

"Can't Prove it? Didn't Do it": The Difficulty of Convicting Defendants in Infanticide Cases in Early Modern Britain

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In Britain during the 1820s there appeared to be multiple cases reported in which women were driven to murder their own children. During this time period, proof of murder was a requirement for conviction.¹ A woman could have all evidence of the crime painting her as a killer, including the media coverage, but the court could deem her not guilty based on the laws set in place about infanticide. Evidence shows the courts ruled a certain way based upon the social and economic situations at this time. Yet the media and literature of the 1820s cast these murdering mothers as sadist wretches who killed their children without just cause. Why did the criminal justice system and the media land on opposite sides of the spectrum in concerns to opinion on infanticide? Was the media too cruel or the court too lenient? To answer this question one must look into what life was like during the 1820s, the laws on infanticide, criminal trials based on these laws and the media coverage of the accused. The primary and secondary sources used for this paper clash over what causes a woman to murder her own child. Infanticide was a social problem. Looking at the evidence it is clear that both the courts and media had legitimate reason for their stances, and in a way were both completely right.

The 18th Century is considered to be a transitional era of early industrial Britain.² It was a time when social classes became even more defined. With the creation of the working class came the middle class³ and class movement, at least upward mobility, was virtually unheard of. Because of Laws such as the Corn Laws of 1816, which kept the price of grain high, England was plunged into a depression and unemployment skyrocketed. There were periods of farmers' distress in 1820-1823 and 1826-1829.⁴ This led to a lack of food since the Corn Laws forbade anyone from buying imported wheat until the home price was a certain

¹Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Crime and Justice - Crimes Tried at the Old Bailey," *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 April 2012).

²Peter Clark, *The Cambridge Urban History of Britain Volume II 1540-1840* (Cambridge: Cambridge University Press, 2000), 505.

³Clark, 324.

⁴J.D. Chambers, *The Workshop of the World* (London: Oxford University Press, 1961), 77

height.⁵ Because of this immigration from the country to cities to find work took place, with more female immigration than male. The “overwhelming reason for female migration to towns and cities in this period was the expanding demand from the middle class for domestic servants.”⁶ Moving to towns and cities did not mean that single women received any relief from the poor system. In fact the only way to get relief is by being employed.⁷ So many women turned to the job market that needed the most workers, middle-class servants. Servants during this time period typically lived within the home of the family they worked for. *The Cambridge Urban History of Britain Volume II 1540-1840* points out 18th century London’s rich and poor lived so close together that “it was the type of milieu in which illicit sexual activity was likely very high and in which illegitimacy was a perpetual hazard.”⁸ Here we have the core two reasons as to why a woman would commit infanticide during the 1820s: the social consequences of illegitimate children and low economic situations. Because servants were a status symbol for their employers they were expected to behave a certain way to represent their proprietors in the right manner. It was common belief that “no respectable mistress would allow her servant the opportunity to transgress moral laws”⁹ Becoming pregnant outside of wedlock was considered a sin against the moral laws and, in turn, social laws of Britain during the 1820s. But this did not stop servant women from having sexual relationships with their employers or other men in hopes of marriage and the possibility of social mobility. Some women did not in fact want the advances of the men within the families they worked for but since the master servant relationship was based upon a paternal system they had no choice. Because of these reasons the servant population had high rates of illegitimate births and infanticide.¹⁰ Piecing together all the evidence will bring us to the same conclusion as it did for these servants. The birth of an illegitimate child meant immediate dismissal and the end to the mother’s career in service.¹¹ With the likely outcome of no job, no shelter and no poor relief if it was known she had child, it is clear to see why some women responded to these trying circumstances with infanticide. The high rate of infanticide shows the

⁵ Chambers, 79.

⁶ Clark, *The Cambridge Urban History of Britain Volume II 1540-1640*, 496.

⁷ Theresa McBride, *The Domestic Revolution The Modernisation of Household Service* (New York: Holmes & Meier Publishers, Inc., 1976)

⁸Clark, *Cambridge*, 507.

⁹ Theresa McBride, *The Domestic Revolution: The Modernisation of Household Service* (New York: Holmes & Meier Publishers, Inc., 1976) 24.

¹⁰ McBride, 99.

¹¹ McBride, 102.

despair that many servants faced with the prospect of an illegitimate child.¹² Considering the fact that most immigrants from the countryside were female and did end up as servants the problem of infanticide within Britain during the 1820s was a large one.

Industrialization and depression created the economic situation in which the government became aware of infanticide. What would become of a female servant if she had a child out of wedlock was also well known within society. In fact, “rather than face disgrace and dismissal which the birth of a child would cause the servant-mother would kill the child to hide her crime against social mores.”¹³ This helped to justify the court leniency on women who were tried for committing infanticide during the 1820s. The criminal justice system in the decades previous was not always so lenient upon women who committed infanticide. England was a Christian nation and because of this, Christian morals bled into state laws. “In Christian ethics infanticide was regarded in the same way as the murder of adults, and this view was reflected in British law.”¹⁴ This meant that the government valued life above all things. If one was found guilty of murdering their child they would be put to death. “Not only was infanticide punishable by death, but a law passed in England in 1623 and in Scotland in 1690 made some alleged infanticides the only offences in which the burden of proof was on the defendant.”¹⁵ This meant that the crown was not charged with proving you guilty, rather you would be charged with proving your innocence. If a mother could prove she had intended to care for the child, like producing to the court baby clothes she bought, then it could be proven that she did in fact want the child and be declared not guilty. Law makers realized that “many children of the early 1800s were desperately unwanted,”¹⁶ and that socioeconomic situations were to blame for mothers killing their children. Because of this, the Act of 1803 was established. “The 1803 Act made it possible to punish infanticide without recourse to the death penalty,”¹⁷ This lessened the harshness of sentences. Because of the 1803 Act, infanticide was treated in the same way as adult murder, where the burden of proof fell on the Crown rather than the defendant. The 1803 Act also created concealment of birth, which was considered a lesser offense.¹⁸ If there was insufficient

¹²McBride, *The Domestic Revolution*, 106.

¹³ McBride, 105.

¹⁴R. Sauer, *Infanticide and Abortion in Nineteenth-Century Britain* (Publication Investigation Committee, 1978), 82.

¹⁵Sauer, 82.

¹⁶Sauer, *Infanticide and Abortion in Nineteenth-Century Britain*, 81.

¹⁷Sauer, 82.

¹⁸Sauer, 82.

evidence of infanticide but the birth and death of a child was concealed than a woman would receive jail time of two years. In the 1820s many courts understood the economic and social burdens women had to face and because of that became lenient upon the accused. In 1826, one observer remarked: "Prosecution takes no pains to convict, and judges and juries are determined not to believe that a child has been murdered, unless they find it with its throat cut, or its brains dashed out upon the pavement."¹⁹ It can be conveyed from the law changes that the government, once they learned that the "constraints of social norms and laws provoke some women to commit infanticide,"²⁰ adapted to the socioeconomic situation at hand.

Many court trials found women not guilty of infanticide based on the fact that no one could prove that the child belonged to the woman and the cause of death for the baby could not always be determined. The primary source of the old bailey proceedings shows multiple cases in which this is found to be true. In the trial of one woman, Susan Hyde, it is clear that the court was extremely lenient upon her. Susan was a maid in the Thomas home. Her mistress found blood on the maid's sheets and floor. Mrs. Thomas found the baby in the privy. There was also blood on the seat where the baby was found head down. So much evidence against Miss Hyde was clear and present, and yet she was found not guilty. While there was a large amount of evidence that could condemn Miss Hyde the fact remains that no one saw her murder the child. No proof of murder meant no conviction. Also the surgeon that inspected the child could find no proof that they child was not born stillborn.²¹ Even in cases where it was clear that the murdered infant was born to a certain woman she could be cleared of murder. A sixteen-year-old maid named Susan Strubbings delivered her baby on her own while her mistress and aunt got a coach. The baby had marks around its neck and died shortly after birth. The surgeon that inspected the child stated: "he observed the neck to be black and lacerated in several places, which might have happened by the prisoner's delivering herself."²² So the charge of willful murder by the Coroner's inquisition was dropped. In the cases of Elizabeth Saunders, Mary Lay and Julia Barry all these women were charged with the murder of their infants and then tossing

¹⁹Sauer, 82.

²⁰ Karen Heimer, and Candace Kruttschnitt. *Gender and Crime Patterns of Victimization* (New York: New YorkUniversity Press, 2006), 93.

²¹*Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 April 2012), June 1821, trial of SUSAN HYDE (t18210606-36).

²²*Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 April 2012), February 1823, trial of SUSAN STUBBINGS (t18230219-37).

them into the privy. They were found not guilty because of the inconclusiveness of whether the infants were born alive or not. The one woman who had been found guilty was seen multiple times with a baby, her body still produced milk and she was seen at the crime scene at the time of death. The baby was thrown into a ditch filled with water and either drowned to death or died from the head injury. Because this was not concealment of birth but actual proof of infanticide the defendant was found guilty and put to death. Out of all the records found in the Old Bailey records only one was of a woman found guilty. Another case that was different dealt with concealment of birth. A servant named Harriet Farrell was found not guilty of murder, but guilty of concealing the birth from her masters who later found the infants body in the garden. From all of these cases we find the courts' reluctance to condemn women who committed infanticide. We also see a pattern of female servants being the offenders committing this crime. Yet there was no evidence found of a mother torturing her child or trying to make them suffer out of desire to be cruel. It was because of the socioeconomic reasons that women committed infanticide during the 1820s. It appears that the criminal justice system handled the situation the best way they could by not condemning these desperate women for trying to survive in a society in which single mothers of illegitimate children fail. During the 1820s "most of those apprehended for infanticide and abortion were single women, and it was believed that the desire to avoid the stigma arising from illegitimacy was the most common motive for these crimes."²³ If only the media could have been so kind.

Religion was a central factor within life of the 1820s. It not only affected law but social and moral belief as well. Because of this it is clear to see why the media continued to describe these women as evil murderesses, because that is how the people viewed them. Newspapers and journal articles were designed to appeal to popular culture and opinions. It makes sense that in order to do so they would have to condemn these women.. There is also the fact that sensational news sells, especially when it is dark and shocking. So it is no wonder that the media would portray these women in very descriptive and negative ways. By calling them "wretches" or "evil murderesses" the media created the belief that they murder the children for their own sadistic pleasure. Prior to the Act of 1803 the media and the law matched up fairly well on feelings on infanticide. The law would punish the offenders with death and the media would paint horrendous pictures of evil mothers who kill their children for no reason. While the law may have changed, the media still created ghastly stories. In one news article

²³Sauer, *Infanticide and Abortion in Nineteenth-Century Britain*, 84.

“the most dreadful charges of infanticide”²⁴ were reported about a midwife who would take babies from mothers murder them and then bury them in her garden. The paper proclaims this woman to be a wretch in using descriptive wording paints a gruesome tale meant to sell papers and incite horror in the masses. It does not mention that anything about the mothers and whether or not they could have actually taken care of the children. Just that the babies were killed and by leaving important information out the newspaper created a sensational story. “If a desperate woman was afraid or unable to obtain an abortion she might resort to infanticide”²⁵ in this case relying upon the midwife to get rid of the child. In the article it mentions that the midwife told the mothers that she was taking the babies to the hospital. This means that the mothers may in fact have had no idea what the midwife was truly doing with the babies.

Another article brings up the fact that a mother, unhappy and looking to end her own existence, tried to poison her children with toxin given to her by a “quack doctor,”²⁶ thereby casting blame not only upon the mother but a doctor for giving her the means in which to murder her children. The interesting part of this piece is that the mother gave her eldest daughter the key to the house and bid her to go inform her father that his wife had poisoned the little ones. It was almost like a cry for attention according to the paper article. Which would make sense considering the woman turned herself in and explained that she wanted to end her own existence. The news was particularly good at exposing what was considered unsightly information. One report of infanticide discusses a woman considered to live in “conformable circumstances”²⁷ becoming pregnant by a Catholic clergyman. To cover up this scandal her family, more importantly her mother, murdered the baby. The article even declared that a maid of the house told them she heard a baby cry and the mother said to her own mother “oh, mother, don’t kill my child.”²⁸ This story is the perfect example of one of the main causes of infanticide mentioned earlier in this paper, that of illegitimacy. The irony of the article is the end when “we are sorry the character of a Clergymen should be connected in any manner with so dreadful an offense.”²⁹ It appears that the writers who are so accepting of condemning the mother and her family are not so

²⁴*Bell's Life in London and Sporting Chronicle*. November 3, 1822: 285.

²⁵Sauer, *Infanticide and Abortion in Nineteenth-Century Britain*, 83.

²⁶*Bell's life in London and sporting chronicle*. "Dreadful Case of Infanticide." November 23, 1823: 723.

²⁷*Bell's life in London and sporting chronicle*. "Infanticide." September 19, 1824: 299.

²⁸"Infanticide" 299.

²⁹*Bell's life in London and sporting chronicle*. "Infanticide," 299.

quick to cast a damaging light upon the clergyman. In these cases above we see both the causes mentioned in previous paragraphs. These women were in desperate circumstances either economically, socially or all of the above. Yet the news articles still condemned them for the crimes, not ever once looking into the reasons as to why these women would go so far as to murder their own babies. It appears that the media was extremely cruel to these women who committed infanticide. They did not even do the proper research to determine why women would murder their infants. The fact does remain though, that they did still commit murder. Combine this with a very Christian set of ideals and morals for British society and it creates an explanation of why the media printed the stories that it did.

When looking at Britain in the 1800s research shows that “two of the oldest and most wide-ranging forms of population control are infanticide and abortion.”³⁰ When looking at how the criminal justice system and the media viewed infanticide it is clear as to how they fell on opposite sides of the spectrum. The criminal justice system understood the structural and cultural forces of gender inequality and women’s relative powerlessness³¹ as reasons for which a woman would commit infanticide. Because of this the court system adapted to situations of the time. The media on the other hand borderline exploited infanticide cases. The works of authors such as Thomas DeQuincy “exposed the periods’ abiding fascination with accounts of violence,”³² within the lower and working class. Infanticide was just another thing in which the public appeared to be curious about. This combined with the social and cultural stigmas associated with infanticide provide just reasoning for why the media reacted so cruelly to women who committed infanticide. It is fascinating to see a situation like this that mirrors current day struggles with similar issues. A prime example is that of abortion within the United States. While lawmakers are trying to adapt to the political and socioeconomic situation of current America certain media and religious groups are condemning women who choose abortion. While our society feels that we have made a great deal of progress, it is clear that problems of yesterday still affect today and possibly tomorrow.

³⁰ Sauer, *Infanticide and Abortion in Nineteenth-Century Britain*, 81.

³¹ Karen Heimer, and Candace Kruttschnitt. *Gender and Crime Patterns of Victimization*, 91.

³²Henkle *Comedy and Culture England 1820-1900*, 48.