

‘The Unnatural Mother’ and the Statute of 1624: Infanticide at the Old Bailey, 1674-

1704

Prior to 1624, infanticide had no formal standing within English secular law. Despite being dealt with by the King’s courts on an increasing basis (under the indictment of murder), infanticide—and the pre-marital sex that so often led to it—remained the Church’s responsibility until regulation became so insufficient that the Crown had to take over. The 1624 Statute, *An Acte to prevent the murthering of Bastard Children*, was intended to discourage women from having pre-marital relationships that would end with an illegitimate child being a financial burden on the parish. Controlling infanticide through the Common Law had proved problematic and legislators felt a law dealing specifically with this crime was necessary to ensure those who broke the law were brought to justice. The arguments of this paper will be based primarily on the indictments for infanticide found in the Old Bailey Proceedings of London between 1674 and 1704, of which there were sixty-nine. The start date for this study was chosen for pragmatic reasons: the Old Bailey records begin in this year. The end date of 1704 was selected because, after Jane Lyne was indicted in 1704,¹ there were no infanticide cases brought forward at the Old Bailey until January 1708. Concentrating on the seventeenth century was intentional, as scholarship on infanticide after the 1624 statute tends to focus on the eighteenth century, a period during which resistance to the particularity of infanticide regulations was becoming more pronounced.

The Accounts of the Ordinary of Newgate, chaplain of that notorious prison who heard the confessions of condemned criminals, will also be reviewed, where they are available. Pamphlets published during the same period, which describe the crime of infanticide, have also been examined as an indicator of public opinion about the crime. Three key questions will be asked of these sources: (1) Why did these women commit infanticide? (2) How were their crimes presented to and perceived by the public? (3) Why were so many women acquitted of a crime for which there was virtually no defence? Scholars have debated the specifics of the Statute and its practical implications, but this paper will argue that the Statute of 1624 *did* create a presumption of guilt where women kept their pregnancies a secret and hid the bodies of their dead children. It will also be put forward that the Statute was not enforced to its full extent and that some women at the end of the seventeenth century were still willing to risk censure under the Statute over the shame of an illegitimate child. Additionally, public opinion of infanticide will be shown to be more compassionate towards the both the victims and perpetrators of this crime than the calculated economic repugnance of the state to bastardy indicated. It will also be argued that by the close of the seventeenth century there was already evidence of resistance to the Statute’s presumption of guilt, which contradicted the presumption of innocence, established in Common Law for all other cases of homicide.

I

Infanticide has a long history in England, but it was only at the end of the medieval period, or the first half of the sixteenth century, that secular courts recognized it as a

¹ *Old Bailey Proceedings Online* [hereafter OBP] (<http://www.oldbaileyonline.org>), March 1704, Jane Lyne (t17040308--35).

distinct crime. Prior to this, infanticide could only be charged as homicide under common law, which posed problems for prosecutors. As a result, infanticide was usually brought before the ecclesiastical courts. The most common method used to kill children during the medieval period—or the one most concerning the authorities—was *overlaying*.² Overlaying occurred when a mother took her young child to bed with her and smothered it with her body during the night.³ This method was common because it was difficult to discern if the mother's intentions were homicidal. Prior to 1624, overlaying was treated as a sin, not a crime and defined in broader terms. Mothers, fathers, and often the two in conjunction were brought before the courts on these charges.⁴ Additionally, under canon law, "infanticide by overlaying contained no allegation of intent to kill," though intent might lead to a more severe punishment.⁵ During the 13th century, the penance for this crime was "one year on bread and water and two additional years without flesh or wine."⁶ The most severe punishment for an infanticide offence was public whipping, the same chastisement meted out for other sexual offenses.⁷ The punishment of infanticide during this period was that of a moral offence, and its treatment suggests that it was considered a less serious offence than homicide.⁸

While infanticide was not necessarily socially acceptable, it was often—quietly—acknowledged to be a necessity of survival for the poor.⁹ In the absence of birth control, families unable to support another child would relieve themselves of the new financial burden. Some scholars suggest that during the sixteenth century the Reformation undermined the authority of the ecclesiastical courts and broke down the moral standards imposed by the Church.¹⁰ As the Church became increasingly unable to deal with these crimes, they gradually came under the jurisdiction of secular courts.¹¹ This shift was formalized with the passing of *An Acte to prevent the murthering of Bastard Children* in 1624. This shift in jurisdiction also resulted in a redefinition of the crime. After 1624, infanticide became a crime committed exclusively by single mothers and intent was not only implied, but assumed.

While the statute of 1624 constituted a major shift in the legal definition of infanticide, these shifts were in keeping with the traditional treatment of bastardy. Bastardy was a crime with moral implications very similar to those of infanticide following 1624, as both were the result of extra-marital sexual intercourse. What is striking about bastardy, however, is that it was an offence primarily concerned with economic implications. The sin of the parents was decried, but punishment of the crime was determined by economic factors. The statute of 1610, which condemned female bastard bearers to the house of correction only applied if their bastard was "chargeable to the Parish."¹² If paternity could be established, and the father was capable of providing for the child, the offence was not brought before the courts at all.¹³ Concern with the financial burden on the community when providing for a

² Catherine Damme, "Infanticide: the worth of an infant under law," *Medical History* 22.1 (1978): 3.

³ *Ibid.*

⁴ R. H. Helmholz, "Infanticide in the Province of Canterbury During the Fifteenth Century," *History of Childhood Quarterly* 2.3 (1975): 385.

⁵ *Ibid.*, 381.

⁶ Damme, "Infanticide," 3.

⁷ Helmholz, "Infanticide in the Province of Canterbury," 384.

⁸ *Ibid.*,

⁹ Damme, "Infanticide," 5--6.

¹⁰ *Ibid.*, 10.

¹¹ *Ibid.*, 10.

¹² *Statutes of the Realm* Vol. 4 Part 2 (facsimile) (Buffalo: William S. Hein & Co., 1993), 1161.

¹³ Alan Macfarlane, "Illegitimacy and illegitimates in English history," In *Bastardy and its*

bastard actually led to a form of torture carried out on women in labour by their midwives. The latter were directed to refuse the former aid until they had revealed the child's paternity.¹⁴ More interestingly, if the parents of a bastard were married—regardless of when—the effect was retroactive and the child was automatically considered legitimate.¹⁵ The latter measure, particularly, expresses the monetary concerns involved in punishing crimes involving illegitimate children.

Finally, infanticide during this period must also be understood within the context of high infant mortality. During the seventeenth and eighteenth centuries, over one-half of the children born died before the age of three.¹⁶ There were risks for older children as well: between 1500 and 1800, 25 to 30 per cent of recorded births resulted in mortality before the age of fifteen.¹⁷ Even children who were well provided for were vulnerable to the conditions of the time, such as raw sewage flowing through the streets and frequent epidemics.¹⁸ These factors contributed to a general lack of concern for infants reminiscent of the crime's original status as an ecclesiastical, rather than secular, offence—a situation that subjected perpetrators to the church's milder capacity for punishment. While these conditions were crucial to the social context of infanticide, it will also be shown below that it is important not to overstate the apathy of the community when the corpse of a brutalized infant was discovered.

II

The 1624 infanticide statute was an attempt to prevent women from dodging the consequences of pre-marital sex and bearing a bastard. It was the natural progression from an act passed in 1610 whereby all women who gave birth to “chargeable” bastards—or bastards who would be the financial responsibility of the parish—would be committed to the House of Corrections for a period of at least one year.¹⁹ During the period 1675 to 1704, the bastardy rate averaged 1.612 per cent, or 16 bastards per 1000 births per year in England at large.²⁰ Within the City of London, the rate was much lower, at only 0.233 per cent, or 2

Comparative History, edited by Peter Laslett, Karla Oosterveen and Richard M. Smith (Cambridge: Harvard University Press, 1980), 73.

¹⁴ *Ibid.*, 74.

¹⁵ *Ibid.*, 73.

¹⁶ Larry S. Milner, *HARDNESS OF HEAR/HARNESS OF LIFE: The Stain of Human Infanticide* (Lanham: University Press of America, 2000), 97.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Statutes of the Realm* 4.2, 1161.

²⁰ Laslett, Peter, “Introduction: comparing illegitimacy over time and between cultures,” In *Bastardy and its Comparative History*, edited by Peter Laslett, Karla Oosterveen and Richard M. Smith (Cambridge: Harvard University Press, 1980), 14.

These statistics were drawn from baptismal entries in the parish registers of 98 parishes of the Anglican Church. For the preceding 30 years (1645--74) there was an average bastardy rate of 1.299 (or 13 bastards per 1000 births) though the annual percentage of illegitimate births was on more or less on par throughout the years 1645--1704.

For the following 30 years (1704--1734) there was an average bastardy rate of 2.203 (or 22 bastards per birth) and the annual percentage of illegitimate births consistently began to rise above 2%.

In fact, the second half of the 17th century seems to represent a slump in illegitimacy rates. From 1580--1634 it was not uncommon for illegitimate births to compose 2--3% of the total. Indeed, after 1710, the illegitimacy rate began to rise steadily and by the late 18th century were never less than 4%. Between 1635 and 1709, however, the rate remained below 2%, with only one exception (1695--99). (Laslett 1980, 14--15)

illegitimacies per 1000 births between 1671 and 1700.²¹ This number is, of course, problematic for the study of infanticide because the number of illegitimate births that were concealed, or simply not recorded by the church, is unknowable. It does, however, indicate the prevalence of this illegitimacy in English society: it was common enough, but hardly epidemic.²² The 1624 act was born out of the frustration with the large portion of these unwed mothers who were avoiding the penalties of the 1610 act, and the social consequences of bastardy, by concealing their condition.

The state wanted women who participated in extra-marital sex to be held accountable for their moral transgressions—and to discourage others from following their example. The Statute of 1624 opens by declaring that “many lewd Women that have been delivered of Bastard Children, to avoyd their shame and to escape Punishment, doe secretlie bury, or conceale the Death, of their Children.”²³ If women continued to avoid the consequences of their sexual transgressions in such a manner, there was no deterrent for illicit sex or bearing bastards.

This concern explains why infanticide came to be so narrowly defined in the 1624 statute:

That if any Woman...be delivered of any Issue of her Body Male or Female, which being born alive, should by the Lawes of this Realm be a *Bastard*, and that she endeavor privatelie either by drowning or secret burying thereof, as that it may not come to light, *whether it were born alive or not, but be conceled*, in every such Case the Mother soe offending shall suffer Death as in case of Murther.²⁴

The Statute, which superficially governed infanticide, was exclusively concerned with

²¹ Richard Adair, *Courtship, illegitimacy and marriage in early modern England* (Manchester: Manchester University Press, 1996), 204.

When the prevalence of foundlings is taken into consider, the percentage is much higher.

²² Illegitimacy ratios in England: (Laslett 1980, 14)

5 year periodsParishes included**Illegitimacy ratio%** 1675--7998116/94051.2331680--
8498148/97161.5231685--8998147/97441.5091690--9498152/93381.6281695--

9998198/98972.0011700--170498196/109621.779London illegitimacy (%): (Adair 1996, 204)

PeriodIllegitimacies AloneIllegitimacies Plus Foundlings1671 - 16800.25.01681 - 16900.24.51691 -
17000.35.7

²³ *Statutes of the Realm* 4.2, 1234--35.

²⁴ *Ibid.* (emphasis added)

An Acte to prevent the murthering of Bastard Children (21 Jac. I. c. 27) in full:

“Whereas many lewd Women that have been delivered of Bastard Children, to avoyd their shame and to escape Punishment, doe secretlie bury, or conceale teh Death, of their Children, & after if the Child be found dead the said Women doe alleadge that the said Childe was borne dead; whereas it falleth out sometymes (although hardlie it is to be proved) that the said Child or Children were murthered by the said Women their lewd Mothers, or by their assent or procurement: For the preventing therefore of this great Mischeife, be it enacted by the Authoritie of this present Parliament, That if any Woman after one Moneth next ensuing the end of this Session of Parliament, be delivered of any Issue of her Body Male or Female, which being born alive, should by the Lawes of this Realme be a Bastard, and that she endeavor privatelie either by drowning or secret burying thereof, as that it may not come to light, whether it were born alive or not, but be conceled, in every such Case the Mother soe offending shall suffer Death as in case of Murther, except such Mother can make pass by one Witsesse at the least, that the Child (whose Death was by her soe intended to be concealed) was borne dead.”

unmarried mothers and their offspring. It did not make infanticide itself a capital offence: it already was. Rather, the *concealment* of the birth of a *bastard*, which was later found dead, became punishable by death. The Statute also excludes those indicted for infanticide from the presumption of innocence granted to those prosecuted under the Common Law for homicide. Prior to the passing of this Statute, infanticide had simply been tried as murder under the Common Law. The habitual absence of witnesses to the crime, however, made convicting indicted women practically impossible.²⁵ Once the obstacle of proving a child was born alive—rather than stillborn—was removed, the courts were much more successful in obtaining convictions for this crime.²⁶ The 1624 statute was not without precedents and was in many ways the last resort of legislators who felt their previous attempts to control sexual activity had been unsuccessful.

In his book, *New Born Child Murder*, Mark Jackson speaks about the social context of the Statute. He asserts that it was not contrived for the protection of bastards, but draws attention to the economic factors at play in instances of bastard bearing.²⁷ Under the Poor Laws, it was the financial responsibility of the parish to maintain many of the children born out of wedlock because their disgraced mothers would be reduced to poverty.²⁸ These are valid assertions, but Jackson errs when he moves on to discussing the Statute itself and how it was to be interpreted. He claims that:

The statute simply created a legal presumption whereby a woman who had concealed the death of her illegitimate child was presumed to have murdered it. No longer burdened by the problems of proving live--birth, the prosecution nevertheless had to establish that the child's death had been concealed.²⁹

In simpler terms, Jackson is saying that while proving concealment removed the burden of proving murder, the courts did still have to find positive evidence that the crime had been concealed.³⁰ In practice, this was certainly not the case. It was the responsibility of the defendant to produce witnesses to the birth. This was the case for Mary Clark in 1680 when she “alleged [the infant] was still born; but having no witness therof, as the Statute required, she was found guilty.”³¹ Ann Price found herself in a similar predicament in 1681 when:

She finding her pains come fast upon her: knocked with her shoo, as loud as possible, but could make none hear her, by reason she lay up three pair of stairs; but the concealing of the Child, begin a material Point of evidence against her upon the reciting of the Statute, she was found guilty of Murther.³²

As these two cases clearly indicate, it was the burden of the defendant, not the prosecution, to provide witnesses of the birth. The courts did not concern themselves with seeking out possible witnesses and the absence thereof was often damnation for the woman on trial. If the courts played a role in establishing that the child's death had been concealed, it was a passive one.

Of the trials examined for the present study, there were thirteen instances where the accused was found guilty in part because of her inability to provide a witness. There were also eleven cases where the accused was found guilty of concealment on the grounds of witness

²⁵ Mark Jackson, *NEW--BORN CHILD MURDER: Women, illegitimacy and the courts in eighteenth--century England* (New York: Manchester University Press, 1996), 31--32.

²⁶ *Ibid.*

²⁷ *Ibid.*, 35.

²⁸ *Ibid.*

²⁹ *Ibid.*, 33.

³⁰ *Ibid.*, 33. Jackson also mentions Edward Umfreville, writing in 1751

³¹ *OBP*, July 1680, Mary Clark (t16800707--3).

³² *OBP*, April 1681, Ann Price (t16810413--1).

testimony.³³ It was the sole responsibility of these women to provide witnesses who could attest to their bastards having been born dead. Indeed, the witnesses attesting to concealment were generally persons with close relationships to the accused, such as employers or bed mates. They were also generally the ones to have discovered the crime, rather than an additional witness called to testify. A woman condemned in 1678, for instance, was found guilty because “*she* was not able to produce any of those women” which she claimed were present when she gave birth.³⁴ There was obviously an expectation in court that women would be responsible for providing witnesses to testify in their favour.

Jackson also tries to establish a distinction between concealing the death of a child and concealing the pregnancy, the birth and the dead body of a bastard.³⁵ He claims that keeping the latter three a secret created suspicion of infanticide if a dead child was discovered, but that they did not automatically bring a woman under the Statute of 1624.³⁶ Here Jackson references Zachary Babington, an associate clerk of the assize on the Oxford Circuit, writing in 1677:

It is not the burying of the Child, or hiding of it, that makes it Murther upon the Statute (as some have conceived) for if the Child be found dead in Bed by her side, or in her bosome, yet it is Murther; for the word [*conceal*] in the Statute, relates not to the Body of the Infant, but the death of it...³⁷

Babington’s primary point seems to be that the Statute was not contingent on a woman hiding the body of her child and that even if the dead child was brought forward a witness was still required to prove the mother’s innocence. This was certainly the case for Mary Baker who, in 1693, was found “in the Kitchen with the Child lying upon the ground dead beside her;” Mary was found guilty because she could produce no witnesses to the birth.³⁸ Mark Jackson, however, uses Babington’s statement to reassert his own point that concealment of pregnancy, of birth and of the dead body were not sufficient to indict a woman for infanticide.

In practice, however, the concealment of these three things did bring a woman under the Statute. The courts assumed that a woman who had concealed the dead body of a child was guilty of murdering it; this was probably the result of those women who concealed their infant’s bodies almost exclusively giving birth privately. As a result, the two became tantamount. Such was the case for an unnamed servant who was “caught carrying [her dead infant] in a Hand--basket to bury it.”³⁹ In the records available from the Old Baily Proceedings between 1674 and 1704 Jackson’s assertion is false. The “concealment of pregnancy, of birth and of the dead body of a bastard” does seem to have been roughly equivalent to concealing the birth itself.⁴⁰ Jackson not only misinterprets his source, but makes the mistake of assuming that Babington, simply by virtue of writing during the time while the Statute was enforced, both accurately represents it and embodies the prevalent societal attitudes and opinions toward it.

While Mark Jackson deals with the broad period during which the Statute

³³ **Relationship of witnesses to concealment**

Number of cases with guilty verdicts
Accused could not provide a witness to the birth
13
Witnesses attested to the concealment of the accused
11
Accused called a witness who denied having observed the birth
1
Accused claimed witnesses had been present at the birth but was unable to produce them
2
Witnesses were not mentioned in relation to concealment
11

³⁴ *OBP*, January 1678, unknown (t16780116--1).

³⁵ Jackson, *NEW--BORN CHILD MURDER*, 33.

³⁶ *Ibid.*

³⁷ *Ibid.* (additions made by Jackson)

³⁸ *OBP*, October 1693, Mary Baker (t16931012--32).

³⁹ *OBP*, April 1679, Anonymous (t16790430--6).

⁴⁰ Jackson, *NEW--BORN CHILD MURDER*, 33.

was enforced, in the article “Monstrous Mothers, Monstrous Societies: Infanticide and the Rule of Law in Restoration and Eighteenth--Century England,” Marilyn Francus deals specifically with the period between 1715 and 1750 in the Old Bailey Court Proceedings. She asserts that the application of the Statute of 1624—and discretion therein—was a mechanism of female oppression. Francus does, however, acknowledge this as an eighteenth--century development and maintains that the primary concern of the Statute in the seventeenth century was concealment.⁴¹ To develop her own argument of change over time, she also surveys the period immediately preceding her own, which overlaps with the period considered in this study. As a result, Francus makes several points that are relevant to infanticide and its regulation during the period 1674 to 1704. Firstly, women carrying illegitimate foetuses were often ostracized by respectable society and either dismissed from their service or simply unable to find one.⁴² Secondly, almost every woman accused of infanticide should have been found guilty on the basis of concealment alone—and yet many were not.⁴³ Thirdly, “marks of violence” on the dead body were generally assumed to have been inflicted by the mother while more commonplace injuries— such as bruises—were more easily dismissed.⁴⁴ Lastly, that infanticidal mothers “avoided breeding poverty through a self-regulated (if belated) sense of economy.”⁴⁵ This is a notion that expresses the continuity of attitudes toward infanticide from the medieval period to the eighteenth century. It is also an opinion that should be tempered by the notion of *shame* associated with illegitimate children; however, this was also a shame that could produce economic hardship. Francus raises important points about the social implications of bastardy and her findings are largely consistent with the records of the late seventeenth century.

While Francus’s assessment provides valuable insight into the practical application of the Statute, she makes several erroneous claims about both the state’s motivation for creating the Statute and a woman’s motivation for committing infanticide. Francus claims that:

If anything, the infanticide of lower--class and illegitimate children was not entirely unwelcome, for no one wanted more children begging on the streets or being abandoned to the care of the parish.⁴⁶

This statement must be qualified, but not entirely discarded. The Crown did not make infanticide a capital offence because they wanted to encourage it. Francus is correct to claim that the state aimed to reduce the number of paupers relying on the parish, but she fails to see how the Statute was supposed to achieve that end. The state sought to prevent the acts of sexual congress that resulted in illegitimate children, not to encourage the extermination of bastards. Francus raises some interesting points about the nature of the statute’s implementation and the social implications of bearing a child outside of marriage, but she also fundamentally misinterprets the Statute’s ultimate intent.

⁴¹ Marilyn Francus, “Monstrous Mothers, Monstrous Societies: Infanticide and the Rule of Law in Restoration and Eighteenth--Century England,” *Eighteenth--Century Life* 21.2 (1997):

3.

⁴² *Ibid.*, 5.

⁴³ *Ibid.*, 10.

⁴⁴ *Ibid.*, 13.

One woman in September 1677 claimed that her child was stillborn, a statement corroborated by a midwife’s testimony that “upon view of the Body there did not appear the least mark of wound, bruise, or other violence used. (*OBP*, September 1677, Anonymous (t16770906--1).)

In December 1689, Mary Champion’s acquittal was based partially on the fact that “no appearance of hurt was seen on the Child.” (*OBP*, December 1689, Mary Champion (t16891211--26).)

⁴⁵ *Ibid.*, 16.

⁴⁶ *Ibid.*, 2.

III

The issues raised by Jackson and Francus are important to keep in mind while interpreting the infanticide cases brought to trial at the Old Bailey at the turn of the seventeenth century. In the thirty-year period between 1674 and 1704, sixty-nine cases of infanticide were brought before the court. Of the sixty-seven cases where a verdict can be determined, thirty-eight women were found guilty and sentenced to death. The most common reasons for acquittal during this period were proving marriage and presenting evidence of making provision for the birth, such as hiring a midwife.⁴⁷ But neither of these defences were representative of a majority of the cases and women were acquitted for a wide variety of reasons. Of the twenty-nine acquittals, five cases relied to one degree or another on a lack of evidence—a peculiarity discussed below. During this period only one man was charged under the Statute, and then only in conjunction with a woman—the pair managed to prove that they were married.⁴⁸ When a defendant's occupation is described, it is almost exclusively as a servant. This suggests that while these women occupied the lower ranks of society, they were part of the respectable working-class.

The conviction rate observed here is still much higher than that observed by Marilyn Francus just a decade later. Whereas Francus determined a 20 per cent conviction rate, the present data set indicates a rate of 56.7 per cent.⁴⁹ But according to the Statute, women charged with infanticide should have been found guilty in even greater numbers. The case of an unnamed lodger near the Thames should have been archetypal. The young woman was put out by her landlady—who feared the repercussions of having housed the 'loose' woman—and was unceremoniously dumped in the neighbouring parish:

In this sad condition in the street, and without any help was this poor Creature delivered, and being found lying as one half dead by the watch, and her condition perceived; a midwife was called, who found the Child dead, but not separated from her Body, when she came to her; who asking her if it were still-born, the Prisoner both then and now said, it was not, for she heard it, cry, but denied that she intended or used any wilful means to make away the Life... however being a Bastard Child, and the law makeing it death in that case for any woman to be delivered alone without calling help, she was thereupon found Guilty.⁵⁰

That her landlady left her in another parish speaks to the unwillingness of the community to provide for these women and their offspring. That this young woman was condemned despite having revealed her pregnancy in an apparent effort to provide a witness to her labour, and despite having been found "half dead" herself, indicates how strictly the Statute of 1624 could be applied. While this woman's tale is absurd to the point of outrage, legally speaking it is not exceptional. According to the letter of the law, more cases should have proceeded this way—with women being convicted despite extenuating circumstances—when they could not produce a witness. It is informative that this case is *not* indicative of the whole of the sample.

IV

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Primary Reason for Acquittal Number of Cases
Non compos mentis/melancholy 2
Miscarriage 2
Accused was determined not to be the mother of the dead child 2
No marks of violence 2
Proved marriage 5
Character witness 2
Lived beyond the "violent" act that had made others suspect infanticide 3
Stillbirth 2
Provision 6
Insufficient evidence 1
No explanation given 1

⁴⁸ *OBP*, February 1683, Margaret Benson and Joseph Axly (t16830223--9).

⁴⁹ Francus, "Monstrous Mothers, Monstrous Societies," 1.
1715-1750: 70 cases, 14 convictions, 56 acquittals

⁵⁰ *OBP*, October 1679, Anonymous (t16791015--2).

The simplest way for a woman to evade an infanticide charge was to prove that she was married. Between 1674 and 1704 only one woman initially described as married in the court records was tried under the Statute.⁵¹ Unsurprisingly, she was found not guilty—albeit *non compos mentis*.⁵² This verdict represents a trend of popular thought whereby married women had no motivation for killing their offspring and therefore had to have been outside of their reason to commit such a heinous act.⁵³ This woman should never have been tried for infanticide in the first place, but for murder, because the Statute of 1624 applied specifically to bastards.

An additional five women were able to prove that they were married, and that their dead children were not bastards, through the course of their trials. All of these women were acquitted. Interestingly, once these women had proved marriage, the question of what fate befell the dead child was moot.⁵⁴ Marriage nullified both the application of the Statute and any perceived motivation for the crime. This speaks very strongly to what the Statute was truly trying to regulate: not the murder of small children but the production of bastards through pre-marital intercourse and the economic burdens they presented. Married women were not under the jurisdiction of the Statute and proving marriage was a woman's best defense at a trial for infanticide.

The acquittal of married women was in keeping with the Statute, but the five women who were acquitted during this period for varying degrees of insufficient evidence were not. The most extraordinary of these trials was that of Mary Maye, indicted for strangling her child about the neck, in 1694.⁵⁵ This account of her trial survives:

[the] Child was found dead in a Kennel of dirty water, and she owned the Child to be hers; but said it was a Miscarriage... There was abundance of concurring Evidence to corroborate the Fact, *but there was no positive Evidence that she was guilty of murdering the Child* so she was acquitted.⁵⁶

In this case, the courts could prove that Mary had concealed the birth as well as the death of her child and under the Statute she should have been condemned for that simple fact. She was ultimately found innocent because they could not definitively prove that the child was born alive. This case, unique during the period under review, would tentatively seem to suggest a shift towards treating infanticide as a typical homicide by assuming the defendant was innocent rather than guilty. Four other women were acquitted based partially on insufficient evidence, though it did not play as central a role in their relief as it did in the case of Mary Maye.⁵⁷ Despite having the ability to convict her under the Statute, the court refrained. Garthine Walker has argued that “as early as the mid--seventeenth century, the terms of the 1624 statute were apparently ignored by jurors and judges.”⁵⁸ While this trend was clearly developing during the period discussed, a *wholesale* dismissal of the statute's particularities is not evident. Attitudes about infanticide and its special status were clearly

⁵¹ OBP, January 1675, Anonymous (t16750115--1).

⁵² *Ibid.*

⁵³ Damme, “Infanticide,” 13.

⁵⁴ OBP, February 1681, Mary Naples (t16810228--5); OBP, February 1683, Margaret Benson (t16830223--9); OBP, February 1684, Elizabeth Stafford (t16840227--18); OBP, April 1693, A. M. (16930426--46); OBP, July 1693, Alice Sawbridge (t16930713--11).

⁵⁵ OBP, July 1694, Mary Maye (t16940711--23).

⁵⁶ *Ibid.* (emphasis added)

⁵⁷ During the trial of Sarah Rhoades in June 1690, “the Evidence was somewhat circumstantial, and the prisoner declared her Innocency at the Tryal, so she was acquitted.” (OBP, June 1690, Sarah Rhoades, (t16900605--7)); OBP, December 1689, Mary Campion (t16891211--26); OBP, July 1691, Anonymous (t16910708--15); OBP, December 1691, B. G. (t16911209--3).

⁵⁸ Walker, *Crime, Gender and Social Order*, 153.

being challenged even at this early date, though the Statute would not be repealed until 1803.⁵⁹

Men do not figure significantly in the court records for infanticide. Only one man was indicted under the Statute between 1674 and 1704. In this instance, Joseph Axly is mentioned in conjunction with one Margaret Benson: the two eventually proved that they were married and were acquitted accordingly.⁶⁰ Rob Foulks, the notorious minister--turned--murderer, was indicted for murder, not infanticide.⁶¹ Men are frequently mentioned in the court records, mainly by women using marriage as a defence—often unsuccessfully—but these men usually fail to materialize.⁶² Men were also commonly mentioned as having promised the defendant marriage if she would surrender herself to him but having forgotten his promise after the fact.⁶³ Despite their cursory appearances in the records, infanticide was an essentially female crime.

The bulk of infanticide trials not only saw women on the defensive, but women performing the duties of witness and accuser as well. Evidence at infanticide trials was typically given by women, particularly midwives, who would testify about the condition of the body. In 1690 Martha Nook was acquitted after a midwife declared that the dead child had been stillborn.⁶⁴ In 1696, M. S. was brought to trial after her female peers discovered her condition:

It appeared that she was brought to bed on a Sunday morning and complained that she was very ill, and her Mistress and some women more came to her, and charged her with it, which she denied at first, but finding Milk in her Breast...confessed at last where it was.⁶⁵

The evidence provided by these women was crucial to the case against the accused. Despite the cursory role played by women in most serious crimes during this period, the regulation of infanticide was a distinctly female domain.

The cases where child murderers were indicted for murder instead of infanticide during this period at the Old Bailey tell a very different story than the cases presented above. In 1697, when Jane Watson was indicted for murdering her female bastard, she was indicted for murder, not infanticide.⁶⁶ This case, similar in many other ways to an infanticide trial, took a different course primarily because she had in no way attempted to conceal her condition.⁶⁷ The story of Rob Foulks, indicted for murdering his illegitimate newborn, was qualitatively similar to instances of infanticide. Mr. Foulks was charged with seducing a young woman in his charge, then bringing her to London where she was delivered of a child, which he immediately “cruelly cram'd...down a house of Office.”⁶⁸ Even this method of disposing of the child is reminiscent of an infanticide indictment, wherein a large portion of mothers threw their babies into latrines in the hopes that they would avoid discovery. The critical difference between Rob Foulks and the many young women indicted for infanticide was their sex. The presumption of guilt imposed by the Statute was also not necessary to convict Foulks: “[it] was absolutely prov'd against him by several witnesses, nor was it deny'd

⁵⁹ Damme, “Infanticide,” 13.

⁶⁰ *OBP*, February 1683, Margaret Benson and Joseph Axly (t16830223--9).

⁶¹ *OBP*, January 1679, Rob Foulks (t16790131--2).

⁶² *OBP*, December 1683, Elenor Adams (t16831212--2). (describe)

⁶³ *OBP*, May 1681, Elizabeth Messenger (t16810520--3). (describe)

⁶⁴ *OBP*, September 1690, Martha Nook (t16900903--4).

⁶⁵ *OBP*, February 1696, M. S. (t16960227--18).

⁶⁶ *OBP*, December 1697, Jane Watson (t16971208--2).

⁶⁷ *Ibid.*

⁶⁸ *OBP*, January 1679, Rob Foulks (t16790131--2).

by the miserable Gentlewoman.”⁶⁹ These cases serve to reassert the particular importance of concealment and femininity, respectively, to the jurisdiction and enforcement of the Statute.

V

The limited detail of the Old Bailey Proceedings for this era leads to an impersonal assessment of the crime of infanticide. It is only through the Ordinary’s Accounts that one can get a much better sense of who these women were and why they committed the crime of infanticide. Women like Margaret Spicer, who maintained her innocence until her death, were rare.⁷⁰ Women found guilty of infanticide were more typically presented as creatures of pity and implored to repent their sins that God might take mercy on them. The account of Elizabeth Dale, who claimed she was “Educated by Religious Parents, but walkt not according to their good Counsel and Example,” was typical.⁷¹ Still others confessed, as Elizabeth Moulton did, that “That she had been guilty of Swearing, Lying, and Uncleaness. So the Devil led her from one Sin to another, till she Murtherd her Child.”⁷² These women told the tale of a woman gone astray finally forced to face the consequences of her actions. This moralization of an infanticidal woman’s story was also necessary to justify the retelling of a sensational and violent crime.⁷³ These accounts were, after all, published for mass consumption.⁷⁴ The stories of infanticidal women mirrored those of other criminals condemned to death, and they were generally portrayed as having a long history of sin that led them to their damnation.

The accounts written by the Ordinary of Newgate, like the trials themselves, were intended to deter other young women from committing the same folly. The account taken of Katharine Brown in 1685 described how the Devil took control of a criminal’s soul:

Satan prevails upon Sinners by degrees: first he Tempts them to Immodesty, and Laciviousness in Conversation, by not setting a Watch over their Hearts, to prevent inward Lusting in the first Motions and Ebullitions of it; they by unwary Converse with prophane Persons, Temps them from Chambering and Wantonness, to comply with flagitious desires of gratifying sensual brutish Commixtures; to cover and conceal the turpitude and shave of which, he draws them to Murder their Illegitimate Off- - springs; which is a most unnatural Crime, in as much as the very Sea Monsters Suckle and Preserve their Young.⁷⁵

This tale promoted the idea that infanticide was the end result of a long process of sin. One had to beware the small transgression or risk falling into serious transgression. This account also suggests that these women were easily led astray and the metaphor of the Devil compelling them to commit their crimes is typical. Another common factor in these accounts was a warning from the woman herself to other women. In January 1691, Anne Stephens “warn[ed] all persons to preserve their Chastity” lest they meet her end.⁷⁶ These accounts must, however, be viewed with a measure of skepticism: they were written by the Ordinary as public deterrents, not by the prisoners themselves. They are also reminiscent of infanticide during the medieval period, when it was still considered a church crime, and

⁶⁹ *Ibid.*

⁷⁰ *OBP*, May 1677, Ordinary’s Account: Margaret Spicer (OA16770504).

⁷¹ *OBP*, May 1691, Ordinary’s Account: Elizabeth Dale (OA16910501).

⁷² *OBP*, July 1689, Ordinary’s Account: Elizabeth Moulton (OA16890715).

⁷³ Francus, “Monstrous Mothers, Monstrous Societies,” 8.

⁷⁴ *OBP*, “Ordinary of Newgate’s Accounts,” <http://www.oldbaileyonline.org/static/Ordinarys--accounts.jsp> (accessed October 25, 2012)

⁷⁵ *OBP*, October 1685, Katharine Brown (OA16851023).

⁷⁶ *OBP*, January 1691, Anne Stephens (OA16910126).

indicate that the secularization of the laws governing infanticide did not necessarily lead to shift away from Christian notions of sin surrounding it.

Moral proselytizing aside, the Ordinary's Accounts present the clearest picture of motive for infanticide. The primary motivation for many of these women was, as Anne Stephens claimed, to "avoid the shame of bastardy."⁷⁷ This sentiment was echoed by Elizabeth Moulton, Margaret Deane, Mary Baker and Christian Russel.⁷⁸ Mary Mott, as well as Mary Baker, both despaired of providing for the child.⁷⁹ These women were clearly willing to go to extreme lengths, and risk condemnation under the Statute of 1624, to avoid the social and economic burdens of raising a bastard. These records also confirm that the stigma against an unwed mother was severe and are indicative of why the state wanted to prevent women from concealing infanticide. The state felt that if a woman were going to behave in such a loose way as to occasion an illegitimate pregnancy, that she should in the end be punished. If women were allowed to dodge this punishment, either through concealing their child's body or by the inefficiency of prosecution under the Common Law, then bearing bastards would become more commonplace.

VI

While the Ordinary's Accounts provide insight into how infanticidal mothers perceived themselves, pamphlets describing their crimes are indicative of popular attitudes about their crimes. Pamphlets detailing infanticide cases were multi-purpose: they both informed the public of the consequences of the crime itself while also warning against the sexual transgressions that led to it. Once again, this relates to the necessity of attaching moral guidance to these accounts before they were disseminated to the public.⁸⁰ *Fair Warning to the Murderers of Infants*, a pamphlet published in London in 1692, recounts the sordid tale of the impoverished Mary Goodenough who committed adultery with a baker in return for her maintenance.⁸¹

A letter to her children follows this account, wherein she repents her sins and bemoaned "I had never fallen into those Depths of Sin, which have brought me into the Depths of Misery."⁸² Infanticide pamphlets were sometimes an attempt to regulate social activity, but the morality tales incorporated into them were just as often the means of justifying the publication of these gruesome stories.

It cannot be argued that contemporaries were unaware of the consequences of infanticide or concealment. The tale of the presumably fictitious 'Mary Butcher' told in the poem *The Lamentation of Mary Butcher*, published in 1700, is about a young woman seduced by a deceitful man who attempted to hide her shame by murdering her child:

⁷⁷ *Ibid.*

⁷⁸ *OBP*, July 1689, Elizabeth Moulton (OA16890715); *OBP*, June 1691, Margaret Deane (OA16910603); *OBP*, October 1693, Mary Baker (OA16931023); *OBP*, January 1702, Christian Russel (OA17020128).

⁷⁹ *OBP*, December 1691, Mary Mott (OA16911218); *OBP*, October 1693, Mary Baker (OA16931023).

⁸⁰ Francus, "Monstrous Mothers, Monstrous Societies," 8.

⁸¹ *Fair Warning to the Murderers of Infants: being and account of the Tryal, Condemnation and Execution of Mary Goodenough at the Assizes held in Oxon, in February, 1691/2* (London: 1692). In Early English Books Online [hereafter EEBO], http://eebo.chadwyck.com.ezproxy.library.dal.ca/search/full_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=99889734&FILE=../session/1351228989_27627&SEARCHSCREEN=CITATIONS&SEARCHCONFIG=var_spell.cfg&DISPLAY=AUTHOR (accessed October 20, 2012).

⁸² *Ibid.*

My new--born Infant I did destroy,
In Grief I'm now surrounded...

...So now observe, my pretty Maids,
and Mind the Application,
And shun the base deceitful Man,
Let what will be his Station, Some
only court their Will to gain, Which of
times prove our Ruin...

Poor Wretch! I thought to hide by Shame For
fear my Friends should know it, But by the
Murder now you see
To Multitudes I show it.⁸³

The traditional morality narrative is herein turned to poetry. There can be no clearer indication than this poem, which contains eight full verses of jaunty rhymes about the serious subject of infanticide, that this crime had become an underlying current in English society. Even if a citizen of London could not read, in 1680 the City of London decreed that *An Acte to prevent the murthering of Bastard Children* should be read out by the minister of every parish church four times each year.⁸⁴ It is difficult to imagine that women were not aware of the Statute and its consequences at the end of the seventeenth century. Infanticide was a well-advertised crime and yet many women were willing to risk conviction for this crime over the shame of raising a bastard.

It is in these pamphlets about infanticide that a concern for the well being of the murdered children finally becomes apparent. One pamphlet described the crimes of Mary Compton, a midwife convicted of murdering five young children by starvation that had been placed in her care by the parish.⁸⁵ A child still young enough to lie in a cradle was found by a neighbour to be rotting alive:

When she had it first, it was in a manner dead; and when she had it to her House, she first gave it some Milk, and then opened the Head of it, and the Head-cloaths were perished close to the Skull, and stuck in the Flesh; and the Ears of it were as it were rotten, and ready to drop off, and stunk most loathsomly for want of looking after; and the very Skin upon the Back, and the Lips and Breech of the poor Child came off with the Clouts; and there were perfect holes to be seen in the Hips of it.⁸⁶

⁸³ *The Lamentation of Mary Butcher* (London: 1700). In EEBO, http://eebo.chadwyck.com.ezproxy.library.dal.ca/search/full_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=99893689&FILE=../session/1351230368_28795&SEARCHSCREEN=CITATIONS&SEARCHCONFIG=var_spell.cfg&DISPLAY=AUTHOR (accessed October 20, 2012).

⁸⁴ City of London, *Anno vicesimo primo Jacobi Regis, &c An Act to prevent the Destroying and Murthering of Bastard Children* (London: 1680). In EEBO, http://eebo.chadwyck.com.ezproxy.library.dal.ca/search/full_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=24038244&FILE=../session/1351232228_29919&SEARCHSCREEN=CITATIONS&SEARCHCONFIG=var_spell.cfg&DISPLAY=AUTHOR (accessed October 20, 2012).

⁸⁵ *A particular and exact account of the trial of Mary Compton, the bloody and cruel midwife of Poplar* (London: 1693). In EEBO, http://eebo.chadwyck.com.ezproxy.library.dal.ca/search/full_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=43078109&FILE=../session/1351232893_643&SEARCHSCREEN=CITATIONS&SEARCHCONFIG=var_spell.cfg&DISPLAY=AUTHOR (accessed October 20, 2012).

⁸⁶ *Ibid.*

The horrific death of this child precipitated a search of Mary Compton's cellar by her neighbours. This search produced two more dead children. Mary Compton maintained her innocence of these crimes throughout the trial and beyond, not even repenting in the face of death.⁸⁷ Compton's neighbours did not display indifference towards the suffering of these children, but took decisive action to resolve the situation. They were accordingly outraged by the midwife's crimes and Daniel Parnel, Overseer of the Poor of Poplar, decried her crimes: "Lord! What Woman would be so Bloody, so Monstrous, so Cruel, so much bereft of all humanity, all natural Affections."⁸⁸ The statute was not designed to protect bastards, but this does not necessarily imply that society was impervious to the suffering of defenceless children. True, Mary Compton's crimes fell within the legal definition of murder, not infanticide, and on a large scale at that. Nonetheless, the victims of her crime were chargeable to the parish—given to her as foundlings for a stipend from the community.⁸⁹ The reaction of Compton's neighbours to her atrocities serves, at least, to indicate that people in early modern England were not so concerned with the cost of raising these 'chargeable' children that they approved of their destruction.

The case of a woman who confessed to murdering her infant child in 1675—thirty-three years after committing her crime—bears somewhat more similarities to the cases of unwed mothers. This woman, who remains anonymous, was widowed and left with a (legitimate) child less than a year old.⁹⁰ She is described as having "worked her fingers to the bone" to provide for this child, an indicator of the economic hardship faced by a single mother.⁹¹ The narrative then describes how the Devil planted evil thoughts in her mind:

As long as it lives you will never enjoy a good day: and besides it hinders your preferment; you are young and handsome, and might have a husband or two more if this child's head was but laid, but who do you think will come to woo you as long as this froward Child is with you...⁹²

There must have been some validity to the fear that finding a husband would be difficult considering her attachment to a child in need of constant care and funds for its maintenance. These difficulties could only have been multiplied where an illegitimate child was concerned. Having finally murdered her child, the woman claims the death was accidental and her story is believed.⁹³ Relieved of her burden, the woman remarries.⁹⁴ It is only on her deathbed, in 1675, that the woman finally confesses her crime. Although she was "in a very weak condition," she was transported to prison and "told that she cannot nor shall not dye till she be hanged."⁹⁵ Her crime was clearly thought to be a serious one considering, even after so much time had passed, the woman was put in prison despite being sick and fragile. The tone and manner in which this woman and her crime were described, however, differentiate her situation from that of women supported by their husbands. Her actions are shown to derive

⁸⁷ *OBP*, October 1693, Ordinary's Account: Mary Compton (OA16931023).

⁸⁸ *A particular and exact account of the trial of Mary Compton*, in *EEBO*.

⁸⁹ *Ibid.*

⁹⁰ *Murther will out* (London: 1675), 2. In *EBBO*,

http://eebo.chadwyck.com.ezproxy.library.dal.ca/search/full_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=51784588&FILE=../session/1353643951_16443&SEARCHSCREEN=CI TATIONS&SEARCHCONFIG=var_spell.cfg&DISPLAY=AUTHOR (accessed October 20, 2012).

⁹¹ *Ibid.*

⁹² *Ibid.*, 3-4.

⁹³ *Ibid.*, 5.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, 6.

from desperation rather than anger or insanity. The public feeling towards a perpetrator of infanticide must have closely resembled this attitude. There was a tension between the harsh measures of the Statute and the more sympathetic popular understanding of the crime.⁹⁶ Infanticide, narrowly defined as it may have been legally, still carried a broader social meaning.

Using pamphlets to assess the immediate attitudes of the community to women who fell under the infanticide statutes is problematic. Publications describing these crimes often focus more on the woman's confession and repentance in prison than on the details of her offence. These pamphlets tend to depict their subjects as contrite and somewhat pathetic—the case of Mary Goodenough, above, taken as an example of this trend. This inclination to describe the perpetrators of infanticide—as it was defined *by law*—as pitiable, and to depict married mothers who murdered their children as violent to the point of insanity may have been the result of social perceptions of what motivated these two groups of women.⁹⁷ The impetus for an unwed mother to kill her new-borne child was easier to understand: she wished both to avoid the stigma of having borne a bastard and to relieve herself of the economic burden raising such a child entailed. It was also understood by contemporaries that while these motives were present for unwed mothers, they did not lead inevitably to “inclination, intent or guilt.”⁹⁸ The motivations of married women were less clear. This second category had no easily explained reason for killing their children, and as a result their transgressions were represented more harshly.

VII

When *An Acte to prevent the murthering of Bastard Children* was passed in 1624, it was in the hope that it would force lewd women to face the consequences of their immoral actions. By ensuring that these effects were felt more often, the state hoped more women would be discouraged from participating in sexual activities that would result in a financial burden on the parish. Despite what some scholars have concluded, the Statute sought to achieve higher conviction rates through an almost complete presumption of guilt on behalf of a mother if her child was a bastard and any matter concerning its death was concealed. Women were acquitted

of infanticide for a wide variety of reasons between 1674 and 1704, but that some women were relieved by a lack of evidence suggests a practical regression of attitudes toward the crime and rediscovered belief that infanticide should be tried according to the rules of other homicides. It must also be noted, however, that attitudes toward this crime were never as singular as the 1624 statute would seem to imply—this is supported by the piteous image of infanticidal mothers in print culture. The acquittal of these women, then, might also be seen as part of a wider conflict between the views dictated by the state and the opinions held by the people.

That infanticide was a crime committed almost exclusively by women—or at least prosecuted against them more commonly than men—does make it a vehicle for female oppression, though not in the same sense put forward by Marilyn Francus. This oppression was not manifested in how the Statute was applied in court, but in the Statute's very existence. The crime of infanticide, whose defendants were overwhelmingly women, was a crime with a presumption of guilt. Yet murder, more often committed by men than by

⁹⁶ Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (New York: Cambridge University Press, 2003), 149.

⁹⁷ For an example of how the crimes of married women were depicted, see *A True and Perfect Relation Of a most Horrid and Bloody Murther Committed by One Philmore's Wife* (London: 1686). In EBO, http://eebo.chadwyck.com.ezproxy.library.dal.ca/search/full_rec?SOURCE=pgthumbs.cfg&ACTION=ByID&ID=36273562&FILE=../session/1353642705_15520&SEARCHSCREEN=CITATIONS&SEARCHCONFIG=var_spell.cfg&DISPLAY=AUTHOR (accessed October 20, 2012).

⁹⁸ Walker, *Crime, Gender and Social Order*, 150.

women, carried a presumption of innocence. Despite the odds against them, many women escaped the gallows. It is the accounts of those who did not that offer us the greatest insight into the motivations for infanticide.

Infanticide was a crime committed for practical reasons. Women were unwilling to accept the burden of shame and economic hardship associated with bastardy. This was especially true because many of these women had been promised marriage and maintenance by their child's father and yet had received none. Society pitied these women for their misfortunes, yet despised them for begetting bastards the rest of the community would have been financially responsible for. Worse still, they had attempted to hide their shame by the more hideous crime of murder. Despite the disdain that tinged public opinion of unwed mothers, there was still a degree of pity for their innocent victims. The neighbours of Mary Compton can hardly be said to have been immune to the suffering of that woman's unfortunate wards.