

“Unnatural Mother”: Race, Gender, and Infanticide in the Nineteenth Century

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Introduction

On September 21, 1849, Mary, a slave, went to a place alone and in secret, out of her master's sight, and gave birth to a male child. After she had delivered her son, whom the coroner later characterized as being born alive, healthy, and "in the peace of God and the state," Mary assaulted her infant, instantly killing him. Later, someone discovered the child and Mary was arrested and indicted for infanticide. The indictment charged that she, the slave of Jesse Rankin, had "bestowed mortal wounds" onto her child by kicking it and beating it with "both her hands and feet." She continued to inflict harm by casting and throwing the newborn "against the ground" repeatedly injuring his "head, temples, throat, wind pipe, stomach and back." The indictment read that Mary did "kill and murder against the peace and dignity of the state."¹

Despite the evidence presented against Mary, the North Carolina superior court found her "not guilty," freeing her of all charges, permitting her to return to her master's farm. This case and the court's decision mirrored that of most women charged with infanticide in the nineteenth century. The courts' decisions during this time were striking because the evidence discovered by the prosecution throughout the legal proceedings was at most times sufficient to find the women "guilty." My thesis, therefore, argues that courts, the southern courts in particular, were influenced by pressures outside of the law when they exonerated the women for infanticide. This project will show that conceptions of gender, race, and condition of servitude shaped nineteenth century law.

Infanticide cases are revelatory sources in understanding ideas surrounding race and gender in the antebellum era since enslaved women, free women of color, and white women all appeared in courts for this crime. And because infanticide was legally defined as a crime that

¹ *State v Mary (a slave)*, Fall 1849, Davidson County Criminal Action Concerning Slaves 1840, 1843, 1844, North Carolina, CR.032.928.9, North Carolina Department of Archives and History, late referred to as NCDAH.

could only be perpetuated by women, nineteenth century infanticide cases highlight the roles that women were expected to perform when the responsibilities transcended race and legal status and when those roles were dependent on those categories. Also, as the courts attempted to understand women's motives for killing their children, my analysis of infanticide legal documents illustrates the various circumstances of accused women. It reveals the common and diverse experiences of enslaved women, free women of color, and white women in the antebellum period.

My research focuses on North Carolina's nineteenth century infanticide cases and uses them to shed light on bigger issues regarding race, gender, slavery, patriarchy, and law. By focusing on these different aspects, my work builds on previous studies of infanticide. One of the earliest works on this subject was Peter Hoffer and N.E. Hull's study of infanticide in New England in the years between 1558 and 1803. They quantitatively analyzed data in order to understand the dynamics that caused women to murder their own children. In searching for those influences, Hoffer and Hull wanted to understand why courts began to acquit more women in the eighteenth century as compared to the sixteenth and seventeenth century. They used the law to explain those dire questions and did not give much weight to the women's circumstances that could have influenced their decision to kill their children. However, Hoffer and Hull did find that women were generally acquitted in the eighteenth century.² I show that this pattern continued in the nineteenth century and was not a crime that was unique to New England; instead infanticide instances and rare convictions were also seen in many northern and southern states.

More recent scholarship has illuminated the dynamics of infanticide with similar findings. In *Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America*, Felicity Turner traces the way Americans constructed ideas about race and

² My scholarship builds on the findings of Peter Hoffer and N.E.H. Hull, *Murdering Mothers: Infanticide in England and New England 1558-1803* (New York: New York University Press, 1984). This scholarship is a source for statistics and quantitative data of infanticide instances in New England.

gender in the nineteenth century. She compares and contrasts two time periods, the antebellum era and the reconstruction period. She argues that infanticide narratives were critical in formulating ideas about gender and traces how ideas surrounding it were shaped and transformed in the nineteenth century, a reformation that created the modern thought on gender. My research builds on her findings by illustrating how ideas about race and slavery in addition to gender influenced law, court proceedings, and women's experiences in the antebellum area.³ I argue that infanticide narratives in conjunction with courts' decisions were not necessarily used as a way to form ideas about race and gender; instead, they were used to reinforce and support the established southern thought regarding these social constructions. During this time period, the South had already formulated its definition of race and gender. For example, for decades, beginning in the late seventeenth century, supporters of slavery had used the social construction of race to support and justify the slave system. Also, the definitions of motherhood and womanhood were established along with the responsibilities that these concepts entailed.

In the nineteenth century, the "peculiar institution" was embedded socially, economically, and politically into the South's way of life. Many scholars have discussed the experiences of enslaved women in the South, expanding on the vulnerability of enslaved women and how their gender, race, and legal status subjected them to the most inhumane treatments. Enslaved women were sexually exploited and were victims of psychological and physical abuse. Scholars have also discussed the ways in which these women's legal status limited their social mobility, the

³ More recent scholarship has expanded on infanticide and how this crime is a way to understand gender and race in the nineteenth century. See Felicity Turner's *Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America* (North Carolina: Duke University Press, 2010) and Wilma King's "'Mad' Enough to Kill: Enslaved Women, Murder, and Southern Courts" In *The Journal of African American History* 92 (winter, 2007): 37-56. Also see Martha Hodes *White Women, Black Men: Illicit Sex in the Nineteenth-Century South*, (New Haven: Yale University Press, 1997) and Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009) for more scholarship on that ties in law, gender, race, and slavery in antebellum North Carolina.

customs they adopted and the ways in which they interacted with one another.⁴ My research and analysis of infanticide cases, in which enslaved women served as the defendants, will expand on enslaved women's experiences and how the defendant's individual circumstances ultimately influenced these women's lives and the choices they made.

This thesis also sheds light on white women's experiences in the nineteenth century. It shows that commonalities existed between both black women and white women that transcended race and legal status. Many historians have discussed white women's limited political and social power in the antebellum South. These scholars have demonstrated that white women's rights and capabilities were solidified through marriage and their husband's political and social power during this time.⁵ This project will expand on white women's experiences through the analysis of infanticide narratives formulated through witness testimonies, infanticide court documents, newspaper articles, and writings by nineteenth century intellectuals. These findings complicate modern ideas about women's history during slavery. Many scholars, in their discussion of black and white women, have drawn a distinct line between these women in regard to their daily lives in the antebellum South. However, my research blurs that line by demonstrating that both black and white women who appeared in North Carolina's superior courts had many similarities.

I begin by describing how Americans understood infanticide in the nineteenth century. Chapter one discusses how diverse groups reported and presented infanticide instances in order

⁴ For scholarship that sheds light on the experiences of enslaved people in the antebellum South, see Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market*, (Cambridge, Mass.: Harvard University Press, 1999), 34-42; Eugene Genovese, *Roll, Jordan, Roll: The World the Slaves Made*, (New York: Vintage Books, 1976); John W. Blassingame, *The Slave Community: Plantation Life in the Antebellum South*, (Oxford: Oxford University Press, 1979). For experiences of enslaved women on the plantation, see Deborah White *Ar'n't I a Woman?: Female Slaves in the Plantation South*, (New York: Norton, 1999) and Marie Jenkins Schwarz, *Birthing a slave: Motherhood and Medicine in the Antebellum South*, (Cambridge Mass.; London: Harvard Press, 2009).

⁵ See Laura Edwards, *People and their Peace*; Nancy Isenberg, *Sex and Citizenship in Antebellum America*, (Chapel Hill: University of North Carolina Press, 1998); Clara Lyons, *Sex among the Rabble: An Intimate History of Gender and Power in the age of Revolution, Pennsylvania 1730-1830*, (Chapel Hill: University of North Carolina Press, 2006) for scholarship on white women's experiences in antebellum south.

to support their own ideas, customs, and beliefs. This chapter will use national newspaper articles and scholarly works published during this time period to show that discussions of infanticide were often centered on slavery and ideas of womanhood. As the southern supporters of slavery attempted to justify the slave institution and reinforce their idea of what constitutes a true woman, the North, the abolitionists in particular, reported infanticide instances to denounce slavery.

The second chapter focuses on nineteenth century infanticide cases in North Carolina and it depicts realities of this crime. It unearths the similarities and differences between enslaved women, free women of color, and the white women that appeared in the courts for this crime. I assert that slavery and North Carolina's idea of womanhood and motherhood caused black women and white women to experience similar circumstances in the nineteenth century that led them to kill their children.

The last chapter explains why courts were reluctant to convict women for this crime despite the fact that there was satisfactory evidence to convict. This chapter traces the evidence and arguments presented in the court room to depict how the cases were argued. It shows that even when there was compelling evidence to convict the women, juries regularly returned "not guilty" verdicts, showing that factors outside law were influencing the court's decisions to acquit the women. This chapter then discusses two cases in which the defendants were found "not guilty" but later acquitted or pardoned. In my analysis of these two instances, I show that the southern courts were pressured to uphold the southern systems in their decisions: the system of slavery, the patriarchal system, as well as their ideas of womanhood and motherhood.

In my analysis of North Carolina infanticide court cases as well as diverse newspapers and scholarly works published in the nineteenth century, I reveal how Americans understood

infanticide in relationship to gender, race, slavery, and law in the antebellum era. As diverse groups attempted to support and uphold their own beliefs about women and slavery in their representations of infanticide cases, the southern courts responded to infanticide instances in a way to support these systems and beliefs for the purpose of maintaining order and securing their way of life. These findings expand on the knowledge of women's experiences in the nineteenth century and show how ideas surrounding slavery and patriarchy were weaved into the South's social political and legal fabric, shaping many women's choices and experiences.

Chapter 1

Defining the Unnatural Crime: Infanticide Representations in the Nineteenth Century

America's nineteenth century courts agreed that infanticide was a crime against God and understood it to be an act executed by an individual influenced by the devil. The infanticide court records embodied this idea, primarily in the indictments, all of which accused the mother of lacking the "fear of God before her eyes but being moved and seduced by the instigation of the devil."¹ This belief was based on the observation that infanticide was extremely popular in societies that the Western world had labeled as barbaric and uncivilized. Periodicals and publications perpetuated the idea that infanticide was a common characteristic of underdeveloped nations that had yet to be colonized and Christianized. Therefore, America's understanding of infanticide in the 1800s was influenced by the history of the crime in ancient civilizations and in other areas around the world in the nineteenth century.

In the early 1800s, America was still struggling to form a coherent national identity after gaining its independence. White Americans used infanticide as a way to support the idea that whites were a superior race. In their understanding of infanticide in other nations and in their attempt to grapple with the nature of this crime, not only did many Americans denounce uncivilized nations, but the writers and editors celebrated the United States and its whiteness by drawing a clear line between them and the savage nations that practiced infanticide. They celebrated what they believed to be a superior white race and validated the non-whites' subordinate position in society by inflicting negative qualities to populations that did not identify as Anglo-Saxon.²

¹ This phrase appeared in all infanticide cases in North Carolina, and New York. This phrase also appeared in 18th century New Jersey Infanticide cases.

² William Moore, *American Negro Slavery and Abolition*, (New York: Joseph Okpaku publishing company Inc., 1971) 25-26.

In a journal article entitled “The condition of Woman: Woman in the Nineteenth Century” published in 1846, scholar Margaret Fuller expanded on the idea that child-murdering was confined to nations labeled as barbarous. Infanticide, she claimed “prevails among savage nations.” Her article explained the unnatural crime and its existence in uncivilized areas of the world by mentioning diverse non-white societies where the crime was prevalent and widespread. One society that she talked a great deal about was India. Fuller stated that the Indian population frequently slaughtered their children and that the British government’s efforts to alleviate the crime from the country were stifled by the people’s continued persistence; the women were too determined to kill their children. She also labeled Native American women as “savages” who did not understand the “proper feelings of a wife or mother.” Both the India and Natives were considered to be heinous and the discussion of their infanticide practices depicted this.³

By portraying other nations in such a negative light and labeling them as savages, many periodicals, newspapers, journals and books supported the ideas of imperialism and colonization in different areas worldwide. This portrayal also supported ‘manifest destiny’ which was a belief, chiefly in the nineteenth century, that it was America’s destiny to expand its territory and rule over all of North America. Fuller’s analysis of the Native Americans supported the Indian Removal Act of 1830. It justified what scholar Sean Harvey described as “savagery” yielding to “civilization.”⁴ In Fuller’s description of India, she implied that the people were in need of conversion because of their savagery. This pattern of justifying colonization was not only seen in journal publications, but newspapers also tended to associate infanticide with non-white civilizations. They stated that the crime was known to “prevail” in Africa, India, China, societies

³ Margaret Fuller, “The Condition of Woman: Woman in the Nineteenth Century,” *The Southern Quarterly Review* (1842-1857) July 1846; 10, 19 ProQuest Historical Newspapers: The New York Times.

⁴ Sean Harvey, *Native Tongues: Colonialism and race from Encounter to the reservation*, (Cambridge: Massachusetts: Harvard Press, 2015) 13-14.

that were non-white. Therefore, during the nineteenth century, the public considered the crime not only to be gendered specific but a crime unknown to the white and Christian civilization.⁵

This idea that infanticide only occurred in savage nations was also perpetuated by intellectuals during this time period. Adam Smith, in his 1759 treatise entitled *The Theory of Moral Sentiments*, stated that “the laws of all civilized nations oblige parents to support their children.” According to the English philosopher, because the societies such as India practiced infanticide, they were uncivilized.⁶ Child-murder was used to draw a distinction between civilized and uncivilized nations. Newspapers, periodicals, and other published writings all confirmed Smith’s view that savagery reigned in places that practiced infanticide, thereby, using infanticide as a political football to support imperialism and the white race.⁷

America used infanticide to understand and make sense of the status and condition of women in other countries as a way to promote imperialism and specific political ideologies. This chapter will argue that in the United States, the discussion of infanticide seemed to revolve around the issue of slavery in the antebellum South. Diverse populations saw the crime of infanticide through different lenses that were based on their view of slavery, gender, and race. Northern abolitionists used cases of infanticide to denounce slavery by asserting that enslaved women’s conditions forced them to perform the inhumane act. However, those who supported the “peculiar institution” shaped their understanding of infanticide in a way that promoted slavery in order to secure its survival.

⁵ “Foreign Intelligence from the Spirit of British Missions”, *The Southern Evangelical Intelligencer* (Charleston, South Carolina, April 10, 1819), 18. See also news articles: “The Salem Register,” *The Western Star*, March 16, 1805; 16: 17 (Stockbridge, Massachusetts)6. <http://infoweb.newsbank.com>, “Otaheite,” *Southern Evangelical Intelligencer*(Charleston, South Carolina) April 3, 1819, “Sepulchres of the Dead” Berkshire Journal (Lenox, Massachusetts, June 3, 1830) .

⁶ Adam Smith, *The Theory of Moral Sentiments* 2nd ed. Part II: Chapter II (London: A Millar, 1761)137.

⁷ Felicity Turner, *Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America* (North Carolina: Duke University 2010) 101.

Infanticide: Evidence used for the Anti-Slavery Movement

In the northern states, abolitionists used their understanding of infanticide as a way to fight against the South's institution of slavery. In the early to mid-1800s, northern abolitionists constantly discussed the horrid slave conditions and experiences in the South to build sympathy among the institution's supporters. Northern abolitionists used infanticide practiced among the slave population to plead their cause to northern readers who were indifferent to slaves' conditions. They also used it as a way to reach the northerners who supported it. Edward Pessen, in his analysis of the North in the nineteenth century, stated that northerners' opinions in regard to slavery in the nineteenth century, is better displayed by the writers of the Constitution and the Missouri Compromise because most northerners were in favor of slavery and denounced the abolitionists that threatened it.⁸

In the nineteenth century, the North, South, and many regions in America were economically interdependent. Northern markets depended on slavery because slave labor was used to produce the raw materials, food, and cotton for the North's population. Therefore, abolitionists had to convince the North that it was in the country's best interest to abolish slavery. They perpetuated the idea that infanticide was an unnatural crime, linked slavery and infanticide together to claim that slavery was so morally wrong that it influenced enslaved mothers to murder their own children.⁹ They expressed their views of infanticide through poetry published in newspapers, narratives written by ex-slaves, and novels, all of which described the horrors of the 'peculiar institution.'

One way in which abolitionists challenged the institution of slavery was by negating the assumption and ideology that black women were innately evil and unmotherly; instead in their

⁸ Edward Pessen, "How Different from Each Other were the Antebellum North and South?," In *The American Historical Review* 85:5 (1980):1123.

⁹ Turner, *Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America*, 104.

reports of infanticide, they demonstrated that enslaved women were victims of their terrible circumstance. In 1841, *The Emancipator*, an abolitionist newspaper, reported a case of infanticide that took place in St. Louis, Missouri. An enslaved woman had murdered three of her children by drowning them in a creek. After the facts of the crime were conveyed, the news article included a poem entitled “The Infanticide: A slave mother’s dernier resort” in order to depict the horror of slavery and how it drove a loving mother to kill her children. The enslaved mother took on the narrative voice: “I know their fate is certain, when through life they’ve toiled and bled, they may find death’s welcome curtain, drawn around their aching head.” In this poem the enslaved mother is depicted as a loving and caring mother. The article stated that the mother’s act of murdering her own children was her “latest care” in order to “free them from ill.” By eliding infanticide and slavery, anti-slavery activists claimed that black women were not innately evil, as suggested by many southerners; instead the institution of slavery was driving them to commit this unnatural crime.¹⁰

According to abolitionists, enslaved women were performing their motherly duties in the only way that they could, in the only way that slavery would allow them to. Therefore, they were not to blame, but the institution and the people that supported it were responsible for the crime practiced in the slave population. Abolitionists argued that slavery and all of its horrors were “a systematic effort to keep” blacks “in a state of complete moral degradation.”¹¹ In 1831, *The Liberator* published an article that expanded on the horrors of slavery and how infanticide was an example of moral depravity by claiming that:

This horror is carried to such an extent, that the slaves not only kill themselves, but their children, to escape it. Negresses are known to be remarkably fond mothers, and all I have seen confirms the observation of others; yet this very affection impels them to commit

¹⁰ “From the Friend of Man,” *The Emancipator* (New York: New York) July 29, 1841.

¹¹ H.C Evans, *A Brief Notice of American Slavery and the Abolition Movement* (Dublin: Webb and Chapman, 1846)5.

infanticide. Many of them have the strongest repugnance to have children, and practice means to extinguish life before the infant is born, and provide, as they say, against the affliction of bringing slaves into the world. Is it not a frightful state, which thus counteracts the first impressions of nature, eradicates the maternal feelings from the human breast, and causes the mother to become the murderer of her offspring?¹²

Abolitionists in the nineteenth century stressed the idea that infanticide was a crime practiced by enslaved women because of their dire situations.¹³ By doing this they further solidified the idea that slavery was inhumane and unnatural. They molded and shaped their reports and of infanticide in a way to support their own ideas, values, and beliefs about what was right and what was wrong. According to them slavery was wrong because it coerced enslaved women to perform wrongful acts.

Sometimes abolitionists praised enslaved women for committing infanticide, for taking matters into their own hands, exercising their free will and delivering their children out of bondage. In 1856, the *New York News Observer* described a speech given by William M. Evarts in a meeting, whose purpose was to discuss the upcoming Republican convention. Evarts was a Republican and a devout Christian. In the years before the outbreak of the Civil War, Evarts was dedicated to the Union's cause. He voiced his objections to the Fugitive Slave Act of 1850 that forced northerners to take steps to secure the institution of slavery by returning runaways to the slave South. He did support conciliation between the North and South; however, he believed that the expansion of slavery had to be stopped.¹⁴

In his speech, Evarts mentioned Margaret Gardener, a notorious infanticide in which a runaway slave murdered her two-year old child. Gardner had also intended to murder her other

¹² "The Features of Slavery, whether under the Government of the United States or Great Britain, of Brazil or Portugal, are similarly and Terrorific" in *The Liberator*, February 12 1831.

¹³ Articles about infanticide and how it was a crime associated with slavery appeared in many abolition newspapers such as the *Liberator*, *North Star*, *The Emancipator*, *Northern Freeman*. I discovered approximately fifty articles about infanticide and how it was telling of the slave's experiences in the south.

¹⁴ Brainerd Dyer, *The Public Career of William M. Evarts*, (Berkeley, California: University of California Press, 1933) 47-49.

three children in order to prevent them from being recaptured and forced back into slavery. However, before she could kill her other three children, she was captured.¹⁵ Evarts responded to this infanticide case with admiration. He stated that he felt a great pride in “sharing the bright red blood that ran through a heart bounding for freedom, under the dark bosom of that poor slave mother.”¹⁶

The audience was reported to have responded to Evarts’ speech with loud applause and affirmation. As observed through his speech, Evarts, his supporters, some abolitionists shared this sentiment that in the case of slavery, infanticide was justifiable and on some occasions, favorable. Evarts, like many other abolitionists, used infanticide as a political weapon to push his own agenda. He wanted to stop the extension of slavery not because he believed that slavery was immorally wrong, but he wanted to ensure that the southern states’ political power did not grow and elapse the North’s. Evarts’ speech is an example of how individuals and different populations in the nineteenth century used cases of infanticide to support their own ideas. This is ultimately why there were different responses to the crime.¹⁷

This idea that infanticide was a crime practiced by enslaved women because of their position in society was also expressed in nineteenth century literary work. In 1848, Elizabeth Browning, an abolitionist from London, published a poem in the *Liberty Bell*, an annual periodical created by the Boston Female Anti-Slavery Society for the purpose of raising money for the abolitionists cause.¹⁸ The poem was entitled “The Runaway Slave at Pilgrim’s Point.” Browning identified many terrible experiences that enslaved women were forced to endure in the

¹⁵ Mary Frederickson, Delores Walters and Darlene Clark, *New Black Studies Series: Gendered Resistance: Women, Slavery, and the legacy of Margaret Garner* (Champaign, IL: University of Illinois Press, 2013) 1-5.

¹⁶ “Infanticide Applauded!” *New York Observer and Chronicle (1833-1912)*, June 12, 1956.

¹⁷ *ibid.*

¹⁸ Marjorie Stone, “Elizabeth Barret Browning and the Garrisonians: ‘The Runaway Slave at Pilgrim’s Point’, the Boston Female Anti-Slavery Society, and Abolitionist Discourse in the *Liberty Bell*” In *Essays and Studies* (2003): 34.

38 stanza long poem. She identified infanticide as one of those experiences. The enslaved woman portrayed in this poem was sexually exploited and impregnated by her owner. When she gave birth to her son, she took a handkerchief and covered his face, smothering him. The slave declared that she killed her child because his face was “too white.” When she looked at its face, she saw a look that made her “mad” because it reminded her of her owners’ face, the face “that used to fall on my soul like his lash.”¹⁹

Browning’s depiction of an enslaved women’s experience, characterized as being filled with pain, sexual exploitation, and murder was a picture commonly replicated by abolitionists. It appeared in a variety of distributed newspapers and acquired sympathy from women in the North and South.²⁰ Its depiction was also supported by narratives published in the nineteenth century by ex-slaves that managed to escape the South and obtain their liberty. One narrative in particular dwelled a great deal on the enslaved women’s sufferings; it was Harriet Jacobs’ *Incidents in the Life of a Slave Girl*. Like the enslaved woman depicted in Browning’s poem, Jacobs stated that her child’s face was a living reminder of her “shame.” She described how complicated and painful it was to be an enslaved mother. She wrote that she wished that her son would die in infancy to escape from the terrible life of a slave. She exclaimed that “death is better than slavery.” Furthermore, she also confirmed the idea shared by many abolitionists that slaves could not live moral lives by stating that “the condition of slavery confuses all principles of morality, and, in fact, renders the practice of them impossible.”²¹ Abolitionists, in their narratives, poems, newspaper articles, and speeches, understood infanticide as a crime that caused enslaved women to be unnatural. They believed that infanticide was a complicated and at

¹⁹ Elizabeth Barrett Browning, “Poetry,” *The Liberator* (Boston, Massachusetts) August 18, 1848. Iss.33

²⁰ Stone, “Elizabeth Barret Browning and the Garrisonians,” 38.

²¹ Harriet Jacobs, *Incidents in the Life of a Slave Girl*, (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2009) 70, 80, 98.

times well founded. This was a perspective different from the South, who understood infanticide as a crime that depicted the innately evil African race.

The Sympathetic North Responds to Infanticide

Like the Abolitionists, in general, the Northern news coverage of infanticide was more sympathetic to the defendants, showing that the Abolitionists were a part of a broader system that agreed that infanticide was a complex crime. The North adopted a sociological attitude in response to the crime, and was sympathetic to the women because they understood that often these women were victims of their social circumstances.

In the northern news coverage of infanticide, many of the reports were sympathetic to both black and white women being charged for this crime. *The Pennsylvania Inquirer and Daily Courier* stated that a “shocking” homicide was “supposed” to have been committed by a colored woman. An unnamed source informed the reporters that at some time in the night, the mother adopted the “cruel and inhuman” resolution to kill her child. The jury convened and observed the child and declared that it had been murdered by an unknown person. The mother in question confessed to being the child’s mother; however, she claimed that the child was a stillborn. The news report continued to state that they did not have all of the information and therefore, they did not have an opinion as to whether the mother was guilty or innocent.²²

This report of infanticide is quite different from the way many southern newspapers reported black defendant’s case. This is because unlike the South, the North did not consider infanticide to be a racial issue. The southern press was quick to judge colored women with little to no information. They labeled the women as inhumane and unnatural; however, the northern newspapers tended to base their reports on facts. Also northern reports tended to be longer than

²² “Infanticide,” *Pennsylvania Inquirer and Daily Courier* (Philadelphia, Pennsylvania) February 24, 1838.

those in the South and often did not judge the women indicted for infanticide. This is seen in the case reported by the *Pennsylvania Inquirer and Daily Courier*, which supplied its readers with the facts and further stated that it had little information to make a judgement because the case had not yet been tried.²³

The Daily Atlas reported a colored woman's case in Boston, Massachusetts in a way that followed a similar pattern. Jane Sinclair, the mother, was a servant of a "respectable family." The paper stated that she was thirty and married. Also, it went into great detail about her behavior before the supposed crime. She had complained of having stomach pains and was confined to bed. Soon after, the child was discovered dead. The mother claimed that the child was a stillborn. The news report continued by stating that in two male doctors' "opinions," the child was born alive and was therefore murdered. The mother was arrested and taken to jail to await trial.²⁴

The Daily Atlas' report of infanticide differed then those in the South because it highlighted the good behavior and respectability of a colored servant. As stated earlier, many northern newspapers did not make infanticide a racial crime. Southern newspapers probably would have presented this case differently. Also, if this was of a case of infanticide in the South and was committed by an enslaved woman, the northern abolitionists would have shaped and worded the report to depict the horrors of slavery. However, this reporter seemed to sympathize with the colored servant because of her good characteristics. Also, the news article went into great detail about her behavior to show that it did not coincide with a guilty mother's behavior. She had complained publicly about the pain that she was experiencing. Another servant in the household was helping her and attending to her needs. In all of the indictments where a mother

²³ In research, I found reports of infanticide in Boston newspapers, Pennsylvania Newspapers, and New York Newspapers, all which have a pattern of having longer news articles in their coverage of infanticide. They also used similar language in discussing the infanticide cases where black women served as defendants. They tended to be sympathetic to their circumstances.

²⁴ "Alleged Infanticide," *The Daily Atlas* (Boston, Massachusetts) January 5, 1844. Issue 160.

was charged with infanticide, they stated that the women did it “alone and in secret” because having a child alone was seen to be conclusive evidence that the mother’s intention was to kill her child. However, the article stressed the fact that she did not do this but was open about her pregnancy. It also highlighted the fact that this entire case was based off the opinions of two male doctors, suggesting that the case and the facts were still under speculation.²⁵

Northern newspapers reported black defendants and white defendant’s cases in a similar manner, showing that infanticide was a social issue, not necessarily a racial one. Infanticide was rampant in the northern states and because of this the North could not blame infanticide on blacks because they made up a little more than one percent of the entire population.²⁶ Northern reports dwelled on the woman’s behavior in order to build sympathy and did not exclusively do so with white women. Nevertheless, a discussion of the woman’s behavior was used to suggest if she was guilty or deserving of the punishment associated with a guilty verdict.

For example, a New Hampshire’s newspaper, entitled *Farmer’s Cabinet*, reported a shocking case of infanticide that took place in 1851. Kate Poole was arrested for killing her child of two months by throwing it from a train heading to Nashua. Her child and her husband had accompanied her from Lower Canada, which is the southern portion of present-day Quebec. Poole told the authorities that while she was still on the train, her husband had told her to go to the stove and keep warm. However, upon her return, Poole discovered that her child was missing. When she asked her husband about it, she told the authorities that he had confessed to throwing the child out of the train’s window. The husband then took hold of Poole and threatened her that if she told anyone, she would have the same fate as her infant. Once she and her husband had arrived in Nashua, Poole stated that her husband had fled without her. The

²⁵ *ibid.*

²⁶ Edward Pressen, “How Different Other Were the Antebellum North and South?,” 1127.

newspaper report went on to state that later suspicion arose that she was the one responsible for the child's death. However, the article presented the case in a way to suggest that the mother did not deserve the death penalty by discussing her response to the child's death. It stated that she "exhibited signs of deep sorrow," implying that she did care for her child. Also, the report mentioned that she selected the child's burial clothes. The article highlighted the nurturing and caring side of the mother; by doing this it humanized Poole, suggesting that she was not an unfit mother but a mother influenced by her social situation.²⁷

Many northern writers reported infanticide in way to suggest the crime was at times justifiable because of the defendant's social circumstances. Like the northern abolitionists who believed that it was a justifiable crime among enslaved women in the South, many northerners believed that it was understandable for both black and white women because of their situation in society. In Poole's report, the newspaper went into great detail about her background in order to build sympathy for her. She was described as a single mother that was struggling financially and physically. The article discussed how she could not find work and that she "thought all were against her, and that she had no friends." She committed this act undoubtedly because "her feelings must have been nearly overpowering." It also stated that "taking all the circumstances in to view, we must look upon it more as a case of desperation than of willful and deliberation intention."²⁸

One element seen in many northern infanticide reports that are lacking in many southern reports was the emphasis on the mother's physical looks. Poole was described as "neatly dressed" with "agreeable features."²⁹ A New York newspaper followed and described a mother

²⁷ "Shocking Case of Infanticide in the Car," *Farmer's Cabinet* (Amherst, New Hampshire), November 19, 1851. Issue 2.

²⁸ *ibid.*

²⁹ *ibid.*

who had supposedly killed her child as “very good looking.” This is a pattern seen in many of the northern newspapers; the writers devoted much of the space to discuss things other than the case’s facts. By focusing on the women’s good looks and respectable behavior, the newspapers stimulated sympathy among the readers. Southern newspapers rarely created sympathy and when they did, it was only for the white respectable defendants. Also, their news reports were short, lacking facts and often judgmental, they often condemned the defendants and labeled them as immoral without evidence to suggest that the women killed their children. Therefore, while many northerners understood infanticide to be complex, nonracial and at times justifiable, the South understood it to be a simple unjustifiable crime, at times racializing it to support their own ideas and values.³⁰

The South’s Defense Strategy

In the nineteenth century, southern newspapers, like abolitionists in the North, responded to infanticide instances in way to support their political ideologies. One way in which the southern press presented infanticide instances in the news reports was to defend the institution of slavery, which they deemed was imperative to the South’s prosperity. *The Daily Picayune* in New Orleans reported a story of infanticide that took place in Cincinnati, Ohio. On Friday morning, March 2, 1838, a young servant girl was seen walking down the street with a box under her arm. Later that day, someone discovered the same box near a creek located at the top of the street and a dead infant was found inside. The newspaper said that according to Cincinnati’s news coverage, it was evident that the child had been killed. The authorities probably came to this conclusion after finding marks of violence on the child’s body. The article concluded by denouncing Ohio and other northern States. The writer claimed that this crime was “continually

³⁰ “Police Office-Charge of Incest,” *The New York Herald* (New York, New York) March 25, 1845, Iss.83.

occurring” in places such as Pennsylvania, Massachusetts, New York, and many other states. “We will be excused perhaps for expressing our gratification that the horrible and unnatural crime of infanticide is of rare occurrence in our southern cities.” According to the news report, the reason that infanticide was so rare in the South is because parents “uniformly cherish” and “love their offspring.” In the southern cities the affection of the “human heart are cultivated.”³¹

Louisiana as well as other southern states during the antebellum period pitted themselves morally and culturally against the North. By 1830 most of the northern states had abolished slavery and abolitionists were at work trying to prove that the South and the institution it supported were inhumane. Abolitionists suggested that slavery was evil because blacks were forced to work against their will and because slavery impacted the white race; slavery was so evil that the institution forced the black and superior white race to act in an uncivilized manner. However, by illustrating that this crime was prevalent in the North, southern states like Louisiana could disprove the claim that slavery provoked barbarism among the white population. In fact, the article ended with the question “We never heard of infanticide in New Orleans—did any ever occur?” By using infanticide as an example to illustrate the North’s immoral and the South’s superiority, some southern slave supporters, like the northerners and northern Abolitionists used this crime to promote a specific political ideology.³²

The Daily Picayune claimed that infanticide was an “unknown crime” in New Orleans. However, as will be explained in the following chapters, infanticide did occur in the slave population and the enslaved defendants arrested for killing their children generally lived on smaller plantations. And New Orleans, in particular, was a prime location for slaves. Slave markets were abundant and because there were so many slaves in the city, instances of

³¹ “Infanticide,” *The Daily Picayune*, (New Orleans, Louisiana) March 14, 1838.

³² *ibid.*

infanticide could have gone unnoticed; in fact they did. An ex-slave, Lewis Clark, from New Orleans, reported that he knew of a mother who killed her child because she did not want to be separated from him. Despite this, Louisiana as well as other states declared that infanticide was a crime mostly seen in the northern states.³³

Southern states and slave supporters held the idea that in places where there was infanticide savagery reigned supreme in order to prove that the northerners and those who wished to rid the country of slavery were immoral, unnatural, and uncivilized. These southern defenders claimed that the North was “atrocious” and populated by people that were “sinks of concealed depravity.” This quarrel between the North and South is also illustrated in an article entitled “Negro Burning v Child-killing” published in *Newark Advocate*. John Parish, a northerner and former minister said that while he was visiting Charleston, South Carolina, he saw a black man being burned at the stake and surrounded by many spectators. Parish was a member of the *Society of Friends*, an organization that was responsible for kindling the abolition movement in Britain. And Parish argued that the South’s justice system and customs were barbarous and corrupt because the man did not get his day in court before being burned at the stake for a crime. Parish condemned the southern judicial system and the punishments it adopted by labeling the system and the punishments as cruel and inhumane.³⁴

In response to this accusation that the South’s practices were inhumane, the article stated that the southern slave supporters declared that infanticide was the most horrid of all crimes and that no crime was more common in the North than infanticide. They declared that infanticide, if it was even a southern crime, was not a crime among the slaves in the South; “they have not the least temptation to commit it.” Louisiana, which heavily depended on slave labor, used

³³ Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market*, (Cambridge, Mass.: Harvard University Press, 1999) 34-42.

³⁴ “Negro Burning vs Child-Killing,” *New York Herald*, March, 22, 1860.

infanticide as a defense. The state's slave supporters used it to declare that slavery was not bad because slaves did not commit the crime; their situation in society did not tempt them to murder their children.³⁵

George Fitzhugh, an American socialist theorist, published books and editorials in the 1850s that expanded on the "grossly immoral" North and contrasted southern ethics with those of the North.³⁶ Fitzhugh was a self-educated lawyer who never attended college and was convinced by 1844 that slavery was right, valuable, and necessary. After this revelation, Fitzhugh began contributing to pro-slavery editorials, newspapers, and journals.³⁷ In "Sociology for the South: or, the Failure of Free Society" Fitzhugh declared that the free society was plagued with "misery, crime and poverty" and stated that the South suffered little from these social issues. He advocated for slavery by labeling it as the "best form of socialism" because it relieved slaves from caring for themselves.³⁸ John Calhoun, a South Carolina Senator and supporter of slavery, went so far as to say slavery was the "balance" of the union.³⁹ In Fitzhugh's work he, like the Louisiana article, suggested that slavery was not an evil but instead a "positive good."⁴⁰ Therefore, many southern states used infanticide as a defense strategy against the North, suggesting that it did not take place in the South but reigned in the free society. Like the abolitionists, they used it as way to support their own ideas and beliefs; and in their case, they used infanticide cases as tools to protect their slaves from liberation.

³⁵ *ibid.*

³⁶ John White and Ralph Willet, *Slavery in the American South*, (New York: Harper and Row Publishers, 1971) 51.

³⁷ Joseph M Flora and Amber Vogal, *Southern Literary Studies: Southern Writers: A New Biographical Dictionary* (Baton Rouge, Louisiana: Louisiana State University Press, 2006) 134.

³⁸ George Fitzhugh, *Sociology for the South: or, the Failure of Free Society* (Richmond, VA: A Morris Publisher, 1854) 41.

³⁹ White, *Slavery in the American South*, 47.

⁴⁰ Fitzhugh, *Sociology for the south*, 28. Also see George Fitzhugh, *Cannibals All!: or Slaves Without Masters* (Richmond, VA: A. Morris Publishers, 1857) for his additional thoughts of slavery in the antebellum south.

Racializing Infanticide and Defining the True Southern Woman

All southern newspapers did not discuss infanticide in the same manner. Some states, like North Carolina, South Carolina and Virginia acknowledged that their states did see rare cases of infanticide. However, in these newspaper presentations, writers shaped their reports to suggest that the crime was confined and practiced either by black or immoral white women of the poor class. Yet, the newspapers seemed to stir away from harsh language when discussing white defendant who seemed respectable, suggesting that these women could not have killed their children in order to uphold the idea that the South was a civilized place with true southern women. Therefore, these southern reports used infanticide to define the characteristics of a woman, which was defined as white and virtuous female.

In January 1845, North Carolina's *Weekly Raleigh Register* reported a case of infanticide that took place in Wake County. A newborn colored infant was found half-buried in a ditch. The child was described as being "inhumanly" murdered by its "unnatural mother." The report also emphasized that the women in question, Martha Dickinson, was a free woman of color. The case had not been to trial when the story was reported; yet, this fact did not prevent the *Weekly Raleigh Register* from labeling the mother as unnatural. North Carolina's newspapers were not alone in condemning blacks for this crime without the necessary evidence to prove it. It was a pattern seen in other southern state's daily publications.⁴¹

Southern newspapers were more sympathetic to white defendants than to black ones. A few years after publishing Martha Dickinson's report, the *Raleigh Register* reported another case of infanticide in which a young girl by the name of Anne Eppes was indicted for infanticide.

⁴¹ "Infanticide", *The Weekly Register*, (Raleigh, North Carolina) January 31, 1845. Articles about free colored women appear in the *North Carolina Spectator and Western Advertiser*. In my research, this pattern of condemning blacks without evidence for this crime is seen in newspapers from Virginia, South Carolina, North Carolina, Alabama and Mississippi.

Eppes was a white woman and this is evident because when the defendant was a slave or free person of color, the news' reports made that distinction. But, unlike the report on the free woman of color in 1845, *The Weekly Register* did not define Eppes as "unnatural." Furthermore, the news article stated that it was "not proper for us to speak of" the case to discern whether the woman was guilty of the crime because the case had yet to undergo investigation. And because of this, they lacked sufficient evidence to make a claim or voice an opinion. This comparison between the two reports and the fact that it was a pattern seen in many southern states show that southern states were more sympathetic to white women and were all too willing to accuse blacks, whether slave or free.⁴²

Like the *Raleigh Register*, in 1832, the *New Bern Sentinel* reported an infanticide case where Sally Barnycastle, a white woman, served as the defendant. The news report was sympathetic to her case. North Carolina's superior court found Barnycastle "guilty." However, the *Sentinel* stated that the verdict was circumstantial, and because of this, the case has stirred up "sympathy" in the community for the "unfortunate woman." Periodicals often sympathized with white women and not people of color. However, by reporting infanticide cases in this manner, implying that black women were unnatural and the true child-murders of the South, North Carolina attempted to prove that the institution of slavery needed to continue because slaves were innately immoral, validating their social state in the antebellum South.⁴³

In the mid-nineteenth century, the South began to develop a scientific discourse of race, in which pro-slavery southerners attempted to suggest that blacks' physical difference from whites proved their inferiority. The South felt the need to develop this concept to reinforce the idea that blacks were in their rightful place in society. More and more threats began to encroach

⁴² "Infanticide," *The Weekly Register*, (Raleigh, North Carolina) January 28, 1852.

⁴³ *New Bern Sentinel*, (New Bern, North Carolina) June 8, 1832.

on the South's prized possessions, the assertive abolitionists in the North and the slave rebellions in the South were all seen as dangerous. Scholar Ariela Gross argues that in light of all these growing threats, the South redefined slavery from being a "necessary evil" to a "positive good" in hopes of securing slavery's future. Southern newspapers fortified this concept by associating infanticide with blacks.⁴⁴

In some instances, southern newspapers reported infanticide cases that suggested that a white woman did in fact kill her child. However, in these special cases, the newspapers made it clear that the woman in question was morally wrong and an unfit mother, an anomaly to a true southern woman. Betsey Bennett, a white woman from Charles Town, West Virginia, was indicted for infanticide. However, in this case, the newspaper article stated that Bennett willfully murdered her child. Before accusing this woman of guilt, the article stressed her improper situation in society. It italicized the words "*illegitimate child*," highlighting the fact that the child was a consequence of fornication. It was a common belief in the antebellum South that for a white woman to be virtuous, she had to guard herself from fleshly temptations and from participating in sexual affairs outside of marriage.⁴⁵ And unlike other reports, this one goes into great detail about where the child was found, in a hollow stump abandoned by its mother. It also illustrated the inconsistency and probable guilt of the defendant through her dismantled testimony. At first Bennett denied to being the child's mother. Later she confessed to being its mother but declared that it was born dead.⁴⁶

Most articles did not explicitly state the social standing of the women being charged for the crime. However, many implied the social status of the mother and highlighted the barbarity

⁴⁴ Ariela Gross, "Litigating Whiteness: Trials of Racial Determination in the 19th Century South" In *The Yale Law Journal* 108 (1998):151.

⁴⁵ Sylvia D Hoffert, *A History of Gender in America: Essays, Documents, and Articles*, (New Jersey: RR Donnelly & Sons Company, 2003) 126.

⁴⁶ *Newbern Sentinel*, (New Bern: North Carolina), June 8, 1832.

of the crime through the description of the child's apparel and where it was found. On April 10, a news report discussed an infanticide case where the defendant, Sarah Johnson, was white and like Bennett's news coverage, the article went into great detail about the immoral and unnatural behavior of the mother. It stressed that the mother in question was not married. It continued by describing the condition in which the child was discovered: the child's head was found in a "meal bag" with "a bushel of corn thrown over its face." Johnson was said to have been lying on top of the child and because of this, life "was of course extinct".⁴⁷ *Alexandria Herald*, a newspaper in Virginia, reported a case of infanticide in Petersburg. And in this publication, the writer stated that the child was murdered by an "inhumane mother." However, before stating this, it stressed how the child was found. It reported that the new born infant's body was found dead and nearly naked.⁴⁸

All southern states did not agree with the idea that infanticide was a crime exclusively and primarily practiced by the black population. But the newspaper articles that reported infanticide cases where the mother was white also stressed the illegitimacy and the dishonorable behavior of the mother, using cases of infanticide as a tool to define what a true southern woman was and what an unfit mother looked like. Most of these women depicted in the newspapers were of the poor class, women who were usually frowned upon. An article from Virginia stated that women of the higher class were "tolerably regular" and infanticide was rare among them.⁴⁹ These publications shaped their reports in a way to perpetuate the idea that infanticide was a crime practiced by people who occupy the lowest strata in society.

⁴⁷ "Cruel Infanticide," *New Orleans Argus* (New Orleans, Louisiana), May 10, 1828.

⁴⁸ "Infanticide," *Alexandria Herald*, (Alexandria, Virginia), February 7, 1823.

⁴⁹ "From the National Ageis: Evening Speculations," *The Commercial Register*, (Norfolk, Virginia), September 6, 1802.

Defining Southern Motherhood

The reports on infanticide in the antebellum South also reinforced the definition of motherhood and womanhood and the idea that it was the woman's responsibility to care for their children. Scholar Marci Littlefield claims that the years between 1820 and 1860 represent the "cult of the womanhood" era in which motherhood was viewed as the moral role for women. Therefore, throughout southern reports of infanticide, when a dead infant's body was found, southerners concluded without much evidence that the mother was responsible for killing the child because it was her responsible to take care of it.⁵⁰

For example, in the Petersburg, Virginia report previously mentioned, a deceased newborn infant was discovered on the beach. The article jumped to the conclusion and labeled it as an infanticide despite the fact that a child could have died of natural causes and someone other than the mother could have murdered it. And even when the jury of inquest, (the jury made of men who observed the baby to determine if it was a case of infanticide), declared that the child "came to its death by the hands of some person or persons unknown," newspaper publications regularly accused the mother of the crime.⁵¹ This shows us that the South valued mothers' roles and expected mothers to never abandon their children. Because the child was found dead in an unnatural way, in a field, in a meal bag, or naked on the beach, the southern reporters blamed the mother because the South believed that the child was the mother's responsibility and no one else's.

As discussed earlier, infanticide was a crime generally practiced by women, both white and black. However, in rare instances men were indicted and arrested. In 1839, South Carolina's *Southern Patriot* reported a case in which a man named Jacob Van Deusen was arrested for

⁵⁰ Marci Bounds Littlefield, "Black Women, Mothering, and Protest in the 19th century American Society," *The Journal of Pan-African Studies* 2:1, November 2007, 53-61.

⁵¹ "Infanticide," *Alexandria Herald*.

killing one of his children with an axe. Unlike when the southern newspapers discussed women, the newspaper defended Deusen's behavior. It stated that the father was a "victim" of a "phrensy" and was therefore deranged when he killed his child. It further mentioned his social standing in society by stating that before he became deranged, he was a "highly respectable citizen" and an "affectionate husband and father."⁵²

The *Louisville Journal* reported another infanticide case where a white man was the defendant. Similarly to the case in South Carolina, the article discussed the man with the utmost respect, elaborating on his behavior, shaping the report in a way that suggested that a man of his social status could not have committed this crime. The defendant was "Lieutenant B" from Kentucky and his wife had delivered a child in the middle of the night at a hotel. After she gave birth to the child, the defendant went to hotel's owner and asked him if he could command a servant to bury the dead child. The landlord objected to this and stated that the request was "improper and extraordinary." The landlord then stated that the burial should not take place until morning. However, the Lieutenant was determined and told the landlord that his wife did not want the dead child in the room. He then left the landlord and threw the child in the river. The authorities were informed that the baby did cry and was thereby born alive. The lieutenant was then arrested.

The defendant was referred to as Lieutenant throughout the entire article. The newspaper that reported his story highlighted his proper behavior. He was married and the article also mentioned that he was a man of a "highly respectable family" and served in the US army. Yet, in nearly all of the reports of infanticide cases where a woman was the defendant, the defendant was never referred to as a "miss" or "misses." This confirms the idea that the South generally believed that infanticide was not only a racial crime but a gendered one as well. When a man

⁵² "Infanticide," *The Southern Patriot*, (Charleston, South Carolina), May 16, 1839.

appeared in the news for infanticide, the articles were much longer in order to explain why a male would do it and to justify his behavior. *The Southern Patriot* also used the space to advocate for the male defendant, to illustrate that a male, especially one from a higher social stratum, could not have committed this crime.⁵³

Through the reports of infanticide, the southern newspapers supported the historical idea that infanticide was a crime practiced by an uncivilized population. These reports announced the information in a way to show that the uncivilized population that dwelled in the South was the black and poor white woman. The southern supporters of slavery used cases of infanticide as a way to justify slavery by suggesting that black women were innately savage. Also through their representations of the infanticide, the South also confirmed gender relations, asserting that women were responsible for caring and nurturing their children. Infanticide cases were used as a tool to promote and define womanhood and motherhood.

Conclusion

Nineteenth Americans understood infanticide as a crime that could be shaped and molded to serve their own interests. Abolitionists, northerners, (who were not necessarily inclined to promote slavery), and southern supporters of slavery understood that infanticide was an ideological issue and therefore could be thought about and shaped in different ways. In these infanticide reports, the issue of slavery was the key to many of the representations in the news coverage.

In the North, the abolitionists and northerners in general believed that women were sociologically motivated to commit the crime. Therefore, the women's social circumstances were important in deciding whether the writers were sympathetic to the defendants. For example,

⁵³ "Infanticide," *Milwaukee Daily Sentinel* (Milwaukee, Wisconsin), June 25, 1845.

abolitionists sympathized with enslaved women who committed infanticide in the South because they believed that the institution forced them into a position where infanticide was the only option. In the South, the southern press reported infanticide in various ways. Some states used infanticide instances among blacks to prove their inferiority and justify slavery. They also shaped reports of infanticide in order to reinforce gender relations and women's responsibilities.

These diverse approaches to infanticide invite us to consider the particular position of enslaved women and the position of white women in the antebellum South. Therefore, the next chapters will seek to explain the experiences of the defendants to discover why these women with different backgrounds, legal identifications and social categories appeared in the courts for the same crime. Also, they will seek to explain why these women in the antebellum south were regularly acquitted for this crime, despite the consensus of the South's general public, which believed that this crime was an unjustifiable act and the most heinous crime of them all.

Chapter 2

Infanticide: The Women's Motivation to Commit the Crime

On Sunday May 23, 1830, David Craig was startled by his son, Norton, and his companion, Sam, when they ran into his house frightened. The two boys explained that they heard a child crying while walking near the woods. After hearing this, Craig told Norton to take him to the place where he had heard the cries. Once they reached the spot, 150 or 160 yards from his house, Craig began to search for the child. He told the courts that this was when he found a colored newborn female under a log. The child was lodged under the log and was covered with small sticks and bark. Craig stated that the bark was of "little weight" and did not cover the "entirety" of the child. After taking the child from underneath the log, Craig noticed that it had "sag" about it but was still alive. Craig carried the crying child back to his house, washed her and dressed her. Soon after, Craig called for his slave Charity. After being asked if she knew anything about the baby, Charity confessed to being the child's mother.¹

Charity was an enslaved woman on a plantation in Orange County. She was her master's only slave and was indicted in North Carolina's superior court for murdering her own daughter. In infanticide cases such as Charity's, the first step that sparked an investigation was the discovery of a dead infant. Then the mother would be identified by the coroner and jury, with the help of people in the community. Infanticide defendants were only women because women were the individuals that gave birth to the children. As discussed in the previous chapter, many southern states held this idea that white motherhood and anything pertaining to child-rearing was the mother's responsibility and no one else's.

¹ *State v Charity, (a slave)*, September 02, 1830, Orange County Slave Records no date, 1783-1865 broken series , CR 073.928.8, folder labeled: 1825-1841 (Broken series), Orange County Miscellaneous Records, NCDAH.

However, black women, both enslaved and free, also appeared in the court records for this crime. These women were viewed as socially, economically and morally different from white women; yet they too often served as defendants. This meant that southern courts, North Carolina in particular, believed that the responsibilities of being a mother did not only apply to white women, but also to women of color. Therefore, this chapter will unearth the similarities and differences in black and white women's experiences. Infanticide was deemed heinous and the most unnatural act that could be committed in the nineteenth century.² Because the general public and the courts perceived this crime to be unnatural and atrocious, the cases reveal much about the lives of the defendants.

North Carolina infanticide cases show that the system of patriarchy and the South's definition of womanhood forced black women and white women into similar situations where they felt they needed to murder their own child. Further, this chapter shows that the women, black and white defendants, who appeared in North Carolina courts for this crime, understood their circumstances, their limited power under patriarchy and the slave system. This is ultimately why they killed their children, because they felt it was their only choice.

During the nineteenth century, the definition of womanhood did not apply to enslaved women. Enslaved women were legally defined as property making their bodies mere commodities that could be forced to perform any task commanded by their owners. Enslaved defendants, therefore, were vulnerable because of their sex and even more prone to maltreatment because of their race. This was similar for free women of color who appeared in the courts for infanticide in the nineteenth century. They also had limited mobility and no political power.

² In my research, the testimonies in North Carolina court records, National journals and periodicals/newspapers all defined this crime as an unnatural act committed the mother.

Their experiences, as illustrated in the infanticide court documents, were very similar to enslaved women, which led them to murder their children as well.

In infanticide cases where white women served as defendants, their circumstances and decision to kill their children were influenced by the system of patriarchy and the South's definition of womanhood and motherhood. White women, unlike enslaved women, had more social mobility and their bodies were not considered to be property. However, the white women that served as defendants for infanticide in North Carolina were usually poor as many of them were servants. Therefore, like enslaved women and free women of color, these white women were socially and politically handicapped. They were restricted by their economic circumstances. Yet unlike the black defendants, the implications and idea of womanhood did apply to the white women.

Suspecting the Mothers

In most of the infanticide cases, the child was discovered by a member of the community. After the child was found, the next step was determining who the mother was. This process is illustrated in David Craig's testimony in *State v Charity*. Craig found Charity's daughter with the help of his son. He then took the child back to his house and tried to figure out whom the mother was. In his testimony, Craig stated that the child was "colored," and since Charity was the only woman of color on his plantation he asked her if she knew anything about the child. Charity confessed to being the mother.³

Another instance in which a community member discovered the child was in *State v Rianna Day*, where a free woman of color was indicted for committing infanticide. On February

³ *State v Charity (a slave)*, September 02, 1830, Orange County Slave Records no date, 1783-1865 broken series, NCDAH. This was the indictment for Charity's case.

10, 1849 at around 10 o'clock in the morning, William Newman and David Anderson were sitting in a boat navigating through a pond owned by William H Brown, a white farmer in Orange County, North Carolina. As the men approached the middle of the pond where the water was roughly seven feet deep, they both noticed a floating object. Later Newman told the court that the object was about twenty yards away when he first noticed it and he thought that the object was a dead duck that had been shot. As the men drew nearer, they discovered that the floating object was a dead infant. Anderson stated that after they made this discovery, he took one of his paddles and lifted the child from the water, which he swore remained untouched until Thomas Turner, the coroner of the county, and the jury of inquest arrived at William Brown's Mill House to examine the deceased child and locate the mother. Rianna Day was named the mother after various testimonies and witnesses.⁴

In these two instances, the bodies were discovered by accident and no one in the community had initiated an investigation. This was due to the fact that these women succeeded in birthing and discarding their children in secret. They were also successful in returning to work or to their social life without anyone noticing a significant enough change to start an investigation. In the case of Rianna Day, like Charity, she was suspected of being the mother of the child after the discovery of the child. There were two other slaves on the farm where Day worked. After the child was found, the coroner asked them if they knew who the mother was. This is when they exclaimed that Day, when she worked on the plantation, looked like she was in the "family way." Charity and Day were labeled the mother through the process of elimination.

However, it did not always take a discovery of a baby to suspect a mother of infanticide. There were many instances where the mother was suspected of giving birth to a child before a

⁴ *State v Rianna Day*, March Term 1849, Orange County Criminal Action papers 1848-1849 CR 073.326.48, folder labeled: 1849, NCDAH. This was an inquest taken by William Newton and David Anderson.

body was ever discovered. This was due to the fact that either the women failed to conceal their pregnancies for their entire term or people suspected them of having and disposing of a child based on their behavior. In these cases, where the mother was discovered to be pregnant, she was suspected of killing her child first and the discovery of the child followed.

For example, in 1820 an enslaved woman named Sarah was indicted for infanticide. She was the slave of David Allison, a farmer from Orange County. In this case, Sarah was suspected of giving birth to a child before the child's dead body was discovered. The day after she had given birth to her son and disposed of him in secret, Jim, another slave of Allison's, stated that when he entered the house, he overheard the "inquiry" about "whether Sarah had a child." Her master probably asked Sarah if she had a child because he had already suspected her of being pregnant. Sarah was one of only five slaves in Allison's household. Therefore, the slaves were often always in the sight of the master, mistress, and other slaves in the community.⁵

In Jim's testimony, he stated that after hearing this inquiry he went searching for the baby. He recounts that on the previous day Sarah's behavior was abnormal. Sarah got out of her bed in the morning, went outside but came back shortly after her departure. However, he stated that she left the house again, this time she was absent for a longer period. Jim, wanting to know what Sarah was doing and what was keeping her out for so long, went to the door and called out to her. She was hidden in the garden and he stated that she responded to him exclaiming that her stomach hurt. After hearing his master's suspicions, Jim said he immediately went out of the house to the spot in the garden where Sarah was hiding the previous day. When he located the spot, he found the child "lying on the ground covered with a piece of a blanket and some weeds."

⁵ *State v Sarah (a slave)*, December 1819, Orange County Criminal Action Papers 1820-1821, North Carolina, CR 073.326. 20, folder labeled :1820, NCDAH. This was from an inquest of Jim, a slave on the plantation.

Therefore, Sarah was suspected of being the mother of the child because her master's suspicion of pregnancy and Jim's testimony.⁶

For many infanticide cases of the nineteenth century, an individual suspected a woman of infanticide before a child was found. This was also true for the white defendants that were usually servants working on another farm or plantation. Elizabeth Beaver was a servant for Rebecca Lyon, a white widow who owned a plantation in Caswell County. She was indicted for killing her child in 1811. Rumors circulated that she had a child and disposed of it afterwards. This was because several women testified that when they visited the plantation, Beaver looked like she was in the "family way." After the rumors circulated, Ms. Lyon requested that a search party be formed to find the child. The search group found the dead infant on the plantation. Therefore, similarly to Esther in Orange County, Beaver was suspected because she had failed to conceal her pregnancy from those in her community. This was because, like enslaved women in antebellum North Carolina, white servants were in constant view of their employers. This was a consequence of living or working on a small plantation.⁷

Scholar Martha Hodes, in her book entitled *White women, black me: illicit sex in the nineteenth-century South*, argues that the concealment of a birth and pregnancy was easier for women who did not regularly show up for work or required to leave their household. All of the women who appeared in the courts for this crime did not have the option to avoid work or the outside world. Their low economic and social status required them to work. Therefore, they were often discovered.⁸

⁶ Ibid.

⁷ *State v Elizabeth Beaver*, May Term, 1811, Caswell County Criminal Action Papers 1810-1811, CR 020. 326.4, folder labeled: 1811 In NCDAH. This was the inquest taken on April 22, 1811. Also, the phrase "family way" was another way of stating that someone was pregnant in the nineteenth century.

⁸ Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth Century South*, (New Haven: Yale University Press, 1997) 52.

Hodes continues by stating that the women who came from wealthy families and had relatives elsewhere were more likely to avoid detection.⁹ The same could be said for enslaved women and free white women of color. If enslaved women worked on bigger plantations where slaves were supportive, they may have avoided detection. In the previous chapter, a Louisiana news article had stated that infanticide was an “unknown” crime in Louisiana among the whites and enslaved people.¹⁰ In reality, this was probably not true. New Orleans was buzzing with slaves and slave auctions were frequent. Also, in nineteenth century Louisiana, there were many large plantations that in some cases had more than two hundred slaves.¹¹ In result, the women on the plantations were often around other slaves and were not in constant view of their owners like the defendants were in North Carolina. They could avoid detection, which was probably the reason why enslaved women did not appear in Louisiana courts for infanticide. They committed the crime; however, because they lived on a large slave-holding plantation they were able to hide their pregnancy and were successful in killing their children without any ramifications.

The Commonalities

The women indicted for infanticide in North Carolina had many commonalities that transcended race and legal status. The women who were brought to their county’s superior court for infanticide were young, single servants who concealed their pregnancy throughout the entire term. This was a pattern seen across most nineteenth century cases. It was the case with Charity, Elizabeth Beaver, Rianna Day and many more women who were indicted for infanticide in North Carolina during that time. It was evident that the women were single because the indictments

⁹ *ibid.*

¹⁰ “Infanticide,” *The Daily Picayune*, (New Orleans, Louisiana) March 14, 1838.

¹¹ Daniel E. Walker, *No More, No More: Slavery and Cultural Resistance in Havana and New Orleans*, (Minnesota: University of Minnesota Press, 2004) 138.

referred to the dead infants as bastard children. However, the indictments did not state the occupation of the white women and the free women of color under investigation. Rather, their occupation and social standing in society can be determined by the witness testimonies taken by the state. Elizabeth Beaver, the woman suspected of infanticide in Caswell County worked on Lyon's plantation. This was not mentioned in the indictment, but the testimonies from Rebecca Lyon herself, as well as other women in the community, mentioned her subordinate state.¹² This was the same with free women of color. Sooky Bishop, a free woman of color was indicted for infanticide in Orange County. The indictment did not go into detail about her circumstances. However, in her testimony, Sally Brown stated that Bishop worked for her and was working at her house at the time of the dead infant's discovery.¹³

A common characteristic seen in most infanticide cases, regardless of the defendants' race or legal status (slave or free), was where the women lived. The enslaved women usually lived in small households. However, this was the case with most of the slaves living in North Carolina in the nineteenth century because North Carolina operated on a small farm system. Most often, when there were a small number of slaves on the plantation, masters worked with the slaves side by side in the fields. Their slave homes were in close proximity to the master's house, and the slaves were therefore in their master and mistresses' direct view. All of the free women of color discussed in this chapter were also servants on diverse farms and plantations, and in most cases they were the only ones working on that plantation, like in the case of Sooky Bishop. They also could have worked on small farms that had a small amount of slaves, like in the case of Rianna Day where she had worked on George Laws farm with his two slaves, Rachel and Lucy. Therefore, despite their subordinate label, most black women that appeared in the courts,

¹² *State v Elizabeth Beaver*, May 1811, Caswell County Criminal Action Papers 1810-1811, NCDAH

¹³ *State v Sooky Bishop*, March 1843, Orange County Criminal Action Papers 1843-1844, Call CR.073.326.44, folder labeled: 1843, NCDAH.

enslaved or free women of color, for this crime were servants and depended on others for survival.¹⁴

This was the same case for most of the white women indicted and suspected of murdering their child. These women also worked on small farms and constantly in their employer's presence. These women like the enslaved women and free women of color depended on their employers for their needs and were probably poor. In their discussion of infanticide in England and New England, scholars Peter C. Hoffer and N.E. H. Hull also saw a pattern in those being indicted and convicted for infanticide. Ninety percent of the defendants were women. As discussed earlier, this crime was inevitably classified as a woman crime by the mere fact that most of the women in the sixteenth and through the eighteenth century were responsible for taking care of the children. This was a pattern and custom that nineteenth century women were expected to adhere to. Also, in their analysis of the infanticide cases in this time period, Hoffer and Hull found that eighty-six percent of the infants were illegitimate and seventy-six percent of the women were single. This is the same pattern seen in most nineteenth century North Carolina infanticides.¹⁵

However, there were some women suspected of killing their children who did not fall into all of these categories of being young, single, and servants. One example was Hannah Walker, a white woman from Orange County, who was indicted for murdering her son on March 22, 1822. Walker was different than most white defendants because she was married. In the indictment her child was not referred to as a bastard. Walker also differed from most women indicted for infanticide in that she did not conceal her pregnancy throughout her term. This is

¹⁴ John Spencer Bassett, *Slavery in the State of North Carolina*, (Chapel Hill, North Carolina: The University of North Carolina at Chapel Hill, 2002) 8.

¹⁵ Peter C. Hoffer and N.E.H. Hull, *Murdering Mothers: Infanticide in England and New England 1558-1803*, (New York: New York University Press, 1984) 97.

evident by the fact that her husband, William Walker, had called a midwife, Peggy Perry, to his house to help deliver the child when Hannah began to go into labor. Her husband knew of her pregnant state before she gave birth, she did not give birth to her child in secret like most women convicted of infanticide did.¹⁶ Therefore, when the child was discovered to be dead later on, Hannah Walker was suspected because she was the mother.

Sarah Jefferies case was another anomaly. Sarah Jefferies and her mother Fanny, two white women, lived together in a house in Caswell County. They were both indicted. Sarah was indicted for killing her child while Fanny was suspected of being an accomplice to the murder. In this case, the mother tried to conceal her pregnancy but failed to do so. She was suspected of delivering a child and getting rid of it before a child was ever discovered. Jefferies' case was different than most infanticide cases in that she, like Hannah Walker, was not a servant. Also, Hannah Walker and Sarah Jefferies were similar in that both women had children that were alive. This was not the case with most of the women indicted for infanticide.¹⁷ According to Peggy Perry's testimony, this was not the first time she served as Walker's midwife and this is evident in her discussion of the child's condition at birth. Peggy stated in her testimony that "the defendant had not ever before delivered" a child which "exhibited a sinister appearance." The child was colored, and Peggy Perry was implying that none of her other children were colored.¹⁸ According to the United States census in 1820, Hannah Walker had three sons, all under the age of sixteen.¹⁹ Sarah Jefferies had five living children who were also referred to as bastards.²⁰

¹⁶ *State v Hannah Walker*, November 25, 1821 Orange County Criminal Action Papers 1820-1821, CR 073 326.20 Folder labeled 1821, NCDAH.

¹⁷ *State v Sarah Jefferies*, November 1819, Caswell County Criminal action papers 1818-1820, North Carolina, Folder: 1818, NCDAH. This was the indictment.

¹⁸ *ibid.*

¹⁹ 1820 U.S. Census, Orange County, North Carolina; series: M33, Roll: 82, Digital folder: 005156905, page 368, William Walker, Familysearch.org.

²⁰ *State v Sarah Jefferies*, November 1819, Caswell County Criminal action papers 1818-1820, North Carolina, folder: 1818, NCDAH.

It is important to note that most of the women were suspected of murdering their *own* children. This was the case with the majority of the sixteenth, seventeenth, and eighteenth century infanticide cases. This was still the case with the bulk of North Carolina's infanticide cases in the early nineteenth century and the years leading up to the Civil War. However, there were some rare cases where women were indicted for murdering a child that belonged to someone else.²¹ For example, in Caswell County, Amy, a slave of Stephen Dudson, was indicted for murdering a child that did not belong to her. But, the dead child belonged to a white man by the name of Sidney Merritt, the family-head of another household. Amy was accused of murdering Sidney Merritt's son, James. He was Merritt's only child at the time of the murder, which was in May of 1832.²² The indictment states that "with force and arms," Amy, "feloniously and of her malice . . . made an assault." She took a "certain knife" that was valued at six pence and an axe that was valued at three shillings in "both of her hands." She then sliced his neck, "breaking through the skull bone," instantly killing the child.²³ Amy, unlike most enslaved women, white women, and free women of color in North Carolina's superior courts were charged for killing someone else's child. Sidney Merritt was not a slave owner and therefore probably hired out Amy from Stephen Dudson, who had twenty-six slaves on his farm, to help in his own household or on his own farm.²⁴ Because this is most likely the case, Amy's

²¹In my research, I only came across one case where a defendant murdered someone else's child. All of the other cases for enslaved women, free colored women, and white women, the defendants murdered their own children. This is also true in Hull and Hoffer's research. In their findings, there were rare cases where the mothers killed children that did not belong to them. They found that 85.5 percent of the women indicted for infanticide in New England were the mothers. For their statistics, see Peter Hoffer, *Murdering Mothers*, 97.

²² United States Census, 1830," database with images, FamilySearch (<https://familysearch.org/ark:/61903/1:1:XH5M-1ZG> : accessed 29 February 2016), Sidney Merritt, Caswell, North Carolina, United States; citing 264, NARA microfilm publication M19, (Washington D.C.: National Archives and Records Administration, n.d.), roll 119; FHL microfilm 18,085.

²³ *State v Amy*, May 1832, Caswell County Criminal Action Papers 1832-1834, CR.073.326.33, folder labeled: 1843, NCDAH.

²⁴ 1830 US Census, Stephen Dodson, Caswell, North Carolina, United States; citing 262, NARA microfilm publication M19, (Washington D.C.: National Archives and Records Administration, n.d.), roll 119; FHL microfilm 18,085.

situation was not much different from that of other women accused of infanticide. Since she was leased out, she lived in a small slaveholding household. However, Amy's case was still an anomaly since most of the women indicted for this crime murdered their own children.

In the majority of North Carolina infanticide cases, the indictments would include the phrase that the defendant had “concealed the pregnancy” and “in secret gave birth” to and murdered her infant. Such language was necessary because in order for a case to be classified as infanticide, the victim had to be an infant otherwise it would be child-murder. Hannah, a slave belonging to John G Harts of North Carolina, was suspected of killing her son and was indicted for child-murder. The court documents referred to Hannah’s son as “Solomon.” It is evident that Hannah’s son was not an infant when his body was discovered and that Hannah did not murder Solomon as soon as she gave birth to him because the indictment referred to him by name. In most infanticide indictments, the courts did not reference the child by name because the child did not have one because mothers murdered their children right after giving birth. In Hannah's indictment, Solomon was also referred to as Harts' property, meaning that the state had previously, before this case of infanticide, had recognized Solomon as a slave.²⁵ Cases like Amy and Hannah’s were rare in nineteenth century North Carolina. Most of the women murdered their own children and murdered them within hours of giving birth to them.

The defendants' similar conditions, the mothers being young, single, and servants that tried to conceal their pregnancy and birth their children in secret was a long standing pattern seen in many infanticide cases outside of North Carolina and years preceding the nineteenth century. In 1750, Amey, a servant of James Wilson in Mammoth County, New Jersey, was indicted for murdering her child. Amey was referred to as an "Indian wench" and servant of James Williams.

²⁵ *State v Hannah*, evidence of Thomas Barnett, March term 1836, Granville County Criminal Actions concerning slaves and free person of color 1820-1837, folder labeled :1836, NCDAH.

She worked in his household. In her indictment, the court stated that after giving birth to her "bastard" child in secret, she took it and placed it "under a certain boarded floor."²⁶ A few years later, in 1761, Charity Allerton, a white, single, woman from Morris County, New Jersey was also indicted for infanticide. The indictment ruled that Allerton "brought forth privately and secretly a child alive out of her body." The court further mentioned the child was a bastard. Therefore, the conditions and social standings of the women that appeared in the courts were not unique to North Carolina or the nineteenth century.²⁷

Although they may have had different reasoning, the women came to the same conclusion—to kill their child. Why did they choose to commit infant-murder? Did they have any alternatives? In the nineteenth century, there were some measures that could have been taken to prevent pregnancy or to bring about a successful abortion. In some Southern slave cabins, enslaved women adopted the practice of taking a cotton plant, submerging it in water and drinking it to inhibit menstruation. This was practice seen in Texas, Tennessee, Mississippi, and diverse Southern states.²⁸ Men were also using condoms in the early nineteenth century, originally as a way to protect themselves from syphilis. Items like douching syringes and diverse contraceptives and techniques could have been adopted and implemented by white women to prevent pregnancies or abort children in this era. However, the women suspected for this crime did not do this. Most of the women, according to the indictments and testimonies, carried their children for the full term and then decided to kill them in secret.²⁹

²⁶ *King v Indian Amey*, 1750, New Jersey Supreme Court Case, number 20844, NJDSA.

²⁷ *King v Allerton*, 1761, New Jersey Supreme Court Case, number 20303, NJDSA.

²⁸ Marie Schwartz, *Birthing A Slave: Motherhood and Medicine in the Antebellum South* (Massachusetts: Harvard University Press 2006) 97.

²⁹ Janet Brodie, *Contraception and Abortion in Nineteenth Century America*, (Ithaca: Cornell University Press, 1994)162,208.

It was the only choice for enslaved women, white women, and free women of color. Enslaved women did adopt different techniques to abort their children; however, the slaves that practiced these techniques were located in states that had huge slave plantations with many slaves. Enslaved women learned different techniques and methods within their “female slave network,” that included information about birth control. However, as discussed in detail, enslaved women that appeared in North Carolina courts for this crime lived in small households and were almost always in their master’s direct view. Therefore, it is probable that these women did not have the opportunity or the social community necessary to learn about birth control; they were completely ignorant to the fact. Free women of color felt their only option was infanticide. Like the enslaved women, they were located on a small farm, often working in their owner’s houses and did not have the knowledge and information about abortion methods. Also, many southern states prohibited the importation of contraceptives and informational journals that disclosed information about abortion or birth control. This was another obstacle and explanation for why mothers chose to kill their children.³⁰

If enslaved women, white women and free women of color were all aware of the contraceptives that existed in the nineteenth century, they still would not have utilized them because they did not have access to them. Masters wanted enslaved women to have children; therefore, they would not have provided their slaves with contraceptives that would hinder him from increasing his profits. David Craig, a new and upcoming slave owner probably would have wanted Charity to have a child to increase his property. The white women and free black women did not have access to these contraceptives because they did not have the money or the resources to purchase them. These women were poor servants. To them, it would have been easier and cheaper to have their child and then kill them. Therefore, infanticide was the easiest and often

³⁰ White, *Ar’n’t I a woman*,70.

the only option for the southern slaves, free blacks, and white women in nineteenth century North Carolina.

Why Were Children a Problem For Black Women?

Even though all of the women indicted had many common characteristics, vital differences did emerge in their individual lives as a consequence of race, legal and social status. These differences could have caused disparity in why each woman chose to commit infanticide. In the nineteenth century pregnancies presented a host of problems for single women, both black and white, in the South. All women, despite their social standing and race, were responsible for taking care of their children during this era. For enslaved women, nurturing their children meant something more than providing them with food and shelter. For the most part, such things were provided by their owners. But enslaved women had an additional duty; to minimize slavery and its impact on their children. Horrors of slavery included psychological abuse, whippings, malnutrition, and often sexual exploitation. Not all black defendants of infanticide were slaves, but because southern racial prejudices often disregarded legal status, all black women, slave or free, were subjected to the same conditions and the same treatment. Therefore, enslaved women and free women of color had similar reasons for wanting to kill their child.³¹

In infanticide investigations, the state did not gather information about the fathers. This was true for enslaved women and free women of color. In their inquest and initial investigation, coroners did not ask witnesses of the community questions about the father, reinforcing the idea that this crime was gendered specific and committed by women. However, additional information gathered throughout the investigation process could help fill that gap. For example,

³¹ Felicity Turner, *Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America* (North Carolina: Duke University 2010) 82.

in Charity's case, the only other male besides David Craig that lived on the plantation was Craig's son, Norton, who was between the ages of six and ten. Therefore, the master was the only person on the plantation that could have fathered Charity's infant.³² When the witnesses, jurors and both legal counsels, described the female child the tone of its complexion was never mentioned. The witnesses and the court documents simply referred to the child as being colored.³³ The father could have been white because at this time mulatto children of mixed ancestry were identified as colored or Negro; their African blood was the deciding factor in their identity. Martha Browne, an ex-slave, explained in her narrative that she was often mistaken for being white because her mother was a mulatto and her father was white. The taint of African ancestry was not apparent in her skin, which resulted in her color being misconstrued as being white. However, she was still defined as a Negro and experienced the struggles that most people with that label were forced to endure during their time in captivity.³⁴

Evidence suggests that Charity was sexually exploited. In Craig's testimony, he stated that he, as well as others living on the plantation, noticed that on numerous occasions, Charity appeared pregnant, but that those appearances would disappear. This statement suggests that this was not Charity's first time birthing a child and possibly murdering it.³⁵ It also indicates that she was most likely a victim of sexual exploitation. Her persistent practice of killing her children suggests that Charity did not want to be a mother. Enslaved women lacked birth control and could not prevent pregnancies. The only way to prevent a pregnancy was to abstain from sexual

³² 1830 U.S. Census, Orange County, North Carolina; series M19; Roll: 123; Page 267; Family History Library Film: 00018089, David W. Craig, Digital Images, Ancestry.com.

³³ *State v Charity*, a slave of David Craig, September 02, 1830., Orange County Slave Records no date, 1783-1865 broken series, CR 073.928.8 Folder labeled 1825-1841 (Broken series), in Orange County Miscellaneous Records, NCDAH. See also the testimony of, Norton Craig, Rebecca Craig, and Thomas Fraddis (coroner) found in the same folder as the indictment.

³⁴ Martha Browne, *Autobiography of a Female Slave*, editor J.S. Redfield (Documenting the American South: 1906) 19.

³⁵ *State v Charity*, March term 1831, Orange County Slave Records no date, 1783-1865 broken series, CR 073.928.8 Folder labeled: 1825-1841 (Broken series), in Orange County Miscellaneous Records, NCDAH

intercourse. If Charity did not want to be a mother, it would be plausible to assume that she would have chosen to abstain from sexual relations. However, her numerous pregnancies suggest that this was not the case. It instead insinuates that Charity was a victim of rape.

Charity sexual exploitation by her master was not only possible, but probable. Many enslaved women experienced it. Historian Wilma King provides an example of a Missourian enslaved woman who was raped by her master and was later charged with infanticide. Nelly, the enslaved woman, was charged with killing her child. Her master, Henry Edwards, was the infant's father. In addition, and similar to Charity, it is believed that Nelly was Edwards' only slave. King discusses the possibility of Nelly being used as a breeder on the plantation. It was possible that Edwards wanted more slaves to increase his slave work force and raped Nelly for that purpose.³⁶ The same analysis can be applied to Charity's case. David Craig, lacking other slaves on his plantation, could have wanted to change his circumstances and produce more slaves, each of which would benefit him economically. Charity's status and conditions on Craig's farm are inconclusive. There is no record that sheds light on why Charity was in Craig's possession. We do not know if he inherited her from a relative or if he bought her at an auction.

Jefferson McKinney was a white man of Louisiana and in a letter to his brother he explains what a female slave meant to him. His sixteen-year-old female slave, whom he had just purchased, held much promise. In his letter, he dwells on the benefits of her reproductive ability. He described her body as his future. It is possible that Craig was in the same position as McKinney, a new comer to the institution of slavery, and for that reason Charity was purchased for the purpose of breeding, like McKinney's female slave. Slaves "were treated as physical manifestation of the categories the traders used to select them." Therefore, if an enslaved woman

³⁶ Wilma King, "Mad" Enough to Kill: Enslaved Women, Murder, and Southern Courts", *The Journal of African American History*, Vol. 92, No. 1, Women, Slavery and Historical Research (Winter, 2007), 39.

was purchased for the purpose of populating the plantation or farm, her body was most likely sexually abused and subjected to cruel and inhumane treatments.³⁷

Peter Hoffer and N.E. Hull argue that the crime of infanticide was somewhat dependent on women's environment, economic distress, and social disorder.³⁸ Enslaved women who appeared in the court for this crime were vulnerable to sexual exploitation because of their gender. They were also more vulnerable to cruel treatments and horrid experiences because they were a part of the black race and subjected to slavery. The enslaved defendants often murdered their children because they believed it was the only option they had. As discussed earlier, enslaved women did not have any social mobility. They did not own property and did not have rights to their own children. When women were manumitted and granted their freedom in the South, their children did not obtain liberty. After being manumitted, women could not stay in North Carolina and look over their children that were still held under bondage. The North Carolina 1830 slave statute stated that after a slave was manumitted, they had to leave the state within ninety days or they would be "arrested and sold." Enslaved women could not hire their time out either.³⁹ Enslaved women appeared in the criminal courts on numerous occasions for living free and hiring their time out.⁴⁰

Enslaved women had few options. They could not work and buy their children's freedom. The laws of southern states in the nineteenth century prohibited slaves from exercising autonomy and having any rights, including legal rights. In Charity's case, she was the only slave on the

³⁷ Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market*, (Cambridge, Mass.: Harvard University Press, 1999), 82, 144.

³⁸ Hoffer and N.E.H. Hull, *Murdering Mothers*, 145.

³⁹ Slaves and Free Persons of Color: An Act Concerning Slaves and Free Persons of Color, 1830 c9 s5

⁴⁰ My research has yielded many court cases where enslaved women were brought to the court for hiring out their own time and living as free. Their involvement in those crimes outnumbered the cases in which I found enslaved women indicted for infanticide. See *State v Negro Rachel Louis*, spring term 1843, Chowan County Slave Records Criminal Actions Concerning Slaves (1830-1844), *State v Rachel Billings*, June term 1833, for examples of these types of cases.

plantation and was most likely sexually exploited by her master. Knowing her circumstances and status in society, someone with limited power and mobility, Charity probably chose to murder her daughter to protect her from the brutal life of slavery. In *Incidents in the Life of a Slave Girl*, Harriet Jacob's often wished death upon her children because she did not want to see them suffer and live a life in slavery.⁴¹ In 1810 Susanna, a slave from New York was convicted for infanticide. At that time New York slave laws were very similar to those in North Carolina and other southern states in the antebellum period. New York did not abolish slavery in its state until 1828. When Susanna was asked why she decided to kill her child, she stated that she did want her child to suffer like she did.⁴² Therefore, these women committed infanticide in response to their environment and social status in the South. The enslaved women were restricted by their gender and race. They understood that infanticide was the only way in which they could liberate their child and exercise some authority over its future.

The circumstances of indicted colored women were similar to those of the enslaved defendants. These defendants were poor and servants on small slaveholding farms or on farms without slaves. They were single women with limited mobility and power. The southern states and their laws restricted them. They were limited by their gender and their race just like enslaved women were.⁴³ Day was a servant for George Laws and she lived at his house for a month, serving him and working with his two other slaves, Lucy and Rachel, on his plantation. However, Laws told the court that once he discovered that Day was pregnant, he discharged her

⁴¹Harriet Jacobs, *Incidents in the Life of a Slave Girl*, (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2009) 70, 80, 98.

⁴² Paul Finkelman, ed., "Report of the trial of Susanna a colored woman", June 1810, Schenectady New York. In *Free Blacks, Slaves, and Slaveowners in Civil and Criminal Courts* (New York: Garland Publishing 1988) 211-260.

⁴³ Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009) 102.

from his service. A few days later, the child was found dead.⁴⁴ Laws assumingly chose to discharge Day because he did not want a crying child on his plantation, getting in the way of the work that needed to be done. Therefore small slaveholding farms were a disadvantage for enslaved and free women because these farms did not have additional enslaved women that could help the defendants raise their children. Scholar Deborah White argues that in the antebellum south, a “female slave network” was common on larger plantations where enslaved women would help each other survive the dual responsibilities of being a mother and a slave.⁴⁵ However, the enslaved women and free women of color indicted for infanticide in North Carolina did not have slave community with this system in place. In consequence of this, they had to take on the responsibility of caring for their children.

In an earlier infanticide that took place in 1843, Sooky Bishop, a free woman of color was indicted for murdering her infant child. Like Day, she was a servant and worked on a plantation owned by William Brown, a white farmer in Orange County. Free women of color differed from enslaved women in that they had to work in order to make a living. They were not property, but still were negatively impacted and restricted legally, politically, and socially by southern racial attitudes. Therefore, a child was a heavier burden for free women of color than for enslaved women. They were responsible for feeding, caring, and protecting their child. They did not have an owner that had a stake in the child’s survival. Free women of color were on their own in raising their children. Therefore, both Day and Bishop probably chose to kill the child

⁴⁴ *State v Rianna Day*, March Term 1849, Orange County Criminal Action papers 1848-1849 CR 073.326.48, folder labeled: 1849, NCDAH. This was an inquest taken by William New and David Anderson.

⁴⁵ Deborah Gray White, *Ar’n’t I a woman: Female Slaves in the Plantation South*, (New York: W.W Norton and Company 1999) 127, 139, 140.

because an infant would be another obstacle in their life; an additional responsibility that would require time and resources.⁴⁶

In the indictment for Day, the court stated that the child was a mulatto, meaning that it was mixed with African and Anglo-Saxon blood. Therefore, like enslaved women, free women of color could also have been sexually exploited.⁴⁷ In the South, white southerners believed that African American women were always sexually available, not just enslaved women but all black women.⁴⁸ Therefore, even though enslaved defendants and free women of color were legally different, their gender and race created similar situations and experiences that lead them to take a similar stance for killing their children.

Why Were Children a Problem for White Single Women?

Most of the white defendants were single servants, indicating that these women were likely poor. In consequence, they had little social and political mobility. In her discussion of sex in antebellum America, the scholar Nancy Isenberg argues that women were “aliens” to the antebellum South and their husbands solidified their citizenship in the southern states. She goes on to discuss the characteristics of women without liberty: they did not have the ability to control and secure their child’s health, disclose their viewpoints, and ability to control their own lives. White women indicted for infanticide did not have control over their lives or their children’s lives because of their socioeconomic status. For Elizabeth Beaver, Sally Paul, Patience Rye, Nancy Trimble, all poor white single women indicted for infanticide, a bastard child proposed a series of issues for them. The South scorned bastardy; therefore, an illegitimate child could

⁴⁶ *State v Sooky Bishop*, March 2 1844, Orange County Criminal Actions 1843-1844 CR. 073.326.44 folder labeled 1843, NCDAH, indictment and testimony of Sally Brown,

⁴⁷ *State v Rianna Day*, March Term 1849, Orange County Criminal Action papers 1848-1849, NCDAH.

⁴⁸ Edwards, *The People and Their Peace*, 116.

tarnish the woman's reputation. Also, because the white women were poor, a child would be a financial burden.⁴⁹

Sarah Jefferies and Elizabeth Beaver, the two white women indicted for infanticide in North Carolina, were similar to the black defendants in that they likewise responded to their circumstances and situation when they decided to murder their children. And like the black women, these women had limited social mobility. However, the white women had limited social mobility because they were economically burdened and did not have husbands. Unlike enslaved women and the free women of color, their race or legal status did not influence white women to kill their children.

Whites were placed higher than enslaved women in the social strata, meaning that white women had more mobility in the society, in the legal system, and they also had more control over their own bodies. Their virtue was treasured and most of the time protected by white men. Rape cases in the nineteenth century are an illustration of this. Court cases dealing with rape upon the bodies of white women were common in the nineteenth century; however, rape cases dealing with enslaved women were almost unheard of. In 1821, Robert Wilson was indicted for assaulting Sarah Cobs, a white female. The indictment stated that Wilson beat her and greatly injured her, acting against the peace of the state.⁵⁰ Unlike men who assaulted white women, men who assaulted enslaved women were not brought to court on assault charges.⁵¹ John McCottor of Chowan County brought two men to court for assaulting his female slave. However, he did not bring them to court on moral grounds or any concern for his female slave; rather, he did so for economic reasons. The two men beat Rose, the female slave, and as a consequence, Rose was

⁴⁹ Nancy Isenberg, *Sex and Citizenship in Antebellum America*, (Chapel Hill: University of North Carolina Press, 1998) 147-148.

⁵⁰ *State v Robert Wilson*, indictment, September 18, 1820, Orange County Criminal Action Papers 1820-1821, CR 073 326.20, folder labeled: 1821, NCDAH.

⁵¹ Bardaglio, "Rape and the Law in the Old South," 756.

lame, sore and retained for some time. McCottor's lawyer stated that "he the said John McCottor was deprived of the labor and the service of his said servant and all the benefits and advantage of which might and would otherwise have earned him." In other words, the two men's actions did not wrong Rose, but her owner. The rape of Rose was ultimately a property crime against McCottor, not a personal crime against her.⁵²

While, white women were valued for their virtue, and protecting it was imperative, enslaved women were valued for their economic benefits. Instead of her actual body receiving protection, it was her labor and the benefits associated with her labor that was perceived as worthy of protection. Sometimes the protection of this labor required violence or sexual assault to be inflicted on enslaved women.⁵³ Solomon Northrop, in his narrative, describes an instance where an enslaved woman, Patsy, was brutally beaten by her master, Mr. Epps, after he discovered that she had been missing from the plantation. Realizing that those actions mirrored that of exercising autonomy and control of her body, Epps inflicted pain and physical brutality in order to reestablish the power structure on his plantation.⁵⁴ In Browne's narrative, she discusses a time when she was stripped and beaten after breaking a dish in the kitchen.⁵⁵ The actual body of the enslaved woman was not what was valued, but what they produced. This principle lead to these women being raped, beaten, manipulated, and exploited in every shape and form as long as the treatment of the enslaved woman did not threaten the institution of slavery.⁵⁶

Yet, despite the fact that the South viewed white women to be superior to enslaved women, the white defendants' circumstances were very similar to those of the black defendants. Elizabeth

⁵² Karen Getman, "Sexual Control in the Slaveholding South: The implementation and maintenance of a racial caste system," *Harvard Woman's Law Journal Vol 1* No.1 (March 22, 1994) 146.

⁵³ *John McCottor v Thomas Myers and Allen*, spring term 1819, Chowan County Slave Records Civil Actions Concerning Slaves 1733-1819 (Broken Records), CR 024.325.27, folder labeled: 1819, NCDAH.

⁵⁴ Solomon Northup, *Twelve Years a Slave: Narrative of Solomon Northup, a Citizen of New York, Kidnapped in Washington City in 1841, and Rescued in 1853* (New York: Derby and Miller 1853) 254-256.

⁵⁵ Browne, *Autobiography of a Female Slave*, 44.

⁵⁶ Getman, "Sexual Control in the Slaveholding South," 126.

Beaver was a servant for Rebecca Lyon, a white widow who owned a plantation. Beaver most likely did not come from a wealthy family and she lacked social mobility because of her economic status. Like the black defendants, Beaver could have seen a child as an unnecessary and dispensable burden. They too, like the free black servants, did not have a lot of money and most likely did not want to waste their limited resources and time on a child. In Richmond County, Patience Rye, a single white woman was indicted for infanticide and a witness told the court that Rye had confessed to having a son that was “born alive.” Rye had also declared “that it would have been living till then if there had have been any person there to take care of it.”⁵⁷

Even though the white and the black defendants had some similar circumstances that could have influenced them to kill their children, white women had other motives for committing this crime. Southern white women were expected to live and conform to the traditional definition of a southern woman. The white defendants were unmarried and the courts identified their children as bastards, emphasizing the fact that the women charged for infanticide had committed fornication. North Carolina and the South in general, as discussed in the previous chapter, frowned upon premarital sex among the white women. The South despised it so much that they made it an illegal act and if women were found to have committed fornication, there would be serious consequences.⁵⁸

In 1843 two justices from Orange County, Samuel Lynch and Thomas Jones, ordered Nancy Rengotaff, a white woman to be investigated and examined because they were informed by an unnamed source that she had given birth to a child. In their letter to the Orange County authorities, Lynch and Jones emphasized that Rengotaff was an unmarried woman and because

⁵⁷ *State v Patience Rye*, September 1808, Richmond County Criminal Action Papers 1806-1809, CR 082.326.4, NCDAH.

⁵⁸ *ibid.*

of this, if she had the “bastard” child, she would “become chargeable to the court.”⁵⁹ When the court found women guilty of fornication, these women had to pay a fine to the state.⁶⁰ Some of the white women indicted for this crime, poor white women, probably decided to murder their children to avoid that charge. Therefore, the South’s definition of a true woman and North Carolina’s determination to ensure that white women stayed virtuous influenced white women’s decisions. In the cases with Jefferies, Beaver, and other white women indicted for this crime, these societal expectations influenced them to commit infanticide. Like enslaved women and free women of color, white women acknowledged their state, their limited power and rid themselves of the source of the problem in the only way they thought they could.

Southern states often attacked white women’s improper behavior in the nineteenth century. Hannah Walker, the white married woman indicted in Orange County in 1822, had a colored child. This meant that Walker had defied her marriage and committed fornication with a black man.⁶¹ Having a child with a black man could have had many consequences for Hannah Walker, and white women in general in the nineteenth century. If her condition and the child’s color were discovered by anyone in her community, she could have been ridiculed for acting improperly. Her reputation would have been tarnished, not only because she had gone back on her vows, but because of the man she chose to have sexual affairs with.⁶²

Additionally, husbands could— and most often did— file for divorce when their wives gave birth to child fathered by another man. In 1832, Marville Scroggins petitioned for a divorce when he saw that his wife had given birth to a mulatto child. He exclaimed that she had deceived him.

⁵⁹ *State v Nancy Rengotaff*, September 12, 1843, Orange County Criminal Actions 1842-1843, CR .073.326.43 folder labeled: 1843, NCDAH.

⁶⁰ Getman, “Sexual Control in the Slaveholding South,” 126.

⁶¹ *State v Hannah Walker*, November 25, 1821, Orange County Criminal Action Papers 1820-1821, CR 073 326.20, folder labeled: 1821, NCDAH.

⁶² Clara Lyons, *Sex among the Rabble: An Intimate History of Gender and Power in the age of Revolution*, Pennsylvania 1730-1830, (Chapel Hill: University of North Carolina Press, 2006) 312.

Scroggins and his wife, Lucretia, were married for five months before she gave birth. When they were married, Marville claimed that he did not know that his wife was pregnant with a mulatto child. Before she gave birth he stated that the two had “lived together in uninterrupted harmony.” However, when Marville discovered Lucretia’s “infidelity and fraud,” he left her and asked the court to give him a divorce. However, the court rejected his request because “we think him criminally accessory to his own dishonor, in marrying a woman whom he knew to be lewd.” Even though Lucretia Scroggins did not get a divorce, she had become notorious in her community because of her improper behavior.⁶³ In addition to children being an economic burden to white women, a bastard child was also seen as a problem that could lead to social ruin for women. Therefore the white defendants would have wanted to commit murder to rid themselves of their children for these reasons.

Conclusion

As discussed earlier in the last chapter, different states, regions, and populations shaped and understood infanticide in a way that would reflect their own customs, values and beliefs. Northern abolitionists asserted that it was a crime among enslaved women. Some states, like Louisiana, denied the existences of the crime. Many southern states acknowledged that women did practice infanticide but the practice was confined among black women and white women who were contrary to the true southern woman. This chapter has illustrated that the reality of the

⁶³ *Scroggins v Scroggins*, 14 N.C. 535 (N.C. 1832). Look at *Barden v Barden*, 14 N.C. 548 (N.C.1832) for another case where a white man petitioned the court for a divorce when he discovered that his wife had given birth to a mulatto child. In this Supreme Court case, the wife, Ann M. Barden had presented herself before marriage as a virtuous woman, claiming that the child belonged to Jesse Barden, her husband. Unlike Marville Barden, Judge Ruffin did reverse the superior court’s decision, giving Barden the chance to prove his case. And in this case, Anne M. Barden, like Lucretia Scroggins was shamed for her infamy.

crime, the women circumstances, and possibly their reasons for killing their children was dependent on where they were in society, their economic, social and legal status.

The Northern abolitionists in their push for the dissolution of the slave system attempted to write off infanticide as a type of resistance; the only way in which a slave mother could have authority in their child's life. This is true, enslaved women were powerless and because of their race, they were not at liberty to assert any type of authority over their child in the legal sense. However, white women and free women of color were also brought to the court for this crime. Enslaved women were influenced to kill the children because of their experiences in slavery. In regard to free women of color, the consequences associated with being of African ancestry caused them to kill their children for similar reason. The white defendants, trying to conform to the idea of what a true southern woman was and trying to rid themselves of the financial burden of raising a child, decided to commit infanticide. Therefore, infanticide serves as example in understanding how oppressive the slave system and the patriarchal system were in the nineteenth century. Both systems were so oppressive that enslaved women, free women of color, and white were brought to court for the same crime, a crime considered the worst of all in the nineteenth century.

Chapter 3

“NOT GUILTY”

On October 24, 1810, the district attorney for the county of Schenectady, New York appeared before the court to prosecute Susanna, a colored slave of Thomas Powell. Susanna was being charged with murdering her bastard infant son. The district attorney addressed the court and said that Susanna was guilty and her actions “could amount to nothing short of murder” and that she had “willfully and of her malice aforethought” murdered her child. He then proceeded to discuss the manner in which she had killed her son. He reported to the court that Susanna cut the child’s throat and tongue with a sharp object, nearly severing it from the root of the mouth while at the same time fracturing and dislocating the infant’s jaw.¹

After describing the crime “of a most serious nature” to the court, he went on to state that the jury should issue a guilty verdict for diverse reasons; first, the situation she was found in implied that she was guilty. She was alone with the corpse; blood was found on her bed and on top of a pile of clothes in her room. Second, the district attorney argued that Susanna was guilty because she had concealed the pregnancy and delivery. He then concluded his opening statement by arguing that the marks of “extreme violence” provided satisfactory evidence “inconsistent with every idea of the prisoner’s innocence.”²

Infanticide trials in the nineteenth century were unique among murder trials. Three things had to be proven before the jury could issue a guilty verdict for infanticide. First, the courts had to prove that the defendant was the mother of the child. Second, the prosecution had to prove that the child was born alive. Third, the prosecution had to prove that the mother killed it. The punishment for this crime was death; in North Carolina, the sentence was carried out by hanging.

¹ Paul Finkelman, ed., “Report of the trial of Susanna a colored woman”, June 1810, Schenectady New York. In *Free Blacks, Slaves, and Slaveowners in Civil and Criminal Courts* (New York: Garland Publishing 1988), 211-260.

² *ibid.*

However, in homicide trials, the prosecution had to persuade the jury that the defendant had killed the victim. Then after the prosecution proved this, the question was then whether the defendant was guilty of manslaughter, second degree murder, or first degree murder. Defendants only received the death penalty if the jury found them guilty of first degree murder; therefore a guilty verdict was not synonymous with a death sentence.

This chapter will depict how infanticide cases were argued in trial. It will trace how the two points were proven by the prosecution and disproven by the defense counsel. The two points were whether the child was born alive and if so, was it murdered by the mother. The first point, whether the woman was the child's mother will not be discussed into great detail because this matter is rarely disputed in the courts because it is established before the trials began.

Identifying the mother was not a hard task. The women could have confessed to being the mother, which was the case with Charity, the slave from Orange County, Susanna from New York, and many of the women indicted for the crime in nineteenth century North Carolina.³ The other way jurors and the courts identified the mother was through the help of others, these individuals tended to be women who were apart of the defendant's everyday life. These women would examine the suspected mothers, usually by squeezing their breast in order to make the claim that the women did have the child. If milk came out of the breast, the woman was

³ *State v Charity (a slave)*, September 02, 1830, Orange County Slave Records no date, 1783-1865 broken series, folder labeled: 1825-1841, CR 073.928.8, Orange County Miscellaneous Records, NCDAH. Also see *State v Hannah*, evidence of Thomas Barnett, March term 1836, Criminal Actions Concerning Slaves and Free Person of Color 1820-1837, folder: *State v. Hannah* (a slave of Col. John G Hart) 1836, CR 044 928.16, NCDAH and *State v Sarah (a slave)* December 1819, Criminal Action Papers 1820-1821 Orange County, North Carolina NCDAH for infanticide cases where enslaved woman admitted to being the mother. See *State v Hannah Walker*, testimony of Peggy, November 25, 1821 Orange County Criminal Action Papers 1820-1821, CR 073 326.20, folder labeled: 1821, NCDAH for a case where a white woman admitted to being the mother. *State v Jefferies and Betsy Combs* November 1818, Criminal Action Papers, Caswell County (NCDAH) is another example where a white woman admitted to being the mother.

identified as the mother and rarely did the defense counsel make an argument against this claim.⁴ It was the other two points that the court found hard to prove because most of the women, as discussed in the previous chapter, concealed their pregnancy and gave birth to their children in secret. This chapter will show how the prosecution responded to these cases in their attempt to convict the women.

The court's decision and their reasoning for vindicating the women are revelatory in how courts understood infanticide. The first chapter discussed how diverse groups in the nineteenth century understood the crime. It was an ideologist crime that was shaped and reworked in order to fulfil these group's desires. However, the courts' decisions created an interesting paradox, because as discussed in the earlier chapters, the general public viewed infanticide to be the worst crime that could be performed by a human being; therefore, why were these women rarely found guilty and hung for this crime? Why were jurors so reluctant to convict the women when the evidence was so compelling?" This chapter will discuss two infanticide cases where two defendants were initially found guilty but pardoned or retried and found not guilty. The two cases demonstrate that jurors were influenced by factors outside the law in making their decision to acquit the women, factors pertaining to gender, race, and slavery.

Proof that the Child Was Born Alive

In the seventeenth century, Britain categorized infanticide as an act of murder. Infanticide was defined as a crime in which a person of a sound-mind "and discretion, unlawfully killeth any reasonable creature in being and under the King's Peace with malice aforethought." However,

⁴ See cases *State v Esther (a slave)*, fall term 1833, Records concerning slaves and free persons of color, NDAH. See *State v Sarah (a slave)* December 1819, criminal action papers, Orange county, folder labeled: 1820, (NCDAAH) for two infanticide cases where enslaved women did not admit to having their child. In my research findings, most enslaved women and free white women of color denied being the mother at first, but later admitted after being pushed by others.

infanticide had one additional characteristic that set it apart from other degrees of murder. The act of concealing the death of a bastard child was considered conclusive evidence that the child was born alive and that the mother was guilty as charged of killing the infant.⁵ The British parliament made the act of concealing a lifeless or living child illegal and punishable by death in 1624 when it passed the statute 21 James 1, chapter 27, which became known as the Jacobian law.⁶

Parliament believed that the Jacobian law, a law that many states followed until the early nineteenth century, was a necessary statute in dealing with infanticide because they found that it was nearly impossible to determine whether a child was born alive or dead when the child's death was concealed. Therefore, if the mother had concealed the birth and death of the child, it was presumed that she was guilty of murder. This law further assumed that only unmarried women murdered their children and that the unmarried women concealed their children's death for the purpose of concealing their criminal misdeed. The Jacobian statute did not acknowledge the possibility that women could have wanted to conceal the child's death in order to avoid the shame and repercussions associated with having a child out of wedlock. A dead child was still evidence that a woman was participating in premarital sex, an act that was sometimes punishable by the law.⁷

In nineteenth century North Carolina, the prosecution had to prove that the mother committed murder by arguing that the several branches of its definition applied to this case. First, for this crime to be considered infanticide, the court must provide evidence that the mother had a

⁵ William Blackstone, *Blackstone's Commentaries: with notes of reference, to the constitution and laws, of the federal government of the United States; and of the commonwealth of Virginia. In five volumes. With an appendix to each volume, containing short tracts upon such subjects as appeared necessary to form a connected view of the laws of Virginia, as a member of the federal union* (Philadelphia: Robert Carr printer, 1803), 198.

⁶ *ibid.*

⁷ *State v Joiner* 11 N.C. 350 (N.C. 1826) Supreme Court of North Carolina

sound mind when she committed this act. She also must have had the ability to discern between “good” and “evil.” Furthermore, the killing of the infant must also be considered “unlawful”, meaning that the mother killed the child without “warrant or excuses.” This was usually the source of many of the issues that arose in the court room, whether there was an act of killing to begin with. Therefore, it was often considered imperative to discern whether the child was born alive or dead especially after states did away with statute 21 James 1, Ch. 27. North Carolina nullified this law with the act of 1818. The act of 1818 stated that the concealment of a deceased child was no longer sufficient evidence to convict a mother of infanticide; and the law would thereafter be argued under common law. Instead, the court ruled that the act of concealment would henceforth be considered a misdemeanor.⁸

It was well known in the nineteenth century that when infants were born under ordinary circumstances, a great number of them died from natural causes, whether that was during labor or after the child was born. Therefore, death was thought to have derived from some cause of this kind until evidence was brought to the court suggesting otherwise. The child could have died as a result of being exposed to the outside elements, receiving an injury during child birth, and more. Therefore, in the cases of infanticide, where it was known that the child was not born under natural circumstances, the proof of life fell entirely on the prosecution. Proving that the child was born alive was the hardest task because the mother gave birth to the child in secret. There were some but rare cases where the prosecution could skip over this step; *State v Charity* being the example. David Craig, Charity’s master, explained to the court that when he found the child in the woods, it was still alive and crying. Therefore, the child was born alive and the only point

⁸ *ibid.*

that the prosecution had to prove in this case was that Charity inflicted harm on her daughter that resulted in her death that night.⁹

Another example in which the court did not have to prove that child was born alive was in *State v Hannah walker*, through the evidence gathered from the midwife's testimony, the fact that the child was born alive was already established.¹⁰ The court did not require medical proof to determine if a child was born alive if there were eye witnesses who testified to this fact. Therefore, in the cases where Charity and Hannah Walker served as the defendants, the prosecution could cross this off their to-do list. However, in most of the instances, this was a step that the prosecution had to prove and it was difficult to do so. If the prosecution failed to meet this standard, prove that the child was born alive, than they would no longer have a case and the mother would be acquitted.¹¹

The prosecution often attempted to prove that the child was born alive through use of the medical evidence collected at the jury of inquests.¹² Most times the jurors and coroners did not collect the medical evidence themselves but relied on other women in the community to do so. These women were the midwives and the defendants' friends that interacted with the defendants on a normal basis. The prosecution requested that these women come to court and give their testimonies. The fact that women were often the individuals who appeared in court to prove that

⁹ *State v Charity (a slave)*, September 2, 1830, Orange County Miscellaneous Records, NCDAH.

¹⁰ *State v Hannah Walker*, November 25, 1821 Orange County Criminal Action Papers 1820-1821, CR 073 326.20, folder labeled: 1821, NCDAH, testimony of Peggy Perry, the midwife.

¹¹ Alfred Swaine Taylor, *The Principles ad Practice of Medical Jurisprudence*, 3 ed. (Philadelphia: H.C. Lea's Son and company, 1883) 317.

¹² The jury of inquest was a group of 12 men who went to the place where the child was found to examine the child. This was done when the coroner was informed that a person had died under unusual circumstances. In all infanticide cases, a jury of inquest did visit the place where the child was found. However, because the coroner had to be informed of the incident, the inquest sometimes did not examine the child until many days after it was found dead. This mere fact could present a host of problems for the prosecution. For example, in *State v Charity*, the coroner was not informed and did not gather a jury of inquest to examine the infant until after it had already been buried. Therefore, the coroner had to dig up the child and examine it. This too could have presented many problems for the prosecution because the effects of burial could have corrupted the medical examination.

the child was born alive suggests that women were imperative to the infanticide investigations and trials.

When determining if a child was born alive, the prosecution had to prove that the child had the capacity to “maintain a separate existence” from his mother. The prosecution had to prove this capacity in order to show that the child was viable.¹³ In *State v Jefferies*, the prosecution used four women’s testimonies to prove this point. Sarah Jefferies, like most women who appeared in the court for this crime, had concealed her pregnancy and had supposedly killed her child in secret.

In her testimony, Mrs. Montgomery stated that Mrs. Foller, a friend of hers, had requested that she accompany her to Fanny Jefferies’ house. When she arrived to the house, she saw “sufficient signs” to convince her that a child had recently been born there. Mrs. Montgomery did not relay to the jury of inquest what those signs were. Also during the trial, the court did not ask her what those signs were.¹⁴ This suggests that the courts valued the women’s voices in infanticide cases so much that they allowed their opinions to be submitted as irrefutable evidence. This was true for the defense and the prosecution; the defense did not cross examine Mrs. Montgomery to ask her what those signs were in order to test her expertise on the subject. The prosecution and the defense counsel chose not to question the women on their medical knowledge because during this time, anything regarding childrearing and child birthing was considered to be an area of a women’s expertise. Therefore, in this time period where women

¹³ Taylor, *The Principles ad Practice of Medical Jurisprudence*, 312.

¹⁴ *State v Sarah Jefferies*, May 1819, Caswell Country Minute Superior Docket, NCDAH, the testimony of Mrs. Montgomery.

often occupied the political margins and rarely appeared in court to testify, infanticide cases represented one place in which they could take center stage.¹⁵

A few days later, Mrs. Montgomery said that she went back to Fanny Jefferies' house to see Sarah's child. There were reports in circulation that Sarah had recently given birth, even though on numerous occasions Sarah had dismissed this discussion as mere gossip. The witness said that when she finally saw the child, she saw that it had hair on its head and nails "so well grown as to project toward the ends of fingers."¹⁶ In the nineteenth century, the court and the medical world understood that once a child reached a certain age in the womb, it was fully capable of living outside of the womb because it had already developed the necessary organs to do so. This age was thought to be between 6 or 7 months in utero-gestation. And in her testimony, Mrs. Montgomery listed characteristics synonymous with a child having the capability of living outside of its' mother womb.¹⁷ To solidify the fact the child was indeed at the age where it could survive outside of the womb, Mrs. Montgomery claimed that the child was about seven months and no less than 6 months. She went on further to claim that she had seen "several children live and grown up not more advanced than this."¹⁸ Therefore, the prosecution used this testimony to show that the child was indeed viable and did have the capacity to maintain a separate existence out of the mother's womb.

If the prosecution was able to show that the child was "viable" and had the capacity to live outside the womb, it were one step closer to convincing the jury that the child was born alive. However, showing the infant's viability was only one step into proving that the child was

¹⁵ Felicity Turner, *Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America* (North Carolina: Duke University 2010), 21-22.

¹⁶ *State v Sarah Jefferies*, May 1819, Caswell Country Minute Superior Docket, NCDAH, testimony of Mrs. Montgomery.

¹⁷ Taylor, *The Principles and Practice of Medical Jurisprudence*, 312.

¹⁸ *State v Sarah Jefferies*, May 1819, Caswell Country Minute Superior Docket, NCDAH, testimony of Mrs. Montgomery.

born alive. The child could have been a still born, which most women indicted for infanticide claimed. Most women suspected of this crime confessed that the child was theirs; however, they went on further to say that it was born dead. Sarah Jefferies was no anomaly, like most women, she denied that the child was born alive. Therefore, in her case, the prosecution had taken a small step into proving that the child was born alive. Further, it was even a smaller step in the long process of trying to convince the jury to find the mother guilty of the crime.¹⁹

In Sarah Jefferies' case, the state had established that the child's body was developed enough to function on its own without the help of the mother's body. This was a necessary step needed to convince the jury that the child could have been born alive. However, in the rest of Mrs. Montgomery testimony, the prosecution attempted to meet the standard of proving that the child was indeed born alive. Mrs. Montgomery continued by stating that when she saw the child, she saw that its tongue was hanging out of its mouth. This was the main source of evidence the prosecution used to suggest that the child was born alive. Sarah had claimed that the child was born dead when Mrs. Montgomery had asked her how the child had come to its death. However, the witness asserted that it could not have been born dead by exclaiming; "no, it must have cried or the tongue could not have been out." This was the prosecution's smoking gun. The court understood that if the child had cried, then it must have been born alive.²⁰ By proving that child

¹⁹ See Paul Finkelman, "Report of the trial of Susanna a colored woman", June 1810, Schenectady New York. In *Free Blacks, Slaves, and Slaveowners in Civil and Criminal Courts* (New York: Garland Publishing 1988), 211-260; *State v Rianna Day*, testimony of Rachel and Lucy March Term 1849, Orange County Criminal Action papers; *State v Elizabeth Crabtree* September term 1821, Orange County criminal action papers; *State v Sooky Bishop*, March 1843, Orange County Criminal Action Papers 1843-1844, all at NCDAH for additional cases of where the defendants claimed that the infant was not born alive.

²⁰ *State v Sarah Jefferies*, May 1819, Caswell Country Minute Superior Docket, testimony of Mrs. Montgomery. Also see *State v Sarah Jefferies*, inquest of Mrs. Montgomery, November 1819, Caswell Country Criminal Action Papers 1818-1820, folder labeled: 1818, North Carolina, NCDAH.

cried, the prosecution presented the court with the “strongest evidence of the child being born alive.”²¹

Once the prosecution proved the child had been born alive, the defense counsel was now considered to be in the hot seat. Mrs. Montgomery was a midwife and she had ‘practiced for many years’ therefore the defense probably would not have succeeded if they tried to directly contest her testimony. As discussed earlier, the court understood that child rearing and child birth was a woman’s area of expertise. Therefore, instead of directly asserting that Mrs. Montgomery’s statements were false, the defense called additional women to the stand to offer their testimony in support of Sarah Jefferies’ claims, that the child was not born alive.

The defense counsel asked Patsy Barrot to give her testimony. Barrot stated that in August, (three months prior), she had gone to Fanny Jefferies’ house to visit the prisoner. When she saw Sarah Jefferies, the witness said Sarah “was not pregnant.” The defense counsel asked Barrot to speak in order to prove to the court that the child was not viable. The dead infant was discovered in November and if Sarah was not pregnant in August, this meant that the infant was not developed enough to live without the existence of its’ mother womb when it was born , the baby would have only been three months old. Therefore, by claiming that the child was not viable, the defense attempted to negate the testimonies given by the state’s witnesses. Ultimately the defense was asserting that the child could not have been born alive because it had not yet undergone the necessary developments needed to survive outside the womb.²²

Further Patsy Barrot and another witness, Franky Stephens, offered additional evidence that proved that the infant was not born alive. Stephens said that she had seen Sarah Jefferies in

²¹ Dean Amos, *Principles of Medical Jurisprudence: designed for the profession of law and medicine*, (Albany: Gould, Banks and Gould, 1850) 112.

²² *State v Sarah Jefferies*, May 1819, Caswell Country Minute Superior Docket, NCDAH, the testimony of Mrs. Patsy Barrot.

August as well and she was definitely not pregnant. Barrot said that the child had “very little hair on its head” and “appeared to be about two months.” Barrot and Stephens helped the defense in proving that the child was underdeveloped through their examination of the child. And like the state’s witnesses, the defense only called women to the stand in order to discuss the conditions of the child. Therefore, the prosecution did not cross examine the witnesses to question them on their knowledge of children and child birth. It is also possible that the defense and the prosecution did not call men to testify because there were no men that could offer substantial evidence. Women were important in every stage of the legal process. They were active in discovering the dead infants and instrumental in providing the main source of evidence in the court. Initially, David Craig was not allowed to testify in Charity’s case, as a result, only the other women that lived on the plantation or near the plantation were asked to speak in court. Their testimonies were the richest in evidence and influenced the decision of the court.

Patsy Barrot proceeded in her testimony by stating that the night before the prisoner had supposedly given birth, Barrot and Sarah were washing clothes together and that Sarah had “fell down with a pail of water and was badly bruised.”²³ This was the defense’s smoking gun. If a child had died in the womb, the mother could not have been convicted for murder. William Blackstone, in his explanation of the infanticide trials, states that if “the child dieth in her body, and she is delivered a dead child,” then the prisoner could not be found guilty because no harm was done to the child directly. If a woman fell while pregnant, it could have resulted in a stillbirth. By adding the additional information that Sarah had bruises from the fall, the defense counsel was emphasizing that it was a hard fall, a fall that could and most likely resulted in the death of the child.²⁴

²³ *ibid.*

²⁴ William Blackstone, *Blackstone's Commentaries*, 198.

Sarah Jefferies trial is just one example of how the prosecution tried to prove that the child was born alive. In Sarah Jefferies' case, the state focused on the exposed tongue to suggest that the child was born alive but the prosecutor in different cases proved the child was born alive in a variety of ways. In the case of Susanna, the prosecution called two doctors to the stand to give their testimony. Doctor Cornelius Vrooman stated that the child was full grown and that the "child must have been born alive in order to such a discharge of blood; for there must have been a circulation."²⁵

There were other cases where the prosecution would try to prove that the child was born alive; they looked at the color of the lungs, if the lungs were of a lighter color, it was believed that the child had breathed. Doctors would sometimes weigh the lungs. The most popular test was the hydrostatic test. This test required that the doctors take the lungs and submerge them into water, if the lungs floated then that was evidence that the child had breathed and was therefore born alive. If the lungs sunk it suggested otherwise. However, tests like these were abandoned because it was later discovered that infants' lungs sunk when it was known that the children had lived.²⁶ Therefore, it was very hard for the prosecution to prove that the child was born alive. The prosecution also referenced the child's wounds to suggest that it was born alive. If there were wounds on the child, the prosecution could use that as evidence to suggest that the mother did kill the child and the child was not a stillborn. Therefore, if the prosecution hit a wall trying to prove that the child was born alive; they could prove that the mother killed the child and the child's viability would then be proven.

²⁵ Finkelman, "Report of the trial of Susanna a colored woman," 265 (page 15 of the report).

²⁶ Taylor, *The Principles and Practice of Medical Jurisprudence*, 323-385, 526.

Proof that the child had been murdered

Even if the child was found to be born alive, the prosecution still had to prove that the mother killed the child and that it did not die naturally either from birth or from other circumstances outside the mother's control. Most of prosecutors in the nineteenth century looked at the physical wounds or marks on the child to suggest that it had been murdered by the mother. In *State v Jefferies* case, the prosecution called Mrs. Horton to testify on behalf of the state. In her testimony, Horton said that she was the first witness to see the child because she was the one that retrieved it. The witness said that when she saw the child, the "skull was mashed in and broken." She went on to state that the "ankle of one of the legs appeared to be broken." It was in the wrong position; it was "bruised, black and discolored." The prosecution attempted to prove that some type of violence had been inflicted on the child and resulted in these injuries.²⁷

Another example in which the prosecution attempted to prove that wounds were a result of a mother's violence was in the trial of *State v Charity*. The coroner for the state went to Craig's house to examine the child when he was informed that a child had died in an unusual circumstance. Thomas Haddis, the coroner, probably had to request that the child be dug up because by the time he had arrived, Charity's daughter had been buried. In his testimony, Haddis stated that he opened the coffin and found a bruise on the child's forehead. Also, he saw a bruise on the side of the head. He then stated that even "though the skin appeared not to be broken" he was "satisfied that violence had been used on the child before its death." Haddis did not initially find a fracture; however, he stated that after further examining the child he found that there was more "grating of the bones than usual from the ordinary openings in a child's head." This discovery induced him to take further actions and open the child's head. This is when the coroner found that the skull was "much fractured." The state submitted Haddis'

²⁷ *State v Sarah Jefferies*, May 1819, Caswell Country Minute Superior Docket, NCDAH, testimony of Mrs. Horton.

testimony into evidence to suggest, like in Sarah Jefferies case, that the mother had inflicted some harm unto the child that caused it to die.²⁸

However, the defense responded to the prosecution by illustrating that many of the wounds were consequences of childbirth. The defense attorney in Susanna's case is an illustration of that. After the prosecution had called the doctor, Cornelius Vrooman, to the stand to give his testimony that the wounds and the blood were conclusive evidence that the child was born alive, the defense attorney cross-examined Vrooman. Ingen, the defense counsel, asked Vrooman if it was possible for a child to suffer from injuries when the mother was in the midst of travail during childbirth. Vrooman admitted that it was possible for children to acquire injuries as a result of this.²⁹

In the nineteenth century, there was an understanding that child birth was dangerous not only for the mother but the child as well. Infant mortality ran high, especially among enslaved people. This statistic doubtlessly is a result from the harsh treatments that enslaved women were forced to endure during this time. Enslaved women at times worked until their condition no longer permitted them to do so. Also, as a slave, many of the women in the antebellum South did not receive the necessary nutrients to ensure that they would give birth to a healthy child.³⁰ Therefore, the child could have died from natural occurrences and from childbirth.

The women who appeared in the courtroom for infanticide had birthed their children in secret and therefore did not have the resources that other women had when in labor. Therefore, it is more likely that the birth would be unsuccessful. This is what Ingen was attempting to show in

²⁸ *State v Charity*, September 02, 1830., Orange County Slave Records no date, 1783-1865 broken series, CR 073.928.8, folder labeled: 1825-1841 (Broken series), Orange County Miscellaneous Records, NCDAH, testimony of Thomas Haddis (coroner for the state).

²⁹ Finkelman, "Report of the trial of Susanna a colored woman", 266 (page 16 of the report).

³⁰ Marie Schwartz, *Birthing A Slave: Motherhood and Medicine in the Antebellum South* (Massachusetts: Harvard University Press 2006), 135, 153, 207.

his cross examination. Marks or wounds on the body were not always considered conclusive evidence to suggest that the child was violently beaten. However in the case of Susanna, the prosecution pointed out that the marks of violence on the child were “inconsistent with every idea of the prisoner’s innocence.” The marks on the child showed that it had suffered from “extreme violence.” Susanna’s indictment stated that the male child’s throat had been cut with some “unknown instrument.” However, in nineteenth century North Carolina, the marks of violence were not as extreme so the prosecution had to rely on additional evidence to suggest that the mother murdered her child. This is when the prosecution asked the witnesses to speak on the mother’s character and behavior.³¹

In Sarah Jefferies case, another witness by the name of Elizabeth Foller was called to testify on behalf of the state. She stated that Jefferies had come to her house a few days before the child was discovered. Jefferies told Foller and her husband that she knew that there were rumors saying that she was pregnant. She further stated that those people were wrong and that she “would disappoint them” and that if she did have another child, “nobody should ever know it.” This evidence suggested that Jefferies had planned to murder her child before it was born. The prosecution tried to prove that there was intent.³²

Further, the prosecution attempted to show that the mother was guilty of the crime due to her confusing answers and accusations. Sarah Jefferies at first denied to having a child to begin with. However, after Mrs. Montgomery had examined her and discovered that milk secreted from her breast, Mrs. Montgomery told Sarah that there was evidence to suggest that Sarah had a child and that it was “useless to deny it.” This is when Sarah confessed to having the child, but claimed that the child was born dead and was “no longer than her fingers.” Later, when Mrs.

³¹ Finkelman, “Report of the trial of Susanna a colored woman”, 221 (page 11 of the report) district attorney’s address to the court, 217 (page 7 of the report) the indictment.

³² *State v Jefferies*, May 1819, Caswell County Minute Superior Docket, NCDAH, testimony of Elizabeth Foller.

Montgomery saw the child for herself, she told the court that she confronted Sarah about the appearance of the child and told her that “the child was much longer than she had stated the previous day.” In response to this, Sarah left the house crying. This portion of Mrs. Montgomery testimony showed the court that Sarah Jefferies was most likely guilty of murdering her child because she was deceitful and lied on numerous occasions presumably to cover up her crime.³³

In Mrs. Horton’s testimony she stated that when Fanny, Sarah’s mother, instructed her to get the child, Sarah responded in a “vulgar manner” and refused to get the child. Mrs. Horton had to retrieve it herself. The child was in a basket underneath Sarah’s bed. Horton brought out the basket, removed the wool that was covering the child, and placed the child in her lap. The infant had a “very dirty look as if it had been buried.” Clay was on its back and hips. She further stated that ants were “running over it.” Sarah’s response to her mother when asked to retrieve the child and the way in which the child was disposed suggested to the court that Sarah was an unfit mother and that she did not care about the child. As discussed earlier, southern women’s responsibilities were to nurture and care for their children. Sarah’s actions suggest that she did the opposite of that. Therefore, the prosecution would use the way in which the child was disposed of as an indicator that the mother most likely killed the child. In *State v Charity*, the prosecution used the inhumane and unusual burial site to prove that the mother had killed her child. This was a technique used by many prosecutors in nineteenth century North Carolina, many of the children were considered by the court to be inhumanely disposed of and this fact suggested that the mother was also inhumane.

It is important to note that mothers could be tried for and convicted of infanticide even when a dead body was never discovered. In these cases, the prosecution focused on the mother’s behavior to prove that the mother killed the child. In *State v Patience Rye*, Rye was indicted for

³³ *State v Jefferies*, May 1819, Caswell County Minute Superior Docket, NCDAH, testimony of Mrs. Montgomery

infanticide and the court did not have a body. The prosecution first established that Rye did have a child through testimonies; the people in her community served as witnesses and informed the court that Rye had confided in them and confessed to the crime. The prosecution then listed the “circumstances to prove” that Rye was the murder. These circumstances focused on her abnormal behavior. The prosecution claim stated that Rye “refused the company of her daughter” when she gave birth to her child. Also, “her contradictory answers,” and the fact that “she knew her time” was proof of her guilt. Therefore, when the prosecution could not prove that the child was born alive by actually examining the child or through eye witness accounts, the state attempted to establish guilt through the mother’s actions.³⁴

Now it was the defense’s turn, it had to respond to all of the prosecution’s accusations and many of the defense attorneys did this by showing that the women’s actions, the concealment of the children, were justifiable. Sarah Jefferies had admitted that she had given birth to a child, and when someone asked why she did not let her “circumstance be made known” to everyone else, she stated that she was afraid because her mother had “made some threats about having another child.”³⁵

In 1831, another infanticide case, *State v Sarah*, was tried in Caswell County. In her testimony, Sarah exclaimed that she was “taken suddenly and within five minutes” she had “delivered a dead child” at the spring near her mistress’ house. She stated that the child appeared to have been bruised as a result of the unanticipated childbirth. However, she was afraid to inform her mistress of this because she believed her mistress would have accused her of killing the child herself. She further stated that she had left the child on the ground in order to retrieve some water from the spring and upon her return she found a “bass eating of the child.” The child

³⁴ *State v Patience Rye*, September 1808, Criminal Action Papers 1806-1809 Richmond County, North Carolina CR 082.326.4, folder labeled :1808, NCDAH.

³⁵ *State v Jefferies*, May 1819, Caswell County Minute Docket Superior Court, NCDAH.

looked so awful after being eaten by the bass, that she “was ashamed to let it be seen.” As a consequence, Sarah said that she decided to conceal the child.³⁶

In these two instances, the prosecution used the prisoners’ testimonies to prove that the women did not intentionally hurt their children and by them concealing the child, it did not necessarily mean that they killed it. The court understood that concealment was not conclusive evidence to suggest that the mother killed the child. This is ultimately why North Carolina and many other states abandoned the Jacobian law that stated that concealment proved the mother’s guilt. Despite the fact that the court had repealed this law, the act of concealment did influence the court decisions if the defense counsel could not prove that it was justifiable. The defense counsel in *State v Charity* failed to meet this standard and the court found her guilty of infanticide.³⁷

We Find the Defendant “Not Guilty”

Most of the women in nineteenth century North Carolina were found “not guilty” even when there was strong and compelling evidence to suggest otherwise.³⁸ In Susanna’s case, she had previously confessed to murdering her child by stating that she had murdered her child because “it would be happier out of the world than in it, where its mother had a hard lot, and it would have the same if alive.” Also, the “extreme violence” inflicted on the child which was evident through its horrific wounds was also compelling evidence to convict her for this crime.

³⁶ *State v Sarah (a slave)*, May 1831, Caswell County Criminal Action Papers 1831-1832, Folder: 1831, NCDAH.

³⁷ *State v Charity*, September 1830, Orange County Minute Superior Docket, NCDAH, 110.

³⁸ See cases *State v Elizabeth Beaver*, May Term 1811, Caswell Criminal Action Papers; *State v Hannah*, March Term 1836, Granville County Criminal Action Papers; *State v Nancy Trimble*, March Term 1814, Orange County Criminal Action papers; *State v Sally Paul*, March Term 1820, Orange County Criminal Action Papers; *State v Hannah Walker*, March Term 1822, Orange County Criminal Action Papers, NCDAH, for cases where the jury found the women not guilty.

However, she was acquitted. This was the same case for many of the women who were tried for infanticide, they were found to be free of all charges when the evidence suggested otherwise.³⁹

The trials' outcomes did not correlate with the evidence presented; therefore, it is obvious that something other than the law influenced the jurors' decisions. There were two cases in which the court initially found the defendants guilty for the crime. These women were Charity, the slave from Orange County and Sarah Jefferies; however, these women would also be pardoned or acquitted. These two cases prove the rule that the North Carolina court did not only take the infanticide law into consideration, however, there were additional factors pressuring the jurors to acquit, or in the case of Jefferies, to pardon the defendants.

After hearing the statements from both the defense and the prosecution counsel regarding Charity's case, a female slave indicted for infanticide, the jury entered the courthouse with a verdict on September 15, 1830. The jurors upheld the indictment, finding Charity guilty of murdering her female child, a felony punishable by death. After hearing the verdict, the counsel for the defense asked for a new trial and the judge allowed the defense to explain why there should be a retrial. The court called Charity, who was present at the proceeding, to the bar and asked if she wished to make a statement concerning why she should not be put to death. Silence fell upon the court room. Charity did not respond, declining the opportunity to object to the jury's verdict. The defense counsel's rule to show cause was discharged and the court denied a new trial. The court upheld the jury's verdict and the judge proceeded by explaining the punishment.⁴⁰

The court ordered that on October 15, 1830, the county's sheriff was to take Charity and transport her to the place of execution, where she was "to be hanged by the neck until she be

³⁹ Finkelman, "Report of the trial of Susanna a colored woman," 260.

⁴⁰ *State v Charity*, September 1830, Orange County Superior Court Minute Docket, September 1830, NCDAH.

dead.” David Craig, Charity’s master, was present at the proceeding and heard the juror’s verdict and the sentence that accompanied it. Upon hearing the court decision that condemned his slave to death, Craig pleaded the Supreme Court for an appeal.⁴¹

Earlier, before the verdict had been issued and before the court hearing was concluded, the presiding judge had denied Craig the opportunity to testify in court. According to the judge, with the prosecution concurring, the master of the slave had a “direct interest” in the slave and the court decision.⁴² The master was therefore likely to mold his statement to ensure his slave’s liberation. Therefore, since the defense counsel was not permitted to present Craig as a witness, they objected the use of Craig for the prosecution declaring that the “master was unwilling and could not be compelled to give testimony.” The defense counsel doubtlessly made this objection to avoid any harm that would be brought to the defendant’s case through Craig’s statements for the purpose of building the prosecution’s case.⁴³

However, upon receiving Craig’s petition, the Supreme Court issued a writ that overruled the lower court which had declared that the master could not be submitted as a witness for the defense counsel. Judge Ruffin of the Supreme Court stated that since the rights of the slave and the master are woven and interconnected it was impossible to “restore him his property, without yielding her another trial for her life; nor reverse the judgement for the costs, without reversing it altogether.” The court ultimately decided to comply with the master’s wishes and grant Charity a new trial “because of the improper admission of the evidence of the master being over ruled.” Craig was then taken and examined as a witness for the new trial.⁴⁴ On Thursday, March 17 1831, the Superior returned a new verdict and found Charity “not guilty.”

⁴¹ *ibid.*

⁴² *State v Charity* 13. N.C. 543 (N.C. 1830)

⁴³ *State v Charity*, September 1830, Orange County Superior Court Minute Docket, NCDAH.

⁴⁴ *State v Charity* 13. N.C. 543 (N.C. 1830)

As depicted, Charity was originally found guilty of infanticide; however, after David Craig gave his testimony, the jurors changed their minds and ruled that Charity was innocent. There was only one difference between the new trial and original trial and that was Craig's testimony. All of the other witnesses' testimonies were the same as heard in the first trial. Also, Craig's testimony did not offer any new evidence. The women that testified had established that the child was born alive and believed that the child "appeared that it might live." So what was it about David Craig's testimony that influenced the jurors to ultimately change their mind? I argue that they changed their mind in order to please Craig, the master. David Craig demonstrated to the court that he did not support the decision of the court and did not want his slave hung when he repealed to the Supreme Court. Therefore, the only new evidence that was presented to the jurors in the new trial was that the master did not want Charity to be put to death.⁴⁵

The Superior courts' juries consisted of only men. Some of these men could have been slave owners as well and therefore sympathized with Craig's situation, especially since Charity was his only slave. Further, the jury also could have changed their mind not necessarily out of sympathy but in order to support the very foundation of the slave system. In *State v Mann*, a case that was argued in North Carolina's Supreme Court a year before Charity was brought to trial, the judge ruled that North Carolina courts were "compelled to express an opinion upon the extent of the dominion of the master over the slave in North Carolina." Judge Ruffin continued by stating that "the end is the profit of the master" and that "this dominion is essential to the value of slaves as property; to the security of the master, and the public tranquility, greatly dependent upon their subordination. . ."⁴⁶ The Supreme Court essentially ruled that the wants and the

⁴⁵ *State v Charity* (a slave), September 02, 1830, Orange County Slave Records no date, 1783-1865, CR 073.928.8, folder labeled: 1825-1841 (Broken series), Orange County Miscellaneous Records, NCDAAH, testimony of Polly Chuck.

⁴⁶ *State v Mann* 13 N.C. 263 (N.C. 1829)

master's security should be the court's priority. Charity's new trial's decision is in agreement with the Supreme Court ruling. Therefore, the jurors in the cases for infanticide where enslaved women served as the defendants had the additional pressure to acquit the women not because they found the women innocent but acquitted them to preserve the institution of slavery.

In *State v Jefferies*, the court also had originally found Jefferies guilty for murdering her infant. The defense counsel moved for a new trial because "the evidence proved, if the child had been killed by the mother, the manner of the death was different from that charged in the indictment, and was produced by blows, and not by choaking and strangling." The Supreme Court overruled the defense's reason and upheld the Superior Court's decision. Jefferies was placed in jail to await her execution date.⁴⁷

Sarah Jefferies' story and struggle for liberation did not end there. In March 1820, individuals in the community began to petition the governor to pardon Sarah Jefferies and similar to Charity's case, the people's reasoning had nothing to do with the infanticide law and what must be proved in court to acquit her. The first petition was signed and sent to the governor by the twelve jurors that had convicted Jefferies. They stated "that the child of the said Sarah was not born alive, that if it had been, she was too affectionate of a mother to have offered violence for it herself." Another petition, which was signed by thirty seven additional names, claimed that Sarah's "verdict was contrary to evidence." The prisoner had given birth to many children before and "they have no death." They further stated that their confidence was further strengthened by the "dying declaration of the prisoner, made since her trial and at a time, when in sickness," she believed that she was going to die.⁴⁸

⁴⁷ *State v Jefferies* 7 N.C. 480 (N.C. 1819)

⁴⁸ Governor's Papers, volume 49.3, John Branch February 8th –November 28th, petitions on page 500-501, 513-514, NCDAH.

The individuals in these petitions did not attempt to obtain a pardon for Sarah Jefferies by showing that the prosecution failed to meet the three standards needed to convict the mother of infanticide. Instead, these individuals pressured the governor to pardon Jefferies because they realized that she was an affectionate and nurturing mother who could not have killed her child. As discussed in the first chapter, the southern general public believed that infanticide was only practiced by mothers that were considered to be unfit. Therefore, when the jurors realized that the mother was nurturing and caring, they petitioned the governor to pardon her in order to preserve the southern definition of a true woman and mother.

In another petition, a man by the name of A.D Murphey suggested “that there was no satisfactory proof that the child was born alive.” He further stated that the jury formed their decision based on the “opinions” of some women. These opinions were a “matter of presumption and the contrary presumption appeared to me to be the strongest.” The evidence for the contrary presumption was that the world could deduce “nothing” that would influence a mother “to destroy her child.” Murphey’s remarks, unlike the jurors, did try to show that the prosecution failed to prove that the child was born alive; however, the contrary evidence he offered was not concrete evidence to prove that the mother did not kill her child.⁴⁹

Murphey continued by stating that Sarah Jefferies “has literally become a subject of pity.” She has “suffered in prison” from two winters. Individuals that had visited her in prison claimed that “her health is waning.” Murphey, with the jurors concurring, claimed that by keeping her imprisoned, the governor was “denying” her the time she could be spending with her family, all of whom were “dependent upon her labor for support.” The petitions were pressuring Governor John Branch to pardon the women, not because the community believed her to be innocent, but because they wanted the governor to uphold the values and the customs of the

⁴⁹ Governor’s Papers, volume 49.3, John Branch February 8th–November 28th, petitions on pages 356-357.

Southern state.⁵⁰ On May 19, 1820, John Branch stated that “for satisfactory reasons” he pardoned Sarah Jefferies and commanded Caswell County to notice this pardon and act accordingly.⁵¹

Conclusion

Nineteen century North Carolina courts had to meet certain standards to prove that the mother was guilty of infanticide. However, in most cases where it seemed that the prosecution did meet these standards, the jurors were still reluctant to convict the mothers. Therefore, factors outside of the law must have pressured the jurors to acquit the women for this crime. Laura Edwards in her work entitled, *The People and Their Peace*, argue that the southern courts’ “point was to restore order” and not necessarily to protect individual rights.⁵² This is what the jurors attempted to do when they acquitted the women. As exhibited by Charity and Jefferies’ case, the court did so by reinforcing the slave system, patriarchal system, and the southern idea of motherhood and womanhood. In Murphey’s petition for Jefferies, he stated that issuing a pardon would be “gratifying to many,” implying that the only way in which the governor could restore order was to pardon Jefferies.⁵³

Southern courts vindicated the women in order to support their beliefs and customs. Chapter one explained that groups in the nineteenth century: abolitionists, pro slavery activists, northern and southern politicians reported infanticide cases in way to promote their principles, whether that was slavery, the patriarchy system, or the definition of a true southern woman. Therefore, the courts’ decisions supported American culture. In particular, North Carolina courts

⁵⁰ :ibid.

⁵¹ John Branch, Governor’s Letter Book 1817-1820, volume 23.2, (May 19, 1820), 301 NCDAH.

⁵² Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009)102-103.

⁵³ Governor’s Papers, volume 49.3, John Branch February 8th –November 28th, petitions on pages 356-357.

upheld the southern culture. And infanticide cases were used to reinforce the southern idea surrounding gender, race, and slavery. Infanticide instances, as demonstrated in this chapter, shed light on how these systems and social constructs were so deeply embedded in the South that they influenced law.

Conclusion

In July 2008, a 22-year old white woman named Casey Anthony was arrested in Orlando, Florida under suspicions that she had neglected her child, Caylee. The day before Anthony's arrest, Anthony's mother had dialed 9-1-1 and informed the police department that her grandchild had been missing for thirty-one days and her daughter would not reveal the child's whereabouts. When the police questioned Anthony, she explained that her nanny had taken her and she had not seen her child since June 12th of that year. She told the police that her nanny had called her since then and that she had spoken to her child. However, Anthony stated that the nanny would not tell her where she had taken her daughter.¹ Subsequent evidence showed that Anthony's statements had been false. Her nanny did not have her daughter, and Anthony even lied about her place of employment. When Caylee's remains were discovered in a wooded area less than a mile from her house, the investigation became a child-murder case.

During this investigation and the trial, Casey Anthony became the "most hated woman in America."² News of her case spread across the country like wild fire and the public condemnation was so widespread that a judge ordered the trial be moved to Clearwater instead of Orlando to secure an impartial jury. Americans across the nation watched the case unravel on their screens and learned of inconsistencies in Anthony's testimony; they heard the witness testimonies and saw when new evidence was presented in court. Most Americans were sure that the jury would return a guilty verdict. However, to their and the prosecution's surprise, the court found Casey "not guilty" for the serious charges of first degree murder and child neglect. The court had only found her guilty for four misdemeanors on the grounds that she had provided false information to law enforcement officers.

¹ Jean Casavarez, "What Life is Like for Casey Anthony" *CNN.com*, July 4, 2014.

² *Anthony v State*, District Court of Appeal of Florida, Fifth District, No.5 D11-2357, the decision was made on January 25, 2013. In this case, Anthony attempted to appeal her conviction, her four misdemeanors.

Casey Anthony's case demonstrates that child-murder is still being practiced today. Her case also illustrates that like nineteenth century Americans, there is a universal repugnance for the act. In addition, Anthony's case has many similarities with nineteenth century infanticide cases. In her case, like most of the nineteenth century infanticide instances, Casey Anthony was found "not guilty" of murdering her child even when the evidence suggested otherwise. Also, like her nineteenth century predecessors, Anthony was a young and single woman.

Between 2008 and 2011, Anthony's notorious child-murder case was talked about by everyone. This is another aspect that was similar to some of the nineteenth century infanticide cases, the size of the community that had a direct interest in the outcome of the case. In many nineteenth century infanticide cases, influence was limited to the local community. However, in cases like Margaret Gardner's, the national community got involved, shaping both the case's public portrayal and outcome. The diverse debate over infanticide in the antebellum supported distinct political agendas as well. For example, northern abolitionists shaped their reports of child-murder to show the horrors of slavery; enslaved women often felt that they did not have choice and the circumstances of slavery compelled them to perform this "unnatural" act. At the same time, proponents of slavery used infanticide by enslaved people and free women of color as evidence that blacks were innately evil and therefore deserved a subservient position in society.

Also, in Casey Anthony's case, like in the infanticide cases discussed in this thesis, the prosecution had the hardest task of proving that she killed her daughter. The prosecution was unable to discern the child's time of death. The state tried to show that Anthony had dosed her daughter with chloroform, suffocated her with duct tape and dumped her body in a wooded area. However, the prosecution was unable to provide satisfactory evidence to prove this. They could not prove that Anthony was a bad and neglectful mother. This allowed the defense to show

doubt. The defense also justified Anthony's inconsistent testimony by stating that she was a product of sexual assault and was coached to lie her whole life and therefore could not expect anything different from her.³ These are the same tactics the defense counsels adopted in the nineteenth century courts. They attempted to justify the women's actions when the women concealed the infant's death.

There are similarities in the ways in which the cases are argued and in some cases why the court would return a not guilty verdict. Ultimately, the prosecution could not prove that Anthony was a bad mother, which allowed her to walk away unscathed. This demonstrates that in contemporary cases of infanticide, the law is still influenced by modern thought of gender and motherhood. Cheney Mason, one of Anthony's defense attorneys, recalled that when he first met Anthony he thought that "this can't be" based on her looks. He described her as being small and childlike, characteristics, he conceived, as being unlike a murderer. It was after this meeting that Mason decided to join the defense team pro bono. In the nineteenth century, Sarah Jefferies of Caswell County was pardoned for infanticide in 1820 because the community, with the governor agreeing, believed that her behavior suggested that she was not a murderer. Therefore, American culture influenced law then and continues to do so today.

However, there are great distinctions between Anthony's case and the past infanticide cases. Anthony lived with her parents who were characterized as belonging to the working class. As discussed in chapter two of this thesis, the women who appeared in the court for this crime in the nineteenth century were of the poor class. Usually they did not live with their parents but on their owner's plantation and in the case of enslaved women, they lived on their master's plantation. Yet even though Casey Anthony's life differed in some ways from the defendants in

³ Lizette Alvarez, "Casey Anthony Not Guilty in Slaying of Daughter," *New York Times*, July 5, 2011.

the nineteenth century, her case is telling of American culture today and how courts allow preconceived definitions of social constructions to influence law.

Casey Anthony's case took place approximately two hundred years after most of the infanticide cases discussed in this thesis. Yet, like nineteenth century infanticide instances, infanticide cases in the twentieth and twenty first centuries still provide a rich source for understanding broader questions about American culture. This thesis has demonstrated that infanticide cases can be used to understand race, slavery, gender and law during the nineteenth century. It showed how women were influenced by a variety of circumstances—including slavery, economic instability, poverty, or sexual exploitation—in their decision to murder their child. It also illustrated how diverse populations viewed and understood slavery, motherhood, womanhood, and race in the antebellum period and their perceptions of infanticide were influenced by their own beliefs.

In contemporary cases, women are being influenced by their circumstances when they decide to kill their children. In July 2015, a newborn baby was found in a dumpster in Kentucky. The female infant was only a few hours old when it was found. The baby was transported to the hospital upon discovery and the doctors were able to return the baby to a stable condition. Her mother was fifteen years old and was from a poor neighborhood. Her young age and limited options could have influenced her to abandon her newborn. Similar to many poor white women in the nineteenth century, the mother probably did not have the means to care for a newborn. Like the women in the antebellum era, the mother in this case was not married; she was also very young and economically unstable. In 2012, a 22- year old, Brittany Cole, was accused of arguing with her child's father about how she was no longer able to care for her son. She later disposed of him in a dumpster. In the antebellum era, the women were influenced by their

circumstances when they decided to dispose of their children. And contemporary infanticides demonstrate that this is a long standing pattern; women are still being motivated by their economic status and allowing their circumstances to influence their decisions. In the early nineteenth century, poor white women did not want the extra responsibility. This was true for enslaved women and free women of color. A child was at times considered an unnecessary burden and they therefore chose to murder their children.⁴

Today, infanticide is not confined to America, but it is a crime practiced worldwide. In May 2013, Evan Grae Davis, a documentary filmmaker, spoke on his latest work, “Its a Girl,” which explored gendercide in China and India. Davis argues that over 200 million women are “missing” from the world population because of this systematic destruction of a gender group. Through selective abortion and post-natal infanticide, those two countries eliminate more girls each year than are born in America. A woman from Southern India said that when she has a daughter, she strangles it right after it is born. She has killed eight of her female infants. However, when she discusses these killings, she does not display any remorse or show that she is conflicted by her action; this is because she knows that her babies were better off dead than alive in her impoverished village.

Infanticide cases therefore provide a way to understand gender roles as well as the rate of social relations and development in other countries today. Males are preferred because they are the ones that work and take care of their elderly parents. Women in countries like India are married off and in most cases families are forced to pay a dowry for their daughter’s marriage. Therefore, females are viewed more of a liability and males are preferable, especially when the families are poor, which is the case for most of the families in India and China that practice

⁴ David Moye, “Brittany Cole Accused of Dumping 9-Month-Old Child in Dumpster,” *Huffington Post*, July 10, 2013.

infanticide. In China the one-child policy is disastrous for female infants. Similarly to India, Chinese prefer males to females because sons have been traditional viewed as more valuable than daughters. There are forced abortions in China. These women are forced to abort their children and even undergo forced sterilization. However, instead of undergoing those traumatic experiences, women adopt the practice of infanticide where they determine who lives and who dies.

Scholar Nancy Scheper-Hughes states that infanticide is a “survival strategy,” a strategy that is adopted to insure a family’s future. Families that are poor and do not have many options to prosper have to invest in their “best bets” and disregard the rest. This is what families in India and China are doing when they choose to murder their daughters; they are responding to their circumstances. The women and men who are practicing infanticide are ultimately products of the environment that they live in. The women in the nineteenth century were also products of their environment.⁵

Enslaved women, free women of color, and the white women responded to their limited political, economic, and social mobility. They implemented their “survival strategy.” Many of the white women suspected of infanticide in the nineteenth century were poor servants that did not have the means or the support to raise a child. Therefore, they took action and murdered their infants to avoid the additional responsibility of taking care of them. The same was also true for black defendants, both enslaved and free. A child would be a burden for enslaved women because even though enslaved women were viewed as property and did not the ability to own any property themselves, they were still expected to take care of their children.

⁵ Nancy Scheper-Hughes, *Child Survival: Anthropological Perspective on the Treatment and Maltreatment of Children* (Boston: Massachusetts, 1987) 128.

There are distinct differences from the infanticide instances today and the infanticide instances in the antebellum era. However, like in early America, the instances today can be used to shed light on different cultures, the social and political power women are able to exercise. In doing this, infanticide instances illuminate some of the injustices and the problems that still exist in the world today. Many women in America and in countries worldwide do not have access to reproductive sources and abortions. Women are being forced to kill their own children because they believe it is their only choice because their rights are still being withheld by men and the government. Women's bodies and sexuality are still being controlled by society and tradition. Infanticide instances, whether it took place in the antebellum period or the twenty-first century, shed light on the poor, the powerless, and the individuals that are still being held under bondage.

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