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# Chicago Husband-Killing and the "New Unwritten Law"

In April 1919, the *Chicago Tribune* reported that Mrs. Emma Simpson shot her husband, from whom she was separated but refused to divorce, in court, in proceedings concerning alimony payments. Mrs. Simpson told a reporter that she would defend herself. "I will need no attorney—the new unwritten law, which does not permit a married man to love another woman, will be my defense. It will save me." And, she continued, "I will tell my whole story to the jury and they will free me. I am perfectly confident of that."[2]

Mrs. Simpson was wrong, it turns out, on several counts. Rather than defending herself, she retained Clarence Darrow as her attorney. He indeed defended her by arguing to the all-male jury, "You've been asked to treat a man and a woman the same—but you can't. No manly man can." The jury deliberated only half an hour, however, before finding Simpson, at the prosecutor's urging, insane *and* guilty.

If Emma Simpson thought the new unwritten law would save her, others wanted to save Chicago from the new unwritten law. A June 1912 article in the *Chicago Inter-Ocean* asked:

> Can a woman be convicted of murder in Chicago? Has some intangible defense taken growth that renders her immune from the treatment that would be accorded a man under similar circumstances? . . .

> The questions have nothing to do with the probable guilt or innocence of any certain fair defendant. It has been the cumulative effect of year after year of acquittals that has forced on [readers'] minds a suspicion of the existence of a new "unwritten law," holding a protecting wing over the heads of the weaker sex.[3]

The article refers to "almost a score" of Chicago women, charged with murdering their husbands or some member of their families, who were acquitted. The article also mentions "an almost equal number of women, originally hail[ing] from Chicago, [who] have been arraigned on charges of like crimes committed in other portions of the country"—one of whom was said even now to be living in a flat on the South Side of Chicago.

What was the "new unwritten law"? Cook County police records suggest that 265 women killed their husbands (including common law husbands) in Chicago between 1870 and 1930; of these only about 24 were convicted and some of these convictions were vacated.[4] Of 17 convictions of white women between 1875 and 1920, according to Jeffrey Adler, one woman's sentence was remitted, two were found criminally insane, and two were sentenced to terms of only one year.[5] From 1921 to 1930, only 12 of the 186 women who killed their husbands seem to have been convicted and to have served their time. Even before women were allowed on juries in Illinois then, and contrary to received wisdom, all-male coroner's juries, grand juries, and petit or trial juries, at least in Chicago, exonerated most wives who killed their husbands.

Perusal of New York and St. Louis newspapers suggests that Chicago's articulation of concern over husband-killer acquittals was unique, although the fact of such acquittals may not have been.[6] In any event, Chicago husband-killing cases were "spectacular" in both senses of the term. The woman journalist who covered some of the cases in the mid-1920s for the *Chicago Tribune* wrote a play that later became the basis for the recent hit musical and film "Chicago." Husband-killing cases appear throughout the twentieth century in many forms of popular culture: as short stories, plays, silent film, musical drama, film.

But what exactly was Chicago's new unwritten law? Available documents for the most part reveal what it was not: formal legal records indicate when the so-called new unwritten law—as the exoneration of women who killed their husbands (or other intimates)—failed. Grand jury indictments, for instance, occur when coroners do not free a suspect. Prosecutors go to trial when grand juries fail to discharge an ac-

cused. Prison records (and those of probations and pardons) exist when defendants are not acquitted. And yet it is to these writings and others that one must turn to explore "the unwritten." The unwritten, in these cases, is a "law"—at least occasionally in name—which, like all modern American positive law, raises questions about the doing of justice and the transmission of law through texts.

## A Legal Right?

In the only scholarly article I have found that mentions the new unwritten law directly, Jeffrey Adler writes that "The new unwritten law gave a woman the right to use lethal force in resisting an abusive husband." Claiming that "The overwhelming majority of the women who looked to this affirmative defense did not claim that adultery had occurred, and none of these killers had caught her spouse *in flagrante delicto*," he argues that

> In order to secure an acquittal (on the ground of self-defense), the woman had to demonstrate that she had been the victim of wife beating. Having established a history of abuse, she was then legally justified in killing her husband, according to this theory.

Adler goes on to quote Emma Simpson's case—leaving out the phrase "which does not permit a married man to love another woman."[6a]

Was the new unwritten law a formal legal right and affirmative defense, as Adler suggests? Might it have been a battered women's syndrome defense for its time? Was it somehow analogous to—or, better, a distortion of—the "old unwritten law" or honor defense used by men who, upon finding a wife, daughter or sister *in flagrante delicto*, killed the other man? Was "new" a way of referring to the novelty of women invoking particular legal defenses? Or was it a reference to women becoming beneficiaries of what was also considered an "unwritten law," that of jury nullification or the right to negate official law?

Unfortunately, Chicago (Cook County) criminal court records for 1902 to 1927 have all been destroyed. It is therefore impossible to confirm that the phrase was used at trial. So far, perusal of pre-1902 and post-1927 files don't indicate its use. (The post-1927 files are especially interesting because they contain, for cases with jury trials, both the instructions given and those requested but denied.) Further, because the trials resulted largely in acquittals, there is but one appellate case; the

Nitti case, as one would expect, is quite atypical, and does not seem to include the phrase. (The issues in the 1923 trial and appeal of Italian immigrants Isabella Nitti and her new husband Peter Crudelle for the murder of Sabelle's first husband, about which more will be said later, provide hundreds of pages that reveal more about the state of legal practice in Chicago at the time than about the new unwritten law.) Based on newspaper accounts, coroners' records, grand jury indictments, and the few trial and appellate materials that exist, though, there are still four—nonexclusive—interpretations of the new unwritten law.

One interpretation of the new unwritten law—that apparently invoked by Emma Simpson when she speaks of finding her husband in a hotel room with another woman four years earlier and to which she refers when she says that the new unwritten law "will not permit a married man to love another woman"—takes the new unwritten law to be analogous to the "old unwritten law" or the nineteenth-century custom, apparently inherited from Europe, whereby a man who found his wife, sister, or daughter *in flagrante delictoe*, had a heat-of-passion or provocation defense should he kill the woman's lover. Clarence Darrow, who represented Emma Simpson, later refers to the unwritten law (neither "old" nor "new") in the context of a 1932 Hawaii case, which he lost, in which he defended a husband whom he acknowledged was "legally" guilty, for killing the men who accosted his wife. As in Maurine Watkins' 1926 play, "Chicago," the old unwritten law applied to men who killed their rivals, rather than the objects of their ostensible affections. (In Watkins' play, which later became the basis for several works including the recent blockbuster musical film, "Chicago," a husband kills a man whom he does not know is his wife's lover and the "unwritten law" defense is said to be unavailable to him.)

The new unwritten law, unlike the old unwritten law then, concerned the killing of a spouse or partner rather than the rival. As Emma Simpson understood it though, it protected the woman who killed a husband who had betrayed her. Betrayal however actually was seldom an issue in cases, unlike Simpson's, where acquittals occurred. Husband-killing cases where "jealousy" or "betrayal" or the granting or receiving of "attentions" were mentioned (according to the CHHP or in newspaper articles) tended to be cases that led to conviction, rather than exoneration or acquittal. This becomes especially clear in the 1920s.

During the 1920s, numbers of husband-killings grew. Of course, so had Chicago's population. And so did the use of guns in such killings. In the last three decades of the nineteenth century, according to the

CHHP, 18 wives and mistresses killed their partners, three of whom were police officers. In the decade from 1900 to 1909, 22 women killed their partners; from 1910 to 1919, 35 did so; from 1920 to 1929, 169 did so, 23 in the year 1929 alone. This figure would be matched only by the 24 husband-killings of 1930. Of the twelve convictions that were not vacated in the 193 husband-killings that took place during the eleven-year period from 1920 through 1930, jealousy was an issue in at least five of the disputes. Grace Pearl shot her husband in a "fit of jealousy," according to the police record; Marcelle Hernandez shot her husband during "a domestic quarrel due to jealousy"; Beulah Conner's "motive" for shooting was said to be jealousy. Tillie Evans stabbed her husband "in the home of another woman"; Angeline Clark stabbed her common law husband "for speaking to another woman on the phone." Jealousy and betrayal certainly did not provide grounds for exoneration under a new unwritten law, although some—like Emma Simpson—perceived it to be so.

A second interpretation of the new unwritten law, closer to that claimed by Adler then, takes the new unwritten law to be an early version of something like a battered women's syndrome defense. Like men's justified provocation to anger under the old unwritten law, the new unwritten law might be thought to cover instances in which another emotion—of "fear" of a man—provoked a woman to kill. Indeed coroner's records confirm that many of the killings occurred during the course of one of many struggles, where a possibly intoxicated husband came home to a waiting wife. Weapons were usually guns—but also kitchen knives, pokers, stove pipes; killings took place in kitchens, drawing rooms, bedrooms—clearly "domestic" violence. Both coroner's records and newspaper articles time and again speak of witnesses testifying as to the violent quarrels and fights between women and the husbands they killed.

Whether and how during this period a woman's state of mind was linked to her abuse, as is often an issue in contemporary cases, remains to be investigated. The coroner's jury record (through 1911) does not seem to touch the issue. Coroner's records most often describe the cause of death in medical terms and in passive voice. Hence, Thomas Barker's death was "due to Fracture of Skull, said fracture received caused by being hit on the head with a piece of a stove held in the hands of and thrown by one Mary Ann Barker." Ollie Mitchell came to his death "from shock and hemorrhage due to an incised wound in the chest, said wound inflicted with a knife held in the hand of one Delilah Mitchell . . ." A coroner's jury could recommend that a woman "be held

to the Grand Jury until discharged by due Course of law," although it seems to increasingly have stated its "opinion that the accused was justified in protecting her life and the lives and her children" or its belief that "her act was one of self defense. We therefore recommend that she be released immediately from police custody."

Even when the six-man coroner's juries did not exonerate women who had been subjected to brutality, however, grand juries failed to indict; should grand juries continue the case, prosecutors filed no bills; and when they did so, judges as well as juries acquitted the women. As Judge Kersten declared in the 1905 Hopkins case:

> The evidence in this case clearly establishes the fact that the deceased was in the habit of maltreating, abusing and beating this woman . . .[7]

The assistant state attorney's speech to the trial jury in the case of Virginia Troupe—the one white woman to be convicted of manslaughter and sentenced to the minimum penalty of 14 years in the penitentiary before 1920—bespeaks the threat that a defense grounded in a wife's having been beaten posed: "If this jury sets the precedent that any woman who is attacked or is beaten by her husband can shoot him, there won't be many husbands left in Chicago six months from now."[8] (The 19-year-old Mrs. Troupe, by the way, had admitted that she and her husband were quarreling over attentions, to which her 15-year-old brother-in-law testified, that she had received from another man.[9] She ultimately served eight years in the female penitentiary of Joliet Prison.[10])

One conviction of a husband-killer that did not mention jealousy or betrayal reverses the usual spouse-beating roles. Mrs. Hilda Exlund, described as a woman "of powerful physique" who had been "a husband beater for years," was convicted of murder in 1919 (she too was sentenced to 14 years at Joliet Prison). The foreman of the trial jury of 12 married men who convicted her, claimed that "The fact that she was a woman did not enter into our discussion or deliberation. She was guilty and should be punished."[11] Neighbors called as witnesses had said that the defendant, "a large woman," "continually abused her husband," who was described as "a small man," and "called him names."[12]

A third interpretation of the new unwritten law then, a variation on the second, conceives of it less as a battered women's syndrome defense for its time than as self-defense in the case of women. Acquittals of wives—like exonerations earlier in the process—may have been based on self-defense. Not only do jury instructions available in post–1927

cases bear this out, but as early as 1905, Judge Kersten states (of the Hopkins case) that:

> . . . [The evidence] clearly establishes that on the night in question [the deceased] made a brutal and vicious assault on her, and she had a right, under the circumstances, if she honestly believed she was in great danger of losing her life, or of receiving great bodily harm, to use such force as was necessary to protect herself; and what was necessary, under the circumstances, no person on earth could tell but herself.

And as Kersten put it:

> A woman, when married, does not become the chattel or slave of her husband. She has the same rights that her husband has, and her husband is bound to preserve these rights to the same degree that she is bound to preserve his.

Six of Kersten's colleagues also commented on the Doyle holding for the press. They noted that women were no longer men's property—"A woman is not a man's slave because she is wedded to him"—and that women had the right to defend themselves—"The law of self-defense applies to women as well as it does to men." The *Record-Herald* noted that "the result of the [Hopkins] trial was no surprise . . . The surprise came in the fact that the coroner's jury had not previously exonerated her." Already in 1902 in fact, in an early husband-killing case, the wife's acquittal was simply reported as a matter of self-defense. (Compare the much earlier 1867 trial of unmarried Mary Cosgriff, aka "Irish Mollie" Trussell, however, for whom the new unwritten law was apparently not yet available. In what the *Chicago Times* in its report portrayed as a spectacularly sentimental case, Cosgriff's self-defense claim failed. Eleven of the jurors who convicted Cosgriff of manslaughter for shooting George Trussell, "a gambler and 'sporting' man," her long-time lover, and the father of her ten-year-old son, wrote the governor after the trial, however, petitioning for her pardon. The state's attorney, having "examined the daily morning papers of this city published on last Saturday and Monday containing an account of the trial," declared that the newspapers "contain a substantially correct statement of the evidence." With the trial judge's concurrence, these articles were forwarded the governor. They provide the only trial documentation in the file of Cosgriff's pardon, which the governor granted.)

If the "unwritten law" in the cases above refers to self-defense (as it

also does in a short story by Nelson Algren in the 1930s), the "new" of the new unwritten law seems to apply to the extension of self-defense to women during a period in which emergence of—and anxiety over—the "new woman" was paramount.

A fourth interpretation then is that while "new" may refer to women, "unwritten law" refers more broadly to jury nullification or to what was not perceived as formal or official law at all. In law review articles of the time, "unwritten law" refers to any instance of what we *now* call "jury nullification." Legal and political justifications for "jury nullification" in the United States seem to shift from a grounding in natural law or morality in the mid-nineteenth century, to due process concerns in the early twentieth. The "new unwritten law" could mark a moment of similarly shifting understandings of women's roles and rights. As women became visible in the legal system, the new unwritten law could refer to an as-yet unresolved and yet clearly changing situation, made explicit in husband-killing cases, in which terms for the articulation, in positive law, of women's place in society ultimately shifted from moral language concerning the domestic sphere to a procedural language of rights.

The four interpretations above suggest that rather than being, as Adler suggests, a formal legal right or affirmative defense as such, the new unwritten law was how the popular press referred to what was apparently widely perceived as not being official law at all. The four interpretations are not incompatible. Jurors seemed to some, if not to many, to be carving out exceptions to the formal law for women, even as women's roles were changing and judges were insisting that perceived exceptions were in keeping with official articulations of the law of self-defense anyway.

## The Right Story?

Despite claims such as those of Judge Kersten, the perception that male juries and the male-dominated system of the time somehow failed to properly apply the law to women persists today in various forms. In 1917, before women were allowed on juries in many jurisdictions and well before the first woman served on an Illinois jury in 1940, Susan Keating Glaspell wrote a prize-winning short story, "A Jury of Her Peers," about a woman who kills her husband. The story, resurrected in the 1970s by the movement to valorize and reclaim women's voices in

literature, is usually read as an indictment of the male-dominated legal system. Glaspell based the story on a one-act play, "Trifles," that she had written two years earlier. The play itself was apparently inspired by the first (April 1901) trial of Margaret Hossack, accused of having murdered her husband, which Glaspell had covered as a reporter in Iowa.[14]

The story tells of a visit by two women to the home of a widow whose husband had been found strangled in bed the day before, with a rope around his neck. The women have come to fetch an apron and shawl for Minnie Wright, who is now in jail. They accompany their husbands—the sheriff and the farmer who found the man's body—and a county attorney (or prosecutor), who are inspecting the dreary house and property, the scene of the crime, for clues. The men, who seem to think that Mrs. Wright did kill her husband, find nothing to suggest a motive. They make fun of the women who are occupied in the kitchen with the mundane things of Wright's life—the interrupted task of pouring sugar and wiping down the table, preserves that have spilled over, an oven that does not work properly, quilting pieces that are stitched more erratically than the rest. As they gather Mrs. Wright's much-mended affairs, the two women notice a broken bird cage. Looking, on their own initiative, for Mrs. Wright's sewing scissors to bring her, they find underneath the things in her quilting basket, a pretty box. Wrapped in red silk in the box is a canary whose neck has been wrung. At the end of the story, Mrs. Hale, the farmer's wife, and Mrs. Peters, the sheriff's wife whom the attorney describes as "married to the law," take and hide the dead bird, the only evidence that seems to provide a motive.

The 1900 murder that inspired this story occurred, not in the urban wilderness of Chicago, but in rural Iowa.[15] At the coroner's inquest and at Hossack's first trial, which resulted in a life sentence of hard labor, the prosecutor insisted on entering evidence of family disputes to establish Hossack's motive for murder. Neighbors and others testified as to John Hossack's cruelty, threats, and rage toward his wife and children, even as they suggested that such family matters should have been kept private. The defense, by contrast, continually (and largely unsuccessfully, it seems) objected that such evidence was irrelevant. Hossack herself refused to testify as to any maltreatment by her husband—in her silence hiding, as did Minnie Wright's peers for a different reason, what we, again like Minnie Wright's peers, would tend to consider a crucial aspect of her case.

In contrast to Hossack's Iowa trial, in which beatings were perceived to establish a wife's motives and lead to conviction, during the first three decades of the twentieth century in Chicago, beatings seem rather to

justify women's lethal responses and to lead to their exoneration. Clearly, differing expectations and perceptions—in Chicago and in Iowa, in fact and in fiction—of violence and justice, of women's roles in marriage and in public, are at issue. They emerge both in what is said and what is unsaid in various texts. How is one to understand these differences given the sometimes contradictory messages of public records and written texts, however? What are we to make of the silences and speech of various sources?

In Chicago, at least one Cook County prosecutor or state's attorney argued that women should be allowed on juries. He argued in 1912 for women's jury service, not—as Glaspell might be thought to suggest—because of women's greater understanding of or insight into their sisters' experiences, but because he thought that women would see through the wiles and manipulations of their fair husband-killing sisters. Men "can never overlook the sex element and judge impartially and without emotion. The defendant need not be beautiful; if she merely appears feminine on the stand, she is safe," State's Attorney Wayman suggested.[16] Was Wayman's position yet another manifestation of the male-dominated legal system in which women were relegated to particular stereotypical roles? And if so, what of it? What links can be made between views like his and the eventual extension of jury service to women?

Even women lawyers—women were admitted to the bar in Illinois long before they had the right to vote or to serve on juries—were not above manipulating—or claiming to manipulate—the system. Helen Cirese, an extremely fashionable and photogenic Italian-American lawyer and, at age 20 in 1920, the youngest woman to graduate from De Paul Law School, reflected in a 1940 interview on her work on a team of Italian-American attorneys seeking a retrial in the 1923 Chicago case of Isabelle Nitti-Crudelle. According to Cirese, who also successfully defended Chicago husband-killer Lela Foster in 1921, the fact that a string of beautiful women had all been acquitted of killing their husbands suggested to her that Nitti had only to be taught English and dressed up for her appeal to succeed. How does this public recollection seventeen years after the fact square with the hundreds of printed pages on record that constitute appellant's briefs and dwell on the procedural inadequacies of Nitti's earlier trial—and in particular on mistakes by her trial attorney?

These are only a couple of the many issues surrounding stories of Chicago husband-killers and the new unwritten law's ambiguous boundaries between fact and fiction. A "law" at least in name, the unwritten

law makes its somewhat paradoxical appearance in writings. In the silences and speech of its texts, in their facts and fictions, the new unwritten law emerges as one early twentieth-century possibility of justice—and, of course, of injustice—which has yet to be more fully explored. Traces of the new unwritten law offer the possibility of a history of law, in which what is mundane and everyday—like a dead canary—can not only be hidden, but can be found— and perhaps hidden—again. In the transmission and transformation of traces of the new unwritten law, law's dynamic character emerges as a subversive legacy—the story of finding and hiding and perhaps finding and losing justice again.

## Afterword on Sources

Additional information and background on homicide cases from the Chicago Historical Homicide Project can be found in the archives of the Chicago History Museum, the Chicago Public Library, The Newberry Library, Northwestern University Library and other collections. Appellate case records and, for some cases, trial transcripts may be preserved in the archives of the Illinois Supreme Court. The Illinois State Archives include additional sources for prison records, such as the Joliet Prison historical records. Coroner's records may be found through IRAD, the Illinois Regional Archives Depositories. Details can be found on the Chicago Historical Homicide Project website: www.homicide.northwestern.edu under *references*.

## Notes

1. Thanks to Leigh Bienen, Leslieanne Cachola, Shannon Jackson, Sara Kendall, Janisha Sabnani, and Shalini Satkunanandan, for help with these preliminary formulations of this material.

2. April 26, 1919, Chicago Tribune

3. "No Chicago Woman Convicted of Murder; Scores of Fair Sex Arraigned and Tried for Killing but In Every Case Jury Has Failed to Hold Guilty," *Chicago Inter-Ocean*, June 22, 1912.

4. Much of this data comes from the Chicago Historical Homicide Project (CHHP), supplemented by other sources. Many thanks are owed to Leigh Beinen at Northwestern University School of Law School for making accessible a database of a Cook County police log, maintained consistently from 1870 to 1930, that records more than 11,000 homicides. The log contains names and situations of all the victims of killings that po-

lice were called in on, including information about suspects and, often, the outcomes of legal actions.

5. Jeffrey S. Adler, "'I Loved Joe, But I had to Shoot Him': Homicide by Women in Turn-of-the-Century Chicago," *Journal of Criminal Law and Criminology* 92 (2002): 867-897, using records from note 4 and others. I am indebted to this incredibly informative article. Adler found that "every white woman who killed her husband between August, 1905 and October, 1918 was exonerated or acquitted, totaling thirty-five consecutive cases" (884; note that two women were never charged or tried and a third committed suicide). See also Jeffrey S. Adler, "'We've Got a Right to Fight; We're Married': Domestic Homicide in Chicago, 1875-1920," *Journal of Interdisciplinary History* 34 (Summer 2003): 27-48.

6. In a study of prosecutorial records of late nineteenth-century New York, Carolyn B. Ramsey argues that wife-killers and other institutionally and politically marginal types who killed were convicted in disproportionately high numbers. "The Discretionary Power of 'Public' Prosecutors in Historical Perspective," 39 Am. Crim. L. Rev. (2000) 1309. Elsewhere she argues that legal treatment of wife killers between 1880 and 1920 in New York and Denver differed from that of husband killers. Women were treated more leniently than men and evidence of past abuse was viewed sympathetically in female defendants' cases, but not in male defendants' cases. "Intimate Homicide: Gender and Crime Control, 1880-1920," Univ. Colo. L. Rev. 77 (2006): 101-191.

6a. Adler, "Loved Joe," 882.

7. Rec-Her, Tu 3/21/1905.

8. *Inter Ocean*, W 1/10/1906.

9. *Chicago Tribune*, Aug. 10, 1905.

10. Joliet Prison records.

11. *Chicago Tribune*, Jan. 17, 1919.

12. *Chicago Tribune*, Jan. 15, 1919.

13. *Chicago Record-Herald*, March 21, 1905.

14. See Ben-Zvi, Linda, "'Murder, She Wrote': The Genesis of Susan Glaspell's Trifles," in Ben-Zvi, Linda, ed., *Susan Glaspell: Essays on her Theater and Fiction* (Ann Arbor: Univ. of Mich. Press, 1995) and many others on the origins of Glaspell's story, as well as its later reception.

15. Patricia L. Bryan, "Stories in Fiction and in Fact: Susan Glaspell's A Jury of Her Peers and the 1901 Murder Trial of Margaret Hossack," 49 Stan. L. Rev. (1997) 1293. Information in this paragraph about the Hossack trial comes from Bryan, "Stories," 1303, 1317-1325, 1330-32, 1339-41.

16. See "Women Jurors to Try Feminine Murderers," Vol. XX, No. 11, p. 328 (Nov. 1912), (https//: www.law.stanford.edu/library/wlhbp/articles.html accessed 11/17/03 at 3:30 pm.)

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