The history of infanticide in England. Alan Macfarlane

The major source for our knowledge of infanticide lies in the legal records of the ecclesiastical and secular courts. It is thus important to establish the legal position in relation to infanticide in England. As far as I can see, and this will have to be checked (xxx) there was no specific civil offence of infanticide in England before 1623. It would appear that until then, the matter was either dealt with by the Church, or might possibly come to the courts as an ordinary case of homicide.

The ecclesiastical courts seem to have been the place where infanticide was normally punished. We are told that 'Since the eighth century the penance for overlaying - and as we move into the later Middle Ages for the other designated forms of infanticide - was consistently lighter than the penance for even accidental homicide if the victim were an adult.'[1] Or again that 'Evidently, the taking of an infant's life, while certainly not condoned, was understood. Moreover, a temporary, sometimes a public and humiliating penance was deemed appropriate and sufficient punishment for this sin.'[2] Damme gives an example of such a penance. 'Joan Rose was convicted at Canterbury in 1470 of killing her son. The judge ordered that Joan should dress in penitential garb and "go before the procession in the parish church of Hythe on three Sundays with a wax candle of half a pound in her right hand and the knife with which she killed the boy, or a similar knife, in her left." She was also ordered to go twice around the markets of Canterbury, Faversham, and Ashford in a similar fashion. This was obviously meant as a humiliating public admission of guilt, and as a warning to other against the crime of infanticide.'[3] There was a statute of 1224 that 'Under threat of excommunication from the church, women should be restrained from keeping their children close by in bed lest they smother them while in sleep.'[4] This again suggests that the matter was dealt with by the ecclesiastical courts. We are told that 'The thirteenth-century penitential of Thomas of Chobham brought yet other methods of infanticide into official purview, such as refusal to nurse and death by the mother's own hand.'[5] Yet even in the ecclesiastical courts, with the much milder penalties, the cases are very infrequent. The Canterbury records, for instance, do not show a large number of cases. Helmholz found that the largest number of prosecutions for the offence for any one year was four, which given the size of the diocese, is relatively small.[6]

It would appear that infanticide could also be tried as homicide in the secular courts. Burn noted, on the basis of the fifteenth century lawyer Hales, that 'if a man procure a woman with child to destroy her infant when born, and the child is born, and the woman in pursuance of that procurement kill the infant; this is murder in the mother, and the procurer is accessory. H.H. 433'[7] We might therefore expect to

[1] Kellum, Infanticide (xerox), p.370
[2] Damme, Infanticide (xerox), p.6
[3] Damme, Infanticide (xerox), p.5
[4] Damme, Infanticide (xerox), p.3
[5] Damme, Infanticide (xerox), p.3
[6] cited in Damme, Infanticide (xerox), p.2; check Holmholz xxx
[7] Burn, i, p.122

find cases in the extensive medieval secular courts. In fact Hair notes that 'An extensive examination of medieval legal records has revealed very few cases of this crime[8] and he could find no infanticides in the coroner's inquests for Bedfordshire and Nottinghamshire in the thirteenth century.[9] Nor can they be found in the Coroner's rolls for 1265-1413 published by the Selden Society.[10] Hoffer notes that 'Infanticide virtually never appeared in either the coroners' rolls or in the trials in gaol delivery. Of 2,933 homicide cases which came before gaol delivery justices in three counties (of Norfolk, Northamptonshire and Yorkshire) from 1300-48 only one case of infanticide appeared...'[11] Kellum could only find four cases in the medieval legal records, and even two of these were probably child murders rather than infanticide.[12]

This is puzzling. As Hoffer concludes, 'The apparent scarcity of cases in medieval England is nevertheless incompatible with findings from other Western Christian societies.'[13] The evidence which the several recent scholarly attempts to investigate this topic have uncovered amounts to two or three cases in the secular courts, and a few in the ecclesiastical. We can interpret this in many ways, of course, depending on our leanings, as evidence of widespread and condoned infanticide, or of its virtual absence.

Some light may be thrown on this medieval situation if we look at the later, and better documented, period from the sixteenth century. Hoffer claims that 'The number of infanticide cases heard by coroners and judges on the home circuit and in Middlesex showed a sharp increase under Elizabeth's reign over previous years.'[14] Yet while it is a relatively large increase, the figures are still very small indeed. The table Hoffer produces show that in the whole of Essex between 1558-1593, a county of about eighty thousand persons, there were some twenty-three indictments. In Sussex there were even less, some fourteen. In London and Middlesex, there were only seven.[15] These are still tiny numbers.

The numbers increased somewhat in the early seventeenth century and were probably affected by the first act specifically to deal with this offence. The preamble makes it clear that it was aimed at a specific form of infanticide, the killing of bastard children. This act was reprinted in Burn.[16] 'By the 21 E.c.27. 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 women do alledge, that the said child was born dead; whereas it falleth out sometimes (altho' it is hard to be proved) that the said child or children were murdered by the said

[8] Hair, LPS 9 p.44
[9] Hair, Population Studies, p.18
[10] Kellum, Infanticide, p.371
[11] Hoffer, Mothers (xerox), p.5
[12] Kellum, Infanticide, p.373
[13] Hoffer,Mothers (xerox), p.5
[14] Hoffer, Mothers (xerox), p.7
[15] Hoffer, p.7 table 1
[16] Burn, Ecclesiastical Law, i, p.122

women their lewd mothers, or by their procurement; it is enacted, that if any woman 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 they 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.'[17] In other words, in this most secret of offences there was a presumption of guilt, unless innocence could be proven by one witness. This was a reversal of the normal presumption of innocence in English law which later commentators such as Blackstone thought too harsh.

The number of cases did rise somewhat after the 1620s, but it still remained relatively small. It is calculated that 'In the 1610s, Greater London high courts had 2.7 indictments for infanticide per year for a population of between 175,000 and 225,000. This gives an indictment rate of approximately 1.35 per hundred thousand people per year. Elizabethan Essex assize courts averaged about one case per year, for a population of 70,000 adults and children, resulting in a 1.44 per hundred thousand rate.'[18] In Essex in the period between 1601-1625 there were only nine prosecutions for infanticide. In the next twenty-five years there were thirty-three cases.[19] The proportions of all homicides which were infanticides was of the order of seven to ten per cent.[20] Then the infanticide cases dropped off again. 'Eighteenth-century England witnessed a decline in the rates of the indictments for infanticide and the percentages of convictions as steep as their increases were in the Tudor and Jacobean era.'[21] Some of the figures in the eighteenth century are summarized by Malcolmson. He notes the uncertainty of the real incidence, and adds that 'All we can say with some degree of certainty is that the actual criminal indictments for infanticide, like other charges of murder, were never very numerous. In Staffordshire the indictments for infanticide (or the concealment of a bastard birth) appear to have averaged slightly less than one per year during the period 1743-1802; they represented approximately 25 per cent of the total indictments for murder and manslaughter in that county. Only sixty-one infanticide cases were tried at the Old Bailey between 1730 and 1774, and in Surrey during the eighteenth century there seem to have been, on average, only three or four trials for infanticide in each decade.'[22]

The impression from the courts, therefore, is of rather infrequent prosecutions. This may have been related to various factors. Firstly, infanticide was an extremely difficult offence to prove. With many infants dying at birth, it would be very difficult to show conclusively that the death was intentional; this was the purpose of introducing the clause about the need for a witness to the birth. That this new law was brought into operation is shown by an interesting case described by William Petty, when a woman

[17] Burn, Ecclesiastical Records, i, p.122
[18] Hoffer, Mothers (xerox), p.21
[19] Wrightson, Infanticide, p.12
[20] Hair, LPS, p.14
[21] Hoffer, Mothers (xerox), p.65
[22] Cockburn, Law, p.191

was hanged (though subsequently revived) because she failed to make known the delivery of her bastard child as the law required.[23] Various tests were devised to try to establish whether a dead infant had breathed before it died, or whether it had been born dead, for instance the carcass was put in water and if it floated was thought to have inhaled air.[24] Yet it was admitted that these tests were of dubious value. This matter was of central importance, for English law defined infanticide as the killing of the child 'after the entire body is brought from the womb alive.'[25] The difficulties were compounded by the fact that it was known that the smothering of babies by their mothers, one variant of 'cot deaths', was common, and frequent statutes were passed trying to prevent mothers taking their infants into bed with them.[26] Midwives might also be accomplices and during the seventeenth and eighteenth centuries they were required to swear on oath that they would not 'suffer any woman's child to be murdered, maimed or otherwise hurt.'[27]

Another difficulty in bringing prosecutions was that there was clearly very considerable sympathy with the plight of women who had not only suffered the shame of bearing an illegitimate child, but had then been forced, through shame, to kill it. The result was that there was a growing tendency for the accused to be acquitted. At first, the juries were fairly hard-hearted. Of the forty-nine cases in the Essex Assizes in the first half of the seventeenth century where there was a known verdict, twenty-nine were found guilty and ordered to be hanged. Later, however, the juries became increasingly unwilling to find the accused guilty. In Staffordshire it seems that not a single indictment for infanticide in the period 1743-1802 resulted in the death sentence (the evidence available includes thirty-nine such indictments). Leniency appears to have been more the norm than the exception. As Blackstone correctly pointed out, 'it has of late years been usual with us in England, upon trials for this offence, to require some sort of presumptive evidence that the child was born alive before the other constrained presumption (that the child whose death is concealed was therefore killed by his parent) is admitted to convict the prisoner.'[28] If it could be shown that the mother had prepared in any way for the arrival of the child, for instance if she had a small piece of clothing ready for it, she could use this as evidence that she intended to keep it.

Even when the defendant was found guilty, it has been suggested that 'The crown has usually exercised its right of mercy when defendants have been found guilty of this charge.'[29] How often, someone was executed for this offence is uncertain. There certainly are cases recorded in contemporary sources, [30] but in other trials we do not usually know the outcome.[31] Where we do, the accused did not necessarily suffer death. For instance, the Aldgate records note that 'Elizabeth Asher, the Reputed daughter of

[23] Petty, Papers, ii, p.164
[24] cf Thackey??, Disease of Maids, p.92; Malcolmson in ed Cockburn xxx
[25] Hocart, Enc.27
[26] Damme, Infanticide, p.4
[27] Wrigley, Population, p.125
[28] Cockburn, Law, p.197
[29] Hocart, Enc. p.27
[30] E.g. Smyth, Obituary, p.31
[31] e.g. Heywood, Diary, many cases; Winthrop, Diary, p.29

Thomas Asher in Wollsack alley in Hounsditch the Mother named Joane Tagge, Servant to Thomas Newton a Broker in houndsditch, who like a Murderous Strumpett, cast hir said Child into a Privie, but by Gods good grace it was heard to Cry by the Neighboures and saved a live and Chrisned the tenth day of May Anno 1615, she (the mother) was taken afterwarde and Araigned but escaped death. The Poore infant dyed within a fortnight after.'[32]

Why, then, have authorities such as Langer or McKeown believed that infanticide was common? One reason is clearly that towards the end of the seventeenth century, mainly in London it would seem, there was a rise of a phenomenon which was very widespread in Paris, Milan and St. Petersburg and other continental cities, namely the abandonment of unwanted children or foundlings. Much of the evidence for infanticide emerges from those who supported the idea of setting up facilities to deal with such 'dropping' as it was termed. Mrs. Cellier, who was one of the first to advocate the setting up of special hospitals, warned of 'the great number (of children) which are overlaid, and wilfully murdered, by their wicked and cruel mothers...'[33] This was written in the 1690s. During the next fifty years there was a public outcry. Malcolmson cites a number of people who wrote in the same vein. "'Not a sessions passes", claimed Daniel Defoe, "but we see one or more merciless mothers tried for the murder of their bastard children"; it was said in 1737 that "such crimes are now become so common that they are heard of almost every day"; a report in 1738 referred to "the vast numbers of grievous murders of this kind". Infanticide, thought another writer, '(is) a crime to the scandal of our country, little known but in Great Britain, where more murders of this nature are committed in one year than in all Europe besides in seven". Thomas Coram, the principal promoter of the London Foundling Hospital, was said to have become committed to the project because of "the shocking spectacles he had seen of innocent children who had been murdered and thrown upon dunghills".[34] Dorothy George quotes the Ladies' Memorial praying for a charter for the Foundling Hospital (1739): 'No expedient has yet been found out for preventing the frequent murders of poor miserable infants at their birth, or for suppressing the inhuman custom of exposing newly born infants to perish in the streets, or the putting out such unhappy foundlings to wicked and barbarous nurses who undertake to bring them up for a small and trifling sum of money, do often suffer them to starve...'[35]

In 1757 Burrington[36] wrote that people sent 'their Bastards to the Foundling Hospital; if they are not admitted, there are Men and Women, that for a certain Sum of Money will take them, and the Fathers never hear what becomes of the Children afterwards...in and about London a prodigious Number of Infants are cruelly murdered unchristened, by those Infernals, called Nurses; these detestable Monsters throw a Spoonful of Gin, Spirits of wine, or Hungary-Water down a Child's Throat, which instantly strangles the Babe; when the Searchers come to inspect the Body, and enquire what Distemper caused

[32] Forbes, Aldgate, p.151
[33] Mrs. Cellier, Royal Hospital, p.191
[34] Cockburn, (ed), Law, p.190
[35] George, London Life, p.371
[36] Burrington 'An answer to Dr. William Brakenridge's letter concerning the number of inhabitants, within the London bills of mortality' (London J.Scott 1757 - pamphlet)

the Death, it is answered, Convulsions, this occasions the Article of Convulsions in the Bills of Mortality so much to exceed all others. The price of destroying and interring a Child is but Two Guineas; and these are the Causes that near a Third die under the Age of Two Years, and not unlikely under two Months,'[37]

The 'dropping' of children was certainly common in some early eighteenth century cities. Malcolmson cites a number of cases in the 1720s and 1730s noted in newspapers and writes that '"Dropping" appears to have been particularly prevalent in London: it was claimed, for instance, that during the first half of 1743 a dozen infants were abandoned in the parish of St. George's Hanover Square.'[38] By 1760, we are told, 'the London Hospital was deluged with 4,229 newcomers, making a total of 14,934 admissions in the preceding four years.'[39] It would appear that this was the peak of the concern. The recorded cases died away and by 1808 Malcolm noted that 'dropping of children is but little known at present.'[40]

As regards those accused of infanticide, there is one outstanding feature: they were almost all unmarried women. Hoffer concludes that 'married women were not accused of murdering their newborn babies...'[41] and Malcolmson agrees that 'Documented instances of infanticide within marriage are exceptional.'[42] He found less than a dozen cases, and three of these were instances where the marriage had barely preceded the child's birth, and it was thought that shame was the motive.[43] Malcolmson warns against the difficulty of deducing from this absence that such cases did not occur or were very rare. It was practically impossible to detect, let alone prove, infanticide within marriage. Yet it is certainly true that all the alarm, concern and literary and legal evidence was concentrated on a certain class and status, namely poor unmarried women. Many of them were servants. Malcolmson notes that of the fifty women whose occupation was given in infanticide cases at the Old Bailey between 1730 and 1774, thirty-five were servant maids.[44] He gives a sensitive account of the difficulties and pressure which such servants faced. 'The social and economic consequences of unwed motherhood were very serious indeed. If a girl was a servant - and a high proportion of young women were - knowledge of her pregnancy would result in immediate dismissal; she would probably receive no character reference, and there would be little chance of her being taken into service again. In all probability she would be virtually stigmatized for life.'[45] Literary accounts of their plight were sometimes given in ballads, such as that collected by Pepys under the title 'No naturall mother, but a Monster'. Or, 'the exact relation of one who for making away her owne new borne child, about Brainford neere London, was hang'd at

[37] Erlich, Population, p.213
[38] Ed Cockburn, Law, p.188
[39] Langer, Infanticide, p.359
[40] quoted in George, London Life, p.211
[41] Hoffer, Mothers, p.101
[42] in Cockburn, Law, p.192
[43] Ed Cockburn, p.206
[44] Cockburn, Law, p.202
[45] Ed Cockburn, Law, p.192

Teybome, on Wednesday the 11 of December 1633'[46] or, much later, in classics such as **Adam Bede**. Their desperate situation and pathetic attempts to overcome terrible odds is also movingly described in some of the Assize depositions for the northern circuit which have survived from the later seventeenth century.[47]

[46] Pepys in Garland, ii, p.425-30
[47] Assizes 45; see note xxx of ed. cockburn for references