EIGHTEENTH CENTURY INFANTICIDE
A Metropolitan Perspective

By Gregory Durston[*]

Sexual intercourse outside marriage was widespread in the eighteenth century metropolis, despite ineffective social sanctions. Inevitably, this sometimes led to extra-marital pregnancies and illegitimate births. These often created serious problems for single women, many of whom were domestic servants or employees, originally from the provinces, and therefore far from sources of family assistance. Some had recourse to infanticide as a way out of their difficulties. However, the crime was tried according to special and theoretically harsh statutory procedures dating from the previous century. Nevertheless, by the 1700s — and as a result of changing social attitudes — these were widely ignored, being considered excessively draconian. As a result, acquittals for women indicted with the crime were common. Even so, it appears that infanticide was often treated more strictly in the metropolis than it was in provincial England, despite the former's reputation for breaking down traditional social mores.

Introduction

Under the French Criminal Code, 'infanticide' is limited to the murder of newborn infants. In England, it is legally used to refer to the killing of those under a year of age, and colloquially used for the murder of small children. This article will deal with neonaticide. Additionally, it will focus on the killing of illegitimate babies rather than the era's *apparently* much rarer killing of babies born within marriage (though it seems that the benefit of any doubt was usually given to suspicious deaths amongst the newborn offspring of married couples).[1] There has already been an excellent general study of eighteenth century infanticide by Mark Jackson, using as his main source evidence drawn from the court records for northern England.[2] By contrast, this paper will examine changing legal procedures and attitudes to the crime in the metropolitan area, meaning in this context the contiguous development that was made up of the City (the 'square mile'), Westminster and the adjacent, and sometimes urbanised, County of Middlesex. This will be with particular reference to the evidence that can be obtained from the Old Bailey Sessions Papers, the published accounts of trials at the Old Bailey, the court that dealt

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1 For an example of this, see *Trial of Elizabeth and John Tyrant*, OBSP, 5 July 1727.

2 Jackson (1996).

with nearly all prosecuted infanticides from this area.[3] In doing so, it will also attempt to identify features that were either special to the London area, or at least more commonly found in an urban, rather than rural, environment. Additionally, it will focus more heavily on forensic practice than Jackson's study.

Historically, infanticide has been found in most societies, being motivated by a huge array of factors ranging from eugenics, gender selection and economic/subsistence issues to post-natal depression. Although Christianity vigorously condemned the practice, it continued to have an illicit existence in premodern England. How frequently it occurred is hard to establish. By its nature, infanticide is committed in secret, and a lack of prosecutions does not necessarily establish its absence. Some observers, such as Daniel Defoe, feared that exposed cases were merely the tip of an early eighteenth century infanticide 'iceberg': 'But alas! What are the exploded Murders to those which escape the Eye of the Magistrate, and dye in Silence?'[4] Nevertheless, there is no tradition in English folklore even tacitly justifying it. Although many cases undoubtedly went entirely undiscovered, an analysis of those in which there was exposure would suggest that a relatively small minority of unmarried pregnant women had recourse to such a drastic solution.

Social Background to the Crime

Unsurprisingly, cases of infanticide almost invariably involved female suspects, if only because — in the case of illegitimate births at least — the putative fathers had usually disappeared. A 'typical' example which might be considered is the case of Ann Mabe, a servant who was impregnated by her employer's coachman in 1718. Unfortunately, he disappeared shortly afterwards, despite Mabe sending him several imploring letters asking for assistance.[5] Many women were abandoned without any means of contacting (or sometimes even identifying) their former partners. As a result, of the cases heard at the Old Bailey Sessions between December 1714 and December 1799 only four involved male defendants as principals, and all of these were married men who had assisted their wives in killing their babies or, in one case, who had committed the crime after his wife died in childbirth. All led to acquittal. This meant that infanticide was unusual in being a very serious offence in which the defendants were normally women. With the *de facto* abandonment of witchcraft prosecutions in the latter part of the seventeenth century, such practices were considered to be unique.

Royalty apart, most people in the early modern era were well into adulthood before they wed. In Jacobean England, the average groom was more than 26.5 years of age when contracting a first marriage and his bride was over

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3 These are now available online at www.oldbaileyonline.org. However, some caution must be exercised in using the search engine as, inevitably in such a huge project, a few mistakes have crept in. For a general discussion of the value and limitations of these reports, see Langbein (1978).

4 Defoe (1731), p 9.

5 *Trial of Ann Mabe*, OBSP, 27 February 1718.

23.5.[6] As a result, and even allowing for a slightly later onset of puberty and the fact that the average age at marriage fell during the eighteenth century, many people had to wait years between sexual maturity and the arrival of socially sanctioned sexual intercourse within marriage. Indeed, some individuals — such as servants — may never have been able to experience such approved coitus.[7] This inevitably produced 'fornication', the existence of socially (if ineffectively) sanctioned sexual intercourse outside marriage. The incidence of this appears to have expanded considerably during the eighteenth century, as attitudes towards penetrative sex changed and people became more sexually active.[8] When combined with bad luck, poor contraception and dishonoured promises of betrothal should such an eventuality occur (a common feature of sexual dalliances outside marriage in this period), along with inequalities of power between genders and classes, this inevitably led to instances of extra-marital pregnancy.

Despite the propagation of 'official' morality, via pulpits and chapbooks, the absence of virginity in unmarried females, even if discovered, seems to have been viewed as a *relatively* minor sin at a popular level in eighteenth century England. It did not usually bring intolerable shame on the individual concerned. Unlike some Mediterranean societies, there is little evidence that such women found it difficult to marry once suspected of unwedded sexual intercourse, and there was no physical inspection of prospective brides to ensure virginity. In any event, given the size of the capital and the frequent transience of its social relationships — especially those involving servants — it would often have been easy for women to put their 'pasts' behind them, *provided* there was an absence of children.

By contrast, the consequences of giving birth to bastards could be fairly drastic for poor women. Although the simple begetting of illegitimate children was not a crime, producing bastards that might become a burden to the community was punishable in the courts. This had frequently occurred in the seventeenth century. Thus a Jacobean statute of 1610 (7 James, cap 4) provided that: 'Every lewd woman which shall have any bastard which may be chargeable to the parish, the justices of the peace shall commit such woman to the house of correction, to be punished and set on work, during the term of one whole year'. Public whipping and pillorying were also potentially available. Nevertheless, although much of this legislation remained on the statute book during the eighteenth century, the courts were much less assiduous about imposing physical punishment and it was probably not this that acted as a primary deterrent.

However, illegitimate children still had to be supported at the expense of the parish, and it was this, as much as any inherent immorality, that alarmed local authorities. This explains the concern shown by contemporary parish officers about apparently pregnant single women who moved into their communities. Thus, in 1739, Elizabeth Harrard claimed to have been forcibly

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6 Laslett (1983), p 82.

7 Macfarlane (1980), p 71.

8 Hitchcock (1997), pp 70–87.

moved on by the Richmond beadle when she went into labour in his suburb and then to have experienced exactly the same treatment when she arrived in Twickenham on the same day, being escorted out of the town by its beadle and left in adjoining fields.[9] If the parish was landed with a bastard, it would have to be put out to nurse and, when old enough, apprenticed. In practice, little care and less expense would be taken over this, so that eighteenth century survival rates for bastards thrown on the parish were quite appalling, as cheap but neglectful nurses, institutions and dubious apprentice masters were selected by church wardens. Many illegitimate children survived for only a few months, relatively few (well under half) to adulthood. Despite this, there was still considerable expense involved for even the most economical vestry. As a result, the parish would either try to obtain a lump sum, perhaps ten pounds, if it was to take immediate responsibility for a bastard or, alternatively, support and an undertaking from the genitor to meet any future expenses, if he could not be coerced into marriage.[10] If the paternity was acknowledged, and the father could provide maintenance, the offence would not usually come before the civil courts. Consequently, poor unmarried women who were pregnant or had produced bastards were pressured to reveal the identities of those who had impregnated them. Thus, in March 1726, it could be laconically noted in a London journal that a pregnant woman had 'hang'd herself with her handkerchief in Covent Garden Round House, where she had been committed for being with child, and not discovering the father'.[11] For the same reason, it was ordered that midwives at childbirth should try to extort a genitor's name out of an unmarried woman.[12]

On its own, the hostility of local taxpayers, coupled with the moral shame of bearing a bastard, gave considerable incentives for pregnancies to be concealed and the resultant children disposed of. However, there were other, practical, consequences that were equally severe. These would normally include loss of position for female servants and employees and, without a reference and with a small child in tow, little prospect of securing another. This might require falling back on one of the rapidly increasing number of workhouses in and around the capital. Hopes of making a future marriage would also be severely damaged if the child survived. As Sarah Hayes explained, when accused of concealing her delivery in 1746, 'I was a servant, and would not disgrace myself'. Given these consequences, many felt it was unsurprising if a woman in such a position tried to 'screen herself from censure, by the commission of a more dreadful sin in the murder of a spurious infant'.[13]

Of course, some desperate women managed to pre-empt such a situation. Defoe was convinced that induced miscarriages to avoid embarrassing or inconvenient pregnancies were widespread in the early 1700s, and deplored the

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9 *Trial of Elizabeth Harrard*, OBSP, 6 September 1739.

10 George (1965), pp 214–15.

11 *Weekly Journal,* or *The British Gazetteer,* 19 March 1726.

12 Macfarlane (1980), p 71.

13 *The Gentleman's Magazine* (1749) vol. 19, p 126.

'Abortions, which wicked Wretches make use of to screen themselves from the Censure of the World'.[14] Bernard Mandeville shared his view, and in 1736 Ronald Brome claimed (untruthfully) to have dismissed his servant because he caught her boiling up an abortificent in his kitchen.[15] Indeed, legally, abortion was not viewed as seriously as infanticide, especially in the early stages of pregnancy (prior to the foetus 'quickening'). However, it was medically a very risky and highly uncertain path. If the foetus did survive to term, many other women took the less drastic step (to killing) of simply abandoning the infant in an environment in which it was likely to be found and perhaps succoured — or at least handed over to the parish authorities. Thus, in 1701, a woman left her baby in an attractive bandbox in Fleet street, where it was picked up by a man who had no sooner 'opened his prize, e're a child within it fell a crying'.[16] How frequently the streets of London served as a dumping ground for illegitimate children, both from the city and its environs, is not clear, but there are many descriptions of bastards being abandoned by both residents and visitors.[17] The parish would then be forced to take on the financial burden involved, unless a kindly (and perhaps childless) stranger intervened. Thus, in the first six months of 1743, 12 babies were abandoned in the parish of St George, Hanover Square, alone.[18] The prosperous nature of this locality may have encouraged its selection for 'dropping'. With Thomas Coram's establishment, in 1739, of the London Foundling Hospital for 'exposed and deserted children' near Brunswick Square, such mothers were presented with an alternative, and numerous babies were abandoned there. At one time, they could simply be put into a basket placed outside the hospital's door. Nevertheless, and for a variety of reasons — many probably based on physical practicalities such as an inability immediately after birth to move any great distance and the lack of privacy in an urban environment — a few women resorted to killing their babies.

Although detested as an 'unnatural' crime, the immediate backgrounds to many cases of neo-natal infanticide were depressingly similar. A general (i.e. nationwide) survey for the era suggests that many, if not the majority, of suspected perpetrators were servant girls; most killings were committed almost immediately after birth; and the sex of the infant was irrelevant to the mother's decision — it was fear of the shame and practical consequences of giving birth that was the motivation.[19] As Bernard Mandeville suggested in 1724, many young women — especially domestic employees — were 'chiefly mov'd to this Action by the fear of losing their services, and wanting bread'.[20] Indeed, many argued that shame was likely to be felt most acutely by women who

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14 Defoe (1731), p 10.

15 *Trial of Elizabeth Skinner*, OBSP, 15 January 1736.

16 *English Post*, 12–14 November 1701.

17 Macfarlane (1980), p 71.

18 Malcomson (1977), p 188.

19 Malcomson (1977), p 192.

20 Mandeville (1724), p.27.

were naturally most 'modest'.[21] Usually, the woman had concealed her pregnancy as best she could during gestation, given birth in secret and then swiftly disposed of the baby's body. A recent and localised survey of Cheshire has produced much the same pattern.[22] It also seems to have been fairly common in northern Europe generally. Thus, in eighteenth century Stockholm, the typical infanticide defendant was also an unmarried female servant who had become pregnant by a fellow servant, the employee of a neighbouring household or — more rarely — by her master.[23] Similarly, the overwhelming majority of prosecuted offenders in the eighteenth century German cities of Hamburg and Nuremburg were maidservants.[24]

Most of these findings are also replicated when seen in a specifically metropolitan context. This is, perhaps, not surprising. London was seen as sexually highly corrupting for female servants, especially those who came from the country. Jonas Hanay warned that they could not 'suspect half the wicked arts which are played off to seduce young females'.[25] The threat came from numerous quarters: masters, their sons, apprentices and male fellow servants. The latter were frequently considered to be 'very pert and saucy where they dare, and apt to take liberties'. Apprentices were equally bad, and could not marry during their indentures, whatever they might promise. Employers could also abuse their considerable power. Women who thought that they might lure a man into marriage were vulnerable to men who were equally determined to entice them into sexual relationships, using the promise of wedlock as 'bait'.[26]

The Statistics for London

Between December 1714 and December 1799, 125 women stood trial accused of infanticide. Of these, 20 were convicted and sentenced to death.[27] Thus the conviction rate for women was about 16 per cent. Of the women who were convicted, nearly all had killed their babies within an hour of birth (usually almost immediately). Of the 20 dead babies, 19 infants (95 per cent) were described as illegitimate. There was an almost equal division between the sexes, with 11 female babies being killed, eight male ones, and one in which the sex of the infant was not identified in the reports. The case of the single married woman to be found guilty, Mary Morgan in 1724, appears to have occasioned surprise. Half (10) of those convicted were clearly domestic servants, though their job descriptions varied — cook, housemaid, and so on. The number may have been greater as the reports are not always clear; some others appear to have been the employees of small businesses. The great

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21 Hunter (1812), p 9.

22 Dickinson and Sharpe (2000), p 49.

23 Kasperson (2000).

24 Ulbricht (1988), p 111.

25 Hanay (1789), p 209

26 Heywood (1743) pp 35–48.

27 Francis Whalley is inaccurately listed as having been convicted on the search engine.

majority of women committed their crimes alone, though a handful were assisted by family members or friends who were sometimes charged as accessories; such cases, like that of Grace Gates, her mother and a male friend in 1752, often resulted in acquittals.

An examination of the Old Bailey Sessions Papers also reveals an unequal distribution amongst the 129 cases (including the four with male defendants) between 1714 and 1799. There are localised peaks in prosecutions for the crime. Thus in 1716 there were two cases, while in 1718 nine women were indicted (albeit that four came from one incident, with three being accessories), falling to four in 1719. As a general rule, however, prosecutions declined as the century advanced, despite a major increase in the metropolitan population at the same time, from 600 000 to about a million. (On one analysis, London and Middlesex witnessed a halving in the number of indictments per capita between 1670 and 1770.)[28] Thus, taking June 1757 as the mid-point between December 1714 and December 1799, only 36 of the 129 accused were indicted in the second half. Additionally, only five of the convictions occurred in this period, and none between the end of 1775 and 1799. The last 15 trials all produced acquittals. Not all women condemned to death were actually executed, some sentences being commuted — or at least not carried out — for a variety of reasons. Thus, according to the Ordinary's *Account*, during the eighteenth century only 10 women were hanged for the crime at Tyburn, the normal place of execution. Significantly, these occurred prior to 1752, though several — such as Ann Hullock in 1760 — have been missed by this source. Even so, they still constitute 12 per cent of all female executions at this place.[29] This pattern seems to have been broadly replicated nationwide and in the English colonies in America. However, and also perhaps significantly, the decline in convictions at the Old Bailey prior to 1775 seems to have been less marked than elsewhere in the country. Thus, on the Northern Circuit Assizes, only six women were found guilty out of almost 200 indicted between 1720 and 1800, producing a conviction rate of about 3 per cent, less than a fifth of that found at the Old Bailey. Additionally, the last conviction on the Northern Assizes occurred in 1757, 18 years earlier than in London.[30]

Infanticide and the Law

Infanticide was not viewed as seriously as other homicides in medieval England. Although deprecated, its prosecution was frequently left to the Church courts, which could not shed blood (though they might impose penance). Thus, in the early sixteenth century, the unmarried Alice Ridyng was dealt with by such a forum after she gave birth at her father's home in Eton and, within hours of the birth, suffocated the child and buried it in a dung heap.[31] However, during the second half of the sixteenth century, there was a significant increase in concern about the crime and it became a regular topic

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28 Hoffer and Hull (1981), pp 66 and 80.

29 Linebough (1991), pp 148–49.

30 Jackson (1996), pp 3, 134; Jackson (1994), p 70.

31 Goldberg (1995), pp 25–32.

for discussion amongst Elizabethan legal writers such as Richard Crompton. The extent to which this was part of the era's general quest for order, a response to new social and religious mores or the result of increasing early modern sentimentality towards children (itself perhaps the consequence of a reduction of the risks attendant on investing in such relationships) is difficult to assess. Whatever the reasons, the crime fell into the province of the secular courts, with secular prosecutions multiplying from the 1580s.[32] Again, this pattern was widely replicated elsewhere in Europe. Thus, in Sweden, the offence had also been dealt with by the church courts in the medieval era, and did not have its own secular legal regulation until after the Reformation. It was only in the latter part of the sixteenth century that Swedish courts began to develop special procedures to deal with cases of infanticide.[33]

The 1624 Statute

In England, the Crown faced inherent difficulties in prosecuting the offence. It was necessary to prove that the dead baby had been born alive, and had then deliberately been killed, in order to obtain a conviction. Given the surreptitious nature of the act, witnesses were rare, so the prosecution was usually forced to rely on circumstantial evidence — something upon which early modern juries were notably reluctant to convict. This led to the passing of a special statute in 1624, after which most unmarried women accused of murdering their newborn children were tried under an *Act to Prevent the Destroying and Murthering of Bastard Children* (21 James I, cap 27). In theory, the new Act apart, the only difference to ordinary murder cases involved in the killing of a baby was that the latter did not permit for a number of defences, such as self-defence, that were otherwise potentially open to those accused of killing adults: 'there can be no provocation, it cannot be manslaughter; that is the only difference: the single question is, whether the child was wilfully and intentionally killed or not?'[34] By contrast, the wording of the 1624 statute effectively reversed the burden of proof:

> Whereas many lewd women that have been delivered of bastard children, to avoid their shame, and to escape punishment, do secretly bury or conceal the death of their children, and often, if the child is found dead, the said women do allege, that the said child was born dead ... Be it enacted ... in every such case the mother so offending, shall suffer death as in the case of murther, except such mother can make proof by one witness at the last that the child ... was born dead.

Strictly speaking, if narrowly construed the statute was potentially less far-reaching than at first might have seemed the case. Arguably, it was concealing the baby's death, not its body post-mortem, that brought the presumption into play, and the intention of the mother was crucial in

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32 Hoffer and Hull (1981), p 7.

33 Kasperson (2000).

34 *Trial of Elizabeth Curtis*, OBSP, 15 September 1784.

determining guilt.[35] In practice, the court records suggest that such subtleties were usually ignored, and that a woman who hid the death of an illegitimate newborn baby was presumed to have murdered it unless she could prove it had been stillborn by calling a plausible witness. The statute is also indicative of a fairly advanced understanding of concepts of burden and standard of proof, despite occasional claims that these were largely a product of the following century.[36] The Act's effects were initially dramatic; in the decades immediately after 1624, up to 40 per cent of unmarried women accused of the crime were convicted and hanged. The number of prosecutions also rose significantly. These reached a peak during the Puritan attempt to put offences of immorality at the core of the criminal canon in the Interregnum. In Essex, for example, there were 14 in the years between 1656 and 1660, compared with only three between 1661 and 1665.[37] Similar provisions were also introduced into the criminal codes of many European countries, including Scotland, Denmark, Sweden and France.[38] Indeed, it has been argued that there was an early modern European 'infanticide craze', costlier in lives than that over witches.[39] Thus, faced by the same evidential problems as were found in England, the Swedish legislature developed similar solutions. The most important of these meant that an accused unmarried woman was considered to have murdered her child if she had concealed her pregnancy, deliberately given birth in solitude and then hidden the body of the dead baby. As in England, this meant the tacit abandoning of accepted notions of due process.[40]

In theory, given that it remained in force until 1803, unmarried women accused of infanticide during the eighteenth century had to avoid its draconian provisions, if at all possible. The legal operation of the statute, and one way of avoiding it, can be seen in a case from 1717. This involved a servant named Ann Hasle, from St Giles without Cripplegate, who was accused of drowning her newborn male bastard in a large copper. On its discovery, Hasle claimed that the infant had been stillborn. Although a midwife and surgeon who examined its body gave evidence that there were no marks on the baby indicative of injury or drowning, the accused woman still faced the reverse onus clause contained in the 1624 Act. Indeed, the wording of the Act was read to the jury so that they appreciated that 'concealing the Birth and Death of Bastard-Children should make the Mothers deem'd the Murtherers of them'. The prisoner, too, realised that she had to 'put her self out of the Reach of this Act'. To do this, she alleged that she had been a married woman at the time of conception, and claimed that her husband had since died. Prior to Hardwicke's *Marriage Act* of 1753, the documentation of such events was often poor, and she called her sister to prove her nuptials. Her evidence on this issue being accepted, Hasle was 'deemed not to be affected by that [1624] Statute'. This

35 Jackson (1994), p 67.

36 Shapiro (1986), p 156.

37 Wrightson (1974), p 12.

38 Blackstone (1769), p 198.

39 Dickinson and Sharpe (2000), pp 35–36.

40 Kasperson (2000).

transformed the situation, as it then became a normal murder case and thus the 'Prosecutor's Business to prove the Child was born alive and that she murthered it'. The lack of conclusive evidence on this issue was enough to create a doubt in the jurors' minds, and she was acquitted.[41] The working of the 1624 Act can also be seen in a case from 1784 in which it was again not operative, because there had been no Grand Jury indictment, so that the barrister prosecuting the case had to inform the jury that because it was a trial 'upon the Coroner's Inquisition at common law, not under any indictment on the [1624] statute, it is necessary that there should be some evidence to satisfy you, that the mother by violence and wilfully was the cause of the child's death'.[42] In 1745, another interesting point was raised at the Old Bailey by the trial of James Leger, as the accessory to an infanticide allegedly committed by Grace Usop in his house. Unusually for the era, Leger was legally represented (something that had only been possible for a decade). His counsel argued that, as a married man, unlike the accused woman, he was not affected by the statute, and thus it 'must first [be] proved that the child was born alive' before he could be convicted. He too was acquitted.

The Act in Practice

However, in many eighteenth century trials it *should* have been almost impossible to avoid the theoretical reach of the 1624 Act. Despite this, it seems that the statute was being regularly ignored by judges and juries by the late 1600s, and almost entirely disregarded after the middle of the following century, as the reverse onus clause was increasingly seen as draconian and smacking 'pretty strongly of severity, in making the concealment of the death almost conclusive evidence of the child's being murdered by the mother'.[43] This was quite overtly recognised at the time, although one sessions report from 1743 suggested, wholly implausibly, that ignorance of the statute was widespread, and that such killings would 'not so frequently occur' if it was better known.[44] Apparently more sympathetic judges and juries began to accept a range of special defences, such as 'benefit of linen', in which the defendant demonstrated that she had made bed clothes (and other things) in preparation for the birth of her baby, and 'want of help', in which the defendant argued that the infant died despite her efforts to secure assistance. Indeed, whatever the original intention of the Jacobean legislators, the precise — and rather technical — wording of the 1624 Act did provide *some* legal justification for such defences. Thus, as early as 1664, Sir John Kelyng had concluded that a woman who knocked for help, *during* her labour, was not caught by the statute.[45] Both of these defences are well evidenced in the Old Bailey Sessions Papers. Typically, in 1718, Francis Bolanson was acquitted at

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41 *Trial of Ann Hasle*, OBSP, 17 July 1717.

42 *Trial of Elizabeth Curtis*, OBSP, 15 September 1784.

43 Blackstone (1769), p 198.

44 *Trial of Elizabeth Shuddrick*, OBSP, 12 October 1743.

45 Jackson (1994), p 67.

trial, largely because she had 'made provision' for her child.[46] By the late eighteenth century, this defence was being applied in an almost mechanistic fashion, so that in 1784, a prosecuting barrister observed in court that he could not blame the Grand Jury for earlier returning an infanticide bill *ignoramus* in his case as the woman concerned had 'provided some things for the child'.[47] The significance of such evidence should normally have been a matter for the trial jury. Some, like Daniel Defoe, complained bitterly about the willingness of apparently intelligent men to accept such flimsy defences and their gullibility in believing that the presence of a 'scrap' of linen disproved a deliberate killing. He feared that women contemplating infanticide were well aware of this and planned for it, either before or after committing their killings.[48] In fairness to Defoe, there is a little evidence to support this assertion. When Mercy Hornby was tried at the Old Bailey in April 1734, she asked one of the prosecution witnesses if she had not discovered children's bed linen in her trunk. The witness agreed that she had found a shirt, blanket, night cap and other items, but damningly added that these had not been discovered until a day after the crime came to light, and it was, 'much to be fear'd, that you did not put them there; for indeed I was inform'd they were borrow'd of a Neighbour'.

However, and even more significantly, acquittals were frequently being secured even in the complete absence of these special defences. Indeed, during the 1700s, it seems that the 1624 statute was only expressly mentioned to Old Bailey jurors on rare occasions and that numerous judges were ignoring it without having a fig-leaf of legitimacy for doing so. By the 1760s, William Blackstone could frankly note that the statute's implementation had been severely watered down:

> I apprehend it has of late years been usual with us in England, upon trials for this offence to require some sort of presumptive evidence that the child was born alive, before the other constrained presumption (that the child, whose death is concealed, was therefore killed by it's parent) is admitted to convict the prisoner.[49]

Securing an Infanticide Conviction

Despite such cases, to secure an infanticide conviction in the eighteenth century, it was normally 'necessary that there should be clear proof of the child's being born alive, and having appearances of violence, and that the Jury should be clearly satisfied that the mother intentionally killed the child'.[50] Essentially, this was the traditional common law legal onus for all murder prosecutions. As a result, it was unusual to see a conviction in the London area unless the method used to kill the infant was unequivocally murder or, if the

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46 *Trial of Francis Bolanson*, OBSP, 15 October 1718.

47 *Trial of Elizabeth Curtis*, OBSP, 15 September 1784.

48 Defoe (1731), p 10.

49 Blackstone (1769), p 198.

50 *Trial of Elizabeth Curtis*, OBSP, 15 September 1784.

physical evidence of deliberate murder was absent, the suspect made explicit admissions to the crime — whether to an examining JP, coroner or third party. One way of proving deliberate killing was to find wounds that were clearly of human origin, unlike the majority of cases in which smothering, strangling or drowning appear to have been the likely cause of death. Thus Mary Morgan's conviction in February 1724 was the result of her baby having two stab wounds to its belly, one of which was so deep that its 'Bowels came out'.[51] In 1737, Mary Shrewsbury was convicted and sentenced to execution after cutting the throat of her illegitimate baby so deeply that: 'It could not be cut worse, unless it's Head had been cut quite off.' The importance of such incontrovertible injury to sustaining a prosecution was widely appreciated, as can be seen from the reaction of Ann Palmer, a midwife instructed by a Parish Officer to examine Shrewsbury. After she adduced an admission from the suspect that she had thrown her baby's body into a vault, accompanied by a claim that it was dead when she did so, Palmer immediately responded by saying: 'I hope you have not havock'd it.'[52] This was in marked contrast to the situation that had prevailed in the seventeenth century. During that era, in Essex for example, although prosecutions in which blows were the alleged cause of death were the least likely to result in acquittals, well over half of those accused of killing their babies by strangulation, suffocation or drowning were also convicted and sentenced to hang.[53] However, where such methods of killing were employed in the eighteenth century, they usually required specially incriminating circumstantial factors to produce a conviction. This was partly because eighteenth century juries were willing to accept faintly plausible, if far-fetched, explanations for otherwise suspicious facts in a way that their predecessors had not. For example, breech deliveries apart, in the usual course of birth the neck and head of a baby appears first and is consequently the most obvious place for an unaided mother to 'lay hold of to assist herself'. In doing this, it was sometimes argued, she might inadvertently put pressure on the child's throat, strangling it.

Similarly, in 1778, although the baby of a servant, Anne Taylor, was recovered from the privy of her master's house and a surgeon gave evidence that its head was almost severed from its body, the court 'accepted' her argument that this was the result of her self-delivering it or, alternatively, of it slipping into a deep and sharp edged privy while she was relieving herself.[54] As this case suggests, the requirement that evidence of an injury's provenance be unequivocal grew progressively stronger as the century advanced. Making admissions to the crime, even if the injuries were not clear-cut, could also produce a guilty verdict. Thus, in 1744, Ann Terry was convicted of throwing her baby to its death because she openly admitted doing it 'to hide her shame'.[55] Similarly, in 1761, Esther Rowden was found guilty after making

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51 *Trial of Mary Morgan*, OBSP, 26 February 1724.

52 Trial of Mary Shrewsbury, OBSP, 16 February 1737.

53 Wrightson (1975), p 15

54 *Trial of Anne Taylor*, OBSP, 9 December 1778.

55 *Trial of Ann Terry*, OBSP, 10 May 1744.

admissions to a woman from St Martin's workhouse, whose lying-in room she had used after giving birth. This woman had pressed Rowden about widespread suspicion that she had recently given birth and eventually extracted a confession as to where the infant's body was to be found and, far more seriously, that her baby had been born alive and then been strangled with a string.[56]

Special Features of Metropolitan Infanticide

Disposal of the Body

After a baby had been killed, its mother would have to dispose of its body. A failure to hide the corpse effectively was likely to lead to exposure. Thus, in 1736, Jane Cooper left her baby's corpse sewn up in a bundle, with a friend, for 'safe-keeping', with strict orders that no one be allowed to open it. However, her friend ignored this command when, after a few days, the package began to smell like rotting meat and exude maggots. This led to Cooper's arrest. Concealment posed far greater problems in an urban environment than in the countryside. In rural areas, bodies could be buried in fields and woods, dropped into ponds, lakes and rivers or even burnt. This was not usually possible in London, and explains the astonishingly high number of cases in which the infant's body was discovered in a 'house of office', 'little room' or 'vault' (ie a public or domestic privy), producing routine newspaper observations such as: 'Yesterday, a Servant was committed to Newgate for murdering her Bastard-Child, by throwing it into a House of Office.'[57] Thus, taking the 15 prosecutions for infanticide from January 1760 to the end of 1770, over half (eight) involved the use of a privy. Sometimes, it had not been employed merely to dispose of the baby's corpse, but was actually the method by which it was killed, usually by smothering as a result of immersion. Occasionally, the condition of the deposits of excrement in such places could itself become a vital issue at trial, especially when, as periodically occurred, the accused woman claimed that she had suddenly given birth as she defecated and then been unable to retain hold of her (slippery) baby. As a result, those responsible for emptying privies might be called to give evidence on how deep and liquid the 'night-soil' in them was. If it was soft and could readily cover a newborn baby, it was more likely to have been deliberately chosen. If firm and shallow, the woman's account became more plausible.

Coming to Notice

The discovery of infanticide usually came from a failure to conceal the telltale signs of pregnancy, birth or the infant's body from neighbours. The metropolitan area differed little from the provinces in how this occurred. However, the relative lack of privacy made concealment much harder. One other factor that made London unusual was the social isolation of many female employees. In Cheshire, for example, it seems that a high proportion of cases

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56 *Trial of Esther Rowden*, OBSP, 21 October 1761.

57 *The Post-Boy*, 22–24 November 1711.

in which exposure for the crime was avoided involved close family members rallying round the pregnant woman to assist in hiding the birth.[58] The city attracted huge numbers of immigrants from all over the country and beyond. Of the women hanged (for all crimes) at Tyburn between 1703 and 1772, only 35 per cent had been born in London, and 19 per cent came from as far away as Ireland.[59] Many metropolitan women, miles from their places of origin, had no prospect of any form of help in concealing a killing. Of course, it also meant an absence of social support to encourage them to keep a baby and intimate family pressure against killing it.

Frequently, births came to light after someone was prompted to make enquiries about a sudden loss of weight in the suspected woman, the discovery of blood and afterbirth on the floor, soiled linen or the medical problems often attendant on an unassisted delivery. Of course, not everyone who found out about such an event would inform on the mother. In 1737, Elizabeth Bell appears to have been sympathetic to the plight of her lodger. After seeing blood, being told by the young woman that she had miscarried, and despite the circumstances being extremely suspicious, she merely fetched her lodger some hot ale, and then went to bed after being sworn to secrecy. The court was unimpressed by her conduct, telling her: 'You have behav'd very ill in this Affair, and you deserve to be severely reprimanded. You saw all the Symptoms of the Woman's being deliver'd, and instead of making a Discovery, you ran out of the Way.'[60] How common such a reaction was is hard to establish. However, it does not appear to have been typical. In the North of England, it has been noted that there was considerable popular hostility towards those who committed infanticide, and this seems to have been matched in London. Thus, in 1747, it was observed that a misguided and mistaken allegation of baby killing in a poor area meant that the accused woman was 'like to fall a sacrifice to the Mob'.[61] Many people, especially women, seem to have gone out of their way to expose such cases. Typically, one landlady whose newly arrived lodger appeared to have given birth, locked her into the house and went for the authorities. Similarly, Rebecca Prince, from St Brides parish, was accused of murdering her baby after she gave soiled linen to another woman to wash. This woman 'perceiv'd some Tokens on them, that made her suspect the Prisoner had had a Child, whereupon she went and acquainted her [Prince's] Mistress'. In turn, her employer immediately sent for a midwife who examined Prince and extracted a confession.[62]

It was not simply the birth that presented problems. Most servant girls would have to hide their pregnancy and its telltale signs in an environment that afforded little privacy, domestic staff usually sharing rooms and frequently sharing beds. Morning sickness could be explained away as a stomach upset, unless very severe. However, rapid and localised weight gain was much harder

58 Dickinson and Sharpe (2000), p 36.

59 Linebough (1991), p 143.

60 *Trial of Mary Shrewsbury*, OBSP, 16 February 1737.

61 *Trial of Elizabeth Fletcher*, OBSP, 9 September 1747.

62 *Trial of Rebecca Prince*, OBSP, 27 February 1723.

to account for. Although the loose and voluminous shifts of the era gave some scope for concealment, it was often not enough. As a result, when challenged, some women — such as Mary Mussen in 1757 — claimed to be suffering from a medical condition, such as the dropsy.[63] Others would allege that they had a familial history of putting on weight in a distinctive fashion, one suspect averring that her prominent pot-belly was shared by all her relatives. Nevertheless, in many cases it was widely suspected that individuals were pregnant long before they actually gave birth, especially if they continued with the same employer throughout the pregnancy (London was noted for its very high turnover of domestic staff, something which afforded an opportunity to avoid continuous surveillance). Thus Martha Shackleton's master had 'long suspected' she was pregnant in 1743. Similarly, Mussen's employer had been suspicious for at least two months. Fellow servants, who lived more intimately with the women, would often notice the symptoms earlier and frequently seem to have ignored them, in what may almost have amounted to a 'code of silence'.

Involving the Authorities

Infanticide was a serious felony. However, it differed from other grave crimes in the diverse manner in which the authorities became involved, especially in the metropolis. Although a midwife would usually investigate at an early stage of proceedings, it was often the suspected woman's neighbours who called her in. Nevertheless, a variety of local and public officials might also become involved. Obviously, if an infant's body was discovered in a public place, a constable might initiate an inquiry, as Peter Debrather did in 1735.[64] Churchwardens, overseers of the poor and parish beadles might also become involved. Thus, in 1737, a Mr Bay noted that he was called to the scene of an alleged infanticide in Moorfields, by virtue of his position as an overseer. Once there, he put a guard on the house and made other arrangements for the investigation. In theory, most women accused of the crime should have been examined by a magistrate. However, this does not always appear to have been a very important part of the process. This may have been because it was appreciated that the coroner would also question them. Nevertheless, the magisterial questioning could result in admissions that were hard to deny later at trial. Thus, in June 1727, after Elizabeth Archer fled to London having killed her baby in Staffordshire, she 'sign'd her Confession of the Fact' in front of Sir Thomas Clarges JP. Although she was returned for trial to her native county's Assizes, her confession would go with her.[65]

The Coroner's Role

A coroner and his jury would investigate cases of infanticide, like any other form of homicide. They might view a surgeon's autopsy, and would receive other evidence at their hearing. This investigation was significant, because

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63 *Trial of Mary Mussen*, OBSP, 26 May 1757.

64 *Trial of Elizabeth Ambrook*, OBSP, 16 January 1735.

65 *The British Journal,* 17 June 1727.

coroners had the power to commit cases for trial direct to the Old Bailey without the matter having to be indicted by the Grand Jury. Normally, of course, that body would consider the case as well and, in most cases where the coroner had decided there should be a hearing, the Grand Jury would also find a *billa vera*, so that the defendant would stand trial on both the coroner's Inquisition (a standard parchment document) and the Grand Jury indictment. However, this was not *invariably* the case. Coroners seem to have been rather more willing to commit for trial than Grand Juries, apparently not requiring so clear-cut a *prima facie* case. (Indeed, some observers complained that eighteenth century coroners' jurors were too willing to attribute suspicious deaths to murder.)[66] As a result, the Grand Jury would sometimes return a finding of *ignoramus* on the bill of indictment and trial would take place solely on the coroner's inquisition. This occurred, for example, at the trial of Elizabeth Fletcher in 1741, and of Elizabeth Curtis in 1784. Curtis was prosecuted by the celebrated barrister William Garrow, who felt that it was necessary to open the trial by informing the jury about the unusual nature of the committal, as normally, 'after the inquisition is found, and the woman committed, the next step in point of law is to prefer an indictment before the grand Jury for the same offence, that was preferred [in this case], and has been thrown out'.[67] Almost invariably, in trials held solely on a coroner's inquisition, an acquittal followed. Occasionally, however, the converse could happen — for example, where a coroner negligently failed to submit an inquisition to the Old Bailey. Thus, at the trial of Frances Whalley in October 1761, the hearing took place solely on the Grand Jury indictment, and the coroner for Middlesex, George Grew, was fined £50 for failing to return an inquisition and not appearing in person at the Old Bailey. The coroner's investigation and the information it threw up could also be alluded to in evidence given at the subsequent trial on indictment. Thus, at Whalley's hearing, a constable involved in the case was asked whether an autopsy had been performed on the baby's body in open court, to which he replied: 'No it was not; it lay in the room all the time the jury sat.' The coroner's oral examination of the accused woman would also be produced for the court, sometimes in person by the coroner.

Expert Evidence

The use of 'expert' witnesses in criminal trials, though sanctioned in England for over 150 years before 1700, was still rare in the eighteenth century. However, cases of infanticide were an important exception to this general situation, especially in and about London. There were good reasons for this. Giving birth was an extremely dangerous business throughout the era, and many children were stillborn for entirely natural reasons. Thus, in a typical week in 1680, returns from the bills of mortality for 131 metropolitan parishes show that there were 236 christenings and 12 children who were stillborn.[68]

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66 Baldwin (1776), p 63.

67 *Trial of Elizabeth Curtis*, OBSP, 15 September 1784.

68 British Library tract L.23.C.7.(62)

This was typical for the whole of the following century. In the year 1707, the same area produced 547 stillborn infants; in 1727, the figure was 590; in 1764, it was 729; and in 1784, it was 528.[69] This meant that claims that a baby had been 'dead on arrival' were often very plausible. As a result, infanticide frequently attracted medical opinion evidence to rebut such suggestions. At least 10 per cent of all eighteenth and early nineteenth century prosecutions in which expert medical evidence was called at the Old Bailey involved such cases.

This type of evidence was also readily available in London, the centre of England's medical profession. It was usually given in the form of testimony from midwives and surgeons or (very much less frequently) physicians and apothecaries, who had examined the infant's body and who could give evidence about what was 'normal'.[70] Of the 20 cases alone in which convictions were secured, at least 18 involved the calling of a midwife *or* a doctor (usually a surgeon), and at least six cases involved both (including William Complin, in September 1765, who described himself as both 'surgeon and man-midwife').[71] In the others, at least one professional was called (midwives being more common than surgeons as sole expert witness). This is a minimum figure; the existence of some experts may not have been mentioned in the sketchier trial reports. Even in the 18 cases between the start of 1740 and the end of 1750 which resulted in acquittals, the great majority involved the calling of a medical expert. The use of different types of professional at the same trial was partly because many infanticide cases raised two distinct medical questions: firstly, whether an infant had been born (rather than miscarried); and secondly, whether it had survived birth and then been deliberately killed. The era's usual obstetrical practice meant that the first issue was often addressed by a midwife, while the second — if contested — was more likely to come within the remit of a surgeon (though the division was not rigid). Thus, in 1750, when a surgeon giving evidence strayed outside his area of primary expertise, the court asked: 'Are you [also] a man midwife?'[72] On gynaecological issues, if nothing else, a 'skillful woman' might be accorded primacy. Indeed, occasionally — especially early in the period — an ordinary female witness who had given birth could be treated as a *de facto* expert and asked to give an opinion to (male) judges and juries on a natal issue. This occurred when Mary Soy's servant of six weeks was taken ill with stomach pains in 1784; her mistress was asked whether she had had children and, when she responded in the affirmative ('Four dead ones'), she was questioned about whether her servant's symptoms were reminiscent of labour pains. However, as the century advanced, the courts became increasingly reluctant to allow lay people to venture such opinions. A large majority of those who gave expert testimony did so on behalf of the Crown, rather than the defendant — this being a more extreme version of the general pattern in the period and

69 Hoffer and Hull (1981), pp 186–87.

70 Landsman (1998), p 451.

71 *Trial of Maria Jenkins*, OBSP, 18 September 1765.

72 *Trial of Jane Trigg*, OBSP, 12th September 1750.

unsurprising, given the differences in resources and education between those representing the authorities and suspects. Only a handful of eighteenth century Old Bailey infanticide cases produced a 'battle of experts' between prosecution and defence witnesses. However, this did not mean that unchallenged medical experts were necessarily partisan or actively sought a conviction, especially early in the century, when notions of adversariality were much weaker. Thus, in the unusual case of Mary Mullen in 1757, in which two medical witnesses appeared for the Crown and another for the defendant, each expert readily conceded the limits of his or her knowledge and that they might be mistaken in their conclusions. All were restrained in giving their testimony, and none appears to have seen their role as that of advocate.[73]

There seems to have been a greater willingness to consider experts, especially those instructed by public authorities such as a JP or coroner, as being 'neutral', and many experts seem to have shared such a view. Indeed, Defoe was convinced that numerous acquittals were being secured by bogus experts, paid for the purpose, and that for infanticide defendants it was common practice 'to hire a set of old–bedlams, or pretended midwives, who make it their trade to bring them off for three or four guineas, having got the ready rote of swearing the child was not at its full growth'.[74] However, this was not invariably the case. Mercy Hornby was damned by the testimony of a midwife she herself had sent for, after exposure, to ensure the removal of the afterbirth. How helpful medical evidence was is a matter for debate. In 1783, Dr William Hunter was very sceptical about the value of medical testimony in infanticide cases. He felt that many who gave it did not have sufficient specialist experience in the subject, were 'not so conversant with science as the world may think', sometimes mistook natural marks for violence and were inclined to express their views to coroners and courts too quickly and firmly.[75]

Bodies might be examined for signs of violence and autopsies performed, often under coroners' supervision, to establish whether the child was born alive or dead. Given that the 1624 Act was widely ignored, establishing a live birth was usually vital to a successful prosecution, as a claim to have suffered the miscarriage of a premature baby was an obvious defence. To establish that an infant had gone to term, evidence might be given on the presence of nails, hair and its general size. However, even if gestation was complete, it did not prove that the baby was alive at birth. To do this, a number of tests of varying degrees of scientific value were developed and other indicators of a live birth identified. One regular test conducted at infant autopsies was to remove and then float the baby's lungs in a bowl of water, on the basis that their floating would be indicative of the presence of air. This was deemed to be a sign that the infant had breathed after (a live) birth. This test was often accorded considerable significance by surgeons such as Richard Stevens (1750) in the early and middle decades of the 1700s. However, as the eighteenth century advanced, many metropolitan doctors appear to have become more sceptical

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73 Landsman (1998), pp 451, 476.

74 Defoe (1731), p 9.

75 Hunter (1812), p 18.

about its value. Thus, at a trial in 1762, both surgeon and man-midwife were cautious about its worth, both rejecting the suggestion from the court that it 'proved' the issue, and one noting that he had very recently seen a 'false positive' returned from the test in controlled conditions.[76] For some, such doubts matured into near-contempt for the test by the later decades of the century, so that the surgeon at Elizabeth Parkins' trial in 1771 observed that, although its validity was 'formerly thought decisive; but now that opinion is exploded'.[77] At Anne Taylor's trial, in 1778, a witness, mentioning that the coroner had ordered the 'usual experiment' to be made on the baby's lungs, was firmly told by the court: 'That is nothing. We never suffer that to be given in evidence.'[78] Other judges, however — even at the Old Bailey — continued to accord it value while accepting, as the court observed at the trial of Ann Spinton in 1771, that it was not conclusive of the issue. Indeed, many surgeons were still according some significance to what they called the 'hydrostatic test' in the early 1830s, albeit qualifying it so heavily as to render it as little more than indicative of post-natal survival.[79] Whatever its value, there were also instances of highly sophisticated forensic analysis, based on the close observation of a dead baby's body. Thus, in 1757, a testifying surgeon noted the presence of dried blood in the nostrils of an infant whose throat had been cut. He explained its presence as being the result of this injury having been inflicted while the baby was still breathing (and thus alive), and its breath having then forced the blood upward. The jury convicted.[80]

Another well-recognised test was to examine the baby's body to see if it had its fists clenched, something popularly thought to be a sign that it was dead at birth. Thus one of the main reasons for Mabe's acquittal in 1718 was 'the opinion of the Midwife and Court, that a child that is new born, if alive, [is born] with its hands expanded'.[81] The discovery of faeces, passed by a newly delivered infant, was also viewed as indicative of a live birth. Indeed, in 1757, Ann Farrer, a midwife, was adamant that it was impossible for a dead baby to pass a stool.[82] Obviously a baby's crying after delivery was also conclusive if established. By contrast, there were signs that were viewed as indicative of a stillbirth. The position of the afterbirth might be one of these. Thus the midwife who examined Rebecca Prince's baby, after it was retrieved from a vault in 1723, believed the child was stillborn because 'what should have come away with it came not away till the Night after'.[83] If it was necessary to prove that a woman had recently given birth, perhaps because a baby's body had been found outside the suspected mother's personal quarters and she resolutely denied that it was hers, evidence could be given that she had been searched by

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76 *Trial of Mary Samuel*, OBSP, 8 December 1762.

77 *Trial of Elizabeth Parkins*, OBSP, 10 April 1771.

78 Trial of Anne Taylor, OBSP, 9 Dec 1778.

79 Severn (1831), pp 140–41.

80 Landsman (1998), p 451.

81 *Trial of Ann Mabe*, OBSP, 27 February 1718.

82 *Trial of Mary Mussen*, OBSP, 26 May 1757.

83 *Trial of Rebecca Prince*, OBSP, 27 February 1723.

a midwife, either at home or when being questioned by a JP, and found, *inter alia*, to be lactating — as occurred with Francis Whalley. Some of these tests (always carried out by women) seem to have come close to being physical assaults, but were already centuries old by the eighteenth century, as evidenced by Alice Ridyng's experiences in the early 1500s.

However, as some of these case studies indicate, despite the importance given to medical testimony it was widely recognised, even at the time, that it was still a rather inexact science and thus frequently inconclusive. As a result, it was probably more likely to help a defendant by raising a doubt than to advance a prosecution by eliminating one. This was expressly recognised in 1782, when a presiding judge observed that floating a dead baby's lungs was only conclusive if the test favoured the accused. It was merely indicative if the converse occurred: 'It has been held to be conclusive, if the lungs sink; but not to be conclusive, if they float: it is a common experiment, and, in that case, gives a degree of probability.' The surgeon being questioned agreed with the court's general assessment of current medical opinion.[84]

The Eighteenth Century Legacy

The attitudes towards infanticide established during the eighteenth century were to lay the foundations for those that were prevalent in the following one. Many observers thought the crime remained widespread in the 1800s. Indeed, there were claims in the mid-nineteenth century, by men such as Dr Lankester (an MP and Middlesex coroner), that in London the police thought no more of finding a dead newborn's body than they did that of a cat or dog. Lankester estimated that there could be thousands of women living in London alone who had secretly disposed of a baby without being discovered. Benjamin Disraeli even suggested that it might be as common in England as it was on the banks of the River Ganges.[85] (Interestingly, there was considerable and ongoing political and public concern in Britain about the prevalence of infanticide in India, and especially the systematic killing of female babies in some parts of that country.)[86] Even so, Victorian women who were accused of infanticide were usually treated with considerable leniency. Few were convicted. The 1803 Act, which repealed that of 1624, had incorporated a provision allowing juries acquitting defendants of murdering their newborn offspring to return a verdict of guilty to the lesser offence of concealing a birth, a crime which carried a maximum sentence of two years' imprisonment. More than 60 years later, Byles J ventured the opinion that nearly all cases in which a conviction for this offence was secured were actually instances of murder.[87] Those women who *were* convicted of the full crime routinely received pardons. No woman was executed for killing her own baby (below the age of 12 months) after 1849. Like Defoe over a century earlier, many observers attributed this to an overly sympathetic attitude on the part of judges and juries. Some barristers

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84 *Trial of Sarah Russell*, OBSP, 3 July 1782.

85 Langer (1974), p 360.

86 See, for example Moor (1811), p 9.

87 O'Donovan (1984), p 261.

claimed that they seized 'every favourable scrap of evidence' to acquit, even in cases where there was no real doubt as to guilt. Like Defoe, several Victorian observers also feared that women contemplating the crime were well aware of this in advance of committing their offences. There was particular concern that, despite the claimed prevalence of infanticide in the capital, a 'sympathetic' approach to the crime was especially common at the Old Bailey.[88] Such attitudes ultimately found a legislative outlet in the 1922 *Infanticide Act*, which made the maternal killing of 'newly-born' infants manslaughter in certain circumstances. It was passed because it was practically impossible to secure convictions for murder in these cases (even though any death sentence passed was certain to be commuted).

Conclusion

Patterns of infanticide in the metropolitan area are broadly similar to national trends, albeit with a number of situational differences explained by a largely urban environment. Generally, however, no special paradigm is necessary to distinguish them from rural developments. By the late 1600s, a national transformation was underway in the levels of prosecution and conviction for the crime, and these continued to fall during the 1700s. This process was reflected in the metropolis, although the fall in conviction rates was slower than in provincial society. This is, perhaps, a small indication that London — although seen as a corrupting location by contemporaries, and a dissolvent of traditional social mores by some modern scholars — preserved many 'traditional values', at least during the 1700s. In London, as elsewhere, it seems that the decline in prosecution was not primarily a matter of incidence but rather the result of a marginalising of the 1624 Act combined with a general reduction in willingness to return guilty verdicts for infanticide, irrespective of the statute. Although Defoe had to assume, if only for the purposes of argument, that eighteenth century jurors were genuinely being taken in by the explanations being proffered by accused women, it seems more likely that their 'not guilty' verdicts were indicative of a major change in legal and social attitudes.

Why this occurred must be a matter for considerable conjecture. Nevertheless, there are several plausible explanations for such a change in outlook. Probably amongst the most significant was a growth in notions of due process. This was reflected in a more clearly enunciated burden and standard of proof, the advent of defence counsel, the expansion of evidential rules (hearsay was expressly excluded at Mercy Hornby's hearing in 1734) and the widespread use of expert evidence. Indeed, the crime appears to have made a major contribution to the development of forensic practise and criminal law in many of these areas. Thus legal representation could lead to imaginative defences even in apparently hopeless cases. At the trial of Mary Mullen in 1757, defence counsel argued that the defendant was innocent, although her baby's throat had been cut, because in the pain of a difficult childbirth an unassisted mother might accidentally slash its throat when she meant to cut an

[88] Higginbotham (1989), p 319.

umbilical cord that was wrapped around the infant's neck.[89] It is apparent that infanticide ceased to be viewed as a 'crime apart' during the 1700s, in much the same way that witchcraft had after 1660. As a result, juries accepted that they would have to let numerous guilty women go free if they wished to avoid the risk of convicting the innocent.

However, the process appears to have gone further than this, as judges and juries acquitted women who, in their hearts, they must have believed to be guilty, *provided* that the evidence allowed the possibility of a charitable interpretation. Could anyone really have accepted Sarah Hunter's claim, in 1769, that she gave birth entirely unwittingly and 'awaked in the morning and found there was a child ... I can give no account how I did it'?[90] This was not simply a reflection of judicial policy. In the following century, Keating J observed, in a written memorandum to the 1866 Commission on Capital Punishment, that whatever judges might do to inform jurors about the substantive law and the evidence in an infanticide case, they would wholly disregard it and 'eagerly adopt the wildest suggestions which the ingenuity of counsel can furnish'. Juries would simply not convict for what was, theoretically, a capital offence.[91]

As a result, other explanations for the decline, apart from the simple growth of legal propriety, must be sought. These might include a general decline in Puritanical forms of religion, especially amongst members of the 'political' nation, and an apparent change in sexual mores during the era. This had a number of practical consequences, not least in a near-tripling of illegitimacy during the eighteenth century. In turn, this may have engendered male guilt — a feeling that the escaped seducer was at least as responsible for what had occurred as the woman prosecuted. Many legal decision-makers, drawn from the upper and middling social orders, would have indulged in extra-marital sexual dalliances. They may have agreed with Dr William Hunter in 1783 that in most cases it was the father of the child who was 'really criminal'. Frequently, the mother was simply weak and deluded by a man, who, 'Having Obtained gratification ... thinks no more of his promises'.[92] Sympathy for the predicament of females who were the recipients of male sexual attentions, whether prostitutes or single women, accompanied by a feeling of male responsibility for the absence of restraint that encouraged illicit liaisons, seems to have influenced legal attitudes towards a number of eighteenth century offences, and frequently led to a benign application of the criminal law.[93] The decline may also have reflected a more open recognition that committing bastards to the care of the parish was often a belated death sentence in any event. Thus a satire from 1768 involved church-wardens jocularly inquiring about the fates of nine illegitimate babies put out to nurse

89 *Trial of Mary Mussen*, OBSP, 26 May 1757.

90 *Trial of Sarah Hunter*, OBSP, 28 June 1769.

91 O'Donovan (1984), p 261.

92 Hunter (1812), p 6.

93 Simpson (1996), p 53.

the previous week, and asking their custodian, 'Mother Careless', how many were still living. She immediately replies 'only two'.[94]

However, this change in attitude also ran counter to several of the era's other trends. Thus newborn babies appear to have been excepted from a growing intolerance, both legal and social, towards attacks on wives, children and servants that seems to have occurred from about 1750.[95] Additionally, the decline in popular willingness to convict proceeded even as the post-1690 'Reformation of Manners' campaign, addressing general immorality, was at its peak. Furthermore, it occurred as provision for looking after pregnant women who went 'on the parish' increased. Indeed, it has been argued that London's eighteenth century parochial and hospital provision was 'uniquely well designed' for women in this situation. There were several lying-in hospitals and almost 70 parish workhouses, small and large. This, combined with a huge reduction in the use of active punishment for bastard bearing, such as commitment to a house of correction, might have led the courts to feel that there was less excuse for such acts than in the previous century.[96]

Whatever the reasons, the eighteenth century saw a revival of the medieval notion that infanticide was different to other homicides. Indeed, with hindsight, it is the period immediately after 1624 that must be seen as being legally 'unusual' from a historical perspective. The 'long' eighteenth century (1688 onwards) witnessed a return to what might be viewed as a 'traditional' approach towards infanticide, found in medieval, Victorian and modern England. This is not to suggest that people became blasé about the killing of newborn babies, merely that contemporary observers did not feel that it normally warranted execution. In this, they may have been demonstrating that certain factors inherent to the crime — such as that it does not create a sense of social insecurity, that the infant is perceived as being less capable of suffering than an adult or older child, that the loss to its family is not as great and that frequently the motivation behind its commission is (or at least was) to hide shame — meant that many were predisposed not to view it as being quite the same as other forms of killing.[97]

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