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**TRIAL BY PUBLIC OPINION:  
The Relationship Between the Media and the Criminal Justice  
Process Seen Through the Case of Williamina “Minnie” Dean.**

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*Abstract*

Williamina “Minnie” Dean was convicted of infanticide in 1895 and became known as the only woman to have been executed in New Zealand’s history. However, her case had been a sensation from the moment she was arrested. This is due to the media’s extensive coverage of her case. The media have always been an integral part to the criminal justice process in order to fulfil the right to freedom of expression and free press. However, this right has always competed with the right for a defendant to have a fair and impartial trial. Therefore, the criminal justice process must try and balance these two principles in order for the best outcome to arise. This paper examines the balancing of these two principles through the real life case of Minnie Dean. This paper works through how the media was able to affect different procedural aspects of the case’s criminal process. Ultimately, the media did have a negative effect on Minnie Dean’s right to a fair and impartial criminal justice process. Modern day New Zealand has a lot more checks in place to make sure the right to a fair trial and free press are better balanced compared to the late 19th century. However, Minnie Dean’s case still highlights how important it is to make sure a defendant can have a fair process while also making sure the media can express the information to the public at large.

**Key terms:** ‘Criminal Justice Process’, ‘Fair Trial’, ‘Media’, ‘Minnie Dean’

## *Table of Contents*

Abstract.....	2
I Introduction.....	4
II Media Involvement in the Criminal Justice Process.....	5
III Setting the Scene.....	6
A 19th Century New Zealand Journalism .....	6
B The Idea of Baby Farming in 19th Century New Zealand .....	9
C Background of Minnie Dean .....	12
IV How the Media Affected Minnie Dean’s Case.....	14
A Change of Venue .....	14
1 Legal Procedure .....	14
2 The Media’s Effect on Minnie’s Case .....	16
B Jury of the Supreme Court Trial .....	19
1 Legal Procedure .....	19
2 The Media’s Effect on Minnie’s Case .....	20
C Executive Council.....	25
1 Legal Procedure .....	25
2 The Media’s Effect on Minnie’s Case .....	26
V Conclusion .....	29
VI Bibliography .....	31

## *I Introduction*

On 10 May 1895 Invercargill and New Zealand were rocked by scandal. Newspapers were reporting the arrest of one Williamina “Minnie” Dean at her home in Winton the day before, charged with the murder of an infant named Eva Hornsby. There followed one of New Zealand’s most highly publicised cases for its time and to date. Minnie was eventually convicted and executed for the death of another infant Dorothy Edith Carter.

Minnie did not only solidify her name in New Zealand history because she was the only woman to have received the death penalty; but also because of how sensational the case was itself. To this day folk tales and myths are still told about Minnie Dean.<sup>1</sup> The story of Minnie Dean still lives on due to hoards of detailed coverage from the newspaper media. Thankfully, these newspaper articles are still in existence, and are easily accessible to the public, having been helpfully added to the National Library of New Zealand’s digital database, *Papers Past*.<sup>2</sup> Another key source was Lynley Hood’s *Minnie Dean: Her Life and Crimes*, which not only gives a thorough walk through of events, but also helps gauge the public sentiment at the time.<sup>3</sup>

Since the case was so thoroughly reported from the moment Minnie was arrested; it brings into question the age-old debate on whether media involvement affected the outcome of the case. Many studies have looked at the effects of the media on the criminal process; however they are usually simulated studies.<sup>4</sup> This paper is going to attempt to show the effect the media can have on the New Zealand criminal process using the real case of Minnie Dean. This paper’s ultimate conclusion being that the media did negatively affect the criminal process. This paper is not arguing that Minnie should not have been convicted of murder, this subject already having been thoroughly delved into, and there are other factors that could still have led to a guilty verdict. Nor is this paper arguing whether the proper criminal process was adhered to, that already having been done by Sophie Davis’ *Hung Out to Dry? Questioning the Legality of Minnie Dean’s 1895 Trial and Execution*,

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<sup>1</sup> Lynley Hood *Minnie Dean: Her Life and Crimes* (Penguin Books, Auckland, 1994) at 23 – 30.

<sup>2</sup> <[www.paperspast.natlib.govt.nz](http://www.paperspast.natlib.govt.nz)>.

<sup>3</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1.

<sup>4</sup> Christina Studebaker and Steven Penrod “Pretrial Publicity: The Media, the Law, and Common Sense” (1997) 3 PSYCHOL. PUB. POL’Y & L. 428 at 433 – 438.

which was also a great help in inspiring this paper.<sup>5</sup> Instead, this paper will explore how the media was one of the main factors that led to the conviction and execution of Minnie Dean.

## *II Media Involvement in the Criminal Justice Process*

Media and the criminal justice process have a long history together. It has been the subject of much scholarship around the world, especially in the United States. The United States Constitution has a conflict between the First and Sixth Amendments, where the former allows for free press (which can include prejudicial information to a jury), while the latter guarantees a person the right to be heard in front of an ‘impartial jury’.<sup>6</sup> Currently New Zealand has a similar conflict with ss 14 and 25 of the New Zealand Bill of Rights Act 1990. However, nothing in the New Zealand Bill of Rights is ultimately new; instead, it collated many older legal concepts into one statute.<sup>7</sup> The New Zealand legal system had actually been grappling with the free press and fair trial conflict from the moment the criminal process was set up in the 19th century. There are now safe guards in place to make sure the media does not give out certain information while a case is proceeding through the courts.<sup>8</sup> However, prior to 1905, it was very much in the media’s favour; as they could report on any aspect of criminal proceedings, and decided themselves what information was best not to be published, which as you will see, was very little.<sup>9</sup>

It is not as simple as saying the media is there as the middle man reporting facts of cases to the public. Or to say the media is there to satisfy our, “hunger for scintillating, scandalous and sordid stories”.<sup>10</sup> The media can be seen as a key tool for the open justice principle.<sup>11</sup>

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<sup>5</sup> Sophie Davis “Hung Out to Dry? Questioning the Legality of Minnie Dean’s 1895 Trial and Execution” (2015) 46 VUWLR 115.

<sup>6</sup> Wayne Overbeck *Major Principles of Media Law* (Thomson Higher Education, Boston, 2008) at 287; United States Constitution, amend I and VI.

<sup>7</sup> Geoffrey Palmer “A Bill of Rights for New Zealand: A White Paper” [1984-1985] I AJHR A6 at 21.

<sup>8</sup> Contempt of Court Act 2019, s 7.

<sup>9</sup> Francine Tyler “What’s in a Name? A history of New Zealand’s unique name suppression laws and their impact on press freedom” (2020) 26 Pacific Journalism Review 279 at 279.

<sup>10</sup> Susan Hanley Duncan “Pretrial Publicity in High Profile Trials: An Integrated Approach to Protecting the Right to a Fair Trial and the Right to Privacy” (2008) 34 Ohio N U L Rev 755 at 757.

<sup>11</sup> Tyler “What’s in a Name?”, above n 9, at 279.

It helps educate and make people feel involved in the process; which also helps, “foster public confidence in the judicial process”.<sup>12</sup> The media can help make sure people and governments are held accountable for their actions.<sup>13</sup> It can also help solve evolving crimes.<sup>14</sup> However, there is always the dark side to media involvement. The defendants right to a fair trial can be impeded if jurors or judges hear information from the media and form a biased view before the trial evidence itself.<sup>15</sup> Especially if the information provided by the media is not given or inadmissible at trial, which usually undermines the presumption of innocence principle.<sup>16</sup> Media reporting prior to witnesses going on the stand can potentially influence their memories and distort facts.<sup>17</sup> Media may also simply get the information wrong which could therefore jeopardise a case. Also, outside of the criminal process itself, society can be harmed if they are forced to pick sides before an outcome has been made through the legal system.<sup>18</sup> Many of these issues will be seen in Minnie’s case.

### *III Setting the Scene*

#### *A 19th Century New Zealand Journalism*

By 1895 the main source of news came from the local newspapers. Newspapers were established in New Zealand early in the 1840s mainly by British immigrants, to help fortify New Zealand colonial ties with Britain by, “provid[ing] important links to ‘home’”.<sup>19</sup> Initially newspapers were found in bigger European settlements, however with the expansion of ‘communication links’ for example railway and road links; more newspapers

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<sup>12</sup> Duncan, above n 10, at 757.

<sup>13</sup> Duncan, above n 10, at 757.

<sup>14</sup> Duncan, above n 10, at 757.

<sup>15</sup> Nico Rogge “Prior Restraints on Media Coverage of Criminal Trials: Critique of New Zealand's Approach to Shift the Balance between the Right to a Fair Trial and Freedom of Expression” (LL.M Research Paper, Victoria University of Wellington, 2011) at 13.

<sup>16</sup> Rogge, above n 15, at 13.

<sup>17</sup> Rogge, above n 15, at 13.

<sup>18</sup> Duncan, above n 10, at 762.

<sup>19</sup> Ross Harvey “Newspapers” in Penny Griffith, Keith Maslen, Ross Harvey (eds) *Book & Print in New Zealand: A Guide to Print Culture in New Zealand* (Victoria University Press, Wellington, 1997) 128 at 128.

were being established in local towns in country areas like Taranaki and Southland.<sup>20</sup> For example, 16 newspapers had been founded in New Zealand by 1851, which then grew exponentially to 181 newspapers being founded between the years 1860 and 1879.<sup>21</sup> Many newspapers did not last long but some newspapers were able to stabilise when their settlements “became more established”.<sup>22</sup>

New Zealand newspapers adopted from the British the same enthusiasm to report news on crime and court hearings. Court reporting in newspapers can be traced back to the inception of newspapers in England.<sup>23</sup> However, even before the creation of the newspaper, “news about crime, disasters and extraordinary events had always commanded attention”.<sup>24</sup> For a newspaper to succeed, it had to supply readers with what they were interested in which usually included sensational crime stories.<sup>25</sup> By the late 18th century, in England newspapers were the main source of news on crime and justice.<sup>26</sup> In New Zealand the Criminal Code Act 1893 stated detailed official records for criminal court proceedings were not needed; the Crown Book only needed to hold summary information on the judge, jurors, result and a, “memorandum of the substance of all proceedings”.<sup>27</sup> Instead newspapers were the main source of detailed accounts of trial proceedings. This can be seen with Minnie’s case, where much of the Southland newspapers practically printed transcripts of each day of the coroner’s inquests and trial.<sup>28</sup> Newspapers also relied on reporting personal stories and anecdotes to create scandal.<sup>29</sup>

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<sup>20</sup> Harvey “Newspapers”, above n 19, at 129.

<sup>21</sup> Harvey “Newspapers”, above n 19, at 128.

<sup>22</sup> Harvey “Newspapers”, above n 19, at 129.

<sup>23</sup> Peter King “Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth and Early-Nineteenth-Century London” (2007) 22 *Continuity and Change* 73 at 74.

<sup>24</sup> David Hastings *Extra! Extra! : How the People Made the News* (Auckland University Press, Auckland, 2013) at 6.

<sup>25</sup> Hastings, above n 24, at 3.

<sup>26</sup> King, above n 23, at 74.

<sup>27</sup> Criminal Code Act 1893, s 390.

<sup>28</sup> “The Winton Child Murders” *Otago Daily Times* (Otago, 19 June 1895) at 4; “Winton Child Murders” *Otago Daily Times* (Otago, 20 June 1895) at 3.

<sup>29</sup> Bronwyn Dalley “Criminal Conversations: Infanticide, Gender and Sexuality in Nineteenth-Century New Zealand” in Caroline Daley and Deborah Montgomerie (eds) *The Gendered Kiwi* (Auckland University Press, Auckland, 1999) 63 at 71.

The introduction of the telegraph in the 1860s also helped spread news across the country quicker. The telegraph also, “caused a major shift in focus from local opinion to news from a wider catchment area”.<sup>30</sup> The first telegraph lines were established in the South Island in 1862. The South Island and North Island were connected in 1866 with a cable running across the Cook Strait. Auckland was also connected to Wellington by telegraph in 1872 which ran through Tauranga, Taupō, and Napier.<sup>31</sup> Now connecting most of the main centres. New Zealand was connected to the rest of the world, especially Britain, in 1876 with the laying of the trans-Tasman cable.<sup>32</sup> The telegraph now made it possible for people, “to know about situations existing simultaneously in a number of centres”.<sup>33</sup> By the end of the 19th century telegraph news was, “an essential part of a newspaper,” and just accepted as part of everyday journalism.<sup>34</sup>

Not everyone was literate in the late 19th century, however, literacy skills in New Zealand had been steadily rising throughout the century. In the early to mid-19th century schooling was sporadic, being established by churches or individuals.<sup>35</sup> However, in 1877 the Education Act came into force, which, “began the standardisation of reading systems and readers”.<sup>36</sup> Newspapers were also involved in raising the New Zealand literacy rates; students who had newspapers in their homes were, “better readers...better spellers...better grammarians...[and exhibit] a more extensive knowledge on a greater variety of subjects”.<sup>37</sup>

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<sup>30</sup> Harvey “Newspapers”, above n 19, at 129.

<sup>31</sup> A. Wilson “Telecommunications” (11 March 2010) Te Ara: The Encyclopaedia of New Zealand <[www.teara.govt.nz](http://www.teara.govt.nz)>.

<sup>32</sup> Ross Harvey “Bringing the News to New Zealand: The supply and control of overseas news in the nineteenth century” (2002) 8 *Media History* 21 at 27.

<sup>33</sup> Harvey “Bringing the News to New Zealand”, above n 32, at 23.

<sup>34</sup> Harvey “Bringing the News to New Zealand”, above n 32, at 31.

<sup>35</sup> Lydia Wevers “Reading and Literacy” in Penny Griffith, Keith Maslen, Ross Harvey (eds) *Book & Print in New Zealand: A Guide to Print Culture in New Zealand* (Victoria University Press, Wellington, 1997) 212 at 212.

<sup>36</sup> Wevers, above n 35, at 214.

<sup>37</sup> Ross Harvey “The Power of the Press in Colonial New Zealand: More Imagined than Real?” (1996) 20 *BSANZ Bulletin* 130 at 134.



Therefore, 19th century journalism was a perfect way to spread the fear and moral indignation of baby farming around New Zealand.

### ***B The Idea of Baby Farming in 19th Century New Zealand***

Baby farming was the result of ideals from the Victorian period.<sup>38</sup> Respectability in society was key; therefore, illegitimate children would ruin such respectability.<sup>39</sup> There were multiple options for this problem; raise the child alone and lose any respect you have in society, have the grandparents raise the child as their own, or persuade the father to pay for a permanent child minder (unofficial adoption). But if these options were not possible women were left with, infanticide, committing suicide or trying abortion.<sup>40</sup>

‘Baby-farming’ was first coined in 1860s England by the British Medical Journal (BMJ).<sup>41</sup> In 1868 the BMJ published an exposé on lying-in institutions which captured baby farming in a broader sense and insinuated the idea, “all working-class women [wanted] to destroy infant lives”.<sup>42</sup> It described these women as “unscrupulous,” “nefarious,” and “shameful,” which journals, newspapers and political figures started to repeat.<sup>43</sup> It created the idea of a baby-farmer being, “a corrupt and unnatural businesswomen;” branding them as criminals.<sup>44</sup> This exposé was further helped with the highly publicised trial of Margaret Waters in 1870. The prosecution argued Waters, with her sister, created a system to profit from disposing of unwanted babies. They were paid by the parents to take the children; then let the children die and abandoned them on London streets.<sup>45</sup> Thus, solidifying to the

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<sup>38</sup> Ginger Frost *Illegitimacy in English Law and Society, 1860-1930* (1st ed, Manchester University Press, Manchester, 2016) at 2.

<sup>39</sup> Frost, above n 38, at 2.

<sup>40</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 91-92; Ministry for Culture and Heritage “Baby Farmers” (21 June 2016) NZ History <[www.nzhistory.govt.nz](http://www.nzhistory.govt.nz)>.

<sup>41</sup> Ruth Ellen Homrighaus “Wolves in Women’s Clothing: Baby-Farming and the British Medical Journal, 1860-1872” (2001) 26 *Journal of Family History* 350 at 357.

<sup>42</sup> Homrighaus, above n 41, at 357.

<sup>43</sup> Homrighaus, above n 41, at 357 – 358.

<sup>44</sup> Homrighaus, above n 41, at 358.

<sup>45</sup> Homrighaus, above n 41, at 359.

public how ghastly baby farming was.<sup>46</sup> These views followed British settlers to the small colony of New Zealand.

The views on baby farming in New Zealand were heightened with news reports of high profile cases from Britain and Australia, such as Margaret Waters.<sup>47</sup> The two most reported and sensationalised cases that stirred up public opinion in New Zealand came from Australia in 1892 and 1893. The case of Sarah and John Makin in Sydney; and Frances Knorr in Melbourne, respectively. On 3 November 1892 Sarah and John Makin were arrested when police unearthed five infant bodies in their garden. In all, 13 bodies were found in backyards of 11 homes they had lived in since 1890.<sup>48</sup> The Makin's were both found guilty for the death of an unknown infant and sentenced to death; however Sarah Makin's sentence was commuted to penal servitude for life. Frances Knorr was convicted of murdering two infants, "on or about 11 April 1893".<sup>49</sup> Knorr was an easy target as she was no longer a respectable women. Before she was accused, her husband had been sent to jail, and her second child was conceived while he was there.<sup>50</sup> The two infants she was accused of killing were other people's children, therefore, she was labelled a baby farmer.<sup>51</sup> Unlike Sarah Makin, Frances Knorr was executed at the Old Melbourne Gaol on 15 January 1894.

*Papers Past* shows New Zealand newspapers extensively reported on both cases, but especially the Makin case.<sup>52</sup> The media used both cases to highlight and ingrain in people how horrid baby farming in general was. At the start of the Makin case, newspapers like the *Wanganui Chronicle*, had stated it, "promises to be one of the most sensational baby

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<sup>46</sup> Homrighaus, above n 41, at 358 – 359.

<sup>47</sup> Ministry for Culture and Heritage "Baby Farmers", above n 40.

<sup>48</sup> Heather Radi "Makin, John (1845-1893)" in National Centre of Biography (ed) *Australian Dictionary of Biography* (Australian National University, 2005).

<sup>49</sup> Lucy Sussex "A Murdering Mother: Frances Knorr" in Ellen Bayuk Rosenman, Claudia Klaver (eds) *Other Mothers* (Ohio State University Press, Ohio, 2008) 163 at 163.

<sup>50</sup> Sussex, above n 49, at 163.

<sup>51</sup> Sussex, above n 49, at 163.

<sup>52</sup> <[www.paperspast.natlib.govt.nz](http://www.paperspast.natlib.govt.nz)>, above n 2; "The Sydney Baby-Farming Case" *New Zealand Herald* (Auckland, 15 November 1892) at 5; "Baby-Farming in Sydney" *Timaru Herald* (Canterbury, 22 March 1893) at 4.

farming cases unearthed in the [New South Wales] colony”.<sup>53</sup> The infants in the Makin case are described as, “cruelly murdered,” and everyday there was a, “new development of a horrifying character”.<sup>54</sup> They reiterated that the Makin’s, “were carrying on the nefarious and hellish trade of baby-farming, destroying the lives of infants for paltry gain”.<sup>55</sup> When Knorr was executed the *Auckland Star* wrote, “the unhappy woman whose name has been rendered so infamous in connection with the recent baby-farming cases, paid the just penalty of her crimes at the Melbourne gaol yesterday,” and she, “seems to have been quite as callous as the notorious Makins”.<sup>56</sup>

From these influences, newspapers started to report on suspected baby farmers in New Zealand, yet most of it was, “more smoke than fire”.<sup>57</sup> In 1884 newspapers published a Dunedin coroner noting, “something very much akin to baby farming exists in Dunedin,” yet the child had died of natural causes.<sup>58</sup> In 1890 there was a headline, “Baby Farming in Dunedin. Horrible Revelations,” however, it was a charge for neglecting children with no signs of death.<sup>59</sup> In 1889 a police survey into baby farming was done, with all districts but Dunedin reporting they only had “honest caregivers”.<sup>60</sup> The police inspector in Dunedin reported, “some few cases of baby-farming have cropped up”.<sup>61</sup> Yet, by 1893 the Commissioner of Police was reported saying, “I have no hesitation in saying that the evil of “Baby-Farming” exists in this Colony to a large extent,” claiming just in Christchurch he knew of 20 baby farms.<sup>62</sup>

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<sup>53</sup> “Horrible Discovery Near Melbourne” *Wanganui Chronicle* (Wanganui, 5 November 1892) at 2.

<sup>54</sup> “The Latest” *Colonist* (Nelson, 14 November 1892) at 3; “Special to the Press” *Press* (Canterbury, 22 November 1892) at 5.

<sup>55</sup> “The Makin Trial” *Temuka Leader* (Canterbury, 18 April 1893) at 4.

<sup>56</sup> “The Evening Star: With Which Are Incorporated, Tuesday, January 16, 1894” *Auckland Star* (Auckland, 16 January 1894) at 4.

<sup>57</sup> Ministry for Culture and Heritage “Baby Farmers”, above n 40.

<sup>58</sup> “Baby Farming at Dunedin” *Manawatu Standard* (Manawatu, 17 January 1884) at 3.

<sup>59</sup> “Baby Farming in Dunedin” *Press* (Christchurch, 7 November 1890) at 5.

<sup>60</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 92; Ministry for Culture and Heritage “Baby Farmers”, above n 40.

<sup>61</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 92.

<sup>62</sup> Ministry for Culture and Heritage “Baby Farmers”, above n 40.

Minnie Dean's arrest being at the height of the baby farming moral panic, was therefore, unfortunate timing.

### ***C Background of Minnie Dean***

Minnie Dean arrived in Invercargill from Scotland, by way of Tasmania in the early 1860s with two young daughters. Minnie married innkeeper Charles Dean in Etal Creek, Southland, on 19 June 1872. The Deans adopted their first child Margaret Cameron in 1880. In 1887, Charles, Minnie, and Margaret (Minnie's girls having been married off), moved to Winton. They took up occupancy in a two-story house named the Larches. Unfortunately, the house burned down not long after, and from the remains Charles built a small cottage made up of two rooms and a lean-to.<sup>63</sup>

Minnie started taking in babies for money with her first advertisement in April 1889.<sup>64</sup> In all it has been calculated Minnie minded 27 children from 1889 until her arrest; however, only 19 have been identified.<sup>65</sup> Not unexpectedly, some of these children were known to have died, as there was a mortality rate of 85 deaths per 1,000 live births a year at the time.<sup>66</sup> However, the eight unidentified children and knowing at least six identified children died, shows the mortality rate in Minnie's care was over this expected rate.<sup>67</sup>

Some of the earlier deaths had led Minnie into hot water, like the death of a six-week-old infant in March 1891. Minnie was discharged of any wrong doing by the following coroner's inquest, but it was noted the Larches was unsuitable for children, and legislation was needed.<sup>68</sup> However, in the public's eyes Minnie was now thought of as a baby farmer just like the stories from overseas.<sup>69</sup> Minnie vowed from that moment there would be no

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<sup>63</sup> Lynley Hood "Dean, Williamina" (7 June 2013) Te Ara: The Encyclopaedia of New Zealand <[www.teara.govt.nz](http://www.teara.govt.nz)>.

<sup>64</sup> "Page 3 Advertisements Column 1" *Southland Times* (Otago, 18 April 1889) at 3.

<sup>65</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 94.

<sup>66</sup> Hood "Dean, Williamina", above n 63; Kerryn Pollock "Child and Youth Health – Health Status of Children and Young People" (5 May 2011) Te Ara: The Encyclopaedia of New Zealand <[www.teara.govt.nz](http://www.teara.govt.nz)>.

<sup>67</sup> Hood "Dean, Williamina", above n 63.

<sup>68</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 104.

<sup>69</sup> Hood "Dean, Williamina", above n 63.

other inquests, and would no longer cooperate with police.<sup>70</sup> Minnie also did not help herself when she declined to register under the new Infant Life Protection Act 1893; and also breached the Act in July 1894.

The alleged events happened from Monday 29 April to Saturday 4 May 1895. Minnie left the Larches on Monday to collect Dorothy Edith Carter in Bluff on the Tuesday and then returned home. On Thursday Minnie went to collect Eva Hornsby. Minnie took Dorothy, her purse, and a hat box to carry a few larger items.<sup>71</sup> Due to train times, Minnie had to break the trip at Dipton and spend the day at the Dipton Hotel. Here, Dorothy, according to Minnie and hotel staff, looked ill. Minnie had given Dorothy two doses of Laudanum before leaving the house that morning. Laudanum was a common opiate used to soothe children at the time.<sup>72</sup> In Minnie's last statement she says, it was on the train ride from Dipton to Lumsden when she realised the child was dead.<sup>73</sup> Not knowing what to do, she placed the child in her hat box and made the decision to continue on and pick up Eva from Eva's grandmother at Milburn.<sup>74</sup> Minnie then continued on to Clarendon, before getting out and waiting for the train to take her back south. While waiting, it is here, Minnie claims Eva Hornsby died.<sup>75</sup> She claims she had placed Eva on the bench, and while busy tying up her packages the child rolled over onto the ground, Minnie had, "made a spring to catch her, but was too late".<sup>76</sup> Though this seems unlikely, since Minnie was the only witness we will never know what truly happened. However we do know Minnie continued on the next train to Clinton to stay the night, before heading home to the Larches on 4 May, now with two deceased infants in her hatbox.

Minnie's travels did not go unnoticed. A newsagent saw Minnie and Eva's grandmother in the same carriage, and suspected an exchange of the child was happening. When he found

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<sup>70</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 104.

<sup>71</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 121.

<sup>72</sup> Hood "Dean, Williamina", above n 63.

<sup>73</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 122.

<sup>74</sup> "Minnie Dean's Last Statement" in Ken Catran *Hanlon: A Casebook* (BCNZ Enterprises, Auckland, 1985) at 171.

<sup>75</sup> "Minnie Dean's Last Statement", above n 74, at 172.

<sup>76</sup> "Minnie Dean's Last Statement", above n 74, at 172.

out Minnie did not arrive in Clinton with a child he alerted the authorities. The police tracked the grandmother down and confirmed Eva had been handed over to Mrs Dean. On 9 May 1895, the police decided to take the grandmother to the Larches to confront Mrs Dean. Clothing of Eva's were found, and Minnie was arrested, charged with murdering Eva Hornsby, "on or about the 3<sup>rd</sup> May, 1895".<sup>77</sup> The police soon uncovered two female infants and a skeleton of a boy said to be around 4-years-old in the garden.<sup>78</sup> The day the two infants were found Charles Dean was also arrested and charged with murder.<sup>79</sup>

Even though the first coroner's inquest was not opened until 14 May 1895, by 10 May news of Minnie's arrest was spreading throughout New Zealand. The public's trial of Minnie Dean had begun.

#### *IV How the Media Affected Minnie Dean's Case*

To reiterate, this essay is not arguing Minnie was guilty of manslaughter instead of murder. There are other factors that led to Minnie's guilty verdict, such as, Williams J's directions to the jury; Minnie's defence counsel, Alfred Hanlon, deciding to give a closing argument over putting Minnie on the stand; or even the fact the evidence may have just clearly shown she was guilty of murder.<sup>80</sup> This essay is arguing the media negatively affected the trial process and was a significant factor that led to Minnie's execution. If there was no press, Minnie may have still been found guilty of infanticide on these other factors.

This essay is now going to look into a few aspects of the criminal process where the media had a negative effect.

#### *A Change of Venue*

##### *1 Legal Procedure*

Change of venue was one remedy created to curb the freedom newspapers had on writing about cases pre-trial. There had been many unsuccessful attempts in England to limit pre-

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<sup>77</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 128.

<sup>78</sup> Hood "Dean, Williamina", above n 63.

<sup>79</sup> "Further Particulars" *Otago Daily Times* (Dunedin, 14 May 1895) at 7.

<sup>80</sup> Davis, above n 5, at 129 – 136.

trial reporting on cases since the 1780s.<sup>81</sup> Eventually, the idea for a change of venue came in the 19th century. Initially the King's Bench sparingly made orders of a change of venue. The Central Criminal Court Act 1856 was then enacted, initially in response to the case of William Palmer.<sup>82</sup> William Palmer had been accused of poisoning his friend, and ordinarily would have been tried in Staffordshire; however there was so much local prejudice the Act allowed for his trial to be held in the Central Criminal Court in London.<sup>83</sup> Even with the new Act, the attitude toward granting these orders did not change, and only very strong cases of prejudice were ever granted.<sup>84</sup>

In New Zealand the Criminal Code Act 1893 stated a Judge of the Supreme Court could move a case from the Court of committal to another Court either in the same district or in another district if needed.<sup>85</sup> An application can be made to the Judge either when sitting in Court or in Chambers, and the accused does not need to be present.<sup>86</sup> The Judge must believe it is, "expedient for the ends of justice".<sup>87</sup> The Judge also must consider in making their decision, "conditions as to bail, the payment of the costs of the prosecutor and witnesses, and of the removal and transmission ... of the indictment... of the removal of the person charged, and as to any other matter or thing whatsoever as such Judge may, in his discretion, impose".<sup>88</sup> However, judges, like in England, only granted them sparingly. Change of venue orders were usually only granted if it was similar to the Palmer case, where "a community [was] so shocked at a crime that a prisoner could not obtain a fair trial," therefore needing to be more than just an ordinary interest in the case.<sup>89</sup>

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<sup>81</sup> David Bentley *English Criminal Justice in the 19th Century* (The Hambledon Press, London, 1998) at 45 – 47.

<sup>82</sup> Central Criminal Court Act 1856 (UK) 19 Vict c 16.

<sup>83</sup> George Knott *Trial of William Palmer* (William Hodge & Company, Edinburgh and London, 1912) at 12.

<sup>84</sup> Bentley, above n 81, at 47.

<sup>85</sup> Criminal Code Act, s 347.

<sup>86</sup> Section 347(2).

<sup>87</sup> Section 347(1).

<sup>88</sup> Section 347(2).

<sup>89</sup> *Regina v Leggatt* (1900) 19 NZLR 317 at 318.

## 2 *The Media's Effect on Minnie's Case*

The magisterial hearing was held from 6 June to 8 June 1895. The Court being, “so packed that the railing around the dock threatened to collapse under pressure from the surging crowd”.<sup>90</sup> The hearing ended with Charles Dean being discharged, and Minnie Dean being committed to trial in the Supreme Court. The story from the Hanlon family is that soon after the hearing ended Alfred Hanlon applied for a change in venue in Chambers. Hanlon wanted the Supreme Court trial moved from Invercargill to Christchurch.<sup>91</sup> He argued that there was too much pre-trial publicity in Invercargill for the Supreme Court trial not to be prejudiced.<sup>92</sup> This can be seen with the packed courtroom at the hearing, and also by way of Minnie Dean being marched through angry crowds, from Milton Railway Station to the court house and back, handcuffed to Detective-sergeant McGrath.<sup>93</sup>

The change of venue was denied. There would have been other factors the Judge had in mind when making the decision, such as the cost and moving the witnesses. However, the main consideration would still have been around the media and public prejudice. The judge would likely have known the media coverage of this case had now widely spread across the country. There was also no evidence that a Christchurch jury would be any better than an Invercargill jury. To be on the jury men had to be lawful, of sound mind, and be of “good fame and character,” suggesting many would have kept up with the case, either by reading the newspapers, or at least the information from the newspapers would have been spread by word of mouth to those that could not read them, due to it being such a big topic.<sup>94</sup> The case was also tapping in to the big moral issue of baby farming that had been stirred up by the press for a long time beforehand, opinion on such a subject was most likely not going to be much different in any other region. However, the jury in a different region may have looked at the case more factually, instead of emotionally like Southlander's did.

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<sup>90</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 144.

<sup>91</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 150.

<sup>92</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 150 – 153.

<sup>93</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 136.

<sup>94</sup> Michèle Powles “A Legal History of the New Zealand Jury Service – Introduction, Evolution, and Equality?” (1999) 29 VUWLR 283 at 286 – 289.



However, Christchurch still would not have been much of a better location. Canterbury newspapers were relaying the same type of information as in Otago/Southland. For example, multiple newspapers in Canterbury relayed information from the *Otago Daily Times* that the house was a, “miserable place... and is far from clean,” “the whole surroundings are extremely wretched and squalid,” and “it is difficult to conceive how any mother with the slightest spark of feeling could consent to her child being brought up in such an environment”.<sup>95</sup> Many other articles were headlined with words such as “The Baby Farmers,” “The Child Murder Cases” and “The Winton Murder Case,” which shows that no explanation was needed once the title was read, everyone knew exactly who the article was going to be about.<sup>96</sup>

If the considerations of costs and transferring witnesses were taken out, no matter where the case was tried in New Zealand people knew about Minnie Dean. The use of the telegraph meant newspapers all across the country were able to get the same up to date information from the reporters in the south. Less than a week after Minnie’s arrest, details had already got around about how she was arrested, how the police had been keeping an eye on her, and the news of the bodies and the skull in the garden.<sup>97</sup> Other articles speculated how the children had died, the nature of Minnie’s business, and explained the police’s theory in detail.<sup>98</sup> Newspapers across the country were able to publish the same long, detailed transcripts of each day of all of the coroner’s inquests and outcomes of them.<sup>99</sup> The Wellington newspaper, the *Evening Post* even titling each new article before the case started “The Winton Horror” (the newspaper then changed to titling articles “The

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<sup>95</sup> “The Baby Farmer” *South Canterbury Times* (Canterbury, 16 May 1895) at 3; “The Winton Murder Case” *Ashburton Guardian* (Canterbury, 17 May 1895) at 2.

<sup>96</sup> “The Baby Farmers” *South Canterbury Times* (Canterbury, 29 May 1895) at 2; “The Child Murder Cases” *Star* (Canterbury, 16 May 1895) at 3; “The Winton Murder Case” *Timaru Herald* (Canterbury, 30 May 1895) at 3.

<sup>97</sup> “Alleged Child-Murders” *New Zealand Mail* (Wellington, 17 May 1895) at 31; “The Winton Baby Murders” *Poverty Bay Herald* (Gisborne, 16 May 1895) at 2.

<sup>98</sup> “Charges of Infanticide in Southland” *Taranaki Herald* (Taranaki, 13 May 1895) at 2.

<sup>99</sup> “Baby Farming Case” *Auckland Star* (Auckland, 4 June 1895) at 2; “The Dean Case” *Daily Telegraph* (Hawkes Bay, 11 June 1895) at 2.

Dean Murder Case” or something similar during the trial).<sup>100</sup> Therefore, no matter where the case was held, potential jurors would have known at least something about the case.

However, the newspapers in the south did seem to be more prejudicial than the newspapers around the country. There is a feeling of hatred and sickness toward Minnie underlying these articles; compared to other regions which seemed to be more neutral, stating facts and a bit of speculation. For example, even though the *Evening Post* articles noted above had titles which meant people knew exactly what the article was going to be about, they relayed new facts about the case in a more neutral way.<sup>101</sup> Whereas Southern based newspapers were not so neutral, using negative words like “gruesome” and “surreptitiously” in order to get across facts or would go into detailed speculation unlike newspapers in other areas.<sup>102</sup> Therefore, it may still have been better for the case to be heard outside of Invercargill. However, this would not have been known to the Judge at the time. The knowledge of the case being widespread would most likely have been known due to the many reporters in the courtroom; even several cameras were said to have been used.<sup>103</sup> The newspapers also explicitly stated the case was widely known.<sup>104</sup> But, it was highly unlikely the Judge knew exactly what each article from each newspaper had said. If this case had been held in earlier times when local news stayed as such, Minnie’s case may have been considered for transfer, as locals had more than an ‘ordinary interest’ in the case. But due to the fairly new telegraph making such sensational news widespread and constant, this took away any chance Alfred Hanlon had of arguing for a change of venue.

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<sup>100</sup> “The Winton Horror” *Evening Post* (Wellington, 16 May 1895) at 2; “The Winton Horror” *Evening Post* (Wellington, 25 May 1895) at 2; “The Winton Baby-Farming Cases” *Evening Post* (Wellington, 7 June 1895) at 4; “The Dean Murder Case” *Evening Post* (Wellington, 31 July 1895) at 3.

<sup>101</sup> “The Winton Horror” *Evening Post* (Wellington, 16 May 1895) at 2; “The Winton Horror” *Evening Post* (Wellington, 25 May 1895) at 2; “The Winton Baby-Farming Cases” *Evening Post* (Wellington, 7 June 1895) at 4.

<sup>102</sup> “Further Particulars” *Otago Witness* (Otago, 16 May 1895) at 28; “Baby-Farming at Winton” *Mataura Ensign* (Otago, 14 May 1895) at 2; “The Winton Baby-Farming Case” *North Otago Times* (Otago, 30 May 1895) at 3.

<sup>103</sup> “Child Murders” *Southern Cross* (Otago, 25 May 1895) at 12.

<sup>104</sup> “The Dean Case” *Tuapeka Times* (Otago, 18 May 1895) at 3.

Thus, Minnie had to have her trial at the Supreme Court in Invercargill in front of and decided by the people who a few years prior had voiced their growing suspicions.

## ***B Jury of the Supreme Court Trial***

### *1 Legal Procedure*

The New Zealand jury trial was transplanted from England in the very early years of colonisation. The jury had been around for centuries; in England the right to trial by jury was first officially created in the Magna Carta 1297.<sup>105</sup> The jury had, “become a constitutional principle sacred to generations of Englishmen that men should be judged by their peers”.<sup>106</sup> However, it soon was adapted to fit, “the realities of their colonial setting”.<sup>107</sup> The jury system was so important it was subject to some of the first pieces of legislation in New Zealand, being the Supreme Court Ordinance of 1841 and the Jury Ordinance 1841.<sup>108</sup> The jury system was then refined more with numerous legislative changes up to the 1890s. Therefore, the jury system had the problem of having no one consolidated statute for a guide.<sup>109</sup> However, for Minnie’s criminal trial, the jury would have to be made up of 12 men between the ages of 21 and 60 who held British citizenship and had residence for six months or more. Technically, the jurors had to hold an estate in fee simple in land or tenements, however due to the “chaotic state of land titles,” this qualification was never really implemented.<sup>110</sup> There was also a lengthy list of exemptions.

In the early years of jury service the jury were supposed to come to a decision based on, “their knowledge of the people, the case, or the locality”.<sup>111</sup> However, by the 19th century,

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<sup>105</sup> Magna Carta 1297 (Eng) 25 Edw I c 29, s 29; Oscar Battell-Wallace “An Unfinished Journey” (2019) 11 NZLJ 426.

<sup>106</sup> Powles, above n 94, at 285.

<sup>107</sup> Neil Cameron and Susan Potter “The New Zealand Jury: Towards Reform” in Neil Vidmar (ed) *World Jury Systems* (Oxford University Press, Oxford, 2000) 167 at 167.

<sup>108</sup> Supreme Court Ordinance 1841 (Imp) 5 Vict c 19; Jury Ordinance 1841 (Imp) 5 Vict c 3; Powles, above n 94, at 285.

<sup>109</sup> Powles, above n 94, at 294.

<sup>110</sup> Cameron and Potter, above n 107, at 169.

<sup>111</sup> Law Commission *Juries in Criminal trials: Part One* (NZLC PP32, 1998) at 1.

the expectation was that the jury were entirely independent of the case and to have no prior knowledge of it.<sup>112</sup>

## 2 *The Media's Effect on Minnie's Case*

Minnie's trial was held between 18 June and 21 June 1895. Minnie was charged with murdering, "a female child Dorothy Edith Carter, and having murdered 'a second female infant whose name is unknown'" .<sup>113</sup> The 12 men picked came from a roll of eligible jurors in a twenty-mile radius of Invercargill. However, this pool of men would have been small as there were only about 6,000 people in the area and many of these people would have been disqualified by age, gender, the exemption list, and also those who had already served at the coroner's inquests.<sup>114</sup> The 12 men that were sworn in came from a range of occupations; and we will never know for sure, but they seemed like the types of men who likely read the newspapers or at least would have known something about the case. The Crown prosecutor, T. M. Macdonald started by telling the jurors to discard any statements or facts about the case they heard previously, and to approach the evidence without prejudice or bias, and to do their duty without fear or favour.<sup>115</sup> However, from the evidence below, it is unlikely that they did.

We will also never exactly know why or how the jurors came to their decision due to the convention to keep what is said in the jury room a secret and that juries do not need to give reasoning for their decisions.<sup>116</sup> But it would be naive to say nobody is susceptible to the kind of media coverage seen in Minnie's case, especially when baby farming was such a hot topic.

The jury may have been negatively affected by the media in three ways. First, by the language used within the articles. Second, how the newspapers character profiled Minnie before the trial. And third, the detailed reports of the coroner's inquests meant the jurors would have known some, if not all of the facts already. Each will now be looked at in turn.

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<sup>112</sup> Law Commission, above n 111, at 1.

<sup>113</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 163.

<sup>114</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 163.

<sup>115</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 165.

<sup>116</sup> Law Commission, above n 111, at 60.

## (a) Language Used

Many of the Southland/Otago based newspapers employed emotive and negative language throughout their coverage of the case. This language made Minnie seem like she was unmotherly, and a woman that could not be trusted. Instead of saying ‘Minnie Dean’ or ‘Mrs Dean’ newspapers would say “the woman” or “the woman Dean” when describing her movements, thus giving the feeling she was not a person.<sup>117</sup>

A couple of newspapers had also used emotive language in describing how some of the children looked in her care, which would have been an affront to the Victorian ideals at the time. Dorothy Edith Carter was described as looking “sickly” when she was first seen with Minnie at the station.<sup>118</sup> Newspapers also reported an incident in Christchurch where she had to give the child back as she had been “cruelly neglecting” it, and the child, “had altered so much for the worse... in the course of three days... the mother was unable to recognize it”.<sup>119</sup>

The description of the Larches was also used to pull on the heartstrings, and sympathise for the children that lived there. The surroundings of the Larches was described as, “anything but cheerful”.<sup>120</sup> As stated earlier the *Otago Daily Times* had described it as a wretched hovel, with the children sleeping in a room where you could see the ground through the rough floorboards, their bedding consisted of bags and were, “far from clean”.<sup>121</sup> Even for the 19th century, this detailed description, makes the reader feel revolted and repulsed of such conditions. This description of the house was able to spread widely throughout many newspapers.

This emotive language makes you feel sorry for the children and the original parents. It made people feel like Minnie was an uncaring and horrible human. People’s emotions were already running high due to the coverage of baby farming cases like the Makin and Knorr cases; the newspapers were able to just add fuel to the fire.

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<sup>117</sup> “Further Particulars” *Otago Daily Times*, above n 79.

<sup>118</sup> “Further Particulars” *Otago Daily Times*, above n 79.

<sup>119</sup> “Further Particulars” *Otago Witness* (Otago, 16 May 1895) at 28.

<sup>120</sup> “Child Murders” *Southern Cross* (Otago, 18 May 1895) at 9.

<sup>121</sup> “The Winton Baby Farming Case” *Otago Daily Times* (Otago, 15 May 1895) at 2.

## (b) Character Profiling

Not only did the newspapers use emotive language, but the media were able to specifically make out that Minnie was a horrible human. Francine Tyler has found that newspapers used language and phrasing to frame Minnie as a “bad” person.<sup>122</sup> Women accused of killing persons who are not related to them often are framed as being masculine and a “particularly bad” person.<sup>123</sup> This was no different for Minnie. Tyler found the newspapers she examined made Minnie out to be a bad person; however the more proximate one (the *Mataura Ensign*) did it more sparingly.<sup>124</sup> However, any information does not need to be overtly prejudicial; any damaging information, “disguised in hints, presuppositions, questions, qualifications, and other indirect but legal form of reporting,” can potentially influence the public.<sup>125</sup> Therefore, the *Mataura Ensign* had stated Mrs Dean, “has been under police surveillance for years,” and had failed to register under the Life Protection Act, which still profiles Minnie as a bad person.<sup>126</sup>

Other newspapers have been more explicit in character profiling. The *Otago Daily Times* in length profiled Minnie. It recounted how she came from Scotland, with two daughters, married Charles Dean, had their hotel in Etal Creek, noting how one of her daughters had drowned with Minnie’s grandchild, and the other one was still living in Mataura. It then goes into detail about her business of “baby-farming at Winton,” stating the amount of children she had kept and who were currently accounted for; it also gave detail of the coroner’s inquest in 1891 about the child that had died in her care.<sup>127</sup> Other newspapers went on to recount similar information.<sup>128</sup>

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<sup>122</sup> Francine Tyler “Demented Mother, Maniac with a Gun, Madman: Prejudicial Language Use in Historical Newspaper Coverage of Multiple-Child Murders in New Zealand” in J.B. Weist (ed) *Mass Mediated Representations of Crime and Criminality* (Emerald Publishing Limited, Bingley, 2021) 49 at 56.

<sup>123</sup> At 51.

<sup>124</sup> At 60.

<sup>125</sup> At 53.

<sup>126</sup> “Baby-Farming at Winton” *Mataura Ensign*, above n 102.

<sup>127</sup> “The Winton Baby-Farming Case” *Otago Daily Times*, above n 121.

<sup>128</sup> ““The Larches” Horrors” *Western Star* (Otago, 18 May 1895) at 3; “Child Murders” *Southern Cross*, above n 120.

It had also been reported that the Winton public had, “suspicions of foul play,” for years; and that she was elusive to the police.<sup>129</sup> The *Evening Star* also recounted how Minnie used to send advertisements about wanting to adopt a baby, however they eventually stopped adding them due to, “suspicious circumstances”.<sup>130</sup>

However, even though for the majority of the time newspapers reflected Minnie negatively, they sometimes added information in support of Minnie being a good, motherly person. However, it was done sparingly and usually quickly at the end of articles. From *Papers Past* the Otago/Southland newspapers only had eight articles with positive information about Minnie between the time of her arrest to the start of the trial.<sup>131</sup> However, even these were usually undermined by other sentences in their articles. For example, the same *Otago Daily Times* article referred to above did have a paragraph at the end stating how she had kept a memorial card on her mantel piece for the death of a previous six month old child, and that the children in Minnie’s care seemed to be, “well-mannered, and show signs of having some religious training”.<sup>132</sup> However, in that same paragraph the article says, “she always appeared to have an affectionate regard for the children,” and in regard to the memorial card, “it may be mentioned that Mrs Dean received a premium of £30 with this child when it was five weeks old,” which seems to undermine the positive remarks about her.<sup>133</sup>

Other articles relay what she had said in letters and advertisements how she wanted to adopt a child, saying she was kind, would love and care for it, and that she, “had a good position,” however, these were also undermined very quickly by noting she was suspicious, or going

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<sup>129</sup> “The Baby-Farming Case” *Evening Star* (Otago, 13 May 1895) at 2; “Further Particulars” *Otago Witness*, above n 102.

<sup>130</sup> “The Baby-Farming Case” *Evening Star*, above n 129.

<sup>131</sup> “The Winton Baby-Farming Case” *Otago Daily Times*, above n 121; “Further Particulars” *Otago Witness*, above n 119; “The Dean Case” *Tuapeka Times*, above n 104; “The Baby-Farming Case” *Evening Star*, above n 129; ““The Larches” Horrors” *Western Star*, above n 128; “The Winton Baby-Farming Case” *North Otago Times* (Otago, 4 June 1895) at 3; “The Inquest” *Otago Witness* (Otago, 16 May 1895) at 28; “Further Particulars” *Otago Daily Times*, above n 79.

<sup>132</sup> “The Winton Baby-Farming Case” *Otago Daily Times*, above n 121.

<sup>133</sup> “The Winton Baby-Farming Case” *Otago Daily Times*, above n 121.

directly back into the facts of the dead bodies or the like.<sup>134</sup> Therefore, essentially still profiling Minnie as a bad person.

### (c) Detailed Reports of the Coroner's Inquests

The media's constant detailed reports of the three coroner's inquests before the Supreme Court trial also would have likely affected the jury. The coroner's inquests were held between 15 May and 10 June 1895. Many newspapers gave transcripts of each day of the inquests. The *Otago Daily Times*, *Otago Witness* and *Evening Star* did this more frequently and in more detail as they were closer in proximity and had special reporters covering the case. However, other newspapers less frequently gave detailed transcripts of the inquests too, such as the *Mataura Ensign* and the *Southern Cross*.<sup>135</sup>

The detailed transcripts also included the outcomes of each inquiry. These outcomes were that "Eva Hornsby was willfully murdered," "Dorothy Edith Carter met her death on the 2nd May, between Winton and Lumsden, through poison administered by Minnie Dean," and "the name and identity of the said child unknown... but they are strongly of opinion that...the said child...is that of a male child by name Willie Phelan".<sup>136</sup> Even though only Dorothy's inquest named Minnie, the other two helped show the idea that she was a cold-blooded baby farmer.

There was also little information said in the trial, which had not already been said and published before or during the coroner's inquests. This was made clear by the media themselves. The *Otago Daily Times* said, "practically nothing new was, however, elicited during the hearing of the evidence," before going on to relay all the evidence given at trial anyway; and other newspapers by telegraph got the information that, "absolutely nothing new came out of evidence, which was substantially the same as already telegraphed or

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<sup>134</sup> "Further Particulars" *Otago Witness*, above n 119; "The Dean Case" *Tuapeka Times*, above n 104; "The Baby-Farming Case" *Evening Star*, above n 129.

<sup>135</sup> "The Winton Baby-Farming Horror" *Mataura Ensign* (Otago, 31 May 1895) at 3; "Alleged Child Murders" *Southern Cross* (Otago, 1 June 1895) at 5.

<sup>136</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 143 – 144, 157.



published”.<sup>137</sup> Therefore, no matter what newspaper the jurors would have been getting their information from by either reading themselves, or hearing about it; it is likely they would have known some or all aspects of the case before the trial.

Therefore, even though it will never be known why the jurors decided Minnie was guilty. These three ways of constant reporting show it is unlikely the jurors were impartial or had no prior knowledge about the case.

The media’s influence however, did not just end when she was found guilty by these 12 men, but continued until the very end, as can be seen with the Executive Council decision.

## ***C Executive Council***

### *1 Legal Procedure*

The royal prerogative of mercy came from England. It came from the time when the Sovereign was seen to be, “central to the administration of justice,” therefore having the right to pardon offences.<sup>138</sup> The prerogative is flexible in order to mitigate any possible injustices that came about through the legal process.<sup>139</sup> A limited form of this prerogative is commutation of a sentence; where the sentence would be reduced, with conditions.<sup>140</sup> In New Zealand the Sovereign delegated this power to the Governor of the colony, as it saved on delay of communication back to England, and the Governor would have better knowledge of the circumstances of the offence and person in question.<sup>141</sup> Originally the power was at the sole discretion of the Governor, this was to make sure there was no political influence.<sup>142</sup> However, this slowly changed; first by the Governor needing to have a report of the proceedings of the trial and hear the opinion of the judge, so to make an

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<sup>137</sup> “The Winton Child Murders” *Otago Daily Times*, above n 28; “The Baby Farming Case” *Hawke's Bay Herald* (Hawke's Bay, 19 June 1895) at 4.

<sup>138</sup> Janet McLean and Alison Quentin-Baxter *This Realm of New Zealand: The Sovereign, the Governor-General, the Crown* (Auckland University Press, Auckland, 2017) at 250 – 251.

<sup>139</sup> McLean and Quentin-Baxter, above n 138, at 251.

<sup>140</sup> Hilaire Barnett *Constitutional and Administrative Law* (14th ed, Taylor & Francis Group, London, 2021) at 115.

<sup>141</sup> McLean and Quentin-Baxter, above n 138, at 252.

<sup>142</sup> McLean and Quentin-Baxter, above n 138, at 253.

informed decision.<sup>143</sup> In 1868 this changed to needing to have a meeting with the Executive Council, however the Governor still had the ultimate choice.<sup>144</sup> But, by 1895 the Governor was advised by the Executive Council when to use the prerogative for capital cases.<sup>145</sup> Therefore, it essentially came down to the Executive Council to make the decision on whether someone should be granted the royal prerogative of mercy.

## 2 *The Media's Effect on Minnie's Case*

After Minnie Dean's leave to appeal was denied, the Executive Council was her last hope of staying alive. The Executive Council comprised seven Ministers led by R. J. Seddon. Being the Liberal Party, they were more liberal compared to conservatives on many things like land and labour reform; however when it came to law and order they took a conservative approach.<sup>146</sup> Before Minnie's case four women convicted of infanticide had had their sentences of death commuted to life imprisonment.<sup>147</sup> However, these women's cases did not seem to touch into the same moral indignation as Minnie's did as they were before publicity around baby farming had really taken off and they had all killed their own children/relative due to certain social pressures, meaning people were more sympathetic.<sup>148</sup> No woman had been executed, and 51 executions had happened in the colony before Minnie.<sup>149</sup>

Even though the Executive Council would have got a report of the proceedings; for a case like Minnie's they would have been reading about it since the start. They would have also had sources to know what the feelings and attitudes were like in Southland too. After Minnie was convicted the media became even more intense in describing Minnie and the

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<sup>143</sup> McLean and Quentin-Baxter, above n 138, at 253.

<sup>144</sup> McLean and Quentin-Baxter, above n 138, at 253.

<sup>145</sup> McLean and Quentin-Baxter, above n 138, at 253.

<sup>146</sup> Hood *Minnie Dean: Her Life and Crimes*, above n 1, at 143 – 144, 191.

<sup>147</sup> Dalley, above n 29, at 66 – 67; "The Bruce Herald. "Nemo me impune lacessit." Tokomairiro, December 11, 1872" *Bruce Herald* (Otago, 11 December 1872) at 6.

<sup>148</sup> Dalley, above n 29, at 76; "The Bruce Herald. "Nemo me impune lacessit." Tokomairiro, December 11, 1872" *Bruce Herald*, above n 147.

<sup>149</sup> Sherwood Young *Guilty on the Gallows: Famous Capital Crimes of New Zealand* (Grantham House Publishing, Wellington, 1998) at 281 – 282.

case.<sup>150</sup> The *Mataura Ensign* using strong words such as, “we think they can have no hesitation in agreeing with the jury,” calling her a “murderess,” a “wretch – whom we can hardly speak of as a woman,” and even likening her to the devil.<sup>151</sup> The article even refutes certain arguments on why the decision was wrong, such as, “there are some who are disposed to look on circumstantial evidence with great suspicion. That cannot rest on this case... the truth is, murder was practised by her as a regular business”.<sup>152</sup> It was also reported many people believed that Minnie should be executed, and the police had got a number of applications from people offering, “to perform the hangman’s duty”.<sup>153</sup>

Not only were there strong views by the media about Minnie; but the Executive Council would have also been thinking about the strong public outcries from previous decisions not too long before. The decision to commute Sarah and Anna Flanagan when they had been found guilty of infanticide was not received well. Sarah Flanagan with the help of her mother, Anna, were convicted of killing Sarah’s illegitimate child mere days after she had given birth; the baby’s severed head having been found in a bush.<sup>154</sup> Newspapers and the public alike expressed their disapproval; one newspaper saying, “if woman [sic] ever deserved hanging, Sarah Jane Flanagan did, as the law stands, and the commutation of her sentence is, we think, a mistaken exercise of the prerogative of mercy, and a miscarriage of justice.”<sup>155</sup>

Another decision that created quite an outcry was that of Louis Chemis. Chemis had been convicted of murder, but had his death sentence commuted. In this case many believed he should have been let off entirely, and criticised the Executive Council for it.<sup>156</sup> The *Marlborough Express* stating, since there was doubt Chemis should have been regarded as not guilty and therefore released; however, “the Executive have given in to the mob...[and therefore] have been guilty of deplorable weakness.”<sup>157</sup> After these types of cases the

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<sup>150</sup> Tyler “Demented Mother, Maniac with a Gun, Madman”, above n 122, at 60.

<sup>151</sup> “Trial and Conviction of Minnie Dean” *Mataura Ensign* (Otago, 25 June 1895) at 2.

<sup>152</sup> “Trial and Conviction of Minnie Dean” *Mataura Ensign*, above n 151.

<sup>153</sup> “Town and Country” *Lyttelton Times* (Canterbury, 25 June 1895) at 2.

<sup>154</sup> Dalley, above n 29, at 67.

<sup>155</sup> “Misplaced Clemency” *Evening Post* (Wellington, 14 March 1891) at 2.

<sup>156</sup> “The Case of Louis Chemis” *New Zealand Mail* (Wellington, 9 August 1889) at 33.

<sup>157</sup> “The Kaiwarra Murder” *Marlborough Express* (Marlborough, 9 August 1889) at 2.

media would start running the discussion about the abolition of the death penalty as well.<sup>158</sup> Therefore, the Executive Council were walking on a tightrope.

The Court of Appeal decision may have also had an impact on the Executive Council's decision; however it seems slight compared to the newspaper coverage. The Court had to decide on the question, "whether any of the evidence so objected to and admitted was or was not properly admitted;" this evidence being the four other children that had disappeared in Minnie's care and the evidence of the skull found in the garden.<sup>159</sup> The leave to appeal was refused. Therefore, the Executive Council had more reason to not commute Minnie's sentence. However, the media did not seem as interested in the decision compared to the rest of the case. Only about 25 articles could be found reporting on the Court of Appeal, with only about half going into any detail.<sup>160</sup> Few seemed to worry or care too much about the point of law, it was even anticipated that the Court of Appeal was going to refuse leave to appeal anyway.<sup>161</sup> Even with the Court of Appeal's decision the Executive Council could have still commuted Minnie's sentence. It seems more likely the Executive Council listened to the overwhelming media coverage wanting Minnie executed and the Court of Appeal decision was just an added influence in justifying the decision.

However, not everyone was in favour of the execution of Minnie Dean. The Canterbury Women's Institute had written a letter in favour of commutation. However, this piece of news seemed to be brief, in the end pages, and mixed in with other articles, rather than being standalone articles like the ones in favour of execution.<sup>162</sup> The Executive Council would have still known of this appeal from the Institute; but could easily surmise from reading the newspapers that this was not the general opinion of the public.

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<sup>158</sup> "Standard and Cook County Gazette Published every Tuesday, Thursday, and Saturday Morning. Be just and fear not; Let all the ends thou aim'st at be thy country's, Thy God's, and truth's. Tuesday, March 17, 1891." *Gisborne Standard and Cook County Gazette* (Gisborne, 17 March 1891) at 2; "Capital Punishment" *Marlborough Express* (Marlborough, 10 July 1895) at 3.

<sup>159</sup> *Regina v Dean* (1895) 14 NZLR 272 at 274.

<sup>160</sup> <[www.paperspast.natlib.govt.nz](http://www.paperspast.natlib.govt.nz)>, above n 2.

<sup>161</sup> "The Winton Murder" *Evening Star* (Otago, 29 July 1895) at 2.

<sup>162</sup> "Our Letter Home" *New Zealand Mail* (Wellington, 12 July 1895) at 39; "Late Wires" *Daily Telegraph* (Hawke's Bay, 1 July 1895) at 3.

In making the decision the Executive Council not only had to think about what was best for justice, but what was best politically too. They had a lot of backlash from their previous decisions and knew there could be more public outcries of clemency if they waited any longer, politicians always think about what is best to stay in power, and could see from the media coverage that what looked best was to not get in the way of Minnie's execution.

Therefore, the media negatively affected this aspect of the case, because of the constant media coverage making Minnie out to be bad and needing to be executed, and their involvement in prior cases, the Executive Council rushed into making a decision. They made it in a day, a week after the Court of Appeal decision, while in the case of Louis Chemis the Executive Council considered it for a few days to hear everything.<sup>163</sup> We will never know exactly why they made their decision, however if they had waited or discussed it a little longer they may have commuted Minnie's sentence just like all other women that had been sentenced to death. Or they may have come to the same conclusion, but it would have been more thought through. Instead they listened to the media, gaged the public's mood from the newspapers and used that as a main factor in hurriedly deciding to send Minnie to the gallows.

## *V Conclusion*

The criminal process in the case of Minnie Dean was affected by the media. Newspapers were the dominant form of the media in 19th century New Zealand, and a way to keep these newspapers going was to feed off of crime, as this is what interested the people and got people buying them. However, this meant that newspapers could heavily influence the public with the narrative they spun. The problem and fear of baby farming was at its height across the colonies; and something needed to be done about it in New Zealand. However, this had negatively affected Minnie's trial, whether it was murder or not. Minnie did not have a chance to be able to have her trial moved to a different location, where she could be tried by peers that were likely not so biased. The jury likely knew most if not all of the facts before the trial had even started. The Executive Council would also have been keeping

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<sup>163</sup> "The Louis Chemis Case" *Marlborough Express* (Marlborough, 5 August 1889) at 3.

up with the trial through the newspapers. Couple this with media backlash from previous decisions, it is likely the media was a factor in the Executive Council's decision. However, we will never exactly know why they did come to their conclusion.

The media therefore was a factor that led to the execution of Minnie Dean in the Invercargill gaol on 12 August 1895. Even though it was a small number of people inside the gaol to witness her death, there were crowds outside, climbing buildings to have a glimpse of the execution, such was the frenzy created by the media.

With this conclusion, it sheds light on how important it is to get the balance right between the right to free press and the right to a fair trial. In modern New Zealand there are much more safeguards in place to allow accused persons to have a fair trial, while allowing the media to still be involved. However, the case of Minnie Dean still highlights how careful we need to be in balancing these two fundamental principles, to make sure the right and just outcome arises.

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