

The Trial and Testimony of Grace Marks, Murderess: Gender Performance in a Colonial Courtroom, Upper Canada 1843

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The bodies of a man and a woman were discovered in the cellar of a farmhouse in Vaughan Township, Upper Canada, on July 30, 1843. David Bridgeford, a coroner for the Home District, reported that the man had been shot through the chest at close range. The woman's body was found under a tub. She had suffered multiple blows to the head and had been strangled. The autopsy revealed she was pregnant at the time of her murder.¹

The bodies were those of Thomas Kinnear, owner of the homestead, and his housekeeper Hannah Nancy Montgomery. The events leading up to the murders were fairly innocuous. Twenty-year old James McDermott was hired as a stable boy in late June 1843, and a sixteen-year old woman by the name of Grace Marks was hired as a domestic servant a week later.² Mere weeks after the hirings and days before the murders, Montgomery informed Marks and McDermott that their employment at Kinnear's homestead would be ending shortly, but they would receive their wages before departure.³ On July 27, Kinnear left his homestead in Vaughan Township for his house in Kingston, with plans to return in two days. Marks and McDermott took advantage of Kinnear's absence and plotted the murder of Montgomery and Kinnear for when he returned. On July 29, just hours before Kinnear's return, McDermott struck Montgomery with an axe, dragged her to the cellar, and strangled her with a piece of white cloth that Marks had given him.⁴ When Kinnear arrived home, he remarked upon Montgomery's unusual absence. Shortly afterwards, McDermott shot Kinnear in the chest with a double-barrelled gun.⁵ McDermott and Marks then dragged Kinnear's body down into the cellar, stripped both him and Montgomery of their valuables, robbed the house, and fled. Neighbours quickly noticed Kinnear and Montgomery's disappearances and their bodies were discovered the next day. The authorities were notified and George Kingsmill, High Bailiff of the City of Toronto, arrested Marks and McDermott on July 31 in Lewiston, New York. They were brought back to Upper Canada for trial.⁶

Both trials were held at the Toronto courthouse. James McDermott's trial took place on November 3, 1843 and Grace Marks' on the following day. Defense lawyer Kenneth

¹ The Trials of James McDermott and Grace Marks at Toronto, Upper Canada, November 3rd and 4th 1843: For the Murder of Thomas Kinnear, Esquire and his Housekeeper Nancy Montgomery, at Richmond Hill, Township of Vaughan, Home District, Upper Canada, on Saturday, 29th July, 1843 : With Their Confessions Since Their Trials and Their Portraits (1843), 11. http://archive.org/details/cihm_67883.

² *Ibid.*, 3.

³ The Trials of James McDermott and Grace Marks, 3; Susanna Moodie, *Life in the Clearings versus the Bush* (London: Richard Bentley, 1853), 217. In the trial transcripts, Marks states only McDermott was to be fired but according to Moodie, McDermott told his lawyer that both he and Marks were to be fired upon Kinnear's return.

⁴ The Trials of James McDermott and Grace Marks, 4.

⁵ *Ibid.*, 5.

⁶ *Ibid.*, 6.

McKenzie requested that McDermott and Marks be tried separately.⁷ His request was granted and this arguably changed the outcome of the trial. Though acting as a defense lawyer for both Marks and McDermott, McKenzie used the discrepancies in the confessions and trial proceedings to cast Marks as an unwilling participant and another victim of McDermott. During their separate trials for the murder of Kinnear, each unsuccessfully claimed that the other was the instigator. McDermott claimed the murders were a result of Marks' envy of Montgomery's position and that his murderous actions were spurred on by Marks' beauty.⁸ In turn, Marks defended her actions and involvement with the murders by claiming she was a pawn of McDermott's plotting. She stated that McDermott's plan was to kill Kinnear and Montgomery and then steal all the valuables in the house.⁹ By November 4, 1843, both Marks and McDermott were sentenced to death, yet only McDermott was hanged. Although the jury's plea for mercy saved Marks' life, she nonetheless spent the next thirty years incarcerated in the Kingston penitentiary and the Toronto Asylum.¹⁰

Historians know very little about the trial of Grace Marks and James McDermott. In fact, there are numerous discrepancies in the few sources that detail the events surrounding the trials. Marks unquestionably played a role in the murders, but what that role was remains uncertain. McDermott made two voluntary confessions and in both, he stated that the murders would never have happened if not for Marks.¹¹ In her own voluntary confession, Marks admitted that she had in fact promised to assist McDermott in murdering Kinnear and then lied to inquiring neighbours to cover for McDermott's actions. Marks maintained that McDermott had been the one behind the plot.¹²

Why then was Grace Marks allowed to live? At the time of the trial, the trend of institutionalizing criminals instead of executing them was on the rise. Kingston Penitentiary had only accepted its first prisoners a few years prior to the Marks trial.¹³ Historian Janet Miron argues that institutions were not stigmatized as shameful or abhorrent institutions but rather were viewed as "emblematic of the modern, progressive status of society."¹⁴ Historian Leslie Erickson reflects on this "forward-thinking" in argument of the widespread belief in the late nineteenth century Canadian populace that Canada as a "civilized nation" should not be subjecting women to the death penalty.¹⁵ Yet Marks' clemency is still particularly remarkable considering the nature of the legal system in nineteenth-century Canada. As historian Donald Fyson points out, the court system was overwhelmingly patriarchal with all-male juries and judges hailing from the upper ranks of colonial society.¹⁶ Women had no direct control over legal proceedings and their trials

⁷ *Ibid.*, 8.

⁸ Moodie, *Life in the Clearings*, 217.

⁹ The Trials of James McDermott and Grace Marks, 3.

¹⁰ Janet Miron, *Prisons, Asylums, and the Public: International Visiting in the Nineteenth Century* (Toronto: University of Toronto Press, 2011), 104.

¹¹ Moodie, *Life in the Clearings*, 221; The Trials of James McDermott and Grace Marks, 16.

¹² The Trials of James McDermott and Grace Marks, 5-6.

¹³ Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton, Athabasca University Press, 2012), 33.

¹⁴ Miron, *Prisons, Asylums, and the Public*, 6.

¹⁵ Leslie Erickson, *Westward Bound: Sex, Violence, the Law and the Making of a Settler Society* (Vancouver: UBC Press, 2011), 213.

¹⁶ Donald Fyson, "Local Judiciary, Local Power, and the Local State: The Justices of the Peace of Montreal, 1764-1830" (1997), 7. <http://fl.laval.ca/hst/profs/Dfyson/LocalJudiciary.htm>.

were subject to masculine ideologies and beliefs. One of these beliefs held women to a stringent standard of ideal womanliness. Ideal women were to be virtuous, chaste, subservient, modest, beautiful, and respectable. Whether as victim, accused, or witness, women were pressured to prove their adherence to these gendered notions of female comportment when they entered a colonial courthouse.

The nature of the crime – a double murder – also makes Marks' stay of execution noteworthy. Female domestic servants who had murdered, or were accused of murdering, their male employers were generally convicted and harshly punished. Yet Marks' original death sentence was altered after the all-male jury sought mercy, thereby demonstrating and affirming their own civilized manliness. This was a highly unusual recommendation, particularly in light of her accused crime. Historians Murray Greenwood and Beverley Boissery argue that some crimes were forgiven while others were harshly condemned because of how they aligned with feminine gender ideals. For example, infanticide convictions were typically excused by juries who reasoned that infanticide was excusable due to the perceived helplessness of a woman with no other option.¹⁷ A woman who committed infanticide could be "frail but pure of mind, passive, submissive, and emotional" thereby requiring the manly protection of the court.¹⁸ A woman on trial for murder, however, was not being passive, subservient, or helpless, especially when accused of killing her employer. Other immigrant and working-class women like Marks who killed their social and cultural superiors were judged especially harshly and often hanged for their crime.¹⁹ These women were much less likely to be granted clemency. The legal system repeatedly proved to be harsher towards women perceived to be outsiders to colonial categories of womanhood.

The odds were not in Grace Marks' favour; yet she managed to avoid execution. In what follows, I examine how Marks, as a working class, unmarried, Irish woman was able to muster compassion from the all-male jury regarding her role in the murder of her male employer and social superior, Mr. Kinnear. Because Marks was presented as the "ideal colonial woman" at the trial and in the press, she was successfully able to portray herself as a victim of the scheming hired-hand, James McDermott. This enabled her to exploit the underlying notion of chivalry and male duty that propped up the legal system of nineteenth-century Upper Canada.

Historians disagree how we should understand the gendered performances of women in the colonial courtroom. Some studies suggest that an undercurrent of chivalry and protectionism towards "helpless" women permeated the legal system. This underlying protectionist ideology went hand-in-hand with gender performances for both men and women. For men to be viewed as *men*, they had to be seen doing their *duty* by protecting women. Numerous historians have argued that women were able to manipulate this idea of manly protection by successfully portraying themselves as "ideal women" or "ideal victims" worthy of such protection.²⁰ That some women used their adherence to proper

¹⁷ Murray Greenwood and Beverley Boissery, *Uncertain Justice: Canadian Women and Capital Punishment 1754-1953* (Toronto: Dundurn Press, 2000), 18.

¹⁸ *Ibid.*, 218.

¹⁹ Erickson, *Westward Bound*, 228.

²⁰ See Greenwood and Boissery, *Uncertain Justice*; Donald Fyson, "Women as Complainants Before the Justices of the Peace in the District of Montreal, 1779-1830," (Draft for 75th annual meeting of the Canadian Historical Association, St. Catherines, 1996), <http://www.profs.hst.ulaval.ca/Dfyson/WomComp.htm>; Patrick J. Connor,

gender roles to their advantage illustrates that some women were able to assert their demands for justice.²¹ The undercurrent of chivalry, then, often protected rather than convicted a woman on trial, so long as she could prove her adherence to dominant discourses of femininity.

Other historians argue that the gendered performances necessary for a "fair trial" meant that the patriarchal legal system could not protect the majority of women.²² Because it was nearly impossible for most women to achieve the stringent ideals of womanhood, trials often degenerated into gender performances wherein women sought to prove that



Figure 1: J.G. Howard, Second Court House (1827-1853), Toronto, ca. 1836.
Source: Toronto Public Library, Toronto Reference Library

they upheld the virtues of colonial femininity. Often trial verdicts were decided by how close a woman's gendered performance came to the ideal. Historian Sandy Ramos and others argue that this severely limited and barred most women from achieving justice in the colonial courtroom. A woman in court who was found to have, or even believed to have, strayed from these

ideals "forfeited the patriarchal protection afforded them by law."²³

Even the most innocent of actions, such as walking alone down a street at night, could be used against a woman to cast her, and her testimony, as suspect.²⁴ These historians depict most colonial women as falling short in their struggle to depict themselves as deserving of the court's manly protection.

These threads of protectionism and gender performance were at work in the 1843 trial of Grace Marks. From the moment Marks walked into the Toronto courthouse, her reputation came under scrutiny from the all-male jury. While the rhetoric of the law

"The Law Should Be Her Protector: The Criminal Prosecution of Rape in Upper Canada, 1791-1850," in *Rethinking Canada: The Promise of Women's History*, 5th ed. eds. Gleason et al. (Don Mills: Oxford University Press, 2006); Lori Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto: University of Toronto Press, 1997).

²¹ Connor, "The Law Should Be Her Protector," 97.

²² See Sandy Ramos, "'A Most Detestable Crime': Gender Identities and Sexual Violence in the District of Montreal, 1803-1843." *Journal of the Canadian Historical Association* 12, no. 1 (2001); Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993); Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth Century Canada* (Toronto: Canadian Scholars' Press and Women's Press, 1991).

²³ Ramos, "A Most Detestable Crime," 34.

²⁴ Carolyn Strange, *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880 - 1930* (Toronto: University of Toronto Press, 1995), 66.

promised fairness regardless of character, these men dispensed justice along gendered lines based upon contemporary notions of what was considered respectable for men and women.²⁵ Their understandings of gender, however, were further complicated by ideas of class and ethnicity. The consequence was that both women and men on trial needed to prove that they successfully performed appropriate gender roles outside of the courtroom. The results of these trials must, therefore, be viewed in light of these performances of gender, class and ethnicity, from which the jury's decisions were completely inseparable.

During their separate confessions at the trial, Grace Marks and James McDermott both attempted to establish that they correctly performed colonial womanliness and manliness as understood in the colony of Upper Canada. As Ramos points out, this was commonplace in nineteenth-century Canadian trials. Women and men "often created narratives that incorporated many of the dominant gender ideals" as a way of signalling to the jury and judge that they shared the same values, and therefore ought to be trusted.²⁶ For McDermott this strategy proved to be wildly unsuccessful. Marks, however, managed to convince the court both of her good reputation and womanly virtues.

There is plenty of evidence to suggest that Marks was *seen* as upholding the colonial standards of ideal womanhood. This was essential for Marks. Historian Cecilia Morgan argues that it was not enough for a woman to uphold her feminine virtues; she also had to be seen by others as doing so.²⁷ Even sixty-five years after the trial, a neighbour of the Kinnear homestead at the time of the murder wrote a newspaper article describing the gruesome event. W.M Harris wrote that Marks possessed a "lively disposition and pleasant manners."²⁸ According to the trial transcripts, Kinnear's neighbour John Wilkie described Marks as "a decent respectable girl."²⁹ James Newton, another neighbour on stand as a witness, testified to Marks' "good behaviour" and stated he had never heard Kinnear complain of her.³⁰ Marks' beauty, dress, and attitude were all recorded as objects of inquiry in the trial transcripts.³¹ Neighbours and witnesses testified that Marks exhibited all the ideal qualities associated with proper colonial womanliness. For many people, it was inconceivable that Grace Marks, a hard-working, respectable, working-class girl could have committed such a horrific act. Neighbours such as Harris concluded that because of her irreproachable character, pliable nature, and good manners that she simply could not have been a murderess.³²

These statements seem exceptional considering how easily Grace Marks could have been cast as falling far from the ideal of respectable colonial womanliness based on other aspects of her identity, particularly her ethnicity and class. Historian Ted McCoy points out that middle-class society often connected beliefs about criminals to "apprehensions about class, poverty, race and gender."³³ Marks was a recent immigrant from Ireland with no

²⁵ Ramos, "A Most Detestable Crime," 31-32.

²⁶ Ramos, "A Most Detestable Crime," 32.

²⁷ Cecilia Morgan, "'In Search of the Phantom Misnamed Honour': Duelling in Upper Canada," *The Canadian Historical Review* 76, no. 4 (1995): 540.

²⁸ W.M Harris, "Recollections of the Kinnear Tragedy," *Newmarket Era*, 24 July 1908, *Our Ontario Online*.

²⁹ The Trials of James McDermott and Grace Marks, 14.

³⁰ *Ibid.*

³¹ *Ibid.*

³² Harris, "Kinnear Tragedy," *Newmarket Era*.

³³ McCoy, *Hard Time*, 95.

roots or ties to Toronto or Upper Canada; her reputation had to be established on only the span of three years and she had no lifelong acquaintances in the colony. Her employment record was erratic. She had worked for four different families in the three years that had passed since her arrival in Upper Canada. Thomas Kinnear, her fifth employer, lived on a homestead north of Toronto.³⁴ Grace Marks had been working as Kinnear's domestic servant for less than a month at the time of his and Nancy Montgomery's murder. Marks was also the last of three employees hired by Kinnear, once again making her reputation at the homestead and in the colony one of a short duration.³⁵

What is more surprising, however, is that more was not made of the statements in Marks' own confession that hint at behaviours that do not align with the standards of colonial womanhood. Marks' voluntary confession on November 17, 1843 reveals elements that challenge her supposed femininity. In it, Marks stated:

I slept with Nancy that night; before we went to bed McDermott said to me that he was determined to kill her that night, with the axe, when in bed. I entreated him not to do so that night, as he might hit me instead of her.³⁶

There was an aspect of cold-heartedness in Marks' request to McDermott to not kill fellow employee Nancy Montgomery. Marks did not object to the murder of Montgomery per se; she merely opposed the way in which McDermott planned to carry it out. Marks specified *only* that she did not want McDermott to kill Montgomery in the bed, as Marks feared McDermott would hit her with the axe and not Montgomery.³⁷ More importantly, Marks made no effort to warn Montgomery of McDermott's murderous intent. Instead, as Marks recalled in court, she begged McDermott, "for God's sake don't kill her [Montgomery] in the room, you'll make the floor all bloody."³⁸ Again, Grace Marks did not oppose the murder of the housekeeper; she merely opposed the mess it would create.

It is possible that Marks' objections to the murder of Montgomery illustrate that she had in fact tried to save Montgomery's life. Marks might have thought the two women would be unable to stop McDermott on their own, so trying to delay the killing until Kinnear returned home could have been a strategic tactic on her part. This argument seems incompatible, however, with further evidence of Marks' willing participation. When Kinnear returned home, Marks made no effort to warn her employer of McDermott's murderous intent. She knew that McDermott was not only planning the murder of Kinnear, but also that he was capable of it; he had already strangled Montgomery with a piece of white cloth while Kinnear was away.³⁹ At the trial, Marks was unable to account for why she did not, on two separate occasions, warn Kinnear of his impending fate when she had the time and opportunity.⁴⁰ Although these discrepancies in Marks' behaviour suggest that

³⁴ The Trials of James McDermott and Grace Marks, 3.

³⁵ *Ibid.*, 15.

³⁶ *Ibid.*, 4

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*, 4-5.

⁴⁰ *Ibid.* Although Marks testified that McDermott stayed close to her outside in the yard to ensure she did not warn Kinnear, there were two instances when she would have had the opportunity. According to her

she was perhaps not the paragon of colonial virtue that people believed her to be, it was the men in the court who chose to ignore her transgressions and condemn McDermott for his..

Marks was able to cast herself as a victim of McDermott largely because of his already poor reputation. She was aided in part by the court granting McKenzie's request to try the defendants separately, thus safeguarding her from the condemnation McDermott received. She was further helped by the gender performance expected from men in trials. Like Marks, McDermott was also subject to colonial gender rules inside and outside the courthouse. He attempted to portray himself as having the qualities of the ideal colonial man that included his heterosexuality respectability, ties to the community, and property ownership. As Cecilia Morgan argues, the provisions of protecting and honouring women were also linked to the definitions of true colonial manhood. Being perceived as the "ideal man" was especially important for working-class men like McDermott who tried to use these values to signify that although not from the same class, he nonetheless shared the same colonial values as the men on the jury. Men who could demonstrate their successful performance of ideal colonial manliness had a better chance at being acquitted of a crime.⁴¹

At trial, McDermott repeatedly emphasized his military career, his good work habits, and his religiosity. He attempted to establish that he had ties to the community by stating he had arrived in Upper Canada for work in 1837. He even stressed his heterosexuality by proclaiming Marks' beauty and his attraction to her.⁴²

Unfortunately for McDermott, he did not succeed in proving his adherence to the ideals of colonial manliness. W.M Harris, the same neighbour that praised Marks's nature, described McDermott as "morose," "churlish," "dishonest," and with "little to admire in his character."⁴³ At his trial, witnesses condemned McDermott as "sullen," "downcast," and of a "forbidding countenance."⁴⁴ He emphasized his heterosexuality, stating his attraction to sixteen-year-old Marks was the rationale for his actions. This ultimately hindered his gender performance; for McDermott's unbridled desire for Marks likely affirmed for the "respectable" men on the jury the weakness of

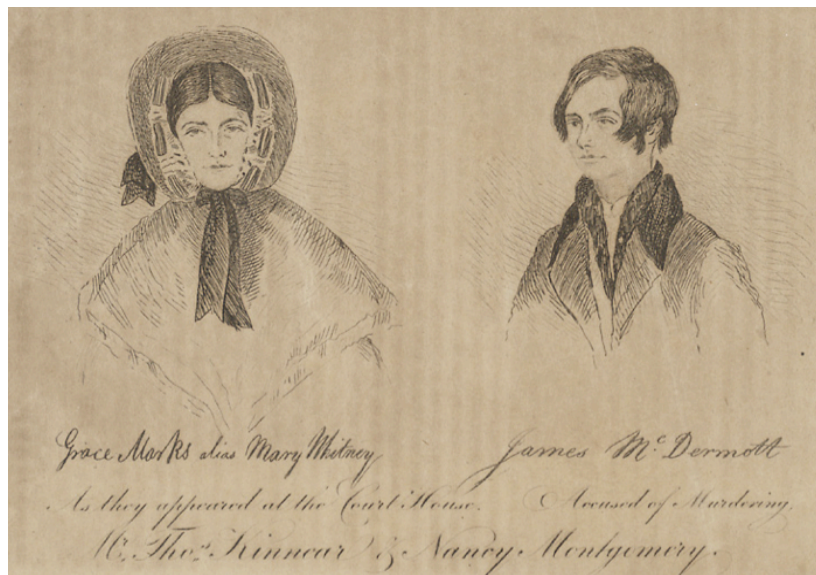


Figure Two: Portraits of Grace Marks and James McDermott. Source: *The Trials of James McDermott and Grace Marks* (Toronto: 1843), 17.

confession, she was alone with Kinnear once when McDermott was caring for the horses in the stable directly after Kinnear's arrival and later, when she went into the room to take Kinnear's tea and dishes away. She explicitly stated that McDermott was in the kitchen, not in the room with her and Kinnear at that time.

⁴¹ Ramos, "A Most Detestable Crime," 32.

⁴² Moodie, *Life in the Clearings*, 217.

⁴³ Harris, "Kinnear Tragedy," *Newmarket Era*.

⁴⁴ *The Trials of James McDermott and Grace Marks*, 8.

McDermott's character and his lustful nature.⁴⁵ As a result, McDermott was not perceived as the "ideal man" but as a dangerous "foreign stranger." Ramos argues that juries were reluctant to convict a man possessing of the aforementioned qualities of true manhood. But if the accused man was considered foreign, newly emigrated, or without ties to the community, he was cast as a "foreign stranger" and thereby untrustworthy and more likely to be convicted.⁴⁶ McDermott's recent emigration, also from Ireland, combined with his "swarthy" complexion explicitly noted in the trial transcripts, marked him as the foreign stranger. For McDermott, falling under the heading of the "foreign stranger" instead of "ideal man," meant that the court did not trust his testimony. In light of these character judgements made of McDermott, Marks could portray herself as an ideal colonial woman who had fallen victim to McDermott's violent and "foreign" designs.

In her confession, Marks claimed that she acted under duress. She was frightened by McDermott, particularly after he had threatened her life.⁴⁷ She further asserted she had not wanted to assist McDermott with the killing of Montgomery and Kinnear, but that McDermott had wrung a promise out of her. Marks also stated that she was an unwilling participant who had had no choice in the matter: "he had made me promise to assist him."⁴⁸ She then clarified how she was bound to her word as an honourable woman.⁴⁹ More importantly, Marks emphasized how she had distanced herself from the actual murders. She claimed she could not help McDermott kill a woman, and that she would only help him kill Kinnear because she had promised to do so. Yet she also testified that she had refused to call Kinnear into the house so McDermott could shoot him.⁵⁰ Marks actively distanced her actions from those of McDermott and portrayed herself as the victim of his dangerous scheme. This was arguably Marks' strongest defence. Marks stated that she was terrified of McDermott because he had shot at her.⁵¹ McKenzie used the bullet from this encounter, lodged in a doorframe at the Kinnear residence, as evidence in Marks' defence; a defence that revolved around Marks' good reputation and her argument that she was a passive, subservient maid who had unwittingly become the unwilling accomplice of a man set on murdering their employer. In seeking to condemn McDermott as the instigator, Marks testified that she too was one of his victims.

McDermott's efforts to condemn Marks as the mastermind behind the entire murderous plot only increased the validity of Marks' claim that she was a victim of a scheming McDermott. During his testimony, McDermott made repeated efforts to portray Marks as far removed from the ideal colonial woman. He stated she was typically moody, sullen and insolent with her superiors; that she was not a subservient or docile woman.⁵² McDermott claimed it was Marks who had issues with Montgomery and that she was jealous of Montgomery. In particular, he claimed that Marks resented the special privileges

⁴⁵ Ramos, "A Most Detestable Crime," 42.

⁴⁶ Karen Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993), 37.

⁴⁷ The Trials of James McDermott and Grace Marks, 5.

⁴⁸ *Ibid.*, 4.

⁴⁹ *Ibid.*, 4-5.

⁵⁰ *Ibid.*, 5.

⁵¹ *Ibid.*, 6-7.

⁵² Moodie, *Life in the Clearings*, 209.

that resulted from Montgomery's status as Kinnear's housekeeper and, quite possibly his lover:

'What is she [Montgomery] better than us?' she [Marks] would say, 'that she is to be treated like a lady, and eat and drink of the best. She is not better born than we are, or better educated.'⁵³

McDermott used Marks' dislike and reported jealousy of her superiors as a possible reason for wanting Montgomery killed. He even stated that Marks' resentment towards Montgomery was so strong that it was Marks who had coerced him into the murder.⁵⁴ He claimed he had no problem with Montgomery until Marks informed him of the supposedly nasty things Montgomery had said about him. It was only then, he testified, that he and Marks decided to kill her. Yet in spite of his efforts to cast Marks as a woman of ill repute, it was McDermott who paid the ultimate price; he could not escape the incapacitating effects of his own failed gender performance.

McDermott's failure to perform appropriate colonial manliness hurt his case, while strengthening Marks' defense. People in the community viewed McDermott as the reason for Marks' participation, willing or not, in the murders of Montgomery and Kinnear. He was regarded as a bad influence over her. Five years after the trial, newspapers in Upper Canada still referred to her as the "unfortunate girl" corrupted by McDermott.⁵⁵ This was exactly what Marks herself argued in court; she was a casualty of manly forces beyond her control. Moreover, because McDermott did not conform to acceptable standards of gender for a colonial man, people doubted his characterization of Marks. He was not believed when he attempted to cast Marks as the instigator of the two murders. The more vehemently he insisted Marks was the instigator, the more firmly neighbours, witnesses, and the jury believed that Marks was a victim. On the eve of his execution, McDermott recounted his version of the events for a second time to his defense lawyer McKenzie. At the end of the confession, McKenzie succinctly summed up the general sentiment toward McDermott, telling him, "if ever a man deserved his sentence, you do yours."⁵⁶

Grace Marks was able to exploit the underlying notion of chivalry and protectionism in the legal system in nineteenth century Upper Canada. Her successful performance of gender situated her as a woman worthy of the law's protection because she upheld the feminine standards of ideal colonial womanhood. Marks and her lawyer stressed her feminine weakness, her powerlessness, her subservience and even her fear of McDermott, all the while emphasizing that she met the proper standards of womanliness. Historian Lori Chambers has found that if women could convey the impression to the judge and jury that they were upholding the traits of ideal femininity, then the chancellors were sympathetic to these women.⁵⁷ Ramos argues that if an all-male jury and judge were persuaded that a woman was respectable, then the court was honour-bound to protect her.⁵⁸ Grace Marks was doubly afforded the law's protection because she proved herself to be not only a

⁵³ *Ibid.*, 217.

⁵⁴ *Ibid.*, 216-217.

⁵⁵ "Provincial Penitentiary," *British Whig*, 10 November 1847, *Our Ontario Newspapers Online*.

⁵⁶ Moodie, *Life in the Clearings*, 220.

⁵⁷ Lori Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto: University of Toronto Press, 1997), 6.

⁵⁸ Ramos, "A Most Detestable Crime," 37.

respectable woman, but she had also situated herself as a victim of McDermott. Though she was convicted of the crime, the chivalry of the court, and the manly protection it was designed to provide women allowed Marks to live.

The trial of Grace Marks and James McDermott for murder in 1843 demonstrates that ideas about proper performances of gender were of the utmost importance in the colonial courtroom of nineteenth-century Upper Canada. Both society and the courts came to view Grace Marks as the "ideal colonial woman" who embodied womanly virtue. James McDermott, in contrast, was condemned because of his poor reputation and by failing to meet the standards of ideal manhood. Marks ultimately won this contest of gender. In accordance with her good reputation, Marks was also cast as the ideal victim while McDermott became a threat to women and colonial society as the "foreign stranger." As a result, Marks was able to utilize the underlying chivalry of the patriarchal Canadian legal system and received a form of the law's protection. That she was successful in doing so in light of the heinous crime and accusations levelled against her is evidence that the highly gendered aspects of the legal system in colonial Canada could be used to a woman's advantage. Though Marks was guilty, the original sentence of death was commuted to imprisonment. In 1873, Grace Marks was released from incarceration and moved to New York, where she is believed to have lived out the rest of her life. James McDermott had been cold in the ground for thirty years since his execution on November 21, 1843.

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