

## *Femme and Fatality: Gender and the Trial of Lizzie Borden*

---

Esther Boone

Tulane University, New Orleans, Louisiana, USA



**Abstract:** Crime is an intrinsic part of culture. Such is certainly the case with the Borden family murders, the 1892 killings of Andrew and Abby Borden: two well-respected and monied members of upper echelon society in Victorian-era Fall River, Massachusetts. If the intrigue of the murders themselves was not enough to cause a cultural stir, the suspect who emerged at the forefront of the investigation into the crimes undoubtedly was. To this day, it is widely believed that Lizzie Borden, Andrew's youngest daughter, committed the brutal killings that left both her father and stepmother unrecognizably bludgeoned by an axe in their own family home; however, her 1893 trial found her innocent on all accounts of murder. Over a century later, society remains gripped by what has now become the legend of Lizzie Borden, her near-obvious guilt, and her found innocence. This case explores how cultural norms and assumptions surrounding gender and criminality largely contributed to Lizzie Borden's not-guilty verdict in a trial where almost all evidence suggested her sole guilt; it also aims to investigate the modern implications of feminine influence on perception of crime and capability through the lens of Borden's heavily gendered trial and defense.

### **Historical Context**

The latter half of the 18th century saw plenty of change within the formerly humble East Coast mill town of Fall River, Massachusetts. With the invention of steam engine technology having recently altered the face of global production, Fall River—a small city once known for its humble mill-based economy—transformed into one of the most prominent hubs of the textile industry within the United States (Conforti 2015). Alongside this industrial growth came a substantial increase in concentrated wealth amongst the families who led Fall River into the Industrial Age. Like many parochial New England communities, the history of leadership in Fall River held roots dating back to early Puritan movements throughout the Northeast; the city's prominent families in the 1890s were the same people who had controlled the wealth and progress of Fall River for up to centuries prior (Conforti 2015). By the latter half of the 19th century, the Borden family was among the most distinguished in the city's leading circle (Conforti 2015). For this reason, it was even more shocking to the town—and to the nation as a whole—when Andrew Borden and his wife, Abby, were found brutally axe-murdered in their Fall River home on August 4, 1892. Their killings, now among the most famous in American history, have inspired over a century worth of speculation, and to this day, the crimes remain notoriously unsolved.

National attention surrounding the murders of Andrew and Abby Borden became even more rabid when the case's primary suspect emerged as none other than Lizzie Borden, Andrew's youngest daughter. Suddenly, Fall River transformed from an industrious mill capital to the site of a gruesome and divisive murder trial that took the country by storm. Both the literal jury, and the figurative one that exists within the public sphere, were enthralled by the overarching question that

defined the case: could a well-to-do high society daughter double as a violent murderer behind closed doors? To this day, many speculate that Lizzie's demure and feminine appearance in court served as her leading form of defense in the face of a mounting pile of evidence that suggested her sole guilt (Robertson 1996). Many continue to ask: was Lizzie's treatment in the trial fair? Or did her status and womanhood play more of a part in her legal perception than the cold, hard facts of the case? Moreover, do feminine influences and gendered biases still impact criminality and the courts of today?

### The Bordens

The Borden family first arrived in the United States from England in the 1630s, following a wave of Puritan settlement in the American Northeast. By 1636, the leading patriarch of the American extension of the Borden family, Richard, had settled in the area that would later become Portsmouth, Rhode Island— just miles from what was in the 1890s, and what it is today, Fall River, Massachusetts (Conforti 2015). When Fall River first became an incorporated town in 1803, members of the Borden family made up more than half of the families counted as part of its original population. While other relatives of the family prospered elsewhere throughout industrial New England, the Fall River Bordens saw little professional success or societal status until the life and career of Andrew Borden (Conforti 2015).

Born in 1822, Andrew spent the majority of his adult life amassing a considerable fortune for his family within Fall River, as well as curating a pristine reputation within the world of local business and industry (Conforti 2015). He was notably careful with his investments, making it his personal goal to never borrow or owe any sum of money to other parties or individuals. He invested meticulously in a number of different avenues, acting as a jack of many trades throughout Fall River and the surrounding area (Conforti 2015). Perhaps his most prominent landholding was his downtown business office, the A.J. Borden Building (Conforti 2015). Standing in the midst of boutiques and community centers flanked by pedestrian foot traffic, Andrew's building served as the physical manifestation of his professional success—a marker of his status as a central pillar within the city and its upper echelon society. At the time of his death Andrew was just shy of 70 years old, and his estate was worth around \$300,000, a sum which today would be equivalent to about \$10 million in holdings (Conforti 2015). The entirety of this wealth had been self-earned over the course of his lifetime (Conforti 2015).

Andrew was first married in 1845 to a Fall River seamstress by the name of Sarah Morse (Conforti 2015). Six years later, the two welcomed their first child, a daughter Emma, to the world. Lizzie Andrew Borden, bearing her father's first name as her middle one, was born ten years later. In between their two surviving children, Sarah had given birth to another daughter, Alice Esther, whose poor health as a child led to her eventual death just days before her second birthday. Lizzie's arrival was, in many ways, the miracle following the tragedy of her young sister's demise; however, more misfortune was soon to come. In 1863, the 39-year-old Sarah died, leaving her husband as a widower responsible for the care of their two daughters. Only two years following Sarah's death, Andrew remarried Abby Gray (Conforti 2015). From all accounts, their union was more of a negotiated arrangement for the sake of convenience than a marriage based in love. Abby was 37 and had never been married; Andrew was 42 and in need of a new wife. The two never had any children of their own, and his daughters never took a particular liking to her. By the time of Abby's death, neither Emma nor Lizzie referred to her as their mother, and in many ways, they publicly bullied her and avoided her both in and outside the household. Over the course of her marriage, Abby became increasingly antisocial and generally unpopular, if not altogether ignored,

within the Fall River community, a public sentiment that would even follow her in death (Conforti 2015).

In 1892, the Bordens lived in a single-family home on Second Street in Fall River. Emma and Lizzie both lived at the Second Street property, as neither of the sisters had ever been married or made enough money to support a life of their own; they were 42 and 32 years old, respectively. Many speculated that Emma remained a life-long spinster out of loyalty to her younger sister, and a sense of duty to act as a mother figure, what with the untimely death of their own mother and the sisters' considerable age disparity (Conforti 2015). Despite their closeness, Emma and Lizzie were intensely different individuals. Emma was educated, soft spoken and plain; accounts of Lizzie portray her as more of a vivid and difficult personality. It is also largely believed that the girls' father demonstrated a particular favoritism towards Lizzie (Conforti 2015). She was not held to the same academic standards as her older sister, with Lizzie never finishing high school while Andrew sent Emma on to study in higher level seminary school. Lizzie was also known to be materialistically spoiled and was said to throw fits if she did not get her way with her father, demanding gifts in return for his perceived wrongdoings (Conforti 2015).

From a gendered and historical perspective, Lizzie's familial relationships were unconventional. At the time, it was thought that women of this class were largely responsible for the maintenance of the household and the care of the family; Lizzie's role within the Borden house did not reflect any aspiration to fulfill these projected customs (Holba 2018). While Lizzie followed the typical custom of not working outside the home, she did not do much around the house either. She never sought to find a suitor or to bear children. She wielded a noticeable amount of social and emotional power over her father, often manipulating him for her own benefit. Most notably, she actively tried to destroy familial ties with her stepmother, violating the role of peacekeeping and household nurturing that was intrinsically linked to notions of womanhood at the time (Holba 2018). These marked deviations from societal norms called Lizzie's character and intentions into question within the Fall River community. Speculation and critique of these arguably unfeminine tendencies would complicate the perception of Lizzie during her 1893 trial, emerging as something both the prosecution and the defense would have to address (Conforti 2015).

Personal opinions on Lizzie, the majority of which were gathered by detectives and investigators following the murders of Andrew and Abby, ranged significantly in their description of her character (Conforti 2015). In general, it seems as though family members and Fall River locals found Lizzie "quite uninteresting and rather unpleasant" (Schofield 1993, 98). People who knew her in town understood her attachment to material items to be a sign of bad temperament and greed, generally agreeing that she was overwhelmingly "competitive" in her social interactions (Lincoln 1967, 22). Due to her lack of likability, many believed that Andrew's money and status as a professional were the only reason that Lizzie was allowed to float around the "outer edge of the inner circle" within the upper echelon of Fall River (Lincoln 1967, 22). Her image was even further tarnished publicly in the years leading up to the murders when a string of petty theft and shoplifting crimes led to several interactions between Lizzie and local police (Lincoln 1967).

## The Crime

On the day of August 4, 1892, there was an unusual cast of characters within the Borden house. The family's eldest daughter Emma was out of town, visiting friends to avoid some of the hot summer in the city; however, an unexpected visitor arrived to take her place: John Morse, the brother of Andrew's late first wife, Sarah. According to John in his later testimonies, he was in

Fall River for business and had asked to stay with Andrew as a favor, knowing Emma was gone and there was room in the house (Carlson 2010).

The morning began with Abby Borden demanding that the family maid, Bridger, complete a long set of chores for the day's work; this list included washing the windows from the outside of the house (Carlson 2010). Bridget's absence from the indoors of the Second Street residence became one of the most important pieces of information during the trial. As she washed windows, both Andrew and John left to attend to matters of business. This explanation of events left a critical period in which Lizzie and Abby were alone, the only two people within the Borden house (Carlson 2010).

When Bridget finished the window washing, she returned inside to continue her chores. Minutes later, Andrew knocked on the door having returned from work and Bridget let him in., Bridget later testified remembering she heard Lizzie laugh from the upstairs at this time, presumably standing directly next to the location where police would later determine Abby had already been lying dead for close to an hour (Carlson 2010). Following this laugh, Lizzie descended the stairs to tell Bridget and Andrew that Abby had been called out of the house by a friend. Hearing that Abby was no longer home, Bridget went up the back stairs to her maid quarters to rest (Carlson 2010). Soon after Bridget laid down in her room, Lizzie began to yell from the downstairs of the house. Her screams regarded her father's murder. When Bridget came downstairs, Andrew had been axe-murdered on the living room couch where he had laid to relax after coming home from his morning at work. Bridget ran across the street to get help, and when she came back, she walked upstairs to find Abby's dead body in the guest bedroom. Police later determined that Andrew had been struck 12 times by an axe, and Abby had been struck 19. Neither one was facially recognizable when their bodies were found (Carlson 2010).

Based on this set of information, Lizzie was the only person present inside the Second Street property for both murders; however, she had an alibi to defend herself against criminal accusation. Lizzie later explained to police that she had gone out to the barn to complete a chore while the maid had gone up to her chambers. It was, she explained, only after she came back inside that she discovered Andrew, dead on the couch (Carlson 2010). Whether it was for this alibi or for other reasons, Lizzie was not an immediate suspect in the police investigation regarding the murders (Carlson 2010). Local papers would describe Andrew and Abby's bodies as being "hacked to pieces" (Robertson 1996, 375).

### **Police Questioning**

In retrospect, the early efforts made by the Fall River police force were not competent nor successful in collecting evidence and information regarding the truth of the crime, even as compared to Victorian era forensic standards. For hours following the discovery of Andrew and Abby's bodies, unauthorized personnel wandered around the Borden home, contaminating evidence, spreading blood, and moving items about; in fact, the crime scene itself was never officially roped off by investigators (Conforti 2015). Although many modern criminological tactics were yet to become common practice in the police field, the tampering of the scene, coupled with the lack of attention paid toward emerging leads made the investigation internally weak from its start. Part of this oversight was reflected through the early suspicions regarding the primary suspects, which were thoughtlessly broad and hardly considered members of the household as potentially responsible (Conforti 2015). Police searched in neighboring cities and towns, going as far out as Boston in their scope of interest. It was only when these efforts proved to yield no

tangible leads that investigators began to ponder the question of whether the true murderer was somehow connected more personally to the Borden family and house (Conforti 2015).

Police detectives originally focused their investigation on two main suspects within the home: John Morse, Andrew's visiting former brother-in-law, and Bridget, the family maid (Conforti 2015). However, as the investigation continued, eyewitnesses came forward to confirm both John and Bridget's alibis. At the time of either one or both murders, first-hand accounts placed them each outside of the house (Conforti 2015). This left Lizzie as the only person whose self-defense was entirely rooted in her word alone. Despite the incriminating nature of this reality, neither police nor the court of public opinion saw Lizzie as a potential suspect in the early days of police questioning (Carlson 2010). In fact, Lizzie's clothes were never even seized or examined to see if there were traces of blood. Later that day, she was even caught carrying a morning dress out of the house's upstairs covered in a pink wrapping; this dress was never gathered by the police either; regardless of their lack of suspicion, police detectives did interview Lizzie several times on the day of the murders (Conforti 2015). It was the inconsistencies and discrepancies in her statements across these interviews that would first alert them to her potential guilt (Conforti 2015).

The central inconsistencies told to police regarded her supposed trip to the barn at the time of Andrew's murder. Several times throughout the day, Lizzie told different officers varying stories about why she had been out there and what had brought her back inside. Most notably, Lizzie changed her story on what she had heard of her father's death; in one testimony, she claims to have heard nothing, while in another, she claims to have heard scrapes and moans (Conforti 2015). Additional testimony on behalf of investigators revealed that several police officers went to the barn to see what Lizzie may have been doing upstairs at the time of the murders. Reports of the state of the barn claim that there was an undisturbed coat of dust on the floor, likely indicating that no one had been there for days (Conforti 2015). Detectives were also alerted by Lizzie's evident disdain for her stepmother, Abby. When asked if she knew of anyone who may have had a motive to kill her mother, meaning Abby, Lizzie responded, "She is not my mother. She is my stepmother. My mother is dead" (Carlson 2010, 27). Suspicion finally reached an alarming peak when several eyewitnesses came forward to reveal that they had seen Lizzie in a shop downtown weeks earlier, trying to buy poison. The shopkeeper she had approached denied her purchase, stating it was something she needed a prescription to be able to buy (Carlson 2010). This mounting pile of suspicion and vague evidence suggesting Lizzie's guilt led to her eventual arrest a week after the murders were committed (Schofield 1993).

### Societal Norms: Gender and Crime

Many criminologists and legal theorists speculate that the delay in Lizzie's arrest, and her original avoidance of suspicion, were largely rooted in her status as a white, wealthy woman. At the end of the 19th century, societal notions of class and womanhood placed Lizzie far from the traditional archetype of an axe murderer. One writer of the time noted that society was able to see men "wrestle with the good and evil within him but a woman... could only embody good or evil" (Schofield 1993, 99). This meant that, to many members of the public and potentially the jury, a white, well-to-do woman must certainly embody all goodness. Her status and generalized identity attained too many "non-criminal features" to allow her to commit the acts of a violent criminal (Robertson 1996, 381). It seems as though from the beginning of the investigation, police and the public alike wanted to find a certain kind of person responsible for the case: masculine, poor, potentially foreign, and with an accent. Lizzie's greatest legal asset was perhaps that she matched none of this desired description.

There was also strong gender-based doubt rooted in Lizzie's anatomical capability to commit such a crime. The brutality of the murders themselves seemed to reaffirm these societal sentiments. Whoever committed the murder had gone to great lengths to bash and brutalize Abby and Andrew's bodies well after blows to the skull had already rendered them both dead (Carlson 2010). The violent nature of the crime led it to be widely masculinized in the public sphere. While it was accepted that women could be murderers, it was not expected that they murder with such a blatant and extreme and physicality. The societal stereotype of the femme fatale took form in the angry wife, or the abused mistress; in the common viewpoint, these women took out their rage through poisoning. While the 19th century saw no statistical increase in poison-related deaths, it culturally demonstrated an increase in the popular image of this imagined feminine murdereress (Carlson 2010). Those who believed in Lizzie's guilt pointed to the testimonies indicating she had been denied access to poison earlier, leaving her with no other choice but to find a more violent path to murder; believers in her innocence maintained their fixation on the societal standard that this type of crime was that of some wild, foreign animal—not that of a woman (Robertson 1996). This public sentiment seems to have prevailed despite a medical examiner's ruling statement that a woman was absolutely physically capable of committing such a crime (Robertson 1996).

In terms of incidents of feminine rage and crime, suspicions were raised regarding the role of menstruation in a potential fit of rage that led to the killings. Throughout the 19th century and beyond, many of the even distinguished physicians and medical professionals maintained that menstruation in women could lead to temporary psychosis and provide reasonable justification for criminality within actions (Robertson 1996). Suspicions regarding Lizzie's menstruation cycle were sparked when a pail containing blood was found by police in the basement of the Second Street home (Robertson 1996). The blood, found on the day of the murders, was relatively fresh, a reality Lizzie explained by claiming that she was going through her menstruation period. Lizzie also used this explanation to justify a small amount of blood identified by investigators on her dress. Ultimately, her period of menstruation was barely questioned, or mentioned at all, within her trial—likely due to societal taboos and tensions regarding the discussion of such a private, feminine matter in such a public sphere. It was only brought up once, by the defense, to justify why Lizzie may have seemed disturbed or vacant during the original police questioning (Robertson 1996). Regardless of the lack of press paid toward the role menstruation in the Borden trial, many modern criminologists note an increase in the use of premenstrual syndrome (PMS) as justification for criminality of female defendants by their teams in court cases; this increase continues in the face of a mounting pile of medical doctrine to suggest that PMS should not be taken into account as an excuse or a factor in neither the legal nor criminal setting (D'Orbán 2009).

The only other widely held image of the female criminal able to commit this type of violence was that of the insane woman. Local papers pointed to the expectation that the only kind of person capable of such a crime was an insane man, but following Lizzie's arrest, attention focused on the possibility of her insanity (Conforti 2015). The District Attorney's office quickly reached out to several medical professionals to ask for help in analyzing Lizzie's mental health and stability. None of them were able to make any determinations on Lizzie's sanity based on the information provided by police interviews alone; thus, the office turned to the court of public opinion, conducting interviews with Borden family members and Fall River locals to draw up a clearer portrait of Lizzie's character (Conforti 2015). Many disclosed that Lizzie was "ugly" and "odd," yet no one suggested any history of insanity on either side of her family, and none suggested they believed in anything particularly evil about Lizzie's essence (Conforti 2015, 131). These findings further cemented the belief in Lizzie's innocence. A bratty daughter was not enough

explanation for the severity of Abby and Andrew's killings. Many members of the public thought, "if Lizzie Borden was guilty of murdering her father (and stepmother), then perhaps any apparently proper middle-class woman might be equally capable of such violence;" and this was a notion society was unwilling to accept (Robertson 1996, 356).

### The Trial

Lizzie Borden's trial began in June of 1893, almost a full year after the deaths of Andrew and Abby. From its start, Lizzie's privilege as a wealthy woman was a large factor in the quality of her defense and her treatment by the jury, a group of twelve local, white men. Over the course of the year, Lizzie had inherited half of her father's estate and fortune. This acquisition left her considerably wealthy and made her capable of assembling one of the best legal teams possible for her defense (Ford 2019). She was even able to afford the former governor of Massachusetts, George Robinson, to represent her as her lawyer. This proved to be a huge advantage. Not only was Robinson a skilled politician and legal expert, but he was also a celebrity and an esteemed member of the government with connections to many Massachusetts courts (Ford 2019). His simple endorsement of Lizzie's innocence was a huge component of her positive portrayal in the media and public over the course of the trial. Additionally, the poor work of the police effort during the original investigation had already cast a shadow across the prosecution's argument and telling of events (Conforti 2015).

Gender lay at the heart of Lizzie's public presentation while on trial. She played the role of the demure lady the whole time, dressing properly and framing herself in the light of the youngest daughter whose beloved father had been brutally murdered (Carlson 2010). Lizzie was constitutionally protected from being put on the stand at her own trial, and thus her appearance and physical representation, as well as her silence, were her greatest armor. The prosecution team focused its efforts primarily on the attack of her perceived womanhood. In their opening statement, they chose to focus the bulk of their argument on comments made by Lizzie about Abby Borden (Holba 2018). They implied that "no respectable girl would consider devaluing the worth of a family unit like Lizzie did" through the negative treatment of her stepmother, simultaneously implying that Lizzie was not a respectable girl, and suggesting that there was motive for her to commit the crime due to her public intrafamilial disdain (Holba 2018, 1). Ultimately, however, the prosecution failed in executing an effective defamation of Lizzie's character. Comparing her in-court statements to Lady Macbeth, the prosecutors inadvertently damaged their argument by attacking the sanctity of wealthy, white femininity—an image heralded and protected by many members of the jury, the media, and the public (Robertson 1996).

Lizzie's defense chose to center their argument around her femininity as well; however, they of course maintained it in a more positive and pure light. To the defense, Lizzie was an involved community member, a devout Christian, a loving daughter whose father was buried wearing a ring she had given to him as a symbol of their special bond (Robertson 1996). Lizzie cleverly supported the sentimentality of their argument through weeping openly at the description of the murders several times throughout the trial (Conforti 2015). In this way, the same gender bias that the prosecution used against Lizzie became the thing that upheld her image and thwarted her guilt in court (Holba 2018).

Modern portrayals of feminine criminality do not stray far from these Victorian-era established norms and dual, competing images. Into the 21st century, the media continues to frame female killers, kidnappers, and thieves as "aberration[s] of true womanhood," furthering the age-old assumption that femininity is pure and sanctified, and any female action that diverts from these

standards is therefore entirely unfeminine in nature (Easteal 2015, 4). In the modern media, this depiction of the impure and unfeminine female criminal becomes more developed and more profane through the observation of societal emphasis on the sexuality and “debauchery” that make up the identities of women suspected of murder (Easteal 2015, 25). This can be seen in the public fixation on Casey Anthony’s history of drug use, which floated to the forefront of her 2000s murder trial involving the mysterious disappearance and killing of her toddler-aged daughter, Caylee. The problematic nature of this portrayal is also evident in the 2007 trial of Amanda Knox, an American twenty-year-old whose private sex life was brought to the forefront of crime-related pop culture following the unsolved murder of Knox’s roommate in Italy. Even as society supposedly drifts away from many of the stereotypes surrounding femininity, court systems and public perception of criminality alike remain racked with traditional standards of womanhood and sexist implications regarding the violation of these same standards (Easteal 2015).

In the Borden case, however, the framing of Lizzie’s own femininity was not the only deployment of gender stereotypes and dynamics involved. Her lawyers also played off male stereotypes, and the masculine, monied presence of the jury as well. In one statement, George Robertson called directly on the jury to consider that establishing Lizzie’s innocence meant protecting the sanctity and purity of a good, proper woman (Ford 2019). Robertson understood the gendered dynamics of 19th century New England and used Lizzie’s perceived delicate nature as a reason to preserve her innocent status; he also saw how traditional notions of masculinity amongst the jurors would be threatened if they were to ruin the life of a seemingly innocent and sensitive woman (Ford 2019). Her lawyers also focused on the notion of reasonable doubt, encouraging the jury to remember that if they convicted Lizzie as guilty, they had to do so with absolute certainty. Their argument then centered around the idea that Lizzie’s identity and status was enough within itself to call into reasonable doubt her capability of committing the crime. In this way, her defense skillfully skirted around addressing or justifying many of the incriminating details and testimonial inconsistencies regarding the actual facts of the case (Carlson 2010). This defense platform was based on one of the central tenets of female criminality today: the chivalry theory. The chivalry theory explains the phenomenon in which women are subject to more lenient treatment within the justice system due to sentiments about the fragility of feminine figures, and the following societal desire to protect them (Islam 2014).

The closing statements on both sides of the trial focused intensely on gender stereotypes and traditional notions of womanhood. Ironically, both the defense and the prosecution assumed the same ideas of standard femininity; however, one argued for Lizzie’s fulfillment of these standards, while the other focused on the ways in which she did not meet them. Lizzie’s defense made the closing argument that Lizzie was an upstanding woman, whose physical and emotional capabilities made her unable to commit the murders being tried. It closed by proposing that the true murderer was an unknown male assassin who snuck into the home while Lizzie was preoccupied doing chores for the family, as any good domestic daughter would have been doing (Conforti 2015). The prosecution closed by arguing that Lizzie was a cold, greedy woman with immense spite towards her stepmother and jealousy regarding her father; in this way, they used traditional ideas of femininity to craft a petty, feminine motive that was culturally existent and understandable. The prosecution also made an uncomfortable show of recognizing the hurt their team personally felt in having had to assert the guilt of a woman so supposedly upstanding (Conforti 2015).

The jury presented their decision on June 20, 1893. It is thought that they reached their verdict within 10 minutes, although they waited to deliver the ruling for an hour so as to seem it

was fairly deliberated (Ford 2019). Lizzie was found not guilty. In response, the Massachusetts courtroom broke into cheers. She lived out the rest of her life in Fall River, alone in a new home paid for with her piece of Andrew's estate (Ford 2019).

### **Understanding Female Criminality**

Despite having taken place in the late 19th century, much of the gendered biases that underpinned the Borden case remain prevalent in the modern judicial system of today. Across the board, studies on the relationship between gender and law typically find that women are treated preferentially under the scrutiny and system of judicial courts. From receiving more favorable sentences, to being tried for less serious crimes, to being convicted at lower rates for the same offenses, almost all research done within modern courts nods toward the notion that not much has changed in the perception of the feminine criminal since 1893 (Nagel 1983). Many of these findings are linked to the societal assumption that, like the prosecution in the Borden case suggested in his odd closing remarks, women deserve to be treated “chivalrously” within the criminal system (Nagel 1983, 112).

There are four main theories that contribute to the criminological explanation of preferential treatment for female criminals: masculinity theories, opportunity theories, marginalization theories, and the aforementioned chivalry theory (Islam 2014). Masculinity theory suggests that feminine-presenting individuals are less likely to be convicted of crime because society ties criminality so intrinsically to physical manifestations of masculinity. In Lizzie’s case, masculinity theory played favorably for her legal team within court, as her status as a well-to-do, demure, white woman likely subconsciously cast doubt upon her capability to commit such a heinous crime. If the masculinity theory remains prevalent in the 21st century, it is no doubt that this theory was probably even more true to the times of the deeply sex-segregated 1800s (Islam 2014).

Opportunity theory asserts that women with access to more socioeconomic opportunity and mobility are less likely to commit acts of violent crime. Author Rita J. Simon first crafted the framework of opportunity theory in her 1975 book, *Women and Crime*. Her book details the ways in which education, liberation, independence, and opportunity allow for women to break away from much of the subjugation, dependence, and domestic abuse that accounts for so much of violent criminal action amongst the female population (Islam 2014). The Borden case as interpreted through the lens of opportunity theory becomes increasingly complex. While Lizzie’s family was wealthy and she had access to the benefits of this wealth, it was not hers, and as a woman in the 19th century, there was little she could do with it in terms of autonomous opportunity or independence. In this sense, Lizzie’s case for innocence may actually be weakened by the application of opportunity theory—a strategy that the prosecution utilized in their favor during trial. Portraying Lizzie as the subordinate daughter desperate to come into the wealth of the familial estate provided the most compelling motive as to why she may have committed the crimes (Islam 2014).

The marginalization theory on female criminality is likely the most obvious explicator of patterns and trends regarding conviction and sentencing amongst women in crime. Essentially, the marginalization theory is the statement of what contemporary empirical evidence has almost deemed fact: women at the margins of society—whether that be in terms of race, sexuality, class, etc.—are more likely to be associated with and subsequently convicted of violent crime within the modern judicial system (Islam 2014). Class-based implications and assumptions played arguably just as large of a role in the Borden case as gender; the principles of marginalization theory are

reflected in the treatment of Lizzie during her own appearances in court. Jurors and the public alike both perceived Lizzie as marginally less capable of committing murder because of her race and socioeconomic status. As noted earlier, many members of the viewing public did not want to disrupt their comfortable, Victorian-era assumptions surrounding race and class with the complicating image of a white, upper-middle class murderer (Robertson 1996).

The chivalry theory of feminine criminology is the theory most applicable to the Borden case itself. Chivalry theory implies that there is much more female criminality than females who are convicted criminals; it states that many women who do commit violent crime are declared not guilty despite their actual guilt (Islam 2014). Whether this was the case with Lizzie is, of course, it is impossible to say. However, as popular opinion begins to shift towards the assumption of Lizzie's unfound guilt, there is a growing validity to the potential claim that chivalrous sentiment, especially given the all-male jury, played a role into the public portrayal and perception of Lizzie as a woman so demure it would be unethical to subject her to the harm of conviction (Islam 2014).

Borden scholars also point to the gendered and historical context of Victorian New England as the defining feature in Lizzie's found innocence. The rise of the early feminist movement at the time of the Borden murders meant that the traditional image of womanhood was newly vulnerable, threatened seriously for the first time in American history. To convict Lizzie of murder would have been to inflict yet another dent upon the pureness of the feminine image, which in turn would batter the sanctity of the patriarchal family unit (Holba 2018). The jury of men who ruled in favor of Lizzie's innocence may have been more so ruling in favor of themselves, inadvertently protecting notions of the subjugated female so as to remain in power as the dominating male.

### **The Aftermath**

The Borden murders remain some of the most famous and intriguing in American mystery, and to this day remain unsolved. In a way, as it has been retold and reimagined, the truth of the case has become entirely secondary to the myth of it. Perhaps most strange is the century-spanning resonance of Lizzie as a sort of feminine icon and—despite the not guilty verdict—cult murderer. Since her death in the 1920s, Lizzie's legacy has been turned into a nursery rhyme, several movies, a host of TV series, and a play. While some of these cultural products of her cold case are factual, others are radically feminist and almost entirely imagined. One Sundance film from 2018, entitled "Lizzie," even portrays the falsified, sapphic re-telling of the family murders in which the titular character is driven to murder through sexual craze and jealousy (Duralde 2018). Whatever it may be, there is an evident, feminist edge behind the continual interpretation of Lizzie; it is as strange as it is fascinating.

There is also the question of whether or not her legacy is stereotypically harmful. While doing away with the monolithic image of sanctified and pure womanhood was likely both inevitable and helpful in progressing the feminist cause, replacing this single expectation with the duality of the femme fatale may be equally problematic, if not for its divisiveness than certainly for its sexualization and villainization of any female figure who diverges from the curated and innocent societal norm. In Lizzie's case, the societal embracement of these sexual and macabre fabrications denotes something objectifying and commodifying about the portrayal of feminine criminality and the notion of femme fatale.

Finally, the legacy of the Borden crime is interesting in that it hardly concerns whether or not Lizzie was actually guilty. The prevailing questions asked about the case seem more curious about whether or not her guilt matters. It is less a curiosity of the crime and more a curiosity of the defense: was her wealthy, white womanhood enough to buy innocence in the face of a growing

pile of guilt? The outcome of her trial suggests it was. For some, identity, may matter more than evidence in the face of conviction and crime.

## References

- Carlson, Cheree. 2010. "The Lizzie Borden Murder Trial: Womanhood and Asset and Liability." *Historical Journal of Massachusetts* 38(2).  
<https://go.gale.com/ps/anonymous?id=GALE%7CA308434623&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=02768313&p=AONE&sw=w> (Accessed March 13, 2021).
- Conforti, Joseph. 2015. *Lizzie Borden on Trial: Murder, Ethnicity, and Gender*. University of Kansas: University Press of Kansas.
- D'Orban, P.T. 2009. "Violent Crime and the Menstrual Cycle." *Cambridge University Press*.  
<https://www.cambridge.org/core/journals/psychological-medicine/article/abs/violent-crime-and-the-menstrual-cycle/4F146CE0F5FB5CFE8624E16E554641A3> (Accessed August 17, 2021).
- Duralde, Alonso. 2018. "'Lizzie' Film Review." *The Wrap*. <https://www.thewrap.com/lizzie-film-review-chloe-sevigny-kristen-stewart/> (Accessed June 8, 2021).
- Easteal, Patricia. 2015. "How Are Women Who Kill Portrayed in Newspaper Media? Connections with Social Values and The Legal System." *Women's Studies International Forum*.
- Ford, Christian. 2019. "The History of Lizzie Borden: Burying The Axe." *JMU Scholarly Commons*.  
<https://commons.lib.jmu.edu/cgi/viewcontent.cgi?article=1725&context=honors201019>. ( Accessed April 14, 2021).
- Holba, Annette. 2018. "The Rhetoric of Gender Bias in Victorian New England: The Ongoing Dialectic." *The Hatchet: A Journal of Lizzie Borden and Victorian Studies* 1(1).  
<https://lizzieandrewborden.com/HatchetOnline/the-rhetoric-of-gender-bias-in-victorian-new-england-the-ongoing-dialectic.html> (Accessed March 31, 2021).
- Islam, Mohammed. 2014. "Theories of Female Criminality: A Criminological Analysis." *International Journal of Criminology and Sociological Theory* 7(1).  
<https://ijcst.journals.yorku.ca/index.php/ijcst/article/download/39737/35977> (Accessed April 4, 2021).
- Lincoln, Victoria. 1967. *A Private Disgrace*. Seraphim Press.
- Nagel, Ilene. 1983. "Gender and Crime: Offense Patterns and Criminal Court Sanctions." *Crime and Justice* 4: 91–144.  
[https://www.jstor.org/stable/1147507#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/1147507#metadata_info_tab_contents) (Accessed March 30, 2021).

Robertson, Cara. 1996. "Representing Miss Lizzie: Cultural Convictions in the Trial of Lizzie Borden." *Yale Journal of Law & Humanities* 8: 351- 416.  
<https://digitalcommons.law.yale.edu/yjlh/vol8/iss2/2/> (Accessed March 30, 2021).

Schofield, Ann. 1993. "Lizzie Borden Took An Axe: History, Feminism, and American Culture.: *American Studies* 34 (1). <https://journals.ku.edu/amsj/article/view/2852> (Accessed March 28, 2021).