“A hard-working and nice person”? Respectability, femininity, and infanticide in England and Wales, 1800-2000

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Abstract: Infanticide stands out as a crime which, in England and Wales, has been marked for at least two hundred years by deep-rooted continuities in its representation and treatment by both the criminal justice system and the media, despite the massive political, economic, social, legislative, and cultural changes that occurred over this period. Particularly remarkable about this longstanding discourse is its routine emphasis that the guilty mother is *also* a victim of tragic circumstances that led to the crime and deserving of sympathetic treatment. It also invariably sets infanticide apart as a “special case” which does not necessarily fit with either medical or legal definitions of diminished criminal responsibility. Perhaps surprisingly, this framing of women who commit infanticide stresses not only their “normality” prior to the offence but also their “respectability”, a sharp contrast to the sometimes overtly misogynistic representation of other types of women offenders. This chapter argues that it is above all “respectability” that profoundly shaped the cultural script relating to infanticide in England and Wales between 1800 and 2000, and that this continues to exert a powerful legacy on the relatively small number of cases that now come before the courts in the twenty-first century.

Key words: infanticide, respectability, mental illness, homicide, women, socio-legal

Introduction

In October 1940, the *East Anglian Daily Times* reported on the trial at the Norfolk Assizes of Phyllis Boon, a 25-year-old single woman, for the killing of her new-born baby. For the twenty-first century reader, the emphatic description by one witness of the defendant as "…a hard-working and nice person", and evidence stressing that she was from a well-regarded family that had a good local reputation, might seem startling given the circumstances of the case: the infant had been stabbed to death with scissors and the body was hidden in a chest of drawers (*East Anglian Daily Times,* 1940).[1] So too might be the (relatively) lenient sentence that was bestowed by the court. Having been found guilty of infanticide, Boon was bound over to keep the peace for 12 months: effectively giving her a suspended sentence (*Lynn News & County Press*, 1940: 12). Unlike some other trials for suspected infanticide during this period, there was no question, given the violence that had been inflicted and the efforts made to conceal the body, of this being an accidental death or one from natural causes. Nor was there any mention of symptoms or behaviour that might have suggested the defendant was suffering from mental illness, beyond a brief statement made by Boon following her arrest that she had given birth to the baby in the early evening and claiming that "I don't remember what happened after that" (*Lynn Advertiser*, 1940: 5). In fact, while this was a particularly eye-catching example

[1] While this article was still short, the *East Anglian Daily News's* report was significantly fuller than other local papers which also covered this case; the reports of the trial itself in the *Lynn News & County Press* comprised just four sentences, and the *Lynn Advertiser's* earlier report of the magistrates committing her for trial only six sentences.

of sympathetic witness testimony, such explicitly positive descriptions in the courtroom and the media of women accused of killing their infants in nineteenth- and twentieth-century Britain were routine, and these fit into a clearly established pattern that persisted throughout the significant political, economic, social, legal, medical, and cultural changes across this period (Grey 2014, 2017, 2018).[2] Despite the distressing nature of the crime and the longstanding valorisation of motherhood, English and Welsh women accused of killing their infants have nonetheless remained a "special case" for at least two hundred years among women offenders in their treatment and representation by both the media and the criminal justice system – moreover, one that does not fit easily with more familiar (and equally gendered, not to say misogynistic) stereotypes.[3] These narratives invariably stress that the woman on trial was of previous "good character" and driven to the crime by events and

[2] Because of the separate legal systems of Scotland and Ireland, and after 1922, of Northern Ireland, this chapter focuses specifically on the context of infanticide cases and their representation in England and Wales, rather than attempting a "four nations" approach to its treatment within the United Kingdom. To the best of my knowledge there is regrettably no study at present dedicated entirely to infanticide in Northern Ireland, but there are valuable discussions of infanticide cases in Scotland (Abrams 2002; Kilday 2021: 31-35 and 46-55; Marks and Kumar 1996; Siddons 2014) and Ireland (Brennan 2013, 2018a, 2018b; Farrell 2013; Rattigan 2012) during the period covered here.

[3] It should be noted that infanticide emphatically being singled out as a "special case" set aside from expected categories is not limited to the professions of law and medicine, or the press and judicial system, but can appear in potentially surprising forms. As Amanda Rees (2009) has demonstrated, a highly charged debate has raged between primatologists since the 1970s over the ultimate significance of infanticide committed by apes and monkeys – not only for what this aspect of animal behaviour might reveal about primates but also regarding fundamental questions of scientific authority and practice.

circumstances that meant she was deserving of compassion, often arguing that she was not fully in control of her actions at the time of the killing, even if her actions might not fit with either medical diagnoses or legal definitions of mental illness and reduced culpability. This chapter explores why such discourses have retained their power and influence, and the impact of this problematic legacy, which continues to haunt twenty-first century infanticide cases. Beginning with a definition of what it has meant to be "respectable" in nineteenth and twentieth-century England and Wales, the chapter then explores how this nebulous but powerful concept influenced the passage (or not) of new legislation. It demonstrates that the national consensus established by the 1860s about what it meant for a woman to commit infanticide continued to resonate with the customary and explicitly sympathetic judicial treatment, media representation, and popular understandings of the crime and right up until – and arguably beyond – the end of the twentieth century.

Respectability, gender, and power

To fully understand the durability and power of "respectability" as resonating through infanticide cases in England and Wales over the course of the nineteenth and twentieth centuries, it is important to first set its parameters. While this may sound obvious, it is a phenomenon that scholars have often found difficult to pin down, partly because it has so often acted as a subtle and supposedly "common sense" consensus operating against the backdrop of other social and cultural dynamics and factors. Respectability did not only refer to how a person looked, spoke, and acted, to their family background, or where they lived and worked, yet each of these things could play a part in shaping it. Carolyn Conley has memorably described this as

being “the quintessential Victorian ideal and yet the most difficult to define” (Conley, 1986: 527). Although the trope of respectability was perhaps most associated with (and frequently deployed by) middle-class commentators, and such individuals invariably assumed a close relationship between the two categories, it was certainly not unique to this group and did not map neatly onto class backgrounds. The language and demarcation of respectability, and its converse “roughness”, remained both highly charged and nebulous during the period covered by this chapter, and could be invoked within and by marginalised neighbourhoods and individuals as well as being applied to them by outsiders (Brown et. al., 2011; Ross, 1985; Masters, 2010; O’Leary, 2005; Walkowitz, 1992). Definitions of what constitutes “respectability” in any given society are of course marked by regional and temporal specificity, and in some instances the criteria for this category can change dramatically in a short span of time. For instance, as Corrie Decker has illustrated, “by the mid-1960s, nearly all ‘respectable’ women in Zanzibar were expected to work outside the home for the common good” (Decker, 2014: 1), the result of a stark reversal in established attitudes to women’s work and education on the island since the 1930s.

Arguably, the most comprehensive definition and explanation of respectability and its corresponding impact on people’s lives has been provided by the sociologist Beverley Skeggs (1997) in her landmark study of working-class British women navigating their experience of “caring” courses in further education and reflecting more broadly on their attitudes towards work and family. As she observed, “Respectability contains judgements of class, race, gender and sexuality and different groups have differential access to the mechanisms for generating, resisting,

and displaying respectability" (Skeggs, 1997: 1). While it is too simplistic to describe the discourse of respectability as all-encompassing or inevitable – denying any agency to those impacted by it – or as being purely a tool of class control imposed from above, it is thus also crucial to acknowledge its ongoing ubiquity, and that whether arising from external or internal sources, "respectability" inherently relies on reifying and perpetuating hierarchies based on interpretations of what constitutes "good" and "bad" behaviour that are themselves shaped by constructions of gender, "race", and class, among other key factors. If since the turn of the millennium the phrase "respectability" itself has now largely fallen into disuse in England and Wales, generally perceived as an old-fashioned expression which is tied up with snobbery and might well reflect poorly on the person using it as a descriptor, the system of critical value judgements and its corresponding surveillance and policing, both metaphorical and literal, that this represents – one frequently targeting working-class and/or ethnic minority women and girls as an alleged vector of moral and social danger – has certainly not gone away (see for instance Calver, 2020; Creed, 2022; Elliott-Cooper, 2019; McRobbie, 2020; Narayan, 2015).

Infanticide, respectability, and the law in England and Wales, 1800-2000

Between 1624 and 1803, suspected infanticide cases in England and Wales were dealt with under the harshly worded 1624 "Act to Prevent the Murthering of Bastard Children". A widespread belief that many women secretly killed babies to spare themselves from the disgrace and stigma of unmarried motherhood meant that this statute reversed the normal presumption of innocence in cases where a single

woman's pregnancy had been concealed and the infant then died at some point after it was born: instead, the law now held that proof of concealment combined with this clear evidence of "immorality" was inevitably then also proof of premeditated murder, and thus a capital crime (Billingham, 2019). Significantly, this also introduced a formal requirement for expert medical testimony to be heard in these cases, as it was an essential part of securing evidence that the infant had not been stillborn or died from natural causes, and that the child's death thus fell within the boundaries of the 1624 Act (Watson, 2020: 144). From the late seventeenth century onwards, however, courts were increasingly unwilling to impose the death penalty in these cases (Gowing, 1997; Jackson, 1996; Muir, 2020: 122-134, 168-184). Far from being a state-sanctioned endorsement of the reluctance by juries to find women guilty, however, the decision to repeal the 1624 Act in 1803 – just one of several unrelated criminal justice reforms to be included in the same legislation, later referred to as Lord Ellenborough's Act – was prompted by frustration with the small proportion of cases that resulted in conviction, and represented an (ultimately unsuccessful) effort to increase these numbers in the early nineteenth century (Kilday, 2013: 113-116). Henceforth, infanticide cases would again be treated as any other alleged homicide in terms of the burden of proof, and a new alternative verdict of "concealment of birth", punishable by up to two years" imprisonment with hard labour was introduced. Further legislation in 1828 aimed to expand its scope by making concealment of birth a separate charge, as well as an alternative verdict to murder, and allowing it to be brought against married as well as unmarried or widowed women. From 1861, it was now possible to charge anyone that the authorities believed to be responsible for such concealment, not just the mother of the baby (Grey, 2018: 44).

Despite these changes, and the widespread perception in Britain of infanticide as having become a veritable epidemic by immoral women (if one that often went either undetected or unpunished) between the 1830s and 1870s (Arnot, 1994, 2000; Kilday 2013: 111-150), conviction rates remained low across the nineteenth century. Partly, this was because of the immense challenges that had to be overcome to meet the criteria for what was called "separate existence" before a charge of either murder or manslaughter could be brought: this mandated expert medical testimony that the baby had not only been born alive, but had been completely born from the mother's body at the time of death – so, for instance, that the baby in question was neither a stillbirth nor had died during parturition. Since this was practically impossible to confirm without an eyewitness to the birth, medical men were forced to rely on conducting an extensive range of medico-legal tests that were widely acknowledged to be open to interpretation at best and unreliable or potentially useless at worst, particularly those involving the lungs (Dixon, 2022; Watson, 2020: 143-198).[4] Without a confident assertion from the expert witness that he believed the child to have had a separate existence, the prosecution was limited to a charge of concealment of birth, even in cases where significant violence seemed to have been used. Medical witnesses might also be questioned about the mental health of the accused, or their likely experience of pregnancy and delivery. These questions, too, were potentially more open to interpretation than they might seem. In practice, as Suzanne Bell and Mary Fissell have recently explained, for both historical and

[4] Although seventeenth and eighteenth-century midwives were also called upon to provide this evidence, they had been entirely excluded from this process by 1863 (see context in Dixon, 2022: 58-82).

contemporary contexts, the "array of suspecting, fearing, hoping, knowing, and/or denying in the early phases of a potential pregnancy cannot be reduced to a simple binary or even a yes-maybe-no spectrum" (Bell & Fissell, 2021: 508). For women in nineteenth- and twentieth-century England and Wales who had reasons to try to conceal their pregnancy, there was even more at stake in this blurred state of the potential for pregnancy and the simultaneous denial of that possibility. Women who were confronted by employers, friends, or family members about being "in the family way" during this period routinely denied this could be the case, blaming weight gain, nausea, pain, or bleeding on a range of ailments (Arnot, 2000; Grey, 2014: 207-210). Victorian juries could be willing to accept a respectable woman's insistence that she could not possibly have anything to do with the discovery of a murdered child even when the medical evidence suggested directly otherwise (Grey 2018: 46-47). Moreover, even though very few women who suffered from so-called "puerperal insanity" (a common diagnosis roughly equivalent to what might now be labelled as postnatal depression or psychosis) ever harmed their children, the condition was inextricably linked in the popular imagination with both cases of infanticide and the simultaneous potential for a full recovery to "normality" (Marland, 2004; Pedley, 2020). The idea that the physical and emotional pain of childbirth or its aftermath might generate a state of temporary insanity where they were not fully in control of their actions and that did not necessarily correspond with either medical or legal definitions of mental illness, especially for single women of formerly good character facing the shame of having an illegitimate child, had crystallised as a core element in

the “cultural script” of infanticide cases by 1860 (Grey, 2014).[5] This neatly combined public and professional concerns about the possibility of mental illness contributing to these tragic events, including the resulting potential for miscarriages of justice, with the resounding emphasis on infanticidal women as having been previously “normal” and “respectable”, both of which were states considered fundamentally incompatible with deliberately perpetrating lethal violence, especially when the victim had been a vulnerable baby. The Infanticide Act 1922, which was passed with relative suddenness after the repeated failure of similar measures during the nineteenth century, explicitly drew on these ideas to justify replacing the mandatory death penalty for murder with a prison sentence in cases where a woman killed her “newly born” infant while suffering from “mental disturbance” (Grey, 2010). The amending Infanticide Act 1938, which replaced the (deliberately) vague term “newly born” in the statute with a limit for this charge or alternative verdict of 12 months after giving birth retained this wording. Even during the mid-twentieth century, by which point puerperal insanity was seen as an outdated diagnosis, infanticidal women in England and Wales were not categorised or represented in the same ways as other women killers commonly were (Seal, 2010), retaining their “special” status. From 1922 onwards, there was a broad consensus that the new law represented the fairest possible way of dealing with infanticide cases, meaning they no longer faced the death penalty if convicted, and giving the Home Office a degree of flexibility in deciding behind the scenes at what point a nominal life sentence might be exchanged for release on license (Grey, 2017: 81-83). Following the Second World

[5] The partial defence of “diminished responsibility” was accepted in Scottish law in the nineteenth century but not introduced to England and Wales until the passage of the Homicide Act 1957: see especially the gendered impact of this legislation in Seal (2010).

War, it also seems to have become increasingly likely for judges to sentence a woman found guilty of infanticide to probation orders (possibly including some mandated psychiatric observation of treatment) rather than a term of imprisonment, continuing a trend for increasingly lenient sentences that can be traced back to the 1880s (Grey, 2008, 2014).

This consensus and sympathy embodied by new domestic legislation in the early twentieth century, however, was not necessarily extended to other areas under British rule. Significantly, although the elimination of infanticide by indigenous peoples was routinely held up throughout the “long nineteenth century” (1789-1914) as both a particular concern of the British Empire – a core facet of the so-called “civilising mission” – and justification for its governance over supposedly “lesser” cultures, debates over the causes of infanticide and best way to prevent and punish it in the colonies were kept almost entirely separate from parallel discussions of the crime in England and Wales. On the rare occasions such a direct comparison was made by a journalist or other commentator, such as the author of a medical jurisprudence textbook, this was done with the clear intent to either shock British readers, or, conversely, to re-emphasise the supposed dramatic distinction in motivations for criminality between the inhabitants of colony and metropole (Grey, 2011). Such discourses were regionally specific rather than monolithic, and inevitably inflected by the shifting concerns and priorities of imperial authorities and settlers, and the broader context of developments in the colony (Anagol, 2002; Chapple, 2021; Conor, 2016: 152-238; Grey, 2013; King, 2014; Murthy, 2023). This could mean, for instance, that in any given decade, allegations of infanticide by “native subjects” might be represented as a widespread problem in one colony that

demanded urgent attention and resources to combat, and simultaneously as rare to non-existent in another. Overwhelmingly, such colonial representations focused specifically on instances of *female* infanticide as a cultural phenomenon and a supposed marker of civilisational "backwardness" – its abolition (whether intended or achieved) held up as marker of success by the British Empire and of "benevolent" rule. In practice, those cases of infanticide by colonial subjects where the sex of the infant was utterly irrelevant, and the killing – just as in England and Wales – was prompted at least in part by the severe economic and social difficulties facing mothers of illegitimate children, made the authorities profoundly uncomfortable. Notably, when the possibility of introducing an Infanticide Act in colonial India modelled along the lines of the recent English one was mooted in 1926, this generated fierce opposition from within the civil service and judiciary, and the proposal was dropped several months later, in large part on the grounds that comparisons of white and South Asian women's lives and experiences in the two jurisdictions were held to be so utterly different as to verge on the ridiculous (Grey, 2021).

As Siska van der Plas and Willemijn Ruberg (2023) have demonstrated was the case for the Netherlands, infanticide cases tried in England and Wales and their newspaper coverage between the 1960s and the 1980s continued to be strongly influenced by constructions of gender and sexuality, including broader social and cultural changes regarding what constituted "proper" motherhood and fatherhood. Potentially, this period could even have seen at least a degree of retrenchment in the sympathy customarily bestowed on infanticide defendants, as the number of overall cases brought before the courts continued to decline. This decrease in prosecutions

ran alongside significant legislative and social developments such as the legalisation of abortion from 1967, steadily increasing access to contraception and sex education (including the right of unmarried people to have contraception and family planning advice provided under the National Health Service from 1974) that all substantially reduced the likelihood of an unwanted pregnancy (for key context see Cook, 2004; Hall, 2013: 148-174; Rusterholz, 2020). Being better able to avoid this prospect – albeit in strictly relative terms – more easily than had been the case in the decades before 1970, especially combined with a gradual reduction in the stigma facing lone mothers (Thane and Evans, 2012: 140-194), could have meant that the media and criminal justice system were much less likely than before to view infanticide as a crime committed by the formerly respectable.

If anything, however, the by now well-established tendency towards lenient sentencing in infanticide cases seems to have *increased* during the late twentieth century. From 1979 onwards, there does not seem to have been any instance of a woman convicted of infanticide in England and Wales receiving a custodial sentence (Loughnan, 2012: 224). The standardised move away from custodial sentencing in practice during and since the 1980s seems to have substantially reduced – although not eliminated – much of the remaining popular and professional concerns that persisted into the late twentieth century about the risks of the woman charged with infanticide being treated "unfairly" by the courts. Where such concerns about the prospect of "unfairness" as an inevitable product of the criminal justice system for women charged with killing their infants were reignited between 1980 and the early 2000s, these tended either to focus on aspects of individual cases, or were regarding instances of suspected child homicide that fall outside the boundaries of the

Infanticide Act 1938 and so were not subject to its provisions.[6] When the Law Commission (2006) reviewed whether or not the existing law on murder, manslaughter, and infanticide should be amended, while acknowledging criticisms that the wording of the Infanticide Act was based on conspicuously outdated language and open to criticism on several points (including a potential reinforcement in law of sexist views about women's capacity and agency regarding violence), it argued that the defence should be retained, recommending only minimal amendments to the existing law to remove any references to "lactation" and expand the time the defence was available from 12 months to 2 years after the child was born. In the end, the suggested amendments were not implemented by the government, and the Infanticide Act 1938 remains largely unaltered from its original state save small changes to the phrasing (e.g. by replacing the words "notwithstanding that" with "if", but leaving other elements alone) that were introduced by section 57 of the Coroners and Justice Act 2009.

Conclusions: The more things change…?

It is almost impossible to accurately determine the number of infanticide cases that occur in twenty-first century England and Wales, where official figures are believed to be particularly liable to both underreporting and unwitting distortion (Brookman

[6] While it is beyond the scope of this essay, a series of high-profile murder convictions at the turn of the millennium in England and Wales where mothers were accused of killing their young child through induced illness because of a psychiatric condition labelled "Munchausen's by Proxy", meant that this was a hotly debated question at the time in the press, as well as professional forums. The convictions were later quashed as unsafe (Bates, 2019).

and Nolan, 2006; Milne, 2021: 9-16). This, too, represents a continuity with the period covered by this chapter. During the nineteenth and early twentieth century, British civil servants acknowledged that even the judicial statistics they produced themselves were unreliable on this point, since crimes which might be considered collectively as “infanticide” could be potentially recorded under several different headings with no way to detect this (buried in the data for “murder” or “manslaughter”, among others), and the popular claim of medical reformers that a substantial number of such killings went both unacknowledged and unpunished remained a controversial point of debate between the 1830s and 1860s (Grey, 2017: 74). If the introduction of the 1922 Infanticide Act meant that categorisation of such offences was likely to become more granular during the interwar years, the improvement was strictly a relative one. While it seems clear that there has been a significant and ongoing reduction in the number of such cases over the course of the twentieth century, meaning that as of 2016, approximately eight women are charged with infanticide or closely related offences across England and Wales every year, this too may well be an underestimate of “actual” numbers (Grey 2018: 54). Moreover, the processes surrounding what Fiona Brookman and her colleagues have identified as the “collective sensemaking” which determines the progress (or not) of a suspected homicide killing investigation from its early stages to a criminal trial in Britain remain both understudied and opaque (Brookman et. al, 2020). This situation is further complicated because despite advancements in science and technology, significant difficulties remain for contemporary forensic pathologists in reliably determining the cause of death for very young infants, especially in those cases where the body is not rapidly discovered (Payne-James et. al, 2011: 67).

What does not seem in doubt, however, is the extent to which twenty-first century English and Welsh infanticide cases, along with concealment of birth, remain influenced by what were originally nineteenth and early twentieth century concerns about gender, motherhood, and respectability – emphasising that the infanticidal woman stands apart from "other" female criminals and is deserving of special treatment. This is not simply the result of the relevant legislation remaining largely unchanged since it was passed, though inevitably the wording and precedent for the statutes in question plays a part in creating this perception (Grey, 2010; Milne, 2019). Yet as research by Sylvia Murphy Tighe and Joan Lalor has demonstrated, concealing a pregnancy – a phenomenon which increases the likelihood for multiple issues, up to and including the prospect of infanticide – is not simply a historical relic, but a contemporary and global problem that is often directly related to traumatic experiences: "The reasons for concealed pregnancy may have changed but the fear women experience has not" (Murphy Tighe and Lalor, 2019: 613). The complexity and distressing nature of infanticide cases, and the continued support for the "cultural script" which tends to emphasise the previous good character and particular circumstances of the woman charged, in its turn encourages this heavy reliance on what are by now well-established precedents and practice – even more so than is usual for the criminal law – for understanding and dealing justly with the crime that seem to have been effectively settled since the interwar years. This, in turn, helps to explain why despite the repeated (if sporadic) efforts in the decades following World War Two to significantly amend or even simply abolish the Infanticide Act 1938, these proposed reforms have never been met with enthusiasm, and the statute remains in force as of 2023.

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