

Tyra Pearson “Unnatural Mother”: Race,
Gender, and Infanticide in the
Nineteenth-Century South

On September 21, 1849, a slave named Mary left her quarters alone and in secret, found a place 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 having been born alive, healthy, and “in the peace of God and the state,” Mary assaulted her infant, killing him instantly. Later, after the child was discovered, 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 and beating it with “both her hands and feet.” She continued to inflict harm by casting and throwing the newborn “against the ground” and 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 and permitting her to return to her master's farm. The court's decision in this case mirrored the experience of many women who were

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 (NCDAH).

charged with infanticide in the nineteenth-century American South. Even when the prosecution provided sufficient evidence to secure a guilty verdict, courts repeatedly found women not guilty of infanticide.

Nineteenth-century conceptions of gender, race, and condition of servitude pervaded the legal system and shaped court rulings. Infanticide cases are revelatory sources for understanding race and gender in the antebellum era. Infanticide was legally defined as a crime that could only be perpetrated by women. Nineteenth-century infanticide cases therefore highlight the roles that women were expected to perform and provide rare instances of women transcending race and legal status in the South. This article argues that infanticide cases in the South allowed women to transcend societal limitations even as they reinforced gendered expectations of southern women. Such cases illuminate contradictions within southern patriarchy and the institution of slavery.

Infanticide cases in North Carolina illuminate the intersection of race, gender, slavery, patriarchy, and the law. Historians have studied infanticide in the South, but primarily in the eighteenth century. One of the earliest works on this subject was Peter Hoffer and N.E. Hull's study of infanticide in New England between 1558 and 1803, in which the authors analyzed data in order to understand the dynamics that caused women to murder their own children. In searching for those influences, Hoffer and Hull strove to understand why courts acquitted more women in the eighteenth century than they had in earlier periods. The authors believed that intricacies of the law could explain these changes and did not pay much attention to the women themselves.² An analysis of nineteenth-century cases in the South shows that the pattern of acquittal outlined by Hoffer and Hull continued into the nineteenth century and was not confined to northern states.

More recent scholarship has situated infanticide within the broad development of social constructs. In *Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America*, Felicity Turner argues that infanticide narratives were critical to the formation of ideas

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



The Modern Medea, a wood engraving of an enslaved woman who killed two of her four children to prevent them from living through the horrors of slavery. This was a common motivation for enslaved women who committed infanticide in the nineteenth century. (Image courtesy of the Library of Congress.)

regarding gender in the nineteenth century.³ A detailed examination of southern infanticide cases, however, shows that infanticide narratives, in conjunction with courts’ decisions, did not help form *new* ideas about race and gender, but reinforced existing notions. In the nineteenth century, southerners had already formed strong opinions about race and gender, as many historians have shown. Indeed, as early as the late seventeenth century, supporters of slavery had used conceptions of race to support and justify bondage. By the same token, the definition and responsibilities of motherhood and womanhood had been firmly established in the South before the turn of the nineteenth century.

By the nineteenth century, the “peculiar institution” of slavery was deeply embedded in the South’s way of life. Many scholars have discussed the experiences and distinct vulnerability of enslaved women in the South, who were subjected to the most inhumane treatments, including sexual exploitation, psychological abuse, and physical mistreatment. Furthermore, these women’s legal status limited their social mobility,

3 Felicity Turner, *Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America* (North Carolina: Duke University Press, 2010). For more recent scholarship on gender and race in the nineteenth-century American South, see Wilma King, “Mad’ Enough to Kill: Enslaved Women, Murder, and Southern Courts” In *The Journal of African American History* 92, no. 1 (Winter, 2007): 37-56.

the customs they adopted, and the ways in which they interacted with one another.⁴ Analysis of infanticide cases, in which enslaved women served as defendants, can demonstrate how these women drew upon their experiences to help them make choices in order to survive the depredations of “the peculiar institution.”

Infanticide cases also shed light on white women’s experiences in the nineteenth-century South. Many historians have discussed white women’s limited political and social power in the antebellum South, demonstrating that their rights and capabilities were solidified through marriage and their husband’s political and social power.⁵ White women’s experiences can be further understood 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 associations to slavery. Whereas some scholars have drawn a firm line between the daily lives of black and white women in the antebellum South, an examination of infanticide cases blurs that line due to similarities in the treatment of black and white women in North Carolina’s superior courts. Whether white or black, southern women were held to high standards of motherhood, making infanticide a highly gendered act that could transcend racial lines.

Court officials were reluctant to convict women for infanticide even when there was often satisfactory evidence to convict. The regularity of “not guilty” verdicts in these cases shows that factors outside the law influenced the court’s decisions to acquit women. In analyzing such verdicts, this article reveals that southern courts were pressured to make decisions that upheld entrenched southern social norms, the system of slavery, the patriarchal system, and conservative ideas of womanhood and motherhood. These findings expand on previous scholarship of women’s

4 For research 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); and 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.: 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).

experiences in the nineteenth century and show how ideas surrounding slavery and patriarchy were woven into the South's social, political, and legal fabric, shaping women's choices and experiences in the nineteenth century.

Understanding Women's Motives

In the nineteenth century, certain groups saw infanticide as a crime that could be shaped to serve their own political interests. Abolitionists and supporters of slavery alike understood that infanticide was an ideological issue that could be framed to reinforce their positions on the institution of slavery. In the North, they believed that women were motivated to commit infanticide by outside social and personal conditions. Therefore, the women's social circumstances often determined whether or not they garnered the sympathy of the court. For example, Northern abolitionists sympathized with enslaved women who committed infanticide in the South because they believed that the institution of slavery had forced these women into a position in which infanticide was the only option, thus demonstrating the extreme conditions of enslaved peoples. In the South, on the other hand, the press often used instances of infanticide as proof of black moral and psychological inferiority, using the cases to justify slavery instead of rejecting it.

Reports on infanticide in the antebellum South also reinforced the definition of motherhood and womanhood—namely, the idea that it was women's responsibility to care for children. Sociologist Marci Littlefield claims that the years 1820 to 1860 represent the “cult of the womanhood,” a distinct period in which motherhood was the supreme moral role for women. Therefore, when an infant was found dead, southerners concluded without much evidence that the mother was responsible for killing the child, regardless of intent, because it was her responsibility to take care for it.⁶ Men were rarely indicted for infanticide. Even when men were indicted, newspapers shaped the narrative in a way that justified the man's actions or suggested male innocence in some way. Infanticide was viewed not only as a racial crime but also a gendered one. Infanticide was deemed a rejection of one's womanly duty and, therefore, an “unnatural” act.⁷

6 Marci Bounds Littlefield, “Black Women, Mothering, and Protest in the 19th century American Society,” *The Journal of Pan-African Studies* 2, no. 1 (November 2007): 53-61.

7 Edward Pessen, “How Different from Each Other were the North and the South?” *American Historical Review* 85, no. 5 (1980): 1123; Turner, *Narrating Infanticide*, 104.

These diverse social and political perceptions of infanticide point to the specific social positions of enslaved and white women in the antebellum South. North Carolina infanticide cases show that the patriarchal system and the southern definition of womanhood forced black and white women into similar situations in which infanticide seemed necessary or appropriate. The women who appeared in North Carolina courts for this crime understood the limits of their power under the systems of patriarchy and slavery. These restrictions are one explanation for infanticide: women did not want their children to be subjected to the cruel and inhumane experiences that they had been forced to endure. These women did not want to raise a child who would be equally powerless and unable to change their position in society. They felt infanticide was their only choice.

During the nineteenth century, the Southern understanding of womanhood did not apply to enslaved women. In southern states, many whites defined a true woman as one who was virtuous and moral, but in a way that was identified with whiteness. Southern whites viewed enslaved women as property, making them doubly vulnerable and disadvantaged in courts. Free women of color who appeared in the courts for infanticide were similarly limited in their mobility and political power.

Although white women had more social mobility and freedom than enslaved women, white defendants in these cases in North Carolina were usually poor, which similarly limited their social power. Like enslaved women and free women of color, these white women were socially and politically handicapped, restricted as they were by their economic circumstances. Yet, unlike black defendants, traditional visions of womanhood applied more readily to the white women and thus posed distinct challenges to these notions of proper femininity.

In the nineteenth century, pregnancy presented a host of problems for single women in the South. All women, despite their social standing and race, were responsible for taking care of their children during this era. However, vital differences based on race, and legal and social status existed, affecting women's motivations for committing infanticide. Free women charged with infanticide were generally young, single servants

who concealed their pregnancies throughout the entire term.⁸ For enslaved women, child-bearing and pregnancy had a unique implication: exposing their children to slavery and its associated physical and psychological abuse. Many enslaved women felt that it was their obligation to protect their children from these traumas. Free women of color were similarly economically handicapped, discriminated against, and subjected to harsh treatments due to their racial status, which resulted in similar motivations for infanticide despite these women's legal status.⁹

While most white women charged with infanticide lacked this motivation, their lack of social and political mobility in southern society could pose other problems. In her discussion of sex in antebellum America, Nancy Isenberg argues that white women were "aliens" in the antebellum South because their citizenship was defined by their husbands'. According to Isenberg, white women in the South did not have the ability to control and secure their child's health, disclose their opinions on the raising of the child, or control their own lives—even in terms of childbearing. Women who became pregnant out of wedlock exacerbated these gendered concerns. For Elizabeth Beaver, Sally Paul, Patience Rye, Nancy Trimble, all poor white single women indicted for infanticide in antebellum North Carolina, a bastard child presented a series of issues for them. An illegitimate child could tarnish the woman's reputation, due to a general scorn for bastardy, and become an additional financial burden for poor white women.¹⁰

Openly giving birth to and raising a child was simply not an option for many enslaved women, freed women of color, or white women in the nineteenth-century South. Despite differences in legal status and race, most southern women had similar motivations for committing infanticide. Enslaved women were motivated to kill their children because of their experiences in slavery. Freed women of color similarly were pushed to kill their children for reasons of racial discrimination. White women did so in an attempt to conform to the idea of a true southern woman and to

8 *King v Allerton*, 1761, New Jersey Supreme Court Case, number 20303, New Jersey State Archives (NJDSA); *State v Elizabeth Beaver*, May 1811, Caswell County Criminal Action Papers 1810-1811, NCDAAH; *State v Rianna Day*, March Term 1849, Orange County Criminal Action papers 1848-1849 CR 073.326.48, folder labeled: 1849, NCDAAH. This was an inquest initiated by William New and David Anderson.

9 Felicity Turner, *Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America* (Durham, NC: Duke University Press, 2010), 82.

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



Five generations of slaves in Beaufort, South Carolina. Since slavery was an inherited status in the nineteenth-century South, many enslaved women committed infanticide so that their children would not have to endure the horrors of slavery. (Photo courtesy of the Library of Congress.)

rid themselves of a financial burden. Infanticide therefore linked the most oppressed persons under slavery and patriarchy in the nineteenth century. But despite the pervasiveness of slavery and patriarchy, black and white women were consistently found “not guilty” for infanticide despite overwhelming evidence that appeared to prove their guilt. In the legal arena, these women were uniquely able to transcend widespread limitations that affected women across the South.

Understanding Infanticide Through the Law

Infanticide cases were unique among murder trials in the nineteenth century. Prosecutors had to prove three conditions before the jury could issue a guilty verdict: that the defendant was the mother of the child, that the child was born alive, and that the mother committed the crime. Whereas homicide defendants only received the death penalty in certain cases, the punishment for infanticide in North Carolina was death by hanging.

Identifying the mother was generally not a difficult task. Women sometimes confessed to bearing the child, as was the case with Charity, a slave from Orange County.¹¹ In other cases, jurors and the courts identified the mother through the help of other witnesses, usually other women who had daily interactions with the defendant. These women would examine the suspected mothers, usually by squeezing their breast to produce milk, which demonstrated that the woman had borne a child. The defense counsel rarely made arguments against such claims.¹² In contrast, determining whether or not the baby was born alive and if the defendant committed the crime was much harder to prove given the defendants' tendency to conceal their pregnancy and give birth in secret.

Legal definitions of infanticide in the United States originated in the early British legal tradition. In the seventeenth century, British courts categorized infanticide as murder, defining it 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, infanticide had one additional characteristic that set it apart from other

11 *State v Charity (a slave)*, September 2, 1830, Orange County Slave Records no date, 1783-1865 broken series, folder labeled: 1825-1841, CR 073.928.8, Orange County Miscellaneous Records, NCDAH. For infanticide cases where an enslaved woman admitted to being the mother, 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 a case where a white 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; and *State v Jefferies and Betsy Combs*, November 1818, Criminal Action Papers, Caswell County (NCDAH).

12 *State v Esther (a slave)*, fall term 1833, Records concerning slaves and free persons of color, NDAH. For two infanticide cases where enslaved women did not admit to having their child, see *State v Sarah (a slave)* December 1819, criminal action papers, Orange county, folder labeled: 1820, (NCDAH). In the sources for this article, most enslaved women and free white women of color initially denied being the mother, but later folded under questioning.

forms 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. The British Parliament made the act of concealing a (lifeless or living) child illegal and punishable by death in 1624, when it passed a statute known as the Jacobian law, which stated that a dead child was evidence of a woman's engagement in premarital sex, an act that was punishable by law.¹³

Though much of the American legislation on infanticide was taken from the British tradition, in nineteenth-century North Carolina the prosecution *did* have to prove that the mother intentionally committed murder and had not simply concealed a stillbirth. First, for the crime to be considered infanticide, the court had to provide evidence that the mother had a sound mind when she committed this act, by proving her ability to discern between "good" and "evil." Furthermore, the killing had to be considered "unlawful," meaning that the mother killed the child without "warrant or excuses." Therefore, it was imperative to discern whether the child was born alive or dead, especially after states did away with the Jacobian Law. In 1818, North Carolina deviated from the Jacobian Law, determining that the concealment of a deceased child would no longer serve as conclusive evidence to convict a mother of infanticide. The court ruled that the act of concealing a stillbirth would thereafter only be considered a misdemeanor.¹⁴

In the nineteenth century, infant mortality by natural causes was common, making infanticide even more difficult to prove. Infant death was assumed to be from natural causes, for example from exposure or injury during childbirth, until evidence was brought to a court suggesting otherwise. Therefore, in cases of infanticide, the proof of the child's livebirth fell entirely on the prosecution. Proving that the child was born alive was the hardest task because of the secrecy surrounding most relevant births. In rare cases, such as *State v Charity*, the prosecution skipped over this step. David Craig, Charity's master, explained to the court that the

13 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; *State v Joiner* 11 N.C. 250 (N.C. 1826) Supreme Court of North Carolina.

14 Ibid.

child was still alive and crying when he found it in the woods. Therefore, the child was shown to have been born alive and the prosecution only had to prove that Charity inflicted harm on her daughter by abandoning her, resulting in her death that night.¹⁵ Similarly, in *State v Hannah Walker*, evidence gathered from a midwife's testimony established that the child was born alive.¹⁶ However, in most instances, proving the child's live birth was a difficult step. If the prosecution failed to meet this standard, they would no longer have a case and the mother would be acquitted.¹⁷

When undertaking this vital step in infanticide cases, the prosecution had to prove that the child was born alive by demonstrating its capacity to "maintain a separate existence" from his mother.¹⁸ This was done by using medical evidence collected at the jury of inquests.¹⁹ The jurors and coroners usually did not collect medical evidence themselves, relying on women in the community, typically midwives and friends of the defendants, to do so. These women often appeared in court to prove that the child was born alive, making women crucial to the legal processes surrounding infanticide.

For example, 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 allegedly killed her child in secret.²⁰ A woman, Montgomery, stated that Mrs. Foller, a friend of hers, had requested that she accompany Mrs. Foller to Fanny Jefferies's house. When she arrived at the house, she saw "sufficient signs" that a child had recently been born there. Montgomery did not relay to the jury of inquest what those signs were, and the court did not

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

16 *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.

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

18 *Ibid.*,

19 In all infanticide cases, a jury of inquest, comprised of 12 men, went to the domicile where the mother resided to examine the child after the coroner had been informed that a person had died under unusual circumstances. However, because the coroner had to be informed of the incident, the inquest sometimes did not examine the child until many days after the discovery of the body. This procedural issue could present a host of problems for the prosecution. For example, in *State v Charity*, the coroner was not informed and did not summon a jury of inquest to examine the infant until after it had already been buried. Therefore, the coroner had to exhume the remains to conduct an examination, which potentially altered the result of the coroner's examination.

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

ask her to elaborate.²¹ The courts valued women's voices in infanticide cases to the point that their opinions were submitted as irrefutable evidence. This was true for both the defense and the prosecution. The defense did not cross-examine Montgomery to ask her what those signs were to test her expertise on the subject. That the prosecution and the defense counsel chose not to question the women on their medical knowledge demonstrates the centrality of women in this field of knowledge. Though women often occupied the political margins of southern society in the nineteenth century and rarely testified in court cases, infanticide cases represented one place in which they could take center stage.²²

Beyond the condition of the child, the period of gestation and age of the child when it died was an additional factor considered in infanticide cases. In *State v Jeffries*, Montgomery said that she went back a few days later to see Sarah's child. Reports had circulated that Sarah had recently given birth, even though on numerous occasions Sarah had dismissed this discussion as mere gossip. Montgomery stated that when she finally saw the child it had hair on its head and nails "so well grown as to project toward the ends of fingers."²³ In the nineteenth century, it was generally understood that once a child reached a certain age in the womb (generally six or seven months) it was fully capable of living outside of the womb because it had already developed the necessary organs to do so.²⁴ Demonstrating this knowledge and working to prove that the child was old enough to survive outside its mother's womb, Montgomery claimed that it was about seven months old and not younger than six months. She further claimed that she had seen "several children live and grow up not more advanced than this."²⁵ The prosecution used this testimony to show that the child was indeed viable and had the capacity to maintain a separate existence out of the mother's womb.

Even if the prosecution proved that the child was "viable" and had the capacity to live outside the womb, they still had to show that the child

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

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

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

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

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

was not stillborn, something that most women indicted for infanticide, including Sarah Jeffries, claimed. Considering the importance of proving the child's viability and life when securing a guilty verdict, women tended to say that their child was stillborn. Jefferies was no anomaly: like most women, she denied that the child was born alive.²⁶

In Jefferies's case, the state could establish that the child had developed enough to function on its own. Once it had achieved this, the prosecution used the rest of Montgomery's testimony to argue that the child was indeed born alive. While Jeffries had told Montgomery that the child was born dead, 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 [hanging] out [of its mouth]." This testimony was the lynchpin of the prosecution's argument. The court accepted that if the child had cried, then it must have been born alive, thus providing the "strongest evidence of the child being born alive" by the most current standards of medical science of that time.²⁷ Once the prosecution proved that the child had been born alive, the defense counsel had to call additional women to the stand to support Jefferies's claim that the child had been stillborn.

One of these women, Patsy Barrot, stated that she had gone to Fanny Jefferies's house three months prior to the child's death, to visit Sarah, who "was not pregnant" at the time. Furthermore, Barrot stated that Jefferies "fell down with a pail of water and was badly bruised" the night before the prisoner had supposedly given birth, to argue that the child had been stillborn due to injury. The defense used this evidence to claim that the child was not old enough to be considered viable and was instead born prematurely due to an injury.²⁸ Another witness, Franky Stephens,

26 For additional cases where the defendants claimed that the infant was not born alive, see "Report of the trial of Susanna a colored woman," June 1810, Schenectady New York, in Paul Finkelman, *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 1849, Orange County Criminal Action papers, NCDAH; and *State v Elizabeth Crabtree* September term 1821, Orange County criminal action papers, NCDAH; *State v Sooky Bishop*, March 1843, Orange County Criminal Action Papers 1843-1844, NCDAH.

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

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

supported Barrot's testimony. Both Barrot and Stephens helped the defense prove that the child was underdeveloped. Like the state's witnesses, the defense only called women to the stand in order to discuss the condition of the child and the prosecution did not cross-examine the female witnesses or question their knowledge of children and child birth. As witnesses, women were vital in every stage of the legal process.

Prosecutors proved in a variety of ways that infants were born alive. Sometimes, the prosecution would examine the color of the lungs. If the lungs were of a lighter color, it was believed that the child had breathed before dying. Doctors would sometimes weigh the lungs, often using the popular hydrostatic test, which required that the doctors submerge the lungs in water. If the lungs floated, then the child was assumed to have breathed and therefore had been born alive. However, tests like these were eventually abandoned when it was discovered that an infant's lungs could sink even when it was known to have lived.²⁹ Lack of advanced medical knowledge made it difficult to prove livebirth definitely, which may be why women's own experiences with childbirth was given such credence.

In some cases, when viability could not be proven through witness testimony or an examination of the development of a child's body, other indications could be helpful in securing a verdict. Visible wounds could suggest that the mother inflicted harm, which in turn proved the child's viability. In *State v Jefferies*, Mrs. Horton testified that she was the first witness to see the child because she was the one that retrieved it. She told the court that when she saw the child, the "skull was mashed in and broken." She added that the "ankle of one of the legs appeared to be broken." It was in the wrong position and was "bruised, black and discolored." The prosecution used this evidence to argue that some type of violence had been inflicted on the child, resulting in these injuries.³⁰ The prosecution provided similar evidence in *State v Charity*, during which a coroner cut open a child's head to find that the skull was "much fractured." In such cases, courts saw wounds as proof that the mother had injured the child in a

²⁹ Taylor, *The Principles and Practice of Medical Jurisprudence*, 323-385, 526.

³⁰ *State v Sarah Jefferies*, May 1819, Caswell Country Minute Superior Docket, NCDAH, testimony of Mrs. Horton.

way that had caused its death.³¹

Sometimes the defense responded to such evidence by insisting that a child's wounds came from birth itself. In the nineteenth century, childbirth was dangerous for both mothers and children. Infant mortality ran high, especially among enslaved people who had less access to medical care or supplies. Furthermore, the harsh treatments endured by enslaved women led to increased child mortality rates and poorer health overall. Enslaved women at times continued to work until their pregnancy no longer permitted them to do so, and they did not receive the necessary nutrients to ensure that they would give birth to a healthy child.³² Bruising, broken bones, or general poor appearance were thus often blamed on the conditions of childbirth. Therefore, the defense argued that many infants died from natural occurrences outside their mothers' control.

When marks of violence were not as visible, the prosecution would ask witnesses to speak on the mother's character and behavior in an attempt to demonstrate the potential for such violence.³³ In Sarah Jefferies's case, a 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 alleging that she was pregnant. She further stated that those people were wrong, that she "would disappoint them," and that if she did have another child, "nobody should ever know it." The prosecution used this evidence to prove intent rather than physical conditions.³⁴ Similarly, the prosecution argued that the defendants' contradictory answers proved her guilt. Jefferies at first denied having a child, only to later admit that it was "useless to deny it." Montgomery noted that Jeffries had given different answers about the age of her child and had left the house in tears. The prosecutors used this portion of Montgomery's testimony to argue that Sarah Jefferies was guilty of murdering her child. Her deceitful

31 *State v Charity*, September 2, 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, NCDH, testimony of Thomas Haddis. Haddis was the North Carolina state coroner from x to y.

32 Schwartz, *Birthing A Slave*, 135, 153, 207.

33 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.

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

nature, they insisted, was proof that she had tried to cover up her crime.³⁵

In bringing character witnesses, examining physical wounds, and accusing women of deceit, prosecutors tried to convince juries that defendants fell short of their motherly responsibilities. According to Mrs. Horton's testimony, Jefferies's dead infant had a "very dirty look as if it had been buried," with clay on its back and hips, and ants "running over it." Sarah's actions ran contrary to southern expectations of women as caretakers. The prosecution insisted that the defendant's supposed lack of morality and unpleasant personality indicated that she had killed her child. In *State v Charity*, the prosecution similarly used the inhumane and unusual burial site as evidence that the mother had killed her child. This argument was used by many prosecutors in nineteenth-century North Carolina. If the court decided that an infant had been inhumanely disposed of, it was indicative of the inhumanity of the mother and that she was capable of murder.³⁶

When no dead body was discovered, the prosecution focused solely on the mother's behavior to prove that the mother killed the child. In *State v Patience Rye*, the defendant—a single white woman from Richmond County, North Carolina—was indicted for infanticide even though the court was never provided with the child's body. During the trial, the prosecution first established through testimonies that Rye had a child, then listed the "circumstances to prove" that Rye was the murderer, most of which focused on her abnormal behavior. As proof of guilt, the prosecution stated that Rye "refused the company of her daughter" when she gave birth to her child, gave "contradictory answers," and knew she was about to give birth. Even when the prosecution could not prove that the child was born alive by actually examining the child or through eyewitness accounts, the state attempted to establish guilt through the mother's actions and moral character.³⁷ The defense often responded to the prosecution's accusations by showing that a woman's concealment of her dead infant was justifiable. Sarah Jefferies admitted that she had given birth to a child. When someone

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

36 *State v Jefferies*, May 1819, Caswell County Minute Superior Docket, NCDAH, testimony of Mrs. Horton; *State v Charity*, September 1830, Orange County Superior Court Minute Docket, September 1830, NCDAH.

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



Even when pregnant, enslaved women were forced to work on plantations in the South, which contributed to the high infant mortality rates among enslaved populations in the antebellum era. (Image courtesy of the Library of Congress).

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.”³⁸

Why were jurors so reluctant to convict women when the evidence was so compelling? Two infanticide cases, in which the defendants were initially found guilty but were pardoned or retried and later found not guilty, can help explain this paradox. The two cases demonstrate that jurors were influenced by factors beyond legal guidelines in making their decision to acquit women, focusing instead on factors pertaining to gender, race, and slavery.

The Public Weighs In

Even when women were found guilty of infanticide, the courts sometimes spared their lives due to pressure from the public. For example, the defense counsel in *State v Charity* failed to meet the standard of justifiable concealment and the court found her guilty of infanticide, a felony punishable by death.³⁹ The court ordered that on October 15, 1830, the county’s sheriff was to transport Charity to the place of execution, where

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

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

she was “to be hanged by the neck until she be dead.”⁴⁰ David Craig, Charity’s master, was present at the proceeding and requested an appeal in the North Carolina Supreme Court upon hearing that his slave had been condemned to death.

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. The master was 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 to the use of Craig for the prosecution, declaring that the “master was unwilling and could not be compelled to give testimony.”⁴¹

Upon receiving Craig’s petition, however, the North Carolina Supreme Court issued a writ that overruled the lower court. 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.” 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 examined as a witness for the new trial. On Thursday, March 17, 1831, the Superior Court returned a new verdict and found Charity “not guilty.”⁴²

Charity was originally found guilty of infanticide. However, after David Craig gave his testimony, the jurors changed their minds. Craig’s testimony was the only difference between the two trials: the other witnesses’ testimonies remained the same. Furthermore, Craig did not offer any new evidence. The women who testified had established that the child was born alive and believed that the child “appeared that it might live.” What was it about Craig’s testimony that influenced the jurors to change their mind? The most likely answer is that the jurors wanted to please Craig, the master. The only new evidence presented to the jurors in the new trial was the master’s displeasure with the original verdict.⁴³

40 Ibid.

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

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

43 *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, NCDAH, testimony of Polly Chuck.

These courts' juries consisted of only men, who might have sympathized with Craig's situation, especially since Charity was his only slave. The jury also might have changed its verdict in order to support the foundation of the slave system. In *State v Mann*, a case that was argued in North Carolina's Supreme Court a year before Charity's case, 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."⁴⁴ The Supreme Court essentially ruled that a master's desires and security should be the court's priority. Charity's new trial's decision is evidence of the impact of that ruling.

State v Jefferies also resulted in a pardon following an initial guilty verdict. 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 North Carolina Supreme Court overruled the defense's reasoning and upheld the superior court's decision. Jefferies was placed in jail to await her execution date.⁴⁵

In March 1820, individuals in the community petitioned the governor to pardon Sarah Jefferies. Much like the treatment of Charity's case, the people's reasoning had nothing to do with the infanticide law or legal burdens of proof, but instead focused on the mother's character. The jurors who had convicted Jefferies formed an initial petition to the governor. 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 37 additional North Carolinians, claimed that the "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 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.⁴⁶ The individuals in these petitions did

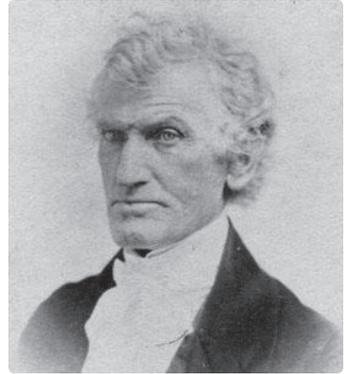
44 *State v Mann* 13 N.C. 263 (N.C. 1829).

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

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

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, they pressured the governor to pardon Jefferies because they believed that she was an affectionate and nurturing mother who could not have killed her child. Because the southern public believed that infanticide was only practiced by unfit mothers, evidence of a mother being nurturing and caring could result in public support through such petitions for pardons, which sought 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 argued that the jury formed its decision based on the “opinions” of some women, which were “matter[s] of presumption and the contrary presumption appeared to me to be the strongest.” Murphey continued by stating that Sarah Jefferies “has literally become a subject of pity” who had “suffered in prison” with “waning” health. Murphey and the other jurors claimed that by keeping Jefferies 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.”⁴⁷ Yet again, gendered societal expectations of women and mothers influenced public responses to infanticide verdicts. These petitions pressured Governor John Branch to pardon the women, not because the community believed she was innocent, but because they wanted the governor to uphold southern values and customs. Jefferies’s advocates believed that if a woman conformed to gendered expectations by embodying her maternal role and being an affectionate mother, she should not be punished.⁴⁸ On May 19, 1820, John Branch stated that “for satisfactory reasons” he pardoned Sarah Jefferies, and he commanded Caswell County



Thomas Ruffin served as the chief justice of the North Carolina Supreme Court from 1833 to 1852. Ruffin issued North Carolina Supreme Court rulings that allowed masters to testify on the behalf of their slave, because “the end is the profit of the master.”
(*Photo courtesy of the North Carolina Museum of History.*)

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

48 Ibid.

to notice this pardon and act accordingly.⁴⁹

While the burden of proof for so many infanticide cases lay heavily on the prosecution, the role of female witnesses and the lack of strong medical knowledge of childbirth permitted many prosecutions to “prove” that the accused women were guilty. Paradoxically, this proof relied both on society’s acceptance of women’s incontrovertible knowledge in the realm of childbirth and also on social perceptions of female immorality, often compounded by racial and economic perceptions. However, by relying on this very perception, other southern community members were able to overcome initial court decisions in order to save the lives of accused mothers.

Restoring Order

Nineteenth-century North Carolina courts had to meet certain standards to prove that a mother was guilty of infanticide. However, even when the prosecution met prescribed legal standards, jurors remained reluctant to convict mothers. Factors outside of the law pressured jurors to acquit women for this crime. In *The People and Their Peace*, Laura Edwards argues that the southern courts’ “point was to restore order” and not necessarily to protect individual rights.⁵⁰ As demonstrated by Charity’s and Sarah Jefferies’s cases, the court maintained order by reinforcing the slave system, the patriarchal system, and the southern idea of motherhood and womanhood.

Southern courts vindicated women in order to support their regional beliefs and customs. In the nineteenth century, abolitionists, pro-slavery activists, and politicians from across the nation reported infanticide cases in a way that promoted their principles, whether that was slavery, patriarchy, or the definition of a true southern woman. In this way, the courts’ decisions supported American culture. In the cases examined here, North Carolina courts upheld southern culture. Infanticide cases were used to reinforce southern notions of gender, race, and slavery. Cases of infanticide shed light on how these systems and social constructs were so deeply embedded in the South that they influenced law during the mid-nineteenth century.

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

50 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.