

# THE INFRASTRUCTURE OF INFANTICIDE: Illegitimate Punishment in Early Modern Britain

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*‘The Infrastructure of Infanticide’ analyzes the forgotten “infanticide craze” that plagued the early modern British court system. With hundreds of women executed on infanticide charges throughout this period, punishments for bastardy coupled with extremely low standards of evidence created a series of shockingly unjust legal proceedings. The paper explores the many legislative actions and social taboos that birthed this precarious legal dilemma, as well as early media representation of infanticide cases that shaped public opinion on the matter.*

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## Introduction

Ann Hurlock found herself in a desperate situation. The 23-year-old orphan was pregnant after her co-worker seduced her, and her status as a servant left her with few options. Ann held to her claim that the father had no knowledge of the child, and while this may have been a selfless act to protect her lover from the harsh shame and punishment of bastardy, the absence of a male figure in her life drastically worsened her chances at a bearable post-partum reality. Poor and single, Anne moved in with her mistress with a little over a month left in her pregnancy, and in the early morning on the 8<sup>th</sup> of April, gave birth to a baby girl on the cold floor of her kitchen. Suddenly, she was overcome with emotion. Ann stared at her child, and her child stared back. When the baby began to cry uncontrollably, a wave of fear rushed through Ann’s mind. As she held her baby in the middle of her kitchen, she eyed a knife sitting just a few feet away. Grabbing the blade by its handle, Ann looked at her child.<sup>1</sup>

When they woke up, the other members of the household found a great deal of blood and began to clean. After examining the young servant’s body, a midwife named Susannah Derwood concluded that Ann had given birth. Entering the cellar, Susannah discovered a horrid sight. There lay the corpse of a baby girl, its head nearly severed from its body.<sup>2</sup> Rushing back into the kitchen, the midwife noticed a knife covered in blood. Susannah went to Ann, inquiring about the newly discovered evidence. Ann immediately confessed. “I did not know what to do with it!” she pleaded.<sup>3</sup>

We know about Ann’s horrific infanticide case because it went to trial in a British court system in 1759, and its grim details represent the legal, social, and political phenomena that worsened the position of illegitimate mothers throughout the previous 200 years. While remarkably intense and violent, her story is not unique. Instead, British society had become equally plagued by and fascinated by infanticide cases. Ann’s situation was complicated by several pieces of legislation passed at various points throughout the early modern period, one criminalizing bastardy and

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<sup>1</sup> London Lives, “Ann Hurlock,” March 2018.

<sup>2</sup> John Gibbs, *Testimony in the Trial of Ann Hurlock* (London: Old Bailey Proceedings, 1760).

<sup>3</sup> Susannah Derwood, *Testimony in the Trial of Ann Hurlock* (London: Old Bailey Proceedings, 1760).

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another raising the penalty for infanticide of bastard children.<sup>4</sup> The former, as we will see, may have encouraged the incidence of child murder, and the latter ensured capital punishment for the crime.

The system had no sympathy for mothers like Ann Hurlock. *The London Chronicle* and *Public Advertiser* immediately covered Ann's story in the local papers, detailing the murder for all to see. Their depictions of this "Murderous Mother" had been circulating for a month before Ann's trial began. During the trial, she desperately attempted to recant her previous confessions, instead claiming that the child had a deformity so extreme that she "could not bear to look upon it herself, or let it be seen by others in that detestable view." Despite this new narrative, it only took one week for Ann to be found guilty. When her fate was announced on May 22<sup>nd</sup>, Ann appeared "confounded and thunderstruck."<sup>5</sup> In her final days, Ann cried in a Newgate Chapel. She was forced to read the ninth chapter of Genesis which begins, "And God blessed Noah and his sons, and said unto them, 'Be fruitful, and multiply, and replenish the earth.'" It was reported that Ann repented in the final hours of her life, but penitence could not alter her fate. Ann Hurlock was executed on May 24<sup>th</sup>.<sup>6</sup>

This paper is not relitigating the issue of Ann's guilt or innocence. It instead explains the many facets to her journey, shaped by laws that inadvertently promoted infanticide and by media coverage that sought to profit from news of such a crime. While not unique, Ann's case serves as an intriguing example through which to explore the various systems and ideas with century-old roots and far-reaching ramifications. Legislation, media coverage, and judicial procedure each had a hand in Ann's story, and they all played an equally large role in the stories of other British women.

The position of illegitimate mothers in early modern Britain, who were already ostracized due to underlying societal perception of illicit sexuality, was drastically worsened due to the emergence of the popular press and the significant legal developments surrounding bastard infanticide. This paper discusses the development and interconnectedness of these factors by moving through (1) the advent of bastardy laws in Britain, (2) the subsequent prosecution of bastard infanticide, (3) early media depictions of infanticide, and (4) the eventual reform which ended this strange era in British law and society. All of these were essential components of infanticide cases in Britain. A newly formed popular press echoed, reinforced, and even exaggerated societal fears of the connection between promiscuity and infanticide, while an underlying legal infrastructure severely punished illegitimate mothers under an unjust, unequal application of the law. Together, they shed light on an overall phenomenon that ended the lives of hundreds of women, transcending misogyny in a deadly fashion. While the guilt or innocence of individual infanticide defendants will always remain impossible to determine, this paper will shed light on the underlying infrastructure that unfairly stacked the deck against the illegitimate mothers of early modern Britain.

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<sup>4</sup> Gurevich, Liena. "Parental Child Murder and Child Abuse in the Anglo-American Legal System," *Trauma, Violence, and Abuse* 11, no. 1 (January 2010): 19.

<sup>5</sup> Ordinary of Newgate Prison, *Ordinary's Accounts: Biographies of Executed Convicts* (London: 1760).

<sup>6</sup> Old Bailey Court Reporter, *Old Bailey Proceedings: Accounts of Criminal Trials* (London: 1760).

### The Infrastructure of Infanticide

In the late sixteenth century, Britain, under Queen Elizabeth I, implemented various laws intended to uphold Protestantism and morality. As part of this effort, she passed a statute in 1576 enabling Justices of the Peace to decide on punishments for unwed mothers.<sup>7</sup> Bastardy invariably attracted shame regardless of legal consequences, but the government's newfound stake in bastardy cases came from an economic and moral standpoint. The economic stake was rooted in the belief that the government might have to provide for children when these children lacked the financial stability of a married family. Thus, a bastard child was a crime against society. The moral stake is even easier to understand, as it comes from the biblical belief in the fundamental immorality of intercourse out of wedlock. This dually pronged foundation for the condemnation of bastardy as an illegal act created a dangerous system that would be applied only to certain defendants. The courts saw two possible justifications for a bastardy conviction, and they often treated women much differently than they treated men. Regarding an illegitimate child, any judgment of an unwed father came from an economic perspective, making sure that the father could financially support the mother and the child despite the absence of wedlock. This economic focus thrust poor fathers of illegitimate children into a tough position, yet it provided somewhat of an exit strategy for wealthy fathers (and mothers) of bastard children. Instead of an economic focus, Justices of the Peace emphasized the moral fault with illegitimate conception in cases concerning women, completely shifting the narrative from a salvageable financial position to an unsalvageable moral dilemma.<sup>8</sup>

For parents of illegitimate children, this situation left an inverted pyramid of options, with the number of solutions decreasing in every downward step of the social hierarchy. In their position at the top of this inverted pyramid, wealthy men were able to pay the costs associated with raising a child, as such an act mitigated any argument that the child would be an economic burden on society. In addition, marriage was an attractive option in certain circumstances, as was abandonment. In a basic display of logic, men, when compared to women, had an exponentially easier route in claiming their lack of association with a pregnancy. Less wealthy men generally had a more difficult route. An analysis of four counties in early sixteenth-century Britain found that 75 percent of men incarcerated for bastardy were convicted as a result of their failure to provide sureties, demonstrating the economic focus in the prosecution of men in bastardy trials.<sup>9</sup> Further, because marriage marked social adulthood and provided certain societal privileges, poor men could be refused a marriage license.<sup>10</sup> That being said, unwealthy men had an easier route than did wealthy women, or especially poor women, in dodging the consequences of an illegitimate pregnancy.

Illegitimate mothers had very few options. First, if the father of an illegitimate child was wealthier than the mother, he could refuse to marry the woman due to the economic benefits of staying single. If the father of an illegitimate child was too poor, he could be refused a marriage license. Each of these possibilities left the pregnant mother in a troubling situation. If the father was already married to another woman, or if he simply abandoned the child, this situation further worsened. Wealthier mothers had more options than poor mothers due to the incentives for a man to marry into a

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<sup>7</sup> Walter J. King, "Punishment for Bastardy in Early Seventeenth-Century England," *Albion* 10, no. 2 (Summer 1978): 132.

<sup>8</sup> King, "Punishment for Bastardy in Early Seventeenth-Century England," 133.

<sup>9</sup> King, "Punishment for Bastardy in Early Seventeenth-Century England," 133.

<sup>10</sup> Mary Weisner-Hanks, *Early Modern Europe: 1450-1789* (Cambridge: Cambridge University Press, 2006), 68.

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wealthy family and the preexisting resources for child-rearing, yet social and legal punishment for bastardy still loomed large. On the other hand, a poor single mother could even be reduced to begging or prostitution, a situation worsened by the societal shame and legal ramifications of an illegitimate child. For these reasons, illegitimate mothers in early modern Britain had a logical reason to celebrate stillbirths, or even reason to murder their newborns, a motive that the courts quickly became aware of. Proving motive represents a key element in prosecuting murder under British law, and as illegitimate infanticide cases came packaged with a clear motive, 90 percent of Britain's infanticide defendants from 1558-1623 were women.<sup>11</sup> Of those same cases, only 12 percent of victims were known to be legitimate children, with 73 percent of victims being illegitimate and 15 percent being unknown.<sup>12</sup> Societal and legal constraints made economic factors a clear component of infanticide prosecution, yet due to a sheer lack of data regarding the socioeconomic status of infanticide defendants, it remains impossible to objectively measure how these constraints played out in the courtroom. Thus, the economic status of such defendants will not be a core component of this paper's outcome-based research.

Indeed, the 1576 statute may have even resulted in consequences beyond the lives of the accused, as the rate of infanticide in Britain, specifically the murder of bastard children, began to climb. For example, infanticide cases in Essex, London, Middlesex, and Sussex rose 225 percent in the years following 1576.<sup>13</sup> These districts saw three times the number of cases in the second half of the 1570s compared to the first half. While this trend plateaued for the remainder of the sixteenth century, the consistently high volume of infanticide cases undoubtedly caused concern. While a causal relationship cannot be determined between 1576 bastardy legislation and the sudden increase in infanticide cases that immediately followed, the clear correlation illuminates the first building block by which infanticide was pushed to the forefront of British society.

To deal with this growing problem, Britain passed similar statutes over the next few decades, each refining the punishment for bastardy or related crimes but failing to affect the number of infanticide cases seen by the courts. Chiefly, a new statute was passed in 1609 under James I that specified punishment for unwed mothers to ensure its enforcement.<sup>14</sup> The statute mandated the one-year imprisonment of all mothers of bastards supported by welfare. This punishment increased the burden on the poor while deepening the sense that children born out of wedlock posed an economic strain on society.<sup>15</sup> This new law also resulted in the imprisonment of women even after they had been acquitted of infanticide; many receiving whippings in addition to a prison sentence.<sup>16</sup> Following the 1609 statute, punishment for bastardy became more regularized and more severe, as the law intended.<sup>17</sup> Justices of the Peace were further held accountable by clergymen who advocated the prosecution of the parents of bastards to the fullest extent of the law.<sup>18</sup> When considering accusations of bastard infanticide, courts ultimately decided between the execution or imprisonment

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<sup>11</sup> Peter C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England* (New York: New York University Press, 1984), 98.

<sup>12</sup> Hoffer & Hull, *Murdering Mothers*, 98.

<sup>13</sup> Hoffer & Hull, *Murdering Mothers*, 15.

<sup>14</sup> King, "Punishment for Bastardy in Early Seventeenth-Century England," 132.

<sup>15</sup> King, "Punishment for Bastardy in Early Seventeenth-Century England," 132-133.

<sup>16</sup> Mark Jackson, *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000* (Vermont: Ashgate Publishing Company, 2002), 20.

<sup>17</sup> King "Punishment for Bastardy in Early Seventeenth-Century England," 131.

<sup>18</sup> King, "Punishment for Bastardy in Early Seventeenth-Century England," 132.

of the defendant, putting the defendant in a lose-lose situation. Fear of this situation prompted the concealment of pregnancy, and once concealment had begun, an entrapment of horrid logic and shame sometimes resulted in infanticide.<sup>19</sup>

This period in Britain, generally between 1600 and 1640, has been frequently termed as an “infanticide craze” amongst scholars such as Mark Jackson, Peter C. Hoffer, and N.E.H. Hull, who have each contributed substantially to infanticide research over the past several decades. British society became increasingly aware of the crime, sometimes even prosecuting infanticide charges based on just minimal evidence of pregnancy concealment.<sup>20</sup> Further, British Parliament passed incredibly strict laws to prevent not only bastard infanticide but also sexual promiscuity which was attributed to sparking such an act.

To understand the impact of such a social phenomenon on the trials of individual women, one must first recognize the role of court officials within British society. Judges, prosecutors, and witnesses alike were not exempt from social sentiment, as these individuals interacted within the public sphere like to that any other British citizen. For this reason, media portrayal of infanticide (which will soon be discussed in-depth) becomes important not simply to examine its effect on public sentiment, but rather to gauge common rhetoric and attitude toward bastard infanticide. Although legislation, much of which stemmed from social concern regarding bastard infanticide, created a system of laws that disadvantaged illegitimate mothers within the judicial system, the individuals who comprised the judicial system were subject to this same sentiment in a much less direct fashion. Amongst scholars, this infanticide craze draws many comparisons to the vastly similar, yet longer societal “witch craze” which plagued Europe during this same century. These crimes had the same defendants in some instances, as 62 percent of defendants accused of witchcraft were also suspected of harming infants in some fashion.<sup>21</sup> Beyond any similarity in accused populations, both infanticide and witchcraft accusations resulted in longstanding legal systems built to prosecute their incidences, and each was widely covered in the newly formed popular press.

By the time the 1609 bastardy statute became British law, the foundation for media’s framing of bastard infanticide had already become active within British society. The birth of the popular press during the sixteenth century coincided with a British infanticide scare, which created a newfound platform for stories of these crimes. Such reports unquestionably impacted how people viewed crime. When the means of delivering these stories changed from town gossip to the written word, the messages themselves began to evolve. A new form of short writings, the pamphlet, began to circulate throughout the mid-sixteenth century. Distributors of such material soon became associated with stereotypes akin to entrepreneurs in tabloid press; they exploited vulgar stories for profit.<sup>22</sup>

The first British pamphleteers started by detailing monstrous births before moving into fictionalized stories of urban crime.<sup>23</sup> For many pamphleteers and their readers, no crime was more salacious and repugnant than that of a sexually immoral woman who murdered her child, with the possible exception of witches engaging in satanic activity. Indeed, pamphleteers in the late 16<sup>th</sup> and early 17<sup>th</sup> centuries wrote extensively about witches, as Britain was amid its infamous witch-craze. Pamphlets

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<sup>19</sup> Jackson, *Infanticide*, 49.

<sup>20</sup> Hoffer & Hull, *Murdering Mothers*, 31.

<sup>21</sup> Hoffer & Hull, *Murdering Mothers*, 28.

<sup>22</sup> Joad Raymond, *Pamphlets and Pamphleteering in Early Modern Britain* (Cambridge: Cambridge University Press, 2003), 10.

<sup>23</sup> Raymond, *Pamphlets and Pamphleteering*, 16-17.

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similarly described infanticide and witchcraft, as they saw the crimes as sharing many characteristics.<sup>24</sup> Despite the rampant nature of witchcraft prosecutions, historian J.A. Sharpe estimates that more people may have been hanged for infanticide than for witchcraft throughout the early modern period, and examples of pamphlets demonstrate the underlying motivations for such extensive indictment.<sup>25</sup>

Pamphlets detailed infanticide cases while emphasizing the suspects' perceived lack of morality, often illustrating the mother's aforementioned decision between shame and murder. One account, in a pamphlet by Thomas Brewer in 1609, detailed the life, trial, and execution of Jane Hattersely. Brewer's very title outlines the story, reeling in a reader by writing "The bloody mother, or The most inhumane murders, committed by Jane Hattersley vpon diuers infants, the issue of her owne bodie: & the priuate burying of them in an orchard with her asinessnt and execution."<sup>26</sup> This dramatized account, referred to as "The Bloody Mother," claims to rely on ten eyewitness accounts. It mainly focuses on the sinful nature of the account's subject. In such pamphlets, the sexual promiscuity of the perpetrator is often characterized as more sinful than the act of infanticide itself, leading to a wide variety of assumptions made about the pamphlet's subject. In Brewer's account, Jane is depicted as a vile character from the beginning. He frames the introduction to her story by highlighting her infidelity, in tandem with other acts of sexual immorality deemed repulsive by many, which circulated through Jane's life.

After presenting Jane as an inherently sinful being, Brewer begins to discuss the factors which contributed to her crime. Brewer writes that Jane and her lover "reapt the most wicked pleasures of their vn|godly lust. In which time, the ful number of the babes they haue had, cannot be knowne." The sinful nature of Jane's initial act not only encourages speculation regarding other crimes that she may have committed, but it further focuses on Jane's evil nature as a cause with multiple infanticides as the effect. He does not include any mitigating factors or other explanations such as legal, economic, or societal pressures. Ultimately, Brewer rejoices in Jane's eventual hanging, writing "This willful murdering of innocents is judged a most asines iniquitie in the sight of God, and amongst all good men counted principall of those sinnes, whose lamentable clamours ascend vp belfore the maiestie of God, & incessantly yell out, greedily thirsting for reuenge."

While some elements of such pamphlet accounts seem realistic, others are best understood as dramatized depictions of reality.<sup>27</sup> Accounts such as Brewer's were almost definitely embellished, but they provide us with an example of the information consumed by British commoners in these early stages of public discussion of infanticide cases. An account of Marth Scambler's case of 1615 reveals thematic similarities between pamphlets. The pamphlet details that Martha's "lusty body, strong nature, and feare of shame brought an asiness to her deliuey," adding that the devil forced her into wickedness.<sup>28</sup> Just as with the account of Jane's crime, the author sees Martha as inherently sinful before describing the shame-filled murder she committed. The account of Martha's case undoubtedly dives deeper into the

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<sup>24</sup> Mary Elizabeth Fissel, *Vernacular Bodies: The Politics of Reproduction in Early Modern England* (Oxford: Oxford University Press, 2004), 75.

<sup>25</sup> J.A. Sharpe, *Crime in Early Modern England 1550-1750* (Essex: Longman House, 1984), 61.

<sup>26</sup> Thomas Brewer, *The Bloody Mother* (Sussex, 1609).

<sup>27</sup> Raymond, *Pamphlets and Pamphleteering*, 17

<sup>28</sup> Edward Wright, *Deeds against nature, and monsters by kinde tryed at the goale deliuerie of Newgate, at the sessions in the Old Bayly* (London: 1615).

precarious position that prospective illegitimate mothers were placed into, but the account is no more sympathetic to the perpetrator's case.

The account of Martha's crime demonstrates another important dimension of seventeenth-century infanticide discussion by asserting the devil's role in promoting pregnancy concealment, a charge that directly ties discussions of infanticide to witchcraft pamphlets. Throughout the early 1600s, the activities of the devil were advanced as a valid explanation for infanticide, especially the infanticide of legitimate children. Satanic temptation explained murders that otherwise seemed to have no clear motive such as legal repercussions, as evidenced in the account of Margaret Vincent's case. One pamphlet states that Margaret killed her children (all of whom were legitimate) due to an argument with her husband over her conversion to Catholicism, a decision due to the devil's influence.<sup>29</sup> After Elizabeth Barns murdered her legitimate 8-year-old daughter, another pamphlet explained that the devil had tempted her to drown herself in a lake after she committed the act.<sup>30</sup> Without any evidence of the sexual promiscuity of these married murderous mothers, the pamphleteers lacked an adequate explanation for the vile character of the perpetrators. Further lacking the ability to resort to a default narrative of covering up a shameful act, pamphleteers instead turned to a story that emphasized the role of satanic temptation. Illegitimate mothers were instead depicted as so sinful that child-murder became inevitable to cover their shame. Although bits of satanic influence still seeped into these stories, such influence was made a tangential cause for infanticide as opposed to the central theme of such a horrific act.

While pamphlets spread far and wide throughout early modern Britain, the seventeenth century brought another somewhat more reliable source of news to cities in Europe—the daily newspaper.<sup>31</sup> Newspapers provided a more consistent and reliable source of information about infanticide cases, however their commitment to factual reporting initially decreased as they responded to demands for fast-paced information and widespread accessibility.<sup>32</sup> The extraordinary and fresh nature of news became its main selling point, as organizations immediately reported stories.<sup>33</sup>

But as news organizations grew throughout the 17<sup>th</sup> and 18<sup>th</sup> centuries, newspaper reporting became more straightforward and fact-based. Newspaper accounts of crime, especially of infanticide, demonstrate a lesser degree of embellishment and romanticization as the publications became more established. For example, in London's *Morning Chronicle* in January of 1773, the Country News section simply detailed a few minor facts of one infanticide case. "On Saturday last Sarah Mills was brought to our Castle, charge on the Coroner's Inquest with the willful murder of a male infant in the parish of Hartpury, in this country."<sup>34</sup> The article continues by detailing the basic facts of other "country news," leaving embellishment behind. While newspaper articles spread the news of reported crimes, they did so without using the colorful language of their pamphlet counterpart. Newspapers provided the British people with news of nearby infanticide, and pamphlets simultaneously provided the same population with the vivid imagery needed for newspaper readers to envision the promiscuous perpetrator of such a crime.

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<sup>29</sup> Fissel, *Vernacular Bodies*, 76.

<sup>30</sup> Fissel, *Vernacular Bodies*, 77.

<sup>31</sup> Weisner-Hanks, *Early Modern Europe*, 370.

<sup>32</sup> O'Neil, Lindsay. "Dealing with Newsmongers: News, Trust, and Letter in the British World, ca. 1670-1730," *Huntington Library Quarterly* 76, no. 2 (Summer 2013): 220.

<sup>33</sup> Sharpe, *Crime in Early Modern England*, 3.

<sup>34</sup> "Country News," *The Morning Chronicle*, January 1773.

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The circulation of both pamphlets and newspapers formed an unprecedented new wave of information. These publications quickly spread news about every crime imaginable, often overwhelming their audience. When current-event publications first began to circulate in Britain, it had a unique effect on the first generation of its consumers, prompting Robert Burton to write the following preface to his 1621 book *Anatomy of Melancholy*.

I heare new newes every day, & those ordinary rumors of War, Plauges, Fires, Inundations, Thefts, Murders, Massacres, Meteors, Comets, Spectrums, Prodigies, Apparitions, of townes take, cities besieged ... Battles fought, so many men slain, Monomachies, Shipwracks, Piracies, and Sea-fights, Peace, Leagues, Stratagemes, and fresh Alarums. A vast confusion of Voews, Wishes, Actions, Edicts, Petitions, Law-suits, Pleas, Lawes, Proclamations, Complaints Grievances, are daily brought to our Eares. New books every day, Pamphlets, Currantoes, Stories, whole Catalogues of Volumes of all sorts, new Paradoxes, Opinions, Schismes, Heresies, Controversies in Philosophy, Religion, &c. ... Thus I dailey heare, and suchlike, both private and publike newes, amidst the gallantry and misery of the world.<sup>35</sup>

In the age of news publications, word of the vilest crimes spread within days of their inception, meaning that any media consumer was constantly exposed to crime in an unprecedented fashion. This phenomenon continued through the seventeenth and eighteenth centuries, and pamphleteers had made a living by telling shock-inducing stories full of the vilest of characters.

While daily newspapers grew more popular as they became common within Britain, their bland accounts of infanticide provided readers with only the most basic details of each crime. Pamphleteers, on the other hand, did not alter their approach to reporting. After a century of this same approach, their accounts continued to cite the sin of perpetrators while also warning of the satanic temptation from which the crime stemmed. In the early 1690s, the preface of an anonymous pamphlet condemned Mary Goodenough. “In this Letter is wrap’d up most suitable Persuasions to the Youth of these Kingdoms, to consider thoroughly of, and engage themselves heartily in their Baptismal Covenant. It gives an awakening Alarm to negligent Parents, to instruct their Children in, and conduct them diligently into the Paths of Heavenly Wisdom, lest they deeply mourn at last, (as this poor Woman did) their fatal Cruelty to their Childrens Souls.” But most of all, as it puts it, “This Letter suggests a Warning to Adulterers and Adulteresses, to repent of, and forsake their Crimes, lest God bring them to repent by open shame, as he did this poor Creature, or suffer them to go on in a covert way to Hell.”<sup>36</sup>

Acts of infanticide committed by illegitimate mothers such as Mary Goodenough may not have occurred without instances of adultery, yet pamphlets (such as this one) appear to still blame adulterous behavior for these criminal acts. Such behavior was necessary, yet holistically insufficient, in producing the murder of an illegitimate child. To understand this perception, it becomes essential to recall the situation which brought about an infanticide craze. Laws punishing sexual promiscuity evolved into laws relating to bastard infanticide, as this promiscuity, as opposed to any murderous intent, was seen as creating an inherent motive for infanticide to occur. With infanticide being blamed on adultery throughout decades of media coverage, pamphlets about single acts of infanticide spent a significant number of their words condemning even the illegitimate mothers without any murderous history.

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<sup>35</sup> Raymond, *Pamphlets and Pamphleteering*, 50.

<sup>36</sup> Johnathan Robinson, *An Account of the Tryal, Condemnation and Execution of Mary Goodenogh, at the Assizes held in Oxon, in February 1691/2* (London: 1692).

Even with infanticide rates going down, media portrayal of bastard infanticide did not budge. The preface of Mary Goodenough's case details the wrath of God after an adulterous act, connecting Mary's eventual fate with her initial act of promiscuity. Just as the pamphlets from the early 1600s connected promiscuity to vile character and infanticidal actions, pamphlets from nearly a century later still exhibit these same conclusions.

When child murder involved legitimate children, the narrative changed, just as it had in the early seventeenth century. Pamphlets often victimized perpetrators of legitimate child murder while villainizing perpetrators of illegitimate child murder, drawing a line in the sand between murderous acts and murderous acts prefaced by promiscuity. Illustrations of sexual immorality peppered accounts of bastard infanticide, provoking little to no sympathy. But with no evidence to accuse women of promiscuity, the stories instead reverted to the same storyline as before, solely emphasizing satanic temptation as impetus for the crime. Pamphleteers circulated the story of Mary Cook in the late seventeenth century. As Cook, a married woman had not engaged in promiscuous behavior, N. Partridge's narrative of her case warns of the universality of Satan's temptations "... shew me that man or woman whom the impudence of sin and Satan doth not sometimes charge and assault; but if such a one cannot be found, be convinced of thy need of the Divine breast-plate, which will not only put temptations back, but force the tempter to surcease his assaults;"<sup>37</sup>

The passage concludes with a plethora of biblical verses concerning murder, each emphasizing the temptation that Mary Cook faced while additionally comparing her temptation to that the reader might experience. The pamphlet also describes that Mary Cook may have been driven to kill her child for three possible reasons: "1. That the Devil appeared in a personal shape unto her, and told her she must either destroy herself, or her Child. 2. That the day before she went to see one of her other Children at Nurse, and would have sent the Nurse forth, that so she might have killed that Babe. 3. That she was under trouble of mind about Religion, with many other things."<sup>38</sup> While the pamphlet details the horrific nature of the crime, it withholds from attacking Mary Cook. Instead of labeling her with violent words, the pamphlet describes her largely as an ordinary woman who became tempted by Satan, just as everyone is tempted by Satan.

The stark difference between these two treatments represents the long-lasting legacy of infanticide publication. Early infanticide pamphlets focused mostly on the promiscuity of the mother, developing the character as lewd before detailing the actual crime. A century later, the same story held true. Pamphlets continued to emphasize the promiscuity of the perpetrator when discussing infanticide, and as evidenced by the accounts of Mary Goodenough and Mary Cook. Mothers of legitimate children elicited more sympathy. These habits were engrained within the history of pamphleteering, as even the earliest pamphlets focused on bastard infanticides for their multi-layered shock value. When pamphlets first began to cover the issue of child murder, the narrative immediately shifted away from the loss of human life, instead moving towards the sinful nature of overt sexuality, demonstrating the true extent of an overwhelmingly negative societal perception of sexual immorality. For later bastard infanticide defendants, who lived in a time of relatively low rates of child murder, their legacies were plagued by a writing style of pamphleteers that had been pioneered during a time of high child murder rates. Pamphleteers capitalized on this

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<sup>37</sup> N. Partridge, *Blood for blood, or, Justice executed for innocent blood-shed being a true narrative of that late horrid murder committed by Mary Cook upon her own and only beloved child* (1670), 3-4.

<sup>38</sup> Partridge, *Blood for blood*, 33.

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infanticide craze by establishing a unique style of attacking “lewd women,” so even decades after the craze had ended, the same patterns remained.

Towards the end of the eighteenth century, this framing of infanticide began to change for the first time in centuries. This alteration can be partially attributed to the British people beginning to take a more humanitarian approach to the prosecution of infanticide, as they recognized the impact of birth on the psyche of mothers. Instead of seeing the perpetrators of infanticide as villains, Brits began to recognize the unfortunate situation of illegitimate mothers, many of whom were labeled under the cutting-edge classification of mental illness.<sup>39</sup> This advancement predictably contradicted the historical theme of pamphlets, one that emphasized the lewd, vile nature of women accused of infanticide while spreading fear. At the end of the early modern period, crime pamphlets finally began to change their framing of illegitimate mothers after nearly two centuries of relentless villainization.

Although publications raised public interest in cases of infanticide, they did not seal the fate of individual defendants. Instead, judges, juries, and legislators spearheaded a more substantive attack against illegitimate infanticide during the same period that pamphlets were so quick to expose the detrimental dangers of promiscuity. By the second decade of the seventeenth century, word of crime was spreading faster than ever due to the advent of pamphlets. Especially in a society so focused on religion, the perceived spread of immorality could not be expected to mesh well with lawful, religious idealists.

Various denominations of Christians had a vested interest in deterring immorality, but the Puritans became especially tough on crime. Puritanism gained converts in the early 1560s and grew for many years, with the group attaining significant legislative power over the subsequent four decades.<sup>40</sup> Puritans, depicted as being intensely devout to morality, used their legislative power to lobby for the passage of strict legislation intended to curb crime.<sup>41</sup> In the early 1600s, the nation became more aware of the crime around them (some of which was undoubtedly embellished), and many of the methods of description, as we saw in the last section, included details of Satan’s temptations or female promiscuity. Pamphlets on the topic of infanticide heavily emphasized each of these points, challenging the Puritans to use their parliamentary authority in cracking down on Satanic and lewd temptations of bastardy, child concealment, and infanticide. The Puritans led a movement against illicit sexuality by passing new legislation specifically concerning this topic of bastard infanticide.<sup>42</sup>

Determining guilt in cases of infanticide proved tricky for a plethora of reasons. Chiefly, suspects claimed to have delivered (or perhaps did deliver) stillborn children when they were accused of infanticide, raising two intriguing questions for legislators and judges: How could the court distinguish between stillbirth and infanticide? And without a bona fide strategy to distinguish between the two, how could the country effectively curb the incidence of bastard murder? Recognizing this pressing issue as a concern, the House of Commons attempted to pass infanticide legislation in 1607 and 1610. While each of these proposals failed to attract adequate support, the governing body reconsidered the issue of bastard infanticide many years

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<sup>39</sup> Arlie Loughnan, *Manifest Madness: Mental Incapacity in the Criminal Law* (Oxford: Oxford University Press, 2012), 207.

<sup>40</sup> David D. Hall, *The Puritans: A Transatlantic History* (Princeton University Press, 2019), 47.

<sup>41</sup> Hall, *The Puritans*, 47.

<sup>42</sup> Gould, Rosemary. “The History of an Unnatural Act: Infanticide and Adam Bede,” *Victorian Literature and Culture*, 25, No. 2 (1997): 265.

later. In 1624, British lawmakers addressed these two questions simultaneously with a famous piece of legislation, the “Act to prevent the destroying and murdering of bastard children” passed as chapter 27 of the statute of 21 James I.

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 after, if the child be found dead, the said woman to alledge, that the said child was born dead; whereas it falleth out sometimes (although hardly it is to be proved) that the said child or children were murdered by the said women, their lewd mothers, or by their assent or procurement.<sup>43</sup>

The authors of the 1624 legislation set it up in a problem-solution format, with this first section acting as their identification of a problem. The legislation refers to mothers of illegitimate children as “lewd women,” a phrase that pamphlets and newspapers had frequently used to describe the defendants in infanticide cases. The first section of the law describes the shame associated with their lewd ways, emphasizing the immorality of sexual promiscuity. This emphasis can be attributed to the original supporters of the legislation, which included many known leaders of the Puritan party.<sup>44</sup> This group of Puritans oversaw amendments to the language of the statute, ultimately molding the language into a relentless attack on promiscuous women. For decades to come, this same narrative of “lewd women” perpetrating infanticide would continue to be utilized by authors in their chilling accounts of infanticide. Framing a mother as inherently promiscuous proved to be an effective strategy in fearmongering for sensationalist journalism, as we have seen.

After the problem, of course, comes the solution. Puritan legislators came up with the following policy to curb the aforementioned problem. Its harsh external stipulations should not be taken lightly:

II. For the preventing therefore of this great mischief, be it enacted by the authority of this present parliament, That if any woman after one month 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 laws of this realm be a bastard, and that she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; in every such case the said mother so offending shall suffer death as in case of murder, except such mother can make proof by one witness at the least, that the child (whose death was by her so intended to be concealed) was born dead.<sup>45</sup>

This new law aimed to fill gaps in previous legislation by making it much more difficult to claim that a dead child had been stillborn: mothers were required to produce witnesses to the birth. Yet by placing a hefty burden of proof onto the unwed mothers, the integrity of infanticide cases became further compromised. Instead of the courts fairly hearing the suspects’ cases, the 1624 statute assumed any single woman who attempted to hide the birth of a deceased or stillborn child had murdered it. The statute overwhelmingly presumed the guilt of infanticide suspects. Consequently, the statute resulted in guilty verdicts based solely on circumstantial evidence of concealment. Even just circumstantial evidence of a woman’s promiscuity suggested a possible illegitimate pregnancy, and thus a potential bastard infanticide.<sup>46</sup>

Consider the position of a pregnant woman with an illegitimate child in a post-1624 Britain. If the pregnancy resulted in a late-term stillbirth, which around 3 percent

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<sup>43</sup> Hoffer & Hull, *Murdering Mothers*, 15.

<sup>44</sup> Hoffer & Hull, *Murdering Mothers*, 22.

<sup>45</sup> Hoffer & Hull, *Murdering Mothers*, 21.

<sup>46</sup> Hoffer & Hull, *Murdering Mothers*, 23.

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of pregnancies did, the woman would need to provide a witness to the stillbirth.<sup>47</sup> Yet many stillbirths naturally do not have witnesses, and, in that case, ample evidence would exist under the 1624 statute to convict and hang the woman. If the woman buried the stillborn child without telling anyone, specifically to avoid charges of bastardy, she appeared even more guilty to the courts. This new law presented a relatively high probability that women pregnant with illegitimate children could be hanged for giving birth to a dead, illegitimate child.

Courts began to more dramatically emphasize the illegitimacy of infanticide victims while addressing juries, leading to a relationship between illegitimacy and guilty verdicts. In the years following this new standard of evidence, the Essex Courts treated the infanticide of bastard children much differently than that of legitimate children. The court found 72.7 percent of bastard infanticide suspects guilty while convicting just 33.3 percent of other infanticide suspects within the same period.<sup>48</sup> When illegitimate mothers came before the court for an infanticide trial, juries automatically knew two things about them: the defendant had a motive to commit the crime (due to the shame and legal consequence of bastardy), and the defendant had engaged in shameful, sexually promiscuous activity (in the process of creating a bastard child).

The tangible long-term effects of the 1624 statute are difficult to ascertain. The English Civil War, fought from 1641-1652, made legal data from this period less complete. It is thus nearly impossible to track the long-term trends in infanticide cases in the decades following the 1624 legislation to the mid-seventeenth century. Data after the civil war, however, demonstrates a general trend of decreasing numbers of infanticide cases throughout the late seventeenth and early eighteenth centuries. In the Court of Great Sessions in Chester from 1650 to 1699, for example, the court heard 63 cases of infanticide and executed 20 suspects. Those numbers substantially decreased to 31 cases and 4 executions from 1700-1749 and, from 1750-1800, the number of cases shrunk to 18 while the number of executions held steady at 3.<sup>49</sup> Other courts reported similar declines, marking the beginning of the end for such large-scale infanticide prosecution. There are many reasons for this decrease, including legislative adaption, which will be discussed later. While prosecutions of infanticide steadily decreased throughout the eighteenth century, the legal infrastructure for infanticide cases remained in Britain until the 1803 repeal of the 1624 infanticide statute.

This subsidence of infanticide cases bears the residual effects of the “infanticide craze” that many historical scholars suggest echoed throughout England during the turn of the seventeenth century. Infanticide became numerically less common throughout the late 1600s, a trend that continued through the 1700s and beyond, yet the harsh infrastructure that had been originally constructed to combat infanticide remained in place during the gradual decrease in cases. The Courts of Elizabeth I and James I were long gone, yet their legislation demanding sexual purity remained in place. Actual instances of infanticide decreased, yet pamphleteers persistently made a living off of graphic infanticide stories. Many of the Puritans, who originally authored and lobbied for the 1624 infanticide act, emigrated from Britain in a monumental transatlantic migration just a few years after the passage of their infanticide legislation. Regardless, the legislation remained in place and continued to impact many British women by threatening their lives and substantiating their

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<sup>47</sup> Woods, Robert. "Late-Fetal Mortality: Historical Perspectives on Continuing Problems of Estimation and Interpretation." *Population (English Edition, 2002-)* 63, no. 4 (2008): 591-614.

<sup>48</sup> Hoffer & Hull, *Murdering Mothers*, 24.

<sup>49</sup> Jackson, 38.

ostracization. The world was changing, but the infrastructure left behind by the wake of infanticide prosecutions remained untouched.

These components are even reflected in the introductory story of Ann Hurlock, as it suggests that seventeenth century statutes represent a major piece in this complex puzzle. Although her case was heard in 1760, the existing legislation which intended to prevent bastardy and the murder of bastard children formed a treacherous situation. The laws of Elizabeth I and James I played a major role in sealing the fate of many lower-class women, sparking legal proceedings in which only a narrow category of evidence constituted an acceptable defense.

The actionable language of the 1624 act had profound consequences, essentially mandating a complete shift in the burden of proof for defendants of infanticide. Instead of assuming innocence, the legislation called for the courts to, in the case of an illegitimate pregnancy's concealment, require a witness to any stillbirth or miscarriage. If the defendant could not produce such a witness, she would be convicted of infanticide and thus hanged.<sup>50</sup> Conviction rates initially spiked, before gradually becoming less and less common within Britain, and as British society changed and evolved, members of parliament called the effectiveness of its language into question.<sup>51</sup>

In the late seventeenth century, the 1624 act governed infanticide cases despite eventual attempts at legislative reform, and it led to several convictions based on minimal evidence. In October of 1679, Joan Blackwell was found nearly dead after giving birth to a child. The child had died while still attached to her, and although the death resulted from a lack of proper assistance, the court found Blackwell guilty of infanticide.<sup>52</sup> This guilty verdict, and more just like it, represents a continued, yet fading commitment to enforcing the largely illogical law.

Throughout the eighteenth century, the same held, albeit to a lesser degree. Within the Old Bailey Court of London, Elizabeth Bennett was found guilty of infanticide on May 14<sup>th</sup>, 1741 despite ample evidence that she had extensively prepared to raise a child by purchasing everything that an infant would need. Bennet claimed that the child suddenly dropped from her while she privately used the toilet, but this defense did not lead to her exoneration. Maria Jankins made a similar claim in her infanticide case in September of 1765, but she produced a variety of witnesses who corroborated her story.<sup>53</sup> Twelve witnesses attested to her character, one testified that Jankins had requested to buy childbed linen for her infant, and a surgeon discovered no signs of violence against the newborn while additionally pointing out lung inflation that may have resulted in death from natural causes. Regardless, the Old Bailey Court found Jankins guilty before executing her on September 23<sup>rd</sup>.<sup>54</sup>

These cases, however, represent the exception more so than they represent the rule. The British court systems underwent a transformative period that emphasized the importance of proof within their application of justice.<sup>55</sup> Judges and juries began to increasingly value the burden of proving a defendant's role in a crime before seeking a conviction, which directly contradicted the 1624 infanticide act. Instead of assuming the guilt of infanticide defendants as the act mandated, the courts began enforcing the

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<sup>50</sup> Hoffer & Hull, *Murdering Mothers*, 15.

<sup>51</sup> Loughnan, *Manifest Madness*, 209.

<sup>52</sup> Clayton, Mary. "Changes in Old Bailey Trials for the murder of newborn babies, 1674-1803," *Continuity and Change* 24, no. 2 (August 2009): 342-343.

<sup>53</sup> Clayton, "Changes in Old Bailey Trials," 343.

<sup>54</sup> Clayton, "Changes in Old Bailey Trials," 343.

<sup>55</sup> Loughnan, Arlic. "The 'Strange' Case of the Infanticide Doctrine," *Oxford Journal of Legal Studies* 32, no. 4 (Winter 2012): 693.

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same standard for infanticide cases as that of other murder cases: proof of willful intent. This gradual shift can be classified within a larger transformation of the western court system towards a more modern interpretation of facts based on objective reasoning, one that also influenced the decline in witch trials throughout this same period.

As a result, infanticide cases decreased dramatically over the eighteenth century in total. In one analysis of 220 London infanticide cases, 90 trials of infanticide between 1674 and 1714 resulted in guilty verdicts for 53 percent of defendants while 130 trials between 1715 and 1803 resulted in guilty verdicts for just 15 percent of defendants. Conviction rates were not the only numbers to plummet, as the first period yielded 2.25 cases per year while the second period produced only 1.4 cases per year. Further, zero cases from the Old Bailey Court were found after 1775, another testament to the phasing-out of infanticide cases.<sup>56</sup>

Instead of continuing the large-scale hangings of illegitimate mothers in the early seventeenth century, historical evidence suggests sporadic hangings of women upon little proof of infanticide. The 1624 infanticide act remained in place, and while this law remained firmly etched into the legal code of Britain, the courts' resistance to the 1624 act hung by only the thread of an unspoken, unwritten commitment to truth and evidence. Laws barring witchcraft received a similar treatment, with many courts beginning to refuse the enforcement of such legislation during an era in which these laws were considered outdated.

Women charged began to claim insanity as the cause of their criminal act and courts began to recognize the emotional and physical toll of birth, as that trauma was understood to lead to subsequent flawed decision-making.<sup>57</sup> Claims of mental incapacity grew dramatically in the eighteenth century. Isabella Buckham, for example, was acquitted in her 1755 bastard infanticide case after testifying "I was not in my senses; I do not know what I said or did. Had I been in my senses I should have been very loth to have parted with it."<sup>58</sup> This defense became useful in all charges of child murder, proving even more useful and effective for married women indicted on infanticide charges. Without the pressures of an illegitimate child, insanity was often considered the only possible explanation for such a horrid crime.<sup>59</sup>

Another unorthodox defense became prominent in the eighteenth century, called the "child-bed linen defense." It emphasized the purchase of infant materials as indicating intent to welcome the newborn. Of the 220 trials analyzed by historian Mary Clayton, the "child-bed linen defense" was used in about 38 percent of trials and, significantly, about 75 percent of trials between 1712 and 1735. As the courts moved towards a standard of willful intent, the purchase of linen for a child's bed demonstrated a commitment to raising the child, and thus of evidence that the infanticide had not been committed by the mother.

In the latter half of the eighteenth century, as courts seem, in light of the number of cases, reluctant to apply the 1624 statute, support grew for a less extreme manner by which to prosecute infanticide cases. Philosopher and statesman Edmund Burke led a campaign against the outdated infanticide legislation, emphasizing that it unfairly ignored the mental state of young women.<sup>60</sup> In 1803, Parliament finally repealed the 1624 law after many attempts, replacing it with Lord Ellenborough's bill that substantially decreased the penalty of concealment of a stillbirth to a maximum

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<sup>56</sup> Clayton, "Changes in Old Bailey Trials," 338.

<sup>57</sup> Loughnan, *Manifest Madness*, 207-208.

<sup>58</sup> Loughnan, *Manifest Madness*, 207.

<sup>59</sup> Loughnan, *Manifest Madness*, 208.

<sup>60</sup> Gould, "The History of an Unnatural Act," 265.

of two years.<sup>61</sup> Under this new law, prison sentences for those convicted were typically only a few months, relieving those guilty of pregnancy concealment from any assumption of infanticide.<sup>62</sup>

### Conclusion

Government interest in infanticide did not cease to exist in 1803, and many complex statutory attempts to curb the influence of child murder remain intact today. Instead, the 1803 repeal of 1624 legislation represents a semi-clean break from the infrastructure left in the wake of a dramatic infanticide craze that spanned through the late 16<sup>th</sup> and early 17<sup>th</sup> centuries. Even though the late 1700s, courts were legally obligated to continue the enforcement of bastardy and infanticide laws, which originally intended to curb the incidence of rampant bastard infanticide before the crime became increasingly rare. While the application of such infrastructure became increasingly rare by the turn of the nineteenth century, the 1803 repeal formally vindicated illegitimate mothers from the long-lasting presumption of their guilt based on promiscuity.

Yet legislation was not the only piece of this puzzle. Media portrayal of infanticide, rooted originally in the advent of pamphleteering, spread the news across all of Britain concerning the lewd nature of infanticide defendants while additionally drawing undue attention to the crime as a result of its vile details. Newspapers picked up on the individual stories within days of an arrest, and pamphlets spread colorful depictions of the defendants in the years following their trials. These same media depictions remained relevant well into the eighteenth century, yet their depictions of promiscuous murderers eventually faded along with the decline of infanticide prosecutions.

A dearth of wholistic evidence exists to tie together the narrative of early modern infanticide. Despite its monumental impact and longstanding implications, no modern analysis has attempted to analyze the full extent of an infanticide craze within Britain, meaning that researchers are unable to measure the impact of fearmongering and subsequent executions within seventeenth-century Britain. Recent analyses have pulled from the limited data of individual court systems of Britain, but in the absence of wholistic data, a truly complete analysis of early modern infanticide remains impossible. Therefore, for this field of research to be fully realized, further numerical data must be collected within the physical archives of British judicial districts.

Infanticide prosecution has thus become a sort of forgotten injustice. Due to the lack of mainstream attention directed towards these tragic events, the extreme misfortune of Britain's illegitimate mothers can often be absent from the memories of even those who are steeped in British history. Painfully few scholarly sources describe the details of this saga in-depth, marking a historiographical tragedy due to the usefulness and magnitude of its narrative. Indeed, the perception and creation of bastard infanticide can serve as a uniquely effective manner by which to understand the relationship between morality and law within early modern Britain, with the evolution of such laws providing a clear window into the judicial transformation of western law in eighteenth-century Europe. This story also comes with important lessons through which a greater understanding of contemporary legal and social problems can be achieved, as the legislative and media-based implications of fear-mongering and prosecutorial injustice are consistently discussed all around the modern world.

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<sup>61</sup> Loughnan, *Manifest Madness*, 209.

<sup>62</sup> Gould, "The History of an Unnatural Act," 265.

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Many infanticide defendants may very well have been guilty. The evidence certainly suggests so. Nonetheless, the deck was undeniably stacked against these defendants. Courts were tasked with assuming their guilt. Media organizations drummed up fear and anger through vivid descriptions of all that brutal bastard infanticide entailed. Women who became pregnant with illegitimate children, while sinful by societal standards, were thrust into an unjustly hopeless position during this period of legal and literary infanticidal infrastructure. While it cannot be determined how many of these women were guilty of infanticidal murder, the mass injustice of this infrastructure's existence represents a tragedy in and of itself—a tragedy that ought to be remembered and explored.

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