

The nun, the rape charge and the miscarriage of justice: the case of Nora Wall

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1 Introduction

In 1999, Nora Wall, a former nun, was convicted of the rape and sexual assault of a 10-year old girl. The crimes for which she was convicted were alleged to have occurred in 1987–88 when Wall worked in a childcare institution (St Michael's Child Care Centre, County Waterford) run by the Sisters of Mercy. She was alleged to have held the complainant's ankles while her co-accused Paul (also known as Pablo) McCabe raped the child. She received a life sentence for the rape charge and five years' imprisonment for the sexual assault. Wall was the first woman in the history of the Irish state to be convicted of rape,¹ the first person ever to be given a life sentence for the crime,² and the state's first convicted female sex offender.³ Her co-accused was sentenced to 12-years' imprisonment.

Between the determination of her guilt (10 June 1999) and the imposition of sentence (23 July 1999), it transpired that the complainant, Regina Walsh, had previously made a number of false rape allegations. On appeal, a mere four days after Wall was sentenced, the guilty verdict was overturned when it was revealed that a corroborative witness, Patricia Phelan, had testified at trial despite prior instruction by the Director of Public Prosecutions (DPP) to exclude her testimony on the grounds of unreliability. Phelan had claimed to have seen both of the alleged rapes.⁴ It was also revealed that Phelan had previously made a rape allegation which was thrown out by the High Court due to lapse in time, but that the judge who heard her testimony at this hearing also questioned her credibility. In November 1999, the DPP stated that both accused were "fully and ungrudgingly" entitled to be presumed

1 By virtue of the Offences Against the Person Act 1861.

2 N Murray, "Nun the first person to get life for rape", *Irish Examiner*, 24 July 1999, p. 1.

3 C O'Keefe, "Rapist nun has jail protection", *Irish Sun*, 26 July 1999, p. 14.

4 T MacRuairi, "I saw man raping child twice: claim", *Irish Independent*, 4 June 1999. Wall and McCabe were originally charged with two counts of rape, along with various sexual assault charges. Walsh claimed that McCabe raped her when she was ten and again on the occasion of her twelfth birthday. However, they were acquitted of the second rape charge, probably because McCabe had a solid alibi for the dates in question – he was in jail – and because of inconsistency between Walsh's testimony and Phelan's. Walsh claimed that there was a two-year gap between both alleged rapes. Phelan testified that both rapes occurred within months of each other. Phelan later admitted that she made up her testimony to avenge herself on Wall who, she claimed, had physically abused her when she lived in the home. This was noted in the judgment handed down by the Court of Criminal Appeal on 16 December 2005; *DPP v Wall* [2005] IECCA 140, available at www.courts.ie.

innocent of all charges.⁵ In December 2005, Wall successfully obtained a certificate permitting her to sue the state for a miscarriage of justice. This application was not contested by the DPP. Indeed, senior counsel for the DPP stated that a certificate should be issued.

In this paper I will examine the print media response to Wall, a (temporarily) convicted female sex offender, and examine how and to what extent it fits within the dominant narratives used to represent female criminality and the implicit construction of appropriate/natural femininity that is entailed in these narratives. I will refer to coverage given to the case by the main national tabloid and broadsheet newspapers⁶ over four time periods.⁷ The aim of this article is to critique stereotypical assumptions about women that underlie discussions of female deviance. These assumptions are that real women are not violent, that real women are by nature maternal and nurturing, and that real women are heterosexual and sexually unadventurous. The sum of such discourse is that criminal women are aberrations. Accordingly, female criminality is explained in the negative – how the female offender fails as a real woman. The Wall case offers a unique opportunity to examine these narratives because she fell foul of them (through her conviction for the unfeminine crimes of rape and sexual assault) and was later used to reinforce them (through the example of her appropriately feminine response once she was exonerated). In the second section of this paper, I will examine the representation of Wall as “monster” in the various newspapers up to the point of her exoneration. In the third section, I will critique her re-appraisal as “martyr”, and the implicit reaffirmation of appropriately feminine ways of behaving.⁸ In the final section, I will discuss the significance of the Wall case from a feminist perspective and why it is necessary to have feminist analysis in cases involving alleged female sexual abusers. I will tentatively conclude that although feminists are attuned to deconstructing the narratives of (in)appropriate femininity where an accused female offender is either castigated for her failure to adhere to dominant feminine norms or where she is given an inappropriately reduced sentence because of those norms, we are not as vigilant in cases such as Wall’s where an accused female offender is found to be not guilty (albeit in a tortuous fashion in the Wall case) and those norms are subtly bolstered. As long as these narratives go unchallenged, in whatever forum or context they appear, real women will continue to find themselves entangled in and measured against the constraints of “true” femininity.

5 This admission was issued by senior counsel Mr Vaughan Buckley: “Wall, McCabe ‘entitled to be presumed innocent’”, *Irish Times*, 23 November 1999, p. 4.

6 I use the word broadsheet here to cover those newspapers that engage in more in-depth coverage of the news. In recent years a number of the traditional broadsheet newspapers have converted to the tabloid (i.e. smaller page) format but have not altered their content. The daily papers I reviewed were the *Irish Times*, the *Irish Examiner*, the *Irish Independent* (broadsheets), the *Irish Star*, the *Irish Sun*, and the *Irish Mirror* (tabloids). I also examined seven national Sunday newspapers: the *Sunday Independent*, the *Sunday Tribune*, the *Sunday Business Post* (broadsheets), the *Sunday World*, the *Ireland on Sunday*, the *Sunday Mirror*, and the *News of the World* (tabloids).

7 The first stage was the months of June and July 1999. This period included the six-day trial (which started on 2 June), the verdict (issued on 10 June), the sentence (rendered on 23 July), the request for leave to appeal (the same day), and Wall’s release (27 July). The second stage, November 1999, was the period during which the DPP considered whether or not to pursue any further charges against Wall or McCabe. The third stage consisted of the months of January and February 2004. During this time period, Wall decided to apply for a certificate declaring a miscarriage of justice which would allow her to seek damages against the state pursuant to s. 9(1)(a)(ii) of the Criminal Procedure Act 1993. Wall decided to proceed with this application on 4 February 2004. The final stage, November and December 2005, focuses on the Court of Criminal Appeal’s decision to grant her that certificate. The decision was issued on 1 December but the judgment was not released until 16 December.

8 I should note at this point that I am not specifically interested in the religious connotations of martyrs, although religious imagery was referenced in discussion of the Wall case, but I use the term in a broader sense of appropriately feminine self-sacrifice.

2 The representation of Wall as a monster

The rape and sexual abuse of minors is generally regarded as one of the most serious crimes a person can commit in our society. It is therefore no surprise to see the (usually male) perpetrators of such offences represented as monsters in the media. The “monstrification” of Wall, however, raised some interesting questions. First, in what ways, if any, was the monstrification of Wall as a sex offender different to the generalised monstrification of ordinary female offenders? Second, why did Wall’s monstrosity serve to diminish the culpability of her co-accused? In order to answer these questions I will briefly summarise the findings of feminist criminological literature in which the representation of female criminality by science, law and society has been examined. I will then determine if and how these findings apply to the Wall case.

Since the inception of criminology as a science, age-old stereotypes about appropriate femininity have underlain the various theories developed to explicate female criminality. In the late nineteenth and early twentieth centuries, scientific criminology located the problem of male and female (if considered at all) criminality in biology. The three seminal texts on female criminality – Cesare Lombroso and William Ferrero’s *The Female Offender*,⁹ William Thomas’s *The Unadjusted Girl*¹⁰ and Otto Pollak’s *The Criminality of Women*¹¹ – all postulated simplistic monocausal theories of female criminality. Lombroso and Ferrero argued, despite their inability to find the same atavistic markers of criminality that Lombroso had “found” on the male criminal body, that female criminality was biological in origin. They concluded that the female born-criminal was masculine, sexual, and prone to passions/hormones.¹² Thomas and Pollak moved away from the simplistic biologism of Lombroso and Ferrero’s work, but they both still saw the causes of female criminality as being firmly located in female sexuality. According to Thomas, both men and women operate on a series of desires and wishes, but women’s greater need for love, coupled with their inferior sense of morality, predisposes girls to use their sexuality to deceive and manipulate men in order to attain the other desires.¹³ Pollak argued that women committed as many offences as men did but that the chivalry of criminal justice personnel and women’s greater deviousness protected them. However, he also argued that women’s faculty for criminality was sexually based. He believed that because women assumed the passive role in sexual intercourse, and because they could conceal sexual arousal, they were naturally more deceitful and were in fact criminal masterminds.¹⁴ One of the foundational concerns at the inception of feminist

9 C Lombroso and W Ferrero, *The Female Offender* (New York: D Appleton, 1895).

10 W Thomas, *The Unadjusted Girl* (Boston: Little Brown & Co, 1923).

11 O Pollak, *The Criminality of Women* (Philadelphia: Philadelphia University Press, 1950).

12 As Brown noted in a re-appraisal of Lombroso and Ferrero’s work, the female born-criminal was clearly identified as a rarity by the authors: B Brown, “Reassessing the critique of biologism” in L Gelsthorpe and A Morris (eds), *Feminist Perspectives in Criminology* (Milton Keynes: Open University Press, 1990), p. 41. However, accurate though Brown’s observations are, what was said of a tiny minority of female offenders became the template for how female offenders would be constructed in future criminological discourse. See F Heidensohn, *Women and Crime* 2nd edn (Basingstoke: Macmillan 1996), p. 114.

13 Thomas identified four wishes. These are the wish for new experience, for security, for response and for recognition.

14 Despite his sexist findings, feminist authors have noted that his work was an important contribution to the understanding that social factors impact on women’s criminality. He noted that women’s natural deceitfulness was exacerbated by society’s abhorrence of menstruation that forced them to conceal it, and by being forced to conceal their natural aggressiveness from an early age. He did not expand upon this insight. For a further discussion of this, read: H Botrich, *Fallen Women: Female crime and criminal justice in Canada* (Scarborough, Ontario: Int. Thomson Publishing, 1997), pp. 59–61; B Brown, “Women and crime: the dark figures of criminology” in N Naffine, (ed.), *Gender, Crime and Feminism* (Adlershot: Dartmouth, 1995), p. 382; and Brown, “Reassessing” (n. 12 above).

criminology in the 1970s, and the various feminist criminologies that followed in the 1980s, was that female criminality was constructed as overly sexualised/masculinised/hormonal/insane behaviour and the attendant inference was that criminal women were aberrations from an essentialist conception of “real” women.¹⁵ If female offenders were not “real” women, they were non-women masking themselves in the female form – they were monsters. Accordingly, while the crime of paedophilia makes men monsters, law-breaking in and of itself can be sufficient to warrant the attaching of that label to women.

Although it is unusual for a woman to be accused of being a sex offender,¹⁶ the ways in which the press tried to explicate Wall’s deviance were not. The same markers that are used to explain non-sexual female criminality – specifically excessive/aberrant sexuality and masculinity – were used to explain Wall’s alleged sexual deviance. Indeed, the nature of the crimes Wall was accused of – sex crimes – meant that it was very easy to represent her criminality in a sexualised and masculinised way. Because crime is primarily a male endeavour (as borne out by statistics), it has been argued that it is therefore implicitly gendered male. For this reason, the female offender must be, by default, male/masculinised. In her study of the images used to explain ordinary female criminality in British newspapers, Alison Naylor found that if the female offender’s crime was not represented as being the result of her inferred masculinity, then it was presented as being the result of her defective femininity. Accordingly, her criminality is either caused by her duplicitous feminine wiles (bad) or her fragile hormonally overrun female body (mad).¹⁷ If ordinary female criminality is masculinised, then a female offender who engages in the quintessential male offences of rape and sexual assault must be doubly so. This is not to say that female sexual offenders do not exist,¹⁸ but that their statistical rarity makes those that do seem more aberrant. Therefore, despite the *Irish Independent*’s confidence in an article that appeared on 12 June 1999 that we now know that female sex offenders exist, it is clear that this equality in recognition did not translate into equality of column inches. The media was not interested

15 S Edwards, *Women on Trial* (Manchester: Manchester University Press, 1984); C Smart, *Women, Crime and Criminology: A feminist critique* (London: Routledge & Kegan Paul, 1976).

16 See n. 18 below and accompanying text.

17 Her madness may also be represented as one of passion or love – emotionality is an acceptable female failing: B Naylor, “Women’s crime and media coverage: making explanations” in R E Dobash, R P Dobash and L Noaks (eds), *Gender and Crime* (Cardiff: Wales University Press, 1995), p. 77 at p. 81. Linked to the conception of the female body as being predisposed to madness is the notion of the female mind being predisposed to surrender to a superior (male) intellect, the Pygmalion frame: D Cameron and E Frazer, *The Lust to Kill: A feminist investigation of sexual murder* (Cambridge: Polity Press, 1987), pp. 145–6; C Bell and M Fox, “Telling stories of women who kill” (1996) 5 *SLS* 471 at 473.

18 Estimates as to the prevalence of female child molesters vary considerably. American researchers David Finkelhor and Diana Russell reviewed the American Humane Association and the National Incidence of Studies results on sexual abuse victims. They found that approximately 24 per cent of sexually abused males and 13 per cent of sexually abused females had been assaulted by women, acting either alone or with a partner: R Matthews, J K Matthews and K Speltz, “Female sexual offenders” in M Hunter (ed.), *The Sexually Abused Male: Prevalence, impact, and treatment*, vol. 1 (Lexington MA: Lexington Books, 1990), p. 275 at p. 276. One literature review estimated that in cases where a sexually abusive mother is the sole offender, she is responsible for 5 per cent of female abuse, and for 12 per cent of male abuse: J Hislop, *Female Child Molesters* (PhD Thesis, California School of Professional Psychology, 1994/Ann Arbor, Mich: UMI Dissertation Services, 1997), p. 35. Both in Canada and the UK it is estimated that women are responsible for or are involved in 10 per cent of the child sexual abuse cases: H Harrison, “Female abusers – what children and young people have told ChildLine” in M Elliott (ed.), *Female Sexual Abuse of Children: The ultimate taboo*, (Harlow: Longman, 1993), p. 98; K Jennings, “Female child molesters: a review of the literature” in *ibid.*, p. 242.

in McCabe at all. Wall was the story.¹⁹ Nor did this recognition of the reality of female sex offenders translate into equality of opprobrium. Female sex offenders are regarded as worse than their male counterparts, especially where children are the victims, because such offenders are seen to have offended not only against society but also against their innate maternal nature. Wall was therefore worse than McCabe because, although aberrant, male sexual predators are still within the bounds of the masculine, albeit atavistic/animalistic masculinity. Femininity cannot similarly accommodate female sexual predators.²⁰ The implication is that male sexual violence is almost a given; the real aberration – the person whose actions were unexpected and most in need of explanation – was Wall. This was made abundantly clear both in the cultural anxiety that the apparent exposure of a female sex offender revealed, an anxiety which culminated in the extremely unusual sentence she received, and in the deep sense of relief that followed her exoneration. The clear sub-text was that “real” women do not commit such crimes.

The gender of Wall’s alleged victim also served to masculinise her by bringing her sexual orientation into question. The press was quick to label Wall a lesbian; the *Irish Star* jumped at the chance to use the word “lesbian” in a headline – “I’m no lesbian – rape charge ex-nun”²¹ – when a Garda witness provided a summary of the questions they asked Wall during the course of their investigation. As a traditional marker of female deviance, lesbian sexuality is implicitly marked as aberrant, and it is a short step from aberrant sexuality to monstrous sexuality. At the most basic level, Wall’s monstrous sexuality was “proved” by the allegations themselves – the sexual molestation of a child is regarded as “monstrous” whatever your sexual orientation. However, once Wall was convicted of the crimes, her monstrosification was confirmed through the publication of a number of unsubstantiated allegations detailing an apparently voracious sexuality. In the second of a series of exclusive interviews given by Walsh to Barry O’Kelly of the *Irish Star* in the interim period between the rendering of the guilty verdict and the imposition of sentence, Walsh claimed to have seen Wall engage in sex with men and women, in *ménages à trois*, and claimed that Wall had a long-term sexual relationship with a 16-year old girl in her care.²² The *Irish Times* published an article with a similar claim entitled “I discovered Sr Dominic in bed with another nun . . .”.²³ The source of the claim was a former resident of St Michael’s. The man in question did not accuse Wall of sexually abusing him. He claimed that she invited him to

19 Apart from the examples I will discuss below, one of the most bizarre instances of this tunnel vision was to be found in an article published in the *Ireland on Sunday*. The article discussed the need for more videotaping facilities in garda stations to protect both suspects and the police. The case was mentioned as an example of where a videotape of the confession would have been useful. In particular, the admitted failure of the garda who took McCabe’s statement to take written notes during the interview. Significantly though, while McCabe was the person relevant to the article, a photo of Wall and not McCabe accompanied it: F Ryan, “Sex, notes and a lack of videotape”, *Ireland on Sunday*, 13 June 1999, p. 8.

20 Keitner notes that in cases of men sentenced to death in Florida for aggravated child abuse, their behaviour is portrayed as abhorrent and unacceptable, but is not marked as sex-inappropriate or deviant: C Keitner, “Victim or vamp? Images of violent women in the criminal justice system” (2002) 11 *CJGL* 38 at n. 37.

21 T MacRuairi, *Irish Star*, 5 June 1999, p. 14.

22 B O’Kelly, “I saw nun who raped me have sex with men and even women”, *Irish Star*, 15 June 1999, p. 10.

23 C Dooley, “I discovered Sr Dominic in bed with another nun”, *Irish Times*, 24 July 1999, p. 7.

join her and the other nun.²⁴ Wall's newly "proved" aberrant and monstrous sexuality permitted the publication of the most criticised story printed in the aftermath of the guilty verdict.²⁵ The story is effectively contained in the headline: "Rape nun's abuse pact with Smyth". Father Brendan Smyth was a serial sexual abuser who sexually abused hundreds of boys and girls over a period of thirty-six years. He was moved from parish to parish and from country to country (Ireland, Northern Ireland and the USA) by his Order even though there were repeated complaints made against him. The process by which he was convicted of seventeen counts of sexual abuse in Northern Ireland and seventy-four counts in Ireland brought down a Government.²⁶ The *Sunday World* article was explicit in its accusation – she "secretly provided children for sick paedophile priest Father Brendan Smyth".²⁷ Now, not only had Wall sexually abused girls in her care and been an aider and abettor in an individual case of rape, but she had also been involved in procuring victims for the most infamous sex offender in Ireland. Wall's monstification, through a process of accumulated claims, was complete. Further evidence of this process of monstification by accumulation is to be found in the *Irish Mirror*. The day following the guilty verdict, the *Irish Mirror* reported that both accused were acquitted of the second charge of rape.²⁸ This important detail was omitted from an article published the day after. Wall regressed from being acquitted of the second rape to "coldly watch[ing] a second rape".²⁹ This phrase was prefaced with the word "alleged" but that hardly captures the fact that both accused were acquitted of that charge. With a sleight of the editorial/writer's pen, Wall's acquittal on this charge is erased.

Wall was also masculinised in another more subtle way by the media coverage. She was cast as the dominant party in the alleged abuse partnership. This was facilitated by Walsh's testimony both during the trial and in the first interview Walsh gave to O'Kelly in the *Irish Star*, graphically entitled "I was raped by Sister Anti-Christ". In this interview, Walsh opined:

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- 24 The alleged incident occurred when he was no longer resident in St Michael's but had returned for a friend's funeral. He did, however, state that she regularly beat him and other children at the home. What is interesting about this story, apart from the fact that the Irish paper of record is engaging in sensationalistic journalism, is that the *Irish Times* was one of the few papers to refer to Wall by her given name throughout its coverage of the case once it was no longer necessary to protect the anonymity of the alleged victim. Even in this article, the paper is clear to refer to Wall as "Wall, then Sr Dominic". The choice to call her Sr Dominic in the headline therefore is quite telling. The image of two nuns in a bed is certainly far more titillating than the image of the now quite maternally looking "Wall, then Sr Dominic" in bed with another woman. It could be argued that the headline was simply a direct quote from the former resident, but as will be discussed later, how and when a paper chooses to use a direct quote in a headline can indicate other agendas. See n. 51 below and accompanying text.
- 25 Wall won €175,000 in damages when she sued the *Sunday World* for libel: R Dwyer, "Innocent religious should not be victims of a rush to judgement", *Irish Examiner*, 3 December 2005, p. 16.
- 26 In April 1993 the Royal Ulster Constabulary wanted him extradited to Northern Ireland to face charges there. They submitted a request to the Attorney General, Harry Whelehan, which was ignored for seven months. When it was finally processed, Smyth voluntarily surrendered himself to the Northern Irish authorities in January 1994. He was convicted of seventeen counts of sexual abuse. Three years later he was sentenced to 12-years' imprisonment after he pleaded guilty to seventy-four counts of child sexual abuse in Dublin. The issue came to a head when Whelehan's nomination as President of the High Court was provisionally accepted. The junior coalition partner, Labour, had originally opposed Whelehan's appointment. When Ulster television aired a documentary in October 1994 about the delay in having the Smyth extradition request processed, and suggested it was because Smyth was a religious, this gave Labour the opportunity to withdraw from its alliance with Fianna Fail and the Government collapsed. Whelehan resigned from his post as President of the High Court.
- 27 The source of this allegation is a man who claimed to have been sexually abused at the home, but he does not identify his alleged abuser.
- 28 R Weitz, "Nun and vagrant found guilty of child rape", *Irish Mirror*, 11 June 1999, p. 2. Note that this was one of the few headlines to acknowledge that there were two accused.
- 29 L Kelleher, "Evil rape nun hid her crimes behind smiling face of trust", *Irish Mirror*, 12 June 1999, p. 18.

"I think she manipulated him. He had a drink problem. She was very devious. She was icy cold, evil to the bone."³⁰ Her dominance was also indicated by the comparative lack of attention paid to McCabe by the press. On the rare occasion that an article focused on him, such as an article that appeared in the *Sunday World*, her greater evil and dominance were still emphasised. Therefore, even though the newspapers noted that McCabe was, to quote the *Sunday World*, "already a convicted pervert when Wall . . . welcomed him to the childcare centre",³¹ he was still described as the "sick sidekick" of the "evil nun". Indeed, the overriding impression one obtained of McCabe from the limited media coverage given to him was that he was almost a pitiable figure. This was so despite the fact that McCabe had an extensive prior record, including one conviction for sexual assault.³²

Not only was Wall the focus of media attention, but that attention also manifested itself in sexist ways. There was a marked difference in how the two accused were described. When he was described at all, McCabe was described by his actions and reactions. Wall was described in terms of her (lack of) emotion and her dress. Examples of the contrasting approaches taken to both co-accused were to be found in both the tabloid press and in the broadsheets. The following description appeared in the *Irish Independent*:

The deeply tanned 50-year-old homeless man seemed unable to focus, by turns reading, sleeping, staring agitatedly around him and sometimes even coming into court drunk.

Nora Wall by contrast was the picture of middleclass propriety. In conservative skirts and cardigans with her neat haircut, emotion rarely flickered across her face as the unthinkable evidence mounted up against her.³³

The same differential emphasis in description is to be found in the *Irish Mirror*:

Wall, dressed in a wine cardigan and cream blouse, was led out of the Court . . . behind Pablo McCabe.

The homeless man, who suffers from schizophrenia, epilepsy and Parkinson's disease, hobbled out to start his 12-year sentence.³⁴

It should be noted that both of these samples were printed once the accused could be named and photographed, so the need for such colour commentary, if it ever existed, no longer did.³⁵ Various feminist theorists have noted that the media tends to pay inordinate attention to what female offenders look like, what they wear, and whether or not they show

30 B O'Kelly, "I was raped by Sister Anti-Christ", *Irish Star*, 12 June 1999, pp. 1 & 4.

31 J McElgunn and D Lane, "Secret sex past of rape nun's pal", *Sunday World*, 13 June 1999, p. 2.

32 Prior to the time the alleged incidents were supposed to have occurred, McCabe had been convicted of indecent exposure and sexual assault. The *Irish Times* reported that it took ten minutes to read out his prior record on the day he was sentenced: "Former nun and male helper jailed for rape", *Irish Times*, 24 July 1999, p. 7. Moreover, following the quashing of his conviction for the rape of Regina Walsh, McCabe was convicted of the sexual assault of an adult woman in 2000 and received a three-month suspended sentence.

33 "Sister of no mercy", *Irish Independent*, 12 June 1999, p. 29.

34 L Kelleher, "Life for evil nun who held down girl, 10, while she was raped in her convent bed", *Irish Mirror*, 24 July 1999, p. 4.

35 During the trial, the press were not permitted to identify either offender in order to protect the anonymity of the alleged victim. It is arguable that during this period the press would have relied on descriptions of clothes, etc. in order to make the coverage interesting for their readers. There was, however, one amusing instance where a tabloid gamely tried to spice things up. The *Sunday World* claimed to have an exclusive and published photos of Wall and McCabe on 6 June but obscured their faces with black panels. D Lane, "The nun and her friend at the centre of child rape trial", *Sunday World*, 6 June 1999, p. 4.

their emotions.³⁶ One of the most interesting insights derived from feminist legal and criminological research into the representation of female offenders has been that traditional attempts to understand female criminality have been primarily attempts to distinguish good women from bad/non-women. The fear that women were not what they seemed was both the sub-text of Pollak's chivalry thesis and the reason for Lombroso's anxiety over the lack of atavistic markers on female criminals. As Alison Young notes, the goal of Lombroso's work was "to render the female offender visible, and thus containable . . .". However, his use of language betrays his fear that she is unknowable: "the female offender is described as 'seem[ing] almost' normal. Normality is a simulation, for a female offender can only ever achieve the appearance of it (her 'real' nature underlies and belies her normality)."³⁷ This anxiety was also evident in some of the reporting on the case, as demonstrated by this headline from the *Irish Mirror*: "Evil rape nun hid her crimes behind smiling face of trust".³⁸

The press's determination to demonstrate how Wall failed to be, despite seeming to be, a good/real woman also explains the focus on her lack of remorse – her want of appropriate feminine feeling – both during and after the trial and sentencing. Various newspapers described her demeanour during the trial as "stony-faced".³⁹ Yet Wall was in a double-bind. She could not show remorse for an offence she claimed not to have committed and even if she had shown remorse, she was by no means guaranteed a favourable reception from the press. It has been found that in order to demonstrate her conformity to female norms, and therefore possibly be afforded a lenient sentence, a female defendant is required to be vocal in her remorse. However, her use of tears/remorse can easily backfire. She must not be seen as attempting to blackmail the judge (and/or jury). It is a careful balancing act.⁴⁰ Not only is her use of tears seen as potentially manipulative (one of the frames identified by Naylor), it can also carry the taint of evil. Naylor writes, "[n]o one likes having been conned, or having their emotions manipulated, but when it has been done by a woman, manipulating our chivalric impulses, it is especially evil".⁴¹ There is an additional level of suspicion where female offenders are concerned because, historically, women have been associated with deceitfulness, and the performative aspect of femininity has long been acknowledged and feared.⁴² Accordingly Wall was castigated both for successfully appearing to be a model citizen – "Evil rape nun hid her crimes behind smiling face of trust"⁴³ – and for failing to be appropriately femininely remorseful.

Interestingly, following the formal decision of the DPP not to pursue any further charges, her lack of emotion during the trial was referenced in a way which subtly criticised

36 This focus on external markers of femininity is not confined to the media. Various legal commentators have found that trials involving women often turn into character assessments, with the degree of the offender's performance of appropriate femininity being a deciding influence in determining her guilt and/or innocence. See M Fox, "Feminist perspectives on theories of punishment" in D Nicolson and L Bibbings (eds), *Feminist Perspectives on Criminal Law* (London: Cavendish, 2000), p. 49; C Keenan, "The same old story: examining women's involvement in the initial stages of the criminal justice system", in *ibid.*, p. 29; D Nicolson, "Criminal law and feminism" in *ibid.*, p. 1.

37 A Young, *Imagining Crime: Textual outlaws and criminal conversations* (London: Sage, 1996), p. 29.

38 Kelleher, "Evil rape nun" (n. 29 above).

39 See, e.g. C Cleary and R Costello, "Wall is first woman prisoner on protection", *Sunday Tribune*, 25 July 1999, p. 3; and McElgunn and Lane, "Secret sex past" (n. 31 above).

40 A Worrall, *Offending Women: Female lawbreakers and the criminal justice system* (London: Routledge, 1990), p. 61.

41 Naylor, "Women's crime" (n. 17 above), p. 91.

42 M Haskell, *From Reverence to Rape: The treatment of women in the movies* 2nd edn (Chicago: University of Chicago Press, 1987).

43 Headline of an article written by Kelleher (n. 29 above).

her: “[d]ressed in a green skirt and brightly coloured cardigan, she looked happier and more relaxed than the impassive figure we’d seen during the trial”.⁴⁴ This imputation of blame on Wall for failing to give vent to her emotions during the trial has arisen in other cases where a woman has been wrongfully convicted. As Adrian Howe noted in the context of the Lindy Chamberlain case, when Chamberlain finally expressed her emotions in interviews following her release from jail, it “helped return her to the fold of normalcy”.⁴⁵ It also, as Howe noted, “gave the media an out: she was, they said, ‘her own worst enemy’”.⁴⁶ Yet throughout the various condemnations of Wall for not putting her emotions on display, there was no appreciation of Wall’s individuality (the fact that Wall preferred to keep her emotions in check)⁴⁷ or that women’s supposed emotionality might simply be, at best, a generalisation. This inability to comprehend such alternatives was confirmed by reporting on Wall’s reaction the day her sentence was quashed. The *Irish Sun* seemed confused that Wall “showed no emotion when set free”.⁴⁸ The *Irish Star*, however, reassured us that she was smiling as she left the court.⁴⁹

An additional aspect of this focus on Wall’s lack of remorse was the palpable sense of distaste evident at Wall’s audacity to deny the charges during her trial. Worse still, she portrayed her accuser as a liar and a fantasist. The distaste was not explicit, but it did not require much reading between the lines to decipher it. During the trial, neither accused could be named to protect the anonymity of the victim.⁵⁰ Accordingly, reporting of the proceedings was quite staid and apparently objective. Yet it was clear, even before Wall was found guilty, that the press believed Walsh and Phelan. Reading through the various media reports it became apparent that when and how direct quotes are used in headlines can convey a lot about the presumptive truthfulness of the speaker. The headline in the *Irish Independent* on 10 June 1999 was illustrative: “Nun on sex charge ‘could not believe’ allegations”. On one level the newspaper is using quotation marks to enclose Wall’s own words. On another, the implication is that those words are untrustworthy and for that reason need to be enclosed/separated from the truth with quotation marks. This is clear from previous headlines which were drawn from the testimony of the as-yet-unnamed Walsh and Phelan: “Mercy nun held girl by ankles for rapist, jury told”⁵¹ or “I saw man raping twice: claim”.⁵² No quotation marks enclose these statements – they are self-evidently true. Following the guilty verdict, Wall’s continued claims that she was innocent were seen as particularly damning. The *Irish Independent* was clear about this:

[e]ven when the verdict was read out late last night, Sr Dominic didn’t show any signs of remorse for her evil crime – nor did she blanch at labelling her victim a

44 A Sheehan, “Nora Wall departs with a remarkable lack of bitterness”, *Irish Independent*, 23 November 1999, p. 7.

45 A Howe, “Chamberlain revisited: the case against the media” in N Naffine (ed.), *Gender, Crime and Feminism* (Aldershot: Dartmouth, 1975), p. 177 at p. 180.

46 Ibid.

47 As noted by former residents of St Michael’s who had shared the same house as Walsh: “‘That’s just her way of controlling herself,’ explains Helen. ‘People can be like that,’ Kathleen points out. ‘She went through so much up there [in St Michael’s] that I think by the time these allegations had come out it just collapsed on her.’”: *Ireland on Sunday*, 1 August 1999, p. 5.

48 R Taylor and M McEntyre, “‘Rape nun’ walks free”, *Irish Sun*, 28 July 1999, p. 2.

49 B O’Kelly, “Rape case nun walks”, *Irish Star*, 28 July 1999, p. 1.

50 The victim’s name was only released because she voluntarily gave interviews to the *Irish Star*. On the unexpected importance of these interviews, please see part 3, p. 317 below.

51 “Mercy nun held girl by ankles for rapist, jury told”, *Irish Independent*, 3 June 1999.

52 MacRuairi, “I saw man raping child twice” (n. 4 above).

disruptive child. "Wherever there was trouble she was sure to be there," she told the jury . . . Against bald-face denials and blackening of her character, the victim was fortunate to have a corroborating witness to the horrific abuse she suffered.⁵³

The final interview Walsh gave to O' Kelly was published on 23 July 1999, the day Wall was to be sentenced. In this interview, Walsh said that the most difficult part of the case for her was when Wall denied the abuse: "It was hard seeing her lying. I had to go up there on the stand and there were people making a judgment on me."⁵⁴ The *Sunday World* castigated Wall for calling Walsh a liar saying it "further traumatised the now 21-year old".⁵⁵ Yet Walsh herself admitted under cross-examination on 5 June 1999 that she was frequently reprimanded for making up stories.⁵⁶ The words of a priest who wrote an article after Wall's conviction was quashed are apt here: "not everyone who denies an allegation is 'in denial'".⁵⁷

Not only do the findings of feminist criminologists explain some of the images that were used to represent Wall, they also suggest why she received such an unusually severe sentence. She was, as previously noted, the first person ever to receive the maximum sentence for the offence of rape in Ireland. In a commentary article that appeared in the *Irish Independent*, respected Irish law lecturer Tom O'Malley wrote:

Irish courts very rarely impose a life sentence for any offence other than murder in which case they have no option. A great many serious cases of serial child sexual abuse have come before the courts in recent years. Most have attracted heavy determinate sentences, usually in the bracket of eight to 12 years, sometimes higher. The presence of more than one offender, as alleged in the Wall case, is certainly an aggravating factor, especially when the child is a victim. Nevertheless, a life sentence would not have been expected in a case like this.⁵⁸

The reason the trial judge gave for imposing the maximum was: "[t]here are some cases so gross and so appalling that the courts must not resist imposing the maximum sentence".⁵⁹ This may well be true, but the question remains why Wall's co-accused did not receive the same sentence. There is a significant symbolic difference between a life sentence and a 12-year sentence. Especially as McCabe was the person who was alleged to have performed the physical act of rape, had a prior record, and he had, as Mr Justice Carney noted, no mitigating circumstances in his favour either. The disparity in sentencing was justified by Justice Carney in the following terms: "'This was a gang rape,' he said. 'The leader of the gang was the only person in the world who was charged with the protection of Regina Walsh. I don't think I need to say more than that.'"⁶⁰

The press agreed that no further explanation was necessary. In fact, press reaction to her sentence, from the tabloids especially, was jubilant. The front page of the *Irish Star* comprised a photo of Wall with the headline, "Life". In a sidebar were photos of McCabe

53 "Tears of relief as jury finds victim was no liar", *Irish Independent*, 11 June 1999.

54 B O'Kelly, "I hope evil nun gets a long jail term", *Irish Star*, 23 July 1999, p. 8.

55 McElgunn and Lane, "Secret sex past" (n. 31 above).

56 However, she was adamant that the stories she made up to impress people were never "outlandish": MacRuairi, "I saw man raping child twice" (n. 4 above).

57 Father Doran, "Balancing our response to child abuse", *Sunday Tribune*, 1 August 1999, p. 11.

58 T O'Malley, "Disclosure is crucial issue in any case", *Irish Independent*, 28 July 1999, p. 10.

59 Cleary and Costello, "Wall is first woman prisoner on protection" (n. 39 above).

60 "Former nun and male helper jailed for rape", *Irish Times*, 24 July 1999, p. 1. It is worth pointing out that in a case involving two male accused who subjected a young woman to a 90-minute gang rape heard in June 1999, Justice Carney imposed a seven-year sentence on each offender. This was noted by Keane in a brief review of a number of trial-level sentencing decisions: C Keane, "Sentence is harshest ever for sexual crime", *Irish Examiner*, 24 July 1999, p. 7.

and Walsh. *The Irish Sun's* front page headline was not as concise but was equally triumphant: "Evil beyond words – Rape fiend nun locked up for life".⁶¹ The broadsheets were also untroubled by the significant disparity in sentencing. In the editorial page of the *Irish Examiner*, the following assessment of the sentence was given:

... Sister Dominic's crime was more than rape. It was also a gross betrayal of her responsibility to protect the child placed in her care.

In the circumstances Mr Justice Paul Carney was not only justified but morally obliged to impose the maximum sentence.⁶²

Yet, once Wall's sentence was quashed, a few journalists began to question why Wall received life while McCabe did not. Breda O'Brien wrote:

A strange kind of double standard exists in relation to offences committed by women. They are seen to be much more horrendous than similar acts perpetrated by men.

This view is not very flattering to men. It is as if to say that a man holding a child by the ankles while another rapes her is explicable, but a women doing so is not. Yet the net result of this alleged moral superiority of women is that if a woman is convicted, she will be treated far more harshly.⁶³

Emily O'Reilly came to a similar conclusion. She contrasted the sentence meted out to Ivor Payne, a former priest, who was sentenced to six years for the sexual abuse of nine young altar boys over a long period of time, with the life sentence imposed on Wall for her supposed rape of one child.⁶⁴ Both writers had grasped a fundamental point made by feminist criminologists where female offenders are concerned – that women are often punished not just for the commission of the crime but also because they are women. It should be noted that feminist research has found that differential treatment is not based exclusively on gender. While it has been found that some female offenders do receive lenient treatment from the criminal justice system by virtue of their gender, it is only those women who otherwise adhere to the dominant norms of femininity that benefit. Women who do not fit into the prescribed frames of femininity, whether by virtue of their class, race, sexuality or lifestyle, are not recipients of the so-called chivalry, first criticised by Pollak.⁶⁵ Although O'Malley specifically noted that feminist research has found that "women who are convicted of violent or sexual offences are often punished as role breakers rather than rule breakers", he rushed to add that there was no suggestion that this is what Justice Carney had done. Yet there has to be some sense that this is precisely what he did, consciously or unconsciously, especially as O'Malley also noted how unusually severe the sentence was.⁶⁶

The nature of the alleged role-breaking in Wall's case was especially significant in the press reaction to her alleged criminality. Wall was charged with and convicted of aiding and abetting in the rape of a child, as well as sexually molesting her (and others, if the

61 C O'Keefe, "Evil beyond words", *Irish Sun*, 24 July 1999, p. 1.

62 Editor, "Investigation into nun's case is justified", *Irish Examiner*, 24 July 1999, p. 10.

63 B O'Brien, "Facing up to questions posed by Wall case", *Sunday Business Post*, 1 August 1999, p. 28.

64 E O'Reilly, "Recent cases shake our faith in justice system", *Sunday Business Post*, 1 August 1999, p. 28. Payne's sentence was originally even more lenient. He was sentenced to six-years but the trial judge suspended four years of the sentence provided he receive treatment for his paedophilia. The DPP appealed the leniency of this sentence and the day Wall's sentence was quashed, his original six-year sentence was reinstated. See J Maddock, "Sex abuse priest's prison term increased on appeal", *Irish Independent*, 28 July 1999.

65 For a review of various studies undertaken in this area, see P Carlen, "Against the politics of sex discrimination: for the politics of difference and a women-wise approach to sentencing" in D Nicolson and L Bibbings (eds), *Feminist Perspectives on Criminal Law* (London: Cavendish, 2000), p. 71.

66 See n. 58 above and accompanying text.

unsubstantiated allegations were to be believed). Although female sexual offenders are a recognised category of offender, their limited statistical presence facilitates their representation as individual aberrations.⁶⁷ However, such has been the media attention given to these individual cases – for example Myra Hindley who facilitated the sexual abuse and murder of children by her partner – that few could argue never to have heard of a female involved in the sexual abuse of children. Consequently, I was somewhat taken aback when reading through the various newspaper articles to discover that a curious amnesia seemed to have set in.⁶⁸ Following Wall's exoneration, controversial *Irish Times* journalist Kevin Myers wrote: "[w]as her predicament not made worse by the heresies of the equality agenda, so that nobody dared say in public what many of us thought in private: that no woman could ever freely assist such as Pablo McCabe in the violation of a child?"⁶⁹ Other journalists were not so forgetful:

She joins a very short but infamous list of deranged women including Myra Hindley and Rose West who have aided and abetted men, assisting them as they carried out brutal sexual abuse of children, though in the case of West and Hindley, the abuse ended in murder.⁷⁰

The cultural reach and impact of Hindley in Britain and in Ireland has been immense. For Myers to claim that women cannot be involved in the commission of sexual offences against children is preposterous and facilitates the very "witch-hunts" he later castigates.⁷¹ He may wish it to be true, but quite clearly it is not. The obvious question therefore becomes: why would Myers wish it to be true? Feminist criminologists have suggested a reason: that women, through their culturally ascribed roles as mothers and homemakers, are seen as sources of stability. Any rejection of this role – and any form of criminal activity is regarded as a clear rejection of this role – tends to be read in catastrophic terms. Individual deviance on the part of women portends societal collapse.⁷² The rejection by a woman of that which most distinguishes her from men – her ability to bear children and the concomitant and supposedly innate ability to care for them⁷³ – is apocalyptic.

Wall's status as a nun at the time she was alleged to have committed the offences was also a factor in the social opprobrium heaped upon her. Although Wall left the Sisters of Mercy in 1994, the press insisted in referring to her by the name she took upon ordination, Sr Dominic. And, as a former nun accused of sexually abusing a child, Wall happened to be tried at a most unfortunate time. Up until the 1990s, the Catholic Church held a very

⁶⁷ See n. 18 above.

⁶⁸ I have to admit though that I was not completely surprised. It has been noted in the context of female serial killers that each killer is represented as being an individual aberration, punished and then promptly forgotten, instead of being regarded as a member of a pre-existing and identifiable class of offender; C Skrapec, "The female serial killer: an evolving criminality" in H Birch (ed.), *Moving Targets: Women, murder and representation* (London: Virago, 1993), p. 241.

⁶⁹ K Myers, "An Irishman's diary", *Irish Times*, 31 July 1999, p. 15. Unfortunately, while trying to challenge the witch-hunt he saw being perpetrated in the name of good in which Wall became the "lightning rod", he also exposed his own agenda, an indictment of what he considers to be the negative force of political correctness.

⁷⁰ "Sister of no mercy" (n. 33 above). M Lehane noted that following her conviction "she became the 'face of evil' in a manner similar to Myra Hindley", *Irish Examiner*, 6 February 2004, p. 5.

⁷¹ See n. 87 below and accompanying text.

⁷² As noted by Heidensohn in her discussion of the divide between the public and private spheres: Heidensohn, *Women and Crime* (n. 12 above), p. 165. This fear was given literal form in the crime of *petit treason* – a woman who killed her husband was seen in effect to have committed a crime against society: C Fennell, "Woman as accused" in A Connelly (ed.), *Gender and the Law in Ireland* (Dublin: Oak Tree Press, 1993), p. 171 at p. 173.

⁷³ Although Wall's decision to become a nun clearly precluded fulfilment of the first role (motherhood), her role as a carer of children had fulfilled the second (mothering).

privileged position in Irish society.⁷⁴ However, following a number of sex abuse scandals in which the hierarchy of the church was shown to have valued its own interests over those of the child victims, the Irish public became more suspicious of the clergy and members of religious orders. In addition to this generalised distrust of religious, Wall was tried shortly after the transmission of an extremely influential three-part media exposé on the extent of sexual and physical abuse within religious-run but state-funded institutions. *States of Fear* was aired on RTE 1, the national broadcaster, between April and May 1999.⁷⁵ Wall's trial took place in early June. Despite the earlier revelations of individual cases of religious abusers, it was the sheer scale and the seemingly systemic nature of the abuse – physical, sexual and emotional – exposed in the documentary series that led to an outcry by the Irish public.⁷⁶ In the ensuing hand-wringing that followed her exoneration, various broadsheet journalists expressed their concern that Wall had become the first *States of Fear* casualty, a martyr to our fears of clerical sexual abuse. I will discuss this development in the next section.

3 The transformation of Wall into a martyr

In order for Wall to make the leap from monster to martyr she had to meet two criteria. She had to be legally innocent and morally innocent. In order to prove her legal innocence,⁷⁷ it would have to be established that she had been unfairly victimised by those in power and that there had been abuse of the criminal justice process. The evidence laid forth by her defence at her sentencing hearing and by the prosecution at her appeal was more than

74 The reasons were historical. As the Catholic Church had been persecuted under British rule, an obvious way to assert an independent Irish identity following secession from the British Empire was to elevate the position and power of the Catholic Church. As Fletcher notes: “[t]he dominance of Roman Catholicism can be explained as a reaction to the experience of British colonization, under which the Irish were persecuted as Roman Catholics . . . Prior to Catholic emancipation in 1829, Irish Roman Catholics were . . . denied the right to vote or to be elected to Parliament, the right to hold property, or to attend school . . . Between the 1920s and 1960s, the young Irish nation state institutionalised Roman Catholicism as a marker of Irish national identity through such activities as the adoption of a Constitution in 1937 which privileged the role of the Roman Catholic Church and imposed a ban on divorce, and through its reliance on and support of the Church in its provision of health, welfare and education services.”: R Fletcher, “‘Pro-life’ absolutes” (1998) 36 *OHLJ* 1 (footnotes omitted). The case which is widely credited with changing all of this is the exposure of serial sex offender Father Brendan Smyth. See n. 25 above and accompanying text.

75 The first two parts of the series focused on historical instances of abuse in orphanages, industrial schools and institutions for physically and mentally disabled people; the third looked at a case from the 1990s and how one Irish order, the Christian Brothers, were also responsible for abuse in Australia and Canada. J Waters, “Christian Brothers’ brutality had its origins in colonialism”, *Irish Times*, 15 June 1999, p. 18.

76 The series had huge political, legal and social ramifications. As a direct result of the programme, the Statute of Limitations (Amendment) Act 2000 was passed which changed limitation periods where a case of sexual abuse suffered as a child was being claimed. This was achieved by extending the definition of “disability” in s. 48 of the Statute of Limitations Act 1957 to include “psychological injury” occasioned as a result of sexual abuse which affected the person’s ability to bring an action within the traditional limitation period of three years after the attainment of the age of majority. In its original form, following public outrage after the screening of *States of Fear*, the Bill was to extend the limitations period in cases involving sexual and physical abuse suffered as a child. However, given the varying degrees of physical abuse which could be alleged, it was decided at committee stage to omit non-sexual abuse from the scope of the Bill. The series also had the effect of putting increased pressure on the Government to develop a Sex Offenders Register, which it finally did with the passing of the Sex Offenders Act 2001, and to establish a Commission to Inquire into Child Abuse which was chaired by Ms Justice Laffoy. She resigned in September 2003 complaining of inadequate resources and lack of co-operation from the Government. The chair of the commission was given to Sean Ryan. An interim report was published at the close of Laffoy’s tenure. The commission investigation is ongoing. Finally, in 2002, the Government controversially accepted 90 per cent responsibility for compensation claims, letting religious orders off the hook, as it were: J Murphy, “Opening the floodgates of scandal”, *Village*, 26 January 2006.

77 I use the phrase “legal innocence” deliberately here. It is axiomatic that the criminal law is not concerned about innocence. This is demonstrated by the choices given to the jury – guilty or not guilty. Yet the DPP chose to declare that Wall should be presumed innocent of all charges. See n. 5 above.

sufficient proof of this. In order to pass the second hurdle – proof of moral innocence – Wall's worthiness had to be demonstrated. Although there were sufficient legal grounds to justify McCabe's acquittal,⁷⁸ he was not transformed into a martyr following the quashing of his conviction. This was partly because he had not been as persecuted by the media as Wall had been and partly because he, unlike Wall, had a significant prior criminal record. In this section, I will first detail the evidence that led to Wall's exoneration and what response it generated in the media. Then, I will discuss how the media established her moral innocence.

On the day Wall was due to be sentenced, her defence requested that the decision be stayed on the basis of non-disclosure of evidence and of the discovery of new information, but their petition was rejected by Justice Carney as being beyond the scope of his powers at the sentencing stage. The primary source of this new evidence was the series of interviews given by Walsh to the *Irish Star* in the month between the verdict and sentence. Of particular interest to the defence were Walsh's unsubstantiated abuse allegations against her ex-boyfriend and a rape allegation against an unidentified black man in Leicester Square.⁷⁹ This was in addition to allegations of abuse Walsh had made against her father, her brother, and an uncle in her victim impact report.⁸⁰ Walsh also mentioned in the victim impact report that she had undergone counselling at St Declan's Mental Hospital in Waterford in 1996 to help her to come to terms with the abuse. This counselling was after one of the four suicide attempts she detailed in her interviews with the *Irish Star*. During the sentencing hearing, the defence argued that her stay at St Declan's should have been disclosed to them as it may have had relevance to her mental state at the time she made the allegations. It was more relevant than they could have imagined. It subsequently transpired that Walsh did not actually fully remember the rape(s) at all. She had "flashbacks" when she was admitted into St Declan's and it was these newly recovered memories that prompted her to approach the Gardaí.⁸¹

The *Irish Star* interviews also led to the exposure of skeletons in Phelan's closet. After seeing Phelan's photo in the *Irish Star*, one man contacted Wall's family about a false rape charge she had made against him. The case against him was dismissed on grounds of delay, but Mr Justice McCracken of the High Court took the opportunity to express doubts as to Phelan's credibility. The defence argued that it was hard to imagine that the Gardaí had not known of this prior case because they occurred in neighbouring counties and around the same time.⁸² In fact, there was an even stronger link between the two cases than this. One of the Gardaí who was involved in the Phelan rape charge case was also involved in the Wall investigation. He was a member of the team who investigated the Kilkenny case and he was present when Phelan gave the statement in 1997 in which she claimed to have witnessed the rapes.⁸³

Additional concerns about Phelan's credibility were revealed by senior counsel for the DPP, Vaughan Buckley, on 27 July when he consented to the appeal request subject to the proviso that further action may be taken. The reason given for the consent was that Phelan

78 McCabe also had his own compelling reasons for acquittal. He was a schizophrenic who had not been taking his medication for a number of weeks prior to being arrested and questioned by the Gardaí. In addition, notes were not taken during the confession, as was required by Garda regulations, and there was no record kept of the questions put to him: S O'Driscoll, "Accused claimed nun saw sex with schoolgirl", *Irish Independent*, 9 June 1999; C Coulter, "Disturbing questions raised by conduct of rape trial", *Irish Times*, 28 July 1999, p. 4.

79 O'Kelly reported that Walsh had revealed to him that she was raped in London by an unidentified black man: O'Kelly, "I saw nun" (n. 22 above).

80 R O'Reilly, "Ex-nun gets life for rape", *Irish Independent*, 24 July 1999, p. 6.

81 *DPP v Wall* (n. 1 above), available at www.courts.ie.

82 "Former nun and male helper jailed for rape", *Irish Independent*, 24 July 1999, p. 7.

83 H McGee and G Brandon, "Stonewall" (2000) *McGill*, January, 16.

had been called as a witness despite prior instruction that she should not testify because her testimony was considered unreliable. Senior counsel for the DPP also acknowledged that facts which had come to light as a result of the *Irish Star* interviews, in particular the Leicester Square rape, could not definitively be said to be “not relevant”.⁸⁴ Ironically, therefore, although the tabloid press set out to demonise Wall, they actually paved the way for her release and subsequent exoneration.

The main media response to these revelations was anxiety - the feeling that justice was occasioned in the case purely by chance. Donncha O’Connell, director of the Irish Council of Civil Liberties noted, “[t]he conviction was set aside only because of a fortuitous set of circumstances, essentially because of the decision of Regina Walsh to give a newspaper interview”.⁸⁵ Myers worried in the *Irish Times* that but for Walsh’s decision to give the interview, Wall and McCabe would be “in indefinite solitary confinement, the objects of universal obloquy throughout the land”.⁸⁶ He was concerned that documentaries such as *States of Fear* had created a climate in which “[n]o priest or nun – as poor Nora Wall discovered – is given the benefit of the doubt any more. The accusation serves as a conviction, the allegation as a proof: the hallmark of the true witch-hunt.”⁸⁷ He also noted that the *States of Fear* documentary series had aired shortly before the trial and wondered: “[m]ight the jury members not have been influenced by the harrowing tales they heard in those programmes? . . . Is it not possible that they have transferred their general indignation at sexual abuse by religious onto the single, unfortunate figure of Nora Wall?”⁸⁸

Once there was sufficient legal evidence to cast doubt on the validity of the guilty verdict, the media was now faced with the task of rehabilitating her in the eyes of the public. I should, however, note that this rehabilitation was left mostly to the broadsheets as the tabloids effectively lost interest in the case once the DPP decided not to pursue any further charges.⁸⁹ It was acknowledged by the broadsheets that Wall had been treated very badly by the media. The editor of the *Irish Times* felt obliged to respond to criticism from a reader for the paper’s decision to publish the unsubstantiated *ménage-à-trois* story. The reader noted that the article “added to the air of hysterical prurience that surrounded this whole sorry affair” in a letter to the editor.⁹⁰ The editor noted in response that the article in question was published after the guilty verdict and that the *Irish Times* tries to “get the balance right”. In an article she wrote for the *Irish Catholic*, Wall utilised Christian imagery to convey her sense of persecution:

[m]y way of the cross couldn’t have been more painful, extreme or despising [sic]. Everything was there aplenty – cross, condemnations, nails, thorns, spears, sponge, towels, helpers, rejections, disowning, consolers, public stripping and

84 “Former nun, man have convictions quashed”, *Irish Times*, 28 July 1999, p. 1.

85 H McGee, “When life ended after four days”, *Sunday Tribune*, 1 August 1999, p. 11.

86 Myers, “An Irishman’s diary” (n. 69 above).

87 Ibid.

88 Ibid.

89 Although both sets of newspapers reported on the trial itself, it was not until Wall could be named, photographed and demonised that tabloid interest in the case blossomed. It was during the period immediately after Wall was found guilty up until the point of her successful appeal that the tabloids published a number of unsubstantiated allegations about the level and extent of Wall’s criminality. However, this flowering of interest was relatively short-lived. Of the seven tabloids I reviewed, six did not report on the third stage of the case. In other words, once Wall was released, and she was not re-charged, tabloid interest in the case virtually evaporated. The four stages are detailed in n. 7 above.

90 J Andrews, “Letter to the editor”, *Irish Times*, 30 August 1999, p. 15.

lashings by the media. Nailed to the cross – not on the hill of Calvary, but on every TV screen and newspaper.⁹¹

This imagery was picked up by a few writers,⁹² but two specific themes emerge from the limited coverage of the two final stages of reporting. These are Wall's almost beatific grace upon victory and her position within a respectable family and community. Both serve to establish her martyrdom and to withdraw (appropriately feminine) women from the ranks of child sexual abusers.

The facet of the case which most fascinated media commentators was Wall's extraordinary embodiment of Christian forgiveness throughout the ten years of her ordeal.⁹³ Following the DPP's decision not to proceed with further charges, Wall's generosity is given prominence in a quotes of the week segment in the *Ireland on Sunday*. Her quote is first in the list and she says: "I'm not bitter and have no ill-feelings against [my accusers]."⁹⁴ The *Irish Mirror* also notes admiringly that "she is not bitter despite the three years of hell she has been put through".⁹⁵ After she successfully obtained the certificate allowing her to proceed with a miscarriage of justice claim, the *Irish Examiner* felt compelled to report that Wall embraced Phelan and that both women "burst into tears" even though this detail added nothing to the supposed subject matter of what was being reported – the granting of the certificate.⁹⁶ An entire article in the *Irish Independent* was devoted to Wall's remarkable magnanimity:

The former Mercy sister extended her hand to the man who had presented the State's flawed case against her and said "thank you" for what had just happened in court.

Denis Vaughan Buckley shook hands, looking taken aback at the unexpected gesture, so rare coming from the opposing side after such a serious criminal trial.

But for the former nun who had just received her final vindication it was clearly important to make a gesture of conciliation, a tangible sign of her remarkable lack of bitterness over being wrongfully convicted of rape.⁹⁷

In the same way that the guilty verdict permitted the publication of unsubstantiated and salacious allegations – "[p]ut two and two together and get any number you want"⁹⁸ – once Wall became a martyr, it became impermissible to treat her other than with kid gloves. Even the quite reasonable request by the DPP to postpone the retrial hearing until 22 November 1999 was castigated. Originally the DPP had been given leave to consider whether or not to pursue charges against either or both accused until 1 November 1999. However, due to a lack of stenographers, the transcript of the trial was not received by the DPP's office until after this hearing had concluded.⁹⁹ Quite sensibly the DPP wished to review the transcript

91 N Wall, "My quest for justice", *Irish Catholic*, 5 February 2004, p. 10.

92 Myers used the Calvary image prior to Wall referencing it; Myers, "An Irishman's Diary" (n. 69 above). Other journalists referred to the *Irish Catholic* article, e.g. M Lehan, "I was nailed to the cross – not on the hill of Calvary, but on every TV screen and newspaper", *Irish Examiner*, 6 February 2004, p. 5.

93 It took three years for her case to go to trial, and approximately another seven before she obtained the certificate from the Court of Criminal Appeal.

94 "Hear! Hear! The Week in Quotes", *Ireland on Sunday*, 21 November 1999, p. 33.

95 N Tallant, "Nun's rape charge nightmare", *Irish Mirror*, 18 November 1999, pp. 1 & 7, at p. 7.

96 M Brennan, "Former nun Nora Wall's rape conviction declared a miscarriage of justice", *Irish Examiner*, 2 December 2005, p. 12. It did, however, tally with the earlier obsession with Wall's lack of emotionality during earlier stages in the case. See n. 39 above and accompanying text.

97 Sheehan, "Nora Wall departs" (n. 44 above).

98 "Dangerous desire for condemnation", *Sunday Independent*, 4 December 2005.

99 C Coulter, "Transcript late in rape retrial case, says DPP", *Irish Times*, 3 November 1999, p. 5.

before making a final decision on whether to pursue further charges or not. But sense did not prevail. Fine Gael TD Jim Higgins was outraged: “[i]t adds to the appalling, cavalier manner in which this case has been handled by the State.”¹⁰⁰

Wall's moral innocence was further demonstrated by calling on friends and family to speak on her behalf after she was exonerated. While the media has drawn attention to the problem of child sexual abuse, the child sexual abuser has been presented almost exclusively as a predatory male stranger.¹⁰¹ By focusing on this subset of child molesters (and excluding intra-familial abusers, abusers known to the child, and female sexual abusers), the child sex abuser is represented as Other and it becomes easy to separate or expel him from the community. His actions are decontextualised from a society that sexualises children and from a society in which he may have been sexually abused.¹⁰² Instead, his aberrance is individualised and contained, thus preserving the status quo. The inverse of this tendency was evident in the Wall case once her innocence was assured. Wall's family and friends become very important in newspaper coverage from 28 July onwards.¹⁰³ Every newspaper quoted the reaction of her family and members of the local community to the quashing of her conviction. All declare their sense of joy that she has been released and their absolute confidence that she will be proved innocent. The *Sunday Independent* reported how “friends and colleagues scoff[ed] at the courtroom debacle”.¹⁰⁴ Their “scoff[ing]” had not been newsworthy until now. Her brother-in-law was interviewed by the *Irish Examiner* following her release and he reaffirmed that the family were not just happy that she had been released. They would fight to prove her innocence.¹⁰⁵ The *Ireland on Sunday* reported that “[a] palpable sense of relief that she is free permeates through the close-knit community”.¹⁰⁶ When she was formally exonerated in November, a local county councillor was reported as noting that “the final clearing of Nora's name and the restoration of her impeccable reputation is like the lifting of a huge cloud of depression from the entire valley [where she comes from]”.¹⁰⁷ The effect of this coverage is to return Wall to the community from which she had been temporarily expelled. She becomes one of us again. This emphasis offers the reassurance that sex offenders are clearly not us, and certainly not from people like us. Several newspapers drew attention to the respectability of her origins: “Nora Wall was born . . . to a respectable and well-to-do farming family”;¹⁰⁸ “Nora Wall hails from the moderately prosperous countryside It was the type of genteel, religious, rural

100 C Keane, “DPP finally gets copy of transcript of nun rape case”, *Irish Examiner*, 2 November 1999.

101 P Jenkins, *Moral Panic: Changing concepts of the child molester in modern America* (New Haven: Yale University Press, 1998); N Websdale, “Predators: the social construction of ‘stranger-danger’ in Washington State as a form of patriarchal ideology” in J Ferrell and N Websdale (eds), *Making Trouble: Cultural constructions of crime, deviance, and control* (New York: Aldine de Gruyter, 1999), p. 91.

102 This is not to say that those who sexually abuse children should not be punished. It is one thing to acknowledge the offender's past experience of abuse as a means of understanding their current actions, it is quite another to use it as an excuse. As adults, survivors of sexual abuse have to take some responsibility for their interactions with children. It is also worth noting that the cycle of violence theory is too simplistic to explain fully the phenomenon of child sexual abuse, despite its commonsensical appeal. If the causality between being abused and abusing were so determinative, then there should be considerably more female molesters, as women and girls make up the majority of victims of sexual abuse. Jennings, “Female child molesters” (n. 18 above), p. 246.

103 A number of newspapers had noted that her family rejected the guilty verdict, but it was not until the appeal was quashed that her family assumed particular importance.

104 K Moore, “Ex-nun caught on a legal see-saw”, *Sunday Independent*, 1 August 1999, p. 6.

105 J Murphy, “Family will fight to clear the name of rape-case nun”, *Irish Examiner*, 30 July 1999, p. 9.

106 *Ireland on Sunday*, 1 August 1999, p. 5.

107 J Murphy, “Years of horror are at an end for Nora”, *Irish Examiner*, 24 November 1999, p. 4.

108 H Kelly, “Certificate of miscarriage of justice expected soon”, *Irish Catholic*, 5 February 2004, p. 11.

background from which many young women emerged to provide Ireland's nursing, caring and teaching nuns."¹⁰⁹ The message is clear – sexual abuse occurs only in non-respectable families. Wall's exoneration, therefore, worked to resolve two anxieties that her trial and conviction had generated. First, women do not commit these offences. Second, respectable people do not commit these offences.¹¹⁰ Unfortunately, this resolution is a false one as neither of these comforting claims is accurate.

4 Conclusion

As the preceding discussion has shown, there was nothing extraordinary about the representation of Wall by the media. The images that were referenced to monstrify her were no different, apart from the degree of opprobrium attached to them, to the images that are used to monstrify ordinary female offenders. The means by which she became an exemplar of feminine forgiveness – the ultimate Madonna – also referenced stereotypes of appropriate femininity. However, while we may be grateful that justice was ultimately done in the Wall case, this does not mean that we should forget about the injustice that preceded it. The fact remains that the sentence she received was disproportionate, both when compared to the sentence her co-accused received and to sentences meted out to other accused clerical child molesters. It could be argued that the vindication of Wall, and her entitlement to receive compensation for the wrong done to her, means that we need not trouble ourselves with this disparity. But, if she had been guilty, would her life sentence have been justified? This question should trouble Irish feminists, but apart from some soul-searching by a few female journalists, the silence has been deafening.¹¹¹

This silence may be partly due to a generalised feminist disquiet when faced with the reality of female sexual abusers. There are a number of reasons why feminists have been reluctant to acknowledge such offenders. There is a legitimate fear that any information gathered would be used as part of a feminist backlash. In addition, there are ideological and practical difficulties attached to recognising the reality of female sex offenders. Acceptance of the existence of female child molesters challenges deeply held feminist notions that men are abusers and women are their victims. To admit that women can also be aggressors potentially minimises not only the damage that child sexual abuse causes,¹¹² but also the offences of male sexual abusers.¹¹³ On a practical level, it is feared that bringing the matter to the attention of the public would distract them from the fact that the vast majority of abusers are male.¹¹⁴ For this reason, an attempt to hold a conference for social work professionals in 1992 in London on female sex offenders was decried as a betrayal of feminism.

109 Moore, "Ex-nun" (n. 104 above).

110 Recall Myers' insistence that everyone knew in their hearts that a woman could not possibly commit such crimes. See n. 69 above and accompanying text.

111 See n. 119 below and accompanying text for similar comment by Birch in the context of violent female offenders.

112 Particularly when male victims of female abusers seem determined to minimise the harm done to them. In one study, college students and prisoners who had committed sex offences were asked about under-age sexual experiences with women. Among the sex-offender prison population, 66 per cent declared the experience to have been good, 6 per cent described it as bad, and 25 per cent reported mixed feelings. As Hislop notes, the fact that men who had gone on to commit sexual offences themselves found that the experience did not affect them negatively, demonstrates that men disavow the emotional damage of sexual abuse. Hislop, *Female Child Molesters* (n. 18 above), p. 45, referring to a study by S R Condry, D I Templer, R Brown and L Veaco, "Parameters of sexual contact of boys with women" (1987) 16 *ASB* 379.

113 See Hislop, *Female Child Molesters* (n. 18 above), p. 14.

114 V Young, "Women abusers – a feminist view" in M Elliott (ed.), *Female Sexual Abuse of Children: The ultimate taboo* (Harlow: Longman, 1993), p. 107 at p. 110.

However, female (and feminist) researchers have continued to bring the reality of female sexual offenders to light, even in the face of such anger.¹¹⁵ It is only right that feminism be proactive in the analysis of female child molesters. As primary claims-makers on child abuse in general,¹¹⁶ the feminist movement should also undertake the educative and advisory role on female child abusers.¹¹⁷ A denial of female sexual abusers means that their victims – usually children – are denied adequate protection and/or support.¹¹⁸ Accordingly, more feminists need to speak up. Helen Birch has commented on “the deafening silence from feminists”¹¹⁹ on violent female offenders at the beginning of her article on Myra Hindley. Marie Fox, in her article on the representation of five British female killers, acknowledged this silence but suggested that it may simply reflect confusion on the part of feminists about how to represent such offenders. In order to offer a means out of this confusion, Fox turned to fictional literature in an attempt to reconceptualise violent female offenders.¹²⁰ Specifically she looked at fictional female killers who were not “nice” women as a means of attempting to move beyond the woman as victim narrative.¹²¹

The victim narrative is one that dominates in the context of female sexual abusers, particularly in cases where there is a male co-offender, unless the female offender is positioned as being entirely evil/worse than him (as happened in the Wall case). Even the terminology used to categorise such an offender – the male-coerced female offender – denies female agency.¹²² The Wall case therefore provides a perfect opportunity for feminism to challenge the limiting either/or positioning of female sex offenders. If we find it distasteful to argue for the rights of properly accused female sexual offenders, then why not start with falsely accused offenders. The frequently stated journalistic belief that Wall was worse than

115 K Evert and I Bijkerk, *When You're Ready: A woman's healing from childhood physical and sexual abuse by her mother* (Rockville, MD: Launch Press, 1987); B Dolan, “My own story”, *Time Magazine*, 7 October 1991, p. 47, cited in Hislop, *Female Child Molesters* (n. 18 above), p. 22.

116 Feminism is primarily responsible for the level of exposure that child physical and sexual abuse currently enjoys. It should, however, be noted that child sexual abuse has been discovered, forgotten, repressed, and re-discovered countless times. Jenkins offers a historical perspective on the construction of the sex offender in the United States and examines the various moral panics that arose in the periods 1890–1934, 1935–57, 1958–76, 1976–86, and the 1990s. Although Jenkins' analysis is United-States based, it can be applied to other jurisdictions. Jenkins himself notes that similar patterns can be discerned in those countries that are culturally influenced by the United States, such as Britain, Canada, Israel and Australia. See Jenkins, *Moral Panic* (n. 101 above), p. 231.

117 Young, “Women abusers” (n. 114 above), pp. 108–9.

118 Most self-help books for survivors of sexual abuse are written for those who were abused by men. Jennings, “Female child molesters” (n. 18 above), p. 242.

119 H Birch, “If looks could kill: Myra Hindley and the iconography of evil” in H Birch (ed.), *Moving Targets: Women, murder and representation* (London: Virago, 1993), p. 32 at p. 34.

120 M Fox, “Crime and punishment: representations of female killers in law and literature” in J Morison and C Bell (eds), *Tall Stories? Reading law and literature* (Aldershot: Dartmouth, 1996), p. 145.

121 Unfortunately, while the female anti-heroines she refers to (Andrea in Andrea Dworkin's *Mercy* and Bella in Helen Zahavi's *A Dirty Weekend*) are not “nice”, their violence is represented very much as being a response to patriarchal society, and in this sense they are absolved of their violence (although they fight back, they are still victims).

122 This is all the more worrying because research has found that female co-offenders often go on to abuse independently of their initiatory partner, indicating that they have developed a taste for the abuse. The other main categories of female sex offender are the intergenerationally predisposed female offender, and female offenders who predominantly abuse males. This latter category is broken down into two sub-groups – the experimenter/exploiter and the teacher/lover. Matthews et al., “Female sex offenders” (n. 18 above). Even with these categories there is evidence of a desire to absolve the female offender of guilt. It was suggested that rejection by a husband may contribute to female incest, or that female abusers utilise male children or adolescents to take the place of an absent (either emotionally or physically) adult mate. See Hislop, *Female Child Molesters* (n. 18 above), p. 2.

McCabe had real punitive, albeit temporary, consequences for Wall. By challenging the limiting either/or characterisation of female sex offenders as it manifested itself in the Wall case, both explicitly when she was accused (the monster) and implicitly when she was exonerated (real women do not abuse children), we commence a dialogue on the issue.

The need for an alternative means of framing female sex offenders is great if we are to avoid injustices in future. In order to do this we must acknowledge the existence of female sexual abuse. This requires two steps. First, we need to deconstruct the language we use when we describe child molesters. The words we currently use – predators, hunters and violators – are active, aggressive, traditionally masculine words, and consequently not readily culturally applicable to women. Val Young writes that such language is part of the reason female sexual abuse is “inexpressible”.¹²³ If female sexual offenders cannot be imagined linguistically, then it becomes difficult to imagine them at all.¹²⁴ Second, we must move beyond treating each discovered case of female sexual offending as an individual aberration and instead regard the offender as a member of a pre-existing and identifiable class of perpetrator.¹²⁵ This enables discussion to move beyond the simplistic us/Other dichotomy that is evident in representations of sexual offenders. However, there is a distinction between individualising each female sex offender as an aberration and looking at each female offender as an individual. The dual tendency to individualise (as a monster) and to generalise (with reference to cultural stereotypes of appropriate femininity) needs to be combated. Therefore, while there were certainly aspects of Wall’s behaviour that were exemplary, it is she who should be praised, not her femininity. Similarly, when it was thought that she was a child rapist, it should have been she who was blamed, not her absence of femininity.¹²⁶ The continued focus on natural versus unnatural femininity is both reductive and unhelpful. As Judith Butler argues in the development of her theory on gender performance, “real” women simply do not exist because the intensity of the labour required to attain the “natural” gender challenges the supposed naturalness of the masculine/feminine dichotomy.¹²⁷ By failing to challenge how female offenders are represented, the images used to make sense of them retain their currency and truth-status. More importantly, the images we reference make it difficult to offer a nuanced appraisal of

123 Young, “Women abusers” (n. 114 above), p. 118. She suggests that a child-focused language be used instead to demonstrate that the issue is defined not from apologists’ perspectives, but from the perspective of those affected by the abuse.

124 Because women are not expected to be molesters, cases of abuse are overlooked, ignored, or not taken seriously by authorities. Those cases that do come to official attention are those where the offender is particularly disturbed and tend to involve what have been described as “bizarre or violent sexually deviant acts”: S Travin, K Cullen and B Protter, “Female sex offenders: severe victims and victimizers” (1990) 35 *JFS* 40.

125 See n. 68 above.

126 Indeed, the assumption that femininity equals non-criminality has been found to be rather simplistic. Harris, an ex-prisoner turned writer, found that women in prison are generally women who have desperately tried to conform to society’s notion of femininity – women who stayed with abusive husbands because they were supposed to be loyal to them and women who stole to provide for families; J Harris, *Stranger in Two Worlds* (New York: Macmillan, 1986) and *They Always Call Us “Ladies”: Stories from prison* (New York: Charles Scribner’s Sons, 1988). Worrall came to a similar conclusion after interviewing fifteen female offenders and the magistrates, solicitors, psychiatrists and probation officers who deal with them. She writes, “[a]s can be seen from these accounts, many women are not seeking to break out of the ideologies that confine them to domesticity, sexual passivity, and sickness. Rather, they want to have the worst effects of those ideologies alleviated.”: Worrall, *Offending Women* (n. 40 above), p. 160.

127 J Butler, *Gender Trouble: Feminism and the subversion of identity* (New York: Routledge, 1990), p. 89. Indeed, the designation of nature is not as simple as might first appear. Butler writes: “[s]ignificantly, being ‘outside’ the hegemonic order does not signify being ‘in’ a state of filthy and untidy nature. Paradoxically, homosexuality is almost always conceived within the homophobic signifying economy as *both* uncivilized and unnatural.” (p. 168), emphasis author’s own.

the case and to discuss appropriate punishment. Extreme language and images facilitate extreme responses, both legal and extra-legal. Were it not for that worryingly chance set of circumstances that set her free, Wall would still be in prison serving the life sentence meted out to her because of the simplistic notions of femininity that continue to guide understandings of and response to female criminality.

