of some form of physical force, death often resulted from neglect and abuse which, while recognised as an aggravation of assault in

Scottish law during this period, had not yet raised the level of concern to be recognised as a crime in its own right or been legislated against. Interestingly, the most violent cases, where mothers, and one father, murdered a child with knives or razors were found to be a product of insanity. The attributed causes and explanations for the cases studied concur with Houston's thesis that explanations for insanity were, by this time, increasingly associated with physical and emotional events or disease. Some of these were gendered, such as a woman's child-bearing career. Many, however applied to both men and women, such as religion, bereavement or the long-term effects excessive alcohol consumption.

The qualitative evidence for this type of homicide during the period 1836 – 1869 suggests an indirect, tentative link with the characteristics of the process of industrialization in Scotland. A migrating population, whether employed in larger, consolidated farms in the midland regions, or factories in industrialized regions, engaged in casual sexual encounters with or without expectation of marriage, and with or without existing support systems in place. In this particular scenario, behaviours of young men and women of child bearing age tended to continue according to existing attitudes and practices up to a point. They engaged in premarital sex, but when pregnancy resulted, while women may still have expected marriage, men were often in a position in which they could avoid responsibility. Nevertheless, while the scenario of a mother with an illegitimate child facing limited choices is an enduring one historically, the new urban environment also presented opportunities for interaction with other women and the creation of support networks, making unlawful killing less likely.

Chapter 4. Intra-familial Homicide: Spouses and other adult family members.

Introduction.

The process of industrialization in Scotland from the second half of the eighteenth century fundamentally changed the social structure and altered the dynamic of family life.¹ Pre-industrial Scotland was largely rural and practicing a centuries-old and backward farming system: small settlements of between five and 20 families farmed leased land, shared tools and labour, and depended on family and community for survival.² Agrarian change toward larger consolidated farms and a rise in waged farm labour increased the migration of population in search of employment. Adaptation to overcrowded and impersonal urban accommodation eroded the previous dependence on the established kirk, family and community, thus removing earlier systems of avoiding or controlling conflict, such as the parish Kirk Sessions court and its punitive practices of humiliation and banishment. The new urban and industrial environment threatened the patriarchal values of pre-industrial Scottish society, and the availability of cheap whisky facilitated a drinking culture. It would be cogent to suggest, therefore, that there was a link between industrialization, urbanization, and homicide within the family in Scotland during this period. The aim of this chapter is to establish if there was an existing culture of violence by men against women that was exacerbated by the changing behaviour facilitated by, and opportunities for different criminal scenarios and social interactions within, the urban and industrial environment.

¹ T.M. Devine, *The Scottish Nation 1700-2000* (London, 2000), p.107.

² T.M. Devine, *The Lowland Clearances: Scotland's Silent Revolution 1760-1830* (East Linton, 2003), pp.13-21.

Can similar factors be said to have made the unlawful killing of other adult kin more or less likely?

There were 182 perpetrators accused of killing a partner, spouse or other family member in Scotland between 1836 and 1869. The breakdown, per 1000,00 head of population per region, is shown in Table 4.1:

Table 4.1: Breakdown of intra-familial homicide of spouses and other family members per region (offenders per 1000,000 head of population), Scotland 1836-69.

Region	Northern Regions	S	SW	SE	EM	WM	Other
Intra-familial – Spouses	0.04	0.07	0.12	0.2	0.06	0.11	-
Intra-familial – Other family	0.02	0.03	0.02	0.04	0.05	0.01	1

Northern Regions – north, north-east, north-west

S – southern

SW –south-western

SE – south-eastern

EM- east-midland

WM –west-midland

Other – on board vessel

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69.

The highest number of offenders for this type of homicide is concentrated in the south-west and south-east, suggesting a link with the characteristics of industrializing society. By examining the cases of intra-familial homicide involving spouses and other family members, this chapter aims to establish the extent to which the social and built environment that was evolving as a result of industrialization in Scotland during this period, and the impact this had on relationships, behaviour and social interaction was a factor. The first part of the chapter will focus on the homicide of a partner or spouse and the second part will examine cases in which other adult kin were the victims

Spousal Homicide

128 individuals were indicted for the homicide of their spouse or partner during the period 1836-69: 107 of which were male and 21 female. Given that violence was perceived to be a male characteristic and confrontational, while poisoning was a more covert and non-confrontational method of killing associated with women, it would be useful to quantify and discuss these separately to establish areas of conflict and disharmony within conjugal relationships during mid-nineteenth-century Scotland. A breakdown of the *modus operandi* of males and females is shown in Table 4.2 below:

Table 4.2: Breakdown of *modus operandi* for male and female perpetrators 1836-69.

<i>Modus Operandi</i>	Total	Males	Females
Assault	115	102	13
Poisoning	12	4	8
Neglect	1	1	-
Shot	1	1	-

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69.

Table 4.3: Regional breakdown of *modus operandi* (male and female) 1836-69.

<i>Modus Operandi</i>	Northern Regions		S		SW		SE		EM		WM	
	M	F	M	F	M	F	M	F	M	F	M	F
Assault	8	-	7	-	40	3	30	4	9	3	8	3
Poisoning	1	2	-	-	1	4	1	1	1	1	-	-
Neglect	-	-	-	-	1	-	-	-	-	-	-	-
Shot	-	-	-	-	1	-	-	-	-	-	-	-

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69.

Clearly, the majority of spousal homicides in Scotland during this period were allegedly committed by men and, while four men were indicted for poisoning their wife or partner, the most common *modus operandi* for men was violent assault. The majority of both violent and poisoning offences were concentrated around the industrial and urban central belt, reflecting the wider geographical dispersal of homicide as illustrated in Figure 2.2, and concurring with King's quantitative analysis. A closer look at the circumstances around the incidences of spousal murder in Scotland during this period is needed to establish the extent to which these homicides were a result of conflict created or exacerbated by the evolving industrial and urban social environments.

Lethal Violence

It has been argued that a redefining of notions of masculinity and femininity, and tension between the sexes during the late eighteenth and early nineteenth century period of industrial growth, resulted in a contradiction between patriarchal ideals and the increasing reality that a wife's income was essential for the family economy. A woman's ability to earn money facilitated greater female freedom and independence, and resulted in a 'struggle for the breeches': competition over power and control of family resources, often resulting in violent attempts to re-assert male authority. By the early nineteenth century the new ideologies of separate spheres for males and females, where men joined together in the public sphere of politics and women were expected to keep to the private sphere of the home, had taken root. However, the reality of putting these separate spheres into practice was a class privilege, denied to the working classes: working-class men did not have

political power and working class women, especially in the relative poverty of Scotland, had to work outside the home.³

While the process of industrialization facilitated the development of new technologies, presenting women with greater opportunities for work, and employers with a supply of cheaper, female labour, artisans were unable to follow the traditional path of apprentice to journeyman, and the progression to master before marrying. Increasingly unable to afford their own workshops, artisans generated trade solidarity through a bachelor journeyman culture of drinking rituals and, in marriage, relying on the woman's earnings to support the family. The bachelor lifestyle could generate misogyny and violence against rival female workers and wives who competed for time and money spent on the bachelor culture.⁴ The process of industrialization and urbanization, therefore, altered the dynamic between husband and wife, changed behaviours and increased the likelihood of violent conflict.

A significant cause of conflict within marital relationships was the assertion of patriarchal ideals, where men are the head of the household, the primary providers and in command of those under his roof, and these notions of familial hierarchy are alluded to in cases of lethal violence by men against their spouse which ended in death during this period. Alexander Lang, for example, a 48 year old spirit dealer in Glasgow, had been married to his wife, Isabella, for 15 years. Lang declared that his wife was given to drinking, and was in the habit of taking spirits from his shop. On the day of the fatal assault Lang declared he had told his wife to leave the shop as she was frightening the customers, and when she refused to move he gave her 'a dainty thump' about

³ A. Clark, *Struggle for the Breeches: Gender and the Making of the British Working Class* (London, 1995), pp. 1-6, 64.

⁴ *Ibid.*, 64-87.

the shoulder, after which she went to bed. According to a 16 year old servant, Anne Robertson, however, Mr Lang had been drinking a lot and was in the habit of striking his wife. Robertson declared that Lang had given his wife the fatal beating with a pair of tongs because she had left the shop without his permission.⁵ William Pearson and his wife were drinking together in a public house in Dundyvan, a village that had sprung up around coalmines and ironworks in the area. The couple appeared to be on good terms until Pearson asked his wife to open the door. When she refused, Pearson became angry and dealt her several severe blows.⁶

Alexander Brock, a 24-year-old engineer living in Glasgow, complained that his wife of five years would often absent herself for weeks at a time as a result of intoxication: an issue for which he had often given her ‘wholesome advice, tho with no effect’. He also complained that he often could not account for where his wages had gone, and had previously had to ask for an advance on his wages as a result of her ‘misapplying’ money he had given her for victuals. Mary MacDougall, Brock’s neighbour, declared that the couple often quarrelled, especially if either had been drinking. Mr Brock, she declared, was, like any other working man, in the practice of treating himself to a dram now and again, but had been heard to complain about his wife behaving badly. These complaints ‘were such as a husband might make, whose wife behaved badly and becomes undutiful’. Brock was charged with, although found not guilty of, killing his wife by assaulting her with his fists and pushing her down the stair after she had spent money intended for articles for the house.⁷

⁵ NRS, AD14/48/98, Precognition against Alexander Lang for the crime of murder, 1848.

⁶ NRS, AD14/52/94, Precognition against William Pearson for the crime of murder, 1852.

⁷ NRS, AD14/50/14, Precognition against Alexander Brock for the crime of culpable homicide, 1850.

Elizabeth Miller lodged with Charles Mackay, a 24-year-old ham curer in Glasgow, and his wife, Catherine. Miller declared that she had known Mackay and his wife for about 18 months and that they were both accustomed to taking a dram, especially on Saturdays and Sundays, and frequently had violent quarrels. They had been drinking leading up to the alleged incident and, it was declared, Mackay's wife had been 'flyting' or scolding him, and Mackay stabbed her when she would not give him breakfast.⁸ Alexander Barclay, a calico printer living in Glasgow, also complained about his wife not performing her domestic duty. A neighbour declared that Barclay was often drunk and would beat his wife two or three times a week. When challenged about his behaviour, Barclay complained that it was 'angersome' to come in to breakfast and to get no 'kitchen' or proper food.⁹

Robert Wallace, a 42-year-old sailor, returned to his Dundee home from a voyage to find his wife drunk, and allegedly assaulted her with fists before throwing her down the stairs. Wallace had been heard raging at his wife for drinking and spending so much money, calling her a 'dirty bugger' and complaining about coming home cold and hungry after a voyage, and to a dirty house. Mary Martin, a neighbour, declared that the two were often drunk and Wallace was often heard scolding his wife, but he had not previously been known to use violence.¹⁰ Ann Gibson was assaulted by her partner, William Russell, in the apartment they shared in Old Monkland, Lanarkshire, when she removed his shoes and neck cloth to prevent him going out for more whisky.¹¹

⁸ NRS, AD14/43/222, Precognition against Charles Mackay for the crime of murder, 1843.

⁹ NRS, AD14/47/458, Precognition against Alexander Barclay for the crime of murder, 1847.

¹⁰ NRS, AD14/53/344, Precognition against Robert Wallace for the crime of murder, 1853.

¹¹ NRS, AD14/52/106 Precognition against William Russell for the crime of culpable homicide, 1852.

Similar sources of conflict can be identified in all of the above cases and can be summarised as the use of resources, the wife not performing her conventional duties, and undermining her husband's perceived authority and perceptions of what the duty of a wife should be. While husbands appear to be harbouring traditional, or pre-industrial patriarchal values, and resenting challenges to their authority from wives and partners in Scotland during this period, there were clearly other cultural factors involved: such as the ubiquity of whisky drinking.

Alcohol was a common factor in all the above cases, and in 82 of the overall 102 cases where men killed their partner or spouse by violent means. Typical scenarios can be broadly classified as cases where the husband was a habitual drinker and became violent towards his wife as a result; where both husband and wife were given to drink and quarrelled when under the influence; and where the wife was given to drink and suffered violence because of it. However, while drunkenness could be used as an excuse for violence, and often exacerbated an already volatile situation, it was not necessarily a causative factor in conflict that resulted in the homicide of a spouse, and quarrels were likely to erupt for a variety of reasons.

William Crossan, a 48-year-old quay labourer in Glasgow, had been drinking and beat his wife with his fists and feet for having taken money from him.¹² John Stevens and Alice McDonald had different religious views. Stevens was a protestant and McDonald was Catholic, but they lived happily together in Glasgow without an angry word until each 'fortnightly paynight' when Stevens, a 48-year-old hammer man, got drunk and quarrelled with his

¹² NRS, AD14/69/74, Precognition against William Crossan for the crime of culpable homicide, 1869.

wife. According to their landlady, when drunk, Stevens had abused his wife for being a papist, although the quarrels were not always about religion.¹³

John and Agnes Davidson quarrelled over chastising the children. The accused, John Davidson, a 36-year-old miner in the manufacturing town of Dalry in Ayrshire, declared that three of his four children were quarrelling at breakfast and he scolded the one he thought to be at fault. His wife complained that the wrong child had been chastised and, Davidson declared, she knocked him to the floor and he struck her across the head in retaliation. The victim's sister, however, declared that Davidson would often drink for two or three days at a time after paydays and had been known to beat his wife when drunk.¹⁴

It was also often the case that the quarrels were about the very fact of drinking. William Moscrip, 52 years old, and the proprietor of a Berwickshire inn, declared that his wife had been drinking and got increasingly drunk as the evening advanced. He quarrelled with her for being so drunk and 'high words passed' between them. Mary Ford, a servant to Moscrip, declared that when the victim, Margaret Moscrip, got drunk, which was more than once a fortnight, she became very ill-natured and taunted her husband. The couple always quarrelled when the wife drank and it was for this reason that they quarrelled.¹⁵ Stewart Dunlop, a 34-year-old baker, had lived with Mary Niven in Paisley for 15 years as man and wife before he was tried for and found guilty of Niven's death by assaulting her with fists and feet. Dunlop declared that he found fault with Niven because she had been constantly drunk for

¹³ NRS, AD14/50/41, Precognition against John Stevens for the crime of murder, 1850.

¹⁴ NRS, AD14/52/15, Precognition against John Davidson for the crime of culpable homicide, 1852.

¹⁵ NRS, AD14/68/294, Precognition against William Moscrip for the crime of murder, 1868.

about two weeks, and had paid for the drink by pawning articles from the house.¹⁶

However, the significance of drunkenness is particularly evident where couples were said to live on good terms together except when drunk, and then they quarrelled. Thomas Skirving, a 45-year-old chimney sweep living in Edinburgh, was accused of murdering his wife Jean by assaulting her with a brush in 1863. The victim's niece, Elizabeth Munro, declared that her aunt was good tempered when sober but could be fiery when drunk, and the accused was drunk more often than not. According to Munro, the couple lived agreeably enough when sober but quarrelled when drunk.¹⁷ Alexander Logan, a 20-year-old grocer, and Mary Roberts had lived together as man and wife in Edinburgh for approximately 18 months. According to Robert's father, the couple lived together quite happily initially, but both were addicted to drink and when drunk they quarrelled and fought.¹⁸ Walter Ronaldson, a 49-year-old mason, was accused of killing his wife in Edinburgh in 1856 during a drunken quarrel. Ronaldson's brother declared that the couple were both equally given to drink and if the accused was responsible for his wife's death it must have been while he was drunk, because Ronaldson was an affectionate husband when sober and thought a great deal of his wife.¹⁹

Neighbourhood space, such as the street could, by day, be a place for social interaction and social support but by night could hold greater uncertainties and

¹⁶ NRS, AD14/52/114, Precognition against Stewart Dunlop for the crime of murder, 1852.

¹⁷ NRS, AD14/63/293, Precognition against Thomas Skirving for the crime of murder, 1863.

¹⁸ NRS, AD14/51/572, Precognition against Alexander Logan for the crime of culpable homicide or assault to the danger of life, 1851.

¹⁹ NRS, AD14/56/268, Precognition against Walter Ronaldson for the crime of murder or assault to the danger of life, 1856.

dangers for women.²⁰ High Court of Justiciary records for mid-nineteenth-century Scotland suggest that this danger extended to public roads more generally. James Wright, a cow-feeder at Patterton Farm in Eastwood parish, Renfrewshire, had been drinking with his wife in a public house in 1859. The inn keeper declared that the pair seemed to be sober and were on good terms when they left but had taken some spirits with them. Wright was accused of murdering his wife on the road leading from Stewarton turnpike road to Patterton Farm, although the Libel was not proven.²¹ Andrew Paterson, a 43-year-old overseer from Honeykirk in Wigtownshire, had been in a public house, drinking with an acquaintance when his wife came in and told him he was to go home and not to 'sit there drinking with blackguards'. The inn keeper's daughter declared that when his wife arrived, Paterson tried to close the door on her but she pushed it open and pulled him out: he assaulted her on the way home.²² James Crosby, a 67-year-old hawker in the village of North Knapdale, Argyllshire, was indicted for the murder and assault of his wife on a public road in South Knapdale parish in 1855. Crosby declared that he and his wife travelled the country, selling his goods. He had been drinking before meeting his wife from the steamer and his wife made some remarks on his conduct, and when he asked his wife for his money she refused, and he 'gave her a great deal of abusive language'.²³ Robert Stewart, a labourer or hammer-man in the village of Larkhall, Lanarkshire, was convicted of killing his wife on the street after they had been drinking in a public house. A neighbour of the

²⁰ S. D'Cruze, *Crimes of Outrage: Sex, Violence and Victorian Working Women* (Manchester, 1998), pp.32, 35.

²¹ NRS, AD14/59/156, Precognition against James Wright for the crime of murder, 1859.

²² NRS, AD14/48/141, Precognition against Andrew Paterson for the crime of murder, 1848.

²³ NRS, AD14/55/143, Precognition against James Crosby for the crime of murder or assault to the serious injury of the person, 1855.

couple declared that the victim was a quiet, industrious and motherly woman but her husband was not kind to her, was very much given to drink, and abused her daily.²⁴ William Murray, a labourer in the rural parish of Smailholm, Roxburghshire, declared that, after drinking in a public house, his wife was the worse of drink and she fell several times along the road. At one point she fell, taking him down with her and he fell partly on her and partly on his umbrella, which was broken by the fall.²⁵

Declarations of the accused are not reliable evidence of what happened but, rather, are evidence of what the accused wanted the interrogator to believe happened, and only on rare occasions did the victim survive long enough to give their own version of events. Much of the analysis of the cases examined here, therefore, depends on testimonies of other witnesses as well as that of the principal party or parties: for cases of spousal homicide these witnesses were very often neighbours. It has been argued that there was a ‘privatization’ of domestic violence during this period. Martin Wiener suggests that while ‘public’ male violence was decreasing, ‘private’ domestic violence was not,²⁶ and Robert Shoemaker, based on a study of eighteenth-century London, argues that by the end of the eighteenth century people no longer knew their neighbours or took an interest in their activities.²⁷ Leah Leneman, too, suggests that while nineteenth-century elites were finding wife-beating increasingly unacceptable, it was simply being driven behind doors where it

²⁴ NRS, AD14/59/196, Precognition against Robert Stewart for the crime of murder, 1859.

²⁵ NRS, AD14/45/200, Precognition against William Murray for the crime of murder, 1845.

²⁶ Wiener, *Men of Blood*, pp.2-3.

²⁷ R. Shoemaker ‘Male honour and the decline of public violence in eighteenth-century London’, *Social History*, 26 (2001), pp.98, 126.

was hidden from social surveillance.²⁸ Domestic violence had thus become a privatized affair.

Foyster, however, argues that domestic violence may have started as a quarrel between two people in a domestic location, but it was rarely possible to prevent it from becoming a public concern. Rather, throughout the period 1660 – 1857, becoming involved in the marriages of neighbours, while not guaranteed, was an expected part of everyday interaction.²⁹ The evidence of the Lord Advocate's Precognitions for mid-nineteenth-century Scotland suggests that this was often the case. One of the strengths of the Precognitions is the level of detail about the lives and relationships of individuals living in close proximity but witness statements also provide valuable information about the living conditions of those involved.

It has been argued that typical working-class urban housing in Scotland was multi-occupancy, overcrowded tenement blocks several stories high.³⁰ The Precognitions confirm this and go into a little more detail about how this worked in practice. The house, in which James Wemyss lodged, for example, consisted of two apartments separated by a wooden screen. There were five beds in one room for lodgers and the landlady slept in the kitchen.³¹ The proximity of neighbouring houses also precluded privacy: Samuel Wallace's neighbour declared that she lived so close to the house of the accused that she

²⁸ Leah Leneman, '“A Tyrant and a Tormentor”: violence against wives in eighteenth- and early nineteenth-century Scotland', *Continuity and Change*, 12, no. 1 (1997), pp.31-32.

²⁹ E. Foyster, *Marital Violence: An English Family History, 1660-1857* (Cambridge, 2005), pp. 168-171.

³⁰ T.C. Smout, *A Century of the Scottish People 1830-1950*, pp.32-36.

³¹ NRS, AD14/40/417, Precognition against James Wemyss for the crime of murder, 1840.

could put her hand out of the window and touch its gable, and she was able to hear clearly any quarrelling that took place.³²

Given this close proximity, neighbours were often witnesses to or intimately involved in each other's day to day lives, and frequently testified to the matrimonial harmony or discord of the accused and victim. James Simpson, a neighbour of Robert Stirling Mudie, a 34-year-old sawyer, for example, declared that since Mudie had moved in they had been annoyed by quarrelling from his house, especially on Saturday nights and Sunday mornings. They regularly heard Mudie's wife screaming and his children often took refuge in Simpson's house.³³ A neighbour of James Jack, a 48-year-old tailor living in Glasgow, and convicted of killing his wife in 1851, declared that the victim was an industrious woman and that Jack was a good enough man when sober, but he was never long sober. Jack spent most of his wages on strong drink and was intoxicated at least two or three days of the week. When drunk he cursed and swore at his wife and often thrashed her.³⁴

While intimate knowledge of a neighbour's affairs may have been unavoidable, intervention was not always forthcoming. Clark argues that while male neighbours sometimes interfered in marital quarrels it was usually female neighbours who did so. However, even female neighbours did not always interfere if quarrelling was a common occurrence, and sometimes they only did so if the victim screamed loudly enough or if the violence was thought to be unusually severe.³⁵ According to Foyster, the noise of the violence could motivate neighbours to intervene, especially if it was thought that the violence

³² NRS, AD14/54/348, Precognition against Samuel Wallace for the crime of murder, 1854.

³³ NRS, AD14/51/567, Precognition against Robert Stirling Mudie for the crime of murder, 1851.

³⁴ NRS, AD14/51/2, Precognition against James Jack for the crime of culpable homicide, 1851.

³⁵ Clark, *Struggle for the Breeches*, p. 85.

was reaching lethal levels. However, fear of the violent husband could prevent intervention and, concurring with Clark, Foyster suggests that such occurrences could be so common that neighbours took no notice.³⁶ A case in point is James Stewart's lodging house keeper, who declared that she had often had to interfere and had threatened to call the police about Stewart's treatment of his partner but had not done so until the fatal incident. The accused and victim had both been drinking and when Stewart's wife refused to give him some money, he dragged her out of bed and across the floor. The landlady became alarmed that Stewart was killing his wife and ran to the door to shout for the police.³⁷ A neighbour of Robert White, a 36-year-old underground 'oversman', accused of murdering his wife in 1856, declared that her house was divided from that of the accused by a thin brick partition and she was able to hear noises from his house, including the fatal incident, quite clearly. Although she asked her husband to go to White's house during the struggle, he did not rise and neither did she. Such quarrels and noises in White's house were a common occurrence and she did not therefore pay particular attention to it.³⁸ William Tait declared that his neighbours, Thomas and Margaret Templeton, were much addicted to drink and when under its influence were given to quarrel and fight, 'the one with the other and both alike lead,' Their fighting was generally on a Saturday night and was so loud that he repeatedly rapped on the floor. The noise would desist for a while and then start up again.³⁹ Janet Brown, neighbour of Walter Ronaldson, 49-year-old mason, convicted of killing his wife in 1856, declared that Ronaldson's wife had often

³⁶ Foyster, *Marital Violence*, pp. 198-200.

³⁷ NRS, AD14/66/67, Precognition against James Stewart for the crime of murder, 1866.

³⁸ NRS, AD14/56/113, Precognition against Robert White for the crime of murder or culpable homicide, or assault to the danger of life, 1856.

³⁹ NRS, AD14/40/228, Precognition against Thomas Templeton for the crime of murder, 1840.

complained of the 'ill usage' she received from her husband and Brown had spoken to Ronaldson about this. Brown declared she would have interfered more often but he was a very passionate man and she was afraid to speak to him much about it.⁴⁰

The testimony of neighbours suggests that marital violence was a common occurrence and also gives some insight to the way in which the accused and victim were perceived. However, the actual levels of domestic abuse that women suffered at the hands of their husbands or partners during the nineteenth-century, and the degree to which such violence was considered acceptable is a moot point. Elizabeth Foyster correctly points out that homicide records are not an accurate indicator of levels of domestic violence as men and women were more likely to experience less severe forms of violence in their day to day lives than ever be involved in lethal violence. Foyster argues that the recognition of male violence as problematic can be traced as early as the seventeenth- and eighteenth centuries and there was a greater degree of continuity of intolerance to violence against wives than has been acknowledged. Although a certain level of aggression was an essential attribute of manhood, violence toward wives was considered shameful conduct and notions of male self-control can be identified in the seventeenth as well as the nineteenth centuries.⁴¹

It has been argued, however, that this intolerance did not extend to Scotland to the same extent, and men who beat their wives were dealt with leniently by the courts while wives were portrayed as provocative by the press. Gender ideals that valued aggression as a masculine trait were evident in Scotland

⁴⁰ NRS, AD14/56/268, Precognition against Walter Ronaldson for the crime of murder, or assault to the danger of life, 1856.

⁴¹ Foyster, *Marital Violence*, pp. 8, 34, 63-70.

during the nineteenth-century and the relationship between violence and masculinity was flexible.⁴²

In Scotland, for treatment of a spouse to be considered cruel in legal terms, and to be grounds for separation, the victim would need to be exposed to bodily hurt. There was a tendency for this to mean physical violence, and it was noted in 1804 that ‘the more delicate ... sufferings of the mind come not within the cognizance of any earthly tribunal’. Nevertheless, this view was not necessarily universal and separation had been granted to wives in cases which did not involve physical acts of violence.⁴³ *A Treatise on the Law of Scotland as Applicable to the Personal and Domestic Relations*, published in 1846, and the leading work on the subject until the twentieth-century, suggests that it is the result of the action rather than the act itself that defined an act of cruelty: ‘mere austerity of temper, petulance of manner, rudeness of language, ... even occasional Salles of passion, will not amount to cruelty’, but threats which are ‘of such a character, that they render cohabitation unsafe, by shewing [sic] the settled purpose of the utterer to act on them’ would be grounds for judicial separation. That is not to say, however, that other types of behaviour were not considered cruel. Fraser acknowledged a husband’s right to confine his wife to the house and preventing her from engaging in pursuits of which he has rational grounds for disapproving, but refusing the necessities of life would be considered cruelty.⁴⁴

⁴² A. Hughs, ‘The Non-criminal Class: Wife-beating in Scotland (c1800-1949)’, *Crime, History and Societies*, 14, no.2 (2010), pp.31-41

⁴³ R. D. Ireland, ‘Husband and Wife: Divorce, nullity of marriage and separation’, in The Stair Society (ed.), *An Introduction to Scottish Legal History* (Edinburgh, 1958), pp.97-98.

⁴⁴ P. Fraser, *A Treatise on the Law of Scotland as Applicable to the Personal and Domestic Relations* (Edinburgh, 1846), pp.453-462.

These definitions were not without qualification and harsh treatment was not considered cruel if it was deserved. According to Fraser, while ancient law gave a husband the right to chastise his wife by corporal punishment, it was inconsistent with 'modern' manners.⁴⁵ Nevertheless, his discussion around what behaviour is deserving of punishment is ambiguous. Where cruelty falls short of gross personal violence by a husband toward his wife, he could claim that his wife's conduct was improper, that he was provoked, and that he was exercising his lawful rights as head of the family. Fraser suggested that such provocation included 'giving scurrilous language and maltreating him' and saying 'provoking things to [a] husband which made him quarrel with her'. While acknowledging that not all of a wife's failings should be punishable, Fraser goes on to say that 'if the conduct of the wife is inconsistent with the duties of that character, and provokes the just indignation of the husband, and causes danger to her person, she must seek the remedy for that evil, so provoked, in the change of her own manners.'⁴⁶

According to Fraser, then, provocation was defined by the extent to which a wife failed to meet her expected social role. Lucia Zedner defines the feminine ideal as being closely tied to her role within the home: caring for her husband, raising children, and the preservation of moral and religious values within the family.⁴⁷ Callum Brown argues that this role, as defined by eighteenth- and nineteenth-century Scottish evangelicalism, was as the industrious, gentle, benevolent, moral guardian of the family, whose function was to train her children, and combat the evils of drink.⁴⁸

⁴⁵ Fraser, *Treatise*, p.460.

⁴⁶ *Ibid.*, pp.453-462.

⁴⁷ L. Zedner, *Women, Crime, and Custody in Victorian England* (Oxford, 1991), p.12.

⁴⁸ C. Brown, *Religion and Society in Scotland since 1707* (Edinburgh, 1997), pp.196-202.

Cases explored above suggest that while some neighbours had become used to and tried to ignore marital violence, others, such as Janet Brown, who had tried to speak to her violent neighbour about the way in which he abused his wife,⁴⁹ were less accepting. However, Mary MacDougall, the neighbour of Alexander Brock, accused of the homicide of his wife in 1850, suggested in her testimony that Brock was justified in his complaints about his wife's bad and 'undutiful' behaviour.⁵⁰ The evidence of the Lord Advocate's Precognitions reveals that the accused themselves referred to the provocation they had received from wives or partners, and that juries, the judiciary and the contemporary press expressed some degree of sympathy.

26 of the 107 cases of spousal homicides allegedly committed by men, were found not proven, not guilty, or did not appear in court. Of the remaining 65 cases, in which a man was convicted of killing his wife or partner, the juries recommended leniency in seven, and in four of these the reason was specified as provocation the accused had received. Typical of these was the case of David Baird, a 39-year-old tinsmith, who declared that his wife was addicted to drink and had robbed and ruined him. The victim had been the worse for drink and in bad temper, and an altercation had erupted over some missing money, during the course of which the victim had thrown several articles at her husband. The jury found Baird guilty of the lesser charge of assault and, owing to the provocation he received, recommended him to the utmost leniency of the court.⁵¹ Thomas Templeton, a Glasgow bookbinder, who the jury found guilty of murdering his wife in 1840, was also recommended to the leniency of the court on the grounds of the provocation given by the victim.

⁴⁹ AD14/56/268.

⁵⁰ AD14/50/14.

⁵¹ NRS, JC11/97, f. 98r, High Court Minute Book, 14 October 1851 – 3 October 1853.

Lord Cockburn, presiding at the trial described Templeton as a brute, excited by liquor and pretending to be provoked by a drunken wife.⁵² Templeton was sentenced to death by hanging and a reprieve was applied for but not granted.

Endorsement of the validity of provocation as a mitigating factor in cases where men had killed their partners was also evident in the press. After James Wemyss, had been found guilty of murdering his wife in 1840, an article in *The Scotsman* expressed surprise that the jury could do so in ‘a case of death caused in a quarrel between two persons, both in a state of intoxication, and in which the deceased had given great provocation ...’. The article went on to suggest

the broad distinction between a cool premeditated murder, in which the criminal calmly selects his victim with a view to the amount of booty, and a case of drunkenness, in which there was no forethought, and in which the party killed was, at the outset at least, as much in fault as he whose act became the immediate cause of death.

The petition for a mitigation of punishment also referred to the provocation Wemyss received when his drunken wife irritated and excited him with abusive language and throwing potatoes and that he ‘yielded to the frenzy of the moment. It is also suggested that the ‘victim’s

long continued habits of intemperance, so enfeebled her constitution, and became so liable to effusion of blood on the brain, and was, at the time of the quarrel and assault, in such a high state of mental and vascular excitement, that a comparatively light blow was sufficient to prove fatal.
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Wemyss was being portrayed as the victim of a drunken wife.

While Clark and Foyster agree that contemporary notions of and ideas about domestic violence, wife beaters and their victims were class based, Foyster argues that there is little evidence to suggest that men of particular occupations

⁵² Lord Cockburn, *Circuit Journeys* (Edinburgh, 1889), p.71.

⁵³ ‘The Convict Wemyss’ *The Scotsman*, 15 April 1840.

were more or less likely to use violence against their wives.⁵⁴ Clark, however, while her sample is limited, argues that while weavers valued the contribution wives made to the household finances, and were therefore unlikely to abuse them, marital violence was more common among shoemakers.⁵⁵

The classification and quantification of the occupations of those indicted for spousal homicide during mid-nineteenth-century Scotland is problematic. The summary of Scottish occupations derived from the 1841 census listed more than 600 individual occupations and indicated how many males and females below and above the age of 20 years were employed in each.⁵⁶ The summary provides a valuable snapshot of Scottish society at the time but this particular format for presenting the information was not repeated. Subsequent census reports grouped occupations into six classes, 18 orders and a further 74 sub-orders. The six top level classes represent professional; domestic; commercial; industrial; and indefinite and non-productive occupational groups, and are a useful framework for analysis. However, irregularities begin to appear at a more granular level. This problem is noted in the report on occupations based on the 1871 census data, which points out that the classification of occupations had changed for every census period and that training clerks to correctly classify nearly 700 occupations had been difficult.⁵⁷

The contemporary Scottish statistician, James Cleland, grouped the occupations of Glasgow in 1831 into five categories: professional mercantile and clerical; textile manufacture; trades; servants, unskilled, labouring and

⁵⁴ Foyster, *Marital Violence*, pp.5-6.

⁵⁵ Clark, *Struggle for the Breeches*, pp. 74-75.

⁵⁶ 'Occupation abstract, M.DCCC.XLI. Part II. Scotland', *P.P* 1844, xxvii, pp. 85-89.

⁵⁷ 'Occupations of the People', *P.P.* 1873, lxxiii, p. xxxvi.

casual employment; numerous miscellaneous occupations (unspecified).⁵⁸

Although based on Glasgow, and not directly comparable to England and Wales in the same way as the census framework, Cleland's classification is particularly useful for this project as it specifies types of jobs or trades which easily correlate with the descriptions of occupations being given by those charged with homicide during the period 1836-69.

The analysis of occupations of men accused of domestic violence is further complicated by the way in which a pannel's occupation was recorded in the Lord Advocate's Precognitions. The difficulty of establishing the occupation of those accused of homicide is illustrated by the case of Arthur McNeill, who was described as 'weaver and travelling book salesman, formerly soldier.'⁵⁹ James Moir was described as a weaver but the altercation between him and his wife arose because she roused him from a drunken sleep and told him to go and find work. He had been out of work for a long time and she did not want to keep him any longer.⁶⁰

Using Cleland's occupation classification, Table 4.4 below, based on Cleland's occupational classification, to which an additional group has been added to be more inclusive, shows the occupational background of males, as indicated by the High Court records, who had been indicted for killing their wives or partners during mid-nineteenth-century Scotland. Where more than one occupation was given, it has been classified by that in which the accused was engaged in at the time of the offence.

⁵⁸ Smout, *Scottish People*, p.370.

⁵⁹ NRS, AD14/49/186, Precognition against Arthur McNeill for the crime of murder, or assault to the effusion of blood and danger of life, 1849.

⁶⁰ NRS, AD14/58/247, Precognition against James Moir for the crime of murder, 1858.

Table 4.4: Occupations of Males accused of killing their spouse or partner in Scotland 1836-69.⁶¹

Occupation Group	Total
Group 1(Mercantile/Clerical)	5
Group 2 (Textile)	6
Group 3 (Trades)	45
Group 4 (Unskilled/servant)	31
Group 5 (Misc.)	10
Group 6 (unemployed/widow(er)/pensioner)	6
Unknown	4

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69

Of the 46 tradesmen indicted for spousal homicide during this period, 35 per cent were of the south-west and south-eastern regions with 22 and 14 pannels respectively, and of the unskilled and servant category 21.5 per cent of offenders were from these areas with 11 and 13 pannels respectively.

Furthermore, 30 of the 42 offenders in group three, and 15 of those in group four resided in towns or cities of 10,000 or more inhabitants, which appears to reflect Clark's argument that artisans were among the highest offenders of marital violence. Table 4.5 below provides a more detailed breakdown of the geographical dispersal of males indicted for killing their spouse or partner during this period, including those offenders who were said to be of no fixed abode and also including those residing in industrial settlements that sprung up around industrial development. This further demonstrates that fatal violence

⁶¹ Group one occupations include those employed in legal, educational and medical professions as well as mercantile and clerical. Textile manufacture covers spinners, weavers, printers, bleachers and machinists from all textile industries. The trades category includes clothing, metal and construction trades as well as shipbuilding, food and drink and other miscellaneous trades such as spoon making. Occupations classified as unskilled include labourers, colliers and carters as well as servants. The specialist occupations category covers policing, animal dealing, crofting, maritime and military, and group six includes paupers and pensioners as well as unemployed and widowed.

toward a wife or partner was both a classed and urban phenomenon in mid-nineteenth-century Scotland.

Table 4.5: Geographical breakdown of male offenders by occupational classification, Scotland 1836-69.

Group	Towns >10,000	Towns <10,000	Rural	NFA	Ind. Settl.
1	1	3	-	-	-
2	5	-	1	-	-
3	30	6	1	2	3
4	15	6	6	-	2
5	4	1	3	2	-
6	2	1	2	-	1
Not known	1	1	2	1	-

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69

Ill-usage of women by their husbands or partners in mid-nineteenth-century Scotland usually referred to physical violence and causing bodily hurt. In the charge brought against the alleged perpetrator in cases of homicide and assault the details of injury were not further differentiated beyond the extent of the aggravation of the offence, for example to the effusion of blood or to the danger of life. The Indictment, however, was very carefully worded to avoid objection from Counsel, and these records provide a high level of detail about the injuries sustained and the means by which they were inflicted. At least 14 of the women who were killed by their husband or partner during the 30 year period studied suffered some form of violence to the genital area by kicking, punching or with another implement. The wording of indictments in these cases identified specified areas of the body that suffered injury. However, other cases of sexualised violence may be hidden by the vague wording of indictments, which accused the pannel of ‘otherwise maltreating’ the victim or assaulting her about the head and ‘other parts of the body’.

The act of violent sexualised assault has recently been formally and specifically legislated against in section three of the Sexual Offences (Scotland) Act 2009. Sexual Assault is defined, in part, as a non-consensual sexual act by physical contact either with the body or with an implement.⁶² However, such an act had been recognised as a wrong doing in Scottish courts during the nineteenth-century, although it may have been included as an aggravation of the crime of rape. In 1828, for example, John Cummings and James MacCartney were charged with ‘rape, robbery and assault’ the latter act referring to stabbing the victim in her private parts.⁶³

In her feminist analysis of sexualised serial murder of women, Jane Caputi argues that rape and sexualised murder of women by men are ritual enactments of male domination and primary principles of male supremacy.⁶⁴ While the husbands and partners who inflicted fatal injuries to their victim’s genitalia during this period are not directly comparable to the serial killers of random victims studied by Caputi, what is significant is that, by inflicting such injuries, these perpetrators were exercising what Caputi refers to as the most extreme form of patriarchal violence. Foyster argues that, while there has been a tendency for historians to view sexual abuse as a separate topic area from other forms of physical abuse, women in violent marriages often experienced a combination of physical and sexual abuse and violence often focussed on the genitals, breasts or womb. Furthermore, while it is argued that marriage is a sexual relationship and so all violence within this relationship,

⁶² Sexual Offences (Scotland) Act 2009, *Legislation.gov.uk*, available at <http://www.legislation.gov.uk/asp/2009/9/section/3> [accessed 29th May 2011].

⁶³ Alison, *Principles of the Criminal Law of Scotland* (Edinburgh, 1832), pp.214; NRS, AD14/28/199, Precognition against John Cummings, James McCartney for the crime of rape, robbery and assault, 1828.

⁶⁴ J. Caputi, *The Age of Sex Crime* (Ohio, 1987), pp.1-2.

regardless of its form, is sexualised, Foyster has found little evidence to support the view that men's violence towards women was a major source of sexual excitement.⁶⁵

Injuries to genitals, groin and breasts in seven of the 14 cases were a part of a more general beating which included injury to the head, back and legs, and inflicted by fists or other convenient weapons to hand such as tongs, fire shovel, sticks or a brush.⁶⁶ Other cases involved rather more focussed and brutal abuse. The medical report on the death of Mary Paterson opined that the wounds to her vagina may have been inflicted by a broad but not very sharp weapon and that she died from the bleeding this had caused.⁶⁷ Amelia Huskie died as a result of a general beating but had told a neighbour on a previous occasion that her husband had attempted to 'thrust [a poker] up her inside'. He had not succeeded but, she claimed, it had 'hurt very much'.⁶⁸ The indictment against Robert Stirling Mudie accused him of assaulting his wife by kicking 'or with some other instrument unknown struck her in her private parts or lower part of her belly and did inflict a severe wound within or near her private parts.'⁶⁹

Some of the cases in which the abuse was clearly sexualised suggest the reassertion of extreme forms of patriarchal authority. Mary Donaldson was beaten with fists and feet around the private parts because she had not prepared

⁶⁵ Foyster, *Marital Violence*, pp. 36-37.

⁶⁶ NRS, AD14/40/317, Precognition against George Johnston for the crime of murder, 1840; AD14/47/513, Precognition against Peter McKay for the crime of murder, 1847; AD14/51/431, Precognition against Robert Burnett for the crime of murder, 1851; AD14/52/94, Precognition against William Pearson for the crime of murder, 1852; AD14/53/512, Precognition against William Cumming for the crime of murder, 1853; AD14/56/268, Precognition against Walter Ronaldson for the crime of murder, 1856; AD14/63/293, Precognition against Thomas Skirving for the crime of murder, 1863.

⁶⁷ NRS, AD14/48/141, Precognition against Andrew Paterson for the crime of murder, 1848.

⁶⁸ NRS, AD14/53/228, Precognition against Robert Huskie for the crime of murder, 1853.

⁶⁹ NRS, AD14/51/567, Precognition against Robert Stirling Mudie for the crime of murder, 1851.

supper for her husband.⁷⁰ Mary Paterson, whose injuries are described above, went to the public house, where her husband had been drinking, to ask him to leave. He refused and went to close the door on her but she pushed it open and pulled him out of the room, undermining his authority in public.⁷¹

Two of the 14 victims of sexualised violence were pregnant. It has been suggested that, while it is not possible to establish if the likelihood of domestic violence increased when wives became pregnant, as a way of aborting the pregnancy, such cases were perceived to be a particularly unpleasant form of wife beating.⁷² The sample of such cases during the 30 year period studied is too small to test this observation on occurrence, but there is little suggestion that the perpetrators faced harsher penalties than others. The case against Samuel Clark for murdering his pregnant wife by kicking her in the belly was not proven. However, although Clark was said to have been generally kind to his wife and three children, the couple were both given to drinking and had been asked to leave their house as they were in arrears with the rent. They had quarrelled after Mary Clark broke her resolution to stop drinking and her husband denied any knowledge of her pregnancy.⁷³ Elizabeth Hetherton was seven months pregnant when her husband assaulted her with fists and a stick about her head, and stabbed her around the genitals. The victim's mother claimed her daughter had suffered longer term abuse from Hetherton, although other witnesses claimed the couple were both addicted to drink and quarrelled

⁷⁰ NRS, AD14/48/472, Precognition against John Donaldson for the crime of murder, 1848.

⁷¹ NRS, AD14/48/141.

⁷² Leneman, 'tyrant and tormentor', p.38.

⁷³ NRS, AD14/43/374, Precognition against Samuel Clark for the crime of murder, 1843.

often. The jury found the pannel guilty of the lesser charge of culpable homicide and he was sentenced to transportation for life.⁷⁴

The majority of violent spousal homicides in Scotland during this period were allegedly committed by men, outnumbering female offenders by a ratio of nearly 8:1. Anne-Marie Kilday argues that this gender disparity makes women particularly worthy of attention. While violent acts were considered the antithesis of the gentle and caring female ideal, and suggesting poisoning as the befitting method of choice, in cases where women did use violence, Kilday argues that they were particularly ferocious. According to Kilday, Scottish women murdered with open force and could be just as violent to men as to women. Furthermore, she argues, victims of female homicide were overwhelmingly related to their killers, the most common domestic homicide committed by women was of her spouse, and was a largely urban phenomenon.⁷⁵ While this chapter looks in greater detail at the cases in which women were related to their victim, firstly at spouses and then at other family members, intra-household and extra-household homicide committed by women will be further examined in chapters five and six.

Kilday points out that the killing of a partner by a woman was often an act of self-defence by a victim of long-term domestic abuse.⁷⁶ However, the evidence of the High Court of Justiciary suggests that it may also have been the case that the woman had been the aggressor and her spouse the victim.

Some women who had fought back against violent husbands in mid-nineteenth-Scotland found themselves accused of homicide. Barbara Andrew's

⁷⁴ NRS, AD14/48/336, Precognition against William Hetherton for the crime of murder, 1848.

⁷⁵ A. M. Kilday, *Women and Violent Crime in Enlightenment Scotland* (Woodbridge, 2007), pp.49-52.

⁷⁶ Ibid. pp.52-53.

husband was often the worse of drink, especially after being paid on Saturdays, and when drunk would always quarrel with his wife. Their daughter declared that on Saturday 28 April 1846 her parents quarrelled and her father began beating her mother who then stabbed her attacker in the chest.⁷⁷ Sarah Davidson declared that her husband, John Davidson, had abused her for several years and that she bore marks on her head and arms of injuries he had inflicted. The sources of conflict leading directly to the fatal assault included jealousy and money, and both had been drinking. A shilling had gone missing and Davidson had accused his wife of buying whisky with it, and which he claimed she had been drinking with another man. Sarah Davidson's testimony of long term abuse was supported by a neighbour who declared that she had approached John Davidson about the abuse but was told that his wife provoked him with her ill tongue.⁷⁸

It is not clear if all cases in which women were said to have fought back were a result of long term abuse. Mary McKelvie stabbed her husband, Peter McKelvie, a shoemaker in Edinburgh. The couple had been drinking and Mr. McKelvie began striking his wife for criticising his reading skills and was stabbed in the head during the beating.⁷⁹ Jean Aitken's assertion that her husband 'was in the habit of illusing [her] terrible ...' and that she 'was good to him, the neighbours will prove that', however, was misguided. The neighbours declared that the accused was often drunk and was always more violent than her husband.⁸⁰

⁷⁷ NRS, AD14/66/286, Precognition against Barbara Andrew for the crime of murder, 1866.

⁷⁸ NRS, AD14/53/417, Precognition against Sarah Davidson for the crime of murder, 1853.

⁷⁹ NRS, AD14/38/455, Precognition against Mary McKelvie for the crime of murder, 1838.

⁸⁰ NRS, AD14/69/219, Precognition against Jean Aitken for the crime of murder of assault to the imminent danger of life, 1869.

Indeed, in nine of the 13 cases of female pannels alleged to have killed their partners, the woman was the aggressor, and parallels can be drawn between sources of conflict and exacerbating factors in these cases, and those involving male pannels, such as the use of resources, for example. Mary and Patrick Graham of Edinburgh did not live happily together and it was said that the accused treated her husband badly. On 30 March 1869 the couple had both been drinking and a quarrel broke out after the victim asked his wife for some money and she refused.⁸¹ Catherine Taylor, living in Boghead, Dumbartonshire, was described by a lodger as a big strong woman who did not live agreeably with her husband who was alleged to be in delicate health and often the worse of drink. Taylor constantly accused her husband of withholding some of his wages, which was the cause of quarrelling, and while the couple were the worse of drink, Taylor allegedly seized her husband by the throat, knocked him to the floor, struck him with fists and crushed him with her body, fracturing his ribs.⁸² Margaret Jack, of Dundee, was accused of fatally assaulting her partner, Jack or Jacky Mackay during a drunken quarrel over some missing money.⁸³

Competition over time and money spent in the public house and expectations of a woman's domestic duty is alluded to in the case of Agnes Hunter. Agnes and Archibald Hunter were often drunk and had frequent quarrels. The fatal quarrel broke out after the accused upbraided her husband

⁸¹ NRS, AD14/69/235. Precognition against Mary Graham for the crime of culpable homicide, 1869.

⁸² NRS, AD14/62/40, Precognition against Catherine Taylor for the crime of murder or culpable homicide, 1862.

⁸³ NRS, AD14/56/243, Precognition against Margaret Jack for the crime of murder, 1856.

for being in a public house and he complained of not having had his meal prepared.⁸⁴

However, drunkenness was a significant factor in the majority of cases in which women were accused of killing a spouse. Mary Finlay, indicted for the murder of her husband by assaulting him with a poker in Kirriemuir, Forfarshire in 1836, declared that her husband drank frequently and would get ‘very troublesome’. On the day before the assault he had received his pension as a discharged soldier, got drunk and became ‘fractious and outrageous’ in the house.⁸⁵ A neighbour of Jane and William Murray of Glasgow declared that the couple were both addicted to liquor and frequently quarrelled. Both the accused and the victim had been drinking when Jane Murray scolded and began to beat her husband for falling off his stool.⁸⁶ Agnes Cromarty was indicted for the murder of her husband in Arbroath in 1843 after he became drunk and sustained a head injury. The accused declared that her husband became unsteady on his feet and fell and hit his head. However, a neighbour declared that Cromarty had wished her husband ill and had been seen in bed with her lodger and co-accused, James Connell.⁸⁷

Underlying friction resulting from jealousy within conjugal relationships is also apparent in neighbour testimonies. Mary and John Donelly, living in Glasgow, had been drinking when a quarrel erupted between them during which each abused the other before Mary struck her husband over the back of

⁸⁴ NRS, AD14/53/291, Precognition against Agnes Hunter for the Crime of Culpable Homicide, 1853.

⁸⁵ NRS, AD14/36/450, Precognition against Mary Finlay for the crime of murder or aggravated assault, 1836.

⁸⁶ NRS, AD14/47/401, Precognition against Jane Murray for the crime of culpable homicide and assault to the danger of life, 1847.

⁸⁷ NRS, AD14/43/373, Precognition against Agnes Cromarty, James Connell for the crime of murder, 1843.

the head. A lodger declared that John Donelly usually started the quarrels and continually accused his wife of ‘cohabiting’ with other men.⁸⁸ The case against Christina Gilmour, residing in the rural parish of Dunlop, Ayrshire, for murdering her husband was not proven but, she declared, her marriage was unhappy and her husband had accused her of breaking his heart. Gilmour had replied that he had not been her choice and that she could never feel towards him as a wife should, and testimonies from neighbours alluded to the prisoner’s previous affair with and affection for a John Anderson.⁸⁹

Kilday’s assertion that when Scottish women resorted to violence they were more ferocious than their male counter-parts is largely based on the wording of the Indictment, which, as argued in chapter one of this thesis, is prone to overstatement in order to secure a conviction and is therefore misleading as evidence of the level of violence used. The detailed evidence of the Lord Advocate’s Precognitions for mid-nineteenth century homicide suggests that, while women could be ferocious, such as Mary Finlay, who was indicted for murder and aggravated assault with a poker, and Catherine Taylor who punched, kicked and trampled over her husband, women charged with the homicide of their partner or spouse in Scotland during period were no more violent than the male pannels included in this sample. Women tended to resort to what was at hand, such as a poker, as in the case of Mary Finlay. Barbara Andrew had been cleaning tripe with the knife she stabbed her husband with;⁹⁰ and Sarah Davidson stabbed her partner with a knife that had been near at

⁸⁸ NRS, AD14/46/191, Precognition against May Donelly for the crime of culpable homicide, 1846.

⁸⁹ NRS, JC26/1844/369, Trial Papers relating to Christian or Christina Gilmour for the crime of murder, 1844.

⁹⁰ NRS, AD14/66/286.

hand after eating tea.⁹¹ Mary Graham first threw a pot at her husband in their house, but when he got back up and went toward her she stabbed him in the eye with a fork.⁹² Margaret Taylor bit her husband's finger, which became infected and led to the amputation of his arm from which he did not recover.⁹³ Otherwise, the use of fists, victims falling or being pushed down stairs, and blows to the head by other means were also cited as the cause of death.

However, while the sample size for female offenders who allegedly killed a partner or spouse by violent means is small, it is noteworthy that all these offences were committed in towns and cities, reflecting Kilday's findings from the earlier, enlightenment period that violence committed by female offenders was overwhelmingly in an urban setting. Six of the mid-nineteenth-century homicides were committed in towns or cities with a population of more than 10,000. While seven homicides were committed in towns of less than 10,000: the smallest of which was Kirriemuir, in Forfarshire, a market town with a population of just over 3000, and of which the chief trade was the manufacture of linen.⁹⁴

The number of spousal homicides committed by both men and women during mid-nineteenth-century Scotland in an urban setting was significantly greater than those committed in a rural setting. It was suggested that the urban environment largely removed systems of support and control provided by the established kirk, implying that fatal conflict within conjugal relationships in rural areas would be prevented by kirk intervention. To what degree, therefore,

⁹¹ NRS, AD14/53/417.

⁹² NRS, AD14/69/235.

⁹³ NRS, AD14/52/419, Precognition against Margaret Taylor for the crime of culpable homicide, 1852.

⁹⁴ S. Lewis, *Topographical Dictionary of Scotland* (Edinburgh, 1846).

is kirk intervention evident in the Lord Advocate Precognitions relating for the period 1836-69?

A fundamental problem here is that if kirk intervention was a significant factor in preventing spousal homicide, the extant Precognitions, at best, can indicate that in some cases even intervention could not prevent it. A study of the Church of Scotland Kirk Session records is needed to establish the extent that the kirk intervened in, and appeared to resolve marital conflict. However, a closer look at witness declarations in cases of spousal homicide as a result of assault and long-term abuse in rural areas may give some insight into the role kirk ministers may have had in problematic marital relationships during this period.

The Reverend Neill McLean, minister on the island of Tyree, declared that Jane McDonald, wife of Hector McDonald, a pauper living in Gott or Kirkapoll on the island of Tyree, had been to see him about the baptism of her youngest child. McDonald complained that her husband refused to have the child baptised as he did not believe he was the father. McLean advised McDonald to wait until the man that her husband claimed was the father was back on the island and that the matter could be dealt with then. McLean declared he was aware that the man McDonald was a ‘lazy indolent person’, and understood that McDonald and his wife ‘did not live agreeably’ together.⁹⁵ However, it is the testimony of the victim’s mother, Christina Seaton, that is most instructive. Seaton declared that McDonald had been a crofter but lost the croft and moved into a self-built hut with his wife. Seaton became concerned about the way in which her daughter was being treated by McDonald and so

⁹⁵ NRS, AD14/57/360, Precognition against Hector McDonald for the crime of murder, 1857.

went to their house to see if they ‘could be reconciled’. McDonald was claiming that he was not the father of their child and Seaton had a kirk Elder, Donald McLean, called for in an attempt to settle matters between the parties. However, the issue continued to simmer and was sent before the Kirk Session several times. Despite the intervention of the victims’ mother and attempts at reconciliation by the kirk, McDonald eventually killed his wife by assaulting and abusing her.⁹⁶

A neighbour who lived almost opposite George Younie and his wife Margaret in Rothies, a village in Elginshire, declared that it was well known that Younie treated his wife harshly. A former landlady, Mary Baillie, confirmed that while the couple lived with her they would often be ‘girling with each other and not leading a very compatible life’, and she had seen the injuries inflicted as a result of Younie’s violent behaviour toward his wife. However, although the Reverend Alexander MacWall, minister of the Free Church of Scotland, formed as a result of the Disruption of 1843, was closely acquainted with George Younie, was aware that he was of irregular habits, and had often ‘remonstrated with him about his conduct’, he had never seen the couple quarrel, and as far as he was aware, Younie had always been kind to his wife. He went on to declare that the victim, Margaret Younie, was often drunk and, believing that the minister had some medical knowledge, Younie had often called upon him to see his wife when she was unwell: a condition that MacWall attributed to her own irregular habits.⁹⁷

Allan Mair and his wife Mary, living in the rural parish of Muiravonside in Stirlingshire, were described as being in ‘indigent circumstances’, and

⁹⁶ AD14/57/360.

⁹⁷ NRS, AD14/56/164, Precognition against George Younie for the crime of murder, 1856.

neighbours were aware that Mair treated his wife harshly. The Kirk Session had awarded Mair relief, paid in meal, from the public funds and also paid a woman to clean their house and clothes, as well as being aware of Mair's character. In addition to the cleaner, other neighbours visited Mair's house, especially when he was out, and provided the frail Mrs Mair with water, broth and coals. On the morning of 15 May 1843 one of the neighbours visited Mair's house and found his wife badly bruised and cut, and after covering the victim with bed clothes, informed the minister. The minister, however, declined to interfere, saying that 'as [he] had no hope of being able to adjust their quarrels, if violence had been used application had better be made to the Sheriff.'⁹⁸ While there is some evidence that the kirk could become involved in marital discord in rural areas to some degree, reliance on community and neighbours appears to have been more intimate and forthcoming in the small sample examined here than in the urban environment.

Poisoning.

Of the 21 cases in which women were alleged to have killed their partners, eight involved premeditated killing by poison. As Kilday points out, if violence was perceived to be the antithesis of femininity, if a woman were to commit murder, she would do so in a covert manner that did not involve violence, and poisoning was an ideal method.⁹⁹ Indeed, an article in the *Scottish Journal of Jurisprudence* in 1857 recognises poisoning as being by

its very nature a domestic crime. Opportunities for its perpetration offer themselves not to the stranger but to the husband, wife, friend or those living in the family of the unsuspecting victim ... a trial for murder by poison too often discloses a dark domestic tragedy.¹⁰⁰

⁹⁸ NRS, AD14/43/292, Precognition against Allan Mair for the crime of murder, 1843.

⁹⁹ Kilday, *Women and Violent Crime*, p.40-45.

¹⁰⁰ 'Trials for Poisoning in Scotland', *Journal of Jurisprudence*, 1 (1857), pp.362-365.

Two motives are suggested by the evidence of women accused of poisoning their partners during this period: the removal of an unwanted or inconvenient partner; and the removal of a partner who had become a financial burden. Katherine Watson argues that, in England, the motives for poisoning were usually variants on the themes of poverty and greed, love and hate, exacerbated by lack of choice and desperation.¹⁰¹

A widely used poison during the nineteenth-century was arsenic, the use of which was accepted as a cosmetic, a stimulant, as an ingredient in paints and varnishes and a method of killing insects and vermin. Accidental poisonings were not uncommon and, Watson argues, the story of English poisonings is closely correlated to the rise and fall of the acceptable use of arsenic. It was also a way to end an unhappy marriage.¹⁰² For most English couples up until the Matrimonial Causes Act of 1857 divorce was practically impossible and for women to successfully apply for separation they required proof of adultery and some form of cruelty or desertion.¹⁰³ While the stigma of leaving a spouse to cohabit with a new partner was less an obstacle for the working- than for the middle-class, family ties and economic necessities left desperate spouses with few options. Faced with marital breakdown and an unwanted spouse, some resorted to extreme measures and it is easy to see why 25 per cent of poisoners' victims were their spouse.¹⁰⁴

¹⁰¹ K. Watson, *Poisoned Lives: English Poisoners and their Victims* (London, 2004), p. xii

¹⁰² *Ibid.*, pp.36-37, 53.

¹⁰³ Although this Act permitted absolute divorce, women were still required to prove aggravated adultery which required a compounding factor such as cruelty, desertion or bigamy. See A.J. Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London, 1992), pp. 119-33.

¹⁰⁴ Watson, *Poisoned Lives*, p.56.

In Scotland, a couple could be considered man and wife by cohabitation and by habit and repute¹⁰⁵ and where this relationship broke down, no legal separation would be required. However, where a judicial separation was sought, as in England, cruelty and adultery had to be proven.¹⁰⁶ In a society where there was a socially acceptable alternative to formal marriage, it is interesting to note, therefore, that of the eight cases where women were accused of poisoning their partner or spouse, seven were married and one had lived with the victim for nine years as his wife. There were four males indicted for poisoning a spouse, all of which were formally married. While the sample size is too small to draw definitive conclusions, a closer look at the circumstances of these cases should provide some insight into what motivated men and women to poison their partners.

Two cases in which women were accused of poisoning their spouse involved extra-marital affairs. The evidence against Sally McVey, living in Greenock, amounted to the purchase of arsenic and suspicion of an affair with David Mellor. Certainly, a neighbour declared that the victim was buried on the Monday and on the Tuesday there was a great gathering at the deceased's house where it was rumoured that the accused was to marry the man Mellor.¹⁰⁷ It was commonly believed that 69 year old James McLellan, also of Greenock, was not the father of any of the six children from his marriage to 41 year old Janet: a rumour well known to James. After giving birth to twins the accused

¹⁰⁵ Fraser, *Treatise*, Part 1. Ch.VI, p.202-205.

¹⁰⁶ Fraser, *Treatise*, Part 3, Ch. II. pp. 453-462. Earlier discussions on what was considered cruel apply here.

¹⁰⁷ NRS, AD14/51/496 Precognition against Sally or Sarah Mcvey for the crime of murder, 1851.

had complained that she never got any peace on the subject and James died from arsenic poisoning shortly afterwards.¹⁰⁸

Two cases suggest the removal of a partner who had become a financial burden. Susan Fraser was accused of poisoning her husband. Her son, James, was tried with her and evidence against them included comments that he was nearly blind and a great burden on them and Susan was reported to have said that she would be very comfortable if she were a widow.¹⁰⁹ The medical report in the precognition against Martha Kerr for murdering her reputed husband concluded that the amount of arsenic found in the body may not have been enough to have caused death and it was also found that a meal bag contained a small quantity of arsenic. However, suspicion fell on Martha after her step-daughter declared that the victim was much given to drink and had not worked for some time, that he was blind in one eye and that Martha had complained often and allegedly threatened the victim with just such a demise.¹¹⁰

The four men who killed their wives with poison during this period had similar motives to those of their female counterparts. Ann and Thomas Leith, living in Hawkhill, Dundee, had never lived on very happy terms, although there had been no particular disagreement between them, but Ann died soon after they had discussed terms of separation.¹¹¹ William Bennison was found guilty of poisoning his lawful wife after he had bigamously married another,¹¹²

¹⁰⁸ NRS, AD14/46/338 Precognition against Janet Mclellan, Janet Mclellan for the crime of murder, 1846.

¹⁰⁹ NRS, AD14/52/380 Precognition against Susan Fraser, James Fraser for the crime of murder, 1852.

¹¹⁰ NRS, AD14/53/415 Precognition against Martha Kerr for the crime of murder, 1853.

¹¹¹ NRS, AD14/47/567 Precognition against Thomas Leith for the crime of murder, 1847.

¹¹² NRS, AD14/50/488, Precognition against William Bennison for the crime of bigamy and murder, 1850.

and it was suggested that Edward Pritchard was in debt and stood to gain financially from the deaths of his wife and mother-in-law.¹¹³

Although the informal option of living as man and wife by habit and repute in Scotland may have lessened the social stigma of cohabiting, the evidence against James Burnett for murdering his wife suggests that acceptance of the practice was not universal. Margaret Burnett had been paralysed down one side for five years and could only walk with a crutch. Her husband James, a farm servant in Aberdeenshire, had been sleeping in a house with other servants for one or two years and had formed an intimate relationship with one of them, Jane Carty. Under examination Carty admitted that, before his wife died, Burnett had asked her to leave with him to live somewhere they were not known but Carty had refused. Burnett then promised Carty marriage if his wife did not get better, and their engagement was proclaimed soon after she died.¹¹⁴

A recent case study of Madeleine Smith, who was alleged to have poisoned an inconvenient lover in 1857, questions assumptions about Victorian gender relations, social life and sexuality. In contrast to the notion that middle-class women had limited options for social intercourse open to them,¹¹⁵ Madeleine Smith, the 22-year-old daughter of a successful Glasgow architect, and her acquaintances walked and shopped in fashionable streets, and was able to meet, and start a secret and sexual relationship with a penniless clerk, Pierre Emile L'Angelier. The affair lasted for two years before Smith tried to end the relationship to marry the more socially acceptable William Minnoch. When

¹¹³ Anon., *A Complete Report on the Trial of Dr. E. W. Pritchard for The Alleged Poisoning of his Wife and Mother-in-Law* (Edinburgh, 1865), pp.80-96.

¹¹⁴ NRS, AD14/49/256, Precognition against James Burnett for the crime of murder, 1849; 'Circuit Court of Justiciary', *Aberdeen Journal* (2 May 1849).

¹¹⁵ For the marriageable value of chaste middle-class women see Smout, *Century of the Scottish People*, pp.159-61.

L'Angelier refused to return Smith's letters and threatened to disclose them to her father, Smith allegedly lured L'Angelier to the window of her basement room in Blythswood Square, where she gave him a chocolate drink containing arsenic. Gordon and Nair argue convincingly that, despite gender inequalities, nineteenth-century middle-class women exercised agency and had opportunity to make their own choices and shape their own experience.¹¹⁶ However, Smith's trial attracted a lot of public attention and interest in mid-nineteenth-century Scotland, suggesting that her behaviour was atypical. However, the case also demonstrates that opportunities for pre-marital sexual encounters existed for middle-class women during this period, but consequential threats to respectability could lead to unlawful killing.

Homicide of other adult family members.

It was suggested in the first part of this chapter that the impact of social change brought about by industrialization and urbanization was a factor in spousal homicides during mid-nineteenth-century Scotland: the erosion of family and community, the impact of overcrowded and impersonal urban accommodation and the widespread availability, and habitual consumption of cheap, harsh whisky exacerbated conflict which resulted in fatal violence within conjugal relationships. To what extent, then, are these factors reflected in cases of homicide of other family members?

There were 53 individuals accused of the homicide of other family members, excluding the perpetrators' own non-adult children, in Scotland during the period 1836-69. Table 4.6 shows the geographical dispersal and gender breakdown of those indicted.

¹¹⁶ E. Gordon, and G. Nair, *Murder and Morality in Victorian Britain: The Story of Madeleine Smith* (Manchester, 2009), pp.1-9.

Table 4.6: Geographic dispersal and gender breakdown of those accused of killing adult family members in Scotland 1836-69.

	Males	Females
Rural	10	1
Town/City > 10,000	18	4
Town < 10,000	14	4
Industrial Settlement	1	-
On board vessel	1	-

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69

The above breakdown suggests that the homicide of parents, adult offspring and siblings was an urban phenomenon, committed largely by men. However, a closer look at the circumstances of these cases of lethal violence is needed to establish if characteristics of urban industrial society detailed above were causative or exacerbating factors.

Of the 44 male perpetrators in this category 42 were indicted for using fatal violence while two were accused of poisoning their victims. Of the nine females indicted for killing other family members, six used violent methods and three used poison. Parallels can be drawn between spousal homicide and cases in which other family members were the victims: conflict could arise over use and ownership of resources, the extent to which gender norms were followed, and quarrels about, or exacerbated by, the use of alcohol.

Peter Lynes was indicted for the murder of his sister, with whom he resided in Edinburgh, after she hid his mason's tools to prevent him pawning them to pay for alcohol.¹¹⁷ Alison Fife, a collier in Alloa, Clackmannanshire, was

¹¹⁷ NRS, AD14/67/280, Precognition against Peter Lynes for the crime of murder, or assault by cutting or stabbing, to the danger of life, 1867.

accused of killing his son, also called Alison or Ellis, when the victim accused his father of taking some money from his mother's pocket. The father got into a passion, lifted a potato hoe and struck his son over the head with it.¹¹⁸ A fatal, drunken altercation erupted between James Harrower, a collier in the county town of Clackmannan, and one of his four sisters over the ownership of two pillows that had belonged to their late mother.¹¹⁹ James Weir lived with his mother, Margaret Weir, in a house consisting of one room opening from a passage at the top of a stair, in the burgh of Kilsyth, Stirlingshire. According to a relative, the mother often complained that her son took all the money, drank and threatened her. A quarrel broke out when the accused arrived home drunk wanting food: the mother said there was none and found fault with her son's drinking and she was allegedly pushed down the stair.¹²⁰

John Stewart, who resided with his sister, brother-in-law and aunt in Edinburgh, found fault with his aunt, Janet Stewart, after she allegedly drank his whisky. The victim had been drinking with the other members of the household and had gone to bed. The accused was later heard admonishing his aunt for drinking his whisky, threatening violence and ordering her to get up and prepare the dinner.¹²¹ William Common was found guilty of killing his sister after, according to the accused, he went to a beer shop and found her drinking with some men. Common declared that he told her to go home to her 'bairns', but she refused and said she wanted more beer. However, the beer shop keeper, Alice Anderson, declared that the victim was sober when she

¹¹⁸ NRS, AD14/44/351, Precognition against Alison Fife for the crime of murder, 1844.

¹¹⁹ NRS, JC26/1840/215, Trial papers relating to James Harrower for the crime of murder, 1840.

¹²⁰ NRS, AD14/45/241, Precognition against James Weir for the crime of culpable homicide, 1845.

¹²¹ NRS, AD14/55/282, Precognition against John Stewart for the crime of murder, or assault to the danger of life, 1855.

arrived but Common was the worse of drink and in a passion, abusing his sister as he dragged her toward the door.¹²²

William Common was said to have been the worse of drink, but not to the extent that he did not know what he did or said, and alluded to his sister having neglected her duty to her children in justifying his violence toward her.

Friction between siblings was the cause of two other homicides in Scotland during this period. James Armstrong was indicted for the homicide of his sister in 1849. The accused declared that he had been out all night and called at his father's house, in Stranrear, Wigtownshire, where his sister also lived, in the early hours of the morning and sat by the fire. His sister ordered him to leave, he refused, and a struggle broke out. Armstrong then allegedly assaulted his sister with fists, grabbed her by the throat and broke her ribs. Their mother declared that the two lived disagreeably together. Her son was in the habit of staying out all night with various women, his sister complained of this and he in turn became angry.¹²³ John McSorley and his sister were thought to be having an incestuous relationship, although this was never proven, and a neighbour declared that the two were a good deal addicted to drink and when they drank they quarrelled. However, McSorley had begun to be intimate with another woman and it was rumoured that he would marry her. The quarrelling between McSorley and his sister allegedly became more frequent as a result of this and was thought to be the reason for the fatal quarrel, during which McSorley assaulted his sister with fists and a poker.¹²⁴

¹²² NRS, AD14/60/307, Precognition against William Common for the crime of culpable homicide, 1860.

¹²³ NRS, AD14/49/13, Precognition against James Armstrong for the crime of culpable homicide and assault to the danger of life, 1849.

¹²⁴ NRS, AD14/55/249, Precognition against John McSorely for the crime of incest and murder, 1855.

Friction within families could continue to fester under the surface. Thomas Stevenson and Charles Andrew married sisters and worked together. An altercation erupted after Stevenson arrived for work and Andrew called him a ‘vagabond’ and a ‘blackguard’. Stevenson struck Andrew with a heavy wooden bar shod with iron during the struggle. A fellow worker declared that the two were often the worse of drink, were much in each other’s company and it was rumoured that Andrew had been provoking Stevenson and that he could bear it no longer.¹²⁵ William Jack was indicted for the murder of his brother, Robert Jack, after stabbing him during a quarrel which broke out over some family matters that had never satisfactorily been settled.¹²⁶

A common factor in the majority of cases of intra-familial homicide by violent means was drunkenness, and it could exacerbate existing tension and conflict, as in the cases discussed above, but could also be the reason for conflict. William Hamilton and his wife were said to be quarrelsome and ‘dissipated characters’ and neighbours were afraid to go into the house, where the victim, Hamilton’s mother-in-law also lived, and interfered between them. William Thomas, a police constable, declared he had gone to the house at the time of the fatal assault, but Hamilton and his wife were both the worse of drink and he considered it to be a family brawl.¹²⁷ John Booth, who was convicted of murdering his mother-in-law, Jean Barclay, by stabbing her in the arms, head, and chest. Booth was said to be given to drink and when

¹²⁵ NRS, AD14/44/306, Precognition against Thomas Stevenson for the crime of culpable homicide, 1844.

¹²⁶ NRS, AD14/50/178, Precognition against William Jack for the crime of murder, 1850.

¹²⁷ NRS, AD14/50/147, Precognition against William Hamilton for the crime of murder and assault to the danger of life, 1850.

intoxicated raised disturbances in his house, making threats toward his wife and mother-in-law.¹²⁸

Kilday's findings that most women indicted for homicide during the eighteenth-century were accused of killing someone within their domestic sphere concurs with previous research in the field. However, the argument that a high rate of domestic homicides committed by women was related to the restricted, domestic nature of women's lives has been questioned and it is now believed that women's lives were not as restricted as previously thought.¹²⁹ While cases in which females were accused of the homicide of children and spouses are explored in chapter two and above, a closer look at cases in which women were indicted for the homicide of other family members may provide further insight into domestic killing by women within the family.

Records survive for nine cases in which women allegedly killed parents, siblings and adult sons and daughters during the period 1836-69. Six of the victims died as a result of lethal violence and three were poisoned.

Causes of conflict in cases resulting from assault largely reflect other types of homicide explored in this project, such as quarrels over resources and drinking. Hay Kemp had been out drinking and had neglected to buy the sugar her mother had asked for. A quarrel broke out as a result, during which Kemp assaulted her mother with fists and an axe. A lodger declared that mother and daughter lived agreeably enough except when the accused was drunk.¹³⁰

Arthur and Henrietta Woods were accused of murdering Arthur's 21-year-old

¹²⁸ NRS, AD14/57/200, Precognition against John Booth for the crime of murder, 1857.

¹²⁹ A.M., Kilday, "The Lady Killers": homicidal women in early modern Britain', in K.D. Watson (ed.), *Assaulting the Past: Violence and Civilization in Historical Context* (Newcastle, 2007), pp.208-9.

¹³⁰ NRS, AD14/53/418, Precognition against Hay Kemp for the crime of murder or culpable homicide, 1853.

son from his previous marriage after a quarrel about a missing shilling. Arthur Woods declared that his son, John, travelled the county selling wares and when in Dundee often stayed with them. However, the son was said to be addicted to drink and when drunk was ‘very outrageous in his conduct’, which had frequently been the cause of quarrels.¹³¹ Margaret Fletcher was indicted for the murder of her sister, Helen Shiells, in Leith in 1846. The sisters resided together with their mother but, according to their mother, had not been on good terms for some time and were given to calling each other names. Fletcher declared that her sister was ‘a girl upon the town’ and had often struck and abused her. A neighbour declared that she had witnessed Shiells abusing Fletcher two months previously and that Fletcher was afraid of her sister.¹³²

The suggestion in the above case is that the victim was the aggressor and was killed in a resulting quarrel. The evidence against Jean Brown, accused of murdering her father in Crawforddyke, Greenock, in 1840, also suggests that she had suffered long term abuse and neglect from the victim before she beat him to death with a stick or reed. According to neighbours and tenants Jean Brown was of weak intellect and ‘rather silly in her mind’, and was very dirty, while her father, George Brown, was described as being given to drinking and ‘very harsh to his daughter and had no regard to her comfort or bathing’. The accused declared that while she did not know why she had been put in jail, she remembered striking her father with a small black stick two or three times to keep him quiet and that he was sometimes not very good to her and struck her with his hands.¹³³

¹³¹ NRS, AD14/39/384, Precognition against Arthur and Henrietta Woods for the crime of murder, 1839.

¹³² NRS, AD14/46/342, Precognition against Margaret Fletcher for the crime of murder, 1846.

¹³³ NRS, AD14/40/440, Precognition against Jean Brown for the crime of murder, 1840.

Jean Brown was found to be insane at the time of committing the crime and judged unfit for punishment. Nevertheless, while witnesses testified as to her weak intellect and neglected state, there was no suggestion that she was considered a danger to herself or others. Euphemia Lees, however, was known to have had an attack of mania, had been in a violent and excited state and heard to be speaking of fighting with the devil before killing her 81-year-old mother in Galashiels in 1845.¹³⁴ Isabella Blyth, residing with her 80-year-old mother in the rural parish of Markinch, Fifeshire, was considered to be of unsound mind by some neighbours and acquaintances but, according to others, had been ‘dull for the last two years in a complaining way’ and had stayed in bed a great deal. Blyth declared that she assaulted her mother by striking her two or three times on the head with a pair of tongs but ‘did not know what motive induced me’.¹³⁵ According to Lord Cockburn, when Blyth was told that she had killed her mother she replied ‘Weel, had she no lived lang eneuch’.¹³⁶

While causes of conflict in cases of homicides of other family members by violent means committed by females are similar to those in cases of spousal homicide, cases in which victims were poisoned hint at what was, according to Katherine Watson, a common motive for this covert method of homicide: financial gain.¹³⁷ Two of the poisoning cases against women who allegedly killed other family members were unproven. The evidence against Janet Walker was largely based on the victim’s assertion that his mother had given him some ‘white stuff’ and the evidence that she had bought arsenic, albeit for the disposal of rats in the potato house, although no motive for murder was

¹³⁴ NRS, AD14/45/386, Precognition against Euphemia Lees for the crime of murder, 1845.

¹³⁵ NRS, AD14/52/278, Precognition against Isabella Blyth for the crime of murder, 1852.

¹³⁶ Lord Cockburn, *Circuit Journeys* (Edinburgh, 1889), p.381.

¹³⁷ Watson, *Poisoned Lives*, pp.97-122.

apparent.¹³⁸ Mary Struth was acquitted for the murder of her father by administering sugar of lead, salt of sorrel and laudanum in the seaport town of Kincardine. Having complained that his daughter forced him to take foul tasting medicine, after which he was seized with vomiting and pain in his bowels, John Struth went on to declare that he was a contributor to the Kilbogie Society and upon his death £6 would be payable.¹³⁹

Burial Societies, usually locally based in highly industrialized areas where artisans and working people could afford to contribute, provided a form of insurance that, for a small weekly payment, would pay out a sum of around £2 - £10 on the insured person's death to cover funeral costs. However, the system was open to abuse and, Katherine Watson argues, the frequency of poisonings for insurance claims increased after 1840 as a result of an increase in the number of societies and a difficult economic climate.¹⁴⁰

John Struth declared that his daughter Mary knew of his contribution to the Kilbogie Society and, he believed, that was the reason she was trying to poison him. Furthermore, a neighbour declared that the accused was 'a very bad character and is much given to drink'.¹⁴¹ According to the secretary of the Society, Struth's family was entitled to £6 at the time of his death, and his daughter was the only person entitled to collect as it was she had paid the contribution.¹⁴²

According to Watson, another common type of poisoning for financial gain was to hide a previous theft. Hocussing, the act of drugging a potential victim

¹³⁸ NRS, AD14/45/355, Precognition against Janet Walker for the crime of murder, 1845.

¹³⁹ NRS, AD14/62/258, Precognition against Mary Struth for the crime of murder or administering poison, 1862.

¹⁴⁰ Watson, *Poisoned Lives*, pp.98-109.

¹⁴¹ NRS, AD14/62/258.

¹⁴² 'Alleged Murder by Poisoning – Acquittal of the Prisoner' *Caledonian Mercury* (3 June 1862).

of theft to render them unconscious made stealing easier but, when the victim died, resulted in a charge of murder.¹⁴³ To establish the extent to which hoccussing was practised in Scotland requires an examination of theft cases in inferior courts, but records for one case in which, intentionally or not, resulted in the death of the victim survive in the Lord Advocate's Precognitions.

Margaret Hamilton, living in the market town of Strathaven in Lanarkshire, was convicted for the murder of her sister-in-law by administering arsenic after stealing a bank deposit receipt for £20 and five bank notes for £1 each and then forging her own name on them. Hamilton was known to have had £20 on her person, but she claimed that the arsenic had been bought to kill bugs but had been administered to the victim by mistake instead of a powder that had been given by a doctor. While the charge of theft was not proven, Hamilton was found guilty of forgery and murder and executed.¹⁴⁴

Conclusion.

The qualitative study of homicides of spouses and other family members has demonstrated that a link can be made between the social environment that was evolving as a result of industrialization and urbanization during mid-nineteenth-century Scotland. There existed a drinking culture that exacerbated existing tension within both conjugal as well as wider family relationships, and which became the source of conflict in itself. Men referred to the drunken behaviour of women as being a source of provocation, in defying them and as counter to their expected domestic role.

The evidence also suggests that, while the data for occupations in Scotland during this period is unreliable, intra-familial homicide of spouses committed by men was

¹⁴³ Watson, *Poisoned Lives*, p.119.

¹⁴⁴ NRS, AD14/50/49, Precognition against Margaret Hamilton for the crime of theft, forgery, and using and uttering a forged receipt, and murder, 1850.

largely an urban phenomenon most commonly committed by those in the trades and unskilled groups. Women also used open force in retaliation against violent husbands as well as aggressors and the causes of conflict mirrored those of male perpetrators. Spousal homicide committed by women was also largely an urban phenomenon, although the sample size is too small and too narrow in scope to permit a reliable comparison with male and English counterparts of the level of violence used.

It was suggested that the loss of intervention into marriages by the kirk may have impacted on the likelihood of spousal homicide in urban areas. Certainly, in some urban cases neighbours appeared to have played some part in intervening between husband and wife but the urban environment and frequency of violence also desensitized them, while in the limited cases of rural spousal homicide available to us community and neighbour support was more effective and more significant than kirk intervention.

What this suggests overall is that there was an existing culture of legitimated violence by men toward wives and, significantly, an existing culture of whisky drinking that exacerbated this phenomenon. Furthermore, the greater opportunity for indulging in drinking in public houses that the urban and industrial environment presented, facilitated a change in behaviour, which exacerbated conflict within husband and wife interactions.

Chapter 5. Shared Space, Shared Resources and Homicide.

Introduction.

Chapters three and four explored the way in which the processes of industrialization and urbanization in mid-nineteenth-century Scotland impacted on relationships between men and women, between parents and adult sons and daughters and between siblings. This chapter looks more closely at the built environment and shared space that evolved as a result of those processes, especially of urbanization, to establish the extent to which they caused, facilitated or exacerbated conflict and fatal violence. Was there an inter-relationship between the built environment and homicide? Did living in such close proximity affect the behaviour of, and interactions between, neighbours or those sharing a household and therefore make unlawful killing more or less likely? Was an existing culture of settling disputes with violence or threat of force a factor?

As industrial towns developed, workers increasingly occupied predominantly working-class accommodation established to house factory labourers. This built environment, its material space, a culture of shared possessions and the consequent networks of working-class life were implicit in the 'production' of violence. The very nature of the working-class environment created opportunity for disagreement: shared possessions, resources, and living space were essential elements of social life and support networks but could also be the cause of dispute. While violence was a daily concern, it could also be a tactic for controlling boundaries and use of resources: the implicit or explicit threat of violence within communities had the effect of regulating the behaviour of individuals within urban communities.

Although such violence was not unique to working-class districts, the spatial arrangement of these districts in particular provided motivation for disputes.¹

The close proximity in which people lived could become the flash point for argument, abuse and physical violence. Neighbours crossed and re-crossed each other's paths, or 'neighbourhood space', during the course of day to day life and, while this cultural intersection could be supportive and positive, it could also be the source of tension and abuse. Key areas for conflict included children, property, husbands and use of space.²

This chapter explores the evidence of the Lord Advocate's Precognitions and the High Court Trial Papers to identify the flash points and tensions that led to fatal violence between individuals living in close proximity and sharing space or resources during this period. The aim being to establish the degree to which they could be attributed to the environment that had evolved as a result of urbanization.

There were 20 females and 37 males indicted in Scotland during the period 1836-69 for 53 homicides of people with whom they were either living in close proximity or sharing resources. The indictments for three of those homicides each named more than one male perpetrator, while all female pannels were charged alone. 27 of the homicides were committed in urban centres; ten occurred in rural areas such as farms or crofts, and a further ten were committed on maritime vessels against fellow crew members, either at sea or while in port. However, flash points for physical violence between

¹ J. C. Wood, *Violence and Crime in Nineteenth-century England: The Shadow of our Refinement* (London, 2004), pp.97-106. For a discussion of lodging houses as 'heterotopic' places with rules and rituals of their own, and where 'confusion' and 'inversion' of opposites took place see T. Crook, 'Accommodating the outcast: common lodging houses and the limits of urban governance in Victorian and Edwardian London', *Urban History*, 35 (2008), pp.414-36.

² S. D'Cruze, *Crimes of Outrage: Sex, Violence, and Victorian Women* (Manchester, 1998), pp. 50-1.

individuals living in close proximity to each other could arise out of situations in which the victim had been in the care of others or an inmate within a charitable or public institution for the poor or insane, and there were six such cases in Scotland during this period.

Table 5.1: Breakdown of situations in which homicides between individuals sharing space and resources occurred in Scotland, 1836-69.

	Urban	Rural
Lodgers	13	1
Neighbours	7	1
Fellow servants	0	3
Master/servant	6	3
In paid care of others	2	1
Maritime	10	
Public or charitable institutions (asylum; industrial school)	6	

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69

Table 5.1 suggests that homicides involving individuals living in close proximity were more likely in urban centres, although homicides between fellow servants during this period were confined to rural situations. Although it is not appropriate to classify homicides that occurred on board vessels as strictly urban, the increase in shipping during mid-nineteenth-century Scotland was a result of the industrialization process and all-male crews shared living space and resources in close proximity to each other, creating opportunity for dispute. Cases of homicide in mid-nineteenth-century Scottish institutions, such as the asylum and industrial school, where individuals crossed and re-crossed each other's paths on a daily basis, will also be examined to establish the extent to which the environment could be a factor.

Scottish urbanisation was dominated by the four major urban centres of Glasgow, Edinburgh, Dundee and Aberdeen, and the rapid changes

experienced by these cities have dominated the historical record. However, smaller urban centres such as Haddington and Dumfries typified the agricultural and service centres, while Ayr and Perth served centres for textile industries. There were also more specialist centres such as fishing towns, and spa and sea side resorts. There was a massive increase in the scale, size and dominance of urban space in Scotland during the nineteenth-century and the most common type of housing for all but the highest income groups was the tenement. In 1914 Edinburgh still had more than 7000 one roomed or single-end apartments, 94 per cent of which shared water closets. Glasgow, the ‘shock’ city of this period, had more than 44,000 one roomed ‘houses’ and 111,451 apartments consisting of two rooms, or one room and a kitchen: 93 per cent and 62 per cent of these, respectively, shared a water closet.³

The price for Glasgow’s industrial success was its reputation for being the filthiest and least healthy city in Britain. The most common type of working class accommodation in Glasgow was the high-rise, multi-occupancy dwellings, and many houses were ‘made-down’, a process by which internal layouts of existing housing were altered to create as many separate dwellings as possible. Although the result was the most congested, high-density population in Europe during this period, the supply of accommodation was not keeping up with the demand, limited by the increase in population. Common lodging houses in Glasgow provided accommodation for between 5000 and 10,000 people, attracting new migrants and immigrants, with as many as 40 people crammed into a single room. Dundee had begun the century as a port and hand-loom weaver’s town but by 1860 was employing several thousand in

³ R.J. Morris, ‘Urbanisation and Scotland’, in W.H. Fraser and R.J. Morris (eds), *People and Society in Scotland 1830-1914* (Edinburgh, 2000), pp.75-81.

the course linen and jute industry, and had become a ‘grubby, hard-working, ill-balanced economy’ dominated by a female labour force.⁴ The small, overcrowded houses, shared stairwells, closes and courtyards were the shared domestic and ‘neighbourhood space’ and cases of homicide of or by lodgers and between neighbours living in Scottish urban tenements illustrate the way in which conflict could arise.

Lodgers and Homicide

There were 14 homicides of or by lodgers during the period 1836-69, 12 of which were committed in major urban centres, one of which was committed in Dysart, a seaport town in the county of Fife, and one in the rural county of Ross-shire. Only the Indictment has survived for the case against Peter Kittles, who was accused of murder or culpable homicide in 1848 but from this it is possible to establish that the crime was alleged to have taken place in Perth against Margaret McDonald, who was residing with her husband and Kittles.⁵ While we can assume the case involved a dispute between the lodger and those with who he lodged, the circumstances are unknown. However, the remaining 13 cases suggest that, while children were the cause of one fatal incident, money and property were key causes of conflict, often exacerbated by the use of alcohol, and that homicide could result from the fact of being forced to share living space. One further case illustrates the potential for fatal accidents involving the lack of care with firearms.

An altercation over children was a key cause of conflict between Mary Bryce and her lodger, which ended in Bryce being indicted for the crime of

⁴ W.H. Fraser and I. Maver, ‘The social problems of the city’, in W.H. Fraser and I. Maver (eds), *Glasgow 1830-1912*, vol. ii (Manchester, 1996), pp. 352-79.

⁵ JC26/1848/148, Trial Papers relating to Peter Kittles for the crime of murder or culpable homicide, 1848.

culpable homicide in Greenock in 1864. Bryce assaulted John Hutchinson after his daughter and her own squabbled and stuck their tongues out at each other. Hutchinson had lodged with Bryce, in Tobago Street, Greenock, for five or six weeks and the accommodation comprised a kitchen and two rooms. Bryce, her husband and four children occupied the kitchen and one of the rooms while the victim, his pregnant wife and two children occupied the second room. On Saturday 18th June 1864 Hutchinson sent his seven year old daughter, Alison, out to buy some tripe. When she returned Bryce's daughter asked Alison where she had been but was not answered and there was some shouting and name calling between the two girls. When Bryce interfered on behalf of her daughter Hutchinson and his wife became involved, and in trying to prevent Bryce pushing his pregnant wife he was himself assaulted with a hearth brush and a knife.⁶

Money was a causative factor in three of the homicides involving lodgers during the period. Alexander McTaggart, a 31-year-old hammer-man, was indicted for the murder of a fellow lodger, with whom he shared a tent-bedstead in one room of a house in Hutchesontown [sic], Glasgow, consisting of one room and a kitchen. There was also a closet bed in the room and a family of five slept in the kitchen. McTaggart was described as a quiet man, while McLeod, his fellow lodger, was described as between 60 and 70 years of age, and a 'crabbed' sort of man and quick in temper. Although McTaggart claimed McLeod had taken a pound from him, McTaggart had also been heard to call the victim a 'Heeland w---' and McLeod had antagonised McTaggart

⁶ NRS, AD14//64/63, Precognition against Mary Bryce for the crime of culpable homicide or assault by stabbing, or cutting, to the effusion of blood and injury of the person, 1864.

that evening by hindering access to their lodgings, suggesting the existence of simmering conflict between the two men.⁷

Underlying friction between individuals sharing accommodation could be exacerbated by alcohol, as illustrated in two of the cases in which money was the immediate cause of conflict. Helen McDonald was indicted for, and convicted of, culpable homicide after assaulting her lodger, Thomas McDonald, by seizing his clothes and pushing him down the stair. The accused declared that her lodger and his wife were both given to drink and, while they seemed to find money for whisky, had fallen five shillings behind in their rent. On the afternoon of 15 February 1859 in Cowgate, Edinburgh, Thomas McDonald, his wife and his brother had been drinking and their landlady remarked that she hoped he would not be as uproarious as he had been the night before, and told them that they must leave the house. A quarrel broke out between the victim and his wife, the accused interfered and during the struggle the victim missed his footing and fell backwards into the street.⁸

Dugald McKellar was indicted for the murder of Mary McLoskey, with whom he lodged in Anchor Inn Close, Greenock, in 1857. Patrick McLoskey, the victim's husband, declared that McKellar and another lodger had just been paid and were drinking. McKellar was about two weeks behind in the rent, but the flash point for the homicide was a quarrel between McKellar and his wife about a shilling for more whisky. When the victim interfered McKellar told her that she had too often interfered and he would put it out of her power to do

⁷ NRS, AD14/66/126, Precognition against Alexander McTaggart for the crime of murder, 1866.

⁸ NRS, AD14/59/310, Precognition against Helen McDonald for the crime of culpable homicide, 1859.

so, and then shoved her back against a small stool and kicked her, fracturing her ribs and rupturing her liver.⁹

A missing cloak was the cause of a drunken quarrel between Patrick Greenan and his lodger Michael Robinson. Greenan, his wife and two sons, lived in a house consisting of a room and a kitchen in Saltmarket Street, Glasgow. Robinson and a woman who passed as his wife lodged with them. During the quarrel Robinson shoved Greenan's wife, Helen, to the floor and kicked her, after which she died.¹⁰ Patrick Lunney, a 21 year old stonemason of residing in the industrial village of Alexandria, Dumbartonshire, was indicted for the murder of James Cassidy, a fellow lodger of Duncan McNaught, a grocer and flesher in Alexandria. Cassidy and Lunney had quarrelled three or four times during Saturday 10 November 1860, and had both been drinking when another quarrel erupted that evening over who was having ham for their supper.¹¹

Friction could also develop between individuals who had previously been on good terms. William Ranstead, was accused of the culpable homicide of his fellow lodger, William Chambers, with whom he shared a bed. Their lodging house keeper at Cowgate, Edinburgh, declared that the two men had lodged together for two years and used to 'agree well enough'. However for two or three weeks previous, they had begun to argue about the bedclothes: Chambers complained that Ranstead took all the bedclothes during the night. The landlady provided more blankets but the men continued to quarrel about

⁹ NRS, AD14/57/65, Precognition against Dugald McKellor for the crime of murder, 1857.

¹⁰ NRS, AD14/66/58, Precognition against Michael Robinson for the crime of murder, 1866.

¹¹ NRS, AD14/60/217, Precognition against Patrick Lunney for the crime of murder, 1860.

‘trifles’. Both were given to drink and Chambers was ‘of hasty temper’ and ‘very ready with his hands’.¹²

Drunken behaviour itself could be the immediate cause of a fatal altercation. Alexander Stitt and one of his lodgers in Hutchisontown, Glasgow, Patrick Brady, had quarrelled two months previously but it was thought that this had been resolved. However, when Brady and another lodger came home drunk in the early hours of Sunday 28 February 1864, Stitt asked Brady to make less noise as it was the Sabbath. Brady was very excited and called Stitt ‘a bad name’, saying that ‘he had it in for [him]’, before striking him about the head. However, Stitt declared that he did not know what Brady had meant by this, and it was thought that there was no ill will between the two men.¹³

Thomas Gillon, who lodged in New Wynd, Glasgow, had been drinking for two days and was much the worse of drink. His landlady, Margaret Douglas, had complained that Gillon had been annoying her all day and following a quarrel between him and her brother, had been removed from the house by police. However, on his return Gillon was even more drunk and in an attempt to get him out of the house, Douglas gave him a shove that sent him ‘reeling down the stair’.¹⁴

The spatial and social arrangement of the built environment, and its potential for conflict is clear from the surviving records of homicide. However, it was the sanitary conditions of the tenements, and the potential for the spread of disease in overcrowded city dwellings that particularly concerned

¹² NRS, AD14/53/511, Precognition against William Ranstead for the crime of murder or culpable homicide, 1853.

¹³ NRS, AD14/64/46, Precognition against Alexander Stitt for the crime of culpable homicide, 1864.

¹⁴ NRS, AD14/64/85, Precognition against Margaret Douglas for the crime of culpable homicide, 1864.

contemporary observers.¹⁵ Although motivation was more pecuniary than philanthropic, this was certainly the concern of Peter McManimy and Peter Higgans when they removed Robert McGill, a labourer suffering from typhus fever, from McManimy's lodging house without his consent, and left him at the terminus of the Edinburgh to Glasgow railway in mid-November 1847. McGill was 'for several hours exposed to the inclemency of the weather' before being removed to the infirmary where he died three days later.¹⁶

Two cases of homicide during this period suggest that the cause of friction could also be the very fact of being forced to share living space. Bridget Lynch lived in an attic, or garret room, in Overgate, Dundee. Lynch had a small family and two other women, one of whom was Lynch's sister, generally lodged there. Lynch took Elizabeth Reilly, her husband and three children in out of pity, after Reilly had given birth on the street and, as a result of their poverty, had made no provision for the child. However, Lynch had frequently asked Reilly to find other lodgings as there was not sufficient accommodation in the garret for all of them. Reilly was not willing to leave. A quarrel broke out when Lynch and her sister returned home drunk, during which Lynch grabbed Reilly's infant by the throat and threw him on the floor.¹⁷

The case of Ann Matheson, who was distantly related to her victim, Mary Veag, with whom she lived in the rural parish of Lochalsh, in Ross-shire, illustrates that friction between individuals who shared living space was not exclusively an urban phenomenon. Veag was described as being 'short of

¹⁵ N. Arnot, 'On the fevers which have prevailed in Edinburgh and Glasgow', in Poor Law Commissioners (eds), *Reports on the Sanitary Condition of the Labouring Population of Scotland: in Consequence of an Inquiry Directed to be made by the Poor Law Commissioners* (London, 1842), pp.1-12.

¹⁶ 'Case of Culpable Homicide' *Caledonian Mercury* (1 July 1847).

¹⁷ NRS, AD14/66/23, Precognition against Bridget Lynch for the crime of murder, 1866.

temper' and Matheson had declared that she bore her no ill will and did not desire to have her money, but that Veag was of 'a rash nature', would not allow any person to come into the house, and would not allow a candle to be burning through the night. Matheson further declared she was tired of being in the same house every night alone with Veag and of attending her.¹⁸

The definition of culpable homicide allowed for the element of 'undue negligence, or want of attention, in the performance of a lawful act'.¹⁹ It has been suggested in chapter two that the application of this principle, when applied to the negligence of those responsible for steam vessels, railway and other land carriages, may have been partly responsible for an increase in the homicide rates for mid-nineteenth-century Scotland. However, it applies equally to the reckless discharge of fire arms. According to Alison, to fire a gun where other people are present, regardless of whether it has been loaded with shot or just powder, is culpable homicide because to fire at all would be considered a reckless and dangerous act.²⁰ William Bonthron, the son of a teacher in Dysart, Fife, declared that his father kept boarders, one of whom was 14 year old George Brankinrig, and, he declared, he did not know there was powder in the gun and he pulled the trigger intending to 'snap the gun.'²¹

Neighbours and Homicide

The homicides discussed above occurred between individuals sharing a single household, and while the relationships differ from those discussed in chapter three, there could be similar causes of conflict. Furthermore, Wood points out that, while a 'domestic' crime implied privacy and intimate relationships, the

¹⁸ NRS, AD14/51/243, Precognition against Ann Matheson for the crime of murder, 1851.

¹⁹ A. Alison, *Principles of the Criminal Law of Scotland* (Edinburgh, 1832), p.92, 114-116.

²⁰ Ibid. p.114.

²¹ NRS, AD14/54/297, Precognition against William Bonthron for the crime of culpable homicide and culpable and reckless discharge of loaded firearms, 1854.

nature of the built environment meant that private often became public in many communities. Even where a family had a relatively 'private' abode, they were still tied to their neighbours through the use of shared material spaces. Disagreements commonly arose around the use of common resources, boundaries, privacy, borrowing and noise.²²

Eight people were indicted for murder or culpable homicide involving neighbours during the period 1836-69. The trigger for six of these cases was related to the categories identified by Wood. A fatal altercation between Margaret McCulloch and John McGeachen arose over the use of shared space. McCulloch and an acquaintance had been sitting on the stair of a Glasgow tenement, drinking, when McGeachen, a neighbour, commented that someone could trip over them. McCulloch pointed out that she was sitting on her own stair, not McGeachen's. Insults were exchanged and a struggle broke out, during which McGeachen was alleged to have assaulted McCulloch with his fists.²³ Ann Shaw was convicted of the culpable homicide of a neighbour, Helen Kelly, after Kelly accused Shaw of soiling some clothes that were hanging in a shared courtyard behind a close in Calton, Glasgow. Shaw, who was described by neighbours as being a quiet and inoffensive woman, was crossing the courtyard when Kelly, known to be of a violent disposition, shouted at her to 'stoop her back' because she was dirtying the clothes. Shaw replied that she was not dirtying the clothes, that she paid her rent as well as Kelly and would not hurt her back for clothes. Shaw followed Kelly out of the court and stabbed her.²⁴

²² Wood, *Violence and Crime*, pp.97-103

²³ NRS, AD14/59/252, Precognition against John McGeachen for the crime of culpable homicide, 1859.

²⁴ 'Glasgow Assize' *Caledonian Mercury* (11 January 1836).

Noisy disturbances and a lack of privacy in tenements and closes could also lead to fatal quarrels. Joan Munro was a pauper who had previously lodged with Mary Jack in a close at High Street, Glasgow. Jack had ordered Munro out of the house as a result of her drunken habits, and she found other lodgings in the same close. Jack declared that Munro frequently caused a disturbance at her door, especially when she was drunk, using abusive and insulting language. On Saturday 18 January 1851 Munro was making such a noise at Jack's door when Jack struck Munro over the head with a stick. Alexander Drummond, a neighbour, declared that Munro was a quiet woman and was on good terms with all her neighbours except Jack, as there was some spite between them.²⁵ Andrew Pringle lived in a close in Edinburgh with his wife and step-daughter and, he declared, they did not live on good terms and were often quarrelling. There was some quarrelling on the afternoon of 22 December 1840, during which the victim, Elizabeth Mortimer, from whom Pringle rented his house, was heard to knock on Pringle's door and tell him to leave the land as he was a disgrace to it. Mortimer cried out that Pringle had struck her and Pringle replied that he would teach her to interfere in family affairs. A struggle then broke out during which Mortimer fell or was thrown down the stairs.²⁶

However, not all triggers for the homicide of neighbours in mid-nineteenth-century Scotland can be so easily categorised. Irascibility and excitability could be long-term and exacerbated by some degree of mental disorder. Bridget McGinty, for example, was indicted for the culpable homicide in 1858 of Helen Blair by pushing her down the stairs of a tenement in Longwell

²⁵ NRS, AD14/51/119, Precognition against Mary Jack for the crime of murder, 1851.

²⁶ 'Charge of Murder', *Caledonian Mercury* (18 March 1841).

Close, Greenock. Blair was described as having been a quiet woman until she had been ill with a fever, after which she was said to have ‘become imbicile [sic], that is, quite silly in her mind and very bad tempered and ill tongued’, and that she would ‘go breaking out upon people without any apparent cause’. McGinty declared that she and Blair had been neighbours for three years and that Blair had ‘given me much provocation since she came to the land’ and a neighbour also testified that McGinty and Blair were often quarrelling. However, McGinty declared that on the occasion in question she could not be bothered with Blair and had just wanted her to go down the stair.²⁷

The causes of conflict could also be immediate and specific. Duncan McDonald and Margaret Littlejohn, residing in Carter’s Land, South Street, Perth, were both given to drink and when McDonald was awoken by water coming through the ceiling from Littlejohn’s apartment above, he went up the stairs and a quarrel erupted, during which he was alleged to have assaulted Littlejohn.²⁸ John Stewart allegedly pushed Robert Clark’s wife, who was ‘very much the worse of drink’ down the stairs in an Edinburgh tenement, in an attempt to get her to go away. Clark’s daughters then went to Stewart’s house, shouting for him to come out and knocking down a ‘gate’ that barred access to his window. Clark became involved and a scuffle broke out during which Stewart allegedly struck Clark over the head with a hammer.²⁹

Extant High Court records suggest that the majority of fatal altercations between neighbours occurred in an urban context. However, the sample covered by this project includes one case of homicide between neighbours

²⁷ NRS, AD14/58/240, Precognition against Bridget McGinty for the crime of culpable homicide, 1858.

²⁸ NRS, AD14/48/268, Precognition against Duncan McDonald for the crime of culpable homicide and assault to the serious injury of the person, 1848.

²⁹ NRS, AD14/64/251, Precognition against John Stewart for the crime of murder, 1864.

living in rural Scotland. Mary Timney was found guilty of murdering her neighbour, Ann Hannah, at Carsphad farm, in the rural parish of Kells, Kircudbrightshire, in 1862. Timney had been borrowing tea from Hannah almost daily until Hannah had stopped it but altercations continued over a claim to a tree that had blown down as ‘water wrack’³⁰. Timney was described as having a bad temper, and when in a passion was very reckless and did not care what she did or said. She was also sometimes ‘the worse of liquor’, and had frequently threatened Hannah.³¹

Fellow Servants and Homicide

Individuals could also be brought together to share domestic and neighbourhood space through working relationships or arrangements. High Court records survive for three such cases, all three of which were committed in a rural setting. Isabella Skinner, for example, was indicted for killing her fellow servant, James Monteath, at a farm in Muthill parish, Perthshire, by assaulting him with a poker. Skinner quarrelled with Monteath for putting a table cloth away without folding it. Monteath became angry and threatened to kill Skinner who, ‘was all in a fright as Monteath was between her and the door she could not get out’, and she struck him with the poker she had in her hand. Monteath was described as having a ‘weak intellect’ and ‘of lazy habits and fond of liquor’, and another servant declared that he had previously been threatened with violence by him.³² John McClellan and his fellow servants at a farm in the parish of Girthon, Kircudbrightshire, joined together to buy five bottles of whisky with which to celebrate the Old New Year’s Day on 12

³⁰ Weeds, leaves, sticks etc. carried down by a river, see M. Robinson (ed.), *Concise Scots Dictionary* (1985, Edinburgh, 1999), p.776.

³¹ NRS, AD14/62/129, Precognition against Mary Timney for the crime of murder, 1862.

³² NRS, AD14/51/351, Precognition against Isabella Skinner for the crime of culpable homicide, 1851.

January 1836. After thrashing fodder for the cattle, and after having breakfast, the servants began to drink the whisky and entertain themselves. A quarrel broke out between McClellan and another, and when the victim, Bryce Aughterson, interfered, McClellan assaulted him with fists and feet.³³

Another case of homicide during this period involved a farm servant killing a fellow servant, with whom he shared accommodation, as a result of accidental discharge of a loaded firearm. James Watson was a farm servant at New Farm, Culross, Perthshire. Watson declared that there was a gun for shooting crows on the farm. The gun had been loaded but no crows had been shot and the gun remained loaded. During a struggle between himself and Peter McLauchlan, a fellow servant, the gun went off killing McLauchlan.³⁴

Masters, Servants and Homicide

Conflict could also arise in a master/servant relationship. Isabella Livingstone was indicted for the homicide of her employer, Catherine Fox, tavern keeper in Trongate Street, Glasgow, after Fox had called her whore.³⁵ Helen Herris, of Marykirk, Kincardineshire, had allegedly beaten her 14 year old servant girl, Elizabeth Cooper, on more than one occasion, accusing her of being ‘a lazy limmer’³⁶. However, the fatal beating was delivered on 21 October, 1836, when Cooper was given leave by her master to visit a neighbouring town. On Cooper’s return Herris scolded her for neglecting the youngest child and then assaulted her.³⁷

³³ NRS, AD14/36/146, Precognition against John McClellan for the crime of culpable homicide, 1836.

³⁴ NRS, AD14/53/363, Precognition against James Watson for the crime of culpable homicide, 1853.

³⁵ NRS, JC26/1842/386, Trial Papers relating to Isabella Livingstone for the crime of culpable homicide, 1842.

³⁶ Term of general abuse or contempt for a woman, see Robinson, *Scots Dictionary*, p.375.

³⁷ NRS, AD14/36/20, Precognition against Helen Herris for the crime of culpable homicide, or assault, 1836.

Money and property could also be the source of conflict between masters and servants. Flora McDonald was suspected of poisoning her mistress, Jane McMurrich with arsenic after McMurrich had spoken to McDonald about a missing sixpence. On morning of 10 March, 1860, McMurrich complained that her porridge, prepared by McDonald, tasted like the ‘ratty stuff’, referring to the arsenic and aniseed that had been purchased to kill rats at the farmhouse in Luss, Dumbarton. McMurrich’s husband declared that his wife suspected McDonald of taking the money and he was aware that McDonald had taken offence to the suggestion that she was a thief. He also declared that no one other than McDonald had an opportunity to contaminate the porridge.³⁸ Daniel Clark, of Raise Street, Saltcoats, a harbour town in Ayrshire, was found guilty of culpable homicide after he assaulted his father’s housekeeper, Janet Wilson, because he believed her to be pawning articles belonging to them. Clark declared that he had been drinking and confronted Wilson, told her she had to leave and assaulted her when she refused.³⁹

A child was the victim in one case of homicide resulting from conflict between master and servant. Jane Kinnaird was employed as a servant to John Gibson, a farmer in the parish of Moffat, and in 1867 was accused of murdering Gibson’s three-year-old Mary Harkness, by administering a quantity of Cuff’s Fly. Kinnaird declared that Gibson’s daughter and mother of the victim, Elizabeth, had dismissed her for not being home on time and Gibson in turn declared that Kinnaird was sullen, stubborn, and did not reply when spoken to, and when Kinnaird refused to do her work she was told she should either do her work or leave. Kinnaird initially left, but she returned the

³⁸ NRS, AD14/60/168, Precognition against Flora McDonald for the crime of murder, 1860.

³⁹ NRS, AD14/50/306, Precognition against Daniel Clark for the crime of murder and assault, 1850.

following morning to resume her service and, she declared, gave the child ‘something out of a bottle which [she] got in the milk house, and [the child] drank some of it’.⁴⁰ In another case, four-year-old Williamina Trotter was suffocated when her father’s servant packed away a fold-down bed while she was still in it, in Thurso, Caithness, in 1856. The servant, Williamina Sutherland, declared that the child had been crying during the night and that the nursemaid had asked Sutherland to take the child into her bed in the kitchen. The child slept in all morning and the bed was in the way. Sutherland declared that she assumed the nursemaid had, on her request, taken the child and so put the bed away. Sutherland’s employer, however, declared that she found Sutherland careless and stubborn in her manner and the nursemaid claimed that it would not be possible to put up the bed without noticing a child was still sleeping in it, causing suspicion to fall on Sutherland.⁴¹

The wide use of laudanum as a cure-all, and as a way in which fussy babies could be pacified is evident in two cases in which children died while in the care of others. As suggested in chapter three, while laudanum could be a readily available and discreet method of taking the life of a child, with a medically and socially acceptable reason for its use, potential or perceived misuse could result in charges of culpable homicide. Janet Burns, for example, a servant to Helen White, a dressmaker in Tradeston, Glasgow, was indicted for culpable homicide after White’s two-month-old son, Daniel, died after being given laudanum in 1850. Burns declared that the child had been ‘fretty’, and Burns suggested that she give him ‘poppy’, as this was what White’s mother had said she used previously. White consented although, she declared,

⁴⁰ NRS, AD14/67/134, Precognition against Jane Kinnaird for the crime of murder, 1867.

⁴¹ NRS, AD14/56/163, Precognition against Williamina Sutherland for the crime of culpable homicide, 1856.

she had never heard of ‘poppy’ and had expressed a hope that it was not laudanum.⁴² Elizabeth Hamilton was convicted for poisoning three-month-old Andrew McNeill, in her care, with laudanum in Edinburgh in 1857. Hamilton declared that the child began to cry violently and she thought he was in pain. There was a bottle of laudanum in the room and she had seen her mistress, the mother of the child, give him laudanum previously, on instructions from a doctor. Hamilton gave the child five drops in some milk and informed his mother of what she had done. However, the child became ill and died and Hamilton was charged with culpable homicide.⁴³

Inattention and neglect on the part of servants could also have fatal results. Catherine Forrester, nursemaid to the children of Charles Hammond, of Leith, was indicted for the culpable homicide of his son Arthur, after he died as a consequence of a fall. Forrester declared that she had taken the children for a walk but had started drinking when she met some acquaintances. She further declared that she and a fellow servant took the children home and was later told the child was very ill. On getting home, she declared she had fallen asleep and did not see the child until the following morning.⁴⁴

In the Paid Care of Others

Arrangements which involved the payment of money for childcare services were discussed in chapter three and it was suggested that, while the provision of such a service could be an essential element of survival networks for the mothers of illegitimate children, it could also contribute significantly to the survival of widows or old women who did not have access to other forms of

⁴² NRS, AD14/50/647, Precognition against Janet Burns for the crime of culpable homicide, 1850.

⁴³ NRS, AD14/57/297, Precognition against Elizabeth Hamilton for the crime of culpable homicide, 1857.

⁴⁴ NRS, JC26/1841/463, Trial Papers relating to Catherine Forrester for the crime of culpable homicide, 1841.

income. However, the case of Jane Anderson, a widow, who had custody of a two-year-old illegitimate boy on behalf of his mother, a steam loom weaver, in Dundee, illustrates the way in which such a scenario could result in unlawful killing. Over a period of several months, the child, Peter Devine, was assaulted with fists, shaken, deprived of sufficient food and left in the dark without heat. Devine was said to be strong and healthy when he first went into Anderson's care but Anderson was said to be 'intemperate in habit and very often the worse of drink' and was in 'practice of illtreating [sic] the child' and 'did not nourish it as she ought to have done.'⁴⁵

Adults could also find themselves victims of those who were paid to care for them. The Inspector of the Poor for Perth had committed 80 year old Janet Farquharson to the care of Catherine Landale for four shillings per week for the two of them. A neighbour declared that there had been tension between Landale and Farquharson because Farquharson had been reluctant to give Landale money for tea and sugar. The fatal assault occurred after Landale, having received Farquharson's allowance, bought some whisky and became 'tipsy'. A quarrel broke and Farquharson found fault with Landale about getting drunk and about her 'bawbees', or copper coins.⁴⁶ William Carnegie was acquitted of the murder of the pauper William Walker who was in his care. Walker, described as an elderly man, 'weak in body, and rather silly in mind', received an allowance from the parish and lived with Carnegie, a crofter in Fettercairn, Kincardineshire. Walker collapsed and died on his way home from a neighbour's house after being shaved. The Inspector of the Poor,

⁴⁵ NRS, AD14/60/50, Precognition against Jane Anderson for the crime of culpable homicide, and cruel and barbarous neglect of a child of tender years, 1860.

⁴⁶ NRS, AD14/50/111, Precognition against Catherine Landale for the crime of murder or assault, 1850.

George Falconer, declared that, when questioned about the death of Walker, Carnegie replied that he was 'just a done man'. Falconer also reported that Carnegie complained about Walker being a burden to him and about the inadequacy of the allowance. However, there were no other grounds for suspicion and the cause of death could not conclusively be contributed to violence. Under the direction of the court, the jury returned a verdict of not guilty.⁴⁷

Mariners and Homicide

An increase in shipping was attributed to and a consequence of Scottish industrialization. Although Scotland had, in defiance of the English Navigation Acts, established trade links with the West Indies and North America before the 1707 Union with England, it was not until around 1730 that coastal and overseas trade saw significant growth. The Scottish-Irish coal trade, the importation of manufactured goods from London and Europe to trade in North America, and the export of linen and cottons increased during the eighteenth century, and investment by Glasgow and colonial merchants stimulated coal production as well as other manufacturing enterprises. There was also large scale port development along Scotland's east coast, and shipping figures for the west coast ports of Greenock, Glasgow and Port Glasgow, improved significantly during the first part of the nineteenth century.⁴⁸

Port development and an increase in shipping resulted in an increase in seafaring men in Scottish harbour towns. While at sea, seamen and sailors were subject to crowded living conditions with little or no privacy and may have shared onshore accommodation in seamen's boarding houses between

⁴⁷ 'The Kincardineshire Murder Case' *The Scotsman* (2 February 1853).

⁴⁸ C. A. Whatley, *The Industrial Revolution in Scotland* (Cambridge, 1997), pp. 4-39.

voyages. The nature of overseas trade meant that men from diverse ethnic backgrounds could be living together in close proximity while at sea, and the wide use of whisky exacerbated existing frictions.

11 men were indicted for ten homicides between fellow seamen, either while on board vessels or while onshore between voyages during the period 1836 - 1869. Six of these homicides occurred during the 1860s, two during the 1850s and one each in the preceding two decades. Six of these homicides were committed during a voyage, either in the open seas or in inland waterways, and of those committed while in port, two were in Leith, one in Greenock and one in the western port of Irvine.

Only the Indictment and statement of Thomas Philips, accused of the homicide of Alexander Cunningham has survived, but according to Philips he and Cunningham were good friends and while larking about Philips took a cutlass from the scabbard of a sentry and accidentally cut Cunningham's thigh, severing the femoral artery.⁴⁹ Alexander Mitchell accidentally fell overboard into the Forth and Clyde canal during a scuffle with his brother Andrew, who was subsequently found guilty of culpable homicide.⁵⁰ Robert Bruce, master of a vessel docked in Leith, and Joseph Octon, ship's mate, agreed to fight because Bruce's tea was cold and insufficient. Bruce had been in Edinburgh on business and, he declared, had been drinking but was not drunk. A quarrel broke out between Bruce and his mate when he complained that the cold fried meat was insufficient as he had had no dinner. Octon argued that it was Bruce's own fault as he had gone to Edinburgh without telling anyone and,

⁴⁹ NRS, JC26/1863/122, Trial Papers relating to Thomas Philips for the crime of culpable homicide, 1863.

⁵⁰ NRS, AD14/55/69, Precognition against Andrew Mitchell for the crime of culpable homicide, 1855.

after more words passed between them, Octon suggested they go on deck to ‘have it out’. According to a witness the two shook hands before fighting and had agreed not to hurt one another as ‘it’s only a lark’.⁵¹

Friction could arise out of definition of duties. James McCredie, a boatman on the coal barge, *Welcome*, and the vessel’s master, Archibald McCallum quarrelled when McCallum asked McCredie to take over driving the barge horse as they were not going quickly enough through the Forth and Clyde canal. McCredie argued that it was not his job and a struggle broke out, during which McCallum was thrown overboard and drowned.⁵²

Money could also be a cause of conflict between seamen. It was believed, although not proven, that James Shiels had thrown his crew mate, William Smellie, overboard while the steamer on which they served was in dock in Irvine harbour. After being paid Shiels, Smellie and others went drinking on Irvine Quay and had had a considerable quantity of drink. Once back on board, around midnight, Smellie accused Shiels and another member of the crew of taking some money. Shiels and Smellie went out on deck and sounds of a scuffle were heard. After about ten minutes all went quiet and Shiels returned alone with a torn shirt and declared that Smellie had gone ashore.⁵³

Robert Campbell, 15 year old seaman on board the vessel *Devon* of Leith, was also found to have drowned in suspicious circumstances. The ship’s master, Thomas Galloway, and his brother Peter were indicted for the murder of Campbell after he was seen drowning a short distance from the *Devon*, with a small empty boat and an oar floating nearby. It was thought that Campbell

⁵¹ NRS, AD14/55/297, Precognition against Robert Bruce for the crime of culpable homicide, 1855.

⁵² NRS, AD14/41/261, Precognition against James McCredie for the crime of murder or culpable homicide, 1841.

⁵³ ‘Murder’, *Glasgow Herald* (25 April 1868).

had fallen from the small boat while he was ‘skulling’, while standing on the shafts of the boat: a practice during which, it was claimed, a boy could fall into the boat or, potentially, overboard. However, suspicion fell on the Galloway brothers after it was alleged that they had ‘discorded’ with Campbell, and one of them had been heard to say that they had ‘hove him overboard’. It is not clear what the discord was about and the case against the Galloways was found to be unproven.⁵⁴

There was no doubt at all that Andrew Brown, mate on board the schooner *Nymph*, had killed the vessel’s master, John Greig, with an axe. Brown’s motive, however, was less clear. Other crew members declared that Brown appeared to have tasted drink but was not drunk, and that Brown and Greig were believed to be good friends, no one having witnessed any quarrel or angry words between them. However, soon after setting sail from Montrose to London with a cargo of wood, Brown struck Greig over the head twice with a carpenter’s axe, killing him instantly. When asked why, Brown initially claimed that the master ‘was a bad b---r, for he had taken him to bad houses in London and there spent his money, and he had none to bring to his mother.’ He told another crew member that it was to settle ‘an old grudge’. However, in a letter written the day before his execution, Brown expressed his regret at what he had done and confessed that he had not in fact born any grudge against the victim, but that ‘it came into my head all at once’.⁵⁵ Brown’s sister

⁵⁴ NRS, AD14/36/390, Precognition against Peter Galloway, Thomas Galloway for the crime of murder, 1836.

⁵⁵ As cited in A.F. Young, *The Encyclopaedia of Scottish Executions 1750-1963* (Orpington, 1998), p.126.

declared that he had suffered head injuries in the past that had changed his character and that since then he became violent when drunk.⁵⁶

A consequence of overseas trade was that sailors of various ethnic backgrounds could serve together on any given vessel, and the phenomenon of drunken brawls between men could be exacerbated by cultural difference as well as by the sharing of space and resources. Guiseppe Masselli and Guiseppe Profumo, both Italian, and other seamen had been drinking and the pair had quarrelled with another foreign sailor, a man named Mateo about where he was from. The quarrel continued after Mateo had departed, and Profumo was stabbed during a subsequent struggle.⁵⁷ The circumstances around the case of murder against Clement Tchera, a 40 year old Brazilian, had rather more racist connotations. Crew members gathered on board the vessel *Trachrague*, at that time docked in Greenock harbour, in readiness to sail on Saturday 11 May 1867. Once on board Tchera shared a bottle of whisky with the crew before going out on deck. When he returned to his bunk he appeared to be of the impression that someone had interfered with his trunk and, when William White and others approached him, he stabbed White in the side. The statements from other crew members suggest that no provocation took place at this time, however, evidence in exculpation suggested that Tchera had been the victim of some abuse the night before boarding the vessel. A witness had heard one of the crewmen threaten to ‘loom the black son of a b---’ if he sailed on board the ship, and Tchera was said to have had a wound to his head after the stabbing took place.⁵⁸

⁵⁶ ‘The Montrose Murder Trial’, *The Scotsman* (9 January 1866).

⁵⁷ ‘The Leith Murder Case’, *Caledonian Mercury* (19 December 1865).

⁵⁸ NRS, AD14/67/39, Precognition against Clement Tchera for the crime of murder, 1867.

Joannis Manolatos, a Greek, assaulted and stabbed two fellow crewmen, killing one of them, while at sea in 1864. Manolatos was considered to be insane and unable to instruct counsel for his defence. However, at the time of the murder Manolatos claimed that God had told him the two victims, Robert Campbell and George Williams, had planned to throw him overboard that night, and that he should kill them before they killed him. After arrival in Edinburgh, one of the examining doctors, Dr. Skae, declared that Manolatos believed that there was a conspiracy against his life: that a captain of a vessel on which he had sailed previously had bribed Campbell and Williams to throw him overboard. Although Manolatos had been seen crying the day before the stabbing, he was otherwise said to have conducted himself well and was a civil and obedient seaman, and that there had been quarrel between him and the two victims.⁵⁹

These cases of homicide between mariners illustrate the way in which causal or contributory factors typical of intra-household and of male-on-male extra-household homicides converge in circumstances in which males live in close proximity with other males, and the male propensity to fight, even for recreation, is evident. Flash points and causes of tension reflected those arising between spouses, lodgers, neighbours and in extra-household homicide. However, the nature of this particular environment, living together in close proximity, the sharing of resources and a culture of whisky drinking resulted in greater opportunity for, and exacerbated tensions between, men from diverse ethnic groups.

⁵⁹ NRS, AD14/64/248, Precognition against Joannis Manolatis for the crime of murder and assault by cutting and stabbing, 1864.

Institutions and Homicide.

Material spaces created opportunities for disagreements, but they could also provide other opportunities for, or facilitate violence. The asylum is a case in point. One of the main justifications for restraining the insane was to prevent them causing harm to others.⁶⁰ ‘An Act to alter and amend certain Acts regulating Madhouses in Scotland; and to provide for the Custody of dangerous Lunatics’ of 1841 required that where any ‘furious or fatuous person or lunatic, being in a state threatening danger’, he or she should be committed ‘unto some place of safe custody’.⁶¹ However, the potential for violence was not always evident and Section 59 of the 1845 Poor Laws Amendment Act for Scotland stipulated that, under special circumstances, in particular cases with the consent of the Board of Supervision, it would be possible to dispense with the removal of the insane person to an asylum and to provide for them in some other manner.⁶² Even where the insane were admitted to an asylum, there was potential to do harm to others: to fellow inmates in particular. There were four cases of homicide committed by those considered to be insane, who were being held in institutions during this period. Only the indictment has survived for the case against Robert Lennox, who was said to have assaulted Henry Mitchell in the James Murray Lunatic Asylum in Perthshire with his feet, causing him to fall against a trunk. The trial was scheduled to be held in Perth on 30th April 1849 but he was not called.⁶³ William Craig, also of the James Murray Lunatic Asylum, was indicted for the murder of his fellow inmate, Mathew Speedie, after striking him with a poker.

⁶⁰ R. A. Houston, *Madness and Society in Eighteenth-Century Scotland* (Oxford, 2000), p.217.

⁶¹ Lees, *A Treatise on the Poor Laws of Scotland*, pp.91-2.

⁶² *Ibid.* p.143.

⁶³ NRS, JC26/1849/47, Trial Papers relating to Robert Lennox for the crime of culpable homicide, 1849.

The court was told, and the jury agreed, that Craig was insane and not a proper object for trial.⁶⁴ John Kinnear, a patient in Fife and Kinross District Lunatic Asylum was said to have been subject to repeated epileptic fits up to and at the time he attacked and killed his fellow inmate, Robert Toshack, in February 1867. The diet was deserted, or the case dropped, on the grounds that Kinnear was insane.⁶⁵ The fourth case of homicide committed by someone considered to be insane involved Henry Stewart, a resident of Greenock Poors [sic] House in Greenock, who assaulted Alexander McGregor by striking him about the head. According to medical testimony, Stewart had previously been an inmate in the Lunatic Ward of Greenock Poors House and

ought always to have been under control. It is in such cases as his that we find sudden bursts of passion, sometimes with, and sometimes without reason. I think he ought always to have been in a lunatic asylum.⁶⁶

Although the circumstance in which the case of William Keillor occurred was an arrangement in which he and the victim were both in the care of another, the underlying causes more closely resemble homicides committed in asylums, and is therefore discussed here. Keillor was a young man who was considered to be insane, but perfectly quiet, and was put into the care of Elizabeth Mellis by the Inspector of the Poor in Perth in 1850. Mellis also cared for a young boy, Robert Meldrum. Keillor had given no cause for concern until the day he took hold of Meldrum by his legs and struck his head upon a cut root of a tree.⁶⁷

Another nineteenth-century Scottish institution within which individuals shared living space and resources, and one which provided the setting for the homicide

⁶⁴ NRS, AD14/62/235, Precognition against William Craig for the crime of murder, 1862.

⁶⁵ NRS, AD14/67/168, Precognition against John Kinnear for the crime of murder, 1867.

⁶⁶ 'Murder' *Caledonian Mercury* (16 February 1857).

⁶⁷ NRS, AD14/50/179, Precognition against William Keillor for the crime of murder, 1850.

of Daniel O'Brien by three of his fellow inmates, was the industrial or reformatory school.⁶⁸ Three 14-year-old boys, pupils of the Paisley Reformatory and Industrial School, which catered for boys and girls, were indicted for the culpable homicide, by suffocation, of a fellow pupil, Daniel O'Brien, also 14 years old, in 1865. One of the accused, Thomas Knox, and the victim were sent to the school and paid for by the Parochial Board and slept in the school. The other two accused, David Shepherd and George McKinlay, were said to be 'charity' boys, and went home in the evenings. All four boys were being taught shoemaking. According to the Superintendent of the school O'Brien was a 'stirring and quarrelsome boy' and while he had caused some difficulty at first, he had appeared to become more subdued and greatly improved. Knox and Shepherd were quiet boys and caused little trouble but McKinlay was sometimes 'disposed to rebellion'. While the Matron agreed that O'Brien was a 'lively and stirring boy' she added that he had a rather nice disposition, she never had any trouble with him and he was always respectful.

Knox declared that O'Brien had seized him and squeezed his gums and lips together saying 'that was the way to make him greet'. The three boys made up their minds to do the same to O'Brien and give him a beating, and one of the boys put his hands over the victim's mouth to prevent him from crying out while the others inflicted blows to his face. However, John Smith, who taught the boys shoemaking, declared that the victim finished his work before the other boys and on leaving, gave McKinlay a 'wap' with his coat and then ran off laughing, followed by the other three. According to Smith, O'Brien was 'very stirring and

⁶⁸ For the emergence of reform and industrial schools in Scotland during mid-nineteenth-century to deal with delinquent and destitute children see L. Mahood, *Policing Gender, Class and Family: Britain, 1850-1940* (London, 1995); A.G. Ralston, 'The development of Reformatory Schools in Scotland, 1832-1872', *Scottish Economic and Social History*, 8 (1988), pp.40-55.

thoughtless' and was in the habit of 'crying nicknames' to the other boys.⁶⁹

Although witness testimony suggests that O'Brien could be antagonistic, and that he was thought to have provoked the fatal assault, the industrial school, bringing teenage boys together into a built space on a daily basis, provided opportunities for torment and bullying.

Conclusion.

The major urban centres in mid-nineteenth-century Scotland in which this type of homicide occurred - Glasgow, Edinburgh, Dundee and Greenock in particular - epitomised the working class built environment identified by Wood as being implicit in the production of violence and the individual cases illustrate the way in which the proximity in which people lived could, as D'Cruze also argues, become the flash point for argument and physical violence. Key areas of conflict included children, property and the use of space.

Violence had a widespread public acceptance as a means to settle disputes in Scotland during this period and there was an interaction between the built environment and the 'imagined' space, resulting in an association between a place and an accepted use of that space.⁷⁰ Use and misuse of stairwells and landings in particular could be the cause of dispute, the arena in which the dispute was played out and often contributed to the cause of death.

Not all situations in which homicides occurred during this period can be defined clearly as either rural or urban, such as those occurring between crew members on maritime vessels or in a public or charitable institution. These more unusual cases, as well as those that can be defined as rural, suggest the existence of a culture of violence, or the threat of violence, as a legitimate

⁶⁹ NRS, AD14/65/33, Precognition against David Shepard, Thomas Knox, George McKinlay for the crime of culpable homicide, 1865.

⁷⁰ Wood, *Violence and Crime*, pp.48, 105-6.

means of dispute settlement and control of behaviour, and it has been demonstrated that this culture was extended to other situations in which individuals shared living space or resources or both.

Chapter 6.

The 'Influence of Wine', the 'Heat of Passion', *lucri causa* and homicide.

Introduction.

As discussed in chapter two, Peter King's work on the quantitative evidence for homicide in mid-nineteenth-century Scotland indicates that homicide rates were greater in industrial and more densely populated areas than in rural regions, and the qualitative evidence of court records supports this, as illustrated in Table 2.1 and Figure 2.2. Furthermore, the extant homicide records for the same period suggests that extra-household homicide was the single most common type of homicide, as illustrated in Table 2.2.

This chapter examines the Lord Advocate's Precognitions and the High Court of Justiciary Trial Papers for the period 1836-69 to establish the extent to which the high rate of extra-household homicide in industrial and densely populated regions can be linked to characteristics of an industrializing and urbanizing society.

Records survive for 330 perpetrators, comprising 283 males and 47 females, indicted for this type of homicide in Scotland during the period 1836-69: a male to female ratio of 6:1. The first part of this chapter focuses on men who killed men and the circumstances that led to lethal violent exchanges. Was there a culture of legitimated violence in Scotland during this period? What effect did the bringing together of large numbers of men from diverse backgrounds have on behaviour and did this increase the likelihood of conflict and lethal violence? What were the interactions that were likely to result in unlawful killing?

If certain types of male violence had customary and cultural acceptance for dispute settlement, and the acceptable arena for this violence was in public space such as the street or alley ways,¹ to what extent did this also apply to women, and what provoked them? The second part of this chapter, therefore, explores cases of extra-household homicide committed by women against women and the reasons for, and the circumstances in which they resorted to extra-household violence, in an attempt to answer these questions.

Male-on-male homicide.

Historians of crime largely agree that violence was perceived to be an acceptable part of society and a desired masculine trait up to and including the nineteenth-century.² Martin Wiener further argues that violent deaths of adults in Victorian England were largely perpetrated by men, and that male-on-male violence most commonly took the form of a public fight, either to settle disputes or for sport. Pub- and street-fighting was common and the increased transport network brought about by the industrialization process facilitated the gathering of large audiences at prize-fights.³ While the homicide records do not suggest large numbers of interested bystanders travelling to prize-fights in Scotland during the period 1836-69, the building of the railway network did bring together a large number of men from diverse backgrounds, between whom conflict could arise.

¹ J. C. Wood, *Violence and Crime in Nineteenth-century England: The Shadow of our Refinement* (London, 2004), pp. 105-6.

² J. Archer, "Men behaving badly?": masculinity and the uses of violence 1850-1900', in S. D'Cruze (ed.), *Everyday Violence in Britain, 1850-1950* (Harlow, 2000), pp. 41-54; J. Rowbotham, "only when drunk": the stereotyping of violence in England, c1850-1900', in S. D'Cruze (ed.), *Everyday Violence*, pp.155-169; R. Shoemaker, 'Male honour and the decline of public violence in eighteenth-century London', *Social History*, 26 (2001), pp.190-208.

³ M. Wiener, *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Cambridge, 2004), pp. 41-44.

Male-on-male extra-household fighting as a means of dispute settlement was 'classed' as well as gendered. Donna Andrew argues that the central ethos of the duel was upper-class desire for honour and acknowledgement of superiority, pride and the achievement of pre-eminence, and it excluded women and the lower classes. Duelling, she argues, was an accepted element of contemporary world views and judges and juries were reluctant to convict those involved even for manslaughter; while technically a criminal act, a degree of judicial acceptance prolonged its ideological justification well into the nineteenth century.⁴ Wiener differentiates method with class. Duelling with swords or pistols was a method of dispute settlement among elites and middle-class gentlemen, while plebeians used fists or other convenient weapons. Furthermore, he argues, duels were usually premeditated and clearly flouted the law, but were perceived to be an ancient privilege of rank and, while increasingly proscribed, participants expected to be acquitted. By the second third of the nineteenth-century plebeian set fights, either as organized popular entertainment or as a way of settling disputes, were also increasingly prosecuted as manslaughter.⁵

According to Archibald Alison, writing in 1831, death resulting from duelling or fighting with lethal weapons was murder, and if resulting from the use of non-lethal weapons, it was culpable homicide. He argued that:

Nothing is better established in law, how much at variance soever it may be with prevailing opinions or prejudices, than that where death ensues in a duel, it is murder, how fair and honourable soever the conduct of the parties may have been; and this equally in the receiver as the giver of the challenge.⁶

⁴ D. Andrew, 'The code of honour and its critics: the opposition to duelling in England 1700-1850', *Social History*, 5 (1980), pp.409-416

⁵ Wiener, *Men of Blood*, pp.43-47.

⁶ A. Alison, *Principles of the Criminal Law of Scotland* (Edinburgh, 1832), p.53.

He goes on to differentiate between fighting deliberately, *ex intervallo*, after an interval of time had elapsed, suggesting premeditation, and fighting in the heat of resentment as response to an immediate injury or in defence of life or property. Furthermore, the giving and receiving of a challenge ‘savours the principle of *revenge*, which is always an ingredient of murder’ and was a capital offence.⁷ While Alison acknowledges the convenience of more severely punishing homicide resulting from ‘rash and hasty combats, in which the parties generally under the influence of wine, rush on their own destruction’, in order to discourage the practice, he also asserts that duels fought *ex intervallo*, in cold blood, were ‘the *worst species* of homicide of that description’ and should be viewed no differently.⁸ It could be argued, then, that there was a customary culture of legitimated violence in Scotland by which disputes were settled by the mid-nineteenth-century, and this had some degree of popular acceptance, if not impunity from the law.

The extra-household homicides committed in Scotland by males against males during this period were largely from the trades or unskilled occupations: 52 per cent of offenders were in unskilled occupations relating to an industrial economy such as colliers, miners and wage labourers; 20 per cent were traditional tradesmen such as blacksmiths, shoemakers and victuallers; 11 per cent were in more specialist occupations such as police, teaching, the military, or maritime and related occupations. Table 6.1 provides a complete breakdown:

⁷ Alison, *Principles*, pp.53-55.

⁸ *Ibid.*, pp.54-56.

Table 6.1: Occupation of offenders indicted for extra-household, male-on-male homicide in Scotland 1836-69.

Occupation classification	Number of offenders
1. Professional/mercantile	7
2. Weaving/textiles	15
3. Trades/crafts	56
4. Unskilled/labourer/servant	147
5. Specialist occupation	32
6. Unemployed/widow(ed)	12
unknown	14

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69

Table 6.2: Occupational breakdown of Scottish offenders per type of settlement, Scotland 1836-69.

Occupation classification	1	2	3	4	5	6	Not known
Industrial Settlement	-	-	-	20	1	-	-
Town/city >10,000	4	9	28	38	17	2	7
Town <10,000	1	-	9	24	1	3	4
Rural/village	1	4	12	36	6	5	-
Liminal Spaces	1	2	6	29	3	1	3
Other (on board vessel)	-	-	1	-	4	1	-

Source: NRS, AD14, JC26 Series, Murder and Culpable Homicide Cases 1836-69

Ages of the accused were not always recorded but the available data suggests that as many as 58 per cent of the 283 males indicted for this type of homicide were in the 15-30 age group. 11.5 per cent were emphatically noted as being natives of Ireland, although this is likely to be considerably more as there was

no systematic categorization of ethnicity at this time. At a broad level, then, the data suggests that extra-household, male-on-male homicide in mid-nineteenth-century Scotland was largely committed by young, unskilled labourers and craftsmen in the industrial and highly populated regions, indicating a possible link between this type of homicide and characteristics of an industrializing society. A closer look at the High Court records is needed to establish to what degree this is so, and what the causes of conflict were.

While some fights were arranged after some degree of goading or provocation, the majority were spontaneous, and violence could erupt over a disagreement between acquaintances or fellow workers. James Findlay, for example, was convicted of culpable homicide after he assaulted John Finlay, while fishing in the Bay of Montrose, for having put his fishing lines in disorder.⁹ William Smith was telling his fellow workers a story, while at work in their Glasgow workshop, about the dirty habits of a man with whom he had served on a Man of War ship, and how his comrades had scrubbed the man until he bled. Robert Campbell had argued that these men should have been flogged, and a fight broke out between the two during which Campbell stabbed Smith with a piece of sharp iron or nail rod.¹⁰ Edward Heggie, a labourer at Dundee harbour, was found guilty of culpable homicide after he quarrelled with a fellow worker over pay. Heggie accused Gordon of not dividing the payment received for delivering coals from a vessel fairly between the four men involved, but Gordon, who ‘was the worse of drink’ refused to give Heggie anymore. Although Heggie and his three fellow workers were standing outside a public house when the quarrel broke out, they had not, they claimed,

⁹ NRS, AD14/36/448, Precognition against James Findlay for the crime of murder, 1836.

¹⁰ NRS, AD14/42/284, Precognition against Robert Campbell for the crime of murder, 1842.

been drinking.¹¹ Joseph Hughs, a glassblower in Glasgow, and Robert Cook, however, had been drinking in a public house with eight or nine other acquaintances when a quarrel broke out about the election of Members of Parliament for Glasgow. Cook waited at the door for Hughs to leave and provoked a fight in the street, during which Cook was knocked down and hit his head.¹²

Alcohol could be an aggravating factor in extra-household brawls between workers and acquaintances. Thomas McCrumlish, a labourer in Lochmaben, Dumfries, had been drinking with several acquaintances who had clubbed together to buy drink, and a fight broke out in the public house after McCrumlish accused Samuel Johnston of keeping some of the money for himself. McCrumlish declared that he ‘was so much in liquor’ that he had no recollection of striking anyone, or of the events of the afternoon.¹³ John Ramage was indicted for culpable homicide after assaulting George Farquhar over the payment of ale and raisins in a spirit shop in Aberdeen. Ramage claimed he had paid a shilling for ale and was owed change, which he wanted to use to pay for raisins, but the victim denied that Ramage had paid the shilling.¹⁴

While Wiener identifies the entertainment element of pub and street fighting in Victorian England, Carolyn Conley argues that not only was brawling a form of entertainment for the Irish of all classes, but resulting fatalities were not necessarily considered criminal. Her study on the Irish and violence

¹¹ NRS, AD14/50/184, Precognition against Edward Heggie for the crime of culpable homicide, 1850.

¹² NRS, AD14/47/423, Precognition against Joseph Hughs for the crime of culpable homicide, 1857.

¹³ NRS, AD14/51/23, Precognition against Thomas McCrumlish for the crime of culpable homicide, 1851.

¹⁴ NRS, AD14/38/84, Precognition against John Ramage for the crime of culpable homicide, 1838.

illustrates the way in which an assumed lack of lethal intent in ‘recreational violence’ resulted in the view that consequent death was an unfortunate by-product or ‘melancholy accident’. The assumed absence of malice meant that recreational violence was not considered to be criminal. Brawls were common where large numbers of people gathered and could be on a large scale involving hundreds of men on each side, which usually involved goading, or wheeling, and were governed by a set of rules and represented opposing groups or factions. Recreational violence, regardless of scale, was about physical bravery and entertainment, needed no specific grievance, and was often played out between friends, family and neighbours as a test of manhood.

Alcohol was often a causative factor, or the only explanation for a brawl, and fights commonly occurred at fairs, markets, or celebrations such as weddings and other social gatherings: when a challenge was issued the parties demonstrated their agreement to fight by removing their coats. Given that recreational violence in Ireland had a long-established cultural tradition, and there was a willingness to assume a lack of lethal intent, judges and jurors were reluctant to convict the combatants, and even the relatives of the victims could accept the death as a ‘melancholy accident’.¹⁵

Richard McMahon however, argues that, while some of the cases in his sample of personal violence in pre-famine Ireland could, according to Conley’s criteria, be described as ‘recreational violence’, it is not a wholly appropriate definition. According to McMahon, personal disputes were the single largest cause of homicide in his sample, and that at least two thirds of these disputes arose between men, reflecting national samples. Protagonists

¹⁵ C.A. Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Oxford, 1999), pp.1-41.

were largely from the lower ranks of society, the majority between 16 and 30 years of age, and more than one third of these disputes arose directly from drunken quarrels. Disputes could arise from actual or perceived insults, damage to reputations, jealousy and infidelity. Furthermore, the unplanned, spontaneous nature of disputes was reflected in the use of fists, or by picking up any weapon that was close at hand. According to McMahon, the cases of sample of pre-famine Irish personal violence reflect ‘a continuity of particular aspects of behaviour, particularly although not exclusively among young men’.¹⁶

As pointed out in chapter one, Irish immigrants during the nineteenth-century were attracted to employment opportunities in the South-western region of Scotland, and large numbers settled there. The phenomenon of personal violence among the Irish, and the way in which they behaved and were received and perceived in mid-nineteenth-century Scotland, and the level of associated violence is, therefore, an important consideration here.¹⁷ Irish Catholic migrants were particularly conspicuous in Presbyterian Scotland and were portrayed as being hard drinkers who, after pay day, engaged in ‘communal binges’ that could result in brawls over perceived insults, racial slurs or not paying for his or her share of alcohol.¹⁸ Certainly, the Superintendent of the Police of Glasgow reported in 1835 that ‘of the persons taken up for being drunk and disorderly, more than half are Irishmen and

¹⁶ R. McMahon, “‘Do you want to pick a fight out of me, or what do you want’: homicide and personal animosity in pre-famine Ireland”, in K. Watson (ed.), *Assaulting the Past: Violence and Civilization in Historical Context* (Newcastle, 2007), pp.222-239.

¹⁷ For the ways in which attitudes toward the Irish permeated the English criminal justice system during the period 1750-1825 see P. King ‘Ethnicity, prejudice, and justice: the treatment of the Irish at the Old Bailey, 1750-1825’, *Journal of British Studies*, 52 (2013), pp.390-414.

¹⁸ V. A. Walsh, “‘Drowning the shamrock’: drink, teetotalism, and the Irish Catholics of gilded-age Pittsburgh’, *Journal of American Ethnic History*, 10 (1990), pp.63-64.

women', and his counterpart for Gorbals, near Glasgow, reported that 'Of the persons brought before our court, I should suppose that about two-thirds are Irish, principally for assaults, for being drunk and disorderly, and generally for breaches of the peace.'¹⁹ Conley argues that this stereotype of the Irish as a violent people is inaccurate and, she points out, the homicide rate in Ireland was well below that of England and Wales.²⁰ However, King has demonstrated that, while it is not clear if the Irish in London were actually more violent than their English counterparts, they were considerably over represented in the Old Bailey for violent crimes during the second half of the eighteenth century and first quarter of the nineteenth.²¹

Although ethnicity was not always recorded, we know from the Scottish High Court and Lord Advocate's records that at least 36, or 11.5 per cent, of those accused of male-on-male, extra-household homicides in during the period 1836-69 in Scotland are known to have involved Irish born, and of these 18 were charged as the result of drunken brawls. John Hill, for example, who was a native of County Tyrone in Ireland, was convicted of culpable homicide after he was challenged to a fight by an acquaintance after an evening drinking together in Argyll. Hill took up the challenge and assaulted the victim with fists, feet and stones.²² Michael Clark, a 20 year old tailor and a native of Ireland, had been to a fair in Ayrshire with John Gardner and other fellow workers, and had been in charge of the money that they had subscribed for alcohol. One of the group noticed that Clark was getting the 'worse of drink' and, suspicious that Clark had been spending the money without their

¹⁹ 'Royal Commission on the Condition of the Poorer Classes in Ireland: Appendix G, Report on the State of the Irish Poor in Great Britain', *Parliamentary Papers*, vol. XXXVI, 1836(40), pp. xx-xxi.

²⁰ Conley, *Melancholy Accidents*, p.214.

²¹ King, 'Irish at the Old Bailey', pp.402, 409.

²² NRS, AD14/48/323, Precognition against John Hill for the crime of murder, 1848.

knowledge, suggested that the money should be taken from him. 'Words passed' between Clark and Gardner, and Gardner wanted to fight and, after some minor scuffles in the street, Gardner was stabbed with a pair of scissors.²³ Cornelius Torpy and James Thornton, both originally from County Clare in Ireland and living in Erskin, Renfrewshire, were accused of murdering William Mullen in a spirit dealer's house, in the village of Bishopston in Renfrewshire, after a dispute over the time at which a 'raffle' for a gold seal, which involved the throwing of dice, was to end. A quantity of alcohol had been drunk by those present, about a dozen Irish labourers according to one witness, and a fight broke out when the person who had thrown the highest score of the dice tried to end the raffle ten or 15 minutes early and claim the seal as his.²⁴

The entertainment element of violence among the Irish is alluded to in a newspaper report of a St Patrick's Day brawl in Edinburgh. The account of the incident from the Irish point of view was that

The affray originated with two young men rather the worse of liquor, who fell into a dispute and commenced to fight. Every effort was made to prevail upon them to desist, but in vain; when a few individuals, in order to do justice to both combatants, kept back the crowd and formed a ring around them. The police at length rushed in and attempted to make one of them a prisoner, when they [the police] were struck.²⁵

Although the narrative suggests that a peaceful solution was sought, the affray quickly resembled a sporting spectacle with participants and spectators.

Brawls could also result from friction between Irish and Scots. Thomas Burke, a dealer or hawker, was indicted for murder after fighting between

²³ NRS, AD14/49/22, Precognition against Michael Clark for the crime of murder, 1849.

²⁴ NRS, AD14/63/153, Precognition against Cornelius Torpy and James Thornton for the crime of murder, 1863.

²⁵ 'St Patrick's Day Riot', *The Scotsman*, 21.03.1840.

‘town lads’ and Irish broke out at St. James’ fair in near Kelso in Roxburghshire. It was reported that sticks were being used freely on both sides, as a result of which Robert Mills was fatally injured.²⁶ In another incident, in 1866, several men had been drinking in a public house in Kirknewton village in Edinburgh-shire, and had congregated on the street. One of the crowd, Donald Cameron, had shouted that there was ‘a spy in the company’ which was understood to refer to an Irishman being present, and which provoked a challenge to fight from Charles Gallocher, a native of Ireland. Cameron accepted the challenge on the condition that it was a fair fight: Gallocher, however, called upon several other Irishmen to assist. Cameron ran off but was caught and assaulted by Gallocher and two others.²⁷

Scottish-born descendants of Irish immigrants would not have been identified or quantified as being Irish but they often retained attitudes and traditions of their parents,²⁸ including, potentially, attitudes to violence. If, as Patsy Davis suggests in her study of riots in Birmingham’s Irish community in 1867, an estimate of the size of the Irish community can be reached by multiplying the known Irish-born by 2.5,²⁹ it is possible that 18 per cent of Scotland’s, and 42 per cent of Lanarkshire’s populations in 1851 belonged to the Irish community.³⁰

Nevertheless, parallels can be drawn between the nature of Irish recreational violence discussed by Conley and the nature and form of incidents involving

²⁶ NRS, AD14/56/282, Precognition against Thomas Burke for the crime of murder, 1856.

²⁷ NRS, AD14/66/306, Precognition against Charles Gallocher, John Boy, Thomas McLoughlin for the crime of murder, or assault to the great effusion of blood, fracture of bones and serious injury of the person, 1866.

²⁸ T. Gallagher, *Glasgow, The Uneasy Peace: Religious Tension in Modern Scotland* (Manchester, 1987), p.42.

²⁹ P. Davis, ‘Birmingham’s Irish community and the Murphy Riots of 1867’, *Midland History* 31 (2006), pp.37-66.

³⁰ Based on figures cited in T.M. Devine, ‘The Great Irish Famine and Scottish History’, in M.J. Mitchell (ed.), *New Perspectives on The Irish in Scotland* (Edinburgh, 2008), pp.21-23.

other male-on-male, extra-household homicide not specifically involving Irish protagonists in mid-nineteenth-century Scotland. Although it cannot be assumed that the influence of Irish immigrants was solely responsible for recreational violence in mid-nineteenth-century Scotland, it does suggest that a popular acceptance of violence, as a means of dispute settlement and as entertainment, was present in Scotland at this time.

Causes of Conflict

Further evidence of the phenomenon of recreational violence can be gleaned from cases in which challenges to fight arose from general banter between drinking fellows. David Johnston, a miner, and David McKenzie had both been drinking and wagered who could lift most with their teeth before McKenzie challenged Johnston to fight for £1.³¹ David Paterson had boasted that he could beat Thomas Reilly or any man in Hamilton with his left hand. They had both been drinking and, after 15 minutes of boasting and goading, Patterson threw off his coat and insisted on fighting.³² Seven men were indicted for culpable homicide and breach of the peace in 1860 after an arranged fight for £5 ended in the death of one of the assailants. It had been rumoured that there would be a fight for about three weeks, and it was all very structured; each had a second and a bottle holder. After 15 rounds it was proposed that the fight be stopped, each get £1, and another £1 be given for drink on their return to Glasgow. However, this suggestion was rejected and the fight continued for another 30 rounds.³³

³¹ NRS, AD14/57/232, Precognition against David Johnston for the crime of culpable homicide, 1857.

³² NRS, AD14/57/162, Precognition against Thomas Reilly for the crime of murder, 1857.

³³ NRS, AD14/60/225. Precognition against Hugh O'Hara, Daniel McKay, Patrick McCartney, William Welsh, George McNaught, William Cassidy, John McLaughlin for the crime of culpable homicide, and breach of the peace, 1860.

Fatal altercations could also erupt after long-standing disputes or grudges over property, out of jealousy or perceived wrongs. Charles Magee and Wilson McInally were charged with the culpable homicide of James Nary after a fight broke out over a pick which one of the men had lost.³⁴ Charles Docherty was charged with culpable homicide after he quarrelled with Daniel Malcolm over the occupation of a house which had been provided by the parish. Malcolm had been told by the parish clerk that he had got a house to dwell in, and that another person from the parish was to reside with him. Docherty argued that he had been in possession of the house before and quarrelled with Malcolm for moving into it.³⁵ John Stewart was accused of murder after strangling Francis Middleton. It was alleged that Stewart had maltreated Middleton's children for interfering with his peats, and it was also suggested that malice existed between the two after Middleton's servant girl claimed Stewart was the father of her child, which Stewart denied.³⁶

The actual or perceived infidelity of wives could also be the cause of male-on-male extra-household homicides in Scotland during this period. John Gibson and John Wood had once been good friends but this ended after it was rumoured that Gibson's wife had been intimate with Wood. Gibson was charged with Wood's homicide after throwing him down the stairs.³⁷ James Cameron was accused of killing William Scott by thrusting a walking stick into his eye. Cameron had been married for three months but his wife had been, and continued to be openly involved with Scott: she was often out with

³⁴ NRS, AD14/64/139, Precognition against Charles Magee and Wilson McInally for the crime of culpable homicide or assault to the danger of life, 1864.

³⁵ NRS, AD14/38/360, Precognition against Charles Docherty for the crime of culpable homicide or assault to the danger of life, 1838.

³⁶ NRS, AD14/38/67, Precognition against John Stewart for the crime of murder, 1838.

³⁷ NRS, AD14/64/141, Precognition against John Gibson for the crime of culpable homicide, 1864.

him, sometimes all night, and often went to his home in Fife. Cameron's counsel maintained that the assault could hardly be wondered at, considering the relationship between his wife and Scott.³⁸

Long-standing grudges could develop over perceived wrongs. John McAllister and Michael Dempsey were charged with the murder of Arthur Quinn, who they believed was responsible for McAllister's brother, Tom, receiving a beating for poaching.³⁹ Duncan McDougall and Duncan McMillan were charged with the murder of John McCoag over the paternity of a 'natural child' born to the victim's sister-in-law. McCoag and his family claimed that McDougall was the father and were insisting he acknowledge it: McDougall denied paternity. A 'battle' erupted after a shinty match, a game similar to hockey, during which McCoag was assaulted.⁴⁰

Fatalities could also result from 'larking about'. William White, Robert Cairns and others were 'larking' while at work when Cairns pushed over a bag of sharps, or gravelly grit and sand, which landed on White who was knocked down and fatally injured.⁴¹ James Moore, accused of murder in 1855 declared that he and several others were on Hutchesons Bridge in Glasgow and had a rope stretched across the bridge to trip people. If their hats fell off when the people were tripped they would pick it up. Four or five of the people they had tripped attacked one of the rope holders and a fight broke out, during which a man was stabbed in the heart.⁴²

³⁸ NRS, AD14/67/145, Precognition against James Cameron for the crime of culpable homicide, 1867.

³⁹ NRS, AD14/51/217, Precognition against John McAllister, Michael Dempsey for the crime of murder, 1851.

⁴⁰ NRS, AD14/36/113, Precognition against Duncan McDougall and Duncan McMillan for the crime of murder, 1836.

⁴¹ NRS, AD14/69/294, Precognition against Robert Cairns for the crime of culpable homicide, 1869.

⁴² NRS, AD14/55/46, Precognition against James Moore for the crime of murder, 1855.

‘Means of combat’

The ways in which injury was inflicted was often a significant factor affecting the severity with which the actual crime was viewed. The most common and accepted means to inflict injury for the Irish were fists, feet and teeth.

Throwing stones was also a common response to provocation and could be equally acceptable, while knives were considered cowardly and unacceptable.⁴³ According to Wiener, the distinction that the English judiciary drew between the use of ‘natural weapons’ in a fist fight and the use of feet, teeth, sticks and knives was apparent in nineteenth-century sentencing practices. Although increasingly proscribed, he argues, deaths resulting from fair fights fought with fists were viewed less harshly, and often attracted ‘nominal’ sentences, while kicking, biting and especially the use of sticks and knives were punished more severely.⁴⁴

Archibald Alison argued that if death resulted from a fist fight in Scotland, it was culpable homicide because the ‘means of combat’ would not normally prove mortal and the element of intent, required for a charge of murder, was not inferred. If an individual intended harm, the crime would be manslaughter or murder, depending on the weapon used and the manner of using it.⁴⁵

The Lord Advocate’s precognitions reveal several ways in which injury was inflicted on victims of extra-household, male-on-male homicides in mid-nineteenth-century Scotland: often involving tools or items that were close at hand or easily accessible. Alexander Roddan, for example, threw a pair of shears at Charles Graham, a 13 year old stable boy, during some friendly

⁴³ Conley, *Melancholy Accidents*, pp.33-35.

⁴⁴ Wiener, *Men of Blood*, pp.53-55.

⁴⁵ Alison, *Principles*, pp.53-57.

banter while shearing sheep.⁴⁶ When Thomas Smyth and Hannah Lannigon were set upon by two men in Glasgow, Smyth allegedly grabbed Lannigon's umbrella and struck his attackers with it.⁴⁷ Pokers and tongs were also convenient weapons. Francis Duncan and his son William were indicted for murder and assault when they attacked John O'Donnell with tongs during a quarrel over money.⁴⁸ Edward Porteous provoked David Gibson by snatching his food away and striking him with a curling broom. In self-defence Gibson went to the fire place, seized the poker and struck Porteous across the head with it.⁴⁹

Most common, however, were the use of fists, a combination of fists and feet, and knives. Of the 76 males indicted for the homicide of other males in a fists fight during the period 1836 – 69 four were charged with murder but found guilty of culpable homicide; 17 were indicted for and found guilty of culpable homicide; 18 were indicted for culpable homicide but were acquitted, not guilty or the Libel found not proven; nine were declared outlawed and fugitive. Seven of those accused were found guilty of the lesser charges of either assault or breach of the peace. The majority of those found guilty were sentenced to imprisonment for 12 months or less. Of the four pannels originally accused of murder, two received sentences of transportation for life, one of ten years penal servitude and one of 18 month's imprisonment with hard labour.

⁴⁶ NRS, AD14/38/105, Precognition against Alexander Roddan for the crime of culpable homicide, 1838.

⁴⁷ NRS, AD14/47/383, Precognition against Thomas Smyth for the crime of culpable homicide, 1847.

⁴⁸ NRS, AD14/50/39, Precognition against William Duncan and Francis Duncan for the crime of murder and assault, 1850.

⁴⁹ NRS, AD14/55/142, Precognition against David Gibson for the crime of culpable homicide, 1855.

The harshest sentence passed for an individual charged with, and found guilty of culpable homicide as a result of a fist fight was transportation for seven years. Alexander McKay had been drinking with, and had bought whisky for William Galloway. However, Galloway declared he had been out of work and had no money, and claimed that McKay knew that. McKay said that if Galloway had no money he should not have accepted drink and then assaulted him.⁵⁰

30 males were indicted for the homicide of other males using a combination of fists and feet, just feet or by kicking and strangulation. 14 of those individuals were indicted for murder and 16 for culpable homicide. Only 15 of the 30 indicted were convicted, 14 of which were for a lesser charge. In contrast to the lighter sentences passed on those convicted of causing death in a fist fight, only four of those convicted received a sentence of 12 months imprisonment or less. With the exception of two sentences of 15 month's imprisonment, all other sentences were accompanied by an aggravation, such as hard labour or penal servitude, or were the harshest punishment available to the court next to the death sentence, transportation for life.

References to the severity with which the Scottish judiciary viewed the infliction of injury by any means other than fists, can be found in contemporary newspaper reports. William Bruce was charged with knocking down his victim, striking him with his fist and fracturing his skull. Lord Medwyn, Lord Advocate, considered the indictment against Bruce a 'very heinous charge' but acknowledged that, in Bruce's favour, the deceased had agreed to fight, Bruce had no previous malice against the victim, and no lethal

⁵⁰ NRS, AD14/40/149, Precognition against Alexander McKay for the crime of culpable homicide and assault, 1840.

weapons had been used. However, Medwyn also pointed out that Bruce had repeatedly struck the deceased while he was down, which demonstrated a determination that the fight should continue, which, in his view, increased culpability. Bruce was sentenced to 12 months imprisonment.⁵¹ John Currie was challenged to a fight during fair time in Lanarkshire and the fight having initially been ‘conducted in the usual way’ the deceased bit Currie’s finger. Currie became enraged and kicked his opponent in the head neck and breast, in consequence of which he later died. Lord Neaves, presiding, pointed out that some cases of culpable homicide were very close to being murder while others amounted to very little: this particular case was mixed but, he asserted, whatever the provocation, the accused had used his feet and this was ‘very dangerous and very bad’. Currie was sentenced to 15 months imprisonment.⁵²

Male perpetrators who used knives to kill other males were the most likely to be convicted of extra-household homicide in Scotland during this period. Of the 40 males indicted 36 were charged with murder, nine were found guilty as libelled and received the death sentence. 17 of those charged with murder were found guilty of a lesser crime, three were found to be insane, two were outlawed and only five were acquitted. The majority of those charged with murder but found guilty of culpable homicide received harsh sentences ranging from 7 years penal servitude to transportation for life. Of the four charged with culpable homicide, two were acquitted and two were found guilty of assault and received prison sentences of 10 months and 12 months.

In England all fights, especially unfair fights during which protagonists resorted to kicking and biting, were increasingly proscribed. The use of knives,

⁵¹ ‘Murder or Culpable Homicide’, *Aberdeen Journal* (28 April 1841).

⁵² ‘Charge of Murder’, *Glasgow Herald* (25 September 1868).

however, was considered particularly ‘brutal and outrageous’ and it was ‘the bounden duty... both of judges and magistrates to check so disgraceful a practice as far as the law could do so.’⁵³ The Scottish judiciary held similar views and stressed that the use of a knife in a fight was akin to murder. In passing sentence on Daniel Stewart, who had been charged with murder but confessed to and was found guilty of culpable homicide after assaulting John Gallagher with a knife in 1864, Lord Ardmillan referred to the use of a knife in conflict as unmanly and inhuman. In Scotland, he said, it ‘is uniformly and righteously looked on as a very savage mode of conflict; and the law, as I think with great propriety always visits with extreme severity the use of a knife on the body of an unarmed man.’ Stewart was sentenced to 21 years penal servitude.⁵⁴ The stabbing of James Burke by Charles Donaghy in 1867 was, according to Lord Neaves, a crime of ‘a very heinous character’ and that the behaviour of Donaghy was ‘more like a wild beast than a human creature’⁵⁵. In charging the jury after hearing evidence against James McLeish for the crime of murder in 1869, Lord Ardmillan pointed out that there could be no doubt, in point of law, that the stabbing of an unarmed man in a street brawl was clearly murder. The absence of premeditation, drunkenness or rage were not enough to justify the act and he was bound to tell them that, unless they found circumstances which led them to a verdict of culpable homicide, such an act was murder in law.⁵⁶

⁵³ As cited in Wiener, *Men of Blood*, p.57.

⁵⁴ ‘The Greenock Murder Charge’, *Glasgow Herald* (29 December 1864).

⁵⁵ ‘Charge of Murder at Greenock’ *Glasgow Herald* (28 December 1867).

⁵⁶ ‘Winter Circuit Court’ *Glasgow Herald* (30 December 1869).

Self defence

The circumstances that could justify the use of a knife, therefore leading juries to convict on a lesser charge or mitigating sentencing, may have included self-defence. According to Alison, homicide is justifiable if it is in defence of life, when, for example, a person is suddenly knocked down on the highway or when a quarrel results in an assault. However, it is only justifiable as long as the danger is immediate. Once the immediate danger has passed, or if the means or manner of resistance exceeds the limits of self-defence that may legally be used, such as the use of a lethal weapon, the homicide is then culpable in law: the degree of culpability increasing with the degree to which the limits of self-defence are exceeded.⁵⁷ The following cases demonstrate the way in which the principle of self-defence for homicide was applied in practice in mid-nineteenth-century Scotland.

John Pettet Waterston was charged with culpable homicide in 1857 after, he claimed, a party of seven or eight men attacked him, one of whom took hold of him by the neck while another put his hand on his mouth and he was knocked down. He thought he was to be murdered and struck out with his knife. He had no intention of hurting any of the men and only acted in self-defence. When summing up the Lord Justice General pointed out that:

the nature of the evidence adduced was such that he was sure the jury could not with any confidence entertain the idea that this party was guilty of the crime laid to his charge. There were not many conditions or circumstances under which a party was warranted in using such a weapon as was used here. They were rare indeed: and it was only where the circumstances were of that peculiar kind in which they had reason to believe that the party entertained apprehensions – reasonable apprehensions – for his own safety, that he was warranted in using such a weapon.⁵⁸

⁵⁷ Alison, *Principles*, pp.132-134.

⁵⁸ 'High Court of Justiciary' *The Scotsman* (11 February 1857).

Waterston was found not guilty. However, several of the witnesses were unable to say with any certainty that it was Waterston who stabbed the victim, and the verdict may have been a result of insufficient evidence against him rather than recognition by the jury that the homicide was justifiable.

Nevertheless, the principle of justifiable homicide in defence of life was clearly *in viridi observantia*, or in force and operation. Furthermore, while self-defence may have been a mitigating factor, where the means exceeded the limits of self-defence, it did not necessarily exonerate. Guiseppe Masselli was charged with murder in 1865 after a drunken quarrel. Counsel for the prisoner addressed the jury stressing that Maselli was the smaller, weaker man and could not get away, and that he had used the knife in self-defence. The Lord Justice-Clerk defined murder and went on to say that the jury ‘must satisfy themselves, before bringing in a verdict of murder, that the blow had not been struck in self-defence.’ The jury unanimously found Masselli guilty of culpable homicide, but the Lord Justice-Clerk, declaring that the case was ‘only a shade removed from murder’, sentenced him to penal servitude for life.⁵⁹

The policeman as aggressor and victim.

The use of violence involving policemen was also ambiguous. According to David Barrie, the development of Police Courts in Scottish cities facilitated the control and regulation of working-class life style by making it easier to bring offenders charged with minor public order offences to justice. However, this role was restricted during the early decades of the nineteenth century in

⁵⁹ ‘The Leith Murder Case’ *Caledonian Mercury* (19 December 1865).

Glasgow to dealing with the results of, rather than reshaping, public behaviour. Officers were instructed to supervise popular pastimes, clear the streets of drunks and prevent crowds from congregating. However, while the attempts of officers to disperse rowdy and boisterous crowds increasingly brought ‘street culture’ under control, it also caused frequent clashes between citizens and police.⁶⁰

Clive Emsley argues that, while the police were often the victims of assault when attempting to make arrests, in order to carry out the duties of apprehending the drunk and disorderly, and criminal offenders, a policeman had to be as tough as those he was policing and toughness and physicality would win respect from fellow policemen as well as from his opponents. According to Emsley, statistical evidence suggests that police in Middlesbrough, a rapidly expanding industrial town with large numbers of young male workers and seamen, might expect to be assaulted twice a year, although, given the emphasis on manliness and being seen to be tough, many assaults may have gone unreported.⁶¹ Fatal assaults were, however, more likely to be reported and prosecuted, and extant Scottish records demonstrate Emsley’s point. James Aiger, James McCulloch and several others were all ‘the worse of drink’ and were standing around outside a public house in Dundee when they were asked to move along by the police. A fight broke out during which the officers, three night watchmen, were assaulted and used their batons in retaliation. One of the officers died of his injuries.⁶² Francis War,

⁶⁰ D. Barrie, *Police in the age of Improvement: Police Development and the Civic Tradition in Scotland, 1775-1865* (Collumpton, 2008), pp.198-204.

⁶¹ C. Emsley, *Great British Bobby: A History of British Policing from the 18th Century to the Present* (London, 2010), pp.149-150.

⁶² NRS, AD14/51/425, Precognition against James Aiger, James McCulloch for the crime of assault to the effusion of blood and injury of the person, and murder, 1851.

John McCabe and Michael Ward were charged with assaulting two police officers, one of whom died, in 1868. The officers had been attracted by the noise of some men fighting in a stair way and the men were ordered to move along. Although they were making a lot of noise and swearing, they were only pretending to fight but when the officers attempted to pull one of the accused across the pavement, the police were assaulted and struck with a poker.⁶³

Policemen were also willing participants in fights and, Emsley argues, there may have been some acceptance of the notion of manliness in, and the use of violence by police. The police were required to patrol areas which were potentially hostile to their presence, often in the hours of darkness, and may have responded to provocation with aggression. Contemporaries were concerned that it was difficult to bring a case of assault against a police officer and that the courts would accept police stories uncritically, thus encouraging the abuse of police power.⁶⁴

According to Alison, an officer of the law would be justified in committing homicide if, in the discharge of his duty, his life was in danger or he was not able to discharge his duty otherwise. However, while an officer was ‘bound to *advance*’ against the object of his duty, and entitled to kill earlier than an ordinary individual might be permitted, it was not his ‘privilege’ to kill even a resisting felon unless the above criteria were met.⁶⁵

These principles were applied in the case of William Brown, a watchman at a wood yard in Dumbarton, who was indicted for murder after three men who had been drinking together passed the wood yard and threw stones at the gate,

⁶³ NRS, AD14/69/221, Precognition against Francis Ward, John McCabe, Michael Ward for the crime of assault to the effusion of blood, severe injury of the person, and danger of life, and murder, 1869.

⁶⁴ C. Emsley, *Hard Men: The English and Violence since 1750* (London, 2005), pp.132-138.

⁶⁵ Alison, *Principles*, pp.131-133.

alarming the dogs. Brown got into a passion and, armed with a stick, left the yard in pursuit of the three men to inflict punishment. On addressing the jury, Lord Meadowbank ‘warned all and sundry against the false supposition that they were warranted in assaulting and endangering life in such a case as this. The prisoner at the bar was in no danger whatsoever on the occasion alluded to.’⁶⁶ The jury found Brown guilty of culpable homicide and recommended him to mercy on account of the provocation he had received ‘which produced an excitement that he could not control.’⁶⁷

The need for curtailment was also suggested in the case of William McDonald, a watchman in Aberdeen in 1839. McDonald was indicted for the murder of Christopher Brown, a shoemaker, by throwing him to the ground, striking him with a stick and jumping violently on his belly, causing serious internal injuries. McDonald pleaded not guilty and a special defence was given to the effect that the injury done to Brown was in the discharge of his duty. However, there was little apparent reason for McDonald’s pursuit of the victim and McDonald pressed other night watchmen to give false accounts of events. Before sentencing McDonald to transportation for life, Lord Cockburn pointed out that the jury had not seen fit to recommend the prisoner to the mercy of the court and reiterated that the victim had been:

put to death with great brutality and violence, and no account has been given of any previous provocation to explain this deliberate and remorseless cruelty; and above all, the crime was committed by a paid public officer of police, whose duty it was to govern his temper; whose line of life led him to witness scenes of violence, and ought to have trained and taught him to see such scenes without himself being transported by rage and violent passion; yet he, under the nonsensical and miserable pretence of securing his prisoner, practiced the utmost

⁶⁶ ‘Glasgow Assizes’ *The Scotsman* (16 May 1840).

⁶⁷ ‘Glasgow Assizes’ *The Scotsman* (16 May 1840).

violence on his defenceless body... This man must be made an example to all, and especially to all officers of police'.⁶⁸

While some violence by the police in carrying out their duty was considered to be excusable during this period, McDonald's case demonstrates that the Scottish courts were not uncritical of it.

School Discipline.

Another institution in which there was an acceptance of some level of violence, as a desirable masculine trait as well as a form of control in mid-nineteenth-century Scotland was the school. According to Richard Finlay Scottish society rigidly enforced notions of masculinity and the idea that boys had to be tough to survive and succeed. Physical punishment and discipline of the young by the community as well as from authority figures such as parents, teachers, police and shopkeepers was widely acceptable, and everyday language included numerous euphemisms for a beating. Physical punishment in schools was not only an integral part of the 'three Bs' teaching method, referring to the Bible, belt and blackboard. It also reinforced notions of toughness and manliness: if a child was unable to answer correctly it could be beaten into them.⁶⁹

When, in 1867, seven-year-old William Hunter became confused and omitted words in his reading, and was not able to spell the word 'carry', his school master, John Clark, became angry and struck him on both sides of the face before taking a stick from the wall and beating him about the head with it. According to Clark, he gave the boy a 'kelp' on the side of the head and sent him to the back of the room by himself to learn his lesson, and that the

⁶⁸ 'Circuit Court of Justiciary', *Aberdeen Journal* (24 April 1839).

⁶⁹ R. Finlay, *Modern Scotland 1914-2000* (London, 2004), pp. 119-125.

following day the boy went through his lesson better than he had done before. The child later died of his injuries and Clark was charged with, but found not guilty of culpable homicide.⁷⁰ David Oliphant found himself in trouble after he had struck a girl in the school. The schoolmaster, Peter Howie, called Oliphant forward for a 'pammy' but Oliphant refused to hold out his hand. Howie attempted to kick the boy's hand out but kicked him in the groin instead.⁷¹ While the prosecution argued that Oliphant had died from the injury inflicted by Howie and sought a conviction for culpable homicide, the defence argued that any injury had been inflicted by pure accident while Howie 'was holding up the boy's hand in order that he might administer lawful castigation.' Lord Ardmillan pointed out that, 'in point of law nothing could justify a schoolmaster kicking his pupil'.⁷² The jury found Howie not guilty of culpable homicide but guilty of assault and he was sentenced to keeping the peace for 12 months, under the penalty of £20.⁷³

As Finlay points out, disciplining the young could also be a community activity to deal with misbehaviour. John Campbell, for example, an apprentice blacksmith on the Isle of Lewis, was charged with murder or culpable homicide after he threw an iron rod at some boys who had been misbehaving. The boys had a habit of running about the smithy, and on this occasion they had been running about between Campbell and the gas light, preventing him from working. One of the boys threw some dirt at Campbell before running off. Campbell had been 'twirling' the rod to frighten the boys away but it

⁷⁰ NRS, AD14/67/202, Precognition against John Clark for the crime of culpable homicide, 1867.

⁷¹ NRS, AD14/68/240, Precognition against Peter Howie for the crime of culpable homicide or assault to the serious injury of the person, 1868.

⁷² 'Perth Circuit Court of Justiciary' *Dundee Courier* (16 April 1868).

⁷³ NRS, JC26/1868/32, Trial papers relating to Peter Howie for the crime of culpable homicide, or assault to the serious injury of the person, 1868.

slipped from his hand. The jury found Campbell guilty of culpable homicide and, given his youth and previous good character, recommended him to the leniency of the court. In passing sentence of three months' imprisonment, Lord Jerviswoods referred to the unfortunate position Campbell had found himself in and advised him to refrain from any future fits of passion.⁷⁴

Female-on-female, extra-household homicides

Although homicides committed by females were largely restricted to the family and domestic sphere, as discussed in preceding chapters, there is some evidence, in mid-nineteenth-century Scotland, of women killing other women in similar circumstances to the male-on-male extra-household homicides discussed above: circumstances traditionally associated with male violence.

Pieter Spierenburg argues that the culture of violence was a male culture and that women were not fighters. Where women did participate in violent behaviour they were imitating typically male types of aggression. The degree to which women were violent depended on a learning process, by which they learned about the culture of violence through close contact with violent men. Women who injured someone with a knife, he argues, exhibited typically male behaviour, used typically male excuses and disposed of weapons by typically male methods. Spierenburg's sample of violent women were from the lower echelons of Dutch society including domestic servants and professional prostitutes, on the border between respectable and unrespectable, and living their lives on the streets and in taverns alongside the male fighters whose behaviour they imitated.⁷⁵

⁷⁴ 'Murder and Culpable Homicide' *Inverness Advertiser* (29 April 1864).

⁷⁵ P. Spierenburg, 'How violent were women? Court cases in Amsterdam, 1650-1810', *Crime History and Societies*, 1 (1997), pp.18-27.

Anne-Marie Kilday's work on women and violent crime in eighteenth-century Scotland challenges the view that women were rarely violent. Rather, she argues that the lower rate of violent crime committed by women does not necessarily imply that they were less belligerent, and that women in the lowlands of Scotland during the eighteenth-century were violent in their own right, for their own sake, and just as aggressive as men. However, while rejecting Spierenburg's suggestion that females imitated violent male behaviour, Kilday points out that women were less likely than men to become involved with disputes and accept challenges to duels and brawls, and, given the limited social activities of women, they were less likely to be in a situation that could result in homicide. Furthermore, violent women were more likely to be acquainted with their victims and, in eighteenth-century lowland Scotland at least, were more likely to commit violent crime in urban areas. Only a few of the women in Kilday's sample were in employment, suggesting that, while women's experience in the urban environment was less restricted, controlled and scrutinised than in rural areas, the homicidal female's life was restricted to the domestic environment rather than the 'multi-faceted or versatile' experience of work.⁷⁶

The majority of female-on-female homicides that occurred in mid-nineteenth-century Scotland resulted from tension between neighbours. The overcrowded environment of the city tenement blurred the distinction between the domestic and public sphere and, given that similar tensions which led to lethal violence between members of the same household are identifiable between close neighbours, these cases are examined in more detail in chapter

⁷⁶ A.M. Kilday, *Women and Violent Crime in Enlightenment Scotland* (Woodbridge, 2007), pp.39-58.

four. However, evidence suggests that there was a culture of violence in mid-nineteenth-century Scotland and, although the sample of female perpetrators is too small to be conclusive, Scottish homicide records for this period demonstrate that women could be violent in their own right and for their own sake, and that they could resort to violence to settle disputes in villages as well as urban centres.

Charles McCallum was a travelling spoon-maker and tinsmith and travelled about the country during the summer with his wife Margaret. The pair fell in with another couple and, having become ‘stupid with drink’ one evening while on the turnpike road in Clackmannanshire, the two women began quarrelling and Margaret McCallum assaulted the victim several times with her fist from which injuries she later died.⁷⁷ While the men attempted to interfere, and the victim’s husband was also charged with the offence, they were neither the instigators nor the main belligerents in the assault. Janet Kelby was a rag woman who went from house to house collecting rags in the village of Duffus, Elginshire. Kelby was the ‘worse of drink’ when she went to Jane Wilson’s house asking for some water to be boiled for her, for tea and ‘toddy’. When Wilson refused the offer of a drink Kelby beat her about the head, back and breast, seized her by the throat, put her fingers into her mouth, scratched her cheeks, loosened her teeth and took a dog by the legs and struck her with it.⁷⁸

There is also evidence that women settled disputes by resorting to violence. Francis Muir and her tenant Isabella Brodie had a disagreement about the accuracy of receipts for rent paid in Water of Leith, a western suburb of

⁷⁷ NRS, AD14/68/232, Precognition against Margaret McCallum, William McMillan for the crime of murder, or assault to the severe injury of the person, 1868.

⁷⁸ NRS, AD14/53/300, Precognition against Janet Kelby for the crime of murder, and assault to the danger of life, 1853.

Edinburgh. Brodie claimed that previous receipts had been incorrect and that she would not pay the rent due unless Muir produced a receipt. A receipt was produced and the money was paid, but Brodie resorted to physical aggression to get Muir out of the house after an exchange of insults and Muir later died from her injuries.⁷⁹ Isabella Broadfoot had allegedly caused trouble by telling two women that Janet Faulds had complained about their drinking habits. Faulds challenged Broadfoot about this but Broadfoot maintained that she had spoken the truth and ‘would say more yet’. Faulds then assaulted Broadfoot with her fists, grabbed her neck and pushed her back into a chair.⁸⁰

The victims of female-on-female extra-household homicides were not necessarily always personally involved in the altercations, but, rather, innocent bystanders caught in the crossfire. Mary McPhail went to fetch her mother from a neighbouring lodging house but she arrived at the house during a quarrel and at the very moment that Susan More, who had been knocked down in the quarrel, picked up and threw a metal pot. The pot struck McPhail on the head and one of the feet penetrated her skull.⁸¹ Bridget Drum came out of a stair way into Currie’s Close in Edinburgh during a quarrel between Isabella Bryce and the family of her estranged husband. Bryce had been drinking, was in a ‘high passion’ and had been struck several times by her husband and his family when she threw a stone which hit Drum on the head as she entered the Close.⁸²

Lucri Causa and homicide.

⁷⁹NRS, AD14/46/282, Precognition against Isabella Brodie for the crime of murder, or culpable homicide, 1846.

⁸⁰NRS, AD14/45/186, Precognition against Janet Faulds for the crime of culpable homicide, 1845.

⁸¹ NRS, AD14/57/350, Precognition against Susan More for the crime of culpable homicide, 1857.

⁸² NRS, AD14/40/326, Precognition against Isabella Bryce for the crime of culpable homicide, 1840.

Although there are differences between the classification of offences for the purpose of collating statistics in Scotland and those in England and Wales, the category of Offences against Property Committed with Violence covers broadly similar concepts north and south of the border. While the category includes the sending of menacing letters to extort money, and sacrilege, which imply some detachment between the perpetrator and victim, its main focus is on the criminal appropriation of property by the threat of or actual violence to the person, or illegally entering the home in order to commit theft or some other crime. Archibald Alison defines theft as the ‘felonious taking or appropriation of the property of another’ and *lucri causa*,⁸³ or being done for the sake of gain.

According to the Criminal Returns, there were a total of 17,204 individuals committed for offences against property, committed with violence, in Scotland during the period 1836-69: an average of 510 per year. The National Records of Scotland’s item level catalogue lists 146 cases which were considered serious enough to be sent to the Crown to be heard in the High Court: 20 of those cases involved homicide and fall within the scope of this project.

Robbery and burglary were regarded as particularly serious because they involved the loss of property combined with the threat or use of physical violence, and perpetrators were the most likely, of all property offenders, to be executed. Robbery involved direct confrontation with and threat of violence from the perpetrator, and street robberies in particular generated the most anxiety and horror stories. Offenders may have inflicted violence on their victims because they struggled, or to disable them, but such violence was

⁸³ Alison, *Principles*, pp. 250, 270.

common enough that street robbers were the most feared type of criminal in eighteenth-century England. He further argues that, while robberies did occur in rural areas, especially around the time of markets and fairs, the urban environment in particular provided the opportunities and the cover in which this particular crime could flourish.⁸⁴

While the sample that is within the scope of this project is comparatively small, a qualitative analysis of the cases of property crime that resulted in homicide illustrates that robberies and burglaries were not necessarily stranger-on-stranger violence, as suggested by Clive Emsley,⁸⁵ but could be opportunist crimes between acquaintances, or as a result of disputes over property or debt, and were committed in liminal spaces such as public roads.

Six individuals were indicted for homicide in connection with or as a result of what could be defined as robbery. What is noteworthy is that in all of these cases the perpetrator knew, or knew of, the victim. Robert Gordon, a railway labourer, knew of the man he was indicted for murdering and robbing on a public road near the village of Gartocharn, in the parish of Kilmarnock, Dumbartonshire. Gordon declared that he and another man, Wilson, had left their lodging house together and Wilson had said that he must have some money. On seeing the victim, William Guthrie, on the road, Wilson and Gordon pursued him, grabbed him, rifled his pockets and robbed him of money and other articles. During the attack the victim was kicked and beaten and received injuries to his back and face. He died from extensive haemorrhage resulting from rupture of the liver in three places. The jury, by a majority, found Gordon guilty of murder but, given that the murder was not

⁸⁴ J.M. Beattie, *Crime and the Courts in England 1660-1800* (Oxford, 1986), pp.146-150.

⁸⁵ Emsley, *Hard Men*, pp.17-18.

contemplated, they recommended mercy. However, when passing sentence, Lord Cowan referred to the crime as a ‘most cruel, violent, and atrocious murder, committed on a most respectable man while going home with his wages in his pocket.’⁸⁶ Gordon was initially sentenced to death but remission was granted on 20th May 1856.⁸⁷

John Williams was charged with the murder and robbery of a man he had been drinking with. Andrew Mather, the victim, and others had been in Cleekhimin Inn, in Lauder, Berwickshire, when Williams came in for some ale. Williams, who was unwelcome at the inn but who had been allowed in that evening at the request his acquaintance, was told to leave after an argument about religion between the victim and another of the guests. Mather left the inn about half an hour later and was said to have been sober. He was later found on the turnpike road, beaten and stabbed, with Williams laying on top of him. Williams was found with Mather’s snuff box, tobacco box and pipe in his possession.⁸⁸ The jury found Williams guilty as libelled by a large majority and, before passing sentence, the Lord Justice Clerk expressed complete agreement with their decision.⁸⁹ Williams was executed on March 14th at Greenlaw in Berwickshire. William McKew, indicted for the crimes of murder and robbery in 1850, was known to be in debt regularly, and was known to be good friends with the victim, Walter Lynn, who was reputed to be ‘a careful saving man’, and who often lent McKew money between paydays. The case against McKew was not proven but he and Lynn had been seen

⁸⁶ ‘Glasgow Circuit Court – Thursday, April 30. Murder and Robbery’ *Glasgow Herald* (5 May 1856).

⁸⁷ NRS, JC26/1856/163 Trial papers relating to Robert Gordon for the crime of murder and robbery, 1856.

⁸⁸ NRS, AD14/53/488, Precognition against John Williams for the crime of murder and robbery, 1853.

⁸⁹ ‘The Lauder Murder’, *The Scotsman* (23 February 1853).

walking together, on a public road in a rural parish, shortly before Lynn's murder, and McKew was in possession of four or five sovereigns the following day.⁹⁰

The cases of Gordon, Williams and McKew were largely typical in that the robberies and homicides were committed, or allegedly committed, on the fringes of residential settlements where they had first seen their victim. Two other cases reflect this: Cornelius Kelly was indicted for theft and murder in or near Perth 'the particular place or places being to the prosecutor unknown';⁹¹ John McFadyen was convicted for the murder of Alexander Shields in a part of the River Clyde that ran through Hutchesontown, Glasgow.⁹² James McWheelan, however, was convicted of murdering James Young on a turnpike road in a largely rural part of Ayrshire.⁹³

According to Beattie, burglary and housebreaking caused as much anxiety as did robbery because, as well as the threat or use of violence, it violated the privacy and protection of the home. His work on burglaries dealt with by Surrey courts suggests that burglaries were far more profitable than robberies, that offences ranged from the opportunist snatch and run to targeted and planned burglaries by organised gangs, and that the levels of violence used varied considerably.⁹⁴ In all seven cases of murder as a result of burglary in mid-nineteenth-century Scotland, however, the perpetrator and victim were acquainted in some way, six were perpetrated by individuals working alone, and three of the seven cases were a result of disputes over property or payment

⁹⁰ 'Trial for Murder and Robbery', *Caledonian Mercury* (21 February 1850).

⁹¹ NRS, AD14/64/200, Precognition against Cornelius Kelly for the crime of theft and previous conviction and murder, 1864.

⁹² NRS, AD14/60/250, Precognition against John McFadyen for the crime of theft and previous conviction and murder, 1860.

⁹³ NRS, AD14/48/128, Precognition against James McWheelan for the crime of murder, 1848.

⁹⁴ Beattie, *Crime and the Courts*, pp.161-164.

of alleged debt, two of which were perpetrated by women. Christina Dunn, for example, was indicted for murder, assault and stouthrief, the Scottish legal term for theft with violence, after Mary Farrel denied owing her money and refused to give it. Dunn then assaulted Farrel in her house in Overgate, Dundee, and started stealing items from the house. When Farrel's mother tried to stop her, she was fatally beaten. Dunn declared that she had been drinking and had no recollection of what had happened, but denied stealing from and assaulting the victims.⁹⁵ Catherine Beaton was accused of murder, robbery and theft after calling at the house of Margaret Maclean asking for the repayment of a shilling she had loaned her. Beaton assaulted and strangled Maclean before stealing a broach, reels of thread, and other household items and apparel.⁹⁶ Peter and Michael Scanlane had bought some meal from Margaret Maxwell but had initially refused to pay. A neighbour, the brothers' landlord, had insisted they pay but they had done so reluctantly, and the victim had been warned to take care as they had been displeased. The brothers were found guilty as libelled and were both sentenced to death and executed.⁹⁷

Perpetrators could also be trusted and invited guests of the house. James Bryce was indicted for and convicted of murdering John Geddes, who had been generous to Bryce and his family, in his own home, and for stealing money and goods. Bryce maintained his innocence throughout the very public trial, but made two statements of confession while waiting execution. Bryce confessed to going to Geddes' house to ask for money on the pretence that one

⁹⁵ NRS, AD14/60/39, Precognition against Christina Dunn for the crime of murder, assault and stouthrief, 1860.

⁹⁶ NRS, AD14/56/170, Precognition against Catherine Beaton for the crime of murder, robbery and theft, 1856.

⁹⁷ NRS, AD14/52/368, Precognition against Peter Scanlane and Michael Scanlane for the crime of murder, stouthrief and theft by housebreaking, 1852.

of his children had died and he needed money to bury it. Geddes refused but Bryce stayed the night. Geddes still refused the request for money in the morning and angry words passed between them. Bryce confessed that ‘it came into [his] head to murder him and [he] struck him down with the tongs’ before stealing money and apparel.⁹⁸

George Christie had been shown some hospitality by the widow Barbara Ross while he had been employed to thrash corn in a barn adjoining her house. James Humphrey, a gardener in Aberdeen, employed Christie as a thrasher in September 1852. Humphrey, Christie and another were often in Ross’s house for their victuals and Christie was said to have commented on occasions about the likelihood of Ross having money in the house. A few days after the thrashing had finished Christie allegedly returned to the house, assaulted Ross and her grandson with an axe before taking money and goods.⁹⁹

Individuals could also be at risk from fellow workers at their place of work. Donald Martin was a seaman on board his vessel when he allegedly assaulted the Master of the vessel, Archibald McLachlan, with a knife before throwing him into the sea, and stole £45 in bank notes.¹⁰⁰ John Welsh was in a hut at No.1, Clayband Pit in Kelvinside, Glasgow, when a fellow worker, William Kelso, assaulted him with a pick axe. Although theft was not mentioned in the indictment, Welsh had earlier told another fellow worker that he had money and Kelso was later seen in possession of a steel tobacco box that was thought

⁹⁸ ‘Statement and confession of Bryce’, *Caledonian Mercury* (4 April 1844).

⁹⁹ NRS, AD14/52/396, Precognition against George Christie for the crime of murder and robbery, 1852; ‘The murders at Kittybrewster’, *Aberdeen Journal* (29 December 1852).

¹⁰⁰ NRS, AD14/62/296, Precognition against Donald Martin for the crime of murder and theft, 1862.

to be the property of the victim: the victim's purse was also later found to be empty.¹⁰¹

18 individuals were indicted for 17 homicides resulting from robbery, burglary and theft in Scotland during the period 1836-69. 11 of these individuals were convicted of murder and sentenced to death, five were found guilty of lesser charges and the charges against two were found to be not proven. This is the highest rate of capital convictions for any single type of homicide during this period, which reflects Beattie's findings for eighteenth-century Surrey. It also demonstrates that property crime with violence, robbery and burglary in particular, continued to cause anxiety well into the nineteenth century in Scotland.

Distinguishing between rural and urban homicides as a result of property crime with violence in mid-nineteenth-century Scotland is not always clear cut. While the small sample of homicides resulting from burglary suggest that this type of crime was as likely in an urban environment as it was in a rural area, robberies were more likely to occur in liminal spaces such as turnpike or toll roads between villages or towns, which could be defined as rural. Neither does the simple distinction between either rural or urban take into account industrial or maritime locations such as collieries or on board vessels. What is clear, however, is that this type of crime, in mid-nineteenth-century Scotland, was perpetrated largely by single individuals against people that they knew or knew of, and who they had reason to believe had something to take.

The majority of perpetrators for burglary and robbery offences discussed here were male. However, it was argued in chapter four that female offenders

¹⁰¹ NRS, AD14/55/131, Precognition against William Kelso for the crime of murder, 1855.

were more likely to kill within the family or domestic sphere and cases in which women killed for financial gain are discussed there. However, there was a particular type of extra-household *lucri causa* theft that was committed largely by women against men that were not family members: luring men behind closed doors in the expectation of sexual favours, where they could be robbed or beaten or both.¹⁰² The case of Ann Young, Helen Blackwood, Mary Hamilton and Hans Smith MacFarlane, of New Vennel in Glasgow, is a case in point. A 14 year old boy who slept in the house, declared that during the day the women talked, smoked and, when they had money, drank. At night they would go out and often bring strange men home: there was usually drinking, carousing and sometimes fighting and disorder, and the women slept with the men. Hans Smith MacFarlane, also charged, was their ‘bully’. The men were made to give money and send for drink and if they refused, and sometimes even when they obliged, they were abused. The women also frequently robbed the men as they lay drunk on the floor. Alexander Boyd, who was brought into the house by Hamilton and Young on the night of 12th June 1853, was already quite drunk but gave the women ½ crown for more whisky and offered a further shilling to stay until the following day. After being drugged with snuff he was robbed, beaten and stripped before being thrown out of a window from a height of 23 feet.¹⁰³

Mary McLachlan, Margaret Cook and Margaret McKay were charged with the murder of and robbery from 50 year old John Johnston in an area of

¹⁰² For stealing as an adjunct to sexual activity and the perceived link between prostitution and pickpocketing in England from 1780-1830 see D. Palk, *Gender, Crime and Judicial Discretion 1780-1830* (Woodbridge, 2006), pp.81-83.

¹⁰³ NRS, AD14/53/448, Precognition against Ann Young, Helen Blackwood, Hans Smith MacFarlane, Mary Hamilton for the crime of murder, 1853.

Glasgow notorious as ‘being of the worst description’.¹⁰⁴ According to McLachlan, a 24 year old single woman living in Tontine Close, Johnston approached her in Trongate and asked her to go for a dram before then requesting to be taken to where she lived. McLachlan agreed and they went back to Tontine Close where she lived with Isabell Campbell. Johnston was asked to send for more whisky and he duly gave Campbell a shilling. McLachlan declared that while Campbell was out getting whisky, Johnston asked her to sit on his knee, and when she refused he hit her with a chair. However, Campbell declared that she thought she saw McLachlan’s hands near Johnston’s pockets when he told her to stand back and called her a ‘damnation whore’ before striking her. Johnston tried to escape but was either pushed, or fell down the stair and while lying injured at the foot of the stair, McLachlan and McKay allegedly went through his pockets and further assaulted him.¹⁰⁵

Conclusion.

The sample of homicides as a result of *lucris causa* theft is too small to infer any conclusions about property crime in mid-nineteenth-century Scotland. However, the cases that involved fatal violence that have been examined here suggest that, firstly, the cases of burglary and robbery reached the High Court and ended in convictions because they were known to their victims, and secondly, that women used opportunities provided by the urban environment and the ubiquity of whisky to their advantage by luring men into a situation where they could be exploited.

¹⁰⁴ ‘The Tontine Close-its Tenantry and Crimes’, *Glasgow Herald* (5 May 1858).

¹⁰⁵ NRS, Precognition against Mary McLachlan, Margaret Cook, Margaret McKay for the crime of murder and robbery, 1858.

Extra-household homicide in mid-nineteenth-century Scotland was largely perpetrated by working class men as a result of pub or street brawls, or from altercations within the working environment, and alcohol was a significant causative as well as exacerbating factor. Altercations between men could be spontaneous, erupting between acquaintances over payment for whisky, relationships with women, differences of political or religious opinion, or ownership of possessions, and between women over gossip, money, and broken relationships. Fights between individuals could also be agreed or arranged, either to settle a dispute or for money, and, as Wood suggests, were often played out in the street or public house.

The evidence for Scottish homicide in mid-nineteenth-century suggests, as Wiener argues, that the use of weapons was less acceptable than fist fights. Notions of what means of inflicting injury in street and pub brawls between men were and were not acceptable were evident in the comments of the judiciary, and the level of culpability increased with the level of force or the use of weapons used, even when used in self-defence.

While there is no evidence of homicides resulting from prize fights attended by large audiences during this period, it is clear that, as Wiener argues, male-on-male violence commonly took the form of a public fight or pub brawl for money or to settle disputes. There is also evidence that violence between men had a sporting, recreational element to it, typically associated with Irish immigrants, although, there is also evidence that, as McMahon suggests, that a culture of violence for settlement of personal disputes also existed among the Irish. While the actual numbers of those identified as being Irish-born involved in lethal violence in Scotland during the period 1836-69 support Conley's

argument that the stereotype of the Irish as being violent was exaggerated, it is not possible to establish the extent to which second or third generation Irish had adopted their parents' attitudes to violence, or the impact that this may have had on the number and form of male-on-male homicides. Employment opportunities in the Scottish industrialised areas attracted large numbers of Irish immigrants and the evidence suggests that cultural and religious diversity could create or exacerbate conflict in social interactions.

It is evident that some levels of violence were still acceptable in mid-nineteenth-century Scotland, as further illustrated by the cases of homicide involving the police and in the school room. It was also accepted that a policeman might have to resort to violence in the discharge of his duty, but it is clear from the comments of the judiciary that excessive force or violence was culpable in law. Similarly, although the use of corporal punishment in the school room was not questioned, excessive force was thought to be unacceptable.

Although the incidences were, in relation to male perpetrators, comparatively few, the evidence suggests that women did resort to violence against other women to settle disputes, and became involved in drunken brawls as instigators, in their own right and for their own sake. The cases of female-on-female extra-household homicides suggest that altercations were spontaneous, and the methods of inflicting injury reflect this. Females resorted to physical aggression by pushing and shoving as well as using their fists, and were as likely as men to pick up a convenient item, such as a stone or a pot, to throw at their opponent.

The evidence suggests that extra-household homicide in mid-nineteenth-century Scotland was largely, but not exclusively a male crime. Although the number of females indicted for the homicide of other females was comparatively small, the evidence suggests that, as Kilday argues, Scottish women were capable of violent behaviour in their own right. It is clear that when women were indicted for extra-household female-on-female homicide, they did so under similar circumstances to their male counter-parts, to settle disputes or in drunken brawls, for example, although the arena for disputes were largely the house or in close proximity thereof. Furthermore, rather than imitating male violence, as Spierenburg argues, the evidence suggests that fatal altercations between women were spontaneous, and the means of inflicting injury were immediately to hand or circumstantial.

An enduring culture of violence existed, which defined how and where disputes could be settled by legitimate violence and which suggested the parameters for recreational fights. However, the culture of whisky drinking exacerbated this culture of violence and homicide became more likely in social interactions involving alcohol. This was especially evident where cultural or religious differences existed and was made more likely in the urban and industrial environments.

Chapter 7.

Mobbing, Rioting and Protest

Introduction.

The transformation of industry and industrial relations, and the development of the railway network in Scotland during the nineteenth-century attracted migrants from immediate catchment areas as well as from further afield, generating a large, male dominated, often itinerant workforce of individuals from diverse backgrounds, creating opportunity, environment and perceived justification for riots, protest and industrial disputes. Nine fatal incidents of mobbing and rioting in Scotland during the period 1836-69 resulted in 63 individuals being indicted for homicide, accounting for 9 per cent of the total. This chapter aims to establish the degree to which these cases can be attributed to the environment created by the development of industry during the period studied here. Who were the rioters and what were the interactions that created conflict? What were the circumstances which motivated these disturbances, and to what degree did the process of industrialization make them more or less likely?

The term ‘mob’ was understood to refer to the lower classes generally and to collective disorder and riotous behaviour more specifically. Londoners during the seventeenth and eighteenth centuries exploited traditional celebratory traditions, and the natural tendency for people to gravitate toward loud noise or the sight of a gathering crowd to rally support for political, work related, or sectarian causes. As well as rioting in their own right, ordinary Londoners developed a capacity to manipulate organised demonstrations for their own purposes, and a single London mob was likely to be comprised of a wide range

of participants expressing a wide range of views. However, while the exploitation of sanctioned public celebrations and the broad social composition of participants suggested widespread acceptance of riots during the seventeenth and early eighteenth centuries, the increasing use of violence and weapons resulted in greater suppression and an increasing perception of the mob as a source of disorder.¹

Popular disturbance, or mobbing and rioting, in late eighteenth- and early-nineteenth-century Scotland was one of the few means by which the majority of the population could change the circumstances that affected their lives, and it was a frequently occurring and widely distributed phenomenon. Popular disturbances arose from political issues as well as fear of hunger and causes ranged from the trivial to fundamentally important issues of the period. Triggers could be specific, such as the unpopular Malt Tax and the Act of Union with England, as well as protest about the export of grain and other food stuffs during periods of food shortages. While there may have been some widespread support for some disturbances, such as those against the Malt Tax for example, when the authorities were threatened by collective action, charges of mobbing and rioting resulted.² A common cause of disorder was the strained relations between Irish navvies and settled populations, but industrial protests were also responsible for a significant number of riots in Scotland throughout the nineteenth century. Protest could be an expression of class, gender, religion and territory and could be complex, contradictory and

¹ R. Shoemaker, *The London Mob: Violence and Disorder in Eighteenth-Century England* (London, 2004), pp.XI-XIII, and 111-44.

² K. Logue, *Popular Disturbances in Scotland 1780-1815* (Edinburgh, 1979), pp. 1-17.

competitive.³ Archibald Alison defines mobbing and rioting as ‘all those convocations of the lieges for violent and unlawful purposes, which are attended with injury to the persons or property of the lieges. Or terror and alarm to the neighbourhood in which it takes place.’ Furthermore, the mob must ‘not only have proceeded to acts of violence, but in both England and Scotland, they must have done so in pursuance of a common design, either previously formed or taken up at the moment in pursuance of a common feeling.’⁴

Cases of mobbing and rioting in mid-nineteenth-century Scotland were largely in pursuance of a common cause and, in common with the earlier incidences of mobbing and rioting in both London and Scotland, the mid-nineteenth-century cases that resulted in homicide reflect the issues, tensions and characteristics of the society in which they occurred. Scottish society during the mid-nineteenth-century was undergoing comparatively rapid industrialization and change. In his assessment of the social background to Chartism, Edward Royle correctly observed that industrialization and a change in the organisation of production created a new human geography, new concentrations of population and new social relationships.⁵ While this new society and the social relationships within it created its own friction from which violence could erupt, it also had a significant impact on recorded homicide rates.

Each charge of mobbing and rioting, by definition, resulted in several individuals being indicted. As with other homicide offences, the Libels for

³ W.W.J. Knox and A. McKinlay, ‘Crime, protest and policing in nineteenth-century Scotland’, in T. Griffiths and G. Morton (eds), *A History of Everyday Life in Scotland 1800-1900* (Edinburgh, 2010), pp. 196-211.

⁴ A. Alison, *Principles of the Criminal Law of Scotland* (Edinburgh, 1832), pp.509-513.

⁵ E. Royle, *Chartism* (London, 3rd ed., 1996), pp.1-3.

mobbing and rioting included specific references to various degrees of aggravation of, and alternative charges to, the crimes committed, and reflected the likelihood of there being more than one victim and that not all victims necessarily died. Libels included references to malicious mischief; assault by cutting and stabbing; assault to the danger of life; assault to the effusion of blood and severe injury of the person; and murder, in addition to mobbing and rioting. It was also a gendered crime perpetrated almost exclusively by men. While women had been indicted for mobbing and rioting offences that did not end in fatality, they only represented 8.4 per cent of the accused, for which precognitions survive, during this period.⁶ It is also noteworthy that cases of mobbing and rioting in which women were implicated included preventing officers of the law from carrying out their duty, obstructing the presbytery, and rescuing a prisoner from custody, and none were indicted alone: all were co-defendants with men. All Scottish cases of mobbing and rioting, ending in homicide and brought about by cultural, religious, and economic friction resulting from or related to industrial development during this period, involved male perpetrators.

Logue identifies the presence of navvies, the industrial labourers often comprising of an Irish as well as highland and lowland Scottish itinerant labour force as being a source of conflict and industry related disturbance, and that in the event of such conflict or disturbance, the authorities would favour the settled rather than the itinerant parties.⁷ One such conflict in Stonehaven, near Aberdeen, in January 1847, resulted in the death of William Murray, who had been visiting friends in the area. The construction of the railway around

⁶ Precognitions survive for 59 cases of non-lethal mobbing and rioting during this period, in which 296 men and 25 women were accused.

⁷ Logue, *Popular Disturbances*, pp. 165-7.

Stonehaven attracted a large number of labourers from the Highland region of Scotland, who found lodgings in the area at a cost of around five to six shillings per week. The labourers bought their own provisions but, while prices had risen as a result of the previous winter, the Highlanders blamed ‘a combination among the provision merchants’ and began to harbour a grudge against the local inhabitants. There had been occasional ‘slight assaults’ by the navvies against the local population but on 5 January 1848, a local holiday, two or three hundred navvies assembled in the town square with bludgeons, knives and picks, and speaking in Gaelic, marched through the town, shouting and smashing windows. Around 20 people were assaulted and ‘for anything the mob cared, were in some instances left for dead in the streets.’ According to the *Aberdeen Journal*, 11 of the ringleaders were arrested.⁸

The surviving Precognition named only five of the original 11 offenders that were allegedly apprehended, all of whom were employed in the construction of the railway. During the trial it was alleged that the labourers had planned an attack on the town as a result of ‘some bad treatment’ they had received, and one of those accused, John McKinnon, was heard to say that he ‘had been badly used by the Stonehaven people’ and would ‘be revenged on them.’ One witness declared that one of the mob approached him and asked if he could speak Gaelic, and that when he answered ‘no’ he was struck with a stick.⁹

The 1849 St. Boswells’ riots, in the county of Roxburgh, started with a brawl between two Irish navvies at the annual fair, one of whom was arrested and taken to a barn, which served as a temporary police station for the duration

⁸ ‘Barbarous and Fatal Attack of the Railway Navvies, on Stonehaven’ *Aberdeen Journal* (12 January 1848).

⁹ NRS, AD14/48/201 Precognition against Colin Munro, John McKinnon, William McDonald, Donald Davidson, Donald McKenzie for the crime of mobbing and rioting, malicious mischief, assault and murder, 1848; ‘Mobbing, rioting and murder’ *Aberdeen Journal* (12 April 1848).

of the fair. As many as 300 armed navvies, or railway labourers, then gathered, attacked the police and nearly demolished the barn in an attempt to free the arrested man. Local residents went to the assistance of the police and ‘a general *melee* ensued’, during which William Lauder, a shepherd, was beaten and died of his injuries.¹⁰ While the initial cause of the riot was not directly linked to conflict between the itinerant labour force and the settled population, local residents were quick to support the police against the Irish navvies at the time of the disturbance and later in attempts to apprehend the rioters. Two police officers had attempted to arrest one of the ringleaders at his place of work, but had been met with resistance from, and were turned away by, about 100 Irishmen armed with their work tools. The officers were then joined by around 50 local residents armed with guns and other weapons, but found the offender had absconded.¹¹ The *Caledonian Mercury* reported that,

exasperated by the recent conduct of the railway labourers, the farmers in the neighbourhood of the fatal and most disgraceful affray, unitedly, and assisted with their hinds, drove the navies [sic] from the works on which they were employed, at the same time pulling down their huts.¹²

The contemporary newspaper reports of the St. Boswell’s riot all imply, as Logue suggests, that the authorities favoured the local population over the itinerant navvies. This is particularly evident in the way in which the *Caledonian Mercury* referred to the victim of the riots and his involvement in the affray:

The highest eulogiums are bestowed on the conduct of the unfortunate man who was killed while aiding the police – at one time in the fight, he was found driving half a dozen of ruffians before him.¹³

¹⁰ ‘Fatal Affray at St Boswell’s Fair’ *Caledonian Mercury* (23 July 1849).

¹¹ ‘The Late Riot at St. Boswell’s’ *Glasgow Herald* (27 July 1849).

¹² ‘Riot at St Boswell’s’ *Caledonian Mercury* (26 July 1849).

¹³ *Ibid.* (26 July 1849).

It has been suggested that the Irish had a greater propensity for violence. The phenomenon of recreational violence, associated with the Irish, and the acceptance that deaths arising from this as being ‘melancholy accidents’, as discussed in chapter six, assumed an absence of malice, and recreational fights often occurred where large numbers of people gathered and drank. The trigger for the St. Boswell’s riot was the arrest of an Irishman who had been in a drunken brawl with another Irishman at a fair, and quickly escalated into a large scale affray between the Irish and locals. It is tempting to suppose that the 300 navvies who attacked the police and the barn in an attempt to free the prisoner did so in the belief that he had been unfairly arrested. However, the statements of those accused provide no evidence that this is the case.

Nevertheless, some characteristics of the Irish practice of faction fighting can be identified in the St. Boswell riots as well as in cases of mobbing and rioting between Protestants and Catholics in mid-nineteenth-century Scotland. Faction fights could potentially involve hundreds of men on each side. As a form of recreational violence, faction fighting was a way of proving strength and demonstrating loyalties to one side or the other and they often erupted at large gatherings such as fairs and markets.¹⁴

Large scale immigration of Catholic as well as Protestant Irish into Presbyterian Scotland created a potentially volatile situation. Tom Gallagher suggests that one in five Irish immigrants into Scotland during the nineteenth-century were Ulster Protestants, who were able to fit into Scottish life and culture quite successfully, and were likely to pass on anti-Catholic Orange

¹⁴ C.A. Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Oxford, 1999), pp.20-7.

symbols to Presbyterian Scots in a shared cause against the Catholic Irish.¹⁵

Graham Walker, furthermore, suggests that, while the religion of immigrant Irish was not recorded, an indication of the strong Irish Protestant presence in Scotland was the existence of the Orange Order, which was largely centred in areas where the textile industry and the developing coalfields provided employment. The Orange Order, originally a loyalist political force and a Protestant answer to agrarian Catholic secret societies in Ireland, provided Protestant Irish immigrants in Scotland with a way in which to maintain their Irish identity and to distinguish themselves from Irish Catholics; an awareness of Irish Protestant heritage, including its relations with Irish Catholics, was inherent in membership of Scottish Orange Lodges. Irish Catholics also formed groups that mirrored the Catholic secret societies of Ireland.¹⁶

The riot at Airdrie racecourse in 1854 illustrates this phenomenon. An Orange demonstration on 12 July at Airdrie passed without incident but Irish Catholics had ‘nursed their wrath to keep it warm’ until a race meeting in early August ‘when they came out in the true “party” style of revenge.’ Drinking continued after the last races had finished and a group of Orangemen were listening to tunes that had a ‘party character’, and to which nearby Ribbonmen¹⁷ took offence and vowed to have their revenge. The Ribbonmen gathered in a crowd and, armed with pistols, bludgeons and stobs, or wooden stakes, proceeded to the tent in which the Orangemen were drinking.¹⁸ Six Irishmen were indicted for mobbing and rioting, assault to the danger of life

¹⁵ T. Gallagher, ‘The Catholic Irish in Scotland: in search of identity’, in T.M. Devine (ed.), *Irish Immigrants and Scottish Society in the Nineteenth and Twentieth Centuries* (Edinburgh, 1991), p.20.

¹⁶ G. Walker, ‘The Protestant Irish in Scotland’, in T.M. Devine (ed.), *Irish Immigrants and Scottish Society*, pp.50-4.

¹⁷ Alluding to the Ribbon Society, a Catholic agrarian secret society ideologically opposed to Orangeism.

¹⁸ ‘Riot at Airdrie and Loss of Life’ *The Scotsman* (9 August 1854).

and murder as a result of the disturbance during which one man died and many others were injured.¹⁹

In February 1865 a miner was killed and several others were injured during a riot between Protestant and Catholic miners near Shotts Iron Works in Lanarkshire. Catholic and Protestant miners had been drinking in the village of Dykehead and declarations of witnesses suggest that some ‘wheeling’ had been going on before violence erupted. One of the accused passed by the victim as he stood talking on the street, and there was a brief exchange between them. The victim allegedly asked Gavan if it was him, to which Gavan replied ‘what do you want?’ The victim answered ‘anything’. Gavan then pulled out a skull-cracker and struck him. A crowd of 200 people formed and further ‘wheeling’, in the form of challenges for any ‘Scotch b----r or Orange w----re to come out and fight single handed’, was heard from the crowd.²⁰

According to Alan Campbell, the segregation of Irish Protestants and Catholics, and the transient nature of their lifestyles retarded the development of trade unionism. Men who were on opposing sides of a riot, he argues, were unlikely to participate in workplace solidarity.²¹ W. Hamish Fraser, however, suggests that it was the impact of the Cotton Spinners’ strike in 1837 that curtailed the development of early Scottish trade unionism. The lengthy trial against officers of the Association of Operative Cotton Spinners of Glasgow and Neighbourhood, for a number of charges included conspiracy, use of

¹⁹ NRS, AD14/54/272, Precognition against James Mackrell. Michael Morgan, Michael Hart for the crime of mobbing and rioting, assault to the danger of life, and murder, 1854; AD14/54/273, Precognition against John Milloy, Francis Tonner, Peter McCue for the crime of mobbing and rioting, assault to the danger of life, and murder, 1854.

²⁰ ‘The Dykehead riot’, *Glasgow Herald* (5 May 1865).

²¹ A. Campbell, *The Lanarkshire Miners: a Social History of their Trade Unions, 1775-1974* (Edinburgh, 1979), pp.193-201.

threats, intimidation and molestation against employers and workers, conspiracy to, and the act of, murder. The severe sentences passed for the lesser charges for which any were found guilty, had the effect of unions being associated with violence. The primary function of the Association of Operative Cotton Spinners was, according to its Articles of Association, to keep some control over the numbers entering the trade and to ensure an over-stocked labour market did not push wages down. According to the Articles of Association, members were prohibited from teaching spinning to anyone other than their own sons or brothers. Another method by which the Association attempted to control the number of spinners available for employment was an emigration fund from which the £3 fare to America would be paid for idle spinners.²²

However, despite the Association's attempts to prevent an overabundance of spinners in the employment market, the influx of new hands continued to be a problem, prompting a special committee on the issue in 1836 which found that Glasgow employers were drawing from labour outside Glasgow and in preference to union activists. Furthermore, while there was a period of prosperity in the spring of that year, after which employers granted a 16 per cent pay rise, prices began to drop throughout the autumn and winter of that year, and the Association took the decision to back a strike against one of the industry's largest employer in Scotland. The strike was broken after 16 weeks and left the Association in a weakened state. On 5 April 1837 the Glasgow

²² W. H. Fraser, 'The Glasgow Cotton Spinners, 1937', in J. Butt and J.T. Ward (eds), *Scottish Themes: Essays in Honour of Professor S.G.E. Lythe* (Edinburgh, 1976), pp.80-2.

employers resolved to remove the advance of wages awarded the previous year and three days later the Association called a general strike.²³

Spinners considered those who continued to work during a strike, known as ‘nobs’, as a threat to their livelihood and there were various tactics to remove these ‘nobs’, including buying them off and coaxing with drink. However, the cotton spinners had a reputation for the use of violence going back at least 20 years, and when John Smith, a strike breaker, was shot during the 1837 strike, the authorities tried to illustrate that the violence was organised by the Committee and officers of the Association, who were subsequently arrested with the spinner who was believed to have actually committed the crime.²⁴

The evidence of witnesses at the trial emphasised the appointment and purpose of committees, and the Guard and Secret Committees in particular. According to Sheriff Alison, after Smith’s murder some individuals expressed a willingness to provide information on the condition that they were protected from danger by the court. These witnesses declared that, although the purpose of special committees was not specified, it was generally understood that they were to get a more efficient way of meeting the objective of the Association by removing new hands working for a reduced wage from the mills and preventing others gaining entry. Means resorted to included persuasion with drink, but if that was not successful ‘they were to do what they liked with them’, which was understood to mean destroying life or property, or the throwing of vitriol. It was also well known that when such things were ‘necessary for the interests of the association’, the select committee would hire

²³ Ibid., pp.83-90.

²⁴ Ibid., pp.80-5.

a person to do it. Furthermore, while a Minute of the Association revealed the proposal that names of ‘nobs’ should be printed and sent to all Scottish, English and Irish mills, and that a persecuting committee, be appointed to ‘persecute them to the utmost’. Previous acts of violence by members of the Association were disclosed and, it was claimed, the Association had not only paid for perpetrators of those violent acts to emigrate, but that the association paid members to carry out the acts. It was, according to a witness, well known that when a secret or select committee was appointed, it meant that someone was to be shot, property destroyed or vitriol thrown.²⁵

Archibald Alison, at that time the Sheriff of Lanarkshire, former Advocate Depute, author of *Principles and Practices of the Criminal Law of Scotland*, and Tory,²⁶ declared that throughout June and July 1837 there were numerous acts of violent assault and general fire-raising, including the fatal shooting of Smith. On 29 July 1837, 20 police officers arrested 15 members of the Association during a committee meeting and another three later; no further acts of violence were reported and the strike ended five days later.²⁷

The link between the Association and violence was further implied by the judiciary. In his charge to the jury, the Lord Chief Justice Clerk pointed out that with the exception of the writing and sending of threatening letters, all the acts of violence charged had been committed and most of them had emanated from the Association. He also pointed out that the charge of murder was not

²⁵ ‘Trial of the Cotton Spinners’ *Caledonian Mercury* (11 January 1838).

²⁶ M. Michie, *An Enlightenment Tory in Victorian Scotland: The Career of Sir Archibald Alison* (East Lothian, 1997), pp.3-4.

²⁷ Ibid.

against M'Neil alone but against all the prisoners: the four committee members, he asserted, hired M'Neil for a reward of L.20 to murder Smith.²⁸

In his comments after the jury had found the charge of murder against the pannels not proven, but found that they were guilty of conspiracy, Lord Moncrieff opined that the evidence demonstrated that the Association was 'an association of the most illegal and dangerous description, illegal in its nature and most injurious in its consequences, not only to the public but to the members of the Association themselves.' Committees were appointed for the purpose of deterring workmen from attending the mills by means of molestation and threats, and they conspired to raise wages, not by withholding labour of their own members, but by withdrawing or excluding, by force, threats and violence, the labour of other persons who had a right to work.

Moncrieff went on to equate the Association with:

A species of slavery which was worse than the worst which has been proved to exist in civilized society; placing them in a condition of subserviency [sic], ready to perpetrate the worst crimes at the bidding of their ringleaders, hardened in their hearts, and set against all orders of the community, and under the pretext of promoting the interests of the operative cotton-spinners, bringing destruction on that manufacture in which they were particularly engaged.²⁹

The cotton spinners resorted to violence in protest to the changing nature of the workplace, and the threat to their livelihood from less skilled and blackleg labour, and, as Logue suggests, as a means by which they could influence the circumstances that affected their lives. The 1837 strikes, however, resulted in the break-up of formal union membership and attempts to expel known trade union activists and militants from employment in the South-western area.

²⁸ A. Swinton, *Report of the Trial of Thomas Hunter, Peter Hacket, Richard M'Neil, James Gibb, and William M'Lean, operative cotton-spinners in Glasgow, before The High Court of Justiciary at Edinburgh* (Edinburgh, 1838), pp.360, 6.

²⁹ *Ibid.*, pp.378-81.

Nevertheless, despite the banning of pit workers' meetings underground, miners and colliers were able to co-ordinate and bring about large scale strike action across Scotland's industrial regions in 1842. While the Monklands' miners had their own specific grievances, the strike was not an isolated affair, but was one of many across northern and western England and south Wales, involving as many as 500,000 workers.³⁰

This large scale industrial action had a political dimension and in all areas strikers were raising political demands for wider suffrage and greater access to politics as defined by the Six Points of the Peoples' Charter of 1838. While the Reform Act of 1832 had widened the franchise to owners of land with an annual value of £10 and more, it excluded skilled artisans who then appealed to the labouring classes, suggesting that parliamentary reform was the solution to economic uncertainty; labour was the main contributor to wealth and should have its own vote.³¹

The strategy by which the Chartist objectives were to be achieved was a moot point, both then and now, and has been over simplified as 'moral' versus 'physical force'. While it has been argued that Scottish Chartism erred toward moral, rather than physical force, W.H. Fraser argues that it was essentially no different than English Chartism in strategy, although its manifestation can only be understood in its specific social context. The Scottish economy was going through huge and rapid changes during the 1830s and 1840s but there was a particular Scottish grievance of being under-represented in parliament.

Economic distress was exacerbating working-class discontent and radical

³⁰ R. Duncan, *Conflict and Crisis: Monkland's Miners and General Strike, 1842* (Library Services Unit, 1982), p.11.

³¹ Royle, *Chartism*, pp.4-9.

groups of artisans were declaring support for parliamentary reform.³² The relationship between the political and economic in Scotland are evident in contemporary newspaper reports of the strikes, which refer mainly to the economic issues of the miners: despite Chartist agitation,³³ the *Caledonian Mercury* reported on 22 September 1842 that in Fife, at least, ‘the “strike” is now shorn of any political aspect, and has resolved itself into a mere question of wages between master and miner’.³⁴

The strikes in Scotland during 1842 were a reaction to short time and low wages, had paralysed production and by the beginning of September many employers made concessions to their workforce. While many miners returned to work, others became more determined to in their attempts to picket and intimidate those who had returned and to stop blackleg labourers.³⁵ Ten men were indicted for mobbing and rioting and murder in Ayrshire in November, after their attempts to intimidate new hands, who had been employed in their place. The accused men, along with a number of others, and armed with fire arms, knives, sticks and stones, attacked those who had been willing to work and those who had been asked to guard them. The mob broke into the house in which the ‘new hands’ were lodged and assaulted them. John Dawson, who later died, attempted to escape across a field at the back of the house but he

³² W.H. Fraser, *Chartism in Scotland* (Pontypool, 2010), pp.3-7.

³³ For example see ‘Dundee’, *Caledonian Mercury* (25 August 1842); ‘Political Movements in the Mining Districts of the West’ *Caledonian Mercury* (22 August 1842).

³⁴ ‘The Colliers’ Strike in Mid Lothian’, *Caledonian Mercury* (22 September 1842).

³⁵ It is interesting to note that the Scottish counties affected by the General Strike of 1842 were limited to the central belt. See A. Charlesworth, D. Gilbert, R. Randall, H. Southall and C. Wrigley, *An Atlas of Industrial Protest in Britain* (London, 1996), p.57.

was pursued by the mob and shot.³⁶ Six of the perpetrators absconded from the scene but were apprehended later and were tried in June 1843.³⁷

Conclusion.

Those indicted for homicide as a result of mobbing and rioting in Scotland during the period 1836-69 were men of the lower working classes, Irish immigrants and Highland migrants, with shared grievances, brought together into an environment, created by work opportunities as a result of the expansion of industry and the development of the transport network, and which provided perceived justification for, and opportunity to express those grievances. While the nineteenth-century Scottish mobs tended to pursue a common grievance, as opposed to Shoemaker's earlier London mobs who exploited disorder for their own purpose, evidence suggests that Scottish incidents of disorder did arise as a result of or at public gatherings where people came together and drank.

As Logue suggests, such popular disorder was a means, and often the only means, by which working-class grievances could be expressed. Certainly, the evidence suggests that disturbances in mid-nineteenth-century Scotland could result from a specific incident or grievance, from cultural or religious friction or from economic hardship. While some disorder erupted spontaneously, other incidents were premeditated, or had political undertones, or both. However, while contemporary opinion erred on the side of the settled population as opposed to the itinerant labour force, the vigour with which the local population reacted to the St Boswell riots in particular, suggests that local

³⁶ NRS. JC26/1842/719, Trial Papers relating to Robert Donnachie, James Graham, Robert Wood, William Gibson for the crime of mobbing and rioting, assault with loaded firearms and murder, 1843.

³⁷ NRS, AD14/43/375, Precognition against Michael McMorro, William Gibson, James Ganchen, James Graham, Daniel McAulay, Martin Conn for the crime of murder, mobbing and rioting, assault with firearms, 1843.

society harboured their own grievances against the influx of migrant and immigrant workers.

There is clearly a link between the process of industrialization and this type of homicide. As Royle points out, the process of industrialization created a new human geography and new social relationships. The evidence for homicides in Scotland during this period suggest that this was the case in terms of work opportunities attracting migrant and immigrant labourers in large numbers and conflict arising from the religious and cultural differences between Scottish and Irish; Catholic and Protestant; Highlander and non-Gaelic speakers; and itinerant and settled populations. Furthermore, the change in organization of industrial production, in the context of wider political and economic uncertainty during 1842, was significant in the strike movement of that year that led to the indictment of ten men for one homicide. It could also be argued, therefore, that this type of homicide was not only a result of the industrialization process, but that it significantly contributed to the increase in committals for homicide during this period.

Chapter 8: Conclusion.

The evidence of the Lord Advocate's precognitions for the period 1836-69 has suggested an inter-relationship between homicide and changing environments and helps explain why homicide rates were higher in the industrial and urban areas of Scotland during the first part of the nineteenth-century than in predominantly rural regions. The broad survey of extant homicide records in chapter two has demonstrated a positive correlation between the Criminal Returns and the level of homicide being prosecuted in Scotland during the period 1836-56. This broad survey also concurred with Peter King's findings that homicide rates were higher in industrial regions, and has demonstrated specific structures in which people were more likely to resort to unlawful killing.¹

Industrialization, urbanization and changes in behaviour.

Industrialization and urbanization increased opportunities available to women, in terms of greater freedom of movement and greater earning potential. The same processes also changed the nature of employment for men from pre-industrial apprenticeships leading to craftsmanship status to waged labour.² This social dislocation impacted on, and altered the dynamic between, husbands and wives or partners and it is significant that the highest occurrence of intra-familial homicides involving spouses and other adult family members was in the industrial south-east and south-west in mid-nineteenth-century

¹ P. King, 'Urbanization, rising homicide rates and the geography of lethal violence in Scotland, 1800-1860', *History*, 96 (2011), pp.231-59; P. King, 'Exploring and explaining the geography of homicide: patterns of lethal violence in Britain and Europe 1805-1900', *European Review of History*, 20 (2013), pp.967-87;

² A.M. Kilday, "'Lady killers': homicidal women in early modern Britain', in K.D. Watson (ed.) *Assaulting the Past: Violence and Civilization in Historical Context* (Newcastle, 2007), pp.208-9; A. Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (London, 1995), pp. 1-6, 64; E. Gordon and G.Nair, *Murder and Morality in Victorian Britain: The Story of Madeleine Smith* (Manchester, 2009), pp.1-9.

Scotland. These cases reflect Anna Clark's findings that artisans were among the highest offenders of spousal homicide and that there was a culture of whisky drinking both in the home and in public houses.³ While it is not clear if the men who frequented public houses and drank regularly were indulging in the bachelor culture suggested by Clark, alcohol was a causative factor in spousal homicides and exacerbated already volatile situations. Furthermore, the causative factor in a significant number of homicides resulting from competition over resources within conjugal relationships was spending money on, or pawning household articles in order to buy, whisky.

Although the evidence relating to female perpetrators in mid-nineteenth-century Scotland largely related to the working-class, it was not exclusively so. The case of Madeleine Smith demonstrates that the urban environment presented middle-class women with greater freedom of movement and opportunity for social interactions that could result in homicide.

Impact of population movement on relationships.

There was wide-spread acceptance of pre-marital sex in Scotland during this period, underpinned by an acceptance of cohabitation in law: recognition of being man and wife by 'habit and repute', and the legitimization of children by subsequent marriage. However, the transference of these attitudes and practices and an increase of casual encounters among young transient males and females, to new, often impersonal urban or industrial environments, could result in expectations of marriage not being met and a reliance on other forms of support. It is significant that the highest proportion of intra-familial homicide of child victims was in the south, south east and midland regions:

³ Clark, *Struggle for the Breeches*, pp. 1-6.

areas of rich agricultural land as well as burgeoning industry, and areas in which economic migration might be expected to be greater.

Disadvantage, culture and homicide.

Disadvantage was a factor in a significant number of cases in which mothers killed an illegitimate child. In the majority of these cases, the perpetrators were in low waged occupations. The evidence demonstrates that where support was available mothers of illegitimate children were able to raise their offspring, and some perpetrators already had older, surviving, illegitimate children suggesting that this may not have been unusual. However, while mothers could find themselves disadvantaged as a result of unrealised expectation of marriage, other life events, such as the loss of a partner, could result in temporary insanity or the humiliation of being in debt, making the unlawful killing of a child more likely.

Culture was also a significant factor in cases of Scottish homicide during this period. Historians of crime largely concur that a culture of violence existed in nineteenth-century Britain, and that it was a largely, but not exclusively, male working-class phenomenon.⁴ Homicide records demonstrate that this was the case for mid-nineteenth-century Scotland. The majority of extra-household homicides resulted from spontaneous fights between men and causes of conflict included conduct, differences of opinion, payment for labour, use of resources, perceived insult and religious difference. A

⁴ M. Wiener, *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England* (Cambridge, 2004), pp.41-4; J.C. Wood, *Violence and Crime in Nineteenth-century England: The Shadow of our Refinement* (London, 2004), pp.105-6; J. Archer, "'Men behaving badly'?: masculinity and the uses of violence 1850-1900", in S. D'Cruze (ed.), *Everyday Violence in Britain, 1850-1950* (Harlow, 2000), pp.41-54; R. Shoemaker, 'Male honour and the decline of public violence in eighteenth-century London', *Social History* 26 (2001), pp.190-208; S. D'Cruze, 'Murder and fatality: the changing face of homicide', in A.M. Kilday and D. Nash (eds), *Histories of Crime: Britain 1600-2000* (Basingstoke, 2010), pp.100-115; C.A. Conley, *Melancholy Accidents: The Meaning of Violence in Post-Famine Ireland* (Oxford, 1999), pp 1-41; A.M. Kilday, *Women and Violent Crime in Enlightenment Scotland* (Woodbridge, 2007), pp.39-58.

significant factor in the creation of potential conflict in Scotland during the period 1836-69 was the immigration of a large number of Irish, into the south-western region in particular, forming cohesive groups along religious fault lines as well as competing with Scottish workers for employment. The drinking culture of the Irish and the Scots, and the availability of cheap harsh whisky in lowland Scotland during this period exacerbated an already volatile situation.

Notions of a fair fight were alluded to in cases involving the use of weapons, and cases of self-defence and police aggression also illustrate the degree of acceptance in law, as well as in culture, of a level of violence between men as an acceptable means of dispute settlement.⁵ While police focus on clearing the streets of drunks often put physically tough constables in volatile situations, the judiciary made it clear that violence was only acceptable up to a point. Evidence also suggests that violent disciplining of the young, as a community activity as well as in schools, had been legitimated by custom.

A culture of violence against wives?

The homicide records suggest that the degree to which violence toward wives was acceptable was still ambiguous in mid-nineteenth-century Scotland. The notion of provocation was recognised in mid-nineteenth-century Scottish law as being the extent to which a wife failed to meet her expected social role, and witness testimonies of the period suggest that these values could be held by women as well as by men. While there is evidence that regulating a wife's behaviour through violence was unacceptable, there is also evidence of some

⁵ Wood, *Violence and Crime*, pp. 105-6; Conley, *Melancholy Accidents*, pp. 1-41.

sympathy toward the aggressor where perceived provocation had been given. This is particularly apparent in cases in which wives drank to excess. While provocation was still considered a mitigating factor by perpetrators and the press in mid-nineteenth-century Scotland, the judiciary could be less sympathetic.

It was suggested in chapter four that the impersonal, urban environment removed pre-industrial systems of control and support provided by the established Kirk. While there is some evidence that the Kirk could become involved in marital dispute in rural areas, reliance on community and neighbours was more significant, was more likely to be based on intimate knowledge, and was more forthcoming in rural areas than in the urban environment.

The ‘privatization’ of violence ⁶ and the increased anonymity of the urban environment ⁷ were not evident in mid-nineteenth-century Scottish tenement community. The close proximity in which people lived blurred the distinction between private and public and marital disputes impacted on neighbours: marital discord became public knowledge, and there were cases in which neighbours attempted to provide some level of support. Nevertheless, Scottish homicide records for the period illustrate that desensitization as a result of too frequent violence, or the fear of becoming involved could result in reluctance to intervene and an escalation of violence to fatal levels. The urban environment altered the dynamic of community support: while it was still available, it was less intimate and not always reliable.

⁶ Wiener, *Men of Blood*, pp.2-3; L. Leneman, ‘“A Tyrant and a Tormentor”: violence against wives in eighteenth- and early nineteenth-century Scotland’, *Continuity and Change*, 12, no.1 (1997), pp.31-32.

⁷ Shoemaker, ‘Male honour’, pp.98, 126.

The emerging urban environment and social interactions.

The close proximity with which people lived in the built, urban environment in mid-nineteenth-century Scotland created potential, as well as motivation, for conflict and fatal violence over use of resources and shared space. The physical layout of the Scottish tenement, and the compact arrangement of 'houses', created potential for conflict over shared space and little opportunity to escape annoying behaviour of neighbours. The majority of female-on-female homicides resulted from tension between neighbours, and there was potential for quarrelling parties to fall or be pushed down stairs causing fatal injuries.

The industrializing, urban environment facilitated the creation of cohesive groups and this thesis has illustrated the way in which women living in the urban environment created support networks, both paid and voluntary: a phenomenon that could be particularly beneficial for young women who became pregnant after casual sexual encounters and where expectations of marriage were not met. Nevertheless, these support structures could be the cause of, or contribute to, the unlawful killing of a child. The use of laudanum could lead to overdose and an indictment of culpable homicide, and paying for childcare exposed a child to potential starvation, neglect or abuse.

Shipping was a key factor in Scotland's industrialization process and provided opportunities for conflict between men living in close proximity for several weeks at a time. The environment in which mariners lived was a situation in which key factors in types of unlawful killing identified by this project converged: a whisky drinking culture; annoying behaviour in crowded conditions; conflict over resources; a culture of violence; cultural differences.

Convergence of diverse cultural and religious backgrounds.

Industrialization created employment opportunities for large numbers of migrants within Scotland and for Irish immigrants, and transient men formed cohesive groups based on shared cultural and religious backgrounds. This project has demonstrated that these cohesive groups resorted to riot to protest against issues that affected their lives in mid-nineteenth-century Scotland.

The Stonehaven and St. Boswell riots demonstrate the potential for conflict between settled populations and itinerant labour forces. The Stonehaven case suggests the potential impact that a concentrated itinerant labour force could have on local residents in terms of resources and it also suggests the potential vulnerability of the migrants in terms of access to those resources. The navvies in this case manifested their grievances in cultural terms, by attacking non-Gaelic speakers. The catalyst for the St. Boswell riots was a fist fight between two Irishmen, suggesting an existing culture of recreational violence among the navvies. The Airdrie riots illustrate the way in which large scale immigration of Irish Catholics into Presbyterian Scotland could result in conflict along religious fault lines.

Conclusion.

The process of rapid industrialization in mid-nineteenth-century Scotland caused significant social dislocation. This thesis has demonstrated that there was a degree of continuation of attitudes and practices, but there was also significant change, creating scenarios and opportunities for potential conflict and unlawful killing. What is significant is that the beginning of the decline in Scottish homicide rates, identified by King, coincides with the end of a period

of rapid industrialization.⁸ Key characteristics in homicides during this period can be linked to social dislocation, disadvantage and increased intensification of social and labour relations which occurred as a result of rapid industrialization and urbanization. It would therefore be cogent to argue that the beginning of the decline in homicide rates coincided with the end of this period of growth because urban and industrial society became more settled and systems of urban policing were being implemented. This suggests that some degree of a ‘civilizing process’ was taking place in Scotland at this time.

Further research.

This thesis has highlighted areas where further research is needed, to better understand the sources and to further explore the social history of homicide in mid-nineteenth-century Scotland. Certainly, a comparison between the High Court records and Scottish newspaper reporting on crime would assist in the evaluation of the level of subjectivity in this particular resource. Furthermore, a micro-study of small regions where Procurator Fiscal records survive would enable us to better understand the types of potential homicide that did not reach the Scottish courts, and would provide an important comparative perspective to contextualise and explain the geography of homicide in England and Wales.

As a social history of homicide, this research touched on some of the points raised by Tom Crook in his study of common lodging houses in London, and a more detailed look at cases of violence in mid-nineteenth-century city tenements would be beneficial in better understanding the multiple points of

⁸ C.A. Whatley, *The Industrial Revolution in Scotland* (Cambridge, 1997), pp.24-37.

tension, provocation and uncertainty discussed by Crook.⁹ On a broader level, a similar study of Scottish homicide for the later years of the nineteenth-century, when homicide rates were falling, might help us better understand the deeper patterns of change in the social contexts in which homicide occurred.

⁹ T. Crook, 'Accommodating the outcast: common lodging houses and the limits of urban governance in Victorian and Edwardian London', *Urban History*, 35 (2008), pp. 141-436.

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