

2016

'The True State of My Case: The Memoirs of Mrs Anne Bailey, 1771

Ailwood, Sarah

Ailwood, S. (2016) 'The True State of My Case': The Memoirs of Mrs Anne Bailey', 1771', Law, Crime and History, 6(1), pp. 37-58. Available at:

<https://pearl.plymouth.ac.uk/handle/10026.1/8929>

<http://hdl.handle.net/10026.1/8929>

SOLON Law, Crime and History

University of Plymouth

All content in PEARL is protected by copyright law. Author manuscripts are made available in accordance with publisher policies. Please cite only the published version using the details provided on the item record or document. In the absence of an open licence (e.g. Creative Commons), permissions for further reuse of content should be sought from the publisher or author.

'THE TRUE STATE OF MY CASE': THE MEMOIRS OF MRS ANNE BAILEY, 1771

*Sarah Ailwood*¹

Abstract

This article explores *The Memoirs of Mrs Anne Bailey*, a short memoir published by a lone mother in London in 1771. It addresses questions of methodology, in terms of legal history and textual analysis, to examine how Anne Bailey's *Memoirs* shed light on the operation of everyday justice in the mid-eighteenth century metropolis, as well as what they reveal about relationships between legal and textual subjectivities during the era. The article argues that drawing on life-writing sources enriches our understanding of the lived experience of low-level justice, as well as conceptions of individual personhood in the eighteenth century.

Keywords: eighteenth century justice and courts, life-writing, methodology, textual analysis, scandalous memoirs

1 Introducing 'Anne Bailey'

In June 1771, a lone mother recently released from a Southwark prison published *The Memoirs of Mrs. Anne Bailey*.² Recounting the cycle of debt, arrest, trial and imprisonment she had endured in the six years since her husband's death in 1765, Anne Bailey's *Memoirs* are a rare surviving voice of a woman living on the social margin. Detailing her involvement with the London criminal justice system, they provide a unique insight into how a woman in her situation experienced the personnel and procedures of everyday justice. This article explores Bailey's *Memoirs* as a historical source, locating them within the justice system of eighteenth century London and current research in the field, as well as a piece of life-writing that exposes the complex contemporary relationship between gender and legal and textual subjectivities.

Anne Bailey was born in Devon in 1743. Her father, an attorney, died when she was 2, and her mother subsequently remarried and relocated the family to London. After her mother's death when she was 7 she was cared for by her stepfather, at 10 was placed in another

¹ Dr Sarah Ailwood is an Assistant Professor in the School of Law and Justice, University of Canberra sarah.ailwood@canberra.edu.au The author would like to acknowledge the invaluable research assistance of Rhiannon Markle.

² Anne Bailey, *The Memoirs of Mrs. Anne Bailey, containing a narrative of her various adventures in life; together, With an Authentic Account of the Sufferings she has undergone and is still experiencing from the cruel Behaviour of Mr. John Steward, Mr. L. Maclean, and other False Friends. Taken from her own Mouth, and Revised and Corrected by Herself.* Printed for the Author. MDCCLXXI.

family and at 15 entered domestic service.³ She married James Eastick,⁴ a sailor, in around 1760, operated a haberdasher's shop in east London, had three children and was pregnant with a fourth in 1764 when he sailed for St Christopher's, a voyage on which he died. In Bailey's narrative, James Eastick's death is the catalyst for a chain of events that entangled her in a cycle of debt, sexual exploitation, pregnancy and imprisonment that dominated her life until at least 1771 when the *Memoirs* were published.

Bailey's account of the years following her husband's death is nothing less than horrific. She was soon imprisoned for debt in the King's Bench, where she met John Stewart, with whom she claimed to have fallen passionately in love.⁵ She was released in July 1765 under the Insolvent Debtors Relief Act but continued to visit Stewart in prison.⁶ By the time he was discharged the following November she was four months pregnant and they lived together in Lincoln's Inn Fields where she gave birth to a daughter.⁷ Stewart quickly tired of domestic family life and by early 1767 he had left her to live with another woman and to commence employment with Lauchlin Maclean, who was at that time Secretary to Lord Shelburne, the Secretary of State for southern England.⁸ During Stewart's frequent absences she was visited and on one occasion raped by Maclean.⁹ Strung along by promises of financial support, over the next two years Bailey gave birth to two more children with Stewart, who ultimately refused to maintain her: 'I had been obliged to run in debt, but he would neither pay for coals, candles, nor bread; and the grocer having brought me a few things, he was ordered to take them back'.¹⁰ Determined to secure maintenance for herself and her children, she repeatedly visited both Stewart and Maclean, resulting in her arrest and indictment for trespass and assault, her imprisonment to await trial, and then appearances at quarter sessions and a guilty plea to secure her release. She was imprisoned at one time or another in many of London's gaols and bridewells; during one episode Stewart put their

³ Dates and ages are approximations based on the *Memoirs*.

⁴ Throughout the *Memoirs* Anne uses her maiden name Bailey, rather than her married name Eastick, asserting 'in this narrative I have not thought fit to bring his family in question, but have contented myself with being known to the reader by my maiden name': Bailey, *Memoirs*, p.44. Her identity as Anne Eastick is confirmed in the 'Kalendar of Prisoners in the Custody of the Keeper of the House of Correction in the Borough of Southwark', The Surrey History Centre, QS2/6/1771/Eph/13.

⁵ Bailey, *Memoirs*, p.5; 'Commitment Books of King's Bench Prison', The National Archives (TNA), PRIS 4/3, p.414. James Maclean notes that John Stewart's history is 'rather vague', though he may have been a cavalry troop commander who met Lauchlin Maclean in North America in the late 1750s: James Maclean, *Reward is Secondary. The life of a political adventurer, and an inquiry into the mystery of 'Junius'* (Hodder & Staughton, 1963), p.189.

⁶ Commitment Books of King's Bench Prison, TNA, PRIS 4/3, p.394.

⁷ *Ibid*, p.414.

⁸ Maclean, *Reward is Secondary*, p.191.

⁹ Bailey, *Memoirs*, p.10.

¹⁰ *Ibid*, p.15.

children out to board and sent one to the workhouse, where she contracted smallpox and later died. Bailey formed 'connexions' with other men in exchange for release from prison, and wrote of walking the streets with her surviving children seeking food and shelter.

As a historical source, *The Memoirs of Mrs. Anne Bailey* are a compelling account of the lower courts of eighteenth century London and their approach to dispensing justice to a woman in Bailey's circumstances. Yet their status as a published memoir, and the complexities of textual self-representation and publicity entailed therein, require that they be treated with caution. These complexities, however, signal the slippage between legal and textual subjectivities in the mid-eighteenth century, as individual experiences of law and justice - as victim, prosecutor and perpetrator - influenced personal and public identities. Bailey's *Memoirs* - submitting the 'true state' of her case to the judgment of the public - render explicit the impact of legal experience in forming a platform for the creation of a textual subjectivity.

2 Methodology

Anne Bailey's *Memoirs* present both challenges and opportunities regarding the methodologies that may be used to analyse them and determine their value for academic research. Linda Mulcahy and David Sugarman have recently questioned whether the 'intra-disciplinary tension' between legal history and socio-legal studies 'can be resolved by the emergence of discreet revisionist legal histories or whether the adoption of a socio-legal perspective requires a fundamental rethinking of what constitute authoritative subjects, methods, and sources'.¹¹ While asked in the context of life-writing by judges, lawyers, academics and spectators marginalised by their gender, class or race, the question is equally applicable to life-writing by legal participants, including prosecutors, defendants and witnesses. Documents such as Bailey's *Memoirs* - both historical source and life-writing text - present dilemmas of authenticity and authority that can only be satisfactorily resolved by considering them as an act of textual self-construction.

(a) A Historical Source

As a historical source, Bailey's *Memoirs* illuminate several aspects of law and justice in the eighteenth century metropolis, particularly in the summary and quarter sessions courts. There is an unfortunate lack of surviving documentation regarding cases and procedures,

¹¹ Linda Mulcahy and David Sugarman, 'Introduction: Legal Life Writing and Marginalized Subjects and Sources', *Journal of Law and Society*, 42(1) (2015) 1-6, p.2.

how and why these courts were used and how law was understood and judicial process experienced by key players, including litigants, witnesses, spectators and magistrates.¹² The few extant lower court records, together with a number of surviving magistrates' notebooks and diaries, have formed the basis of quantitative studies using statistical analysis of the number and types of cases seeking to understand the work of magistrates sitting alone and in sessions,¹³ but qualitative studies revealing the lived experience of justice are rare indeed.¹⁴ In these circumstances, personal narratives such as Bailey's *Memoirs* can provide insights into the courts that were 'the main arena in which most eighteenth-century men and women were involved in judicial proceedings',¹⁵ which are otherwise unavailable. Richard Ireland has recently called for further exploration of 'the routine exposure of ordinary people to criminality, as perpetrators, victims or witnesses' and for the treatment of criminals as the subject rather than the object of historical record.¹⁶ Sources such as Bailey's *Memoirs* present such an opportunity to explore everyday criminality, mediated through the words of a woman who played the various roles of perpetrator, prosecutor and victim.

¹² Peter King, *Crime and Law in England, 1750-1840. Remaking Justice from the Margins* (Cambridge University Press, 2006), p.15; Peter King, 'The Summary Courts and Social Relations in Eighteenth-Century England', *Past and Present*, 183 (May 2004) 125-72, p.130.

¹³ For analysis of summary and quarter sessions court records, see J. M. Beattie, *Crime and the Courts in England 1660-1800* (Princeton University Press, 1986); Drew D. Gray, 'The Regulation of Violence in the Metropolis; the Prosecution of Assault in the Summary Courts, c. 1780-1820', *The London Journal*, 32:1 (March 2007) 75-87; Drew Gray, 'The People's Courts? Summary Justice and Social Relations in the City of London, c.1760- 1800', *Family & Community History*, 11:1 (May 2008) 7-15; Drew D. Gray, *Crime, Prosecution and Social Relations. The Summary Courts of the City of London in the Late Eighteenth Century* (Palgrave Macmillan, 2009); Peter King, *Crime, Justice and Discretion in England 1740-1820* (Oxford University Press, 2000); Peter King, *Crime and Law in England*; David Lemmings, *Law and Government in England during the Long Eighteenth Century. From Consent to Command* (Palgrave Macmillan, 2011), pp.26-55. For analysis of magistrates' notebooks, see Drew Gray, 'Making Law in Mid-Eighteenth-Century England: Legal Statutes and their Application in the Justicing Notebook of Phillip Ward of Stoke Doyle', *Journal of Legal History*, 34:2 (2013), 211-33; Peter King, 'The Summary Courts'; Norma Landau, *The Justices of the Peace, 1679-1760* (University of California Press, 1984); Glenda Morgan and Peter Rushton, 'The Magistrate, the Community and the Maintenance of an Orderly Society in Eighteenth-Century England', *Historical Research* 76:191 (2003) 54-77; Carolyn Steedman, 'At Every Bloody Level: A Magistrate, a Framework-Knitter, and the Law', *Law and History Review*, 30:2 (2012) 387-422.

¹⁴ See for example Douglas Hay, 'Legislation, magistrates, and judges. High law and low law in England and the empire' in David Lemmings (ed.), *The British and their Laws in the Eighteenth Century* (Boydell Press, 2005), pp.59-79, p.59. Wilfrid Prest has also noted that quantitative approaches fail to recapture the personal and community experience of litigation: 'The experience of litigation in eighteenth-century England', in David Lemmings (ed.), *British and their Laws*, pp.133-54, pp.141-42. Christine Churches makes a similar point and seeks to expand statistical approaches to understanding the nature and processes of the justice system by exploring its impact on the wider community and the parties involved: 'Some Figures behind the Numbers. Going to Law in Early-Modern England', in Wilfrid Prest and Sharyn Roach Anleu (eds.) *Litigation: Past and Present* (University of New South Wales Press, 2004), pp.44-58, p.44.

¹⁵ King, 'The Summary Courts', p.134. See also King, *Crime and Law in England*, p.15.

¹⁶ Richard W. Ireland, 'Why everything we know about criminal justice history is wrong', *Law, Crime and History*, 1 (2015) 130-42, pp.134, 136.

Life-writing sources are increasingly being used to recover the lived experience of justice in the eighteenth century; much of what we do know about summary courts has been gleaned from the informal personal writing of magistrates.¹⁷ Peter King has relied on 'the diaries and autobiographies of both the middling sort and the labouring poor' to make the case that they were familiar with these courts,¹⁸ and as Carolyn Steedman has demonstrated in relation to the diaries of the framework knitter Joseph Woolley, life-writing can enable us 'to move outside the assize courts, prisons, and market-square hanging places ... to alehouse conversations in which men and women appropriated and disseminated knowledge about the law - and about the magistracy that administered it'.¹⁹ Further, there is increasing recognition of the value of life-writing sources for the recovery of women's legal history. As Rosemary Auchmuty has recently commented, the 'paucity' of information regarding women's legal history means that 'we have to be imaginative in our search not only for source material but actually for women subjects to research, and to ask different questions of the public records that do survive and have been written up in the past.'²⁰ While this comment was made regarding the life-writing of women as legal professionals, it is equally applicable to recovering the legal experience of women who were prosecutors, defendants and witnesses.

(b) The Textual Self

Bailey's *Memoirs* must, however, be treated with caution. As a personal account of one individual's experience of the justice system, they are a singular case study and as such have 'limited value for developing and refining theoretical propositions'.²¹ Unlike the life-writing sources used by King and Steedman, Bailey's *Memoirs* are not a personal record of local events; they are a published account and as such a range of factors has inherently influenced the surviving text, the extent of which it is impossible to determine. The very fact of publication is significant in itself, as considerations of Bailey's aims in publishing her text, her target audience, networks of distribution and reception and even the cost of printing may have affected the published work. Additionally, the title page indicates that Bailey received

¹⁷ Gray, 'Making Law in Mid-Eighteenth-Century England'; King, 'The Summary Courts'; Morgan and Rushton, 'The Magistrate'. Autobiographical sources are also being used in modern criminological research. See Neal Shover, 'Life Histories and Autobiographies as Ethnographic Data', *The SAGE Handbook of Criminological Research Methods* (Sage, 2012), p.11 and Barry Godfrey, 'Historical and Archival Research Methods', *SAGE Handbook*, p.159.

¹⁸ King, 'The Summary Courts', p.161.

¹⁹ Steedman, *An Everyday Life of the English Working Class: Work, Self and Sociability in the Early Nineteenth Century* (Cambridge University Press, 2013), p.124.

²⁰ Rosemary Auchmuty, 'Recovering Lost Lives: Researching Women in Legal History', *Journal of Law and Society*, 42(1) (2015) 34-52, pp.34-35.

²¹ Shover, 'Life Histories', p.15.

assistance in preparing and publishing her text and it has been suggested, though not verified, that her assistant may have been John Wilkes, Stewart and Maclean's political opponent.²² While eighteenth century readers would not have found the involvement of another party unusual in the preparation of a memoir,²³ from an interpretive perspective the potential influence of another person must be considered, and there remains the possibility that Wilkes' assistance may have been provided in exchange for a particularly damning representation of Stewart and Maclean.

Further, archival research has exposed discrepancies between Bailey's account of some of her encounters with the law and the surviving court records. The *Memoirs*' lack of detail concerning Bailey's court appearances, the indictments for which she was tried and their outcomes suggest that these discrepancies may result from her own misunderstanding of what was taking place. Yet there is a more significant inconsistency in which the veracity of the *Memoirs* must be questioned, as it is linked to Bailey's primary motivation for writing: the *Memoirs* are, first and foremost, a life-writing text that constructs 'Anne Bailey' as a textual subject, whose self-representation is inextricably tied to her legal experience. Bailey published the *Memoirs*, at least in part, to garner public sympathy and financial support, to which her public image was critical. She appealed directly to the reader, who she constructed as empathic and altruistic:

I am compelled to ask the assistance of the humane and benevolent, in order to supply me in such a measure that I may be enabled to purchase the necessaries of life, and for a while longer to sustain that being which my false friends have so long endeavoured, by all the arts of malevolence, to render wretched and insupportable.²⁴

Gaining the support of her reader demanded a textual self-representation that was both authentic and sympathetic. Bailey's careful construction of this self began on the title page, in which she described the *Memoirs* as 'an Authentic Account of the Sufferings she has undergone and is still experiencing from the cruel Behaviour of Mr. John Steward, Mr. L. Maclean and other False Friends', at once asserting both her essential truthfulness and her victimisation by cruel, powerful men. She continued these dual themes in her opening pages, in which she also professed her innocence:

²² Maclean, *Reward is Secondary*, p.288; Mary Beacock Fryer, *Allan Maclean, Jacobite General: The Life of an Eighteenth Century Career Soldier* (Dundurn, 1987), p.113.

²³ Caroline Breashears, 'The Female Appeal Memoir: Genre and Female Literary Tradition in Eighteenth-Century England', *Modern Philology*, 107(4) (2010) 607-31, p.611.

²⁴ Bailey, *Memoirs*, p.48.

It is not without regret that I find myself compelled to lay before the public an account of my suffering, and to expose to the world the authors of them, whom I never injured nor offended, and who have yet persecuted me with a savage malice and unremitted cruelty.²⁵

Bailey's choice of words - 'finding herself' 'compelled' to appeal to the public - reinforces the sense that her condition was not of her own making. She avowed the truthfulness of her account: 'I ... shall confine myself to no other rule except that of stating facts in the order in which they happened, and preserving an inviolable regard to truth during the course of these Memoirs'.²⁶

Yet the historical record reveals that on one occasion, it appears that Bailey's adherence to her textual self conflicts with her 'inviolable regard to truth', demanding a departure from what appears to otherwise be a genuinely 'authentic account'. There is a clear disparity in Bailey's version of her initial imprisonment for debt in the King's Bench and the circumstances of her imprisonment as recorded in the Commitment Books. According to the *Memoirs* Bailey was imprisoned 'for some trifling debts which I had contracted';²⁷ she claimed that her late husband had issued a bond 'for a very considerable sum'²⁸ to an anonymous friend, and that when her goods were sold to pay it she was arrested by other creditors and imprisoned in the King's Bench in September 1764. The Commitment Books tell a different story, recording Bailey's imprisonment on 28 January 1765 as being in lieu of bail regarding an indictment against her for assault and for failing to pay the court costs of Thomas Dyes, against whom she and her husband had brought an action for trespass and assault.²⁹ The veracity of both sources is uncertain.

Throughout her *Memoirs* Bailey demonstrated some understanding of the substance of the law, the jurisdictional boundaries of greater London and the roles and powers of various legal personnel. She included little detail, however, of courtroom proceedings and demonstrated a lack of knowledge about judicial processes and her roles within them. It is possible, then, that Bailey was mistaken as to the basis of her imprisonment in the King's Bench. It is equally possible, however, that she deliberately misrepresented it because the reality did not fit her textual self-construction as an innocent victim of the cruel machinations of powerful men. Yet the veracity of the Commitment Books is also questionable. There is no

²⁵ Bailey, *Memoirs*, p.3.

²⁶ *Ibid.*

²⁷ Bailey, *Memoirs*, p.5.

²⁸ *Ibid.*

²⁹ Commitment Books of King's Bench Prison, TNA, PRIS 4/3, p.394.

reference to a case brought by Bailey or her husband against Thomas Dyes in the records of the Court of Common Pleas.³⁰ This absence could, of course, result from the creation and preservation of the court records. Both the *Memoirs* and the 'official record', then, are ultimately unreliable regarding the terms of Bailey's initial imprisonment, a circumstance that itself illuminates the difficulties associated with undertaking close analysis of the operations of summary justice during this period. Fortunately, in other instances where records were created and have survived, they largely corroborate Bailey's account: as one biographer of Lauchlin Maclean has noted, the *Memoirs* are 'surprisingly accurate and, in a sordid way, rather illuminating'.³¹

Bailey's textual self-construction as an essentially passive innocent is further complicated and indeed challenged by both the substance and the form of her text. Her detailed descriptions of her conversations and dealings with Stewart, Maclean and their households, as well as her willingness, though admittedly limited capacity, to assume her own agency as a legal subject, bely the image of powerless naivety she simultaneously constructed throughout the narrative. Her desire to enter the literary marketplace and use a burgeoning eighteenth century print culture to publicly expose these men, and with them aspects of the legal system, is an act of protest and defiance, a refusal to be silenced, which sits uneasily with her self-construction as passive victim.

Yet while Bailey's textual portrayal of herself, others and legal events presents challenges for academic research, in other respects it is in their singularity and very subjectivity that the value of the *Memoirs* lies. Carolyn Steedman persuasively argues that autobiographical writing can 'serve to shift the focus of recent accounts of eighteenth century law, and the preoccupation of its historians with the expansion of statute law and the criminalization of the poor' to instead embark on a larger project of understanding 'how contemporaries understood the nature and provision of law in everyday life: consider "law" as a way of thinking'. Such an approach, argues Steedman, 'may well retrieve much more of the "low" in eighteenth-century life than it does of the "high"'.³² Law's capacity to frame Joseph Woolley's 'reflection on his own experience', Steedman asserts, presents an approach to understanding the legal and social history of the long eighteenth century away from the 'binaries of power and resistance, hegemony and counter-hegemony' whereby 'law is not the

³⁰ Neither the Court of Common Pleas Plea Rolls, TNA, CP 40/3655-3668 for 1764 and 1765, or the Prothonotaries docket rolls, TNA CP 60/1083-1094 for 1764 and 1765, reveal a reference to Bailey, Eastick or Dyes.

³¹ Maclean, *Reward is Secondary*, p.189.

³² Steedman, 'At Every Bloody Level', pp.420-421.

pre-existing structure out of which subjectivities are made and stories told, but rather *is* the story itself'.³³ In *The Memoirs of Mrs. Anne Bailey* law is both the story and the structure from which subjectivity emerges. Her text interrogates, and demands exploration of, both.

3 Representing Justice

Anne Bailey experienced some of the worst aspects of metropolitan civil and criminal justice. Yet while her treatment would certainly offend the present-day values of equality before the law and access to justice, she directs little criticism at the law, its processes or its personnel. Aside from describing the torrid conditions in prison and the conduct of one magistrate, Justice Saunders Welch of Westminster, the tone of her dealings with constables, magistrates and gaolers is strikingly neutral, particularly considering the manifest inequality of her position, the frequency of her imprisonment and her limited capacity to assert herself as a legal subject. Bailey accepts the reality that the legal system is unable to formally solve her predicament, and does not imagine an alternative where this might be possible: its failures meet her expectations. While the close relationship between poverty and criminality illustrated by the *Memoirs* reflects 'the criminalization of the poor', in other respects Bailey's detached perspective and her exposure of the essential compassion of many judicial personnel resists the simplified 'binaries of power and resistance' noted by Steedman.³⁴ As Tanya Evans has argued, people 'demonstrated remarkable empathy and compassion'³⁵ towards unmarried mothers and their children, and while Bailey often found herself alone and friendless, her *Memoirs* illustrate that such compassion could be found in the legal system despite the harshness of the laws themselves. Magistrates, lawyers and gaolers also sought to assist her as best they could, with few options available to them.

(a) *Child Maintenance, the Magistracy and the Bridewell*

Bailey's encounters with the justice system, which began as civil matters but eventually became criminal proceedings, were driven by her determination that John Stewart, and later Lauchlin Maclean, would provide her with money to support her children. Of her first visit to Stewart's house, Bailey wrote that he 'ordered the Servants to thrust me out of doors: a scuffle ensuing, in the struggle I laid hold of the cloth, and pulled it down, together with the plates, &c. which were set upon it for supper'.³⁶ A warrant was obtained and Bailey was arrested and taken to 'Sir John Fielding's' - the Bow Street Magistrates' Court - where the

³³ Steedman, *An Everyday Life*, p.17.

³⁴ Steedman, 'At Every Bloody Level', pp.420-21.

³⁵ Tanya Evans, *'Unfortunate Objects'. Lone Mothers in Eighteenth-Century London* (Palgrave Macmillan, 2005), p.203.

³⁶ Bailey, *Memoirs*, pp.20-21.

matter was heard and discharged by Justice John Spinnage, who occasionally acted for Fielding.³⁷ In adjudicating Bailey's case Justice Spinnage appears to have attempted to resolve the source of the dispute by ordering Stewart to pay Bailey maintenance for their children: 'an agreement [was] made, that Mr. Steward should allow me fourteen shillings per week, for the maintenance of his three children, which was to be paid monthly'.³⁸ In negotiating such a solution and discharging the matter, Spinnage reflects the widespread practice of magistrates seeking to mediate a dispute rather than treat it as a formal accusation or prosecution. Bailey does not record the nature of the 'agreement' made with Stewart: how it was negotiated, the extent of Justice Spinnage's involvement or whether it was an order that could have been enforced.

Stewart's failure to fulfill the agreement prompted a second violent encounter, another appearance at Bow Street and imprisonment in Tothill Fields Bridewell:

His maidservant met me in the passage, and purposely thrust her elbow in my face; after which Mrs. Maitland sent her to get a warrant for me, to Sir John Fielding's; whilst I innocently enough left the orphans at the door. But by the time that I had reached home, two of Sir John's men came and took me up with the warrant; and as I could not find bail, I was obliged to be committed to Tothill fields Bridewell, tho' the Justice, Mr. Lane, was kind enough to keep me five hours in his house; and I went through some most wretched scenes in the prison, and experienced many hours of cruel anxiety.³⁹

The Tothill Fields Bridewell calendar for the October 1769 session indicates that Bailey was committed on 8 July by William Kelynge 'on Oath of Margaret Noble for Assaulting her Agt. the Peace' and discharged two days later by 'S Wrighte', probably the magistrate Sampson Wrighte who would eventually succeed Fielding as Chief Magistrate at Bow Street.⁴⁰ Revealing a misunderstanding of what was expected of her in trial proceedings that recurs throughout the *Memoirs*, Bailey claimed that she 'neglected, by mistake, to appear in court when called to trial':⁴¹ she was again arrested and bailed.⁴² For a third time Bailey visited Stewart's house and for a third time was arrested, presented at Bow Street and this time

³⁷ J. M. Beattie, 'Sir John Fielding and Public Justice: The Bow Street Magistrates' Court, 1754-1780', *Law and History Review* 25(1) (Spring 2007) 61-100, p.72.

³⁸ Bailey, *Memoirs*, pp.20-21.

³⁹ *Ibid*, p.21.

⁴⁰ Tothill Fields Bridewell Calendar for October Sessions 1769', London Metropolitan Archives (LMA), WJ/CC/B/233. On the Bow Street Magistrates' Court see J. M. Beattie, *The First English Detectives. The Bow Street Runners and the Policing of London, 1750-1840* (Oxford University Press, 2012).

⁴¹ Bailey, *Memoirs*, p.22.

⁴² *Ibid*.

committed to Clerkenwell Bridewell to await trial.⁴³ A further discrepancy, this time not in Bailey's favour, is revealed between the *Memoirs* and the archive: while Bailey states that she plead guilty 'to the indictment', the Middlesex Sessions of the Peace Book indicates that she was discharged for want of prosecution.⁴⁴ Bailey approached Stewart for a fourth and final time. Finding her in the kitchen eating a meal with his servants he had her arrested and conveyed to the Covent Garden Round House: 'Mrs. *Maitland* exhibited the articles of peace against me', and that this included 'all the old story of my pulling down the table-cloth, &c. ... though this affair was done six months before'.⁴⁵ She was committed to Clerkenwell New Prison; the matter was heard by Justice Saunders Welch, based in Litchfield Street, Westminster, and she was discharged in mid-1770.⁴⁶ Bailey did not state the outcome of the trial but records that 'twenty-seven pounds had been ordered to be paid me yearly for the support of the children', and it is possible that Justice Welch, like Justice Spinnage, was attempting to use his jurisdiction to compel Stewart to financially support his children, and so end the cycle of arrest and imprisonment occasioned by Bailey's financial distress. The events that followed suggest that this money was not paid, but Stewart's use of the justice system to deal with her appears to have worked. Bailey stopped pursuing him.

Analysing Bailey's narrative in relation to existing knowledge regarding the summary and quarter sessions courts reveals areas of commonality and departure, enriching our understanding of these courts and particularly the roles of magistrates. Her indictment for trivial assaults and other trespasses indicate a departure from common practices of dealing with such matters in other jurisdictions. Assault was the most common form of hearing presided over by a magistrate sitting in a summary court, and magistrates treated assault hearings as civil rather than criminal matters, 'arising from everyday disputes that got out of hand', and assumed the role of mediator to reach an agreement between the parties.⁴⁷ Assault matters rarely resulted in indictments and trials, and when they did, 'little by way of serious punishment was inflicted'.⁴⁸ This was particularly the case for female prosecutors and defendants, whose disputes were frequently dismissed and left to be settled out of

⁴³ The Middlesex Sessions of the Peace Oyer and Terminer Book for October 1769 includes a reference to an 'Ann Dailey', which may be an inaccurate entry of Bailey's name. This is the only possible reference to Bailey's imprisonment in Clerkenwell Bridewell, LMA, MJ/SB/B/0195.

⁴⁴ Bailey, *Memoirs*, p.24; Middlesex Sessions of the Peace Oyer and Terminer Book for December 1769, LMA, MJ/SB/B/0196.

⁴⁵ Bailey, *Memoirs*, p.26.

⁴⁶ Records of the Clerkenwell New Prison do not survive for the relevant period. The only surviving List of Prisoners for the years 1769-1770 is dated December 1769, before Bailey was arrested, LMA, MJ/CC/R/075.

⁴⁷ Gray, 'The People's Courts?', p.11 and 'The Regulation of Violence', p.75; King 'The Summary Courts', p.136.

⁴⁸ Morgan and Rushton, 'The Magistrate', p.58; Gray, 'The Regulation of Violence', p.77.

court.⁴⁹ Bailey's repeated indictment and imprisonment for misdemeanours and minor assaults on other women seems to contrast with the approach taken to like cases in other jurisdictions. It may be that the magistrates of Bow Street took a less lenient attitude than their counterparts in the City and the provinces. John Beattie's research into Sir John Fielding and the Bow Street Magistrates Court reveals that the pre-trial processes he established between 1767 and 1773 - the years when Bailey appeared at Bow Street - led to a higher rate of indictment and conviction for serious offences and felonies, so that 'almost half of all Middlesex felony commitments originated in the Bow Street office'.⁵⁰ Bailey's *Memoirs* invite inquiry into whether a similarly strict view might have been taken of lesser offences as well.

Further, the orders issued by Justices Spinnage and Welch against John Stewart to pay Bailey maintenance for herself and their children indicate that magistrates were prepared to make orders for child maintenance beyond the formal jurisdiction of the bastardy examinations. Bastardy cases were administered by justices of the peace under the statutory jurisdiction of the Poor Law, could be brought by a lone or expectant mother or by the overseers of the parish in which she was resident, and required a hearing before two justices.⁵¹ Magistrates were empowered to remove the mother and children to her parish of settlement, or to order the parish or the father to maintain them; a father could be imprisoned if he refused.⁵² There is evidence that magistrates applied significant discretion in exercising this jurisdiction beyond the scope of statute law and the formalities of the bastardy examinations. Drawing on Richard Burn's *History of the Poor Laws* (1764), Peter King argues that throughout the eighteenth century a practice developed whereby cases would be heard and orders made by one justice, which were then later certified by another, rather than being heard and adjudicated together; consequently 'the ways in which the putative fathers of illegitimate children were dealt with, and imprisoned, by the courts often had little basis in statute law'.⁵³ Tanya Evans similarly notes that 'sometimes only one Justice rather than the required two would be present for the exam'.⁵⁴ There is no evidence in her *Memoirs* that Anne Bailey made use of the Poor Law, either by applying for relief from the parish or through a bastardy examination; one possible explanation for this is that she may have feared being removed to her parish of settlement. However, it seems that Bailey did use the

⁴⁹ Morgan and Rushton, 'The Magistrate', p.70; Gray, 'The Regulation of Violence', p.79.

⁵⁰ Beattie, 'Sir John Fielding', p.76.

⁵¹ Lemmings, *Law and Government*, p.43.

⁵² Evans, *Unfortunate Objects*, p.7.

⁵³ King, *Crime and Law in England*, pp.17-18, 16.

⁵⁴ Evans, *Unfortunate Objects*, 7.

opportunity of being before a magistrate - first Justice Spinnage and later Justice Welch - to obtain an order for child maintenance against John Stewart that was not unlike an order she may have obtained through a bastardy examination. As Evans comments, 'most often an unmarried mother initiated her exam in order to ensure that she would obtain relief either from the parish or from the father responsible for maintaining his child'.⁵⁵ Bailey's *Memoirs* indicate a further procedural relaxation of the magisterial jurisdiction to force the fathers of illegitimate children to financially support them, in which the desired outcome is the same: 'The magistrate's main concern here was essentially a civil one - to ensure that the cost of bringing up the child was borne by the person responsible'.⁵⁶ Bailey's *Memoirs* reveal that despite the apparent harshness of her indictment and imprisonment, for relatively minor offenses, in other respects magistrates treated her with sympathy and compassion, possibly stretching the limits of their authority to provide her with relief through the few options available to them. Evans again notes,

there existed a huge and discernible gap between the letter of the Poor Law and the practice of relief. Justices often interpreted the operation of the law generously. Sometimes they had little choice considering the scale of the problem that they were presented with in the late eighteenth-century metropolis.⁵⁷

Anne Bailey presents such a case, beyond the scope of the Poor Law records themselves.

(b) Politics, Prostitution and the Quarter Sessions

Destitute and friendless, in mid-1770 Anne Bailey agreed to become mistress to Lauchlin Maclean, who by then had been elected to parliament and by whom she was quickly pregnant and deserted.⁵⁸ In the ensuing six months Maclean combined his political power with a strategic use of the criminal justice system to attempt to be rid of her. The *Memoirs* reveal Bailey's tenacious resolve in seeking maintenance for herself and her children, despite her limited understanding of how the justice system worked, and its ultimate resistance to the manipulation of Maclean and his household.

As with Stewart, Bailey was assaulted when she visited Maclean's home seeking financial support: 'his maid-servant fell upon me, dragged me off from the chair, and beat me most unmercifully, tho' I made no resistance, till the cook interposed, and checked her for her brutal behaviour'.⁵⁹ When Maclean eventually agreed to meet her she 'retired to the back

⁵⁵ Evans, *'Unfortunate Objects'*, 7-8.

⁵⁶ King, 'The Summary Courts', 152.

⁵⁷ Evans, *'Unfortunate Objects'*, 25.

⁵⁸ Maclean, *Reward is Secondary*, pp.208-09.

⁵⁹ Bailey, *Memoirs*, p.34.

room, where I remained bolted in for near two hours'.⁶⁰ When she refused to leave without the financial settlement she had been promised, Major Allan Maclean obtained a warrant for her arrest but encountered some jurisdictional obstacles when he attempted to enforce it:

the major ... was genteel enough to make me walk out of my road to meet a constable, who was waiting for me with a warrant which he had obtained: finding what he was about, I said I would go no farther on such an errand, and turned back into the city. The constable then followed and took me, though I conceive it was not within his limit to exercise his office there. I then insisted on going before Justice Welch, though the major wanted me to go to Justice Wright, before whom he had taken out the warrant; however, at length the matter was determined before Justice Cox, in the same office where Justice Welch sits.⁶¹

This episode demonstrates Maclean's strategic approach to prosecution and Bailey's understanding of the jurisdictional boundaries within London and the powers of constables therein. Maclean's chambers in Brick Court were located on the jurisdictional edge of the City; it appears that Major Maclean obtained the warrant from Justice Sampson Wright of the Bow Street office, which did not have jurisdiction over the City. His goal was to have Bailey dealt with one way or another, and he may have judged that she was more likely to have been imprisoned if she was brought to Bow Street, as she had been before.⁶² Bailey unsuccessfully sought to avoid arrest by turning 'back into the city': her earlier experience explains her desire to avoid Bow Street, from where she had been committed to the bridewell, and her preference for Justice Welch, who had attempted a financial agreement with Stewart. When she arrived at Justice Welch's office she discovered that Major Maclean had increased the severity of the charge to assault, perhaps in the hope that Bailey would be indicted and committed: 'the justices hearing the story, looked at Mr. Maclean, shook their heads, and discharged me, desiring him to pay the expenses'.⁶³

Justice Saunders Welch was a significant figure in Bailey's journey through the justice system, and his representation in the *Memoirs* is complex. Welch was a Westminster magistrate who focused more on 'the administration of everyday criminal justice',⁶⁴ with his own office separate from the Bow Street magistrates. Encouraged by his actions in ordering a financial agreement with Stewart and refusing to accept the warrant from Major Maclean, he became Bailey's magistrate of choice. She would later perceive a friendship between

⁶⁰ Bailey, *Memoirs*, p.36.

⁶¹ Bailey, *Memoirs*, p.36.

⁶² Morgan and Rushton 'The magistrate', p.75 and King 'The Summary Courts', p.130 both note that prosecutors exercised choice in selecting a magistrate.

⁶³ Bailey, *Memoirs*, pp.36-37.

⁶⁴ Ruth Paley, 'Saunders Welch', *Oxford Dictionary of National Biography*, 2010
<<http://www.oxforddnb.com/index/101100608/Saunders-Welch>>

Welch and Lauchlin Macleane, to which she attributed his unfair treatment of her when she attempted to prosecute Macleane's servant for assault: 'though I was the accuser, I was not suffered to speak, and he observed that I should make an excellent actress'.⁶⁵ She further claimed that in public he called her 'a common w----e' and insulted her 'on account of my having been in Bridewell', but in private implored her to return to Stewart.⁶⁶ In 1758 Welch had published a pamphlet interrogating the scourge of prostitutes and bawdy houses, and Bailey's experience dealing with him in 1770 perhaps reflected his long-standing revulsion with prostitution and its association with public disorder and crime, as well as frustration at the apparent lack of solutions to the social problem of women in her circumstances.⁶⁷ Despite detecting this bias, Bailey continued to favour Justice Welch throughout her *Memoirs*, his actions revealing a sympathetic commitment to assisting women in her situation.

Having failed in his attempts to remove Bailey by prosecuting her for trespass and assault, Macleane resolved to entrap her into committing the more serious property felonies of breaking and entering and robbery that, if proven, could have resulted in imprisonment, transportation or death.⁶⁸

As I was going to this gentleman's house again the next day, I met him upon the bridge, and I understood that he bade me go to his house, and said that he should soon return: I proceeded thither accordingly, and finding the door open, went in, and seated myself in the parlour.⁶⁹

The servants were waiting, they accused her of theft and severely beat her: 'they stamped upon me, insomuch that I was covered with bruises, from head to foot, and almost dead with pain and terrible apprehensions'.⁷⁰ She locked herself in the room 'from a motive of self-preservation' and Major Macleane 'fetched a constable, who took charge of me as a thief and housebreaker'.⁷¹ Bailey insisted on going to Justice Welch, 'since as he had heard the beginning, I was willing he should hear the end', but he was unable to hear the matter as it took place in Surrey:

⁶⁵ Bailey, *Memoirs*, p.37.

⁶⁶ Bailey, *Memoirs*, p.38.

⁶⁷ Saunders Welch, *A Proposal to render effectual a Plan to remove the Nuisance of Common Prostitutes from the Streets of the Metropolis*, 1758.

⁶⁸ King, *Crime and Law in England*, p.190.

⁶⁹ Bailey, *Memoirs*, p.41. According to Fryer, Lauchlin Macleane had laid a trap for Bailey: "'I'm going to invite her to Bridge Road," he told Allan and Henry. "We'll leave the door ajar, and she's bound to come inside. The servants will be hiding and they'll jump out and shout 'Robbery.' Then, since no one admitted her, I can charge her with breaking and entering", *Allan Macleane*, p.106.

⁷⁰ Bailey, *Memoirs*, p.41.

⁷¹ Bailey, *Memoirs*, p.42.

a brazier of Lambeth who was the constable, took me through the city, over London Bridge, to St. Margaret's-Hill, where Mr. Maclean himself appeared: the Justices Winter, Spencer, and Levy were there. Mr. L. Maclean asserted that I was a common prostitute, and that he had picked me up in the street, declaring that he was determined to prosecute me. A warrant it seems was issued, on its being represented that I threatened to shoot him.⁷²

Bailey had previously told one of Maclean's servants that his master was 'a very bad man, and that it would be no sin to shoot him, or some such unguarded words, and indeed unmeaning words', and this appears to have formed the basis of at least one of the charges against her.⁷³ She recorded that other 'affidavits' contained accusations of assault against a servant, Margaret Satterthwaite, and Major Maclean, though not the substance of the indictment itself. The 'Kalendar of Prisoners' corroborates Bailey's account, specifying that she was committed on 30 November 1770 on oath of Lauchlin Maclean because she 'unlawfully entered the Dwelling-House ... threatened to shoot him, and committed divers Misdemeanours against His Majesty's Peace', and also on oath of 'Margaret Sutherwaite, that she has assaulted, beat, and ill used' her 'and committed divers Misdemeanours against His Majesty's Peace'.⁷⁴ Bailey was committed to the county prison at St. Margaret's Hill in Southwark until she was fit to plead, the injuries she had received rendering her too ill at the hearing. Eventually she pled her innocence but was denied bail by Justice Spencer, because of 'the nature of the indictment, and that Mr. Maclean was a member of parliament'.⁷⁵ She wrote that she was 'sent to take up my lodging with thieves and felons, and to consort with the most abandoned people upon earth',⁷⁶ for 10 weeks to await trial.

Circumstances surrounding Bailey's indictment, commitment and trial reveal the compassion of personnel within the confines of the legal process. When Bailey informed the summary court 'I had no sustenance that day nor the day before' they 'seemed move with pity, and collected me some money, which at that time I was very glad to accept',⁷⁷ implying a broader social role of summary courts. For almost three weeks she 'had the run of the keeper's house' on account of her illness and injuries, and was attended by a local physician; though when she was 'supposed to be out of danger' she was moved to the main prison 'and had not the least nourishment, nor a farthing wherewith to purchase any'.⁷⁸ At Bailey's request

⁷² *Ibid.*

⁷³ Bailey, *Memoirs*, pp.40-41.

⁷⁴ 'Kalendar of Prisoners', SHC, QS2/6/1771/Eph/13.

⁷⁵ Bailey, *Memoirs*, p.44.

⁷⁶ Bailey, *Memoirs*, p.45.

⁷⁷ Bailey, *Memoirs*, p.43.

⁷⁸ Bailey, *Memoirs*, pp.43-44.

the physician visited Maclean's servant to assess her injuries, which established that Maclean had lied to the court to keep Bailey in prison. Bailey was also visited and assisted by a lawyer, 'Counsellor Chetwood',⁷⁹ who offered to provide bail and whose family 'was kind enough sometimes to relieve me'.⁸⁰

Lauchlin Maclean declared his intention to try Bailey 'for my life',⁸¹ and she recorded her experience at the Surrey Quarter Sessions:

At length I was carried up to St. Margaret's-Hill, where something like a trial was prepared, and a jury sworn; yet I had neither given nor received any notice of trial. When I mentioned this to the court, and said I was not ready, they said it might be put off, but then I must go back to prison, or else give bail; and asked whether I had any ready? As I could not procure any bail, and was struck with inexpressible horror at the thought of returning to my place of confinement, I was willing to do any thing to prevent such a terrible circumstance; so I signified to the court that I was willing to ask pardon, though I had given no offence, rather than return to prison. On this the chairman fix'd, that there was no occasion to ask pardon; but that if I would plead Guilty, I should be discharged, upon paying a fine of sixpence; with which I complied.⁸²

The Calendar of Prisoners records that Bailey was 'tried' but does not specify the indictment or the charges. As she was permitted to plead guilty and pay a small fine to secure her release, it may be assumed that the indictment was for a lesser charge than the felonies for which Maclean intended to entrap her. Bailey's account reflects a common experience of defendants at quarter sessions: she does not seem to have been aware of the charges, had no notice of the trial, and even if she did adequate preparation in prison would have been impossible.⁸³ Her misunderstanding of her options is revealed in her asking for a pardon, an order not available to the court.

Bailey's account of the Surrey Quarter Sessions is her last encounter with the law discussed in the *Memoirs*. Although he successfully had her imprisoned for some time, the justice system appears ultimately to have protected her from Maclean and his household. Bailey's next move would be to take up the pen, preferring a direct address to the public for justice than continued entanglements with Stewart, Maclean and the legal system.

⁷⁹ Bailey, *Memoirs*, p.44.

⁸⁰ Bailey, *Memoirs*, p.46.

⁸¹ Bailey, *Memoirs*, p.45.

⁸² Bailey, *Memoirs*, pp.46-47.

⁸³ Beattie, 'Scales of Justice', p.223.

4 Revealing Subjectivity

Anne Bailey was one of numerous lone mothers brought before the magistrates of metropolitan London, one of hundreds of names recorded in archival lists. The creation and survival of the *Memoirs*, however, means that Anne Bailey is capable not only of being an object of civil and criminal justice and its history, but also a subject, whose very subjectivity is inscribed in text. This subjectivity is informed by, and exposes, women's agency in eighteenth century ideologies of gender, sexuality and law. Although Bailey's autobiographical impulse was ignited by her experience of law and justice, the subjectivity constructed through the *Memoirs* is located outside legal conceptions of the female subject, and through it, ideological constructions of the desirable woman, which are ultimately of no use to her in publicising 'the true state of my case'. Bailey draws on a different agency to recreate her self in text; that of an innocent and wronged citizen in an ostensibly civil and commercial society, seeking justice through the 'public', well beyond the scope of legal jurisdiction and process.

Women's legal subjectivity was in an ambiguous state of flux throughout the eighteenth century, as doctrinal law increasingly adapted to the social and economic value of women possessing some characteristics of legal personhood, while remaining reluctant to fully recognise them as legal subjects.⁸⁴ As a widow Bailey possessed individual legal personhood, and in her account it is this very status and her responsibility for her husband's debts that triggers her descent into sexual exploitation and poverty. The ensuing legal process constructed Bailey's public identity as a convicted criminal and a prostitute, the material effects of which she highlights in her *Memoirs*:

I am perpetually turned out of every house and habitation, I have neither money, cloaths, nor necessaries left, and labour under the greatest distresses and the most cruel afflictions, chiefly on account of my having been so often imprisoned; and since the persons who are the authors of my distresses have heard that I intended to publish a book containing the true state of my case, they have employed two women to trace me from one lodging to another, and to blacken my character every where to the people of the house, and to let them know how often I have been confined in *Bridewell*; the consequence of which has been, that I have been turned out of three lodgings within these two months, and it is impossible for me to guess where their inhuman persecutions will end.⁸⁵

Although Bailey's legal subjectivity and her associated public identity contributed to her distress, law was ultimately unable to provide her with a remedy. It was to the public,

⁸⁴ Sue Chaplin, 'Fictions of Femininity. Gender, Law and Genre in Eighteenth Century England', *Griffith Law Review* 11 (2002) 34-43, pp.35-38.

⁸⁵ Bailey, *Memoirs*, pp.47-48.

instead, that Bailey turned for an impartial hearing, an acknowledgment of selfhood, and ideally a just outcome.

Anne Bailey was not the first woman to pursue these goals by publishing an account of her legal experience. In preparing her *Memoirs* she - or her assistant - may have drawn on the work of her literary predecessors, who included both women of celebrity such as Teresa Constantia Phillips and Laetitia Pilkington, and women of comparative obscurity such as Sarah Rippon, Melinda Graham and Dora Tenducci, who similarly took up the pen to protest against the law and its injustices.⁸⁶ Even if Bailey did not consciously write in this tradition - and as Felicity Nussbaum notes, 'few of the women who wrote in the first person recognized their own participation in an emerging female tradition'⁸⁷ - these women at the very least established protocols for the relationship between writer and reader, laying a foundation for the public reception and consumption of women's personal narratives of the legal system. There are clear similarities between Bailey's *Memoirs* and the texts of her predecessors, including her attempted manipulation of powerful men, her assertions of authenticity and her appeal to the public for moral and financial support. For Bailey, like her predecessors, justice is located not in the law, but in the court of public opinion. As Clare Brant argues, publication through a range of life-writing genres provided eighteenth century men and women with 'a means of trying to make people with power accountable to those over whom they exerted that power', creating a 'paralegal culture ... in the service of innocence and civic indignation'.⁸⁸ The 'tribunal of the public' was 'a community whose concern to see justice done distinguished it from the more corrupted worlds of government, law and corporations', and 'its efficacy as an instrument of reparation or revenge was less important than its offering the opportunity to do oneself justice'.⁸⁹ It was to this very public that Bailey addressed her *Memoirs*:

I see no prospect of assistance but from the generosity of such benevolent persons as read my story, on which I throw myself for relief, and to whose

⁸⁶ Teresa Constantia Phillips, *An Apology for the Conduct of Mrs. Teresa Constantia Phillips*, 3 vols (1748); Laetitia Pilkington, *Memoirs of Laetitia Pilkington* (1748); Mrs. Graham, *The Amorous Merchant: or, Intriguing Husband* (1753); Sarah Rippon, *The True State of the Case of Sarah Rippon* (1756); Dora Tenducci, *A True and Genuine Account of Mr and Mrs Tenducci* (1768). On Phillips and Pilkington see Lynda M. Thompson, *The 'Scandalous Memoirists': Constantia Phillips, Laetitia Pilkington and the shame of 'publick fame'*, (Manchester University Press, 2000); Caroline Breashears, 'Scandalous Categories: Classifying the Memoirs of Unconventional Women', *Philological Quarterly* 82(2) (2003) pp. 187-212; Felicity A. Nussbaum, *The Autobiographical Subject. Gender and Ideology in Eighteenth Century England* (Johns Hopkins University Press, 1989).

⁸⁷ Nussbaum, *Autobiographical Subject*, p.128.

⁸⁸ Clare Brant, "'The Tribunal of the Public': Eighteenth-Century Letters and the Politics of Vindication', in Caroline Bland (ed.), *Gender and Politics in the Age of Letter-Writing, 1750-2000* (Ashgate, 2004) pp.15-28, p.15.

⁸⁹ Brant, "'The Tribunal of the Public'", pp.17, 24.

candour and impartiality I submit the justice of my cause, and from whose humanity I must depend for support.⁹⁰

Having given up hope of financial assistance from either Stewart or Maclean, Bailey turned instead to her compassionate reader, upon whose textual participation she depended for the acknowledgment of her subjectivity and the reconstruction of her public identity, as well as financial support.

Despite clear similarities between Bailey and her literary precursors, there are also significant differences in terms of their textual subjectivities and their relationships to ideologies of gender, sexuality and law. It has been argued that Phillips and Pilkington, whose work has received the most critical attention and whose 'self writing finds its genesis in an accusation', resisted the subjectivity they were assigned through their public sexual improprieties and their legal consequences. Nussbaum describes their autobiographical impulses as 'the urge to correct public constructs of their fall as the pivotal and definitive moment that gives meaning to their "character":⁹¹ by reconstructing their character in print, 'such women both celebrate and apologize for their behaviour ... Each text vindicates the apologist from blame, while, in contradiction, it attempts to transform the very moral and social system that requires explanation'.⁹² Bailey's *Memoirs* expose a subjectivity that is quite different from Phillips and Pilkington. She did not characterise her sexuality, her conduct towards Stewart and Maclean or her behaviour in court as in any way scandalous, transgressive or even particularly unusual; nor did she admit to personal failure or frailty. Indeed, Bailey's subjectivity elided contemporary ideologies of the ideal or desirable women, representations of a discourse with which she can no longer usefully engage. As a player in a sexual economy beyond the reach of law, Bailey's *Memoirs* did not so much respond to as disregard the subjectivity forged through legal experience.

Bailey's subjectivity is revealed not through her dealings with the law, but with the pen. Her *Memoirs* are less sophisticated and eloquent than those of Phillips and Pilkington, in terms of both her critique of subjectivity and her capacity to locate herself in a broader social and historical context. As Bailey herself commented: 'A work like this I would however have the reader take notice, must not be expected to be written in a lofty style, or to abound with

⁹⁰ Bailey, *Memoirs*, p.51

⁹¹ Nussbaum, *Autobiographical Subject*, p.139.

⁹² *Ibid.*

rhetorical flourishes'.⁹³ They do not possess the degree of self-referentiality and consciousness of textual self-construction exploited by other memoirists of the period. Yet a different model of subjectivity is discernible both in the fact that the *Memoirs* were written and published, and in the platform from which Bailey staked her claim in the court of public justice. As Sidonie Smith has remarked, the very act of writing and publishing autobiographical writing transforms a woman from being a subject in discourse, to a subject of discourse: 'From their position of marginality, women have spoken. They have written public autobiography'.⁹⁴ Bailey's subjectivity is revealed in the act of intervening in public discourse and asserting that she has something to say worth reading. Further, rather than exploiting her status as a lone mother in distressed circumstances, she addressed the public from the position of a free citizen in an ostensibly civilised and commercial society. Her argument was driven not by her suffering or the suffering of her children, but instead by the injustice of not receiving that which she was owed, through no fault of her own: 'I have suffered equally both in person and character ... without being conscious that I have given the least cause for such treatment to my cruel persecutors'.⁹⁵ In Bailey's view, she was owed not because she is a woman, or because social mores had placed her in an impossible position, but because she entered a transaction with Stewart and then with Maclean for the exchange of sex for money, and, to her, no gendered codes of propriety or legal findings regarding debt or criminality affected the sanctity of that contract. Bailey spoke at once as a prostitute and an indignant and wronged citizen, presenting a wholly different model of female subjectivity, fragile and contingent though it is.

Conclusion

There is no evidence that Anne Bailey's *Memoirs* had any impact whatsoever in achieving Bailey's goals of reconstructing her public image, extracting money from Stewart and Maclean or garnering public and financial support. There is no mention of the *Memoirs* in the newspaper or periodical press, and Bailey herself seems to disappear from the historical record after their publication. Yet in recording and publishing her dealings with the personnel and institutions of law and justice in eighteenth century London, Anne Bailey left a rich source that reveals the everyday experience of criminal justice, particularly for lone mothers. Her *Memoirs* indicate that at a time when women's legal personhood was foregrounded in debates concerning individualism and its limits, for some women - particularly those on the

⁹³ Bailey, *Memoirs*, p.3.

⁹⁴ Sidonie Smith, *A Poetics of Women's Autobiography. Marginality and the Fictions of Self-Representation* (Indiana University Press, 1987) p.51.

⁹⁵ Bailey, *Memoirs*, p.48.

social margin - legal subjectivity could be neither empowering nor disempowering, but instead largely irrelevant. A participant in a sexual economy beyond the reach of law, Bailey's legal subjectivity and the public identity forged by legal experience are of no avail in her quest for justice, which is directed to the public, conceived as a community of impartial readers, rather than to institutions of law and justice. It remains, however, that Bailey's forging of this subjectivity resulted from her experience of law, implying a complex and multi-layered relationship between legal discourse, gender and subjectivity in the eighteenth century.