

Narrating Infanticide: Constructing the Modern Gendered State
in Nineteenth-Century America

by

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Dissertation submitted in partial fulfillment of
the requirements for the degree of Doctor of Philosophy in the Department of
History in the Graduate School
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ABSTRACT

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Abstract

“Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America” traces how modern ideas about gender and race became embedded in the institutions of law and government between the Revolution and the end of Reconstruction. Contemporary understandings of gender and race actually consolidated only in the aftermath of the Civil War, as communities embraced beliefs that women and African Americans constituted distinctive groups with shared, innate characteristics related solely to the fact that they were female or racially different. People then applied these ideas about gender and race to all arenas of life, including the law.

Yet understanding the roles of women and African Americans through universalizing legal conceptions of gender and/or race—conceptions that crystallized in law only in the wake of the Civil War—elides the complexity of the ways in which antebellum communities responded to the interactions of women, the enslaved, and free blacks with the legal system. My study’s focus on infanticide, a crime that could only be perpetrated by females, reveals how women—and men—of all races involved themselves in the day-to-day legal processes that shaped the daily lives of Americans during the early republic and antebellum periods. Communities responded to cases of infant death informed by understandings of motherhood and child mortality specific to that particular case and individual, rather than shaping outcomes—as they began to do so after the Civil War—based on broad assumptions about the race or gender of the offender. My conclusions are drawn from almost one hundred cases of infanticide and infant death

between 1789 and 1877 gleaned primarily from court records and newspapers in Connecticut, Illinois, and North Carolina. In addition, the study draws on reports of other instances from around the nation, as narrated in sources such as diaries, periodicals, newspapers, crime pamphlets, and medical journals.

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Acknowledgements

Writing is a solitary, at times extraordinarily lonely, endeavor. Completing a dissertation is, therefore, impossible to achieve without a veritable cheer squad of supporters, including family, friends, mentors, and colleagues. In my case, it has not mattered if they are located States side in Durham, North Carolina, or oceans away, in Melbourne, Australia. I have relied upon them all. Without these people, I know I could not have completed this dissertation.

First and foremost, my greatest thanks are to my adviser, Laura Edwards. Laura has always known when to push me intellectually—and there are definitely times when I needed a decent kick. Unless Laura had prodded me into applying to Duke University seven odd years ago (decent kick number one), I'd be a lot less self-disciplined than I like to think I am these days. Laura's ambitious commitment to writing books that people want to read, to crafting the absolutely perfect turn of phrase in every sentence that she writes, has served as an ongoing inspiration to me in my own work. Working with her has reminded me why I always wanted to be an historian. That's quite an achievement. My parents were wondering when I was finally going to figure out what I wanted to do with my life.

My committee members, Holly Brewer, Sarah Deutsch, Pete Sigal, and Priscilla Wald have provided me with the intellectually demanding and stimulating environment in which I needed to explore the parameters of this project. They have left me alone to

do my work, but stepped in when I needed their feedback, support, and advice. I have enjoyed working with and learning from each and every one of them.

Over the years, I have benefited from the feedback of numerous colleagues and friends at Duke, within the Triangle, and beyond. Particular thanks go to members of the Triangle Legal History Working Group, especially Jonathon Bird, Fahad Bishara, Mitch Fraas, John Hart, and Roman Hoyos who provided much-needed feedback on a very early draft of chapters one and two; Margaret Humpreys who shared with me her knowledge of medical history in the nineteenth-century United States, especially the history of abortion; Ed Balliesen who has provided valuable feedback on chapters one, two, and four of my dissertation in various iterations; Nina Dayton for comments she provided on an early version of chapter four at the American Society of Legal History conference in 2008 and the members of the audience at that same conference; Jim Schmidt for his ongoing interest in my work; and Cheryl Hicks for her comments on chapter six at the Race, Labor, and Citizenship Conference held in Charleston, South Carolina in March 2010 and members of the audience at that same conference. I also thank members of the Duke University Department of History with whom I have discussed and/or shared my work at various points in time: Eric Brandom, Katharine French-Fuller, Heidi Guisto, Cynthia Greenlee-Donnell, Treva Lindsey, Jacob Remes, Orion Teal, and Eric Weber. Finally, I offer special thanks to Kelly Kennington, who has been generous beyond compare with her own work, her time, and in her support as a colleague and mentor.

This dissertation could not have been completed without the financial support I received from various funding bodies including the Duke University Graduate School; the Duke University Department of History; the Anne T. and Robert M. Bass Endowment; the Newberry Library, Chicago; the William Nelson Cromwell Foundation; the Illinois Historic Preservation Agency; and the Illinois State Historical Society.

One of the reasons I became an historian of America was because of a cadre of Duke-trained PhD graduates in Australia. For better or worse they were responsible for almost everything I knew of American history before I landed on American shores in August 2004. Antony (Tony) Wood did not live to see me finish my PhD. I hope that if he had, he would have been proud. He was, as I have told many people, a terrible lecturer, always sprinting towards the end of his notes as the clock struck eleven and we all began noisily closing our books, and shuffling out towards the next class. But he took an interest in my work and he told me I was good at what I did. Maybe, he suggested, I might want to consider history as a career. The thought had never crossed my mind. Working with John Salmond at La Trobe was one of the great pleasures of my life, a pleasure sufficient to inspire me to return fulltime to graduate study and pursue my goal of completing a PhD in American history in the U.S. For supporting me in that endeavor and maintaining an ongoing interest in my career, I give my thanks to John.

There are friends without whom I could not have completed this. For Catherine in Australia (yes, you know who you are), thank you for making the trip to Durham, especially for spending twenty-four hours in Dallas airport to do so. Thanks also for the

phone calls, the news updates, and for helping me not to forget that Melbourne will always be where my heart belongs. Kristin has cooked for me, eaten with me, and shopped with me for as long as I have known her. In our old age, we have both mellowed and now we just go on allegedly athletic walks together. Mostly, we just catch up on gossip. It has all helped. And, finally, I could not have done this without Paula, the best friend a girl could wish for...along with Daisy, Ollie, Garrett, and Lucy. You know how great a friend you are. I don't need to spell it out for everyone else.

Last, but far from least, there is my family. I had no idea what I was giving up when I left. But I think they did. They all still let me go anyway. To Megan, Gavin, Andrew, Joan, Samuel, Josephine, and the little one on the way, thank you for always backing me one hundred and ten percent. Without y'all cheering in the background as loudly as you do, there is no way I could have done this. And to my parents, well, I am finally at a loss for words. Thank you seems insufficient to express the depth of my gratitude for your support and the breadth of my love for you both. But thank you is all I have. Thank you for letting me go.

List of Abbreviations

AMA	American Medical Association
CSA	Connecticut State Archives
EIU	Eastern Illinois University
GLB	Governors' Letters Books
IRAD	Illinois Regional Archives Depository
ISA	Illinois State Archives
NCDAH	North Carolina Department of Archives and History
RG	Record Group
SIU	Southern Illinois University
UIS	University of Illinois at Springfield
WWA	Working Women's Association
WIU	Western Illinois University

Introduction

In late January 1856, the pregnant slave woman Margaret Garner fled to Cincinnati, Ohio with her husband and four children. Discovered by her Kentucky owner, Archibald Gaines, Garner killed her infant daughter rather than see the child returned to slavery. The ensuing legal cases, in which Gaines sued for custody and Garner was returned to Kentucky under the 1850 Fugitive Slave Act while the Ohio State Attorney prosecuted her for murder, generated a war between federal and state authorities, a gesture towards the battle between state and federal rights that was to shatter the nation within the next decade. But in 1856, a more compelling reason for Margaret Garner's notoriety was the fact that her actions reinforced abolitionist beliefs about the horrors of slavery: slavery was so horrible that it inspired enslaved mothers to kill their children and, unless abolished, would infect free white mothers with the desire to kill as well. The evidence, however, did not support this connection between slavery and infanticide. As newspapers, court records, and other documentary sources from the first half of the nineteenth century indicate, abandoned, dead white infants regularly turned up in America's cities, towns, and farms. Yet not all these deaths received the same attention—or interpretation—as those of Garner's infant daughter.¹

My dissertation, "Narrating Infanticide: Constructing the Modern Gendered State in Nineteenth-Century America," traces how modern ideas about gender and race became

¹ For the earliest historical analysis of the Margaret Garner case, see Julius Yanuck, "The Garner Fugitive Slave Case," *Mississippi Valley Historical Review* 40:1 (June 1953): 47-66. For more recent discussions, see Mark Reinhardt, "Who Speaks for Margaret Garner? Slavery, Silence, and the Politics of Ventriloquism," *Critical Inquiry* 29 (2002): 81-119; and Steven Weisenburger, *Modern Medea: A Family Story of Slavery and Child-Murder from the Old South* (New York: Hill and Wang, 1998).

embedded in the institutions of law and government between the Revolution and the end of Reconstruction. Instances of child murder, including many like the one committed by Margaret Garner, prompted the construction of narratives within local communities as local people—women, men, enslaved, and free—sought to understand infant death, and, more importantly, the motivations of the mothers who murdered their children. As Americans negotiated the unstable social, political, and legal terrain of the new country they had created, narratives of infanticide provided them with a way to explore questions about the responsibilities of women within the emerging republic. In the post-revolutionary period, these explorations of women's roles provided for fluidity and flexibility in responses to infanticide, a crime with which only women could be charged, and ideas about the extent and importance of female involvement in the community's legal and governance systems. People remained open to assessing women's culpability and contributions on the basis of individual character and reputation, rather than determining guilt or innocence on the basis of a universal category such as gender. But, the modernization and consolidation of the American nation-state in the aftermath of the Civil War challenged these ideas. During Reconstruction, communities embraced beliefs that women constituted a distinct group with shared, innate characteristics related solely to the fact that they were female. People then applied these universalizing conceptions of gender to all arenas of life, including the law.

Post-Revolutionary Americans understood the legal status of women in a very different way than their post-Civil War counterparts. Rather than marginalizing women from the courtroom because they were women, Americans in the early republic and

antebellum periods encouraged and relied upon female involvement. Indeed, understanding women's role solely through universalizing legal conceptions of gender—conceptions that crystallized in law only in the wake of the Civil War—elides the ways in which antebellum communities responded to women's interactions with the legal system. These conclusions are drawn from almost one hundred cases of infanticide and infant death between 1789 and 1877, gleaned primarily from court records and newspapers in Connecticut, Illinois, and North Carolina. In addition, my study draws on reports of other instances from around the nation, as narrated in sources such as diaries, periodicals, newspapers, crime pamphlets, and medical journals.

My study's focus on a crime that could only be perpetrated by females reveals how women of all races and classes involved themselves in the day-to-day legal processes that shaped the daily lives of Americans during the early republic and antebellum periods. The enslaved testified at inquests, free blacks informed of crimes, and women spoke with authority about the blood and groans of birth. More importantly, however, communities responded to cases of infant death informed by understandings of motherhood and child mortality specific to that particular case and individual, rather than shaping outcomes based on broad assumptions about the race or gender of the offender. The inclusiveness of local legal processes extended not only to participants, but also to those accused.

Swirling amongst these community-based narratives of infanticide were nationally circulating stories of infant death, such as those generated in fiction, periodicals, abolitionist material, and religious tracts. Although traces of these narratives

are barely detectable in the tales that communities wove, such material was both widely read and enormously popular in the early republic and antebellum America. By associating particular behaviors and characteristics with women, such sources therefore played a critical role in contributing to the formation of social and cultural ideas about motherhood. As these constructions of women were rearticulated and re-circulated in literature throughout the nineteenth century, they slowly reinforced as universal the idea that women acted in particular ways because of characteristics that were innate, rather than prescribed. These same beliefs about women's status then became embedded in the law after the Civil War.

My research demonstrates that after the Civil War, communities became less tolerant of women who committed infanticide. While this trend was most pronounced in the South, particularly in relation to African-American women, the pattern was consistent, I argue, throughout the nation. Infanticide became a crime unrelated to particular, contingent circumstances. Instead, legal practices subtly shifted, reflecting Americans' developing beliefs that women committed the crime due to presumed innate characteristics that defined all women: because of their gender. This belief correlated with larger changes that unfolded during Reconstruction which not only extended the cultural reach of universalizing notions of race and gender, but also embedded them more firmly within law and government. Such constructions aided in centralizing state control over the lives of all citizens, not just women and African Americans. Central to this consolidation of state-based power was also the abandonment at the local level of beliefs about the individuality of criminal offenses committed by women. People then extended

these ideas about universalizing legal categories to everyone within the community, both men and women. In doing so, Americans contributed to the process that embedded newly developing legal constructions of gender and race within the fabric of the emerging nation-state.

My project analyzes the handling of infanticide cases within local communities to consider larger questions about gender, race, and state formation in nineteenth-century America. In doing so, my argument builds on recent scholarship in legal history, women's and gender history, and African-American history, that has persuasively argued for an expanded view of the public sphere and a need to account for the significance of local participation in political and law-making processes in the nineteenth century. Historians, political scientists, and legal scholars have long argued that state-building processes were the province of those who could actively participate in law and party politics by virtue of their access to the franchise.² Excluded from these processes and therefore from the historiography were those who could not vote, such as enslaved people, free blacks, and women.³ Recent scholarship, however, has challenged this view,

² Legal scholars such as Edward Corwin, for instance, emphasized the significance of the American constitution in shaping the development of nineteenth-century American law. See Edward S. Corwin, Liberty Against Government: The Rise, Flowering and Decline of a Famous Juridical Concept (Baton Rouge: Louisiana State University Press, 1948).

³ This early bifurcation between public and private shaped the content of both women's history, and the history of slavery. Women's and gender historians emphasized the extent to which women exerted power within the private or domestic sphere, while historians of slavery evaluated the agency of enslaved people within the system of slavery. For important examples of this early approach to women's history, see Ruth H. Bloch, "American Feminine Ideals in Transition: The Rise of the Moral Mother, 1785-1815" Feminist Studies 4 (1978): 101-126; Nancy F. Cott, The Bonds of Womanhood: "Woman's Sphere" in New England, 1780-1835 (New Haven: Yale University Press, 1977); Linda K. Kerber, Women of the Republic:

emphasizing that exclusion from formal legal and political arenas did not prevent women and African Americans from being involved in governance—the process usually associated with state-building—at the local level.⁴ As historians have shown, free blacks, the enslaved, and women participated in the legal proceedings and political debates that began in the town square, the local tavern, or the bedroom of an infant recently deceased. Although such processes and venues may seem unrelated to forms of state and federal-based governance, they were actually the means through which people throughout America regulated community affairs well into the nineteenth century. Such affairs included everything of concern to the local people: theft, toll roads, orphans, destitute families, child support, the investigation of accusations of assault or rape, riots and affrays, the regulation of slaveholders' treatment of slaves, and sudden or unexpected

Intellect and Ideology in Revolutionary America (Chapel Hill: University of North Carolina Press, 1980); Mary Ryan, The Cradle of the Middle Class: The Family in Oneida County, New York, 1790-1865 (New York: Cambridge University Press, 1981); and Kathryn Kish Sklar, Catharine Beecher: A Study in American Domesticity (New Haven: Yale University Press, 1974). For slaves and free African-Americans, including Walter Johnson's important reconsideration of the value of this approach, see John Blassingame, The Slave Community: Plantation Life in the Antebellum South (New York: Oxford University Press, 1972); Herbert Gutman, The Black Family in Slavery and Freedom, 1750-1925 (New York: Pantheon Books, 1975); Walter Johnson, "On Agency" Journal of Social History 37 (2003): 113-124; Lawrence Levine, Black Culture and Black Consciousness: Afro-American Folk Thought from Slavery to Freedom (New York: Oxford University Press, 1977); and Deborah Gray White, Ar'n't I a Woman? Female Slaves in the Plantation South (New York: Norton, 1985).

⁴ For recent scholarship that has critically re-evaluated the role of those such as women and slaves assumed traditionally marginalized from involvement in the post-revolutionary legal system, see Laura Edwards, The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South (Chapel Hill: University of North Carolina Press, 2009); Ariela Gross, Double Character: Slavery and Mastery in the Antebellum Southern Courtroom (Princeton: Princeton University Press, 2000); Michael Grossberg, A Judgment for Solomon: The D'Hauteville Case and Legal Experience in Antebellum America (New York: Cambridge University Press, 1996); Hendrik Hartog, Man and Wife in America: A History (Cambridge, MA: Harvard University Press, 2000); and Dylan Penningroth, The Claims of Kinfolk: African American Property and Community in the Nineteenth Century American South (Chapel Hill: University of North Carolina Press, 2003).

deaths. All community members understood that the investigation of any death—including that of an infant—was a serious matter, one in which they were all required to participate so that a narrative explaining the death could be constructed. By conducting a close analysis of narratives of infanticide produced by communities and reconstructing a picture of how individuals—whether male or female, enslaved or free—involved themselves in the governance processes, my dissertation builds on recent scholarship. In doing so, I demonstrate that the decentralization of power in the early republic and antebellum period actually accentuated the significance of the contributions of local communities to the larger state-building project.

My project also complicates trajectories of women’s history in the U.S. Early studies of women’s role in American history by historians such as Nancy Cott and Linda Kerber argued that the American Revolution inaugurated a “golden age” for women. In the early republic and antebellum period, women’s acknowledged authority within the domestic sphere provided them with opportunities to participate in shaping the future of the country in ways they were otherwise denied in colonial America.⁵ Historians then challenged this view, with some such as Jeanne Boydston, for example, arguing that the combined impact of the Industrial Revolution and the American Revolution devalued working-class women’s labor, particularly within the home.⁶ Newer studies, particularly of the Northeast, have continued to emphasize the decline of women’s authority during

⁵ See Cott, *The Bonds of Womanhood*; Kerber, *Women of the Republic*; Ryan, *Cradle of the Middle Class*, and Sklar, *Catharine Beecher*.

⁶ Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York: Oxford University Press, 1990).

the Revolutionary period, although the scholarship has differed about whether or not this decline occurred before or after the Revolution. Most recently, scholars such as Sharon Block have argued that by the waning years of the early republic, women's bodies were subject to greater control by men, and women's authority in the public domain was increasingly limited.⁷

Building upon the conclusions of these studies about the extent to which women's influence increased—or did not—as a consequence of the American Revolution, another strand of scholarship has examined women's attempts to increase participation in the polity during the antebellum period. Historians have explored such issues as ongoing demands for the vote, claims for greater property rights, and struggles for equal access to divorce.⁸ Research in relation to African-American women has generally framed their struggles within the dichotomy of agency and resistance.⁹ In contrast, my dissertation

⁷ See, for instance, Sharon Block, Rape and Sexual Power in Early America (Chapel Hill: University of North Carolina Press, 2006); Cornelia Hughes Dayton, Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789 (Chapel Hill: University of North Carolina Press, 1995); and Clare Lyons, Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, 1730-1830 (Chapel Hill: University of North Carolina Press, 2006). Block and Lyons complicate the arguments of the earlier studies listed in note three by arguing that women and African Americans enjoyed significant freedom, particularly within the courts, during the early American period through to the end of the early republic (around 1820). Dayton agrees that women enjoyed significant freedom in the courts, though she differs by arguing that this declined throughout the eighteenth century. One historian of the South who reaches similar conclusions as Dayton in respect of Virginia is Kathleen Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia (Chapel Hill: University of North Carolina Press, 1996).

⁸ Norma Basch, Framing American Divorce: From the Revolutionary Generation to the Victorians (Berkeley: University of California Press, 1999); Nancy Cott, Public Vows: A History of Marriage and the Nation (Cambridge, MA: Harvard University Press, 2000); Nancy Isenberg, Sex and Citizenship in Antebellum America (Chapel Hill: University of North Carolina Press, 1998); and Linda K. Kerber, No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship (New York: Hill and Wang, 1998).

⁹ Many of these more recent studies have complicated earlier historiographical assumptions that public acts (such as rebellion and running away) constituted resistance and agency, while domestic or intimate acts

focuses on criminal and domestic law.¹⁰ In so doing, I highlight important continuities between the early modern period in U.S. history and the post-revolutionary era. These continuities, which endured well into the antebellum period, emphasized the ongoing authority of women, particularly as part of governing and legal processes so vital to the functioning and stability of local communities. Only during Reconstruction did women's influence wane, as state and federal-based legal institutions and forms of government gradually supplanted those at the local level.

My research both builds upon and challenges conventional narratives of African-American history, primarily those of free blacks in the Northeast prior to the Civil War. Scholars of southern history—particularly legal historians—have long acknowledged the

(such as the choice of clothing or the decorating of living quarters) did not. Although convincingly broadening the scope of acts considered forms of resistance and thereby integrating the agency of enslaved women into the history of slavery, these studies are still framed within the dichotomy of agency and resistance. See, for instance, "Negotiating and Transforming the Public Sphere: African American Political Life in the Transition from Slavery to Freedom," Public Culture 7. 1 (Fall 1994): 107-146; Stephanie M. H. Camp, Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South (Chapel Hill: University of North Carolina Press, 2004); Sharla M. Fett, Working Cures: Healing, Health, and Power on Southern Slave Plantations (Chapel Hill: University of North Carolina Press, 2002); and Tera Hunter, To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War (Cambridge, MA: Harvard University Press, 1997).

¹⁰ The few studies that have focused directly on the relationship between the domestic sphere and the law include Peter Bardaglio, Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South (Chapel Hill: University of North Carolina Press, 1995); Holly Brewer, By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority (Chapel Hill: University North Carolina Press, 2005); Laura Edwards, Gendered Strife and Confusion: The Political Culture of Reconstruction (Urbana: University of Illinois Press, 1997); Michael Grossberg, Governing the Hearth: Law and the Family in Nineteenth-Century America (Chapel Hill: University of North Carolina Press, 1985); and Elizabeth Pleck, Domestic Tyranny: The Making of American Social Policy Against Family Violence from Colonial Times to the Present (Urbana: University of Illinois Press, 2004).

particular ways in which race functioned during the antebellum period.¹¹ Consistent with the arguments of historians of the South, my research demonstrates that while the race of a defendant in a criminal proceeding, for instance, informed a legal case, it was rarely the sole determinant of the outcome. Other factors that were just as, or even more important included an accused individual's reputation, her ties to the community, and the character of the person making the charge. In contrast, the literature on the extent to which race shaped outcomes in legal proceedings in the Northeast is sparse, particularly in relation to the antebellum period. The scholarship is limited, I suggest, generally because historians of the Northeast have argued that race, along with gender, became the primary determining factors in Northeastern legal proceedings by the end of the early national period.¹² Given that conclusion, scholars simply assume that race and gender shaped the outcomes of cases in the Northeast during the antebellum era, rather than interrogating the assumption. In contrast, my research has revealed that race functioned in the Northeast during the antebellum period in much the same way that it did in the South—as one of many determining factors in local court cases.

This dissertation traces the development of modern ideas about gender and race that are now so fundamental to contemporary life that we often take them for granted.

¹¹ My findings correlate with those of a number of historians of the South, including Edwards, *The People and Their Peace*; Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven: Yale University Press, 1997); Joshua Rothman, *Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia, 1787-1861* (Chapel Hill: University of North Carolina Press, 2003); and Diane Miller Somerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2004).

¹² See, for instance, Block, *Rape and Sexual Power in Early America*; Dayton, *Women Before the Bar*; Lyons, *Sex Among the Rabble*; and John Wood Sweet, *Bodies Politic: Negotiating Race in the American North, 1730-1830* (Baltimore: Johns Hopkins University Press, 2003).

The analysis employs the analytical categories of race and gender that have proved so fundamental to scholarship in women's and African-American history.¹³ Yet, as Ira Berlin reminded readers in the opening to his large-scale study of early American slavery published just over ten years ago, the enslaved were people, not socially constructed categories.¹⁴ Using the methods of social history, my study reconstructs the lives of nineteenth-century Americans involved in infanticide investigations as witnesses, jury members, coroners, accusers, and accused. But I also consider various cultural sources of ideas about women's role, motherhood, and infanticide during this same period. Understanding how cultural and social, national and local ideas interacted with and informed each other is part of my project's purpose. Identifying these interactions enables me to discern how and when modern ideas about gender and race eventually coalesced and became embedded in late-nineteenth century law and government in the United States.

Tracing the evolution of ideas that prompted historical change inspired me to revisit important historiographical assumptions in relation to nineteenth-century American history, particularly those relating to sectional difference. My dissertation's

¹³ My dissertation employs Joan Scott's conceptualization of "gender" as socially constructed, and "a primary way of signifying relationships of power." See Joan Wallach Scott, "Gender: A Useful Category of Historical Analysis," American Historical Review 91 (December 1986): 1053-1075 (quotation on page 1069). For the concept of race as socially constructed, I draw on Barbara Fields's discussion in "Slavery, Race, and Ideology in the USA" New Left Review 181 (1990): 95-118.

¹⁴ Ira Berlin, Many Thousands Gone: The First Two Centuries of Slavery in America (Cambridge: Belknap Press, 1998). For recent discussions of the problems historians identify with using gender as a category of analysis, see Jeanne Boydston, "Gender as a Question of Historical Analysis" Gender & History 20 (2008): 558-583; Toby Ditz, "The New Men's History and the Peculiar Absence of Gendered Power" Gender & History 16 (2004): 1-35; Afsaneh Najmabadi, "Are Gender and Sexuality Useful Categories of Historical Analysis?" Journal of Women's History 18 (2006): 11-21; and Joan Scott, "Fantasy Echo: History and the Construction of Identity" Critical Inquiry 27 (2001): 284-304.

national approach, one that draws on legal records from Connecticut, Illinois, and North Carolina, challenges longstanding historiographical arguments about regional distinctiveness in American history, particularly Southern exceptionalism.¹⁵ One of the most widely accepted explanations amongst scholars for the different conclusions reached by those researching different parts of the United States in the nineteenth century has been regional distinctiveness. This logic has guided research into all areas of American culture in the nineteenth century, including economic development, law, and the status of women and slaves. Yet, the assumptions of regional distinctiveness on which many historians rely have remained largely unexplored. My dissertation, which compares local legal records from three very different locations, has identified important similarities within local legal processes. In Anglo-American states, governance and legal procedures at the community level remained remarkably consistent throughout the country prior to the Civil War. My findings, therefore, challenge assumptions held by historians and legal scholars about sectional difference. Rather than viewing the South as constantly lagging behind the Northeast, for example, my dissertation demonstrates the similarity of change in the two regions. These findings open the way for a reconsideration of major historiographical questions, such as the nature of sectional differences contributed to the outbreak of the Civil War.

Court records, including pardons, trial transcripts, indictments, and coroners' inquests, form the substantive evidentiary base of my dissertation. Drawing on records

¹⁵ For a recent historiographical discussion of the emergence of ideas about Southern exceptionalism, see Laura Edwards, "Southern History as U.S. History" *Journal of Southern History* 75 (2009): 533-564.

from selected counties in three states, North Carolina, Connecticut, and Illinois, my findings illuminate the responses of local communities to cases of infant death and infanticide. North Carolina and Connecticut possessed comprehensive records for the period covered by this project. Including Illinois in my study provided an opportunity to compare American legal systems at very different stages of development. As Illinois moved from a territory to a state, from rural to urban, the state's constitution changed, as did the structure of its judicial system. Given its French origins, the state also had a very different racial and ethnic composition than that of Connecticut and North Carolina. A massive influx of migrants from Eastern Europe in the mid-nineteenth century further complicated this mix, along with inward migration from states such as Connecticut.¹⁶ Finally, unlike Connecticut and North Carolina, Illinois had a very small African-American population prior to the Civil War, largely due to laws that strictly limited the movement of free blacks into and within the state. Although the records are dispersed and not as complete in Illinois, those that did exist illustrate the significant ways in which the discourse about infanticide developed within the state. Studied in concert these three states illuminate trends that resonate with a larger national discourse gleaned from nineteenth-century newspapers, periodicals, pamphlets, fiction, and a selection of court cases from other states.

¹⁶ For an extensive study of immigration and settlement patterns to Illinois in the nineteenth century, from within the United States and from overseas, see Douglas Meyer, [Making the Heartland Quilt: A Geographical History of Settlement and Migration in Early-Nineteenth-Century Illinois](#) (Carbondale: Southern Illinois University Press, 2000).

An investigation of legal records such as inquest records and indictments within particular social contexts enabled me to examine closely the social forces that created and interacted with the cultural discourse a trial ultimately produced. Using other evidence from in the counties on which I focused, I recreated the social environment in which infanticide, child murder, and infant death occurred. Newspapers, census, marriage, and property records provided evidence about the class and social status of the defendant and her family, along with details of the infanticide cases. Where possible, I traced the lives of those women indicted for infanticide to determine how they were reincorporated into society, irrespective of the outcome of the case. Census and marriage records, for example, revealed if these women married and subsequently bore more children. The accumulation of this data suggests how communities in nineteenth-century America continued to function (or not) with these women in their midst.

Sources located in archives across the country enabled me to piece together the narratives nineteenth-century Americans wove to bring meaning to otherwise incoherent acts of infanticide. The project thus includes court records, newspapers, anti-slavery propaganda, medical treatises, poetry, and fiction. The analysis focuses on reported incidents of infanticide, although it does not attempt to locate every occurrence in the nineteenth-century United States or to determine what “really” happened in each instance. I conducted the bulk of my research in the Connecticut State Archives, Hartford; the North Carolina State Archives, Raleigh; and the Illinois Regional Archives Depositories. The most valuable materials, for my purposes, were the Superior Court Criminal Files in Connecticut and North Carolina, and the Circuit Court Files in Illinois.

In each state, these were the courts that held trial for serious offenses such as infanticide. The case files included briefs; indictments; records of the original coronial inquest or investigation; and, where relevant, requests for pardon or reduction in sentence. With the exception of a few counties in Illinois, the files were organized by year within counties.¹⁷ As I searched through these files, I looked for all criminal cases including concealment of the birth of a child, abandonment or exposure of a child, manslaughter, and murder committed by either a man or a woman. Where the verdict was not listed on the brief, I endeavored to locate the outcome of the case by searching through local newspapers for reports about the case, or cross-referencing to the Superior or Circuit Court Record Books for the relevant county.¹⁸ Employing this method, the counties selected for research in Connecticut, Illinois, and North Carolina yielded information about almost one hundred different cases of infanticide. The incidents provide a way to trace the discourse outward and explore the larger cultural meanings of the rhetoric. The concern, then, is with the larger social currents illuminated by the cases. These currents were of greater significance than the individual acts and their immediate consequences. Determining

¹⁷ In a few instances, case files from counties within Illinois had been organized alphabetically rather than chronologically.

¹⁸ The Record Books provided a brief summary of the court proceedings, including the dispensation of each case. These summations were in contrast to the Criminal Files, which provided a detailed description of the accused's actions—often repeated several times—identifying witnesses and method of disposal or concealment of the infant's body.

when and how ideas about infanticide began to be employed in different contexts illuminate important transformations in society on a larger scale.¹⁹

This methodology presented particular challenges as I worked in Illinois. Like Connecticut and North Carolina, Illinois is awash in nineteenth-century legal records. Yet, Illinois court records—particularly those relating to criminal cases—remain largely underutilized in relation to the first half of the nineteenth century.²⁰ In part, this is because they are not centrally located, dispersed instead to eight geographically remote locations around the state. I chose four locations on the basis of available records, and settlement patterns; a process that was not markedly different from how I selected the county records to consult in Connecticut and North Carolina.²¹ The greater challenge I confronted related to Cook County. Although Chicago was one of the nation’s most-populated cities by the mid-nineteenth century, no legal records exist for Cook County prior to 1871. These records were destroyed in the Great Chicago Fire of that same year. This problem forced me to be creative in the ways that I approached my research in Illinois. I combed every extant request for pardon to the Governor until 1880. While

¹⁹ My cultural approach to the use of legal sources, rather than reflections of what “actually” happened in any given instance, is influenced by Ariela Gross, “Beyond Black and White: Cultural Approaches to Race and Slavery” Columbia Law Review 101 (2001): 640-682.

²⁰ Historians have made good use of Illinois court records, particularly those relating to Cook County, for studies of the Gilded Age and onwards. See, for example, Elizabeth Dale, The Rule of Justice: The People of Chicago versus Zephyr Davis (Columbus: Ohio State University Press, 2001); Beryl Satter, Family Properties: Race, Real Estate, and the Exploitation of Black Urban America (New York: Metropolitan Books, 2009); and Michael Willrich, City of Courts: Socializing Justice in Progressive Era Chicago (New York: Cambridge University Press, 2003).

²¹ The four locations I visited included the Illinois State Archives in Springfield, Southern Illinois University in Carbondale, the University of Illinois at Springfield, and Western Illinois University in Macomb.

there were numerous requests for pardons from prisoners located at Chicago's Bridewell—the city jail—no individual requested a pardon for infanticide or concealment. I also carefully reviewed records for the State Prisons: the Alton Penitentiary, built in 1833 and closed in 1860; and the Joliet Correctional Center, opened in 1858. Through this method, I located a few instances of women committed for infanticide. Although these women were not from Cook County, I was able to reconstruct their narratives through sources from other counties. Chicago newspapers, such as the Chicago Tribune, became particularly important sources of information in the absence of legal records. Accordingly, although my study includes fewer cases of infanticide from Illinois than either Connecticut or North Carolina, I ascribe this situation to Illinois's later settlement more than a paucity of available records. Rather than reflecting a lack of material, the evidence actually indicates that communities indicted fewer women for infanticide because Illinois was more sparsely and remotely settled at least until the mid-nineteenth century.

From my sources, I have reconstructed the narratives that nineteenth-century Americans wove in relation to cases of infant death and infanticide that occurred within their midst. Although I discuss a limited number of cases in the analysis, my method enables me to amplify what can be gleaned from these cases and the ways in which they can be used. Rather than merely revealing what these cases tell us about infanticide, the status of women, and the criminal law in nineteenth-century America, a close study of these narratives illustrates how all Americans—male and female; enslaved and free; servant and master—interpreted and understood the meaning of law, the legal process,

and the forms of governance in their daily lives. These local narratives are then placed within a broad discursive framework exploring the meanings and evocations of infanticide in fiction, poetry, anti-slavery literature, medical treatises, almanacs, and periodicals that circulated throughout the nation. This juxtaposition enables me to explore the ways in which the national dialogue about infanticide differed from the narratives of infant death and child murder constructed and negotiated within local communities. From this contrast, I draw broader conclusions about the ways in which local community members in nineteenth-century American towns understood processes of law-making and governance.

“Narrating Infanticide” begins with a sketch of the complicated web of laws relating to infant murder in the post-Revolutionary period. Chapters one and two then examine the vital role played by local people in investigations into infant death. Of particular importance was the function played by women, whose expertise in matters relating to birth and pregnancy often proved critical in helping communities reach conclusions about the events that had transpired. The following chapters move to an analysis of the national discourse that circulated around motherhood and infanticide in the early republic and antebellum period. Drawing examples from widely circulated seduction fiction, sentimental novels, and anti-slavery material, I consider how narratives from these sources interacted with and informed local people’s ideas about the role of women in society. Such interactions proved critical, I argue, in forming the particular ideas of gender that later became embedded within structures of governance and the legal system. The final chapters of my study trace the rise of modern ideas about gender and

race after the Civil War, ideas which we are so familiar today that we take their existence for granted. The emergence of these ideas during Reconstruction correlated, I argue, with the gradual decline of locally based legal processes. Chapter five examines the impact of the professionalization of the law, and medicine, on investigations into infant death after the Civil War. Though midwives remained popular as birthing attendants well into the early twentieth century—particularly within African-American and working-class white communities in rural areas—professionally trained and licensed doctors assumed control of inquests. Consequently, communities began to understand women’s bodies as objects to be categorized and classified, rather than consider women as individuals with whom they might empathize. My final chapter brings together the themes of gender, race, and class that have run throughout this study, exploring how women in the postemancipation period found themselves subject to greater scrutiny, and marginalized from participation in the same legal processes in which they had once served such an important function.

Exploring the discourse of infanticide through a range of sources, my project generates a picture of the ways in which Americans throughout the nation negotiated and constructed narratives of infanticide in the nineteenth century. Placing close analyses of local cases from Connecticut, Illinois, and North Carolina within the context of the broader national discourse in which people across the continent evoked the specter of infanticide provides important insights into larger questions about gender, race, class and state formation in nineteenth-century America. This enables us to re-conceptualize our understandings of the gendered origins of the contemporary nation-state.

Chapter One
Testifying to the Blood and Groans of Birth:
Investigations into Infant Deaths in Post-Revolutionary America

In May 1822, a “jury” convened in Haywood County, North Carolina to examine an “accusation” brought against Sally Belk, suspected of murdering her newborn infant. The jury’s charge was to determine if she had been delivered of a child recently. Consisting of fifteen women, the jury concluded “upon examination” that Belk had indeed given birth. Consequently, the local Justice of the Peace remanded Belk to the county jail to appear before the next session of the Haywood Superior Court. Based on the findings of these fifteen women, Sally Belk found herself packed off to jail.¹

The investigation into the death of Sally Belk’s child initially seems anomalous. In records of almost one hundred investigations into infant deaths from Connecticut, Illinois, and North Carolina between 1789 and 1880, this investigation is the only one that involved a jury of inquest constituted entirely of women. Typically, men of the local community formed the inquest jury, whether or not the investigation involved an infant. Female juries, usually known as juries of matrons, had been employed during the early

¹ State v. Sally Belk, May 5 1822, Superior Court Criminal Action Papers, Haywood County, NCDAH. As with many infanticide cases from this period, there is no record of the outcome of this case specifically whether or not Belk actually served any time in the county jail even while on remand. It is also important to note that county jails during this time period were often not formal structures in the modern sense, particularly in smaller towns, and less densely populated areas. Being sent to jail simply meant being remanded into the custody of the local sheriff. The prisoners might have lived with the sheriff and his family, or boarded with someone to whom the sheriff hired out the prisoner’s labor. Unsurprisingly, escapes from jail under these circumstances were common, which is why legislation in many states often held sheriffs financially responsible if a prisoner escaped while in the sheriff’s custody. In any instance, accommodating female prisoners amongst a population that largely consisted of men presented particular difficulties for the local sheriff. Though remanded to jail by the Justice of the Peace, it is therefore possible that female prisoners never actually spent any time in custody. For further information on early jails, see Carl R. Lounsbury, The Courthouses of Early Virginia: An Architectural History (Charlottesville: University of Virginia Press, 2005), and Martha J. McNamara, From Tavern to Courthouse: Architecture and Ritual in American Law, 1658-1860 (Ithaca: Cornell University Press, 1998).

modern period in both England and the American colonies to inspect the bodies of women suspected of witchcraft, infanticide, or, more commonly, seeking to delay execution. But, by the 1820s, this practice largely had died out in both England and the United States.²

Yet the privileging of female knowledge in investigations into infant death was not unusual even if women no longer constituted juries. Male jurors in communities across America relied upon the testimony and assumed expertise of women, especially midwives. Indeed, the practice of involving women in every aspect of an investigation into an infant's death continued well into the nineteenth century, almost until the end of the Civil War. Although constituting an all-female jury to reach a conclusion about a woman's fate may have been rare, women's participation in investigations into infant death and child mortality formed a critical component of the investigative process. Local women therefore became intimately involved in crafting narratives that helped to explain infant death.

As a crime primarily concerning females, investigations into infant death and infanticide provide compelling insights into the particular roles that women played in the everyday legal processes of the early republic and antebellum periods. In fact, investigations into infant deaths are so distinctive because of the important role assigned

² For a detailed history of the jury of matrons in the English context, see James Oldham, "On Pleading the Belly" Criminal Justice History (1985) 1-64. For an earlier example of a case involving a jury of matrons in North Carolina, see Inquest of Matrons over Rhody Hulan, April 4 1783, Coroners' Inquests Records, Orange County, NCDAH. There was also a case as late as 1858 in North Carolina involving a jury of matrons, illustrating the extent to which the institution did persist, even if its use was infrequent. See State v. Caroline Morrow, Fall Term 1858, Haywood County, Criminal Action Papers, NCDAH.

to women. These inquests provide an arena in which women's voices and their opinions assumed a privileged—indeed authoritative—status within the community. Decisions about guilt and innocence were made by men based on the authority that those male jurors vested in the expertise and knowledge of women.

The significance of the inclusion of female voices in the creation and circulation of local narratives about infanticide illuminates important continuities between legal processes in early America and the post-Revolutionary era. Legal historians have traditionally emphasized the significant transitions that occurred in the Anglo-American legal system throughout the eighteenth century. Work by these scholars has centered on the changes in the expanding arena of civil law, particularly in relation to property. Yet middle and upper class white men constituted the majority of eighteenth-century property holders. Therefore, such scholarship has suggested that these transformations in the law's focus prior to the Revolution pushed women, along with African Americans, Native Americans, and men without property to the fringes, marginalizing their participation in the legal system, just as they were eventually excluded from the franchise in the new republic.³ But this picture of the law looks different when the focus shifts to criminal law at the local level—and, in particular, to infanticide, a crime perpetrated primarily by women. Rather than being marginalized within the legal system, women's participation

³ Historians who emphasize these changes in the legal system include Cornelia Hughes Dayton, Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789 (Chapel Hill: University of North Carolina Press, 1995); Bruce Mann, Neighbors and Strangers: Law and Community in Early Connecticut (Chapel Hill: University of North Carolina Press, 1987); and William Nelson, Americanization of Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830 (Cambridge, MA: Harvard University Press, 1975).

remained central to its operation in the early republic, just as it had in early modern England and colonial America.⁴ My argument, therefore, builds upon the emerging body of work that has critically re-evaluated the role of those such as women and slaves assumed traditionally marginalized from involvement in the post-revolutionary legal system.⁵

Although infanticide was not an easily defined term, an accusation of such a crime generally assumed that a woman had tried to conceal her pregnancy and the subsequent birth of her child. In the Anglo-American colonies, the legal processes

⁴ For scholarship that emphasizes the role of women as active participants in the early modern and Anglo-American colonial legal culture, see Sharon Block, Rape and Sexual Power in Early America (Chapel Hill: University of North Carolina Press, 2006); Kirsten Fischer, Suspect Relations: Sex, Race and Resistance in Colonial North Carolina (Ithaca: Cornell University Press, 2002); Laura Gowing, Domestic Dangers: Women, Words, and Sex in Early Modern London (New York: Oxford University Press, 1996), Laura Gowing, Common Bodies: Women, Touch and Power in Seventeenth-Century England (New Haven: Yale University Press, 2003); Clare Lyons, Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830 (Chapel Hill: University of North Carolina Press, 2006); Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland," William and Mary Quarterly 44 (1987): 3-39; and G. S. Rowe, "The Role of Courthouses in the Lives of Eighteenth-Century Pennsylvania Women," Western Pennsylvania Historical Magazine, 68 (1985): 5-23. Fischer, Gowing, and Norton primarily place an emphasis on women's use of civil litigation, in the form of slander suits, in the early modern and colonial legal systems, though Gowing—like myself—also highlights the importance of the midwife to particular types of cases within local communities. In her study of rape in early America from 1700 to 1820, Sharon Block illustrates that women could—and did—turn to the law for redress in cases of rape, though she astutely observes that by the early nineteenth century, individual women's voices were increasingly subsumed under a broader cultural rhetoric concerning rape, race, and legitimacy—a discourse that was dominated by men. Like Block, Lyons situates changes in women's legal status in the early nineteenth century, linking the decline in women's access to the legal system (both criminal and civil) to attempts by men to shore up legitimacy in the new republic.

⁵ See Laura Edwards, The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South (Chapel Hill: University of North Carolina Press, 2009); Ariela Gross, Double Character: Slavery and Mastery in the Antebellum Southern Courtroom (Princeton: Princeton University Press, 2000); Michael Grossberg, A Judgment for Solomon: the d'Hauteville Case and Legal Experience in Antebellum America (New York: Cambridge University Press, 1996); Hendrik Hartog, Man and Wife in America: A History (Cambridge, MA: Harvard University Press, 2000); and Dylan Penningroth, The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century American South (Chapel Hill: University of North Carolina Press, 2003).

governing infanticide derived from the English common law, and an Act of the English Parliament passed in 1624 “to prevent the Destroying and Murthering of Bastard Children.”⁶ The law became known as the Jacobean infanticide statute. Pursuant to both the common law and statute, infanticide constituted a capital crime. The Act departed from common law by creating a legal presumption that concealment of a newborn bastard’s death meant that a woman had killed her child. This element made infanticide distinct from murder in a very important way. Even in seventeenth century England, a basic evidentiary requirement for murder was a body. Yet, the crime of infanticide—as constructed in the 1624 Act—did not require a body. Indeed, the very absence of a body constituted evidence of the crime. Concealment, not murder, was the crime. If a woman had concealed her newborn bastard’s body, the law assumed guilt unless she could produce at least one witness who could prove that the child had been born dead. Contrary to longstanding principles of English law, the infanticide statute ensured that the burden of proof in a criminal trial lay on the accused, rather than on the prosecutor. This presumption meant a woman could be sentenced to death for allegedly murdering her infant, even though no body existed to prove that a child had ever been born, let alone drawn breath.

Over time, common law and the 1624 Act were reinterpreted in the American colonies based on each colony’s particular needs and priorities. When the colonies

⁶ 21 James 1, c. 27 (1624). For the full text of the statute, see Appendix A.

became states, each incorporated its version of infanticide into law.⁷ Some states, such as Connecticut, incorporated statutes similar to the 1624 Act into its own legislation.⁸ Others, such as North Carolina, applied the existing English statute of James I as the extant law. The new American states also continued to rely upon the existing body of English common law in relation to infanticide, while developing their own common law traditions. In addition, infanticide constituted a form of murder. In the Anglo-American states, statutes pertaining to murder included such acts as homicide, patricide, filicide, matricide, and infanticide. A woman could, therefore, be charged with infanticide in three ways. She could be charged pursuant to one of either two statutes—the statute specifically relating to infanticide, which did not require a body, or the statute relating to murder, for which a body was required. Finally, a woman could simply be charged with murder as a common law crime.

The specific statute relating to infanticide, or concealment of the death of a bastard child, presented puzzling contradictions as it broadened existing statutory definitions of murder and limited its application to a very specific population. In contrast to the common law and statutory law relating specifically to murder—both of which required a corpse in order to provide evidence that a crime had been committed—the statute specifically relating to infanticide did not require a body. In this way, infanticide

⁷ For a discussion of the development of English law and early American law in relation to infanticide, see Peter C. Hoffer and N. E. H. Hull, Murdering Mothers: Infanticide in England and New England, 1558-1803 (New York: New York University Press, 1981).

⁸ “An Act for the Punishment of Murder,” Acts and Laws of the State of Connecticut in America (Hartford: Elisha Babcock, 1786).

statutes expanded existing ideas about the burden of proof required for murder. The law, however, had a narrow application. It applied only to women who had given birth to bastard children. The law had no application to women who gave birth to legitimate children, nor did it apply to men. Men could be charged with infanticide, as a form of murder, but only if they met the standard of proof for murder—a body existed. Similarly, a woman (or a man) could be charged with the murder of a legitimate child, but only if a higher standard of proof in the form of a body could be met.

Following the practice in England, American states did amend their laws in relation to infanticide because of the growing difficulty courts faced in obtaining convictions.⁹ Juries proved increasingly unwilling to find women guilty of a capital crime, particularly when the absence of a body—its concealment—provided sufficient proof. Connecticut’s General Assembly amended its law in 1808, for example, in response to the controversy generated by the case of Clarissa Ockrey, who was sentenced to death for the crime of infanticide. The outcry against her sentence and the general change in public sentiment favoring reform rather than retribution—particularly for women—persuaded the Connecticut General Assembly to grant Ockrey a pardon, and

⁹ In England, the law was amended in 1803, shifting the burden of proof from the accused to the prosecution. While a woman still faced the possibility of capital punishment for concealing the death of her illegitimate child, the amended law stated that mere concealment was not, in fact, proof of the crime. Rather, the prosecution had actually to prove the mother had killed her child. See 43 Geo. III, c. 58. Some American colonies and/or states, such as Delaware and Pennsylvania, actually amended their laws relating to infanticide prior to England. See, for instance, “An Act for the better Proportioning the Punishment to the Crime of Slave-and Horsestealing, and Conjuraton, and for other purposes,” Delaware Session Laws (1779) which repealed the law stipulating that the concealing of the death of a bastard child was a felony punishable by death, and the laws relevant to Pennsylvania (1786 to 1794).

change the law in the hope of saving other women from her fate.¹⁰ North Carolina amended its law ten years later in 1818, the same year in which Illinois became a state.¹¹ One of the earliest acts of the Illinois legislature was to pass a reception statute adopting English common law, and, with several exceptions, “all statutes or acts of the British parliament...of a general nature and not local to that Kingdom” as the law of Illinois “until repealed by legislative authority.” Accordingly, the law in force in Illinois at the time it became a state was that in force in England at the time. By 1818, concealing the death of a bastard child no longer constituted a capital crime in England. Accordingly, it did not constitute such a crime in Illinois.¹² Although the Illinois statute, and the amendments to the Connecticut and North Carolina law removed the threat of capital punishment for the crime of concealment, they did not change the substance of the crime. According to the statutes in most American states, concealing the death of an illegitimate child remained either a felony or misdemeanor, provided the offender was a woman. Rather than facing the death sentence, women faced different penalties. These varied according to the state and time period. In Connecticut, for example, women convicted of concealing the death of a bastard child faced a sentence that involved standing on the

¹⁰ “An Act to prevent the destroying and murdering of bastard children” passed by Connecticut General Assembly, May 1808, as reprinted in Hartford Courant, June 29 1808, 1; State vs. Clarissa Ockrey, February Term 1808, Superior Court Files, New London County, CSA.

¹¹ For Illinois, see Section 41, “An Act Relative to Criminal Jurisprudence” Revised Code of Laws of Illinois (Vandalia, Ill.: Robert Blackwell, 1827). For North Carolina, see Chapter XXVII, “An act declaring the statute passed in the twenty first year of James the first, entitled an act to prevent the destroying and murdering of Bastard children, to be no longer in force in this State.” Laws of the State of North Carolina Enacted in the Year 1818 (Raleigh: Thomas Henderson, 1819).

¹² See “An Act Declaring What Laws Are in Force in This State,” 4 February 1819, Laws Passed by the First General Assembly of the State of Illinois (Kaskaskia, Ill.: Blackwell & Berry, 1819). For the relevant English law, see 43 Geo. III, c. 58, cited in footnote eight above.

gallows with a rope around their neck for one hour, a fine of up to \$150, and possible imprisonment for a term to be determined at the discretion of the court.¹³ By 1835, the legislature had increased the maximum fine to \$300, and removed the option of allowing courts to sentence women to standing on the gallows.¹⁴ In North Carolina, a mother faced a fine of up to \$500, and a term of imprisonment not exceeding twelve months if found guilty of concealing the death of her illegitimate child.¹⁵ The state of Illinois did not impose fines for women found guilty of the crime, but the legislation provided for the imposition of a jail term of up to twelve months.¹⁶ Many other American states followed suit penalizing a mother who concealed the death of an illegitimate child with a similar mixture of fines and jail terms.

Yet women convicted of infanticide in all states still faced the possibility of the death penalty if they were charged under the statute relating to murder, or if it was defined as a common law offense. Indeed, the statutes specifically relating to

¹³ Section 16, Title 22, Public Statute Laws of the State of Connecticut (Hartford: S. G. Goodrich, & Huntington & Hopkins, 1821). For examples of cases in which women received such a sentence, see State v. Charlotte Baldwin, January Term 1817, Superior Court Files, New Haven County; State v. Catharine Jones, August Term 1820, Superior Court Files, New Haven County; State v. Catharine Obrian, August Term 1825; Superior Court Files, New Haven County; all at CSA.

¹⁴ Title 21, Sections 16 & 17, Public Statute Laws of the State of Connecticut (Hartford: John B. Eldredge, 1835).

¹⁵ Chapter XXVII, “An act declaring the statute passed in the twenty first year of James the first, entitled an act to prevent the destroying and murdering of Bastard children, to be no longer in force in this State” Laws of the State of North Carolina Enacted in the Year 1818. For examples of cases in which women received such a sentence, see State v. Eliza Johnson, Spring Term 1826, Criminal Action Papers, Northampton County; and State v. Mary Monro, April Term 1830, Superior Court Minute Docket, Rowan County, and Governor John Owen, Pardon of Mary Monro, 17 April 1830, p. 190, vol. 28, Governors’ Letter Books; all at NCDAH.

¹⁶ Section 41, “An Act Relative to Criminal Jurisprudence” Revised Code of Laws of Illinois.

concealment of the death of bastards were uniform on this exact point. The Illinois legislation, for example, stipulated that if the mother might be convicted of concealment that should not “prevent such mother being indicted and punished for the murder of such bastard child.”¹⁷ Legislation in both Connecticut and North Carolina echoed this same language.¹⁸ Although the burden of proof was now higher—there had to be a dead infant’s body, and the prosecution had to prove that the mother had killed it—a woman still faced the possibility of the death sentence if found guilty of murdering her infant.¹⁹ In all three states, Connecticut, Illinois, and North Carolina, capital punishment remained the maximum possible sentence for those found guilty of first-degree murder.

Because this morass of laws seems confusing to us now, it is tempting to assume that the situation was even more impenetrable to nineteenth-century Americans. In practice, however, communities were well versed in the operation of the laws and the burden of proof required to prove a charge of infanticide. Nowhere is this clearer than at the place where an investigation began—the inquest convened upon the discovery of a dead infant’s body. Communities routinely investigated the deaths of newborn infants. Though dead children found buried in the ground, hidden in a pigsty, or thrown in a privy generally occasioned more suspicion than those discovered in a home, coroners’ inquests

¹⁷ Ibid.

¹⁸ For Connecticut, see Title 20, Section 106, Public Statute Laws of the State of Connecticut; for North Carolina, see Chapter XXVII, “An act declaring the statute passed in the twenty first year of James the first, entitled an act to prevent the destroying and murthering of Bastard children, to be no longer in force in this State” Laws of the State of North Carolina Enacted in the Year 1818.

¹⁹ In practice, the changes meant that women were often indicted on two counts: one for the crime of concealment, and the other for the crime of murder. See, for instance, the cases cited above in footnote thirteen in relation to Connecticut, and those cited in footnote fifteen in relation to North Carolina.

were usually conducted irrespective of where a body was discovered, who found it, or the state of the corpse's decomposition. Indeed, the peculiar nature of the infanticide statute meant that investigations into infant death did not even require a body for an inquest to be convened. Someone need only voice the suspicion that an infant had been born and subsequently murdered for an investigation to begin. Whatever the particular circumstances, local communities approached the task of investigating all infant deaths—whether suspicious or otherwise—seriously and responsibly.²⁰

Inquest and court records relating to infant deaths illuminate a ritual that was, in many ways, extremely formulaic. In all states, appointed officials presided over inquests. In Connecticut, the Justice of the Peace fulfilled this role.²¹ In Illinois and North Carolina, an office of the Coroner existed specifically for the purpose of investigating deaths, particularly those of a suspicious or untimely nature.²² Once a community

²⁰ A review of available inquests from each state clearly indicates the strong similarities adopted by local communities in different geographic regions undertaking these initial investigations or inquests. For Connecticut, see Superior Court, Papers by Subject: Inquests, c. 1711-1874, New London County, CSA. For Illinois, see Coroners' Inquests Files, Madison County, IRAD—SIU; and Coroners' Inquests Files, McDonough County, IRAD—WIU. For North Carolina, see Coroners' Inquests, Granville County, and Coroners' Inquests, Northampton County both at NCDAH. Files from each of these counties contain numerous instances of unknown infants, found near rivers, in fields, or simply dumped on someone's property. Irrespective of the fact that the infant's identity was unknown to the community—and often the body was badly decomposed—investigations still convened, so that a narrative enabling the community to interpret and understand the event might be constructed. Sometimes these narratives were as simple as the conclusion that infants had died by some “cause or causes unknown” or “hand or hands unknown” to the jurors. For a discussion of the importance of the inquest in local communities in the nineteenth-century South and the ways in which they were conducted, see Laura Edwards, “Status Without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South,” *American Historical Review* 112 (2007): 372-373.

²¹ Title 23, “An Act Concerning sudden or untimely Deaths,” Public Statute Laws of the State of Connecticut.

²² For Illinois, see “An Act Concerning Sheriffs and Coroners” Revised Code of Laws of Illinois; and for North Carolina, see Chapter 25, “Coroners,” Revised Statutes of the State of North Carolina, Vol. 1 (Raleigh: Turner and Hughes, 1837).

member informed of a death or that a body had been discovered, the responsible officer convened a jury of twelve men. The jury's responsibility was to assess, based on the available evidence, how the deceased had met his or her death. In order to reach a finding, the jury relied on the participation of the community, members of which provided evidence confirming the identity of the deceased. If the death was suspicious, the jury called upon local people to testify about the behavior, the daily life, and the movements of the person (or persons) the investigators suspected of involvement in the death. Drawing on the combined knowledge of the community about the deceased and his or her relationships with others within the town, the jury constructed a narrative that explained how an individual had died.

Based on the findings of the investigation, the Justice of the Peace or the Coroner then made a determination about how to proceed. In Illinois, for example, the Coroner had the authority to commit the accused to jail or release the suspect on bail pending a hearing at the next session of the Circuit Court if the jury of inquest had concluded there was sufficient evidence to believe a crime had been committed. The Coroner had similar authority in North Carolina in relation to the Superior Court.²³ In contrast, the findings of an inquest in Connecticut usually were referred to the Justice of the Peace for the relevant

²³ This assessment of the process followed in inquests or investigations from Illinois and North Carolina is based on my review of inquests from the following states (as cited in note twenty above), the relevant legislation (refer notes twenty-one and twenty-two above), and manuals providing guidelines for coroners in North Carolina. See John Haywood, The Duty and Office of Justices of the Peace, Sheriffs, Coroners, Constables, & c. According to the Laws of the State of North Carolina (Raleigh, 1808), and Henry Potter, The Office and Duty of Justice of the Peace and A Guide to Sheriffs, Coroners, Clerks, Constables, and Other Civil Officers According to the Laws of North Carolina (Raleigh: 1816).

county if the jury concluded that foul play had occurred. The matter was then heard at a Justice's Court, where the Justice determined the guilt or innocence of the accused. If the Justice considered there to be cause, the case would then be listed for the next session of the county's Superior Court.²⁴

Consideration of the role of medical professionals in nineteenth-century investigations into infant death illuminates, by contrast, the importance of community involvement. Medicine in America remained in a fledgling state of professionalization, with no authority generally afforded to someone with medical training.²⁵ This was particularly so in matters relating to birth, in which nineteenth-century Americans—particularly those from the lower classes or rural areas—assumed that women, especially

²⁴ My description of the processes followed in Connecticut is based upon my review of inquests from the state, as cited in note twenty above, and relevant case files from the Superior Court for the counties of Hartford, Litchfield, New Haven, and New London between 1789 and 1860. Guidelines regarding the process to be followed were outlined in the relevant legislation regarding “sudden and untimely deaths” (see note twenty-one above), and that regarding the jurisdiction and duties of Justices of the Peace in Connecticut. See, in particular, the relevant sections under Title 21, Courts; and Title 22, Crimes and Punishments; Public Statute Laws of the State of Connecticut. As in North Carolina, manuals also circulated that detailed the responsibilities of Justices of the Peace in Connecticut. See Joseph Backus, The justice of the peace: being a general directory, and forms proper for the due execution of the office, according to the common and statute laws, now in force and use in the state of Connecticut (Hartford: B. & J. Russell, 1816), and John Milton Niles, The Connecticut Civil Officer: in three parts & c. (Hartford: Huntington & Hopkins, 1823).

²⁵ For literature on the development of medicine as a profession in nineteenth-century America, see James Cassedy, Medicine and American Growth, 1800-1860 (Madison: University of Wisconsin Press, 1986); John Duffy, From Humors to Medical Science: A History of American Medicine (Urbana: University of Illinois Press, 1993); Lamar Murphy, Enter the Physician: The Transformation of Domestic Medicine, 1760-1860 (Tuscaloosa: University of Alabama Press, 1991); and Steven Stowe, Doctoring the South: Southern Physicians and Everyday Medicine in the Mid-Nineteenth Century (Chapel Hill: University of North Carolina Press, 2004). For the persistence of home-based, self-help healthcare during the nineteenth century, see Guenter B. Risse, Ronald L. Numbers, and Judith Walzer Leavitt (eds.), Medicine Without Doctors: Home Health Care in American History (New York: Science History Publications, 1977).

midwives, possessed the more authoritative knowledge and experience.²⁶ Juries of inquest across America routinely summoned doctors, but they usually only served as one of a number of witnesses. In most instances, the doctor's opinion had no greater or lesser merit than that of a woman's female friends or family members. This was unsurprising given that, well into the mid-nineteenth century, doctors were still unsure how to establish whether a baby had been born alive or dead.²⁷

²⁶ Most literature on changes in childbearing in America from the colonial period to the antebellum era has emphasized the increasing professionalization of childbirth. This resulted from the introduction of male, medical doctors (with varying degrees of professional training) into the birthing room and the gradual displacement of midwives. It is important to note, however, that these changes were largely confined to urban areas in the Northeast, among middle and upper class women. Further, though upper-class women in the South gradually embraced the use of doctors to ease the pains of childbirth, a large support group of women consisting of friends and family, remained essential to the mother during childbirth and the first few months after the child's delivery. Amongst poor and working-class women—in the North, South, and Midwest—women provided the primary form of support for each other during and after childbirth. In this sense, childbirth remained a public (rather than private) event until well into the nineteenth century, just as it had been during the early American period. For discussions of changing practices of childbirth in the late eighteenth century and early nineteenth centuries, see Sally G. McMillen, Motherhood in the Old South: Pregnancy, Childbirth, and Infant Rearing (Baton Rouge: Louisiana State University Press, 1990); Catherine M. Scholten, Childbearing in American Society, 1650-1850 (New York: New York University Press, 1985); and Richard W. Wertz & Dorothy C. Wertz, Lying-In: A History of Childbirth in America (New Haven: Yale University Press, 1989).

²⁷ One test that doctors employed throughout the eighteenth century, the early republic, and antebellum periods, involved cutting open the corpse's body and filling the child's lungs with water. If the corpse sank, this supposedly demonstrated that the infant had never drawn breath, from which a conclusion of stillbirth could be drawn. If the child floated, this meant it had drawn breath. Even this test, however, generated controversy as its reliability decreased the greater the time elapsed between death and performance of such an examination. If performed some time after the infant had died, the lungs might have collapsed prompting the corpse to sink, irrespective of whether or not the child had drawn breath. Though medical practitioners employed the test widely in infanticide cases in both continental Europe and England during the eighteenth century, it was far less commonly employed in the United States. Up until the 1850s, the most common form of post-mortem examination in cases of infant death consisted of a visual inspection by the doctor. Not until after the Civil War did American medical science develop more sophisticated methods of distinguishing between stillbirths and live births through more rigorous and detailed post-mortem examinations. For a discussion of the development and use of the test in Europe, see Mark Jackson, "Suspicious Infant Deaths: the Statute of 1624 and medical evidence at coroners' inquests" in Michael Clark and Catherine Crawford (eds.), Legal Medicine in History (Cambridge: Cambridge University Press, 1994): 75-81. For one of the earliest American assessments of the reliability of this test, see John B. Beck, "An Examination of the Medico-Legal Question, whether in Cases of Infanticide, the Floating of the Lungs in Water can be depended upon as a certain test of the child's having been born alive," New York Medical and Physical Journal 1:4 (October-December 1822): 441-450. For an example

Jurors, consequently, relied on what they could see in front of them. If the corpse appeared to have marks of violence the jurors generally concluded that the death was murder. When Anna Gilbert killed her three-month old daughter, Maryanne, with an axe, as occurred in Derby, Connecticut in April 1813, the jurors concluded foul play had taken place.²⁸ The jury reached a similar conclusion in its investigation into the death of Solomon, an infant belonging to Hannah, an enslaved woman, in October 1835, Granville County, North Carolina. The child's throat had been cut, with the jury concluding Hannah was responsible given that her own throat was already bleeding profusely by the time she was located.²⁹ But infants died of many causes, most of which did not announce themselves with a conveniently located head wound or slit throat. Smothering, for instance, was a common cause of death identified in nineteenth-century inquests involving infants.³⁰ It was rare, however, that investigators concluded the smothering

of a North Carolina doctor employing such a test, see Inquest Over an Infant (Margaret Paul), May 27 1851, Coroners' Inquests Files, Orange County, NCDAH.

²⁸ State v. Anna Gilbert, August Term 1813, Superior Court Files, New Haven County, CSA.

²⁹ State v. Hannah, March Term 1836, Criminal Actions Concerning Slaves & Free Persons of Color, Granville County, NCDAH.

³⁰ See, for instance, Coroners' Inquests, Northampton County; and Inquest—O'Farrell, December 12 1818, Coroners' Inquests Records, Orange County; both at NCDAH. During the antebellum period, both slave owners and abolitionists popularized the idea that enslaved woman deliberately smothered their infants. The two groups were driven by very different motivations. Pro-slavery advocates argued that enslaved women smothered their children because they were lazy, and incapable of properly caring for their children. For this reason, enslaved women required the paternal, steady hand of white slave owners. In contrast, abolitionists popularized the idea in the antebellum period as they recharacterized infanticide as a justifiable act of murder undertaken by women with limited options, namely enslaved women. In this context, smothering became a gentle form of a brutal act. For further discussion of this issue, see chapter three. Yet, the relative frequency of findings of smothering in inquests involving children of white women—at least in Southern states such as North Carolina—clearly indicates that local people recognized infant children died of a natural cause they characterized as “smothering” in the early republic and

had been deliberate because doing so required testimony that someone had actually seen the mother—or someone else—smother the child.

To further the confusion, the fact that an infant's corpse had apparently been concealed did not establish if a murder, or indeed any crime, had actually occurred. It merely established that someone had tried to dispose of a body in a surreptitious, but not necessarily illegal, manner. Inquests were generally conducted anyway, as the law made investigations in such cases mandatory. Juries investigated and made a determination regarding the cause of death. Yet, in these cases, identifying the child's mother was also paramount. The mother's status, married or unmarried, determined the legitimacy of the child. A child born of a single woman, including a widow, was illegitimate. In that instance, the mother could be indicted for either, or both, concealing death and murder. In contrast, married women could only be indicted for murder, because, according to law, their children could not be defined as bastards.³¹ If the jurors could not reach a

antebellum periods. Indeed, one witness testified in an 1810 investigation into the death of the infant son of Sarah Berman of Randolph County, North Carolina that Berman claimed she did not wish to place her newborn under bedclothes as she might smother the child. See State v. Sarah Berman, October Term 1810, Criminal Action Papers, Randolph County, NCDAH. Although historians have primarily reviewed data relating to enslaved infants who died of smothering, my findings in relation to the children of white women is consistent with conclusions that enslaved women rarely engaged in acts of deliberate smothering. For assessments of the data in relation to smothered slave infants, see Michael P. Johnson, "Smothered Slave Infants: Were Slave Mothers at Fault?" Journal of Southern History 47 (1981): 493-520; Todd L. Savitt, "Smothering and Overlaying of Virginia Slave Children: A Suggested Explanation," Bulletin of the History of Medicine 3 (1975): 400-404; and Stephanie J. Shaw, "Mothering Under Slavery in the Antebellum South" in Rima D. Apple & Janet Golden (eds.) Mothers & Motherhood: Readings in American History (Columbus: Ohio State University Press, 1997): 297-318.

³¹ For laws defining bastards, for Illinois, see "An Act to provide for the maintenance of illegitimate children," Revised Code of Laws of Illinois; and for North Carolina, see Chapter 12, Bastard Children, Revised Statutes of the State of North Carolina, Vol. 1. The Connecticut Statutes did not define who constituted a bastard child. The 1808 collection of the Public Statute Laws (based on revisions from 1702), merely stated that any man accused of being the father of a bastard child by a woman "in the time of her

determination about whether the child had been born alive or dead, no charges could be pursued as concealing the death of a legitimate child, while likely to arouse suspicion, was not a criminal offence.³² The status of the mother determined the legitimacy of the corpse. That status, in turn, helped communities conclude if, indeed, any crime had occurred.

In some rare instances—where no body existed—the community needed to establish that a child had actually been born. In short, the jurors needed to prove the seemingly impossible—that an infant whom they had never seen had, at some point in time, existed. Investigations in these cases proceeded on the basis of complaints made or information provided to the Justice of the Peace, rather than at the behest of the Coroner. Inquests or inquisitions, over which the Coroner usually held authority, could only take place in the presence of a body. Viewing the body was essential to the process of making

travail” would be charged with the maintenance of the child by the county. See “Title XXII. Bastards. An Act concerning Bastards and Bastardy,” Public Statute Laws of the State of Connecticut Book 1 (Hartford: Hudson & Goodwin, 1808). Manuals provided for the Justice of the Peace, however, made it clear that only single and unmarried women begat bastard children. See Backus, The justice of the peace, especially Book One, chapter fourteen, and Book Two, chapter six; and Niles, The Connecticut Civil Officer, especially chapter eleven on bastardy. The practice in these three states was consistent with most American states, which considered children born of “single” women, including widows, as bastards. Children born to married women did not fit this definition. Therefore, those children were, by default, legitimate. This applied irrespective of whether or not the married woman’s husband fathered the child in question. This is unsurprising, as nineteenth-century bastardy laws existed to ensure the provision of support for illegitimate children. Such laws purportedly ensured that illegitimate children would not become chargeable to the town. Though a husband may have been cuckolded and shamed by his wife’s infidelity, a married man was nonetheless expected to provide, by social sanction if not by law, for the children borne by his wife.

³² It is interesting to note that well into the mid-twentieth century it only remained an offence to conceal the death of an illegitimate child, not a legitimate child in many American states.

a determination.³³ Yet, the community’s approach in investigations without a body was, as in inquests, very systematic. Such was the case in the inquiry into the death of an infant allegedly born to Patience Rye in Richmond County, North Carolina, in May 1808. Based on the “information” provided by “different persons,” the local Justice of the Peace, convened a hearing to determine if a crime had occurred. Thirteen witnesses were summoned, of which over half provided testimony at the Justice’s Court. Based on this evidence, the Justice concluded Rye had given birth to a child based on her “appearances before,” her “appearances after,” and “her confessions to all the witnesses.” The fact the child was now gone, combined with Rye’s “evasions” and her “contradictory answers” intimated that Patience Rye had, indeed, killed the child. Rye was indicted for murder at the September Term of the Richmond County Superior Court that year, where the Grand Jury found a true bill.³⁴

³³ Legislation in North Carolina stipulated that the jury summoned by the Coroner should inquire “concerning them that suddenly be dead, after such bodies are seen, in what manner, at what time, and by what cause such death was occasioned.” See Section 6, Chapter 25, Coroners, Revised Statutes of the State of North Carolina, Vol. 1. Legislation in Connecticut and Illinois did not specify that a body was required for the purposes of conducting an inquest. Yet a review of inquests from both these states, along with that of North Carolina, clearly indicates that the conduct of inquests was uniform. Twelve men were summoned to conduct the inquest at the place where the body was found. Inspecting the body, at the presumed location of its death, was an integral part of the inquest process. See the inquests from all three states cited in note eighteen above. Evidence from manuals written for Justices of the Peace in Connecticut, and Coroners in North Carolina, also clearly indicates that the officials instructed jurors to “enquire upon view of the body...there lying dead.” See, for Connecticut, Backus, The justice of the peace, especially Book One, chapter twenty-three (quotation from p. 123); and Niles, The Connecticut Civil Officer, 14-15. For North Carolina, see Potter, The Office and Duty of Justice of the Peace, 65-67. Potter’s manual specifically stated that inquests “must be upon view of the body; if the body be not found, the coroner cannot sit.”

³⁴ State v. Patience Rye, September 1808, Criminal Action Papers, Richmond County, NCDAH. As with many cases from North Carolina, the eventual outcome of this case is unknown. As the Grand Jurors found a true bill against Rye, the case most likely proceeded to trial. Yet, without a body, it is almost impossible that the court could have found Rye guilty of murder. Even in the early nineteenth century, the existence of a body was a basic evidentiary requirement to satisfy a jury that a murder had occurred. It is possible that the State actually indicted Patience Rye for infanticide, or concealing the death of a bastard child, although

Even if a corpse existed and an inquest could be convened, jurors faced a broad range of questions that shaped and informed the potential legal outcomes of the proceedings. If the jury could not determine, for example, to whom the baby belonged, no indictment could be issued irrespective of any conclusion they might reach that foul play had been involved in the child's death. On April 7, 1815, for instance, an "infant male child of colour" was found dead in Stonnington, Connecticut. Though the jury of inquest convened to investigate concluded that the infant had been "willfully murdered," the jurors could not identify the child's mother. Accordingly, no further legal proceedings could be initiated.³⁵ Even when juries were able to determine the identity of the infant's mother, they still found it notoriously difficult to reach conclusions about whether or not death was accidental or deliberate. A newborn infant's corpse found in a river, for instance, suggested deliberate drowning. A child who could not crawl or walk

there is nothing in the indictment (which were typically very formulaic during this time period) to suggest this. In North Carolina in 1808, concealing the death of a bastard child attracted the death penalty just as murder did. It would, therefore, have been logical for the State to charge Patience Rye for concealing her infant's death; a charge that might have been more easily proved. The only reason the State may have chosen not to do so is that Patience Rye was married, and the relevant statute therefore did not apply. Robert Rye had been charged with the assault of Patience Rye in 1801, with court records suggesting that he was her husband. At least one of Patience Rye's daughters, Rachel Rye, testified at the Justice Court in the 1808 case. Although Rachel might have been illegitimate, her existence suggests that Patience Rye was married. Whether Patience was still married in 1808, or whether she was a widow, is unknown. To add to the confusion, John Rye—whose relationship to either Rachel or Patience is also unknown—provided information to the Justice of the Peace in June 1808 that a certain John Delaney did "help and counsele" Patience in the murder of her child. This information was made the day that the Justice concluded Patience had a case to answer at the September Term of the Richmond County Superior Court. Delaney refused to provide the one thousand dollar surety for his appearance in September, though several members of the local community eventually bound themselves over to the Sheriff for payment of this amount should Delaney fail to appear. The extent to which Delaney was, if at all, involved in the alleged murder of the child, and, the extent of his relationship with Patience Rye, is impossible to ascertain.

³⁵ Judgment, Verdict of Inquest, April 7 1815, Stonnington, Superior Court, Papers by Subject: Inquests c. 1711-1874, New London County, CSA.

usually did not fall into the water without assistance. But it was possible, especially if the mother was young, inexperienced, and alone, that she had accidentally dropped the newborn into the river. Though communities clearly suspected wrongdoing in cases of drowning, it was rare that someone was indicted for the crime. Even if possible to identify the infant's mother—and often it was not—it was usually impossible to identify if the child had been born dead or alive.³⁶

Given the extraordinary difficulties of the physical evidence, the testimony and expertise of women assumed particular importance. The death of an infant involved a woman—someone who was the child's mother. In the legal cases, men were rarely involved and always as an accomplice to a woman.³⁷ Investigations into infant death therefore demanded intimate knowledge of the infant's mother and her life. Male jurors

³⁶ See, for example, Jury of Inquest's Verdict on Body of a Child Found Dead, May 12 1800; Verdict of Jury on Negro Boy, June 26 1808; and Inquest on an Infant Child, May 25 1834; all in Superior Court, Papers by Subject: Inquests c. 1711-1874, New London County, CSA.

³⁷ In the few cases where men were charged with infanticide, it was as accomplices to women. For examples from North Carolina, see State v. Patience Rye and State v. John Delaney, September Term 1808, Criminal Action Papers, Richmond County; State v. Elizabeth Beaver and State v. Charles, April Term 1808, Criminal Action Papers, Caswell County; and State v. Elisabeth Crabtree and State v. Harry Wall, September Term 1821, Criminal Action Papers, Orange County; all at NCDAH. Fewer such cases occurred in Connecticut until the late nineteenth-century. One case of child murder involved that of Joel Williamson, who was tried at the Litchfield Superior Court in May 1871 for murdering his infant child—the product of his incestuous relationship with his daughter. Another case from Litchfield, heard in 1886, involved a married couple, Mary and Amos Smith, tried for killing their infant child by virtue of abandoning it by a roadside. In that instance, Mary Smith received a reduced sentence (five years in the penitentiary) for testifying against her husband, Amos Smith (eighteen years). For a newspaper account of the Joel Williamson case, see Litchfield Enquirer, May 4 1871, 2. For details of the Smiths's case, see State v. Mary Smith and State v. Amos Smith, April Term 1886, Superior Court Files, Litchfield County, CSA. For a late-eighteenth century case of infanticide from Connecticut involving a male defendant, see State v. Saul Foster, August Term 1791, Superior Court Files, New Haven County, CSA. Saul Foster was the infant's father. He, along with his wife, Prudence, and his mother-in-law, Hannah Bishop, were indicted for murder. At the Justice Court, the Justice of the Peace determined that Prudence did not have a case to answer given her weakness after birth. In contrast, Prudence's mother and husband were bound over to the August Term of the Superior Court, as the Justice determined them guilty of murdering the infant without the mother's knowledge. In August, the Grand Jury did not indict Saul Foster and Hannah Bishop.

assumed that those best placed to provide this information were other women within the community. Females were also presumed the most knowledgeable about whether or not another woman had been pregnant, even if they did not know the woman well. Finally, women were more likely to possess the knowledge that made it possible to assess whether or not a woman had just given birth. If necessary, women could even physically inspect a female suspect as they did in the case of Sally Belk. Male jurors willingly ceded authority in investigations into infant death to women in the community.

The importance of women's role in infanticide cases is most clearly illustrated in the testimony they provided at inquests. Women had access to and provided information about the one space in the community to which men rarely, if ever, had access: the birthing room. Women testified to the physical signs of birth: things such as blood, and the sounds and signs of labor pains.³⁸ They also knew where a woman anxious to secrete an infant's body might hide it.³⁹ They provided evidence about how far women could potentially wander from their homes to dispose of a body after they had given birth.⁴⁰ A

³⁸ See, for example, Inquest Record, May 6 1849, Coroners' Inquests Records, Orange County, NCDAH. In this case, one witness, Charlotte Murphy, testified to the appearance of blood on the suspect's hands shortly after the birth occurred. For an instance in which a woman testified at an inquest to hearing the sounds of birth which alerted her to the fact that Esther, the accused was delivering a child, see State v. Esther (a slave), Fall Term 1833, Records Concerning Slaves and Free Persons of Color, Robeson County, NCDAH.

³⁹ See, for instance, Inquest Over an Infant (belonging to Margaret Paul), May 27 1851, Coroner's Inquests Records, Orange County, NCDAH. In spite of repeated questions from a family member, Mrs. Ellen Paul, Margaret Paul—the accused—denied she was pregnant and had recently given birth. Recognizing that in her weakened condition, Margaret Paul could not have strayed too far from the house, Ellen Paul undertook a search of the premises and located the body of the dead infant wrapped in "some clothes," stuffed between the feather and straw of the beds. Only then did Margaret confess that she had recently given birth.

⁴⁰ See State v. Patience Rye, September Term 1808, Criminal Action Papers, Richmond County, NCDAH, in which the Coroners' Jury in reaching its conclusions determined that Patience Rye could not, based on

local farmer might stumble across a dead baby buried in a field, but it was the women of the community who provided information about who the baby possibly belonged to, and how it might have gotten there.⁴¹

Men could and did provide testimony about whether or not women had appeared pregnant in the weeks prior to the alleged birth, but ultimately only women could confirm if a birth had actually occurred. As in the case of Sally Belk, women—usually midwives—conducted close physical examinations of a woman’s body to which they testified in the presence of the male jurors. On April 4, 1811 in Caswell County, North Carolina, for instance, a local midwife, Judah Hall, was asked to examine the prisoner, Elizabeth Beaver, who was suspected of murdering her child. Mrs. Hall and another local woman, Ms. Lyon, took Elizabeth upstairs, away from the presence of the men, at which time the women “proceeded to search” Beaver’s body. Both saw, they claimed, convincing evidence that Beaver had recently given birth. The most compelling was uncovered when Mrs. Hall conducted an examination of Beaver’s breasts, which “milked out yellow milk.” The information provided by these women proved critical in establishing Beaver’s pregnancy and confirming she had recently given birth. The

her physical condition as described by those women who examined Rye, have wandered far to bury the child. The information provided the community with an idea of where they might search for the body, although the testimony suggests that they were eventually unable to locate the corpse.

⁴¹ See State v. Nancy Trimble, March Term 1814, Criminal Action Papers, Orange County, NCDAH. Two men in the community, Hugh McCain and William Carrington, had located an infant’s body. The midwife, Mary Wortham, examined Nancy Trimble, testifying that Trimble had recently been delivered of a child, which—upon examination of the infant’s body—Wortham concluded that Trimble had strangled before dumping it in the field.

testimony provided by others, both men and women, who only observed Beaver as she moved throughout the neighborhood in the past few weeks, had been equivocal. Some had considered her pregnant, and others not. The evidence of Mrs. Hall and Mrs. Lyon, based on first-hand observation, resolved any ambiguity in the jurors' minds. The Coroners' Jury concluded that Beaver had murdered & concealed the death of her newborn infant. Both women were listed as witnesses when the case finally made it trial at the Caswell County Superior County later that year.⁴²

This participation was not restricted to white women. African-American women, both enslaved and free, served as important participants in inquests, although their involvement was generally limited to inquisitions over the babies of African-American women. But local people assumed that African-American women, like white women, had specific and intimate knowledge of birth, particularly within their own communities, by virtue of their experience as mothers.⁴³ Such was the case with the enslaved Hannah, sent for in her capacity as midwife in Robeson County, North Carolina in June 1833.

⁴² State v. Elizabeth Beaver, May Term 1811, Criminal Action Papers, Caswell County, NCDAH.

⁴³ As Marie Jenkins Schwartz has shown, white Southerners often respected the expertise and knowledge of African-American midwives, relying upon enslaved midwives to serve the needs of both the white and black communities in the surrounding area. Nonetheless, some slaveholders called in medical practitioners—rather than an African-American or white midwife—when complications arose in childbirth, as the loss of either (or both) the mother or (and) the child represented a valuable loss of property. As historians have noted, Southern physicians appreciated the opportunity to work with enslaved women as it provided doctors with opportunities to investigate ideas about racial difference and experiment with more invasive delivery techniques, usually without the aid of anesthesia. See Marie Jenkins Schwartz, Birthing a Slave: Motherhood and Medicine in the Old South (Cambridge, MA: Harvard University Press, 2006): 143-226, and Steven Stowe, “Obstetrics and the Work of Doctoring in the Mid-Nineteenth Century American South,” Bulletin of the History of Medicine, 64 (1990): 540-566. See also Sharla Fett, Working Cures: Healing, Health, and Power on Southern Slave Plantations (Chapel Hill: University of North Carolina Press, 2002) for further discussion of the conflicts that arose between white physicians and black healers over approaches to illness and pregnancy.

Rather than conducting a physical examination of Esther, the slave woman charged with murdering her recent newborn, Hannah closely examined the infant. After washing the child's body, Hannah concluded he had been choked, based on the "marks of fingers about its neck," the swelling of his upper lips, and the bruise upon the back of the boy's head. Hannah's conclusions prompted her to interrogate Esther, with Hannah demanding that Esther reveal how and why she had killed her son. Such a close examination of the corpse by an enslaved woman was unusual, but in this case, the jury did not call for a doctor preferring instead to rely on the evidence provided by a midwife, even if she was an enslaved woman. Just like the information provided by white midwives, Hannah's findings constituted the most important evidence in the investigation, with other women—enslaved and free—providing testimony that supported and supplemented Hannah's narrative.⁴⁴

The involvement of women—white, black, enslaved, and free—was not restricted to North Carolina. Inquest and court records from around the country indicate that women played pivotal roles in investigations into infant deaths.⁴⁵ In New York City, for

⁴⁴ State v. Esther (a slave), Fall Term 1833, Records Concerning Slaves and Free Persons of Color, Robeson County, NCDAH. For further cases in which enslaved women provided testimony, see W. L. Sutton, "A Case of Infanticide," Western Journal of Medicine and Surgery, 3rd ser., 11 (January 1853): 28-30; State v. Rianna Day, March Term 1849, Criminal Action Papers, Orange County, NCDAH; Inquisition over infant (belonging to Samirah), December 30 1852, Coroners' Inquests, Northampton County, NCDAH. For cases in which free black women provided testimony, see State v. Hannah Gardiner, July Term 1794, Superior Court Files, New Haven County, CSA; State v. Julia Anderson, December Term 1804, Superior Court Files, New Haven County, CSA; and Henry M. Warner, Report of the Trial of Susanna, A Coloured Woman... (Troy, NY: Ryer Schermerhorn, 1810).

⁴⁵ As noted in my introduction, the earliest inquest and court records I have been able to locate for Illinois begin, with one exception, in the 1850s. Though I do not refer to any specific examples from Illinois in this chapter, the presence of women as witnesses in inquests and trials in Illinois throughout the 1850s and the Civil War is consistent with my broader argument in this chapter about the significance of women in investigations into infant death. See, for instance, details regarding the case of Maria House, tried for

instance, Louisa, a chambermaid, testified at the 1819 infanticide trial of Mary Gardener. Louisa had heard an infant crying, and after some searching, eventually discovered the dead child's body hidden in a chest in Gardener's room. Along with other women in the house, she had tried to revive the infant to no avail.⁴⁶ Louisa's story was typical: it was not unusual for women to testify to the discovery of the dead infant's body when the accused worked as a servant in large cities such as New York.⁴⁷ Disposing of the corpse in such cities presented particular challenges—there were no nearby fields in which to secrete a dead body, for example—and a woman often tried to hide the body in the room she shared with another female servant. Though detailed inquest records for Connecticut are scant, the list of witnesses called at those cases that made it to trial also illustrates the extent of involvement of women in those cases. It was rare for any case to make it to trial without a female witness listed on the docket. In some instances, there were many more than one. Of the sixteen witnesses subpoenaed in a 1791 infanticide case against Hannah

infanticide in Springfield, Illinois in April 1857 in "Murder Trial," Illinois State Journal, May 1 1857, and "Murder Trial," Illinois State Journal, May 2 1857. Historians who have analyzed infanticide cases from New Jersey and Ohio have also identified women as the principal witnesses in the cases under study. See Douglas V. Shaw, "Infanticide in New Jersey: A Nineteenth-Century Case Study," New Jersey History, 115 (1997): 3-31; and Kenneth H. Wheeler, "Infanticide in Nineteenth-Century Ohio," Journal of Social History, 31 (1997): 407-418.

⁴⁶ "Mary Gardner's Case," New York City Hall Recorder, 5:5 (May 1 1820): 70-71.

⁴⁷ See, for instance, Warner, Report of the Trial of Susanna. In another New York case from this period, the accused, Clarissa Grady, threw her newborn infant into the privy. See "Infanticide: Clarissa Davis," New York City Hall Recorder, 3:3 (March 1 1818): 45. Throwing your infant in the privy was a common method employed by servant women to dispose of newborn infants as cases from Connecticut during the nineteenth-century illustrate. See State v. Catharine O'Brian, August Term 1825, Superior Court Files, New Haven County; State v. Sarah Freeman, October Term 1842, Superior Court Files, New Haven County; and State v. Julia McQueen, October Term 1847, Superior Court Files, New Haven County; all at CSA.

Bishop from New Haven, Connecticut, half were women. That woman constituted at least one-third of the witnesses was not unusual.⁴⁸ More than likely, those listed as witnesses would have brought friends along with them to the trial, crowding the courtroom with women, all interested in the outcome of the proceedings even if they did not witness the events in question themselves. Those accused of infanticide, such as Clarissa Ockrey of New London, Connecticut acknowledged the significance of female witnesses to the outcome of their cases. Found guilty of infanticide in February 1808 and sentenced to death, Ockrey petitioned the Connecticut General Assembly for her life. The basis of Ockrey's appeal was her lack of access to female witnesses who could have testified on Ockrey's behalf at the trial.⁴⁹

The significance of local women's contributions to the inquest process should not be underestimated. The mechanism of the inquest provided the first stage at which a community formally articulated a suspicion of infanticide in a legal forum.⁵⁰ Based on the findings of the inquest, the local Coroner or Justice of the Peace drew up an

⁴⁸ These conclusions are based on my review of the indictments for infanticide between 1789 and 1860 for New Haven County, Connecticut. Records prior to 1850 are fairly scant for the remaining counties in Connecticut at that time, making it difficult to draw any firm conclusions. For Hannah Bishop's petition, see Petition of Hannah Bishop, wife of John Bishop, and Saul Foster, both of Guilford...to the Connecticut General Assembly, May 1791, Crimes & Misdemeanors, 2nd. Ser., V: 72a-73b, CSA.

⁴⁹ Petition of Clarissa Ockrey to the Connecticut General Assembly, May 2 1808, Crimes & Misdemeanors, 2nd Ser., IV-V: 92a, CSA.

⁵⁰ An informal stage might typically include that of gossip or rumor. For the importance of gossip in an infanticide case, see Cynthia Kierner, Scandal at Bizarre: Rumor and Reputation in Jefferson's America (New York: Palgrave Macmillan, 2004). For a discussion of the significance of rumor and gossip more generally, see Jane Kamensky, Governing the Tongue: The Politics of Speech in Early New England (New York: Oxford University Press, 1997). It is also important to note that a finding in an initial inquest such as that infants had died by some "cause or causes unknown" or "hand or hands unknown" may have been a means of shielding some women from the further scrutiny of the legal system, namely the ignominy of an appearance in court.

indictment, then either remanded the accused to the local jail or bailed the suspect pending their appearance at the next session of the Superior or Circuit Court. Though the jurors—usually male—ultimately made a finding about cause of death, what local women said mattered in helping juries reach a conclusion. These same women were then called upon to testify at the Superior Court or Circuit Court trial if needed. For those whom the inquest process exonerated of any complicity in their infant's death, the findings of the inquest completed the investigation. If the Justice of the Peace did not draw up an indictment based upon the findings of those conducting an inquest, then no indictment was ever drawn up—at least in infanticide cases. Women were able to participate in crafting a narrative that assigned blame, just as easily as they were in crafting one that exonerated a woman of complicity in an infant's death.

The distinguishing feature of investigations into infant death is that women served as the principal participants in crafting narratives of infanticide, as mothers, neighbors, suspects, witnesses, midwives, and on the odd occasion, jurors. Nineteenth-century Americans willingly acknowledged that women possessed privileged and authoritative knowledge that enabled them to interpret the physical evidence presented by another woman's body. In so doing, communities demonstrated the premium they placed on intimate knowledge of the accused in local legal proceedings.

Yet, while the participation of women was critical to the construction of stories about infanticide, the process was one that ultimately involved the entire community. Seeking to make some sense of the events that had transpired, coroners' juries turned to all who had known and heard of the suspect. Midwives and mothers interpreted the

evidence written on the accused's body. Everyone else—rich, poor, enslaved, and free—constructed narratives of an infant's death based on what they knew of the child's mother, supplementing, supporting, and filling out the stories that local women began. Consequently, understanding what happened to an infant became a collaborative project, one in which every member of the local community was intimately involved

Chapter Two **The Importance of Local Knowledge and Reputation:** **Community Responses to Murderous Mothers**

November 18, 1814: In Groton, New London, Connecticut, the Justice of the Peace, Ebenezer Morgan, summoned twelve prominent and “discreet” men of the town to the home of Mr. Isaac Avery. Fragments of a body had been found at Mr. Avery’s residence, and the discovery necessitated an investigation. After due consideration of the remains, the jury of inquest concluded that the body, or what remained of it, belonged to an infant, whose sex was unknown. Given the deterioration of the remains, the jury could not reach a finding as to the infant’s manner of death. They did, however, conclude that the body had been placed in Mr. Avery’s dwelling “in a secret and clandestine manner.” This statement no doubt relieved Mr. Avery, as it absolved him of any suspicion of involvement in the infant’s death.¹

As in so many investigations into infant deaths in the nineteenth century, these jurors reached the only conclusions they could with the information available to them. They had no knowledge of the infant. Nor did they have any knowledge of anyone in the town of Groton who had been pregnant recently and might have tried to conceal a birth and subsequent death of a child. These men, though upstanding and “discreet,” had no medical expertise to determine how the infant had died. Even if one of them did have some kind of medical training, it is unlikely that their knowledge would have assisted the jury. The body was badly decomposed, and the state of forensic science in 1814 was not sufficiently advanced to determine if an infant had been born alive or dead. Based upon

¹ Inquest on the Body of an Infant, November 18 1814, Superior Court, Papers by Subject: Inquests c. 1711-1874, New London County, CSA.

the physical evidence alone, it was impossible for the jurors in Groton to make any finding about how the infant had died. But the jury did know something about Isaac Avery. Jury members knew that he was an upstanding and upright member of the community. Although the body had been found on his property, they did not think it likely that Avery was involved in its death or its concealment. Indeed, it was Avery who had alerted the Justice of the Peace upon the discovery of the remains. Based on their knowledge of Isaac Avery, the jury concluded he was not associated with any wrongdoing.

Investigations into the death of an infant, as in so many other legal proceedings in the nineteenth century, involved individual, intimate knowledge of the persons involved. Without such information an indictment was impossible. There are numerous examples of investigations into the deaths of infants in Connecticut and other states where the jury concluded that foul play had been involved. Such investigations, however, rarely resulted in indictments, stymied as the juries were by lack of information about the woman to whom the child belonged or the people involved in the body's concealment. Where indictments did result, local prejudices and sympathies shaped the outcomes of these infanticide cases in much the same way that these twelve "discreet" men in Groton handled the delicate matter of the infant's remains found on Isaac Avery's land. Drawing on personal knowledge of the accused and others implicated or involved in the case, nineteenth-century Americans crafted narratives that enabled them to explain the circumstances surrounding an infant's death.

Community perceptions of an individual's character were particularly important in shaping responses to infant deaths and infanticide cases in the early republic and antebellum periods. People testified to what they saw and heard, for instance, in interpreting the physical evidence relating to infant death. Yet, as the case of Isaac Avery demonstrates, the community's assessment of a person's reputation also informed how people reacted to and made sense of this physical evidence. In the absence of firm conclusions from the material evidence based on what their senses told them, the reputations of the individuals involved in the investigation—even peripherally, as the person on whose land the corpse was found—often shaped the outcome in some way, even if it was only to clear that person of any wrongdoing. Isaac Avery was not absolved of fault simply because he was a man, but because he was a person known and respected in the community.²

Cases of infant death and infanticide provide a lens for understanding the closely-knit relationship between reputation and knowledge in the early republic and antebellum periods. The logic that privileged women's knowledge also elevated that of others—including slaves, for instance—who knew anything about the death under investigation,

² Legal historian Barbara Shapiro has argued that communities in early modern England and the Anglo-American colonies used very clearly delineated means of assessing evidence and an individual's character, particularly one suspected of a crime. The criteria for making such assessments were detailed in Justice of the Peace Manuals, including those that travelled across the Atlantic, such as William Hening's New Virginia Justice (Richmond, VA: 1795). By the nineteenth century, these specific criteria had largely disappeared from the Justices' Manuals. Nonetheless, it is clear from the manner in which communities conducted inquests in states throughout nineteenth-century America that these criteria no longer needed to be written down, simply because their use as means of evaluating evidence and character were so firmly embedded within local legal culture. For further discussion of these issues, see Barbara Shapiro, "Beyond Reasonable Doubt and Probable Cause:" Historical Perspectives on the Anglo-American Law of Evidence (Berkeley: University of California Press, 1991): 127-145.

or the accused person. That knowledge then acquired value within communities by virtue of the reputation of those who spoke. But, as the previous chapter demonstrated, an individual's reputation was not determined by his or her place within a universalizing social order that marginalized women simply because they were women or slaves simply because they were slaves. The information that women provided, for instance, was considered important because females had intimate knowledge of birth and pregnancy. This was knowledge that men neither had nor assumed they should possess. Extending that argument, this chapter illustrates the authority local communities granted to information provided by all of those who knew the woman suspected of perpetrating infanticide. As communities valued information specific to the individual under investigation, they sought out and evaluated testimony from everyone who had such particularized knowledge, be they rich, poor, enslaved, or free.

Laden with all this knowledge about the dead infant lying before them, juries then sifted through the information, considering carefully the reputation of those who had testified. The credibility of particular testimony depended upon who had spoken. The nature of the information someone possessed, for instance—the fact that it could only be gained by proximity to the accused that others did not have—often provided the informant with credibility he or she might otherwise be denied. A slave's testimony might become reliable because only he had access to the knowledge that jurors deemed critical for making a judgment about what had occurred. Similarly a midwife's statements often had as much authority as those of a doctor, given her knowledge of the woman involved and her experience in matters of pregnancy and birth. Factors such as a

person's property holdings and profession did shape how communities assessed an individual's credit, but just as important, and sometimes even more so, was an individual's place within the complex web of social relationships in which the accused and those testifying were embedded.³ Juries drew on the knowledge of everyone within that web, assessing the value of information based on their judgments of the credibility of each witness. This local knowledge, carefully evaluated for reliability, enabled communities to produce narratives explaining the infant deaths they confronted on a regular basis. Those narratives also shaped legal outcomes, becoming embedded within the practice of law.

When Mrs. Judah Hall and Mrs. Rebakah Lyon examined Elizabeth Beaver's body on April 4 1811, they were looking for signs that Beaver had recently delivered a child. The examination, as I observed in the previous chapter, was discreetly conducted upstairs, away from the eyes of the many men who crowded Mrs. Lyon's home, where the inquest was taking place. One of the men who testified that day was Samuel Dabney, a local doctor. But based on the testimony he provided, it seems unlikely that Dabney

³ For the significance of reputation, as informed by credit and social relationships, as a determinant of status in the new republic and antebellum United States, see Joanne B. Freeman, Affairs of Honor: National Politics in the Early Republic (New Haven: Yale University Press, 2001), Laura F. Edwards, The People and Their Peace: Legal Culture and Transformation of Inequality in the Post-Revolutionary South (Chapel Hill: University of North Carolina Press, 2009), esp. chapter four, and Bruce H. Mann, Republic of Debtors: Bankruptcy in the Age of American Independence (Cambridge: Harvard University Press, 2002). For discussions of how communities assessed character and reputation of both slaves and masters in the context of slavery, see Ariela Gross, Double Character: Slavery and Mastery in the Antebellum Southern Courtroom (Athens: University of Georgia Press, 2000): 72-121. For a discussion of the weight that juries placed upon the evidence of witnesses—and how they evaluated the credibility of witnesses' testimony—within the early modern context, see Shapiro, "Beyond Reasonable Doubt," 186-198.

testified in his capacity as physician. Like other men—and women—who spoke at the inquest, Dabney observed that he had seen Beaver locally in recent weeks. He was, as were most of the others who provided testimony, unhelpfully equivocal about what she looked like on those occasions. When Dabney observed Beaver two weeks prior to the inquest, she had appeared pregnant. More recently, he considered she had not been so but he could not “be certain in either case.” Had it not been for the evidence provided by Mrs. Hall and Mrs. Lyon, the jurors might never have reached a conclusion about who had given birth to the child.⁴

Members of a Coroner’s Jury often called in doctors to examine an infant’s corpse in the early republic and antebellum periods.⁵ This practice was common throughout the United States, as widespread in small, rural areas as it was in large cities.⁶ But Samuel

⁴ State v. Elizabeth Beaver, May Term 1811, Criminal Action Papers, Caswell County, NCDAH.

⁵ There were no nation-wide standards or training for “doctors” in nineteenth-century America. The term essentially included any person who represented himself to the community as a doctor. This included those who are today known as homeopaths; the Thomsonians who advocated the use of herbal medicine and the rejection of professional healthcare in any form; those who supported hydropathic medicine which involved the use of mineral water to treat illness; and anyone who simply advertised his or her self as someone who possessed medical skills.“ Even those who practiced what might be considered a more “orthodox” form of medicine generally relied upon the same techniques that had been in use since the colonial period, including bleeding, blistering, and purging of bodily fluids. The basis for this approach was the belief in humoralism. When the body’s humors were out of balance, the body supposedly became diseased. By purging the body of excess fluids, the balance was supposedly restored. For literature on the role of doctors in nineteenth-century America and the development of medicine as a profession, see James Cassedy, Medicine and American Growth, 1800-1860 (Madison: University of Wisconsin Press, 1986); John Duffy, From Humors to Medical Science: A History of American Medicine (Urbana: University of Illinois Press, 1993); Lamar Murphy, Enter the Physician: The Transformation of Domestic Medicine, 1760-1860 (Tuscaloosa: University of Alabama Press, 1991); and Steven Stowe, Doctoring the South: Southern Physicians and Everyday Medicine in the Mid-Nineteenth Century (Chapel Hill: University of North Carolina Press, 2004).

⁶ This conclusion is based on my review of inquests from Connecticut, Illinois, and North Carolina, in conjunction with select infanticide cases from other states. For examples of such cases from varying locations, see, Inquisition over child of Sarah, 1799, Slave Records (Civil & Criminal), 1785-1829, Northampton County, NCDAH; State v. Catharine O’Brian, August Term 1825, Superior Court Files, New

Dabney did not inspect the corpse, nor did he examine Elizabeth Beaver. This latter fact was unsurprising. Midwives, not doctors, inspected women's bodies.⁷ The approach was consistent with early nineteenth-century medical practice and prevailing social beliefs. Doctors treated illness. They did not routinely examine pregnant women, or those who had recently given birth, because pregnancy was considered a natural condition for women and not a disease.⁸ What, therefore, was Samuel Dabney doing at the inquest, if not to offer a medical opinion? Dabney testified—as did others at the investigation—in his capacity as a respected member of the local community, who had recently observed the suspect on more than one occasion. Although Dabney may have been afforded that

Haven County, CSA; J. H. Thompson, "Case of Suspected Infanticide," American Journal of the Medical Sciences 8 (1844): 269, for a medical analysis of a case of infanticide in New Jersey; State v. Mary Browning, Fall Term 1853, Criminal Action Papers, Haywood County, NCDAH, at which two doctors were present; W. L. Sutton, "A Case of Infanticide," Western Journal of Medicine and Surgery, 3rd ser., 11 (1853): 28-30, for an analysis of the doctor's role in a case of infanticide in Kentucky; People v. Maria House, April Term 1857, Sangamon County Circuit Court, as reported in "Murder Trial," Illinois State Journal, May 1 1857, and "Murder Trial," Illinois State Journal, May 2 1857; and Unknown Child, Stonnington, December 1857, Superior Court, Papers by Subject: Inquests, c. 1711-1874, New London County, CSA.

⁷ There were rare exceptions to this. Slave women, for instance were sometimes examined by a doctor. See, for instance, Investigation into death of infant belonging to Sarah, 1799, Slave Records (Civil & Criminal), 1785-1829, Northampton County, NCDAH. Doctor Simms observed that "he believes Sarah to have been delivered of child from seeing the milk drawn freely from her breasts," with his testimony still unclear about whether his observation was based on a close physical examination of Sarah, or a marginally less invasive visual inspection. In most cases, slaveholders and community members relied on other enslaved women or neighboring white women to provide the information about whether or not a slave woman had recently given birth.

⁸ For the attitudes of American doctors to pregnancy and obstetrics in the first half of the nineteenth century, see Deborah Dwork, "Born in Urban America: 1830-1860" Clio Medica, 12 (1977): 227-253; Sylvia Hoffert, Private Matters: American Attitudes toward Childbearing and Infant Nurture in the Urban North, 1800-1860 (Urbana: University of Illinois Press, 1989); Judith Walzer Leavitt, Brought to Bed: Childbearing in America, 1750 to 1950 (New York: Oxford University Press, 1986); Sally McMillen, Motherhood in the Old South: Pregnancy, Childbirth, and Infant Rearing (Baton Rouge: Louisiana State University Press, 1990); and Steven Stowe, "Obstetrics and the Work of Doctoring in the Mid-Nineteenth Century American South" Bulletin of the History of Medicine, 64 (1990): 540-566.

respect by virtue of his profession, it was not assumed that his role as physician equipped him with expertise about the medical issues involved in the case, specifically those involving women and birth. Instead, Dabney—like the many other men and women who shared information with the Coroner’s Jury—testified as a member of the community who had seen Elizabeth Beaver in the weeks before and after the murder had allegedly occurred. In the end, he was just one of over twenty witnesses listed on the docket for Beaver’s case, eventually heard in November 1811 at the Caswell County courthouse. Of these only half of the witnesses were male; the others were respected female members of the community.

Jurors did draw upon medical information provided by doctors when evaluating the evidence. Summoned by the jury and the coroner, a physician’s purpose at an inquest was to make an assessment about the cause of death.⁹ To reach a conclusion, a doctor usually inspected the corpse, noting any marks or contusions, for instance. He then attempted to determine the cause of these external signs of injury, which was a much more difficult task. Frequently, the doctor’s problem was exactly the same as the one that confronted the jurors. Like the physician, members of a jury could see the obvious signs of injury but were unsure how to interpret the marks. Jurors requested a doctor,

⁹ Legislation in North Carolina specifically stated that if any member of a coroner’s jury requested a post-mortem examination of the corpse, the coroner should summon a physician for that purpose. Costs of the examination were to be met by the county. Similar legislation did not exist in either Connecticut or Illinois, but, as noted above in note four, the evidence indicates that juries often requested the presence of doctors at inquests in both these states. For the North Carolina legislation, see Chapter 25, Section 7, “Coroners,” Revised Statutes of the State of North Carolina, Vol. 1 (Raleigh: Turner and Hughes, 1837).

therefore, as he had particular, specialized knowledge that might assist the jury in making a determination about what had happened.¹⁰

In drawing conclusions about cause of death, a doctor relied—as did a jury—upon observation. Often, a physician simply limited himself to a visual inspection of the corpse, noting as did one North Carolina doctor in November 1821, that the child had “marks on its face.”¹¹ Other doctors elected to be more thorough, conducting what was known in medical parlance of the time as the lung test. When physician James Webb, also of North Carolina, examined the body of an infant allegedly born to Elizabeth Crabtree on September 4, 1821, he acknowledged that there were no visible marks of violence upon the body. Upon a close inspection of the lungs, however, Webb concluded that he was “decidedly of [the] opinion that the child had been born alive.”¹² Doctors also observed if infants had been born prematurely. If a baby had been born prior to reaching full-term, communities asked a different set of questions. Abortion was a possibility people considered, but pre-term babies made juries more sympathetic to a mother’s claims that she had merely concealed her stillborn child. Rather than killing her infant, she had hidden evidence of her shame. Full-term babies, in contrast, suggested that the infant had been born alive. Juries certainly did not accept this fact as conclusive evidence that the infant had been born breathing, but it was one of a myriad of factors

¹⁰ For a discussion of the interaction between physicians and the law in the nineteenth century, see James Mohr, Doctors and the Law: Medical Jurisprudence in Nineteenth-Century America (New York: Oxford University Press, 1993).

¹¹ State v. Hannah Walker, March Term 1822, Criminal Action Papers, Orange County, NCDAH.

¹² State v. Elizabeth Crabtree, September Term 1821, Criminal Action Papers, Orange County, NCDAH.

they weighed in drawing conclusions about whether or not a mother was at fault in her infant's death.

Like juries, physicians also relied upon the testimony of others to draw conclusions. Doctors incorporated accounts provided by witnesses into medical narratives, assisting juries in drawing together and making sense of the multiple strands of evidence with which they were confronted. Consider, for instance, Doctor Norwood who inspected the corpse of an infant at the request of a jury of inquest held in May 1851 in Orange County, North Carolina. Norwood was particularly thorough in his examination. He cut open the corpse, inspecting the body carefully for both external and internal marks of violence, none of which he could find. Consistent with prevailing medical practice of the time, he then performed the lung test, dropping the corpse into water to see if it floated or not. If it did, then the child had breathed, which therefore suggested that the infant had been born alive and subsequently murdered. Norwood helpfully noted for the jury that parts of the corpse had floated, while the lower part of the body had tended to sink. Irrespective of the seemingly inconclusive nature of this physical evidence, he concluded that the child had probably been born alive. Then again, he noted, the woman present in the room at the time of the birth had not heard the infant cry. If the child did not scream, Norwood observed, then it “probably died from the manner of its birth.” There was no reason, he claimed, to suspect that the mother had intended to kill her child.¹³ There is nothing to suggest anyone thought it strange that

¹³ Inquest Over an Infant (Margaret Paul), May 27 1851, Coroners' Inquests Records, Orange County, NCDAH.

Doctor Norwood should base his conclusions on a combination of both his own observation and the testimony of the woman present in the room. Indeed, doing so was entirely consistent with the nature of the legal process of which Norwood was a part. Norwood drew on information, including his medical knowledge, and the specialized knowledge of the woman who was present when the accused, Margaret Paul, gave birth. He did not doubt what the witness had, or had not, heard. That witness had been present, after all, whereas Norwood had not.¹⁴

The ways in which communities employed the knowledge of physicians in investigations into infant death sheds light on how coroners' juries evaluated the information they heard. While there was a place for specialized medical knowledge at the inquest, jurors did not assume that the testimony of white, male professionals trumped that of women within the community present when the baby was born. Nor was the apparent willingness of jurors to accept the words of local women some kind of backwards, regionalized skepticism of a profession still in its infancy even in 1851.¹⁵ Such a characterization would be far from an accurate rendering of how things operated in practice. Jurors appreciated the sources of information as complementary. If there

¹⁴ Steven Stowe has argued that the case histories and notebooks of nineteenth-century physicians reveal the narratives that these doctors authored in order to make sense of the events and the people they encountered in daily practice. Judith Walzer Leavitt has also emphasized the importance of the domestic environment to shaping the work of nineteenth-century doctors. Physicians incorporated what they heard and saw around them in their patient's home into the "business" of medicine, including diagnosis and—by extension—conclusions in a post-mortem examination. See Judith Walzer Leavitt, "A Worrying Profession: The Domestic Environment of Medical Practice in Mid-Nineteenth-Century America," Bulletin of the History of Medicine 69 (1995): 1-29; and Steven Stowe, Doctoring the South: Southern Physicians and Everyday Medicine in the Mid-Nineteenth Century (Chapel Hill: University of North Carolina Press, 2004): 228-258.

¹⁵ The American Institute of Homeopathy formed in 1844, and the American Medical Association constituted in 1847.

were contradictions among and even within narratives, as in that constructed by Doctor Norwood, then the jurors sifted through what they heard, evaluating evidence based on the credibility of who had spoken and the reliability of the knowledge a witness had provided. In the case of Margaret Paul, the physician reconciled the apparent contradictions, neither undermining the soundness of his own evaluation nor that of the other woman who had spoken. That witness's credibility rested on her status as a woman, one familiar with and willing to testify to the sounds and signs of birth. Further, she had sent—without the knowledge of the accused—for both a female neighbor and a doctor immediately after the child was born, inviting outside parties—witnesses—into the birthing chamber to assess first the mother's condition and then that of the baby. The woman's willingness to seek the involvement of other parties suggested that she—if not the mother—had nothing to hide.¹⁶

Jurors evaluated the knowledge that women provided in the same way that they assessed the merits of the information provided by middle and upper class white men, such as doctors. Communities considered everything that informants—women and men—shared; the area of expertise of the witness, be it pregnancy or the dissection of

¹⁶ Women, and occasionally men, were tried as accessories to the crime in infanticide cases. For this reason, it may have been important to send for additional witnesses, such as a doctor or midwife, as soon as possible—to eliminate suspicion of involvement in the infant's death and inform the appropriate authorities as soon as possible. For a case in which others present at the infant's birth were indicted as accessories to murder, see *State v. Sarah Jeffreys* (mother), and *State v. Betsey Coombs* (accessory), September Term 1819, Criminal Action Papers, Caswell County, both at NCDAH. Where the case was eventually dropped against Coombs, Jeffreys was sentenced to death. After Jeffreys's failed appeal to the Supreme Court—and several failed appeals for executive clemency—Governor John Branch finally granted Jeffreys a reprieve from the death penalty in May 1820. See Pardon of Sarah Jeffreys, May 19 1829, GLB, vol. 23, no. 2, 301. One of the reasons that Coombs found herself on trial as an accessory is because of her obvious efforts to help Sarah Jeffreys conceal and lie about the crime, in contrast to the female witness involved in Margaret Paul's case. Indeed, the community also initially indicted Sarah's mother, Fanny, for her apparent role in the concealment and cover-up, before the charges against her were abandoned.

corpses; the nature of the relationship between the accused and the witness that might compromise the evidence; and any motivations the witness might have to lie or embellish his or her interpretation of events. Juries ultimately expected contradictions and complications within and between overlapping narratives, because it was entirely possible—indeed, probable—that no one’s evidence could be entirely discredited and each story contained a grain of truth.

The narrative in Paul’s case was not, therefore, unique. Consider, for instance, the story of Hannah Walker, suspected of killing her newborn child in Orange County, North Carolina in November 1821. The coroners’ jury determined Hannah’s guilt on the basis of testimony provided by several witnesses, including the midwife, Peggy Perry; Lucy Walker, apparently Hannah’s mother-in-law; and Doctor Yancey of Chapel Hill. Covered with scratches and in the early stages of decay, the infant’s body must have looked—and smelt—unpleasant to the jury, even as accustomed as they must have been to the sights and smells of death in antebellum America. Peggy Perry’s description of the child born in “good health” just a few days before would have seemed strangely dissonant with the images of the putrefying corpse lying there before them. The jury concluded that Hannah Walker had suffocated her infant. The finding prompted Hannah’s arrest on a charge of murder for which she was remanded to the local jail pending the next session of the Superior Court in March 1822.¹⁷

The case then took an unusual turn, primarily because Hannah—who had, so it seemed, given birth to an illegitimate, mulatto child—was married. Hannah’s husband,

¹⁷ State v. Hannah Walker, March Term 1822, Criminal Action Papers, Orange County, NCDAH.

William Walker, intervened, seeking bail for his wife until her case could be heard the following year. William applied to a judge sitting at the Superior Court then in session. He did not present any new evidence in his application. He simply asked the Judge to reconsider the testimony presented by everyone at the inquest. In so doing, the Walkers reframed the evidence in such a way that it cast doubt on the jury's conclusions. The scratches might have been caused by the "agonies" of either birth or a natural death. Mrs. Walker, the mother-in-law, had not seen any "improper conduct" on Hannah's part towards the child, suggesting that Hannah loved her infant and had no motive to kill it. Judge William Norwood released Hannah on bail, given the doubts that had been cast on the evidence against her. There is no way of knowing, of course, if the conclusions reached by either the jury or the narrative presented by William and Hannah Walker to Judge Norwood was any more accurate than the other. Nor, however, does the accuracy of either account really matter. No doubt the jury and the Walkers each strongly believed their interpretation of events. The Walkers did not necessarily bend the evidence, deliberately and consciously, to make it appear exculpatory when they knew they were in the wrong. They probably presented the evidence to Judge Norwood as they believed events had transpired. Nor was it a case where the evidence, or prestige, of elite white men simply trumped the testimony of local women. The details, as always, were complicated. Peggy Perry, the midwife, simply testified that she had helped Mrs. Walker give birth to a healthy baby boy. Such evidence confirmed that the child belonged to Mrs. Walker, and that it had been born alive. But Perry did not make any claims about who or what might have killed the child. Indeed, the Walkers did not dispute that the

infant had breathed. The issue over which the jury and the Walkers seemed to disagree was how the infant had died, a conclusion usually informed by the testimony of male doctors, not local women. In the end, the question was one with which a petit jury had to grapple. When Hannah finally faced the court in March 1822, the grand jury found a true bill. Therefore, Hannah Walker was tried for murder.¹⁸

Given the premium that investigatory procedures placed on knowledge of the individual under suspicion, communities often called upon African Americans, both enslaved and free, as witnesses in inquests. This participation was generally limited to cases concerning enslaved women or free blacks.¹⁹ Nonetheless, African-Americans, like white community members, testified to what they knew about the individuals involved, what they had seen, and what they had heard. Indeed, the testimony they provided was key to shaping the outcomes of these investigations. Amongst slaves, for instance, other

¹⁸ The final outcome of Hannah Walker's case is unknown.

¹⁹ In Illinois and North Carolina, legislation dictated that no black or mulatto person, whether free or enslaved, could testify in any case except those concerning other free blacks or slaves. For Illinois, see Third Division, Section 16, "Criminal Code," Revised Code of Laws of Illinois (Vandalia, Ill.: Robert Blackwell, 1827). For North Carolina, see Chapter 111, Section 50, "Slaves and Free Persons of Color," Revised Statutes of the State of North Carolina, Vol. 1. In Connecticut, there appears to have been no legislative provision that prevented African Americans from testifying against whites in the nineteenth century. Given, however, the general prejudice against African Americans in Connecticut in the antebellum period, it is unlikely that African Americans interacted widely with whites. This would have limited opportunities for African Americans to be involved in infanticide cases where the suspected murderer was a white woman. Based on the cases I reviewed, there is no evidence to suggest—at least in infanticide cases—that free blacks or slaves routinely served as witnesses in cases involving whites in Connecticut, Illinois, or North Carolina even when the infant appeared to be the result of an interracial sexual union. The only case I located in which it appeared that an African American may have been listed as a witness in a case involving a white woman is State v. Hannah Gardiner, July Term 1794, Superior Court Files, New Haven County, CSA. As, however, Hannah Gardiner's race was unstated in the indictment, it is not possible to determine if she was African American or white. For discussions of the status of free blacks in Connecticut and white prejudice toward them, see Lawrence Friedman, "Racism and Sexism in Antebellum America: the Prudence Crandall Episode Reconsidered," Societas: A Review of Social History 4 (1974): 211-228; and Robert Austin Warner, New Haven Negroes: A Social History (New Haven: Yale University Press, 1940): 1-122.

slaves were far more likely than slaveholders to have been present when the enslaved woman gave birth or to have some knowledge of what had occurred. Their access to such information—by virtue of proximity—made the testimony that slaves provided credible.²⁰ This was particularly so in cases where the evidence of slaves correlated with and assisted in making sense of the many narratives that the jury was piecing together in creating its timeline and interpretation of events. Jurors had little reason, for instance, to doubt slave testimony if the information provided a key piece of the overall puzzle—information that no white informant, male or female, could supply. Such was the case in Orange County, North Carolina in December 1819, where a jury of inquest convened to investigate the death of a female infant born to Sarah, an enslaved woman owned by David Allison. The testimony of Jim, another slave owned by Allison, was central to the inquest because Jim had discovered the infant’s body, thereby setting in motion the events leading to the investigation. Sarah had been sick that morning, Jim told the jurors. Consequently, he had followed her when she left the house, at which time he found the infant covered with a piece of blanket and some weeds. Even Jim’s observation that the infant was found wrapped in a blanket assumed significance. People frequently interpreted such signs as indications that the mother cared for and had been prepared for the birth of her infant, thereby reinforcing a mother’s claim that the child had been

²⁰ Laura Edwards and Ariela Gross have both demonstrated how people made assessments of a slave’s character and reputation, based on the relationship between slave and master (Gross) and the larger social networks of which slaves were an integral part (Edwards). See Edwards, The People and Their Peace, 111-131; and Gross, Double Character, 79-92, 96-97.

stillborn.²¹ In Sarah's case, the Coroner's Jury disagreed, though the Grand Jury ultimately decided not to indict, thereby ensuring that the enslaved Jim, listed as a witness, did not have to testify in open court.²²

The belief that African Americans had access to valuable, and therefore potentially reliable knowledge that white people did not also extended to free blacks in both the North and South. In an 1804 infanticide case listed for trial in New Haven, Connecticut, for instance, the witness list included eight people, five of whom were African Americans, and two of whom were white physicians. As in Sarah's case, the witnesses were never called to testify in open court because the Grand Jury elected not to indict.²³ Both cases, however, were indicative of the local community's acceptance of the importance of involving everyone with knowledge of the suspect in the process of making assessments about whether or not a crime had been committed. An individual's race did not mean that his or her knowledge had no value. Although an individual's

²¹ For cases in which witnesses noted that clothes had not been prepared for the baby and the infant remained unwrapped, see State v. Sarah Berman, October Term 1810, Criminal Action Papers, Randolph County; and State v. Elisabeth Crabtree, September Term 1821, Criminal Action Papers, Orange County; both at NCDAH.

²² State v. Sarah (a slave), December 1819, Criminal Action Papers, Orange County, NCDAH. See also State v. Rehny Joiner, June 1826, #1,454, Supreme Court Original Cases; State v. Esther (a slave), Fall Term 1833, Records Concerning Slaves & Free Persons of Color, Robeson County; State v. Hannah (a slave), March Term 1836, Criminal Actions Concerning Slaves & Free Persons of Color, Granville County; Inquisition over infant (belonging to Samirah), December 1852, Coroners' Inquests, Northampton County; all at NCDAH.

²³ State v. Julia Anderson, December Term 1804, Superior Court Files, New Haven County, CSA. See also State v. Hannah Gardiner, July Term 1794, Superior Court Files, New Haven County, CSA. In the latter case, Rose, "a negro woman", was listed as one of ten witnesses, though Hannah Gardiner's race was unstated. For a case involving a free black woman in North Carolina in which enslaved women were called upon to testify at the inquest and listed as witnesses for the trial, see State v. Rianna Day, March Term 1849, Criminal Action Papers, Orange County, NCDAH.

status as enslaved or free black potentially made his or her evidence more suspect, communities nonetheless evaluated the information provided by African Americans based on the same criteria used to assess the testimony of white informants. Jurors considered how well the person who spoke knew the accused, using that as a means of determining the value of the knowledge the informant—be he white or black—provided.²⁴

African Americans also shaped the outcome of infanticide cases even if they could not testify directly at trials. Practices governing inquests were different than those laid out in various statutes regarding the admissibility of evidence from African Americans in trials. These laws placed prohibitions on slaves and free blacks serving as witnesses in cases involving whites, prohibitions that structured court cases at the upper levels. Coroners and Justices of the Peace expected to hear testimony from the individual who had found the body, for instance, irrespective of the individual's race. This practice was longstanding and detailed in Justice of the Peace manuals that circulated across the

²⁴ There were a few cases where African Americans were seemingly reluctant to provide information. In those cases, they tended to provide as little information as possible—or it may have been that they simply did not have any knowledge of what had happened. Whatever the reason, jurors paid little heed to the information in reaching a decision. This was not, however, primarily because of the race of the individual but simply because the information he or she provided was of limited use in enabling the jury to reach a determination. Juries evaluated the knowledge shared by white informants in exactly the same way. For examples of cases in which the knowledge shared by slaves was of little help in assisting jurors to make a finding, see, Investigation into death of infant belonging to Sarah, 1799, Slave Records (Civil & Criminal), Northampton County; and Inquisition over infant (belonging to Samirah), December 1852, Coroners' Inquests, Northampton County; both at NCDAAH. It is interesting to note that indictments of the slave women did not appear to be drawn up in either instance. This implies that without the kind of detailed knowledge provided in other cases involving enslaved women—information that was usually provided by slaves—jurors or Justices of the Peace felt that there was insufficient evidence to warrant an arrest.

country in the early republic and antebellum periods.²⁵ As Ariela Gross has argued, if the case reached trial, therefore, white people who had been present at the initial investigation repeated the testimony of slaves. Prohibition on slaves' direct testimony, therefore, did not mean the information they provided was entirely excluded from the courtroom.²⁶ Rather, it was incorporated into the narratives constructed by white witnesses. In these cases, statutes that prevented the admission of slave testimony in court against white witnesses seemed somewhat irrelevant. Once a slave had spoken in the context of an inquest, what she or he said often became part of someone else's narrative, whether or not the borrowing was conscious or unconscious.²⁷

Investigations into suspected infanticides involved questions about intimate areas of a woman's life: her relationships with men, her appearance, her sex life, her state of mind, and her body. Particular, detailed knowledge was, therefore, paramount. If a woman was known within the community, even as a woman with a bad reputation, those questions could be more easily answered. Given the significance of such information

²⁵ See, for instance, Joseph Backus, The justice of the peace: being a general directory, and forms proper for the due execution of the office, according to the common and statute laws, now in force and use in the state of Connecticut (Hartford: B. & J. Russell, 1816), Chapter 23 on "Inquisition of Death."

²⁶ Gross, Double Character, 68-70.

²⁷ See State v. Rehny Joiner, June 1826, #1,454, Supreme Court Original Cases, NCDAH, for an example of such a case. As Rehny Joiner was white, no African Americans testified at her trial for murder in the Pitt County Superior Court. As was typical for this time, however, the Superior Court forwarded a summary of testimony presented at the trial to the North Carolina Supreme Court when Joiner appealed the Superior Court's verdict. This summary reveals that several African-American women were involved in the search for the infant's body. Indeed, it was an African-American woman who eventually discovered the child. Though this unknown woman did not testify at the Superior Court, it is possible she provided information at the original inquest of which no records remain. One of the purposes of an inquest was to hear testimony from the person who had found the body. This requirement was outlined in Coroners' Manuals across the country.

about suspects to the investigative process, an enslaved woman—long resident within the community—might easily fare better than a white woman who had arrived only a few months earlier. On the same basis, the testimony of slaves—male or female—might also be considered more credible than the protestations of a recently arrived woman subject to investigation. An individual’s race or status, as free or enslaved, did not serve as the sole means that jurors used to assess the credibility of the knowledge an individual shared. While jurors certainly considered such factors, it was only one of many that shaped how the community ultimately assessed the value of the information that a person provided. Given the right context, the knowledge of a slave could be more credible than that of either a free black or white woman.²⁸

Those accused of infanticide as well as their friends, family, and supporters, all recognized the importance of the local knowledge of everyone within the community. Information could—and did—place them in jail, but it could also secure them a release from confinement or a reprieve from the death penalty. Petitions to state legislatures and requests for pardons to state Governors constituted a common feature of the post-Revolutionary legal landscape. They fit neatly within the logic of localized legal processes, presenting yet another narrative that complemented and extended the others that communities had already heard and constructed in relation to an infant death.

²⁸ See State v. Rianna Day, March Term 1849, Criminal Action Papers, Orange County, NCDAH, in which two enslaved women, servants of two different masters, provided testimony against Rianna Day, a free black woman. Both women provided evidence critical to the inquest’s outcome, with one witness—Lucy—being present when Day gave birth. Lucy also referred to the residence where she worked as “our” house, suggesting a long-term attachment to the residence while Day was simply hired for one month. For further instances of contexts in which black testimony assumed greater credibility than that of white witnesses or accusers (though not in the context of infanticide cases), see Edwards, The People and Their Peace, 111-131.

Further, like the initial inquests, the petitions commonly drew on the support and knowledge of members of the local community—those who knew the mother best. In May 1813, for instance, Trueman Gilbert of New Haven, Connecticut, drafted a petition to the Connecticut General Assembly. A local Justice of the Peace had indicted Gilbert's wife, Anna, for murder. Anna had struck Maryanne, the Gilberts' three-month old daughter, with an axe. Trueman Gilbert petitioned the Assembly seeking his wife's release on bail, pending her forthcoming appearance at the next session of the New Haven Superior Court. Anna, Gilbert claimed, had not been of "sound mind" when she committed the crime. She had been "sick" since Maryanne's birth. Confining his wife to jail while she awaited the next session of the New Haven Superior Court, would only, argued Gilbert, further endanger Anna's health. Strengthening his petition, Trueman Gilbert added that the local constable, who held an arrest warrant for Anna, had not yet committed her to the local jail pending the outcome of Gilbert's application to the Assembly. Though Trueman Gilbert was the only person to append his name to the appeal, his request illustrates how petitioners often framed these documents. Gilbert did not deny that his wife had committed the crime. Nor did he suggest that Anna's sickness should be an excuse for not appearing at the New Haven Superior Court later that year. Rather, Trueman Gilbert presented his understanding of events, one in which he acknowledged that Anna had killed their daughter, but explained why she had done so. He then used that narrative to request immediate relief for his wife. The form and nature of his request did not disrupt or challenge other narratives of Maryanne's death. Rather,

Trueman's petition broadened and extended all of the stories that community members had circulated and constructed about the infant's murder.²⁹

Petitions and requests for pardons, such as that of Trueman Gilbert on behalf of his wife Anna, demonstrated the significance of specific, personal knowledge to the outcomes of individual cases concerning the death of a child. To construct narratives that made sense of infant death, communities needed knowledge. That is why outsiders had more difficulties navigating the local legal system than long time residents, a dynamic that existing scholarship registers, but does not discuss.³⁰ Outsiders or recent arrivals made assessing the evidence difficult. Communities had less information through which to make an assessment of a woman's character and circumstances. Knowledge of the accused was central to the inquisition process. In the absence of anyone who could

²⁹ State v. Anna Gilbert, August Term 1813, Superior Court Files, New Haven County; Petition to the Connecticut General Assembly on behalf of Anna Gilbert, Crimes & Misdemeanors, 2nd Ser., IV: 85a-86a; both at CSA. For another case in which a husband intervened on behalf of his wife, requesting her release from jail pending trial, see State v. Hannah Walker, March Term 1822, Criminal Action Papers, Orange County, NCDAH. For further examples of petitions and requests for executive clemency, see, for Connecticut, Petition of Hannah Bishop and Saul Foster of New Haven County to the Connecticut General Assembly, May 1791, Crimes & Misdemeanors, 2nd Ser., V: 72a-73a; Petition of Clarissa Ockrey of New London County to the Connecticut General Assembly, May 1808, Crimes & Misdemeanors, 2nd Ser., V: 92a-95a; Sarah Miller, Petition for Release from State Prison, 1850, General Assembly Papers—Prison Releases; and Catharine Dunn, Petition for Release from State Prison, 1861, General Assembly Papers—Prison Releases; all at CSA. For Illinois, see Jane Langfield, List of Reprieve & Commutations, December 2 1862, Executive Clemency Files, ISA. For North Carolina, see Pardon of Catharine Limboch by Governor James Turner, December 4 1804, GLB, 15: 280-281; Pardon of Eliza Johnson, March 24 1828, GLB, 27: 30; Pardon of Rehny Joiner, October 5 1826, GLB, 26: 74; Pardon of Mary Monro, April 17 1830, GLB, 28: 190; Pardon of Sally Barnicastle, June 8 1832, GLB, 29: 115; and Pardon of Catharine Bostian, January 28 1833, GLB, 30: 28; all at NCDAH.

³⁰ The assumption that outsiders experienced greater difficulties in local legal processes and courts informs much of the scholarship in nineteenth century legal history. Yet, the reasons shaping this fundamental assumption—one that is generally accurate, as the scholarship demonstrates—have been largely unexplored. For work informed by this assumption, see Edwards, The People and Their Peace; Dylan Penningroth, The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South (Chapel Hill: University of North Carolina Press, 2003); and Diane Miller Somerville, Rape and Race in the Nineteenth-Century South (Chapel Hill: University of North Carolina Press, 2004).

testify about the reputation of the suspect, community-based legal processes, such as an inquest, virtually ground to a halt.

Yet this was unsurprising. Boundaries between public and private remained remarkably fluid during the early republic and even antebellum era, much as they had been in the early modern period.³¹ The privacy of the individual, at least in the form that we understand it now, was not as fully formed or as powerful as it would later be. Early scholarship on the new republic, based largely on research in New England, suggested that the emergence of the post-Enlightenment family and the separate spheres ideology in nineteenth-century America contributed to the rise of new conceptions of public and private, in which the boundaries between an individual's private life and public life were more distinct than they had been in pre-Revolutionary America.³² Such boundaries, suggests more recent literature, challenged the capacity of communities to make judgments based on personal knowledge.³³ Yet, some historians have also argued that

³¹ Early American lives were shaped by an individual's relationship to the family and the home, and the relationship of the family unit to the larger community. Individuals certainly understood that they had a public reputation—hence, the reason both women and men of all classes pursued cases for slander, for instance—but the protection of this public reputation often related to protecting and reasserting the reputation of the household. For literature on the early American family and community, see John Demos, *A Little Commonwealth: Family Life in Plymouth Colony* (New York: Oxford University Press, 1970); and Jan Lewis, *The Pursuit of Happiness: Family and Values in Jefferson's Virginia* (New York: Cambridge University Press, 1983). For scholarship on the importance of public reputation, particularly in relation to women, in this time period, see Kathleen Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996); and Kirsten Fischer, *Suspect Relations: Sex, Race and Resistance in Colonial North Carolina* (Ithaca: Cornell University Press, 2002).

³² The classic scholarship on these changes remains Nancy Cott, *The Bonds of Womanhood: "Woman's Sphere in New England, 1780-1835,"* (New Haven: Yale University Press, 1977); and Linda Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1980).

³³ More recently, historians such as Ruth Bloch, Cornelia Hughes Dayton and Clare Lyons have suggested that this factor made it harder for women to access the courts and prosecute cases of domestic violence or

the boundaries between private and public in the early republic and antebellum America were actually very flexible. Knowledge about one's neighbors—both friends and enemies—continued to circulate freely throughout a community, reinforcing the significance of information provided by neighbors and eyewitnesses as an essential part of local legal processes, such as the inquest.³⁴ Even well into the nineteenth century, birth remained a remarkably public affair. Middle-class women expected family and friends to crowd the room when they gave birth. Working-class women, at least if they were married, often gave birth in the presence of a neighbor, a family member, or a female friend. Someone needed to be there to assist.³⁵ The very fact that concealment of an illegitimate infant's death remained a crime implied that at least some one should be present at the birth to testify as to whether or not a baby had been born dead or alive. Nineteenth-century Americans considered the circulation of intimate, personal

pursue child support in cases of illegitimate children. See Ruth Bloch, "The American Revolution, Wife Beating, and the Emergent Value of Privacy," *Early American Studies* (Fall 2007): 223-251; Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995); and Clare Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill: University of North Carolina Press, 2006).

³⁴ See, for instance, Edwards, *The People and Their Peace*; Ariela Gross, "Beyond Black and White: Cultural Approaches to Slavery" *Columbia Law Review* 101 (April 2001): 640-682; Penningroth, *The Claims of Kinfolk*; and Joshua Rothman, *Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia, 1787-1861* (Chapel Hill: University of North Carolina Press, 2003).

³⁵ For literature on childbirth in nineteenth-century America, see Sally G. McMillen, *Motherhood in the Old South: Pregnancy, Childbirth, and Infant Rearing* (Baton Rouge: Louisiana State University Press, 1990); Catherine M. Scholten, *Childbearing in American Society, 1650-1850* (New York: New York University Press, 1985); and Richard W. Wertz & Dorothy C. Wertz, *Lying-In: A History of Childbirth in America* (New Haven: Yale University Press, 1989).

knowledge about those they knew—and even those they did not—central to their daily lives.

In the absence of any ability to draw firm conclusions based on physical evidence alone, information constituted an essential part of the legal process simply because everyone within the community expected to know everything about their neighbors. Because everyone assumed they should have access to information about those in their community, people tended to be more suspicious of those about whom they did not have personal knowledge. Outsiders and newcomers generally fared far worse than local people within the legal system as their very presence suggested a rejection of the conceptions that underpinned both the community's social structure and its legal process. These conceptions placed a premium on particular and intimate knowledge of everyone involved within the specific case, and, more broadly, the larger community. In inquests, especially those concerning infant death, outsiders generated problems for juries. If the physical evidence provided no obvious answers, as it often did not, then the jurors could not construct a narrative about what had occurred. Accordingly, as more often happened, the jury constructed a narrative based on what they did know. In short, the woman in front of them was someone of whom they knew very little other than she was most likely the mother of the infant whose death they were investigating. From this information—possibly all they had available—jurors drew the only inference they could. The jury generally concluded that the mother was responsible for her child's death. Such determinations were hardly illogical given the way the legal process operated. To draw

conclusions, juries needed knowledge, even that drawn from contradictory sources. Any testimony was better than none at all.

For those subject to suspicion at an inquest, the value placed on personal information and local knowledge created particular problems. Women under investigation found themselves at a disadvantage when no one could vouch for them or was willing to do so, as Trueman Gilbert had done for his wife. In October 1842, for example, the New Haven Superior Court sentenced Sarah Freeman to death. The court had found Freeman guilty of murdering her newborn daughter by throwing the infant into the privy. Freeman petitioned the Connecticut General Assembly for a reprieve from the death sentence. After some debate about the exact length of the sentence that Freeman should serve for the crime, the state legislature eventually settled on ten years in the State Prison, sparing Freeman from the hangman's noose. Other than her court-appointed counsel, no one had submitted a petition in direct support of Freeman's request.³⁶ The Connecticut Assembly spared Sarah Freeman the death penalty because her case acted as a lightning rod for an important debate of the antebellum period, that about capital punishment.³⁷ Legislators opposed to the death penalty in Connecticut used Freeman's

³⁶ State v. Sarah Freeman, October Term 1842, Superior Court Files, New Haven County; and Petition of Sarah Freeman for Commutation of Punishment, May Session 1843, General Assembly Papers—African American; both at CSA.

³⁷ For general discussions of the movements against the death penalty in America, centered in the New England states during the antebellum period, see Howard Allen and Jerome Clubb with Vincent Lacey, Race, Class, and the Death Penalty: Capital Punishment in American History (Albany: State University of New York Press, 2008): 47-66; Stuart Banner, The Death Penalty: An American History (Cambridge, MA: Harvard University Press, 2002); and Louis Masur, Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865 (New York: Oxford University Press, 1989). For changing public attitudes towards the use of capital punishment for women, see Marlin Shipman, "The

plight as an illustration of the evils of capital punishment.³⁸ The Hartford Courant editorialized on the issue, describing legislative sympathy for Freeman as indicative of the “canker eating its way into the body politic.” The disease, claimed the newspaper, was characterized by pity for the criminal, and a belief in the underlying capacity of people to reform.³⁹ In that regard, Sarah Freeman had many supporters, and opponents, but none of them knew her personally. Certainly no one protested the ten-year sentence Freeman received, which could fairly be characterized as harsh in comparison to other women convicted of infanticide in Connecticut and other states during this period.

Those instances in which individuals received pardons on the basis of something other than particular knowledge of the accused are often as illuminating about the importance of such information to outcomes as those cases in which community members played a much more direct role. The absence of personal knowledge in shaping the narrative underscores the significance of such information. In commuting the death penalty for Sarah Freeman, the General Assembly did not consider the basis on which

Penalty is Death:” U.S. Newspaper Coverage of Women’s Executions (Columbia: University of Missouri Press, 2002).

³⁸ In May 1842, members of the Connecticut legislature had investigated the possibility of abolishing capital punishment within the state and proposed legislation for doing so. See Report of the Joint Select Committee, on that part of the governor's message relating to capital punishment: together with a bill in form for its abolishment. May session, 1842 (New Haven: Osborn and Baldwin, 1842). The same report was presented to Connecticut’s General Assembly the following year in May 1843, the same time at which Sarah Freeman’s death sentence was arousing public debate on the purpose of the death sentence. See Report of the Joint Select Committee: on so much of the Governor's message as relates to capital punishment, with the petition of sundry citizens that it may be abolished; to the General Assembly, May Session, 1843 (Hartford: Alfred E. Burr, 1843).

³⁹ See “Capital Punishment,” Hartford Courant, May 24 1843, 2.

Freeman made her request. The legislature allowed its decision to be shaped by forces remote from the details of Sarah Freeman's life, not by the personal, particular knowledge relevant to her case. Yet the language of Freeman's petition is important, because it is suggestive of how she found herself, at twenty years of age, faced with the death penalty for killing her illegitimate child. Sarah Freeman was isolated and alone. "Being away from her friends," Freeman explained, was what had compelled her to conceal the pregnancy. Her "native" town, where she had resided until two years prior, was Derby. In that location, she was known as a person of "good character."⁴⁰ The unstated implication was that in Derby, people could vouch for her reputation. In New Haven, she was known only as a servant. Like Trueman Gilbert's application, and so many others during this period, Freeman's petition signified the importance of knowledge. The knowledge that Freeman shared was that there were people who could vouch for her character. She had been, until this incident, held in high regard. Those who could testify to that fact resided in her hometown, Derby. Freeman located the knowledge that she hoped would save her with a specific group of people, her friends, in a specific location. Her life was spared, but it was still unfortunate for Freeman that the legislature chose to ignore her petition, which appealed for a consideration of the very particular and personal knowledge about her life. Although it had responded to broader concerns about the appropriateness of capital punishment, and particularly its use for women, the legislature had remained wedded to the narrative that the Judge had crafted in

⁴⁰ Petition of Sarah Freeman for Commutation of Punishment, May Session 1843, General Assembly Papers—African American, CSA.

delivering Freeman's sentence. Chief Justice Williams characterized Freeman's actions as depraved, despicable and ultimately unforgiveable. Freeman had acted in a way, he claimed, worse than that of the most "brute beast."⁴¹ This construction of Freeman's actions informed legislative debate about the appropriate sentence Freeman should serve, not any information about her character—based on years of observation—from her friends in Derby. Freeman, consequently, spent the next ten years languishing in Connecticut State Prison.

Personal, intimate knowledge was important because it enabled communities to negotiate all the factors that informed the outcome of an inquest or a trial. There was, of course, another fact of which everyone involved in Sarah Freeman's case was all too acutely aware. Sarah Freeman was black, although not a single page in the indictment, any newspaper reports, or even the requests for clemency made mention of this. The only person who referred to skin color was Freeman herself, when she noted—in her petition to the General Assembly—that her seducer was a white man. By setting up an implied contrast between her race and that of her seducer, Freeman was indirectly referencing her own race. But, as a fact, Freeman's race remained unstated. Yet, everyone involved with or even vaguely interested in Freeman's case in antebellum Connecticut would have been aware of her race, indicated as it was by her name.⁴² When she stood before everyone at the initial inquest, the Justice's Court—and later in the

⁴¹ "Superior Court—Sentence of Sarah Freeman," Oct 24 1842, [Hartford Daily Courant](#), 2.

⁴² For confirmation of Sarah Freeman's race, I referred to the 1850 federal census, at which time she was still incarcerated in the Wethersfield State Prison.

Superior Court—the fact would have been inescapable. Just because it was not spoken of or about did not mean everyone did not know of it. Freeman’s race, after all, was that which probably prompted Chief Justice William’s characterization of her as a “brute beast.” But it would be a mistake to assume that this fact—and this fact alone—determined the outcome in Freeman’s case. Sarah Freeman was a woman doubly damned: she was black, but she was also an outsider, unknown to anyone other than her employers—so it seemed—within New Haven. The combination of those circumstances—not one or other on its own—contrived to ensure that Freeman suffered the fate that she did.

In cases involving African American women or infants, race functioned as a form of knowledge, one that contributed to determining the outcome. Race did not, however, solely define the outcome, just the same as it was not the only factor that determined the credibility of testimony supplied by slaves or free blacks.⁴³ A woman who was African American did not, simply by virtue of her race, anticipate a different outcome in her case

⁴³ My findings correlate with those historians such as Victoria Bynum, Lisa Lindquist Dorr, Laura Edwards, Martha Hodes, Joshua Rothman, and Diane Miller Somerville, all of whom have demonstrated the extent to which race was not the sole determinative factor in shaping outcomes of legal cases in the South. See Victoria Bynum, Unruly Women: The Politics of Social and Sexual Control in the Old South (Chapel Hill: University of North Carolina Press, 1992); Lisa Lindquist Dorr, White Women, Rape, and the Power of Race in Virginia, 1900-1960 (Chapel Hill: University of North Carolina Press, 2004); Edwards, The People and Their Peace; Martha Hodes, White Women, Black Men: Illicit Sex in the Nineteenth-Century South (New Haven: Yale University Press, 1997); Rothman, Notorious in the Neighborhood; and Somerville, Rape and Race in the Nineteenth-Century South. Literature on the extent to which race shaped outcomes in legal cases in New England and the Northeast, particularly in the early republic and antebellum periods, is sparse. The trend has been to argue that race—along with gender—became determinative, particularly by the end of the early republic. See, for instance, Sharon Block, Rape and Sexual Power in Early America (Chapel Hill: University of North Carolina Press, 2006); Dayton, Women Before the Bar; Friedman, “Racism and Sexism in Antebellum America;” Lyons, Sex Among the Rabble; and John Wood Sweet, Bodies Politic: Negotiating Race in the American North, 1730-1830 (Baltimore: Johns Hopkins University Press, 2003).

than that of a white woman. Sarah Freeman was sentenced to death in New Haven in 1842, but ten years earlier, a New London Grand Jury elected not to indict African-American women Rue and Betsey Benedict for infanticide.⁴⁴ Similarly, grand juries in North Carolina elected not to pursue charges against enslaved women facing trial, or, they tried such women and found them not guilty.⁴⁵ Further, white women who gave birth to illegitimate, mulatto babies did not necessarily face greater community condemnation than those who gave birth to illegitimate, white babies. Admittedly, in other places, at other times, juries did convict and hang African-American women for the crime of infanticide. In each instance, however, communities investigated deaths and evaluated evidence using the same approach: they listened to witnesses and evaluated the credibility of testimony, using race as merely one factor among many to make an assessment of an individual's reputation, be he or she a witness or the suspect. It is, therefore, impossible to discern distinct trends in responses to African American women who committed infanticide or community reactions to white women who killed mulatto children. To conclude that Sarah Freeman received the death sentence on the basis of her race alone seriously oversimplifies the case, obscuring the complexity of the factors that informed the outcome—and those contingencies that shaped so many other cases. The only conclusion that can be drawn is that the outcome of every case was different, based

⁴⁴ State v. Rue Benedict, and State v. Betsey Benedict, September Term 1832, Superior Court Files, New London County, CSA.

⁴⁵ For an instance in which a grand jury elected not to indict, see State v. Sarah, December Term 1819, Criminal Action Papers, Orange County, NCDAH. For an instance in which an enslaved woman was tried for infanticide and found not guilty, see State v. Hannah, March Term 1836, Criminal Actions Concerning Slaves & Free Persons of Color, Granville County, NCDAH.

on the particular knowledge each community held about the suspect and the events in question—knowledge gleaned from information provided by family, friends, neighbors, and enemies.

Everyone in the community—male and female, white and black, rich and poor, enslaved and free—participated in investigations into infant death. Coroners' juries weighed and assessed all they heard, evaluating the information's merits based on the reputation of the individuals who spoke and that of the individual under investigation. Jury members pondered the complex web of social relationships that bound the community together, considering who would know if the accused woman had been pregnant; who could speak to what her motivations might have been to kill the child; and who was best placed to inform of the woman's reputation. Juries relied upon this personal, specific knowledge, using it to interpret the frequently contradictory physical evidence presented by the corpse. These same types of intimate, particular knowledge informed petitions and requests for pardons to state legislatures and Governors. Requesting clemency, women—and their supporters—detailed their lives and provided specific information about the cases in which they were involved. Although the petitioners acknowledged the gravity of a crime such as infanticide, they all sought relief based on the particular circumstances that prompted the women to commit the crime.

Swirling amongst these community-based narratives of infant death and infanticide were other stories of infant death, those generated by authors such as Samuel Richardson, Susanna Rowson, and Hannah Foster. The traces of this fiction are barely detectable in the tales that communities wove. Yet, these writers were enormously

popular in antebellum America, with their fiction—and other stories like it—extracted and republished in local newspapers and periodicals. At least some of those who encountered murdering mothers in the flesh, had read about, or heard of from others, the tragic fates of these fictional women, seduced, abandoned, and pregnant with an illegitimate child. Sentimental fiction represented yet another narrative—amongst many in the nineteenth century—that sought to make sense of, and interpret, infant death.

Chapter Three
Seduction, Sentimentality, and Civilization:
Representations of Motherhood in the Early Republic and Antebellum Period

In September 1810, Sarah Berman of Randolph County, North Carolina, gave birth to a young boy. Two days later, the infant was dead. The local women who testified at the inquest into the death of Berman's son made it clear that they did not believe Berman cared for her newborn, as a mother should. Berman did not, for instance, allow the child to breastfeed, and the food she prepared for her son was cold. One woman who testified, Mary Newby, observed that when the boy choked on a mouthful of the cold food that Berman had prepared, Berman "said she had a mind to jab the spoon down its throat and kill it at once." The boy, testified the women, had been in good health for an infant, a blessing for which they repeatedly congratulated Sarah Berman. Yet in spite of the well wishes of these experienced local mothers, Berman constantly predicted—almost anticipated—her son's death. She sounded like a woman, implied the witnesses, hoping for and helping her child to an early grave.¹

As the previous chapters have established, investigations into untimely and sudden deaths were routine in local communities in the early republic and antebellum period. Given the high mortality rates of infants, local men regularly found themselves conducting inquests and reaching conclusions about an infant's manner of death based on statements heard from a range of people and physical inspection of an infant's corpse. There was, therefore, nothing particularly unusual about the community's investigation into the death of Sarah Berman's son. Yet, the language used by those who testified at

¹ State v. Sarah Berman, October Term 1810, Criminal Action Papers, Randolph County, NCDAH.

this inquisition is particularly illuminating because of what it reveals about social and cultural understandings of motherhood amongst the women of Randolph County. There was an expectation, the female witnesses suggested, that Sarah Berman should have acted in a particular way in relation to her new born son. As a mother, she should have nourished and nurtured her baby. Berman should have let him suckle at her breast, not fed him cold food.² She should have had clothes prepared for her newborn son. In their view, Berman had withheld appropriate nourishment and care from her son, and the infant died because of her deliberate negligence. Berman had failed, the witnesses suggested, in her responsibilities as a mother. The witnesses' claims may have convinced the local jury—a Coroner for Randolph County committed Berman to jail on a charge of murder, pending the next session of the Randolph Superior Court. Yet, for whatever reason, the Grand Jury at that session chose not to indict, and Sarah Berman went free.

This chapter examines the narratives that shaped and informed understandings of women's roles, specifically motherhood, in the early republic and antebellum period. As scholars have long argued, motherhood, within the context of the home, served as women's most important role in the new republic.³ Fiction, periodicals, instructional and

² For a discussion of the importance that communities began to assign to breastfeeding from the mid-eighteenth century onwards, see Marylynn Salmon, "The Cultural Significance of Breast-Feeding and Infant Care in Early Modern England and America" *Journal of Social History* 28 (1994): 247-269.

³ For the historiography that emphasized the importance of motherhood and domesticity to defining women's roles within the home in the early republic and antebellum period, see Ruth H. Bloch, "American Feminine Ideals in Transition: The Rise of the Moral Mother, 1785-1815" *Feminist Studies* 4 (1978): 101-126; Nancy F. Cott, *The Bonds of Womanhood: "Woman's Sphere" in New England, 1780-1835* (New Haven: Yale University Press, 1977); Carl Degler, *At Odds: Women and the Family in America from the Revolution to the Present* (New York: Oxford University Press, 1980); Mary Kelley, *Private Woman, Public Stage: Literary Domesticity in Nineteenth-Century America* (New York: Oxford University Press, 1982); Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel

religious tracts articulated and defined women's responsibilities to and relationship with their homes and their children, with authors explaining how child rearing fulfilled a woman's purpose as a patriot in the new republic. Women's responsibilities were to marry and procreate. While women nurtured the physical and spiritual wellbeing of the child, they also raised children as new, educated republicans. Similarly, while local people—such as those involved in Sarah Berman's case—demonstrated flexibility in their attitudes toward infant death and infanticide, they still had particular expectations about motherhood, shaped by their own experiences and their interaction with the broader national literature. In turn, the experiences of local communities reshaped, informed, and constituted beliefs about women's social roles widely in circulation at the time, understandings expressed in an array of reading material.⁴

Historians and literary critics have long established the connection between the use of cultural resources, such as novels, and the definition of women's roles in the building of the new nation. Yet, the ways in which the scholarly literature interpreted this relationship has gradually changed. Historians and literary critics once maintained that cultural depictions of motherhood and domesticity determined and represented

Hill: University of North Carolina Press, 1980); Mary Beth Norton, Liberty's Daughter's: The Revolutionary Experience of American Women, 1750-1800 (Boston: Little, Brown, and Company, 1980); Mary Ryan, The Cradle of the Middle Class: The Family in Oneida County, New York, 1790-1865 (New York: Cambridge University Press, 1981); Kathryn Kish Sklar, Catharine Beecher: A Study in American Domesticity (New Haven: Yale University Press) (New Haven: Yale University Press, 1974); and Barbara Welter, "The Cult of True Womanhood, 1820-1860" American Quarterly 18 (1966): 151-174.

⁴ My argument here draws on the work of literary critic Mary Poovey in relation to Victorian England, who characterizes "ideology" as something undergoing constant construction, arising as it did from ongoing tension and revision within society. See Mary Poovey, Uneven Developments: The Ideological Work of Gender in Mid-Victorian England (Chicago: University of Chicago Press, 1988).

nineteenth-century women's experiences within the strictly confined boundaries of the home. Yet, academics in both disciplines now acknowledge that women's lives were far more complex and expansive than those suggested by the earlier "separate spheres" paradigm. Literary critics have argued that seduction and sentimental fiction represents such complexity.⁵ Historians, particularly those of the nineteenth-century South, also have questioned the separate spheres paradigm by demonstrating that women's experiences were inextricably woven into the fabric of everyday community life.⁶ My research builds on these findings, demonstrating that the contours of women's lives throughout America were actually far more fluid than the cultural stereotypes of the

⁵ For some of the earliest and most influential proponents of this argument, see Nina Baym, Woman's Fiction: A Guide to Novels by and about Women in America, 1820-1870 (Ithaca: Cornell University Press, 1978); Cathy Davidson, Revolution and the Word: The Rise of the Novel in America (New York: Oxford University, 1986); and Jane Tompkins, Sensational Designs: The Cultural Work of America Fiction, 1790-1860 (New York: Oxford University Press, 1985). With the exception of Nina Baym's study, the latter works responded to Ann Douglas's particularly severe critique that nineteenth-century women's fiction had "feminized" and hence, handicapped, the development of nineteenth-century literary culture. See Ann Douglas, The Feminization of American Culture (New York: Alfred Knopf, 1977). For recent influential surveys of the literature critiquing the "separate spheres" paradigm, see Cathy Davidson, "No More Separate Spheres!" American Literature 70 (1998): 443-463; and Dana Nelson, "Women in Public: A Reexamination of Separate Spheres" in Philip Gould and Dale Bauer (eds.) The Cambridge Companion to Nineteenth-Century American Women's Writing (New York: Cambridge University Press, 2001); 38-68.

⁶ The literature here is vast, particularly in relation to Southern women's history. Representative studies include Jeanne Boydston, Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic (New York: Oxford University Press, 1990); Victoria Bynum, Unruly Women: The Politics of Social and Sexual Control in the Old South (Chapel Hill: University of North Carolina Press, 1992); Stephanie Camp, Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South (Chapel Hill: University of North Carolina Press, 2004); Laura Edwards, Gendered Strife and Confusion: The Political Culture of Reconstruction (Urbana: University of Illinois Press, 1997); Laura Edwards, The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South (Chapel Hill: University of North Carolina Press, 2009); Sharla Fett, Working Cures: Healing, Health, and Power on Southern Slave Plantations (Chapel Hill: University of North Carolina Press, 2002); Alice Kessler-Harris, Out to Work: A History of Wage-Earning Women in the United States (New York: Oxford University Press, 1982); Mary Beth Sievens, Stray Wives: Marital Conflict in Early National New England (New York: New York University Press, 2005); and Carroll Smith-Rosenberg, "Beauty, the Beast, and the Militant Woman: A Case Study in Sex Roles and Social Stress in Jacksonian America" American Quarterly 23 (1971): 562-584.

period have suggested. Yet, I argue, the roles of men and women typified in this fiction still had a broader social significance over time, one that should not be overlooked. Importantly, the ideas articulated in this literature slowly seeped into and transformed Americans' conceptions about the differences between men and women. Fiction and periodicals represented the different functions of men and women in society as natural and innate, an idea that people came to understand and embrace. During Reconstruction, therefore, when both federal and state governments enacted laws that embedded particular understandings about women's and men's respective roles in society into the legal and political apparatus of the nation-state, few people moved to object. The wide circulation and popularity of seduction and sentimental fiction prior to the Civil War familiarized people with the conception that women and men had singularly distinct responsibilities based in gender. It was these same understandings of men's and women's culturally and socially distinct roles that were articulated and embedded in the law by the nation-state after the Civil War.⁷

Seduction fiction, such as the novels Charlotte Temple and The Coquette, characterized the style of fiction produced and widely circulated in the early republic. Scholars generally agree that the genre was inaugurated in the mid-eighteenth century by

⁷ My analysis is limited to published novels, some of which—as I note below—were originally published via installment in periodicals. Accordingly, many of the observations I make in relation to the novels would be just as relevant in relation to seduction and sentimental fiction published in periodicals. For analyses of seduction fiction published in early national magazines, see Susan Branson, These Fiery Frenchified Dames: Women and Political Culture in Early National Philadelphia (Philadelphia: University of Pennsylvania Press, 2001); and Leonard Tennenhouse, "Libertine America" Differences: A Journal of Feminist Cultural Studies 11 (1999/2000): 1-28.

the English author Samuel Richardson. First published in London in 1740 and 1748 respectively, Richardson's Clarissa and Pamela proved enormously popular, circulating widely in England and the American colonies.⁸ Such novels generally featured a plot in which a young, inexperienced woman was seduced by an attractive, often penniless, rake. These seductions occurred despite the careful warnings of the young woman's parents, especially her mother. When the woman eventually found herself pregnant, the rake would usually desert her. While the seducer married a wealthy wife, his young female victim died in childbirth, usually in a strange town without the comfort of family or friends.⁹

Authors in the seduction genre represented the ideal women as morally upright, sexually pure, and virtuous. Without sexual purity, these authors suggested, a woman was ruined. She was unfit for marriage, and therefore financially insecure for life. The protection of sexual innocence was, accordingly, particularly important. Indeed,

⁸ Samuel Richardson (ed. Thomas Keymer and Alice Wakely), Pamela, or, Virtue Rewarded, (New York: Oxford University Press, 2001); and Samuel Richardson (intro. Florian Stuber), Clarissa, or The History of a Young Lady, (New York: AMS Press, 1990). For further discussion of the representation of motherhood and seduction in these novels, see Bloch, "American Feminine Ideals in Transition," 101-126, and Sharon Block, Rape & Sexual Power in Early America (Chapel Hill: University of North Carolina Press, 2006): 45-46.

⁹ For detailed analyses and explanations of the form of the seduction novel, see Elizabeth Barnes, States of Sympathy: Seduction and Democracy in the American Novel (New York: Columbia University Press, 1997); Davidson, Revolution and the Word; and Marion Rust, Prodigal Daughters: Susanna Rowson's Early American Women (Chapel Hill: University of North Carolina Press, 2008), esp. 48-103. Though Cathy Davidson provides one of the most comprehensive analyses of the seduction novel in the early republic, she refers to seduction fiction as a form of sentimental fiction. I, however, like most historians and literary critics maintain the distinction between the two forms of fiction on the basis that they represent distinct genres. Historian Jan Lewis provided one of the earliest—and still most significant—discussions of representations of virtue and seduction in periodicals of the early republic; representations that correlated in many ways with those in seduction novels. See Jan Lewis, "The Republican Wife: Virtue and Seduction in the Early Republic" William and Mary Quarterly 3rd Ser. 44 (1987): 689-721.

Charlotte Temple's mother, in Susanna Rowson's 1794 seduction novel of the same name, characterized Charlotte's abandonment of virtue for the pursuit of "vice and folly" in the form of an elopement as a "misfortune which is worse than death."¹⁰ The only property to which a woman could legitimately claim ownership was her reputation. In abandoning this claim, she became a social pariah—a woman who remained physically alive, but a burden to her family and friends because of her unsuitability for marriage and inability to support herself financially.

The best-selling seduction novel in America, going through over two hundred editions in the nineteenth century, was Susanna Rowson's Charlotte Temple, first published on American shores in 1794.¹¹ The narrative followed the established plot of the seduction novel, with Rowson detailing the tragic story of the young Charlotte and her unrepentant seducer, Lieutenant Montraville. Although Susanna Rowson was born in England in 1762, she is often characterized as the first American author. After spending ten years of her childhood in America, Rowson moved permanently to the United States in 1793, where she eventually settled in Boston with her husband. The geographic

¹⁰ Susanna Rowson (ed. Anne Douglas), Charlotte Temple and Lucy Temple, (New York: Penguin Classics, 1991): 55-56.

¹¹ Susanna Rowson first published Charlotte Temple in England in 1791, where the novel enjoyed only moderate success. Determining circulation, or measuring popularity, for novels such as Charlotte Temple is exceedingly difficult. Though scholars agree, for instance, that Charlotte Temple was the bestselling seduction novel of the nineteenth century in the United States, most cite different sources for reaching such a conclusion. Though she discusses antebellum sentimental fiction, in particular, literary critic Lora Romero provides one of the best analyses of the issues facing scholars in their assessment of this issue. See Lora Romero, Home Fronts: Domesticity and Its Critics in the Antebellum United States (Durham: Duke University Press, 1997): 10-14. As Romero astutely observes, Cathy Davidson provides the most reliable assessment of printing, the circulation and production of books, and the consumption (or reading) of books in the new republic. See Cathy Davidson, Revolution and the Word: The Rise of the Novel in America Expanded Edition (New York: Oxford University Press, 2004): 73-100.

trajectory of Rowson's narrative similarly followed that of her own life, with the character Charlotte following Montraville from her English boarding school to the Lieutenant's army post in the United States.¹²

The novel opened with the fifteen-year old Charlotte attending the boarding school of Madame Du Pont, where Charlotte was a particular favorite of one teacher, Mademoiselle La Rue. The Mademoiselle encouraged and aided Charlotte in her secret assignations with Lieutenant Montraville, who was soon to leave the shores of England to fight in the War against the Americans. Upon the urgings of both Montraville and La Rue, Charlotte ran away from her boarding school, joining the Lieutenant, Mademoiselle La Rue, and another army officer, Belacour—the object of Mademoiselle La Rue's affections—aboard a ship to America. Although independently wealthy, Montraville had no desire to marry Charlotte because she came from a family of limited means. Nonetheless, the Lieutenant lured Charlotte to America with false promises of marriage, planning to maintain her as his mistress upon arrival. Upon reaching America, Montraville lodges Charlotte in a boarding house, where he eventually abandoned her while pursuing and successfully capturing the affections of a wealthy heiress. In a dramatic resolution to the novel, the owner of the boarding house evicted a heavily pregnant and penniless Charlotte into falling snow. After walking through the cold into town, Charlotte approached the only person she knew, the former Mademoiselle La Rue, now married to another army man, Colonel Crayton. Refusing to acknowledge her

¹² For a more detailed biography of Susanna Rowson and Charlotte Temple, see Cathy Davidson, "The Life and Times of Charlotte Temple: The Biography of a Book" in Cathy Davidson (ed.), Reading in America: Literature & Social History (Baltimore: Johns Hopkins University Press, 1989): 157-179.

former student, Mrs. Crayton threw Charlotte onto the street, from where she was picked up and helped into a bed by a family in La Rue's servants' quarters. Charlotte died giving birth to her daughter just as her father, Mr. Temple—having journeyed from England to find her—walked into the room.¹³

The first American-born female writer to publish in the widely popular genre of seduction fiction was Hannah Foster, whose novel, The Coquette, was first published in 1797.¹⁴ While not as popular as Rowson's Charlotte Temple, the novel enjoyed wide readership throughout nineteenth-century America.¹⁵ Foster's tale, in which the principal character was a young, single woman known as Eliza Wharton, was based on the well-known story of Elizabeth Whitman, an unmarried poet from Hartford, Connecticut, who died alone in childbirth at an inn in Massachusetts in 1788.¹⁶ In Foster's novel, Major Sanford seduced Eliza, capturing her virginity yet refusing to marry her. Like Charlotte, Eliza's parents—while financially comfortable—were not wealthy. The Major, in his turn, had large debts. He, accordingly, needed to make a financially opportune match in order to pay off his creditors. When Eliza fell pregnant, the Major spirited her away in

¹³ My summary of the narrative is based upon Rowson (ed. Douglas), Charlotte Temple, 3-132.

¹⁴ Hannah Webster Foster (ed. Cathy Davidson), The Coquette, (New York: Oxford University Press, 1986).

¹⁵ As I observed in note ten (above), quantifying the popularity and circulation of eighteenth and nineteenth-century seduction novels presents a challenging task for contemporary scholars. Generally, however, historians and literary critics agree that Foster's The Coquette—while not as popular as Rowson's Charlotte Temple—was one of the most popular novels in the nineteenth century United States. See Davidson, Revolution and the Word, (2004): 73-100.

¹⁶ For a detailed analysis of the Elizabeth Whitman story and the various re-imaginings of her life over the centuries, see Bryan Waterman, "Elizabeth Whitman's Disappearance and Her 'Disappointment,'" William and Mary Quarterly 3rd Ser. 66 (2009): 325-364.

the middle of the night, leaving her to die by herself as she gave birth to her child in an unknown lodging house.¹⁷

Consistent with prevailing social and cultural ideas at the time, both novels identified the role of parents, particularly the mother, as critical.¹⁸ As in Rowson's Charlotte Temple, Foster's Eliza was seduced while living away from home and the steadying hand of parental authority. In Eliza's case, she was living under the roof of family friends, the General and Mrs. Richman. Mrs. Wharton, her mother, frequently wrote to her daughter, urging Eliza to drop her suit with Major Sanford and flatter herself with the attentions of the Reverend Boyle, a far more respectable and well-suited financial match. In spite of the ambiguity of the novel's title that characterized Eliza as a "coquette," Eliza was ultimately a victim of seduction. The Major's constant attentions wore Eliza into such a state of exhaustion that she could no longer resist his advances. Yet, Eliza also fell prey to the Major's wiles because of the physical absence of her mother, who might have protected Eliza at her critical moment of weakness. Though Major Sanford had followed Eliza when she returned briefly to her parents' home, the final—ruinous—act of seduction occurred when Eliza was, once again, staying at the Richman household. Similarly, Charlotte Temple was at boarding school, away from her parents, and under the close supervision of Mademoiselle La Rue, when both women eloped.

¹⁷ My interpretation of the narrative is based upon Foster (ed. Davidson), The Coquette. For an alternate interpretation by an historian that frames the novel as an examination of the emerging middle-classes' attempt to define an identity within the new nation, see Carroll Smith-Rosenberg, "Domesticating 'Virtue': Coquettes and Revolutionaries in Young America" in Elaine Scarry (ed.) Literature and the Body: Essays on Population and Persons (Baltimore: Johns Hopkins University Press, 1988): 160-184.

¹⁸ The classic discussions of the emerging ideologies of motherhood in the early republic are Bloch, "American Feminine Ideals in Transition," 101-126, and Kerber, Women of the Republic.

Rather than protecting Charlotte from Lieutenant Montraville, La Rue encouraged Charlotte in her affections for the officer. Indeed, La Rue eventually persuaded Charlotte to accept the Lieutenant's offer and elope with him to America.

The young women in both The Coquette and Charlotte Temple were victims of manipulative, rakish men. Though the reader was encouraged to pity Eliza and Charlotte, it was necessary for plot resolution that each woman died. While victims of seduction, neither could undo what had been done. Each had been sexually defiled, and was unable to fulfill a woman's role of marriage, and, therefore, motherhood. Though seduction fiction lacked the explicit religious and spiritual proselytizing tone of later sentimental novels, the narratives implied that redemption could only be achieved through death. More importantly, seduction novels suggest that the "natural" order required marriage between a woman and man. The purpose of such unions was the production of legitimate offspring, with the mother's naturally ordained job the nurture and education of these legitimate children. When this order was upset by the birth of an illegitimate child, order could only be restored by the death of the mother. This logic also extended to the illegitimate children produced by such unions. In Hannah Foster's The Coquette, for instance, the infant died along with its pitiful mother.¹⁹ In Charlotte Temple, the infant Lucy—named after her grandmother—survived, returning to England with her grandfather, Mr. Temple. In 1828, Susanna Rowson's Lucy Temple was published posthumously, detailing Lucy's fate after her return from America. When Charlotte's parents died, another family—friends of Lucy's grandparents—adopted Lucy. Though

¹⁹ Foster (ed. Davidson), The Coquette, 162.

Lucy had access to a significant source of independent wealth when she turned twenty-one, she was never able to discover the truth about her parents, not even her father's name. Eventually, Lucy found herself happily engaged to Lieutenant Franklin, who also happened to be Montraville's son. When the Lieutenant discovered the truth about his relationship with Lucy—they could not marry because they were half-brother and half-sister—he killed himself from despair. Though Lucy survived, her ongoing existence continued to subvert the natural order, creating the potential for incest and leading to suicide. Lucy never married, assuming instead a role as a surrogate mother, by becoming a teacher at a female school.²⁰

While readers had many reasons to appreciate the fiction of both Rowson and Foster, each author's seduction narrative directly addressed issues of legitimacy and illegitimacy. Such concepts were freighted with particular meaning in the early republic. Many readers possibly wondered, for example, about the legitimacy of the new country that had been created as part of the American Revolution. Each author represented the role of women as that of producing legitimate children. In the new nation, readers probably understood this articulation of women's purpose in a very specific context. The production of legitimate children within legitimately constituted families also legitimated the emerging nation. This was particularly so in the case of elite families and those in the

²⁰ My analysis of *Lucy Temple* is based upon Rowson, (ed. Douglas), *Lucy Temple*, 135-165. For another seduction novel—that which scholars generally acknowledge as the first “American” novel, originally published in 1789—centered on the theme of incest and which leads to a similar resolution as *Lucy Temple*, see William Hill Brown, *The Power of Sympathy* (New York: Penguin Classics, 1986). For further discussion of the necessity of death as plot resolution, see Cathy Davidson, “Mothers and Daughters in the Fiction of the New Republic” in Cathy Davidson and E. M. Broner (eds.) *The Lost Tradition: Mothers and Daughters in Literature* (New York: Frederick Ungar Publishing Co., 1980): 115-127.

burgeoning middle-class. As historians have noted, evidence of the high incidence of illegitimate children in this period suggests that readers were unlikely to interpret the birth of bastard children as an actual threat to the status of the new republic.²¹

Nonetheless, readers would have understood the importance of representing children, and by extension, the United States, as legitimately conceived. As wives, mothers, and writers, women played a vital role in cultivating and nurturing these representations.

The antebellum period, beginning in the 1820s, inaugurated the era of sentimental fiction, also enormously popular with nineteenth-century audiences. Scholars agree that readership of both seduction and sentimental fiction—though difficult to measure—was not confined to females. Stories of vanquished women and orphaned children appealed to both men and woman alike. Importantly, however, the publishing industry—both periodicals and books—remained in the control of men.²² But women did not author all sentimental fiction; nor, for that matter, did females write all seduction fiction. By and large, however, women authored the majority of works in both of these genres. While Nathaniel Hawthorne referred to the public's insatiable demand for the work of

²¹ For discussions of attitudes toward illegitimate children in early nineteenth-century America, see John D'Emilio and Estelle B. Freedman, Intimate Matters: A History of Sexuality in America 2nd ed. (Chicago: University of Chicago Press, 1997); Richard Godbeer, Sexual Revolution in Early America (Baltimore: Johns Hopkins University Press, 2002); and Clare Lyons, Sex Among the Rabble: An Intimate History of Gender & Power in the Age of Revolution, Philadelphia, 1730-1830 (Chapel Hill: University of North Carolina Press, 2006). As Laurel Thatcher Ulrich observed in A Midwife's Tale, attitudes toward illegitimate pregnancies within local communities in the early republic seemed to differ from the shame and condemnation represented as the typical response within seduction fiction. See Laurel Thatcher Ulrich, A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812 (New York: Vintage Books, 1991): 145-160.

²² For a useful discussion of these issues, see Romero, Home Fronts, 11-12. On the relationship between female authors and the male book-publishing industry, see Susan Coultrap-McQuin, Doing Literary Business: American Women Writers in the Nineteenth Century (Chapel Hill: University of North Carolina Press, 1990).

“scribbling women” with undisguised disgust, his novels failed to achieve anywhere near the sales or circulation of the women’s fiction he so bitterly resented.²³ Yet, while women “scribbled,” men published, making significantly more money from each story than most authors ever did. A principal factor driving the prodigious production of many authors, both male and female, throughout the nineteenth century was the low rates of pay for writers. Given that straitened financial circumstances initially inspired authors to pick up the pen, continued output ensured them a more financially secure lifestyle. Productivity, however, made their futures only marginally more stable. Most novels began as serials in newspapers and periodicals. Authors were paid per piece produced, usually on a weekly basis. The publisher, in comparison, received his income based on circulation. Those serials that met with initial success continued for as many weeks as the audience demanded, after which time an interested printing house usually arranged with the author for publication of the serial as a book. From then on, the author and initial publisher largely lost control of the work. Different printing presses commonly reproduced the book in other states, for instance, without compensating the original printing house or author. Though the successful authors of sentimental fiction, including women, generated more than enough income to survive, most writers struggled to eke out

²³ For Hawthorne’s comments on “scribbling women,” see Nathaniel Hawthorne to William Ticknor, 19 January 1855, Letters of Hawthorne to William Ticknor, 1851-1864 Vol. 1 (Newark, NJ: Carteret Book Club, 1910): 75. For Hawthorne’s sales figures as compared to those of his contemporaries, see Frank Luther Mott, Golden Multitudes: The Story of Best Sellers in the United States (New York: The Macmillan Company, 1947): 130-131, 303-315.

a living. Even bestselling or widely circulating novels generated more money for publishers than writers.²⁴

Sentimental fiction tended to be less formulaic in its plot development than the seduction novel. The sheer volume of novels published during the antebellum period makes it difficult to generalize about similarities between narratives. Most sentimental fiction, however, was written in the wake of significant events of the time, including the Second Great Awakening, the temperance movement, and abolitionism. Many stories reflect these themes, employing a spiritual or Christian conversion narrative as the central plot device. Domesticity constituted the essential backdrop to these stories, with conversion often taking place in the context of homes.²⁵ While men wielded power within the formal structure of churches, women exercised spiritual authority in domestic environments. This, at least, was the view expressed in many sentimental novels, irrespective of the extent to which this representation correlated with female authority within more formal—or more public—religious rituals and institutions in the world beyond that of books.²⁶

²⁴ Nina Baym discusses the difficulties that serialization has generated for contemporary scholars seeking to uncover the output of nineteenth-century female authors, and the particular hardships that payment and copyright issues generated for even popular and prolific women's writers. See Nina Baym, Woman's Fiction: A Guide to Novels by and about Women in America, 1820-70 2nd edn. (Urbana: University of Illinois Press, 1993): 114-117, and 141-143.

²⁵ For recent surveys on the ever-burgeoning literature on nineteenth century sentimental fiction, see Joanne Dobson, "Reclaiming Sentimental Literature," American Literature 69 (1997): 263-288; June Howard, "What Is Sentimentality?" American Literary History 11 (Spring 1999): 63-81; and Mary Kelley, Private Woman, Public Stage: Literary Domesticity in Nineteenth-Century America (Chapel Hill: University of North Carolina Press, 2002): vii-xxiii.

²⁶ The Quakers, for instance, accorded men and women equal status within the church.

As in seduction fiction, the fundamental importance of marriage and the family served as the central trope that shaped the outcome of the sentimental novel. Sentimental novels often opened with the story of orphaned children, usually young girls. The absence of a legitimate family highlighted the central character's tenuous plight as she struggled to survive in an often-heartless world. In her journey to maturity, the orphan usually survived by constructing a surrogate family around her, one which included a woman who acted as a surrogate mother. The journey also included a spiritual conversion. In the absence of an earthly father, God served as the orphan's spiritual and moral guide. Accordingly, many authors represented the young women in these narratives as independent, even defiant, guided by their own sense of obligation to God rather than an earthly father. Yet the novel always concluded with marriage and often the reuniting of the orphan with one or both of her parents. Marriage served a particularly important function in these novels, representing the surrender of female independence to the authority of a male household head. Becoming a wife represented a reconstitution of a legitimate family for the orphaned girl and the broader society.²⁷

One particularly popular example of the sentimental genre was an 1851 novel, Maria Cummins's The Lamplighter. The story opened with the plight of a young girl,

²⁷ For a lengthier discussion of this form of the sentimental novel, see Baym, Woman's Fiction, 1993: 22-50. For examples of novels following this plot (or with slight variations), see Maria Cummins, The Lamplighter (1851); Eliza Leslie, Amelia (1848); Catharine Sedgwick, A New England Tale (1822); E.D.E.N. Southworth, The Hidden Hand (1859); Susan Warner, The Wide, Wide World (1850), Queechy (1852), and The Hills of the Shatemuc (1856). One of the notable exceptions to this formula is Fanny Fern's Ruth Hall, published in 1855, in which the heroine is a young widow trying to support her family. Throughout the novel, she is represented as an independent and formidable character; one who is not in need of conversion. The novel ends not with marriage, but Ruth's financial—and therefore personal— independence.

Gertrude (Gerty) Flint, living with an unkind guardian, Nan Grant. Nan locked Gerty in a garret, fed her the scraps from the table, and subjected the child to frequent beatings. After Nan cruelly drowned Gerty's kitten in boiling water, Trueman Flint—the local lamplighter who is himself an orphan—rescued Gerty, becoming her “friend” and protector.²⁸ Living with Uncle True, Gerty met his neighbors, Mrs. Sullivan and her son Will, both of whom became part of the surrogate family that slowly formed around the young girl. Indeed, in her role as surrogate mother, Mrs. Sullivan took it upon herself to teach Gerty, shortly after her arrival at Uncle True's, about the relationship between domestic order within the home, and “inward peace” within the self.²⁹ On her first visit to church, while living with Uncle True, the young Gerty met Miss Graham: the woman who will eventually have the greatest influence over Gerty's life. Miss Graham, who is blind, appointed herself as the child's spiritual advisor, instructing Gerty in prayer, charity, and forgiveness. Once Uncle True died, Emily became Gerty's de facto guardian, as Emily moved into the Graham household, the home owned by Emily's father—and in which both Emily and her father, Mr. Graham, still resided. While Gerty was enrolled at the local school, Will—a few years older—took a prestigious job in India. Though Gerty was pleased the job provided well for both Will and his mother, she and Mrs. Sullivan both realized it would be many years before they saw Will again. Gerty had lost her closest friend.

²⁸ Maria Susanna Cummins (ed. Nina Baym), The Lamplighter (New Brunswick: Rutgers University Press, 1988): 15.

²⁹ *Ibid.*, 25.

The lengthy narrative of Gertrude's journey to adulthood was full of many more trials. One of the most significant was her battle of wills with Mr. Graham. Rather than accept his offer of a lengthy tour overseas, Gerty elected to stay behind and remain with Mrs. Sullivan, who had fallen ill and needed care. Mr. Graham threatened to end his financial and material support for Gertrude should she remain behind. In response, Gerty located a position as a teacher in a school close to Mrs. Sullivan's home, a position that provided for both her and Mrs. Sullivan. Inspiring Gerty's decision was a promise she made to Will—that she would look after his mother in his absence—and Gerty's devotion to God. Gerty believes she was bound to help the woman who had so generously fed and clothed her as a child, and she did this without feeling any regret at missed opportunities, such as the overseas tour. In Gerty's mind, her responsibilities to Mrs. Sullivan justified defying Mr. Graham, a decision that received Emily's support. Unable to read and write, Emily had herself come to rely heavily upon the close companionship provided by Gerty. But Emily, unlike her father, accepted Gerty's decision as divinely inspired. After a bewildering array of ongoing plot complications, misunderstood human interactions, Mrs. Sullivan's eventual death, and an unexpected display of 'forgiveness' from Mr. Graham toward Gerty, the story concluded with marriage. Will returned from India, and Gerty agreed to become his wife. Emily, in turn, was reunited with her long-lost sweetheart, whom she also married—a union to which her father grudgingly acquiesced.

Sentimental fiction such as The Lamplighter reinforced the dominance of a particular construction of marriage and family, one with a male head of household and dependent women and children. The conclusion of Cummins's novel, like so many other

sentimental novels, exemplified the restoration of male power so typical to the genre. Emily and Gerty, both of whom had displayed significant degrees of personal independence throughout the narrative, ultimately accepted the authority of a husband. More importantly, both women married men that had been like brothers to them, a fact that reinforced the family as the locus of power. Phillip Amory, the man whom Emily married, was both Emily's long-lost lover, and her long-lost stepbrother. Complicating matters even further, Phillip Amory was also Gerty's biological father—a fact that he revealed to Gerty at the end of the novel. Each woman achieved fulfillment through marriage, and the restoration of the intact family. Cummins manifested this happiness in domesticity. After her engagement to Will, for instance, the smiling Gerty folded napkins and prepared the table for supper in the Graham household, while attending to the needs of Mrs. Graham and her daughters. Gerty's internal content correlated with the delight she found in the external order of a well-maintained and well-run house.

Readers of sentimental fiction, particularly women, also indulged in reading religious periodicals, such as the Connecticut Evangelical Magazine, Missionary Herald, and Religious Intelligencer. As with novels of this period, it is difficult to measure the popularity of these magazines, but the sheer volume of titles suggests a wide audience. These periodicals circulated at a time when many women defined their purpose in spiritual and religious terms. Involvement in the temperance movement, the crusade against slavery, and campaigns to improve conditions for working class women, for example, was inspired by faith, as much as a commitment to eradicate particular evils,

such as alcoholism and slavery.³⁰ For many women, therefore, these periodicals helped them to imagine their work as part of broader missions, both nationally and throughout the world, to serve the Lord.

American women actively participated in global efforts to convert heathens through prayer. But, in order to know who to pray for, Christian mothers needed information about the unsanctified practices of the unconverted. Religious periodicals provided that information, while also constructing and reinforcing the paradigm between Christian and unchristian mothers. Essentially, English and American mothers were Christian. Others, such as the Chinese, Indians, and Native Americans, were not. To be Christian indicated civilization. Unchristian people, in comparison, were savages.

In this literature, infanticide was one of the primary markers of savagery. Despite evidence to the contrary—such as that reported in newspapers in both the United Kingdom and the United States—Christian women did not commit infanticide.³¹ The practice, however, allegedly ran rife in places such as the Sandwich Islands (now Hawaii), India, and China, where the residents were yet to be enlightened by the word of

³⁰ The vast literature on women's involvement in the work of antebellum benevolence and anti-slavery societies includes these representative studies from Lori D. Ginzberg, Women and the Work of Benevolence: Morality, Politics, and Class in the Nineteenth-Century United States (New Haven: Yale University Press, 1990); Nancy Hewitt, Women's Activism and Social Change: Rochester, New York, 1822-1872 (Ithaca: Cornell University Press, 1987); and Julie Roy Jeffrey, The Great Silent Army of Abolitionism: Ordinary Women in the Antislavery Movement (Chapel Hill: University of North Carolina Press, 1998).

³¹ A German visitor to the United States in the 1850s concluded that infanticide must be rife in the United States due to the low wages paid to working-class men. The American magazine that reported the German's account described it as "abuse." The report provides an interesting contrast with those listed below in illustrating the type of assumptions that informed people's conclusions—from around the world—of the prevalence of infanticide. See "America As Abused By A German" The International Monthly Magazine of Literature, Science, and Art (November 1 1851): 448.

God.³² The English philosopher Adam Smith had identified the presence, or lack thereof, of infanticide as one of the most significant distinctions between savage and civilized societies in his 1759 treatise, The Theory of Moral Sentiments. Infanticide represented the failure of one human being to sympathize with another, particularly the neediest, weakest, and most dependent human being: an infant. Therefore, the proliferation of infant murder within a society, argued Smith, determined its degree of civilization. Where infanticide was present, savagery reigned.³³

American religious periodicals and missionaries' reports reflected Adam Smith's reasoning. Missionaries, like most Americans, for instance, proceeded from the premise that as a Christian nation, America constituted a civilized nation. Prima facie, therefore, there was no infanticide. When infanticide did occasionally occur, it was an aberration and laws punished the offenders for their transgression of society's moral and ethical—basically Christian—values. Non-Christian societies were presumed uncivilized. The

³² A search of the Proquest database, American Periodicals Series, reveals numerous articles from the early republic and antebellum period highlighting this concern. For particular examples (in ascending date order), see Thomas Pellatt and John Wilks, "Christianity in India" The Panoplist, and Missionary Magazine July 1813: 86; "Christianity in India" Connecticut Evangelical Magazine and Religious Intelligencer March 1814: 91; "Chinese Tracts" The Guardian and Monitor: A Monthly Publication Devoted to the Moral Improvement of the Rising Generation July 1 1826: 246; "Sandwich Islands" The Missionary Herald, Containing the Proceedings of the American Board of Commissioners for Foreign Missions December 1829: 371; "Gutzlaff's Letter to Dr. Reed" The Religious Intelligencer March 21 1835: 674; "Female Infanticide in India" Christian Register and Boston Observer May 13 1837: 36; "Miscellanies: Infanticide in China" The Missionary Herald, Containing the Proceedings of the American Board of Commissioners for Foreign Missions April 1844: 138; "Art. V—The Calcutta Review" The Biblical Repertory and Princeton Review July 1849: 403; and "Chinese in California" Friends' Review: A Religious, Literary, and Miscellaneous Journal April 24 1852: 507.

³³ Adam Smith, The Theory of Moral Sentiments 2nd edn. (London, 1761), Part V: Chapter II: 322-323. For an application of Adam Smith's argument to seventeenth and eighteenth century infanticide cases, and Harriet Beecher Stowe's Uncle Tom's Cabin (1852), see Elizabeth Maddock Dillon, The Gender of Freedom: Fictions of Liberalism and the Literary Public Sphere (Stanford: Stanford University Press, 2004): 209-236.

cultural toleration of infanticide within those societies only further confirmed that fact. When English colonists first arrived on American soil, for instance, they found the acceptance of infanticide—or infant abandonment—within Native American communities particularly striking. The absence of laws condemning infant murder, rather than the act itself, signified the extent of the difference between the colonists and the Native Americans. In the early nineteenth century, the introduction of laws condemning infanticide within groups such as the Choctaws signified, in the American mind, progress away from barbarity and toward civilization.³⁴ Missionaries working at the “Chickasaw mission” within Mississippi and Alabama reported in 1825 that “suicide, infanticide, and the killing of witches” had been abolished amongst the inhabitants. In conjunction with the Chickasaws’ desires to build houses and educate the young, the abolition of these “barbarous customs” had successfully paved the way toward conversion, and civilization.³⁵

From the sixteenth century, English colonists—and later, Americans—had, therefore, interpreted infanticide as a marker of “foreignness” or “difference.”³⁶ People who looked different, such as Indians, Chinese, and Native Americans seemingly

³⁴ See, for an example, a report presented to Congress in March 1830 by John Eaton, Andrew Jackson’s Secretary of War “showing the progress made in civilizing the Indians for the last eight years, and their present condition.” See Senate Document No. 110, 21st Congress, 1st Session (1830): 13.

³⁵ “Chickasaw Mission” Zion’s Herald January 19 1825: 2. See also Cyrus Byington, “Miscellaneous: The Choctaw Mission” Christian Observer June 30 1849: 104.

³⁶ My analysis here builds upon the work of scholars such as Amy Kaplan and Laura Wexler, who have both—in different ways—addressed the extent to which domesticity constituted itself in relation to foreign or non-white cultures during the antebellum period. See Amy Kaplan, “Manifest Domesticity” American Literature 70 (1998): 581-606; and Laura Wexler, “Tender Violence: Literary Eavesdropping, Domestic Fiction, and Educational Reform” in Shirley Samuels (ed.) The Culture of Sentiment: Race, Gender, and Sentimentality in Nineteenth-Century America (New York: Oxford University Press, 1992): 9-38.

tolerated, and indeed encouraged, infanticide. The acceptance of infant murder, and the apparent failure to police its frequency, meant that the act occurred more often, or so white American readers believed. More importantly, not only did non-white peoples look foreign, they were also culturally and socially distinctive. Amongst Native Americans, for instance, gender hierarchies were radically different from those to which Anglo-Americans were accustomed. Interpreting such differences through literature that both reflected and reinforced particular Christian stereotypes of civilization and motherhood, white Americans characterized this cultural distinctiveness as a signifier of savagery and barbarity.

Such an association between difference and barbarity had significant implications for African Americans, particularly after the Civil War. The pre-existing cultural stereotypes of motherhood and infanticide that circulated amongst white Americans carefully provided a means of navigating the social and cultural implications of infant murder that occurred within American communities. Within the prevailing ideology, Christian women did not commit infanticide. This enabled white Americans to rationalize individual incidents of infant murder as isolated occurrences, rather than interpreting the act as potential evidence of endemic social problems related to poverty and class. Yet, African Americans—both before and after the Civil War—did not fit neatly within the stereotypes of white Christian motherhood established by Anglo-Americans. Obviously, African Americans looked different, just like those from other societies—such as the Native Americans and the Chinese—that accepted infanticide. Though most African Americans were Christian, churches in the South—where the

majority of African Americans lived—were not fully integrated. Further, though most African Americans were Christian, the style of worship and specific beliefs followed by free blacks and former slaves, seemed foreign to most Americans. As the belief that African Americans constituted a distinctive group with shared, innate characteristics related solely to the fact they were racially different slowly became part of the law, white Americans extended the logic they had applied to Native Americans and foreigners to African Americans. The occurrence of infanticide within African-American communities confirmed beliefs in the minds of white Americans that black Americans were racially distinct and less civilized. Further, these occurrences enabled white Americans to continue overlooking the underlying causes of infant murder throughout the nation.

Conflating infanticide with race also proved easier after the Civil War because of the links constructed by abolitionists in the antebellum period between infant murder and slavery. Anti-slavery activists drew on the same constructions of motherhood so popular in seduction and sentimental literature to perpetuate an image of infanticide as an unnatural crime. Indeed, the act was so antithetical to a mother's natural instincts, argued abolitionists, that only a life as horrible as slavery could drive a mother to kill her child. Yet, such a narrative of motherhood and infanticide ultimately obscured the same issues as authors of seduction fiction, sentimental novels, and religious tracts overlooked. As local community members recognized in the narratives they constructed, factors such as poverty, fear, and ignorance lay at the root of many infanticide cases. Interweaving narratives of infant murder so tightly with specific constructions of slavery and

infanticide, abolitionists elided the significance of alternate narratives, primarily those shaped by particular, contingent and local circumstances.

Chapter Four **Slavery, Abolition, and Murdering Mothers**

In June 1833, the pregnant slave woman Esther gave birth on the property of her owner Duncan Graham in Robeson County, North Carolina. Immediately afterward, Esther first choked and strangled her son and then beat him against the wall of the house. She left the dead body in the fodder house, where food was stored for the horses. Most likely, it was also the place where Esther had gone to give birth, because it provided some privacy. Yet, it was only when Margaret Graham heard Esther making “a noise like that of a puppy grunting and groaning” that she sent her children to find Esther’s recently delivered child. By then bruises covered the body of the dead infant, with signs of Esther’s fingers around his neck.¹

Esther’s story, reconstructed from the multiple narratives of local community members involved in the investigation into the child’s death, seems to fit within the narrative framework established by anti-slavery activists such as Elizabeth Barrett Browning in her 1848 poem, “The Runaway Slave at Pilgrim’s Point.” First published in the Boston-based abolitionist periodical The Liberty Bell, Browning’s poem conveyed the imagined grief of a slave mother who killed her child. Raped by her master, the nameless “runaway slave” of the poem strangled her son—the fruit of the crime—rather than look upon her child’s white face.² Reprinted numerous times, the poem enjoyed

¹ State v. Esther, Fall Term 1833, Records Converting Slaves and Free Persons of Color, Robeson County, NCDAH.

² Elizabeth Barrett Browning, “The Runaway Slave at Pilgrim’s Point” in Liberty Bell (Boston: American Anti-Slavery Bazaar, 1848): 29-44.

wide circulation throughout the United States. Abolitionists used Browning's poem, along with novels such as Harriet Beecher Stowe's Uncle Tom's Cabin, published in 1852, to vividly illustrate the horrors of slavery.³ By linking infanticide to slavery, abolitionists defined it as a distinctive feature of the enslaved during the antebellum period. In so doing, they infused the stories of women like Esther with a very specific and limited meaning: she became a desperate mother driven to desperate action by the horrors of slavery.

Yet in promoting this particular narrative, abolitionists actually misconstrued and marginalized the experiences of women—even enslaved women such as Esther—who murdered their babies during the nineteenth century. While abolitionists typed infanticide as an act so antithetical to motherhood that only circumstances as repugnant as slavery could inspire a woman to commit it, murdering mothers constituted part of the fabric of everyday life in the nineteenth-century United States. As discussed in previous chapters, people in towns across America dealt with infanticide, not often, but regularly. They produced diverse narratives dedicated to understanding and interpreting this act, the circumstances of which were as varied as the women—white, black, enslaved, and free—who committed it.

This chapter juxtaposes local stories of infant death and infanticide from Connecticut, North Carolina and Illinois in the context of nationally-circulated narratives

³ Harriet Beecher Stowe's story was first published in serialized version in the abolitionist periodical, National Era, beginning in June 1851. Just over a year later, it was published as a book. For the edition referred to in this dissertation, see Harriet Beecher Stowe (ed. John William Ward), Uncle Tom's Cabin (New York: Signet, 1981).

of child murder generated by anti-slavery activists reproduced in newspapers, poetry, fiction and political tracts. Like the seduction literature and sentimental fiction discussed in chapter three, abolitionist discourse not only marginalized women's experiences, but also obscured the larger issues that shaped alternate narratives of infant death and infanticide in communities across America. The occlusion of these broader issues—primarily the complicated dynamics of poverty and class—was to prove particularly problematic after the Civil War as Americans struggled to reconstitute the nation.

The role carved out for women in the early republic pivoted on the position of the mother. Cast as natural caregivers, women were responsible for the nurture of young minds, bodies, and souls. That conception of motherhood, developed before the Revolution, became even more entrenched afterward, as the historiography establishes.⁴ Anti-slavery advocates built upon and promoted this particular vision of motherhood. The strength of the maternal bond was something that every woman—enslaved or free—instinctively understood. All mothers naturally loved and protected their children. The fact that infanticide was so unnatural and so contrary to a woman's inherent maternal

⁴ For the historiography that emphasizes the importance of motherhood to women's roles in the early republic and antebellum periods, see Ruth H. Bloch, "American Feminine Ideals in Transition: The Rise of the Moral Mother, 1785-1815" *Feminist Studies* 4 (1978): 101-126; Nancy F. Cott, *The Bonds of Womanhood: "Woman's Sphere" in New England, 1780-1835* (New Haven: Yale University Press, 1977); Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1980); and Mary Ryan, *The Cradle of the Middle Class: The Family in Oneida County, New York, 1790-1865* (New York: Cambridge University Press, 1981). For further discussion of the relevant historiography and the development of women's role as mother in the Early Republic, see chapter three.

instincts meant that only mothers placed in extreme circumstances—such as enslaved mothers—might be driven to the desperate circumstances that inspired the crime.

Drawing on these powerful ideological currents, anti-slavery advocates forged a causal link between slavery and infanticide, construing the latter as an inevitable consequence of the former. Only an institution as callous and indifferent to human suffering as slavery could prompt a mother to sunder her maternal ties. Child murder became akin to the mother's supreme sacrifice. Unable to save herself from the depredations of slavery and unwilling to subject her children to those horrors, the mother elected to save her child using the only means available to her—killing it. In the absence of slavery, argued abolitionists, no mother—whether enslaved or free—would ever murder her infant. The ongoing naturalization of Anglo-American motherhood as virtuous and moral was, therefore, particularly important to abolitionist constructions of slave motherhood, as white Americans emphasized the sexual purity of all women. By invoking the specter of the defenseless woman subject to the predatory urges of her owner, anti-slavery agitators hoped to gain the support and involvement of white women in both the North and South.⁵

⁵ The importance of using rhetoric that dramatized the sexual plight of the defenseless enslaved woman to attract woman to the anti-slavery cause has been well-documented by literary critics and historians including Karen Sánchez-Eppler, *Touching Liberty: Abolition, Feminism, and the Politics of the Body* (Berkeley: University of California Press, 1993); Julie Roy Jeffrey, *The Great Silent Army of Abolitionism: Ordinary Women in the Antislavery Movement* (Chapel Hill: University of North Carolina Press, 1998); and Carol Lasser, "Voyeuristic Abolitionism: Sex, Gender, and the Transformation of Antislavery Rhetoric," *Journal of the Early Republic* 28 (Spring 2008): 83-114. For recent discussions of the extent of women's involvement in the anti-slavery movement, see Susan Zaeske, *Signatures of Citizenship: Petitioning, Antislavery and Women's Political Identity* (Chapel Hill: University of North Carolina Press, 2003); and Beth Salerno, *Sister Societies: Women's Antislavery Organizations in Antebellum America* (DeKalb: Northern Illinois University Press, 2005).

Despite the abolitionist emphasis on the horrors of slavery for mothers, anti-slavery literature identified newborn infants as the most defenseless victims of enslavement. The way in which anti-slavery supporters employed this idea is illustrated in Louisa J. Hall's "Birth in a Slave's Hut," published in the 1849 edition of The Liberty Bell.⁶ In Hall's poem—in which Hall adopted the persona of a slave—the enslaved mother gazed with "gloom" upon her child expressing her desire to "crush this babe like a toy / Its breath in the grey dust smother!" In a later verse, Hall emphasized the particular anguish that the birth of a daughter caused for the enslaved mother—all too aware of the specific depredations that awaited a female slave: "In mercy, say not 'tis a daughter! / Oh God, give me leave to destroy / By cord, by sharp knife, or by water, / The thing thou didst mean for my joy!"⁷ The sex of the child, a girl, enhanced her vulnerability and further justified the act of infanticide. In Hall's conceptualization, slavery transformed the pre-existing moral order. Where rape and sexual violence existed, infanticide became not only explicable but also justifiable.⁸

The most pervasive abolitionist-generated image of the murdering mother in the antebellum period was that of Cassy in Harriet Beecher Stowe's Uncle Tom's Cabin; or

⁶ Louisa Jane Park Hall was best known amongst nineteenth century audiences for her dramatic poems and plays such as Miriam: A dramatic poem (Boston: Hilliard, Gray & Co., 1837), and Joanna of Naples (Boston: Hilliard, Gray & Co., 1838).

⁷ See Louisa J. Hall, "Birth in the Slave's Hut," The Liberty Bell. By Friends of Freedom (Boston: National Anti-Slavery Bazaar, 1849): 42-44. Reprinted in Dawn Keetley & John Pettegrew (eds.), Public Women, Public Words: A Documentary History of American Feminism, Vol. 1, (Madison: Madison House, 1997): 168.

⁸ For further examples, see Barrett Browning, "The Runaway Slave," and Maria Lowell, "The Slave Mother" in Liberty Bell (Boston: Massachusetts Anti-Slavery Fair, 1846).

Life Among the Lowly, which was first published as a book in 1852. As the highest selling novel in the nineteenth-century United States, and the second highest-selling book (beat out only by the Bible), Stowe's narrative reached into the corners of every home in America, while also enjoying considerable success overseas.⁹ Cassy, an enslaved woman, had lost all her children to slavery. The man who had fathered the first two infants sold the children away from her, Cassy explained to the central character, a slave by the name of Tom. After she gave birth to her third child, Cassy killed the infant, unable to bear the thought that another one of her children would grow up as a slave. She wept profusely while gently administering an overdose of laudanum to her unnamed, two-week old son, rocking the child to death in her arms. Her motivation for such an act, explained Cassy, was love. She remained unrepentant, for "what better than death could I give him?"¹⁰ As a mother, Cassy had no choice but to kill her son because she understood what awaited him in his future life as a slave. Stowe transformed Cassy's crime into an act of mercy, and a potent demonstration of motherhood.¹¹

Harriet Beecher Stowe elicited sympathy for Cassy, the murdering mother, by employing and reinscribing archetypal constructions of both motherhood and children

⁹ For one of the earliest and most significant reassessments of the extent of the influence of Stowe's Uncle Tom's Cabin on the American political and literary landscape, see Jane Tompkins, Sensational Designs: The Cultural Work of American Fiction, 1790-1860 (New York: Oxford University Press, 1985): 122-146. For an assessment of Stowe's influence in Europe, see Denise Kohn, Sarah Meer, and Emily B. Todd (eds.) Transatlantic Stowe: Harriet Beecher Stowe and European Culture (Iowa City: University of Iowa Press, 2006).

¹⁰ Stowe, Uncle Tom's Cabin: 389-393. Quotation on p. 392.

¹¹ The other instance of infanticide to which Stowe referred in her novel is that of a mother who jumped overboard on a boat, when a white slaveholder tried to separate her and her son. The slaveholder recounted the tale with callous indifference: he swapped the child for a keg of whiskey, as the boy was blind. When he tried to separate mother and son, she became, in the slaveholder's words, a "tiger." See *Ibid.*, 77-78.

throughout Uncle Tom's Cabin. As argued in chapter three, these conceptions had emerged in the seduction novels of the early republic and then had been further developed in antebellum sentimental fiction. Building on these ideas about women and children, Stowe exploited them to their fullest extent in Uncle Tom's Cabin. Early in the novel, for instance, Mrs. Bird persuaded her husband, Senator Bird—who had voted in support of the Fugitive Slave Law of 1850—to provide shelter and a method of escape for a young slave woman, Eliza, and her son Harry. Both slaves were running away from their owner, Mr. Shelby. Mrs. Bird's plea to her husband succeeded because she appealed to the Senator's memories of and love for their recently deceased child.¹² Stowe constructed a narrative in which motherhood—and the strength of the maternal bond—constituted a common bond between enslaved and free women. Mrs. Bird prevailed upon her husband to help Eliza out of the depths of a mother's love. Stowe's plot had already carefully elicited the reader's, particularly a female reader's, sympathy for Eliza. Like Mrs. Bird, Eliza had suffered the pain of watching her children die in infancy.¹³ Her fear of separation from her surviving child, Harry, prompted Eliza to run away from her owners, the Shelbys, when she overheard Mr. Shelby discussing plans to sell her son. Pursued by Haley, Harry's new owner, Eliza made a daring, heroic dash across the frozen Ohio River jumping from ice floe to ice floe, with Harry snuggled

¹² Ibid., 90-107.

¹³ Mrs. Bird had lost one child, Henry, a name very similar to that of Eliza's surviving son.

tightly in her arms.¹⁴ Building upon widely circulating conceptions of motherhood, Stowe's story elevated the maternal bond far beyond slavery.

In spite of the enormous success that Uncle Tom's Cabin enjoyed in both the United States and Europe, the novel demonstrated one of the fundamental problems with the claims of anti-slavery advocates: an absence of proof to support the author's claims. In response to critics of her novel, particularly in the South, Harriet Beecher Stowe published The Key to Uncle Tom's Cabin in 1854. In The Key, Stowe provided allegedly factual and corroborative information to support her representations of various characters, including the Shelbys and Eliza. But The Key contained only one oblique reference to infanticide, and there was no specific information to support Cassy's story.¹⁵ Abolitionists frequently claimed that their fictional narratives, crafted either in novel or verse, had been inspired by actual stories of infanticide, but few authors could provide details about the events that served as the inspiration.¹⁶ Further, anti-slavery journals

¹⁴ Stowe, Uncle Tom's Cabin: 61-74.

¹⁵ See Harriet Beecher Stowe, The Key to Uncle Tom's Cabin: Presenting the Original Facts and Documents Upon Which the Story is Founded. Together with Corroborative Statements Verifying the Truth of the Work (Boston: John P. Jewett and Company, 1854): 86. In her brief discussion of mothers who "murdered their own offspring," Stowe claimed that "a case of this kind has been recently tried in the United States, and was alluded to, a week or two ago, by Mr. Giddings, in his speech on the floor of Congress." She was referring to the Congressman Joshua R. Giddings, who represented Ohio in the U.S. House of Representatives from 1838 to 1859, initially as a member of the Whig Party and later a Republican. Giddings was a virulent opponent of slavery, but it is difficult to identify the infanticide case to which he alluded on floor of the House.

¹⁶ For examples, see "A Mother's Anguish," The American Anti-Slavery Almanac, 1:2 (1837): 43-44; "The Slave Mother's Address," a white-authored poem acting as frontispiece to Lunsford Lane's The Narrative of Lunsford Lane, Formerly of Raleigh N.C. (Boston: J. G. Torrey, 1842), reprinted in B. Eugene McCarthy and Thomas L. Doughton (eds.), From Bondage to Belonging: The Worcester Slave Narratives (Amherst: University of Massachusetts Press, 2007): 35-37; "The Slave and her Babe," The Liberator, 15 August 1845, 132; and Frances Ellen Watkins Harper, "The Slave Mother," Poems on Miscellaneous Subjects (Boston: J. B. Yerrinton, 1854): 6-9.

reported few incidents of infanticide committed by slaves. In contrast, like many newspapers and periodicals of the time, most of the references to infanticide in abolitionist journals referred to its existence in foreign countries, such as China or India.¹⁷ Yet, the powerful rhetorical image of the mother driven by the horrors of slavery to commit infanticide remained in circulation. The potency of the image enabled anti-slavery advocates to neatly sidestep the question of the extent to which the dominant narrative they championed represented actual cases of infanticide that people encountered in local communities. Given that only a few pro-slavery advocates from the South challenged this abolitionist view of infanticide, the dominant narrative persevered particularly amongst middle-class reformers and those in the North who struggled against slavery.

Finally, an enslaved slave woman by the name of Margaret Garner provided abolitionists with the dramatic evidence they desired to demonstrate that slavery forced mothers to murder. In January 1856, the pregnant Garner escaped from Kentucky across the frozen Ohio River to Cincinnati, Ohio with her husband and four children, also slaves. Discovered by her Kentucky owner, Archibald Gaines, Garner attempted to kill all her children, successfully slitting, after several attempts, her three year-old daughter's throat with a butcher's knife. Before she could do any permanent harm to the remaining children, Gaines recaptured Garner and her family. Gaines then demanded the return of

¹⁷ This conclusion is based on my review of approximately twenty nineteenth-century African American newspapers, including The Liberator. I also conducted a search in two popular nineteenth-century newspapers that were not specifically African-American periodicals, Godey's Lady's Book and The Christian Recorder.

Margaret Garner and the children to Kentucky under the terms of the 1850 Fugitive Slave Act. Abolitionists converged on Cincinnati, determined to keep Garner and her children in Ohio at all costs. They demanded that the Ohio State Attorney prosecute Garner for murder, in the hope that such a strategy would delay Garner's return to Kentucky, if not indefinitely then at least long enough for Archibald Gaines to give up fighting for his slave.¹⁸

The case attracted national attention as abolitionists sought to exploit the drama of the escape, the murder, and the subsequent recapture, in order to illustrate the horrors of enslavement to a nation already sharply divided over the question of slavery. There is little doubt that anti-slavery advocates desperately wanted to ensure that Margaret Garner and her children did not return to slavery. Just as important, however, was the fact that the case provided perfect publicity for their cause. In Margaret Garner, the image of the enslaved mother driven to extreme measures to save her child from enslavement became a reality, not a fiction, confirming what abolitionists had always assumed as fact. Like Eliza in Uncle Tom's Cabin, Margaret Garner had dashed across the icy Ohio River with her children, risking everything to save them from slavery. As abolitionists interpreted the case, the fact that Garner had eventually slit her daughter's throat with a knife only

¹⁸ Details of the case can be found in those newspapers that extensively documented the unfolding drama including the Cincinnati Daily Commercial, the Cincinnati Daily Gazette, the Cincinnati Daily Enquirer, the Cincinnati Daily Times, the Louisville Daily Courier, and the Covington Journal (Ky.). The case also received national coverage, prompting editorials in the New York Times and other newspapers throughout the nation. Anti-slavery newspapers such as the National Anti-Slavery Standard and The Liberator extensively covered the case. For useful summaries of the case, see Mark Reinhardt, "Who Speaks for Margaret Garner? Slavery, Silence, and the Politics of Ventriloquism," Critical Inquiry 29 (2002): 81-119; and Julius Yanuck, "The Garner Fugitive Slave Case," Mississippi Valley Historical Review 40:1 (June 1953): 47-66.

demonstrated the extent of her desperation, not her depravity. Indeed, as Garner left court one evening, the prominent abolitionist and women's rights activist Lucy Stone Blackwell approached the woman, offering Garner a knife to kill her remaining children, and then herself. Blackwell defended her actions, claiming that Garner had a right to "liberty with God" rather than "oppression with man."¹⁹ While Blackwell's actions may seem extreme, her justification of Garner's actions as in some way divinely sanctioned accorded with abolitionists' understandings of and justifications for infanticide.

The dramatic escape and recapture, along with the turmoil of the ensuing legal cases generated poetry, books, and volumes of newsprint. Although Garner's exact fate still remains somewhat unclear, her case served as a reference point for abolitionists for years to come.²⁰ Books inspired by the Garner tragedy included the 1856 narrative authored by a Cincinnati resident, Hattia M'Keehan's Liberty or Death!, and Chattanooga by Garner's lawyer, John Joliffe, published in 1858.²¹ Although not directly inspired by

¹⁹ "Selections: Ohio Fugitive Slave Case," The Liberator (February 29 1856): 1.

²⁰ Records indicate that Archibald Gaines defied a pending extradition order from the Governor of Ohio (on the murder charge), and sold Margaret Garner and her children shortly after he brought them back to Kentucky. Shortly afterwards, a newspaper reported that the boat on which the fugitives travelled suffered an accident, and one of Garner's children had been killed. Garner's trail then went cold—some scholars have suggested she ended up at the New Orleans slave market. See "Steamboat Disaster!" Daily Ohio Statesman, (March 11 1856): 2; Reinhardt, "Who Speaks for Margaret Garner?," 89; Steven Weisenburger, Modern Medea: A Family Story of Slavery and Child-Murder from the Old South (New York: Hill and Wang, 1998): 220-231; and Yanuck, "The Garner Fugitive Slave Case," 64-66.

²¹ See John Joliffe, Chattanooga (Cincinnati: Anderson, Gates, and Wright, 1858); and Hattia M'Keehan, Liberty or Death!: Or Heaven's Infraction of the Fugitive Slave Law (Cincinnati: 1856).

the events of the Garner case, Harriet Beecher Stowe's Dred, also published in 1856, featured a story of an enslaved mother who had killed her two young children.²²

As in Uncle Tom's Cabin, all of these books characterized the mother's act of infanticide as the most extreme act of love. In Stowe's Dred, for instance, the slave mother Cora explained that she killed her children because she "loved them so well that I was willing to give up my soul to save theirs!"²³ In Stowe's representation of infanticide, Cora's decision to kill her children was a sacrifice that ultimately saved them from a life of hardship, rather than a choice that harmed them. Poems expressing sentiments such as that of Vermont congressman William Hebard were also typical, reinforcing the abolitionist view that slavery was so antithetical to human nature that it drove mothers to extreme measures. As Hebard observed in his 1857 appeal against slavery penned in response to the Garner tragedy, "Oh what is tyranny, that it can make / Infanticide a virtue in our land, / And not content with human hearts to break, / Enforces crime upon the human hand?"²⁴ In Hebard's poem, infanticide—and by extension—slavery upended

²² Harriet Beecher Stowe, Dred: A Tale of the Great Dismal Swamp (Boston: Phillips, Sampson, & Co., 1856).

²³ *Ibid.*, v.2, 206. For a detailed discussion of representations of infanticide in this novel and the others referred to in footnote twenty-one above, see Sarah N. Roth, "'The Blade Was In My Own Breast: Slave Infanticide in 1850s Fiction'" American Nineteenth Century History 8 (2007): 169-185.

²⁴ William Hebard, The night of freedom: an appeal in verse, against the great crime of our country, Human Bondage (Boston: Samuel Chisholm, 1857): 23-25. As noted earlier, one of the few groups to attack the credibility and prevalence of accounts of infanticide amongst slaves were pro-slavery advocates. Published in 1860, Ebenezer Starnes's proslavery novel, The Slaveholder Abroad, detailed incidents of white mothers engaged in infanticide, driven to do so by the "wage-slavery" of England. Starnes's purpose was to refute abolitionist claims that slavery—and slavery alone—inspired the circumstances that would prompt a mother to kill her child. See Ebenezer Starnes, The Slaveholder Abroad: or Billy Buck's Visit, with his Master, to England (Philadelphia: J. B. Lippincott, 1858).

the traditional moral order. The institution of slavery was so devastating and unnatural that it transformed a crime as violent and inhuman as infanticide into a “virtue.”²⁵

The abolitionist’s narrative of infanticide continued to dominate the historical memory of slavery many decades after emancipation. Historians, amongst other scholars, accepted it as both a plausible, and understandable, explanation for the high rate of infant mortality within slave communities. Infanticide served as a form of abortion, enabling slave mothers to help their children escape from a life of servitude.²⁶ Only in recent years have historians challenged the pervasiveness of this argument, demonstrating that slave children most likely had higher mortality rates than white infants because of environmental factors specific to slavery.²⁷ In 1987, Toni Morrison’s award-winning novel, Beloved, based loosely on the Margaret Garner story, reintroduced the narrative of the murdering slave mother to a wider audience. Yet Morrison characterized Sethe’s—the murdering mother’s—motivations as extremely problematic and ambiguous, thereby complicating the dominant abolitionist narrative and comprehensively challenging any

²⁵ Another poem that immortalized the case of Margaret Garner was Frances Ellen Watkins Harper, “The Slave Mother: A Tale of the Ohio,” Poems on Miscellaneous Subjects (Philadelphia: Frances E. W. Harper, 1857). Pamphlets that later discussed the case included Lydia Maria Child, The Duty of Disobedience to the Fugitive Slave Act: An Appeal to the Legislators of Massachusetts (Boston: American Anti-Slavery, 1860), and Samuel J. May, The Fugitive Slave Law and Its Victims (New York: American Anti-Slavery Society, 1856). After the Civil War, Garner’s plight was immortalized in “The Modern Medea,” an 1867 painting by Thomas Satterwhite Noble. For a detailed discussion of the various representations of the Garner case in fiction and poetry during the nineteenth century, see Weisenburger, Modern Medea, 232-280.

²⁶ See, for example, Raymond and Alice Bauer, “Day to Day Resistance to Slavery” Journal of Negro History 27 (1942): 415-417.

²⁷ See, for instance, Eugene Genovese, Roll, Jordan, Roll: The World The Slaves Made (New York: Vintage, 1976): 496-497; Michael P. Johnson, “Smothered Slave Infants: Were Slave Mothers at Fault?” Journal of Southern History 47 (1981): 492-520; and Deborah Gray White, Ar’n’t I A Woman? Female Slaves in the Plantation South (New York: Norton, 1985): 87-89.

easy justifications for mothers who committed such an act.²⁸ Even so, the infanticide narrative constructed by abolitionists lasted well into the twentieth century, indicative of its endurance if not its veracity.

Abolitionists promoted idealized constructions of motherhood for particular political purposes. As chapters one and two have shown, however, people throughout the United States regularly confronted infant death on very different terms. Neither women nor infanticide generally fit the abolitionists' model. Most notably, the recorded incidents of infanticide—even in the South—did not usually involve slaves, at least not as defendants. A survey of eight North Carolina counties for the early republic and antebellum period, for instance, revealed only six cases of infanticide in which the suspect was an enslaved woman. In the remaining cases, approximately twenty-five in total, coroners investigated white women upon suspicions of infant murder. Although the enslaved population of North Carolina varied between the Revolution and the Civil War, slaves generally constituted just over thirty percent of the total. Yet, allegations of infanticide were only leveled at enslaved women in fewer than twenty percent of cases.²⁹

When slaves were investigated for allegedly committing infanticide, for instance, the ways in which their cases were pursued, and the apparent outcomes of the cases, did not appear markedly different from those for free women, white and black. In October

²⁸ Toni Morrison, *Beloved* (New York: Knopf, 1987). The novel won the 1987 Pulitzer Prize for fiction.

²⁹ These conclusions are based on the data I collected from eight different North Carolina counties in relation to investigations into infant death between 1789 and 1860. These counties are as follows: Caswell, Granville, Haywood, Northampton, Orange, Randolph, Richmond, and Robeson. My calculation of the percentage of North Carolinians held in bondage between the Revolution and the Civil War is based on federal government summary census data from 1790 to 1860.

1835, for example, eighteen men held an inquisition into the death of an enslaved child, Solomon, on the property of Colonel John Hart in Granville, North Carolina. Based on the testimony of two men and the findings of the investigation, Hannah—Solomon’s mother—was indicted and tried for murder. A jury of white males found her not guilty.³⁰ The process in this case was similar to many others, including that of white woman Patience Rye, tried for murdering and concealing the death of her infant son in September 1808 at Richmond County, North Carolina. At the initial investigation in May, local women testified to both Rye’s “appearances before” and “appearances after” the alleged pregnancy to help the community establish if indeed a murder had occurred. Other community members testified as to Rye’s potential enemies—who might fabricate a story about her pregnancy—and Rye’s state of mind over the days the crime allegedly occurred. As in the case of the enslaved Hannah, the investigation was a means through which the community created a narrative that enabled them to explain the apparent death and disappearance of a child.³¹ Over a period of almost thirty years, the investigative procedures used in different communities in North Carolina remained remarkably consistent in respect of both enslaved and free women alike, suggesting the explanatory weakness of the abolitionists’ narrative when considered in relation to actual cases.

³⁰ State v. Hannah, March Term 1836, Criminal Actions Concerning Slaves and Free Persons of Color, Granville County, and State v. Hannah, Granville County Minute Docket, Superior Court, 1831-1840, March 9 1836, both at NCDAH. The finding of not guilty by the court is not to ignore the fact that the Hannah’s owner may have exercised some form of extra-judicial ‘justice’, either discrete or indiscrete. The loss of property—an enslaved child would have constituted valuable property to Hannah’s owner—would have been a sore loss indeed, one for which he may have chosen to exact vengeance.

³¹ State v. Patience Rye, September Term 1808, Criminal Action Papers, Richmond County, NCDAH. Though never explicitly stated in the pages of testimony and the indictments for the trial, it is evident—in Rye’s case—that a child’s body was never found.

The pervasiveness of infanticide in free states in the North and Midwest further undermined the notions of infanticide promoted by abolitionists, which tended to link the crime to enslaved women.³² People in Connecticut and Illinois encountered infanticide regularly, just as people did in the South. As in North Carolina, Northerners and mid-Westerners chose to investigate and pursue cases of infanticide in ways almost identical to those of their Southern neighbors. In August 1832, twelve men convened to investigate the death of an infant girl in Stonnington, Connecticut. The group concluded that the child had been strangled to death by its mother, a local African-American woman, Rue Benedict. Betsey Benedict, the dead child's grandmother, had purportedly aided in the perpetration of the alleged crime. An indictment for murder was drawn up for both women to be presented at the next session of the New London Superior Court, where the Grand Jurors subsequently dismissed the case against the women.³³

³² Illinois was a "free" state, based on both the Northwest Ordinance of 1787, which prohibited slavery in areas north of the Ohio River, and later the 1818 Illinois State Constitution. Nonetheless, it is important to acknowledge that historians have argued slavery continued to exist in various forms in Illinois until the 1840s. In Illinois's early years, slaveholders from Southern states often migrated to Illinois bringing their slaves with them without regard for the law. Indentured servitude also existed in Illinois, and masters in the state often coerced their servants into signing indentures for lengthy periods of service (such as fifty years or more). For discussions of slavery and indentured servitude in Illinois, see Paul Finkelman, An Imperfect Union: Slavery, Federalism, and Comity (Chapel Hill: The University of North Carolina Press, 1981), especially ch. 3, N. Dwight Harris, The History of Negro Servitude in Illinois, and of the Slavery Agitation in that State (Chicago: A. C. McClurg & Co., 1904), and James Simeone, Democracy and Slavery in Frontier Illinois: The Bottomland Republic (DeKalb: Northern Illinois University Press, 2000). I am indebted to Kelly Kennington for these references, including her research into the persistence of slavery in Illinois during the antebellum period. See Kelly Kennington, "River of Injustice: St. Louis's Freedom Suits and the Changing Nature of Legal Slavery in Antebellum America" PhD Dissertation, Duke University, 2009, especially chapter two.

³³ Inquest on the body of an infant, September 7 1832, Superior Court, Papers by Subject: Inquests, c. 1711-1874, New London County; and State v. Rue Benedict (cases 70 & 106), State v. Betsey Benedict (case 102), and State v. Rue & Betsey Benedict (case 108), Superior Court Files, New London County; all at CSA.

Similarly, in Madison County, Southern Illinois in January 1863, twelve men convened to investigate the death of an infant boy. The inquest identified the child as belonging to Elvira Bennett, and described the particularly callous means by which Bennett had killed the child. After “thrusting” a four-inch stick down his throat, Bennett had abandoned her son by the side of the road. Based on the findings of these men—and the testimony of two others who watched Bennett walk away from the abandoned child—Bennett was indicted for murder and ordered to appear at the next session of the Madison Circuit Court. For over a year the case was continued at each session of the court, until Bennett eventually requested and received a change of venue to St. Clair County in May 1864. Finally tried in October 1864—almost two years after commission of the crime—Bennett was found not guilty, even though the circumstances of her infant’s death suggested a particularly vicious crime.³⁴ These cases demonstrate the variance between the ways in which local communities understood incidents of infanticide occurring within their midst and the argument about infanticide made by anti-slavery activists at the national level. Though Rue Benedict and Elvira Bennett were not enslaved, the act of killing one’s child became woven—in some way—into a narrative that made the act explicable, even if not acceptable, to the local communities in which these women lived.

As abolitionists crafted and propagated a dominant narrative in which infanticide had a single cause—slavery—they actually obscured the differing ways in which

³⁴ Child of Elvira Bennett, February 4 1863, Coroners’ Inquests Files, Madison County, People v. Elvira Bennett, May 11 1863, May 18 1863, October 23 1863, May 7 1864, Circuit Court Record, Madison County, Vol. Q, and People v. Elvira Bennett, October Term 1864, Order Books, St. Clair County, Vol. T, 360, IRAD—SIU.

Americans responded to and negotiated instances of infanticide in their daily lives. No single narrative of infanticide was sufficient to explain the ways in which the communities reacted to cases that, on the surface, may appear similar to historians today. Unlike the grand narratives established by anti-slavery fiction, poetry, and propaganda, closer examination of instances of infanticide from each of the three states demonstrates that individual factors played a far greater role in determining the outcomes of cases. Although it was rare for any woman—black or white—to serve time in jail for the crime of infanticide in North Carolina prior to Reconstruction, outcomes were otherwise variable and inconsistent because they were based on circumstances particular to each case and rooted within the local community. While these specific reasons were never recorded and remain lost in the past, traces of the logic followed are suggested by the patterns that do emerge from extant records such as pardons. Those who were sentenced to the county jail in North Carolina, for example, were generally pardoned by the Governor after appeals for clemency, often from the same people involved in the original legal proceedings. One such case was that of Eliza Howell, tried on two counts—murder and concealing the death of her child—at the spring 1826 term of the Northampton Superior Court in North Carolina. Found guilty of the latter crime, Howell faced two months in jail and a five dollar fine. However, members of the Northampton community including some who served on the jury that determined her conviction and sentence, petitioned the Governor for a pardon. Their basis for the request was Howell’s subsequent marriage to “a decent and industrious man,” who then fathered a child with Howell. By demonstrating a commitment to reformed behavior through her actions—a

legitimate marriage and the birth of a legitimate child—Howell satisfied the community’s need for justice. The private acts of meeting a man, marrying him, and constituting a family satiated larger public concerns related to the restoration of the social order and the maintenance of the family with the father at the head as the prevailing social unit of the state.³⁵ In this instance, these factors—rooted within local concerns for the stability and well-being of the community—played a more significant role than the directives of the court in determining the eventual result of the case.

A case from North Carolina involving two women, tried for murdering an infant girl, illuminates how communities constructed very different narratives in relation to the same crime. Tried jointly at the Caswell County Superior Court in May 1820, both white women, Sarah Jeffreys and Betsey Coombs, were initially found guilty. The infant in question was the unmarried Jeffrey’s daughter, although this factor seemed initially to make little difference, since the community responded equally to the violence of the women’s actions. After appeals to the Governor for clemency, Coombs was pardoned. Yet, Jeffries and her supporters were unsuccessful in their initial appeals. While Coombs

³⁵ See State v. Eliza Johnson, Spring Term 1826, Criminal Action Papers, Northampton County; Petition for the Pardon of Eliza Johnson to Governor James Iredell [1828], pp.29-30, vol. 27, GLB; and Governor James Iredell, Pardon of Eliza Johnson, 24 March 1828, p.30, vol. 27, GLB; all at NCDAH. For Connecticut, see State v. Sarah Miller, October Term 1849, Superior Court Files, New Haven County, and Prison Releases, 1850, General Assembly Papers—Prison Releases, CSA. Based on my research in Connecticut, pardons were only requested for those women sentenced to death or to terms in the State Prison (not in the county jail). For an example of such a case in Illinois, see People v. Jane Langfield, May 7 1862, Circuit Court Record, Sangamon County, Volume W, 515, IRAD—UIS; Daily Illinois State Journal, May 9, 1862, 3; and List of Reprieve and Commutations, December 2 1862, Executive Clemency Files, 1861 – 1870, ISA. For a discussion of the way in which the Pardons and Petitions operated in North Carolina—a process that was fairly similar in principle throughout the United States though regional variations existed—see Edwards, “Status Without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South” American Historical Review 112 (2007): 382-383.

enjoyed her freedom, Jeffries waited to see if she would hang. After Jeffries' appeal was rejected by the Supreme Court—an unusual outcome for the time—yet another appeal was made for clemency.³⁶ That request to the Governor was finally successful. Although indicted for the same crime on the same day within the same community, different factors seemingly converged to propel both Coombs and Jeffries to freedom along different paths.³⁷

As in North Carolina, outcomes for cases in Connecticut varied depending upon the individual circumstances of each crime. Communities responded differentially and unpredictably to cases of infanticide in their midst. These outcomes were inconsistent in respect to race and ethnicity. While one woman was sentenced to hang, the charges against others were dropped. People interpreted and constituted a narrative of infanticide on the basis of local factors sometimes shaped by concerns related to a woman's class, ethnicity, or race, but just as often by unrelated dynamics within that community that are now barely discernible to the historian. In June 1808, for example, Clarissa Ockrey died

³⁶ My research indicates that twelve infanticide cases were appealed to the North Carolina Supreme Court between 1789 and 1880. Such appeals were usually only made when women were sentenced to death. Of those twelve, only one—that of Sarah Jeffries—affirmed the ruling of the lower court. The reasons for this are unclear though a note in the Supreme Court file—the source of which is unclear—indicates that public opinion ran strongly against Jeffries. No appeals were made to either the Connecticut or Illinois Supreme Courts during this period in relation to infanticide cases. This probably related to the limited number of death sentences handed down for infanticide in these two states: two in Connecticut during this period, and none in Illinois.

³⁷ State v. Sarah Jeffreys & Betsey Coombs, November 1818, Criminal Action Papers, Caswell County; State v. Sarah Jeffreys, May 1879, 1879 N.C. LEXIS 1; Petition for the Pardon of Sarah Jeffreys and Betsey Coombs to Governor John Branch, March 16 1820, p. 356, Governors' Papers; Petition for the Pardon of Sarah Jeffreys to Governor John Branch, May 1820, p. 513, vol. 49, GLB; and Governor John Branch, Pardon of Sarah Jeffreys, 19 May 1820, p. 301, vol. 23, GLB; all at NCDAH. I note that the citation for the transcript of the Supreme Court case pertaining to Sarah Jeffreys is correct (May 1879). The case was actually decided in May 1819, but the date was incorrectly entered into LexisNexis.

in a jail cell in Norwich, Connecticut.³⁸ One of a handful of African-American women tried for infanticide in Connecticut between 1789 and 1877, Ockrey had been found guilty of murdering her infant daughter at the February session of the New London Superior Court.³⁹ The jury sentenced the defendant to hang. Only the efforts of Ockrey's counsel, who appealed to Connecticut's General Assembly for Ockrey's life, saved her.⁴⁰ Consequently, Ockrey's death in jail seems something of a tragic irony, given that she had been spared from the gallows just one month earlier by the Assembly.⁴¹

Further, Ockrey's crime was no different from that of a white defendant Julia Anderson, indicted for murdering her infant son at the December 1804 term of the Superior Court in New Haven. Yet, Anderson's case was dismissed without trial.⁴² Ockrey's misfortune, however, was not simply related to race, although this clearly played a large role in the determination of her fate. Rue and Betsey Benedict—as noted

³⁸ Connecticut Gazette, June 15 1808.

³⁹ Crimes and Misdemeanors, 2nd Ser., IV: 92, and Connecticut Gazette, February 10 1808.

⁴⁰ State v. Clarissa Ockrey, January 1808, Superior Court Files, New London County, CSA.

⁴¹ In Connecticut, appeals for pardons and clemency were made to the General Assembly, not the Governor. This practice remained in place until 1883, when the Board of Pardons was established to consider all requests. As noted earlier, based on my research in Connecticut, pardons were only requested in cases of infanticide for those women sentenced to death or to terms in the State Prison (not in the county jail).

⁴² State v. Julia Anderson, December Term 1804, Superior Court Files, New Haven County, CSA. Anderson's indictment alleged that she did "strike, suffocate, kill and murder" the said child. Phrases such as this were oft-repeated phrase in indictments for infanticide. Clarissa Ockrey's indictment, for example, alleged that she did "choke, stifle & smother & suffocate her said male bastard child." The lack of specificity in descriptions such as these suggested that the language of the indictments acted as kind of catch-all phrases for describing any of a variety of means by which a mother may have killed her child. Indeed, these ambiguous phrases were used so frequently that they became a kind of narrative voice of their own—one frequently evoked by communities as they struggled to imagine the physical ways in which a woman might kill her child. Such phrases were particularly prevalent in indictments where no body could be located.

earlier—had charges of infanticide dropped when they fronted the New London Superior Court indicted for murder in September 1832. In escaping any formal punishment, the Benedicts fared better than white Irish women such as Catharine Obrian. Found guilty at the August 1825 term of the New Haven Superior Court of concealing the death of her infant son by throwing him into a privy “wherein was a great quantity of human excrements and other filth”, Obrian was sentenced to stand on the gallows for one hour.⁴³ While each woman allegedly committed the same crime—that of murdering her bastard, newborn child—the results of each case varied based on factors that leave no obvious evidence in the available records, but clearly resonated strongly with the local communities at the time.

An instance of suspected infanticide from rural Illinois provides hints of the numerous factors communities considered to reach conclusions in cases of infanticide. In September 1861, an infant child died at the home of John Stoneking Senior in the small township of Bethel, Illinois. Part of McDonough County in the west of the state, the town had been established just five years earlier. The child—the sex of which the jury of inquest never bothered to record—belonged to Nancy Pruett, who had been living at Stoneking’s house prior to the birth of her child. Her relationship to Stoneking is unknown; although it was clear Nancy’s father had kicked her out of the family home. It was Stoneking who reported the infant’s death to the town authorities. He also paid two dollars for the infant’s coffin that Pruett, being “very poor,” could not afford. Stoneking then recovered that cost from the county. With these details at hand, we can easily

⁴³ See State v. Catharine Obrian, August Term 1825, Superior Court Files, New Haven County, CSA.

imagine how the outcome of the investigation into the death of Pruett's child might have transpired. Pruett, the jury noted, was a woman "not having very good reputation." This belief prompted "suspicion" amongst the townsfolk, leading them to convene a jury and conduct an investigation into the child's death. Assumptions of "foul play" abounded. Fortunately, Pruett was saved by advances in medical science. The foreman of the jury was the doctor called upon by the suspicious townsfolk to examine the dead infant's body. Dr. Fugate concluded that the child had died of diphtheria, obviously a more common killer of newborns than infanticide in the nineteenth-century United States.⁴⁴

The people of Bethel clearly had pre-existing constructions in their minds of the type of woman who committed infanticide; constructions that had been informed by interaction with and exposure to alternate narratives of child murder. In their eyes, a woman's "reputation" was an important factor in fomenting suspicion of "foul play." Nancy Pruett would not have been held in high regard by the townsfolk because she was poor, so poor she could not afford to bury her child. She had no permanent home, because even her father could not bear her shame. Further, his reputation would have been suspect in the eyes of the people of Bethel because he was not yet established in the town. There is no record of any Pruetts living in Bethel or the surrounding area in the 1860 federal census. The family was probably a newcomer to the county, attempting to make a living from farming like so many others who migrated from the eastern and southern states to western Illinois. The people of Bethel might have wondered what kind

⁴⁴ Child of Nancy Pruett, September 1 1861, Coroners' Inquests Files, McDonough County, and Copy of Inquisition over child of Nancy Pruett, Coroners' Records, McDonough County, Volume 1, 22, IRAD—WIU.

of father was so slack in the regulation of his household that his daughter became pregnant under his own roof. In contrast, John Stoneking Sr. was patriarch of a well-respected family. He had many children, of whom at least five had land and children of their own. His brothers also lived in the area, and they too had large families and held significant property.⁴⁵

In Pruett's case, the fact she was an unmarried woman, her poverty, and her outsider status, all apparently conspired to make her an obvious target of suspicion. Based on the combination of these factors, the community expected to find evidence of wrongdoing, and was perhaps surprised, or even mildly embarrassed, when it did not. Given Pruett's "reputation," the people of Bethel assumed they would find evidence of infanticide even in the absence of slavery. While Pruett did not kill her child, the details of the investigation into her infant's death illuminates the logic communities used to make decisions about a woman's complicity in child murder in nineteenth-century America.

Within the framework constructed by anti-slavery advocates, infanticide only occurred because of the evils of slavery. Although it was always enslaved women who committed the crime, the fact that they were women was far less significant than the fact

⁴⁵ A farmer—like everyone else in Bethel—John Stoneking's combined real estate and personal property was listed at over \$3,000, more than that of anyone else in Bethel. He appears to have had at least one brother living in Bethel, along with at least five sons each with a family and property of his own. Between them, the Stonekings had the most valuable real estate holdings in the area. These conclusions have been reached by my review of the census data for Bethel Township, McDonough County, Illinois, 1860 Federal Census, pp. 493-494, 497. See HeritageQuest Online, Federal Census Records, <http://persi.heritagequestonline.com/hqoweb/library/do/census/results/image?surname=stoneking&givenname=john&series=8&state=3&countyid=1062&hitcount=2&p=1&urn=urn%3Aproquest%3AUS%3Bcensus%3B8548427%3B50289030%3B8%3B3&searchtype=1&offset=1>, accessed November 1 2008.

that they were slaves. Their roles as mothers gave them the opportunity to commit the crime, but it was the state of enslavement that always prompted them to do so. In fact, by constructing infanticide as contrary to women's inherent nature abolitionist discourse actually minimized the significance of the laws that ensured only women were prosecuted for the crime. In a society without slavery, abolitionists imagined that a crime such as infanticide would not occur. The valorization of a woman's role as mother that was so critical to the anti-slavery argument actually obscured the ability of abolitionists to acknowledge an alternate narrative of infanticide: that investigations into the crime largely targeted working-class women of all races and ethnicities with limited economic, social, and cultural resources.

Linking infanticide so inextricably to slavery—a system premised on coercive labor relations—enabled anti-slavery advocates, many of whom were middle-class and elite women, to overlook the problems associated with what they identified as the alternative to slavery: a capitalist system of free labor. Within capitalism, women's labor within the home literally remained free, naturalized through ideologies of marriage and motherhood as a product of love that did not require monetary compensation. By constructing infanticide as “unnatural” to women's feminine roles, the anti-slavery movement obscured the fact that infanticide was actually a natural response for many women, enslaved or not, who found themselves alone and desperate giving birth in an outhouse or a field in a strange town where they hoped to hide their shame and confusion as quickly as possible. Though the cause for which the abolitionists labored was noble,

the anti-slavery narratives contributed—unintentionally or not—to a larger nationwide rhetoric that ignored the significance of class in shaping views of infanticide.⁴⁶

Linking infanticide so inextricably to slavery anticipated particular conceptions of race that were to prove deeply problematic after the Civil War. Abolitionists framed slavery as the only acceptable explanation for infant murder. Yet, when slavery ended, infanticide did not stop. Seeking to understand the persistence of the crime from the antebellum period to the postemancipation era, Americans in both the North and South identified race—not slavery—as the common factor. Abolitionists had promoted a particular construction of infanticide to aid the anti-slavery cause. Yet, after emancipation, this strategy trapped African-American women in conceptions of race that characterized them as uncivilized and barbaric. These same constructions were then extended to African-American men, defining all freedpeople as second-class citizens.

Anti-slavery propaganda—fiction, poetry, and newspapers—overlooked the fact that infanticide occurred regularly within American society. The murder of infants was not something that could be attributed solely to slavery. People in local communities confronted the crime, responded to, and interpreted the act. Even if a community's response could not be characterized as sympathetic, they did not react with horror or disgust. The narratives that local people generated were ones in which they sought to understand infanticide—and to find a way to live with the woman who had perpetrated the crime, whether she be enslaved or free, black or white.

⁴⁶ As noted earlier (see footnote twenty-four above), pro-slavery agitators were actually more astutely aware of the importance of gender and class in shaping such narratives though one hardly imagines they were particularly sympathetic to the plight of these women.

Yet, in their grand narrative of slavery, abolitionists constructed and propagated infanticide in the national imagination as a crime linked to enslavement. This elision of the complicated dynamics of child murder in local communities was to prove deeply problematic during Reconstruction and beyond. The larger story of the antebellum era obscured the stories of women such as Elvira Bennett, who rammed a stick down her baby's throat, and that of Catharine O'Brian, who threw the body of her newborn baby into the outhouse. Enslaved women such as Esther may have killed their children, but so did poor white and free black women. They all gave birth—usually scared and alone—in outhouses, fields, or barns before running back to work, hoping their absence had not been noted. The lives of such women may not have seemed significant as the struggle over slavery and states rights slowly engulfed the nation in war, yet the importance of the stories created by communities to understand their actions was clearly illuminated during the Reconstruction era. By then, the number of dead babies was increasing and the nation no longer had an easily deployable rhetoric through which to understand and interpret a crime such as infanticide. Immigrant, working-class, and free black women all faced harsher punishments and increased control of their sexual behavior as the new nation attempted to curb the freedom of the newly emancipated and the exploding working-class population. For these people, the limited flexibility promised by this new narrative presented a grim future.

Chapter Five **The Medicalization of Infanticide in Postemancipation America**

On April 17 1866, Joseph Greenleaf informed Hiram Thomas, the local Justice of the Peace, that the body of a dead infant had been found on the land of a local farmer, David Corbit. All three men lived in Vermont Township in Fulton County, Illinois. Located in the far west of the state, the town—like so many Illinois townships during this period—was small in both size and population.¹ But people there still knew the legal processes to be followed when a dead body was discovered. Thomas convened a jury of twelve men, witnesses testified, and a conclusion was reached about the cause of the infant’s death. Based on the evidence presented, the jury concluded that the dead child belonged to Eliza Hastings and that she had been responsible for its death. Thomas accordingly drew up an indictment for infanticide. But then the nearest physician, Dr. Vance, who had not made it to Vermont Township in time for the inquest, arrived. At Thomas’s request, Vance conducted a postmortem examination on the dead infant. Nothing, Vance informed Thomas, “would justify me in believing that [the child’s] death was caused by any human agency.” Without questioning the authority of the medical doctor, Thomas acknowledged there was no case to answer. He then scrawled a note to “ignore the bill” on Eliza Hastings’s indictment.²

¹ The population of Vermont township hovered around 2,000 people in 1860 and 1870. These figures made Vermont the fourth most populated township in Fulton County, of a total of twenty-six townships. For a history of Vermont, see *History of Fulton County, Illinois* (Peoria: Chas. C. Chapman & Co., 1879): 898-935. Population figures extracted from the census for each township in Fulton County can be located on p. 1023 of the same publication.

² *People vs. Eliza Hastings*, April 17 1866, Circuit Court Files, Fulton County, IRAD—WIU.

Strikingly absent from the investigation were female witnesses: local women who could testify to Hastings's appearance before or after the birth of the infant and women who could conduct an inspection of Hastings's body to determine if she had recently given birth. Instead, the witnesses at the inquest were all men, just like the jurors, the Justice of the Peace, and the medical doctor. The exclusion of women was not simply a function of demographics. Just under half of the population of Vermont Township was female.³ Before and during the Civil War, moreover, women typically had participated as witnesses in investigations into infant death in rural Illinois, just as they had in Connecticut and North Carolina.⁴ But by the late 1860s, women's presence and importance in local inquests diminished throughout the country. Even if women did participate in inquisitions, the knowledge they provided carried significantly less value than that of the male physicians in attendance.

The decline of women's authority within the local legal system—their ability to contribute as privileged witnesses with expert knowledge at proceedings such as inquests—marked a turning point in the evolution of nineteenth-century law. The decreasing significance of female knowledge signified not only the marginalization of the

³ This conclusion is based upon my review of the census data for Vermont Township, Fulton County, Illinois, 1870 Federal Census, pp. 1-58. See Heritage Quest Online, Federal Census Records, <http://proxy.lib.duke.edu:2228/hqoweb/library/do/census/results/image?surname=bates&series=9&state=3&county=fulton&countyid=1054&hitcount=7&p=1&urn=urn%3Aproquest%3AUS%3Bcensus%3B1493920%3B-1%3B9%3B3&searchtype=1&offset=2&threadtype=p&threadtype=p>, accessed March 1 2010.

⁴ For examples of inquests from Illinois in which women constituted the majority of witnesses, see People vs. Margaret Kirk, Mary Kirk, and Sarah Smith, October Term 1838, Circuit Court Files, Shelby County, IRAD—EIU; and People vs. Mary Long, March Term 1865, Circuit Court Files, McDonough County, IRAD—WIU. See also the details of People vs. Maria House, April Term 1857, Sangamon County Circuit Court, Illinois, in “Murder Trial,” Illinois State Journal, May 1 1857, and “Murder Trial,” Illinois State Journal, May 2 1857.

contributions of women, but also those of other groups—such as African Americans, newly arrived immigrants, and the working-class—from the legal process.⁵ Indeed, the exclusion of all such groups indicated the extent to which everyone within local communities—rich, poor, black and white—served an increasingly insignificant role in shaping the outcomes of legal proceedings.

This chapter demonstrates how local investigations into infant death after the Civil War adapted to both the opportunities and challenges presented by an increasingly organized and well-trained medical profession.⁶ As medical doctors assumed a more authoritative voice in determining the outcomes of inquests, the contributions of community members to the investigative process became, by extension, less significant. Elite members of the community did not mount a concerted campaign to marginalize the participation of women, African Americans, and the working class. Rather, the increased importance assigned by the jury of inquest to the expertise of medical professionals pushed the testimony of all local people—including elites—to the margins.⁷ While juries

⁵ It is important to note that the decrease in the influence of women and African Americans in shaping local legal processes correlated with a rise in convictions of both females and African Americans for criminal offenses during this period. In regards to women, the growing number of state prisons, built especially for women (either as separate wings of men's prisons or distinct establishments) provided evidence for this fact. The reasons for the increasing rate of convictions are many and complex, but relate, in large part, to the creation via statute of offenses that did not exist prior to the mid-nineteenth century.

⁶ For studies that trace the significant changes within nineteenth-century American medicine, including the development of a medical profession, see John Duffy, *From Humors to Medical Science: A History of American Medicine* (Urbana: University of Illinois Press, 1993); John Haller, Jr. *American Medicine in Transition, 1840-1910* (Urbana: University of Illinois Press, 1981); Lamar Riley Murphy *Enter the Physician: The Transformation of Domestic Medicine, 1760-1860* (Tuscaloosa: University of Alabama Press, 1991); and Paul Starr *The Social Transformation of American Medicine* (New York: Basic Books, 1982).

⁷ Historians have argued that Reconstruction, especially in the South, provided opportunities for women, African Americans, and the poor to use the courts and the political process in ways that often benefited them, rather than further marginalized their contributions as I suggest. See, for example, Nancy Bercaw,

and communities still placed a premium on the physical evidence, all acknowledged that physicians were now the best people to generally provide an authoritative interpretation of that evidence.

The professionalization of medicine correlated with the centralization of authority within law and government. The consolidation of power at both the state and federal levels, and the corresponding development of the law as a profession requiring licensing and specialized knowledge, further contributed to the marginalization of the community-based means of governance that had prevailed throughout the first half of the nineteenth century. Although local communities remained involved in inquests into the early years of the Progressive era, decisions about indictments and outcomes moved into the hands of prosecuting attorneys and grand jurors increasingly remote from and unrelated to the community in which the crime occurred. Local juries of inquest still investigated sudden deaths, by listening to the testimony of neighbors—male, female, black, and white. As in the past, local people testified to the accused woman's recent movements, whether or not she appeared pregnant, and the events relating to the discovery of the infant's dead body. Witnesses, usually female, still advised if a woman had prepared clothes for the expected

Gendered Freedoms: Race, Rights, and the Politics of Household in the Delta, 1861-1875 (Gainesville: University Press of Florida, 2003); Victoria Bynum, Unruly Women: The Politic of Sexual and Social Control in the Old South (Chapel Hill: University of North Carolina Press, 1992); Laura Edwards, Gendered Strife and Confusion: The Political Culture of Reconstruction (Urbana: University of Illinois Press, 1997); and Hannah Rosen Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South (Chapel Hill: University of North Carolina Press, 2009). Building upon the work of these historians, I argue that the participation of women, African Americans, and the poor occurred at a time of fundamental change within the legal system, when the contributions of everyone within local communities—rich, poor, black, and white—were being pushed to the margins due to the professionalization of medicine, and the centralization of the legal system.

child, and how she interacted with her newborn infant. But, the national context in which these local inquisitions occurred had been significantly transformed. The increased complexity of legal statutes, imposed from above rather than produced from below, combined with the authority that communities conceded to the medical profession's interpretation of the physical evidence, reduced the significance of the contributions of local people to legal processes.

By the 1870s, prosecuting infanticide had become a far more complicated legal process than it had been in the early republic and antebellum periods. Concealment of an illegitimate child's death remained a crime in most states, including Connecticut, Illinois, and North Carolina.⁸ But, in practice, communities rarely indicted anyone for such an offense any more. Nor, for that matter, did a suspect generally find herself facing only one indictment. Usually, the accused faced a bundle of charges. In cases of infanticide most prosecutors asked grand juries to indict women with murder. By this time, murder was a crime that had many different levels of culpability, which ultimately determined the sentence a convicted person received. By 1870, for instance, an individual in Connecticut suspected of committing infanticide might find herself facing charges of murder one, murder two, and manslaughter. Alternate possibilities included assault with

⁸ For Connecticut, see Title XX, Chapter VII, Sections 10 & 11, Revision of 1875: The General Statutes of the State of Connecticut (Hartford: Case, Lockwood, & Brainard, 1875); for Illinois, see Chapter 38, Division 1, Section 44, Revised Statutes of the State of Illinois 1877 (Chicago: Chicago Legal News Company, 1877); and for North Carolina, see Chapter 32, Section 27, Battle's Revisal of the Public Statutes of North Carolina, 1872-73 (Raleigh: Edwards, Broughton & Co., 1873).

intent to kill, or exposure with the intent to abandon.⁹ Based on the evidence and instructions received from both the judge and solicitors, a petit jury convicted—or not—on the offense that best fit the facts as they saw them.

The proliferation of statutes in relation to criminal offenses at the state level served as an indication of the extraordinary growth occurring within the legal system across the nation. Both federal and state statutes multiplied exponentially in the wake of the Civil War.¹⁰ Cities such as New Haven and Hartford established Police Courts, designed to streamline and complement the functions performed by Justices of the Peace in the counties.¹¹ Illinois, in turn, engaged in whole-scale reform of its court structure in 1870, the same year in which the state introduced a revised constitution. The court reform was driven, in part, by state leaders' need to find a way of coping with the explosion in Chicago's population, which had placed extraordinary demands on the existing court system in Cook County, in which Chicago was located.¹² In North

⁹ See Title XX, Chapter II, Sections 1, 2 & 4, Revision of 1875: The General Statutes of the State of Connecticut. For cases involving alternate charges to murder or infanticide, see State v. Mary Mehan, December Term 1867, Superior Court Criminal Files, Hartford County; State v. Mary Ann Robbins, October Term 1870, Superior Court Criminal Files, Hartford County; and State v. Maria Jackson, April Term 1871, Superior Court Files, Litchfield County; all at CSA. Mehan was indicted for assault with intent to kill, while Robbins and Jackson were indicted for exposure of child with intent to abandon. For an Illinois case where the defendant was charged with assault for intent to murder her newborn infant, see People vs. Mary Cury, September Term 1867, Circuit Court Criminal Files, Rock Island County, IRAD—WIU.

¹⁰ See Lawrence Friedman, A History of American Law (New York: Touchstone, 2005): 251-500 for a detailed description of the rapid changes in American law in the latter half of the nineteenth century.

¹¹ For the powers of police, see Title III, Chapter IV, Part IV, Revision of 1875: The General Statutes of the State of Connecticut. For the jurisdiction of police courts, see Title IV, Chapter VI, Section 18 of the same legislation.

¹² For the changes between the 1848 Illinois constitution and the 1870 Illinois constitution in relation to the judiciary, see Article V, Constitution of 1848; and Article VI; Constitution of 1870, both reprinted in Revised Statutes of the State of Illinois 1877. One of the principal changes involved making Cook County

Carolina, different impulses inspired change. The United States Congress forced the state to write a new constitution and enact legislation consistent with that constitution in order to re-enter the Union.¹³ One of the few states that remained without a state penitentiary at the end of the Civil War, North Carolina finally completed building its first State Prison in 1884. The existence of the institution necessitated a revision of North Carolina's criminal law, as the prison's presence opened up a range of possibilities regarding the punishment of crimes.¹⁴

The changes in criminal law, namely the proliferation of statutes from the state level and the legal system's greater complexity, correlated with the emergence of a well-organized legal profession. More laws, more crime, and more litigation, translated into a higher demand for lawyers, particularly those with the expertise to interpret the expanding body of statutes and common law in these areas. Like many other groups of people in possession of a particular body of knowledge or skill in the late nineteenth century, lawyers in each state began to organize associations. The state bar associations

one judicial circuit that dealt primarily with the caseload generated by the residents of the City of Chicago. Yet, not all the changes were helpful. By introducing a new layer of courts to the legal system—the police court—the 1868 Constitutional Convention created a system of courts consisting of multiple, overlapping jurisdictions. The problems inherent in this system were not fixed until the early years of the twentieth century. See Michael Willrich, City of Courts: Socializing Justice in Progressive Era Chicago (New York: Cambridge University Press, 2003).

¹³ See Eric Foner, Reconstruction: America's Unfinished Revolution, 1863-1877 (New York: Harper & Row, 1988) for a discussion of the nationwide changes wrought by Reconstruction, including the particular changes that occurred in North Carolina.

¹⁴ North Carolina's new constitution in 1868 provided for the establishment of a state penitentiary. Two years later, prisoners began building the facility, after constructing a temporary prison in which to live while they built the permanent structure. North Carolina's first permanent prison was finally opened for use in December 1884. See Article XI, Section 3, Constitution of the State of North Carolina, 1868; and Chapter 85, "Penitentiary," both in Battle's Revisal of the Public Statutes of North Carolina, 1872-73.

established standards for admission, although it was not until the twentieth century that the authority of the associations became such that they could bar individuals from practicing the law. Nonetheless, membership of the bar association denoted a recognized level of expertise. These professional organizations also implied that those who did not belong shared neither the same level of skill nor the same level of education as members. For clients who cared about such things, a lawyer's membership in a state bar association established knowledge and competence.¹⁵

Irrespective of the increasing complexity and professionalization of the legal system, investigations into suspicious deaths remained the province of local communities, particularly in less-populated areas, well into the late-nineteenth century. As in the early republic and antebellum period, an individual in the town informed the Coroner or the Justice of the Peace if a dead body was discovered or a sudden death occurred. A jury was convened, an inquest conducted, and a conclusion regarding the manner of death reached. Indeed, the essential consistency of this investigative process over such a long period—several hundred years, extending from the early modern era into postbellum America—is more remarkable than any small changes the inquest may have undergone during this time. Even more importantly, the investigative procedures remained consistent not only across time, but also throughout the country.¹⁶ Traditionally, lawyers

¹⁵ For discussions of the professionalization of American lawyers in the second half of the nineteenth century, see Friedman, History of American Law 483-500; Robert Gordon “The American Legal Profession: 1870-2000” in Michael Grossberg and Christopher Tomlins (eds.) The Cambridge Companion to American Law Vol. 3 (New York: Cambridge University Press, 2008): 75-81; and J. Willard Hurst, The Growth of American Law: The Law Makers (Boston: Little Brown, 1950).

¹⁶ My conclusions regarding the consistency in inquest processes are based on my research in inquest records from the pre-Civil War period, as discussed in detail in chapters one and two, and my review of

were not even involved in an inquisition over the death of an infant. That, too, remained constant. Lawyers had virtually no impact at the initial investigative stage of an inquest in the late nineteenth century..

As part of the legal profession, however, coroners' inquisitions could not escape the impact of the nineteenth-century drive towards organization and professionalization. But it was doctors, not lawyers, who drove those changes. The American Medical Association ("AMA"), formed in 1846 for the purpose of preserving the power of medical practitioners known as "the regulars," spearheaded the professionalization of nineteenth-century medicine. , The "regulars" defined themselves in opposition to the "irregulars," medical practitioners engaged in any form of medicine that today would not be considered "orthodox." In nineteenth-century America, the "irregulars" included the Thomsonians, the Eclectics, homeopaths, and those who promoted hydropathy as a therapeutic treatment for illnesses both internal and external.¹⁷ The formation of the

inquests from the postemancipation period. For Connecticut, see Superior Court, Papers by Subject: Inquests, c. 1711-1874, New London County, CSA. For Illinois, see Coroners' Inquests Files, Madison County, IRAD—SIU; and for North Carolina, see Coroners' Inquests, Granville County, and Coroners' Inquests, Northampton County; both at NCDAH. For a discussion of the importance of the inquest in local communities in the nineteenth-century South and the ways in which they were conducted, see Laura Edwards, "Status Without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," American Historical Review 112 (2007): 372-373.

¹⁷ The Thomsonians advocated the use of herbal medicine and the rejection of professional healthcare in any form. They raised the ire of "regulars" because they actively promoted self-help remedies and opposed professionalization. Hydropathic medicine involved the use of mineral water to treat illness. Homeopaths believed that illness was unrelated to physical causes. Rather, disease was a result of the disturbance in an individual's spirit. This philosophy encouraged a particularly close relationship between doctor and patient, which may have accounted for the popularity of homeopathy. Finally, Eclectics, as the name suggests, adopted an Eclectic approach to medicine, combining what they considered the best of both the orthodox or scientific approach, and the botanic-based approach of the Thomsonians. For a description of these various "sects," James Cassedy, Medicine in America: A Short History (Baltimore: Johns Hopkins University Press, 1991): 36-39; Murphy, Enter the Physician, 70-100 (Thomsonians), 186-227

AMA marked the first attempt by “regular” physicians to organize and establish nationwide standards of training and licensing for medical practitioners. Although the profession did not succeed in achieving the goal of setting nationwide standards until the early twentieth century, the “regulars” gradually managed to consolidate authority and marginalize alternative forms of medicine. “Regulars,” for instance, demanded that hospitals—which proliferated rapidly after the Civil War—deny anybody other than “regulars” surgical privileges. State licensing commissions also refused to recognize medical licensing authorities from other states if those associations recognized the right of homeopaths or Eclectics to practice medicine. Over time, homeopaths and Eclectics simply joined orthodox practitioners rather than giving up medicine altogether. The AMA did not push alternative practitioners out of the medical profession. Rather, the Association slowly homogenized and consolidated ideas about what constituted the legitimate practice of medicine.¹⁸

The “regulars” sought legitimization and recognition of one authoritative body of medical knowledge in order to shape public perceptions of medicine. In the first half of the nineteenth century, competing claims to authority by doctors representing the various medical sects, as they were called, had undermined the capacity of any doctor, especially “regulars,” to claim that medicine constituted a science. “Regulars” sought to bolster

(homeopathy, hydropathy); and Starr, Social Transformation of American Medicine, 51-54 (Thomsonians), 96 (Eclectics), 96-99 (homeopaths). Both Eclectics and hydropaths were far more welcoming to female practitioners than homeopaths and the “regulars.”

¹⁸ See Starr, Social Transformation of American Medicine, 79-144 for a detailed discussion of these changes within the medical profession.

public confidence in the science of medicine by insisting that only one form of medicine—that practiced by “regulars”—was legitimate,¹⁹ In turn, the legitimization seemed to provide doctors with increased confidence in their skills, a sense that was clearly evident in inquest records.

The testimony of doctors who attended postemancipation inquests was authoritative and commanding, noticeably different from the uncertainty that characterized inquisitions into infant death in the early republic and antebellum period. This authority was evident in a postmortem examination conducted by William S. Copeland, M.D. on the body of a dead infant in Northampton County, North Carolina, in February 1874. Copeland cut open the child’s body, then closely identified and examined each organ. There was no evidence, Copeland observed, of poison in the infant’s stomach. Such an observation was important, as penalties for death by poisoning were generally more harsh than those ordinarily imposed.²⁰ All of the organs were perfectly healthy, noted Copeland, except for the lungs and the heart. The lungs “were heavily engorged with blood,” as was the right chamber of the heart. The specificity of Copeland’s examination was striking. Not only did Copeland identify the damaged organs, he identified exactly which chamber of the heart was swollen with blood. Based

¹⁹ Ibid. 93-112.

²⁰ North Carolina statute did not specifically address poisoning at this time, although the issue might have been addressed in common law. Connecticut statutes did, however, clearly address murder or attempted murder by poisoning. Murder perpetrated by means of poison was punished in the same way as murder accomplished by any other means. Administering poison with intent to kill was punishable by a minimum of ten years in the state penitentiary, whereas those found guilty of manslaughter faced up to ten years in the state prison. See Title XX, Chapter II, Sections 1, 4 & 6, General Statutes of Connecticut, Revision of 1875.

on his close examination, William Copeland then concluded that the infant had been strangled.²¹ The ambivalence that characterized testimony offered by medical practitioners in investigations during the early republic and antebellum period had disappeared.²²

Male physicians employed the issue of abortion as means of consolidating authority in the latter half of the nineteenth century. Medical professionals, including both “regulars” and homeopaths, argued that no self-respecting physician would perform an abortion. Therefore, evidence of an abortion suggested that an unlicensed practitioner, possibly a woman, had undertaken the procedure.²³ While the introduction of statutes against abortion during the postbellum period reflected social and cultural concerns regarding women’s sexuality, the laws served—just as importantly—to identify and punish those beyond the boundaries of the increasingly well-defined and self-regulated medical profession.²⁴ By characterizing abortion as a form of infanticide, doctors could

²¹ “W. S. Copeland, M.D., Report of February the 14th 1874,” (Inquest over child belonging to Roxanna Harriss), Coroners’ Inquests, Northampton County, NCDAH.

²² For an example of another such clinical examination performed upon the head of an infant (the remainder of the body was not recovered), see “Coroner’s Return of January 12th 1870,” Coroners’ Inquests, Northampton County, NCDAH.

²³ Such beliefs received added currency in an environment where the famed New York City abortionist Caroline Lohman, known as Madame Restell, practiced. Though she had experienced brushes with the law a number of times, Lohman’s final arrest in early 1878 prompted her suicide in a bathtub. See “The Shackford & Restell Case” New York Times February 23 1854: 8; “Law Reports: Mme. Restell in Trouble A Baby Missing” New York Times July 20 1862; “Miscellaneous City News; Mme. Restell Arrested” New York Times February 12 1878: 8; “End of a Criminal Life” New York Times April 2 1878: 1; “The Crime of a Disciple of Restell” New York Times; April 11 1878; 5. See also A. Cheree Carlson, The Crimes of Womanhood: Defining Femininity in a Court of Law (Urbana: University of Illinois Press, 2009): 111-135.

²⁴ The classic studies of regulatory regimes that criminalized abortion in America include James Mohr, Abortion in America: The Origins and Evolution of National Policy, 1800-1900 (New York: Oxford University Press, 1978); and Leslie Reagan, When Abortion Was A Crime: Women, Medicine, and Law in the United States, 1867-1973 (Berkeley: University of California Press, 1997). As Reagan observes,

recast those who conducted terminations as murderers. Whatever specialized knowledge abortionists possessed about the female body was dangerous.

The extent to which the medical profession succeeded in re-characterizing abortion as a form of infanticide was indicated in postemancipation newspaper reports from Chicago, for instance, that commonly conflated the two. According to news accounts, coroners' investigations often began assuming that the dead baby was a victim of infanticide. Only as more facts emerged during the inquisition or sometimes even the trial, did the prosecutor decide to try both the accused woman and the "doctor" involved for abortion. Accordingly, to avoid ambiguity about whether or not the infant had been aborted or killed after drawing breath, doctors performing investigations of corpses often made findings about whether or not the child had been born full-term.²⁵ This was particularly important, as abortion statutes generally targeted the person who had performed the procedure. Depending upon the state where the crime took place, the

although the AMA argued that only "irregulars" practiced abortion, the homeopaths (the "irregulars") generally shared the AMA's antiabortion stance. See, for instance, "Foeticide" Chicago Tribune June 9 1867: 2.

²⁵ For examples of cases from Connecticut in which doctors reached a finding that the child was "full grown" at birth, see "Unknown Child," December 10 1857, Stonnington; "Unknown Infant," September 2 1865, Stonnington; and "Unknown Child," October 28 1871, Groton; all in Superior Court, Papers by Subject: Inquests c. 1711-1874, New London County, CSA. For Illinois, see "Infant Child of Therese Dubon," August 2 1869, Coroners' Inquests Files, Madison County, IRAD—SIU. For North Carolina, see "Coroner's Return of January 12 1870," Coroners' Inquests, Coroners' Inquests, Northampton County, NCDAH; State v. Emiline Shuford, Spring Term 1873, Criminal Action Papers, Catawba County; State v. Catharine (Kate) Whitehead, October 2 1874, Criminal Action Papers, Northampton County; and "Inquest held over the body of an infant found dead at George Fawcett's Farm on Eno River," January 13 1879, Coroners' Inquests Records, Orange County; all at NCDAH.

woman on whom the abortion was performed may or may not have been charged.²⁶

Infanticide cases, in contrast, targeted only the woman who had given birth. In North Carolina, therefore, a physician who took the time to make a finding about whether or not a dead infant was born full-term or prematurely, spared a woman an indictment because only those who performed the abortion were charged. In Illinois and Connecticut, by contrast, both the woman seeking the procedure and the person performing the abortion faced charges.

The professionalization of medicine and the formation of the AMA pushed midwives—and their years of accumulated expertise—out of the birthing chamber.

While midwives remained involved in births in some rural areas, this was the exception rather than the norm.²⁷ By and large, male doctors attended pregnant women, assisting

²⁶ The laws varied from state to state on this point. In Connecticut, for instance, statutes introduced in 1860 targeted both the provider of abortion services, and any woman who procured them. Penalties were, however, significantly less for the woman. See Title XX, Chapter II, Sections 11 & 12, Revision of 1875: The General Statutes of the State of Connecticut. In contrast, North Carolina's abortion laws, introduced in 1881, targeted only those who procured abortions. See William T. Dortch, John Manning, & John S. Henderson, The Code of North Carolina, 1883, Vol. 1. (New York: Banks & Brothers, 1883): Sections 975 & 976.

²⁷ For cases in which the opinion of midwives was still considered authoritative in the postemancipation United States, see State v. Emiline Shuford, Spring Term 1873, Criminal Action Papers, Catawba County; "Coroner's Inquest on the Body of an Infant Child at Hickory Tavern 21 January 1873—Said Infant Being the Child of Julianna Lynn," January 21 1873," Miscellaneous Records, Catawba County; and "Coroner's Report of June 11 1874 (Elen Bryan)," June 11 1874, Coroners' Inquests, Northampton County; all at NCDAH. In each of these cases, either the defendant or the dead infant was black. It is important to note, however, that a midwife did not necessarily attend every case involving either a black woman or a black infant. See, for example, Inquest over child of Betty, a former slave of Thomas Hammer, August 1865, Coroners' Inquests, Granville County; "Coroners Report of Dead Child found near Colored Cemetery," May 30 1873, Coroners' Inquests, Iredell County; "W. S. Copeland, M.D. Report of February the 14th 1874" (Inquest over child belonging to Roxanna Harris), Coroners' Inquests, Northampton County; and "Inquest held over the body of an infant found dead at George Fawcett's Farm on Eno River," January 13 1879, Coroners' Inquests Records, Orange County; all at NCDAH. For a case from Connecticut, see State v. Mary Davis (alias Virginia Harris), March Term 1873, Superior Court Criminal Files, Hartford County, CSA.

both before and during birth.²⁸ At investigations into infant death, this transformed the outcome of the inquest into a conclusion determined by men in possession of expert knowledge about obstetrics: male doctors.²⁹ Female knowledge of pregnancy and birth no longer assumed a privileged capacity. Similarly, local knowledge of the accused's personal circumstances and reputation no longer assumed a significant role. Instead, communities acknowledged that the authority to determine outcomes in the case of investigations into infant death belonged to trained, male physicians. Whereas local females had once examined a woman's body to determine if she had recently given birth, that responsibility now fell to the local doctor. The physician, too, often examined the corpse, consequently placing the outcome of an inquest almost solely in his hands. Indeed, in larger communities—cities such as Hartford and New Haven, for instance—two doctors usually attended the inquest. While the physicians occasionally conducted the postmortem together, usually one medical doctor inspected the corpse, and the other

²⁸ For discussions of changing practices of childbirth in the nineteenth centuries, see Charlotte G. Borst Catching Babies: The Professionalization of Childbirth, 1870-1920 (Cambridge, MA: Harvard University Press, 1995); Judith Walzer Leavitt Brought to Bed: Child-Bearing in America, 1750-1950 (New York: Oxford University Press, 1986); and Richard W. Wertz & Dorothy C. Wertz, Lying-In: A History of Childbirth in America (New Haven: Yale University Press, 1989).

²⁹ Female doctors had a difficult experience being recognized and permitted to practice by the male-dominated medical profession in the late-nineteenth century. One of the ways in which women confronted this problem was by moving into what were considered traditionally “female” fields of medicine, such as obstetrics. Nonetheless, none of the inquests I examined involved female doctors. For studies of women's difficulties in entering the medical profession, see Virginia G. Drachman, Hospital With a Heart: Women Doctors and the Paradox of Separatism at the New England Hospital, 1862-1969 (Ithaca: Cornell University Press, 1984); Regina Morantz-Sanchez, Sympathy and Science: Women Physicians in American Medicine (Chapel Hill: University of North Carolina Press, 2000); and Mary Roth Walsh “Doctors Wanted, No Women Need Apply:” Sexual Barriers in the Medical Profession, 1835-1975 (New Haven: Yale University Press, 1977).

the physical examination of the suspect.³⁰ Instead of midwives, doctors now gave expert testimony at inquests about the types of physical changes in a woman's body after birth.³¹

An inquisition into the death of Nancy Davis's infant in Orange County, North Carolina in January 1879 illuminates the authority that medical practitioners possessed. As requested by the jury of inquest, Doctor Wilson conducted an examination of Davis to determine if she had recently given birth, followed by a postmortem on the corpse. Wilson's clinical narrative of the examination he conducted on Davis illustrates how closely he inspected her body. The doctor concluded Davis had recently given birth based on the dark "areola" around her nipples, the stretch marks on her abdomen, and the "lochia discharge" from her womb. Wilson's close study of Davis's womb led the doctor to believe the baby had been at full-term when delivered.³²

The use of specialized medical terminology to describe a woman's body after childbirth placed the control of that body firmly within the hands of the medical

³⁰ For inquests involving two doctors, see "The Clarey Murder Case" Chicago Tribune June 14 1865: 4; "Crime at Nashville—Infanticide," Chicago Tribune December 13 1865: 2; "Infant Child of Therese Dubon," August 2 1869, Coroners' Inquests Files, Madison County, IRAD—SIU; "Infanticide" Chicago Tribune April 3 1873: 3; State v. Mary Davis (alias Virginia Harris), March Term 1873, Superior Court Criminal Files, Hartford County, CSA; and State v. Catharine (Kate) Whitehead, October 2 1874, Criminal Action Papers, Northampton County, NCDAH. One inquest involving six doctors was conducted over the body of an adult female from Henry County, Illinois, in 1863. The combined expertise of the medical profession concluded that Rosabella Wells came to her death by an "inflammation caused by an abortion." See "Coroners Inquest on Rosabella C. Wells," December 21 1863, Circuit Court Files, Henry County, IRAD—WIU.

³¹ See State v. Catharine (Kate) Whitehead, October 2 1874, Criminal Action Papers, Northampton County; and "Inquest held over the body of an infant found dead at George Fawcett's Farm on Eno River," January 13 1879, Coroners' Inquests Records, Orange County; both at NCDAH.

³² See "Inquest held over the body of an infant found dead at George Fawcett's Farm on Eno River," January 13 1879, Coroners' Inquests Records, Orange County, NCDAH. For a similarly clinical example of a postmortem examination, see "W. S. Copeland, M.D. Report of February the 14th 1874" (Inquest over child belonging to Roxanna Harris), Coroners' Inquests, Northampton County, NCDAH.

establishment. Although a local woman, Lucinda Thompson, accompanied Nancy Davis and Doctor Wilson during the examination, Thompson accompanied the pair solely for the purposes of propriety. The expertise of the physician distanced the local community from the suspect. The new medical knowledge transformed accused women from people whom the community tried to understand and with whom they tried to empathize, to individuals subject to description, assessment, and categorization within unfamiliar language. An accused woman's reputation, the extent of her links to the town, her friendships, and the reputations of those who testified either on her behalf or for the state mattered a lot less if the woman under investigation was investigated strictly as a physical object, rather than as an individual with connections to the community in which she lived.

The authority accorded to male physicians was manifest in the outcomes of those inquests in which women were not indicted for a crime. Occasions arose, for example, when local communities seemed convinced a crime had occurred. In these instances, the intervention of a physician, who identified the cause of death as a result of either natural or unknown causes, often saved a woman under suspicion from indictment.³³ Even the uncertainty of a doctor's finding possessed significant power in a postemancipation inquest. Physicians often found, for instance, that they could not determine a cause of death. Yet, juries accorded an inconclusive finding based upon a medical practitioner's interpretation of the physical evidence greater weight than the oral testimonies of several

³³ For an example, see People vs. Eliza Hastings, April 17 1866, Circuit Court Files, Fulton County, IRAD—WIU.

witnesses.³⁴ Placing a premium on the evidence provided by male physicians rather than local people often benefited accused women, rather than exposing the suspects to an increased risk of an unfavorable outcome. Although a doctor may have been a member of the local community, his responsibility was to identify a cause of death. A physician's job, at an inquest, did not include identifying who had caused the death of the child he examined. If requested, doctors inspected women's bodies or offered a medical opinion about physical signs indicating that a woman may or may not have been pregnant. But, at an inquest, juries never asked medical practitioners to reach a finding regarding who should be held responsible for the child's death. That task belonged to the jury.

This logic, in which the jury ultimately reached a conclusion about culpability for a crime rather than a doctor, explains why local communities reached conclusions about infant death that seemed, based on the evidence of the doctor, surprising and initially inconsistent. Consider again, the case of Nancy Davis from Orange County, North Carolina. When he inspected Davis, Doctor Wilson found that she had recently given birth to a child. The jury then asked Wilson to conduct a postmortem examination on the body of an infant found on a local resident's property. As he had been in his examination of Nancy Davis, Wilson's postmortem was meticulous. The white, male infant had been born at "full-time" and was of a "size usual at birth." The corpse, Wilson noted, was "mutilated," with its scalp torn off, its eyes and tongue "plucked out," and some of its

³⁴ For examples, see "Coroners Report of Dead Child found near Colored Cemetery," May 30 1873, Coroners' Inquests, Iredell County; and "Coroner's Report of September 5th 1874" including "Dr. J. H. Woods's Report," Coroners' Inquests, Northampton County; both at NCDAH. The latter case was particularly interesting, as the jury of inquest (or the Coroner) recorded the language of Doctor Woods verbatim in reaching its finding.

fingers and testicles ripped off. Nonetheless, the doctor concluded, cause of death was strangulation, as suggested by string wrapped tightly around the boy's neck.

The jury of inquest investigating the unknown infant's death found that the infant had died by strangulation, as Wilson had suggested, at the hand or hands of persons unknown. In spite of apparently conclusive evidence that the child belonged to and had been murdered by Nancy Davis—that was surely what the community expected or they would not have requested Doctor Wilson to examine Davis's body—the jury concluded that Davis had no relationship to the murdered child, the “unknown infant.” How did the jury reach such a conclusion? Other witnesses had testified at the inquest, including Nancy's father, John Davis; some neighbors, Mr. and Mrs. Cape; two female friends, Dinah Freeland and Lucinda Thompson; and the local man who found the corpse, Wiley Stovers. All of these witnesses knew Nancy Davis. Some seemed more familiar than others about the rumors circulating about the suspect throughout the town about whether or not Nancy was pregnant. In other ways, too, the record of the testimony is just like that of so many other legal narratives of infanticide from the nineteenth century. The testimonies conflict, the stories disagree, and, in the end, the jurors settled on a narrative of events. In spite of the doctor's evidence that Nancy Davis had recently given birth to a child—and that of witnesses who supported this finding—the jurors in Nancy Davis's case agreed on a narrative that did not hold her legally culpable for any role in her daughter's death.

Yet the narrative constructed by the jury of inquest in Orange County in January 1879 was entirely consistent with the legal processes communities followed in inquests,

both in antebellum and postemancipation America. Jury members had listened to all the evidence, from local witnesses and the medical doctor. From that testimony, the jury had selected those stories that made most sense to them, weaving the various strands of testimony together into a narrative that explained the infant's death. From the neighbors, the jury members borrowed the claim that the Capes did not believe Nancy Davis had ever appeared pregnant. From Doctor Wilson, the jury selected the testimony about the infant's cause of death. For whatever reason, the jury members found Wilson's testimony about Nancy Davis's recent pregnancy less compelling, less relevant, or they simply chose to ignore it. While many juries in postemancipation America may have accepted the evidence of medical doctors without question, jurors could and did—as the case of Nancy Davis illustrates—always choose to privilege a narrative excluding, for whatever reason, that expert knowledge.

By constructing a narrative of a woman's body as medical object, medical doctors contributed to the gradual erosion of community belief that a female controlled her sexuality. If a woman could not claim ownership of the terms in which experts analyzed and assessed her body, she could no longer dictate how that body was used. While medical terminology alienated communities from suspects, it also contributed to changes in the dynamics of human relationships, and female understandings of their bodies. Historians of the early republic, focusing on New England, have argued that women from the early nineteenth-century onwards endured a form of sexual repression, a disassociation from their own bodies. Evidence from infanticide inquests, however, indicates that this process occurred much later amongst working-class people in the

North, the South, and the Midwest. The process began in the second half of the nineteenth century as medicine interacted with local legal processes to transform the day-to-day language that women, and men, within communities used to interpret and understand female bodies. The changes in language created boundaries amongst local people that had not existed in the early republic and antebellum period.

As individuals conceptualized of bodies and sexuality in different ways based on their interactions with postbellum medicine, emerging ideas about gender disseminated from above slowly found root in people's minds. The nation-state forged in the aftermath of the Civil War constructed the ideal citizen as a male head of household. The implied construction of women as second-class citizens, as citizens less capable than men, embedded female dependence in the legal and governance structures of the state. During Reconstruction, these legal conceptions of gender generated at the federal and state levels correlated with the conceptions of female bodies—women as distinctly different because they were women—Americans encountered at the local level in their engagement with a rapidly growing and professionalizing field of medicine. Rather than seeking to understand the individual factors that prompted acts of infanticide, communities began to employ the universalizing categories of gender and womanhood that enabled them to distance themselves from the plight of the individual who perpetrated the crime. In so doing, Americans overlooked the broader social factors that contributed to infant death and infanticide in the late nineteenth-century: issues related to class, poverty, youth, immigration, and race.

Chapter Six **The Meanings of Gender and Race in Postemancipation America**

On May 17, 1867, a jury of inquest convened in Granville County, North Carolina to investigate the death of a female infant. The child had been discovered buried in a shallow grave, its mouth and nose filled with dirt. After listening to evidence from the doctor who conducted a postmortem exam on the infant's body and members of the community, the jury of inquest concluded that a local African-American woman, Harriett Jordan, had—inadvertently or not—buried her newborn child alive.¹ Barely nine months later, on February 10 1868, in an unrelated incident, a small item, “Probable Murder of a Child” appeared buried on the bottom on the front page of a Philadelphia newspaper, the Public Ledger. The story identified the alleged killer as the infant's mother, Hester Vaughn, a recent immigrant from England. The postmortem examination, reported the Ledger, indicated that the child's skull had been fractured in three places, while there were “marks of violence” around the infant's throat.²

Although both incidents involved alleged acts of infanticide, the cases seem to otherwise share little in common. Indeed, the differences, superficially, appear all too obvious. Harriett Jordan was an African-American woman living in the South. Although the subject of potential discrimination by virtue of her color, the testimony given at the inquisition indicated clearly that Jordan had extensive ties to people within her neighborhood, both black and white. Hester Vaughn, in contrast, was a white woman,

¹ State v. Harriett Jordan, Fall Term 1867, Criminal Action Papers, Granville County, NCDAH. For further discussion of this case, see Laura Edwards, Gendered Strife and Confusion: The Political Culture of Reconstruction (Urbana: University of Illinois Press, 1997): 160-161.

² “Local Affairs: Probable Murder of a Child” Public Ledger (Philadelphia, PA), February 10 1868, 1.

lured to Pennsylvania from her home of Gloucestershire, England by rumors that jobs abounded in the Northeastern states of America. Newspaper reports suggested she had few friends, if any, in the United States.³

Yet the narrative of Hester Vaughn was also different in one particularly significant way. Indeed, this difference distinguished her case from that of every other instance of infanticide for which a woman was tried in nineteenth-century America.⁴ Although the American public had long scavenged for every scandalous detail about feisty female killers, murdering mothers attracted—with few exceptions—little to no attention.⁵ But for over a year, Vaughn's indictment for infanticide, her trial, subsequent death sentence, and request for pardon generated stories in northern newspapers across

³ "Hester Vaughn: Touching Story of an Unfortunate Woman" St. Paul Daily Press (Minnesota), December 8 1868: 2.

⁴ The only case of infanticide that attracted close to as much attention as that of Hester Vaughn in the nineteenth-century press was that of Margaret Garner. As detailed in chapter four, Garner was an enslaved woman who escaped from Kentucky to Ohio in the winter of 1856, with her four children. Pursued by her owner, Garner slit her daughter's throat. Abolitionists urged the Ohio Attorney-General to try Garner for murder, in the hope that this would prevent her from being returned to Kentucky as a slave pursuant to the 1850 Fugitive Slave Act. The Ohio Attorney-General was, however, unsuccessful in his attempts to try Garner before she was returned to Kentucky.

⁵ Murdering mothers had long been a subject of execution sermons in the Puritan communities in the Northeast until the end of the eighteenth century. Around this time—corresponding with the public's growing interest in seduction fiction—public interest shifted to narratives of a more sensational nature. These narratives included such subjects as women killing lovers or husbands; abortionists; and prostitutes, but they no longer included cases of infanticide. This seemed to relate to the fact that infanticide remained a crime of the working class, while sensational literature in relation to murder focused on crimes within the middle and upper classes. For discussions of this transition, see Daniel A. Cohen, Pillars of Salt, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture, 1674-1860 (New York: Oxford University Press, 1993); Barbara Cutter, Domestic Devils, Battlefield Angels: The Radicalism of American Womanhood (DeKalb: Northern Illinois University Press, 2003): 18-64; Barbara Cutter, "The Female Indian Killer Memorialized: Hannah Duston and the Nineteenth-Century Feminization of American Violence" Journal of Women's History 20 (2008): 10-33; Karen Haltunnen, Murder Most Foul: The Killer and the American Gothic Imagination (Cambridge: Harvard University Press, 1998); and Dawn Keetley, "Victim and Victimizer: Female Fiends and Unease Over Marriage in Sensational Fiction" American Quarterly 51 (1999): 344-384.

the nation. Supporters of Vaughn in Philadelphia, New York, Cincinnati, and even England whipped themselves into a frenzy on her behalf. They petitioned Pennsylvania's governor for Vaughn's pardon, visited her in jail, and raised money for her. For a moment—or at least for a year—it seemed that people everywhere throughout the North had an opinion about whether or not Vaughn was guilty, what punishment she deserved (if indeed she was guilty), and who should intervene on her behalf.⁶

Unsurprisingly, Hester Vaughn's case received scant mention in southern newspapers.⁷ The Radical Republicans had assumed control over the progress of Reconstruction in early 1867, passing the first three Reconstruction Acts over President Andrew Johnson's veto. These Acts, along with the fourth Reconstruction Act passed in March 1868, prompted dramatic changes in the political, legal, social, and cultural landscapes of America, particularly in the South.⁸ Then, on July 9, 1868, barely five days after Vaughn had been sentenced to death, the fourteenth amendment became part of the

⁶ Newspapers and periodicals that reported on the ongoing interest in the Hester Vaughn case included the Boston Daily Journal, the Cincinnati Daily Enquirer, the Cincinnati Daily Gazette, the Chicago Tribune, The Critic (Washington, D.C.), the Evening Leavenworth Bulletin (Kansas), the Nation, the New Hampshire Patriot, the New York Herald, the New York Observer and Chronicle, the New York Times, the Philadelphia Inquirer, Pomeroy's Democrat (Chicago), the Public Ledger (Philadelphia, PA), Putnam's Magazine, the Saint Paul Daily Press (Minnesota), the San Francisco Bulletin, and the Troy Weekly Times (New York).

⁷ The only brief mention of Hester Vaughn's case I located in a southern newspaper was in the New Orleans' newspaper, the Daily Picayune. The report was a reprint of an article from the Albany Evening Journal in New York. See "Personal" Daily Picayune (New Orleans, LA), June 26 1869: 3.

⁸ As Leslie Schwalm has noted, the Reconstruction Acts and the fourteenth amendment initially had a greater impact in the South than in the Northern and Midwestern states. Restrictions on black male suffrage, for example, persisted well into the 1870s in some Northern and Midwestern states. Further, as Schwalm demonstrates, African Americans had to campaign vigorously in the Midwestern states to ensure that full citizenship rights were extended to them. See Leslie Schwalm, Emancipation's Diaspora: Race and Reconstruction in the Upper Midwest (Chapel Hill: University of North Carolina Press, 2009): 175-217.

U.S. Constitution.⁹ The amendment extended a broad range of civil rights to African-American men. More importantly, the fourteenth amendment guaranteed federal protection of those civil rights for all Americans. Debates about the value of Hester Vaughn's life and that of her child consequently disappeared within the context of these major transformations in the American law and the accompanying changes that their passage brought to the South.

Hester Vaughn's narrative may have seemed starkly different in many ways from that of Harriet Jordan of Granville County, North Carolina. Yet, in each case the outcome for each woman centered upon the same questions: who had the authority to make decisions about the fate of the women involved in these cases? Who had the right to participate in the legal processes that governed the outcomes? These questions may have been no different to those that Americans considered in relation to such cases in the antebellum period, but the context in which these issues were being reconsidered was very different in the Reconstruction era. The presence of free blacks within American society, not enslaved people, presented new challenges in the wake of the Civil War. As Americans struggled to redefine who constituted an American, the issues of rights and citizenship were questions with which everyone was concerned. Hester Vaughn's celebrity, even if isolated to the northern press, draws the modern historian's attention away from the fact that the debates her case inspired were connected to larger questions

⁹ For a discussion of the transformations that the fourteenth amendment and Radical Reconstruction wrought on the political landscape of the South, see Eric Foner, Reconstruction: America's Unfinished Revolution, 1863-1877 (New York: Harper & Row, 1988): 228-411.

about individual rights with which all Americans grappled in the Reconstruction era.¹⁰

Vaughn's case, like that of Harriett Jordan, served as a public space akin to a battleground on which Americans participated in ongoing debates about the nature of civil rights and the individuals to whom those rights belonged in the reconstructed nation. At stake in each of these public spaces, as in so many other narratives of infanticide during this period, were different conceptions about the construction of the ideal citizen.¹¹

Gender played a central role in these debates about citizenship and individual rights in postemancipation America.¹² The fourteenth amendment marked the first time

¹⁰ Modern scholars have generally considered Hester Vaughn's case in isolation from other infanticide cases, using it as a platform to explore larger issues relating to the female suffrage movement in the North in the post-Civil War period. See, for instance, Sarah Barringer Gordon, "Law and Everyday Death: Infanticide and the Backlash against Woman's Rights after the Civil War" in Austin Sarat, Lawrence Douglas, & Martha Merrill Umphrey (eds.) *Lives in the Law* (Ann Arbor: University of Michigan Press, 2002): 55-82; and Angela Ray, "Representing the Working Class in Early U.S. Feminist Media: The Case of Hester Vaughn" *Women's Studies in Communication* 26 (2003): 1-26. One exception to this trend has been Janet Galley's dissertation, Janet McShane Galley "Infanticide in the American Imagination, 1860-1920" PhD Dissertation, Temple University, 2007. Galley explores Vaughn's case within the context of a broader study of the rhetoric associated with postemancipation infanticide cases in Pennsylvania.

¹¹ My understanding of legal narratives, both the words and the events themselves as a form of textual performance or production constructed and negotiated within the public sphere is informed by the work of Hannah Rosen. Historian Hannah Rosen argues that narratives of sexual violence articulated by African-American women during Reconstruction, and recorded by the Freedmen's Bureau, constituted significant forms of political activity within the public sphere, even if the Bureau never investigated the women's claims. As Rosen acknowledges, her work builds on that of critics of Jurgen Habermas's conception of the "public sphere" which Habermas argued was a particular type of middle-class "discursive space." See Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009): 6, 248n21. For two important earlier works that explore the expanded notion of a "public sphere" in relation African-American women during the Reconstruction period, see Elsa Barkley Brown, "To Catch the Vision of Freedom: Reconstructing Black Women's Political History" in Ann D. Gordon et al. (eds.) *African American Women and the Vote, 1837-1965* (Amherst: University of Massachusetts Press, 1997): 66-99; and Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880-1920* (Cambridge, MA: Harvard University Press, 1993).

¹² For the work of historians who have argued for the importance of gender in analyses of Reconstruction, particularly in the South, see Nancy Bercaw, *Gendered Freedoms: Race, Rights, and the Politics of Household in the Delta, 1861-1875* (Gainesville: University Press of Florida, 2003); Laura Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Urbana: University of Illinois Press, 1997); Tera Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors After the*

that federal legislators had linked both the exercise and protection of individual rights to citizenship. Some American women, such as suffragists Susan Anthony and Elizabeth Stanton, for example, found this connection between rights and citizenship deeply problematic. Although women were considered citizens, the federal government had signaled that it did not intend that the fourteenth amendment should guarantee the civil rights of women, either white or black. Indeed, the federal government confirmed its intent in relation to women's civil rights—at least in relation to suffrage—when Congress passed the fifteenth amendment in February 1869, specifically excluding women from the franchise.¹³ Four years later, the U.S. Supreme Court confirmed in Bradwell v. Illinois (1873) that the rights enumerated in the fourteenth amendment did not extend to women. Although women were citizens, they were innately different to men. This inherent difference meant they could not claim the same rights to which men were entitled pursuant to the constitution.¹⁴ Through the fourteenth and fifteenth amendments, men linked individual rights to manhood, cementing in law the conceptualization of the ideal

Civil War (Cambridge, MA: Harvard University Press, 1997); Hannah Rosen, Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South (Chapel Hill: University of North Carolina Press, 2009); Leslie Schwalm, A Hard Fight for We: Women's Transition from Slavery to Freedom in South Carolina (Urbana: University of Illinois Press, 1997); and Lee Ann Whites, The Civil War as a Crisis in Gender: Augusta, Georgia, 1860-1890 (Athens: University of Georgia Press, 1995). For an historian who has considered the importance of gender and labor in the northern context, see Amy Dru Stanley From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation (New York: Cambridge University Press, 1998).

¹³ For discussions of the federal government's efforts to ensure that the fourteenth and fifteenth amendments did not extend civil and political rights to women, see Nancy Cott, Public Vows: A History of Marriage and the Nation (Cambridge, MA: Harvard University Press, 2000), and Barbara Young Welke, Law and the Borders of Belonging in the Long Nineteenth Century United States (New York: Cambridge University Press, 2010).

¹⁴ Bradwell v. Illinois 18 U.S. 130 (1873).

citizen as a male head of household with a dependent wife and children. More importantly, by defining women as innately different from men, the U.S. Supreme Court ensured that men could not remedy the situation constructed in nature that men then used to deny women basic civil rights.¹⁵

Women had very different visions of individual rights, differences amongst themselves and with male legislators. Northern white female suffragists such as Susan Anthony and Elizabeth Cady Stanton found the equation between individual rights and manhood problematic, for instance, as they imagined rights—most importantly, voting rights—as tied directly to citizenship. When that vision failed to guarantee them the vote, the rhetoric of these particular first-wave feminists changed. Linking the right to vote to a particularly racialized, gendered, and class-stratified conception of citizenship, Anthony and Stanton promoted suffrage—the right that they prized above all others—as one that should be limited to elite males and females of all races.¹⁶

For those women who did not privilege the exercise of female suffrage as the only right for which women should advocate, the exercise and protection of a range of

¹⁵ For discussions of the logic of Bradwell and its implication for women, see Ellen DuBois, “Taking the Law into Our Own Hands: Bradwell, Minor, and Suffrage Militance, in the 1870s” in Ellen DuBois (ed.) Woman Suffrage and Women’s Rights (New York: New York University Press, 1998): 114-138, and Laura Edwards, “The Civil War and Reconstruction” in Michael Grossberg and Christopher Tomlins (eds.) The Cambridge Companion to American Law Vol. 2 (New York: Cambridge University Press, 2008): 337-344.

¹⁶ For discussions of the vision of suffragists such as Susan B. Anthony and Elizabeth Cady Stanton, which differed from that of former abolitionists such as Lucy Stone, for example, see Ellen DuBois, Feminism and Suffrage: The Emergence of an Independent Women’s Movement in America, 1848-1869 (Ithaca: Cornell University Press, 1978); Nancy A. Hewitt, Women’s Activism and Social Change: Rochester, New York, 1822–1872 (Ithaca: Cornell University Press, 1984); Julie Roy Jeffrey, The Great Silent Army of Abolitionism: Ordinary Women in the Anti-Slavery Movement (Chapel Hill: University of North Carolina Press, 1998); and Louise Michele Newman, White Women’s Rights: The Racial Origins of Feminism in the United States (New York: Oxford University Press 1999).

individual rights remained an important goal. African-American women, for example, embraced a wide variety of civil rights, many of them not formally recognized within the law. As Elsa Barkley Brown has shown, freedwomen—like their husbands—demanded and exercised the right to participate in electoral politics even if they could not do so by casting a ballot. By participating in rallies, attending political debates, and going to the polling booths with their husbands, African-American women asserted the right to full participation in the polity.¹⁷ White working women in the North claimed the right to an expanded range of rights in the workplace, of which the most significant was the right to earn the same wages as men.¹⁸ In postemancipation America, everyone, even if in different ways and with different agendas, participated in debates about reconstituting the nation, and the rights belonging to the newly-defined citizens who lived within it.

As absent as southerners, both white and black, might have been from the Hester Vaughn narrative, their fate was inextricably bound up in the debates and arguments that Vaughn's sentence inspired. What began as the narrative of one woman, Hester Vaughn, became the story of many Americans. People from all walks of life, including ordinary Philadelphians, first-wave feminists, working women, and anti-death penalty advocates all became invested in the outcome of Hester Vaughn's case. Whether Hester lived or died anticipated the future of America. Although Vaughn's story attracted an inordinate

¹⁷ See Elsa Barkley Brown, "Negotiating and Transforming the Public Sphere: African American Political Life in the Transition from Slavery to Freedom" Public Culture 7 (1994): 107-146; and Barkley Brown, "To Catch the Vision of Freedom" 66-99.

¹⁸ For further discussion of the rights claimed by working women, see Alice Kessler-Harris, Out to Work: A History of Wage-Earning Women in the United States (New York: Oxford University Press, 1982): 75-107; and Stanley From Bondage to Contract.

amount of media attention, the issues the alleged murder highlighted clearly resonated with Americans as they struggled to rebuild the nation. Hester Vaughn—a recent English immigrant, not a native-born American—embodied the anxieties that plagued all Americans throughout Reconstruction.

Although the outcome of Hester Vaughn’s trial differed from that of most other cases of infanticide in the nineteenth century United States, her case began in a way that was too all familiar. In early February 1868, the unmarried Vaughn found herself, alone and pregnant, in a rented room in Philadelphia. After giving birth to the child by herself, the newborn died. Vaughn hid the infant’s corpse in a box under her bed. The alleged crime came to light when Vaughn’s roommate discovered the box with the corpse inside. Found guilty of murder at trial in late 1868, the Judges of the Philadelphia Court of Quarter Sessions sentenced Vaughn to hang.¹⁹

By late November of 1868, some five months after the pronouncement of her death sentence, Hester Vaughn still languished in a jail cell awaiting execution of the death warrant by then Pennsylvania Governor, John Geary. Although Elizabeth Cady Stanton had published a few articles in the suffragist organ, Revolution, neither she nor Susan B. Anthony had shown great interest in Vaughn’s case up until that time, certainly no more so than in the many other causes that occupied their time. But for Anthony and Stanton, November 1868 proved a fortuitous time to become more involved with

¹⁹ “Legal Intelligence” Philadelphia Inquirer, July 1 1868: 2; “Legal Intelligence” Philadelphia Inquirer, July 2 1868: 3; and “Legal Intelligence” Philadelphia Inquirer, July 4 1868: 3.

Vaughn's case. Demonstrating sympathy for the plight of Hester Vaughn provided an important opportunity for Anthony and Stanton to cement a then emerging alliance with working-class women. Formed in September 1868, the Working Women's Association (WWA) was an alliance between white middle-class suffragists, including Anthony and Stanton, and a number of skilled tradeswomen, primarily typesetters, disgruntled at both their exclusion from the male-only National Typographical Union and the lower wages that women received for performing the same typesetting jobs as men.²⁰ The WWA was one of a handful of unions formed in the 1860s by and exclusively for the benefit of women. For Anthony, membership in the newly formed WWA provided her with the credentials to attend the 1868 National Labor Union Congress as a delegate on behalf of working women. After much heated discussion and debate amongst the male delegates, the Congress agreed to seat the female delegates from the women's unions. While attending the Congress, Anthony then tried to garner support from male labor leaders for both equal pay and female suffrage.²¹

In late November 1868, the WWA drafted a memorial petitioning for Hester Vaughn's release to Pennsylvania Governor John Geary. Stanton, along with Eleanor

²⁰ Elizabeth Cady Stanton, "Meeting of the Working Woman's Association in New York" New York World September 18 1868.

²¹ Typesetting was one of the few industries in which women did actually perform the same work as men, namely composing. In her discussion of the short-lived history of the Working Women's Association, Barbara Gray estimates, however, that no more than one percent of working women at this time were employed as typesetters. For analyses of the Working Women's Association as a short-lived alliance between middle-class suffragists and working women, see DuBois, Feminism and Suffrage: 126-161; Barbara L. Gray, "Organizational Struggles of Working Women in the Nineteenth Century" Labor Studies Journal 16 (1991): 16-34; and Israel Kugler, "The Trade Union Career of Susan B. Anthony" Labor History 2 (1961): 90-100. For a discussion of the problems that faced working women in numerous industries in the postemancipation era, see Kessler-Harris, Out to Work: 75-107.

Kirk, an advocate for working women's rights, travelled to Pennsylvania from New York to meet with Geary personally. The Governor warmly welcomed the "ladies" of New York, with their petition in support of a pardon. But, as Geary so astutely observed, people in New York did not seem "so well informed of all the facts."²² Newspaper reports certainly suggested that the WWA remained uncertain about the best approach to pursue in relation to Vaughn's case. Accordingly, the WWA's strategy seemed scattershot: the WWA attempted to appeal to as many people as possible using as many different grounds as possible, even if the bases of appeal were contradictory. Some WWA representatives, for instance, claimed Vaughn was innocent, and a victim of an unfair trial. Supporters of this strategy were so committed to it that they affirmed their support for the use of the death penalty in infanticide cases as an ongoing policy. In Vaughn's case, however, the death penalty was not justified because of her innocence. Hester Vaughn, argued these supporters, should receive a full pardon.²³ Other members of the WWA who supported a pardon for Vaughn simply opposed the application of the death penalty in any case. Vaughn's innocence or guilt was immaterial. The death

²² "State Capital News" Philadelphia Inquirer, December 5 1868: 1.

²³ One of the principal advocates of this position was Eleanor Kirk, also known as Eleanor Ames. Kirk was a frequent contributor to Revolution, the newspaper published by Susan B. Anthony, Horace Greeley, and Elizabeth Cady Stanton. An advocate of working women's rights, Kirk also frequently railed against doctors who performed abortions. Kirk argued that abortionists took advantage of the plight of impoverished women. The alternate solution, suggested Kirk, was women's economic and political empowerment, along with changes in social attitudes toward women with illegitimate children. For Kirk's understanding of Vaughn's situation, see "The Workingwomen of New York in Behalf of Hester Vaughn..." New York Times, November 25 1868: 5; "Hester Vaughn" New York Times December 2 1868: 5; "Hester Vaughn: Touching Story of an Unfortunate Woman" Saint Paul Daily Press (Minnesota), December 8 1868: 2; and Eleanor Kirk, "Is Hester Vaughn Guilty?" Revolution January 21 1869: 35.

penalty constituted a barbaric punishment in an otherwise civilized society.²⁴ Promoting both arguments, the WWA endeavored to reach a broad constituency, irrespective of the fact that one line of reasoning appeared to contradict the other.

When Governor Geary suggested that the “ladies” of New York seemed unfamiliar with the issues relating to Hester Vaughn’s case, he was referring to the fact—so he claimed—that he was unlikely to ever sign the Executive Order mandating the execution of Vaughn’s death sentence. The outcry in Pennsylvania alone had been sufficient to convince Geary that overseeing Vaughn’s execution would be politically unwise.²⁵ Yet, the Governor’s observation was also astute in another sense. As committed as the members of the WWA were to overturning Vaughn’s sentence, the arguments they adopted obscured many of the other issues involved in Hester Vaughn’s case.

Like many young servant women in the nineteenth-century North, Hester Vaughn was an immigrant. In practical terms, this meant that she had no family, and few close friends in Philadelphia. Vaughn had grown up in England attending Sunday school, and had remained a devoted member of the Presbyterian Church as she became older.

²⁴ This argument was more consistent with the views of former abolitionist (Mr.) Parker Pillsbury, and first wave-feminists Susan B. Anthony and Elizabeth Cady Stanton. Although Pillsbury, Anthony, and Stanton believed that Vaughn was convicted on the basis of inadequate evidence, they did not support the use of the death penalty under any circumstances. See, for instance, Elizabeth Cady Stanton, “Editorial: Infanticide” Revolution August 6 1868; Elizabeth Cady Stanton, “Hester Vaughn” Revolution November 19 1868: 20; and “Hester Vaughn” New York Times December 2 1868: 5.

²⁵ “State Capital News” Philadelphia Inquirer, December 5 1868: 1; and “Hester Vaughn’s Case” Philadelphia Inquirer, December 7 1868: 4. Irrespective of this fact, the suffragists’ belief that it was their intervention alone that saved Hester Vaughn has proved so persuasive that even some contemporary historians remain committed to repeating this claim. See, for instance, Lori Ginzberg, Elizabeth Cady Stanton: An American Life (New York: Hill and Wang, 2009): 136, 218n7.

Several years prior to the alleged infanticide—newspaper reports were unclear on the exact timing—Vaughn and her husband had migrated to Pennsylvania in the hope of attaining better work situations than those available to them in England.²⁶ Shortly after their arrival, Vaughn found herself alone. Newspaper accounts differ as to the reasons why Vaughn found herself stranded in America without a husband. Early reports suggested that he died. Other accounts, primarily those relying on the suffragists’ version of events, suggested that Vaughn’s husband had abandoned her for another woman.²⁷ Whatever the reason for her husband’s departure, Vaughn clearly fended for herself better than suggested in most newspaper accounts, which were determined to paint her as a helpless victim. She had managed, for instance, to maintain a job and support herself. . Indeed, after she was sentenced to death some of her former employers came forward to petition the Governor for a pardon.²⁸ But accounts were probably accurate in suggesting that Vaughn remained largely isolated within the large city. At the very least, she had no friends who felt confident enough to step forward and speak on her behalf at the trial.

²⁶ Newspaper accounts relating to the case indicate that Hester Vaughn emigrated to the U.S. with her husband around 1854. These same reports, however, identify Vaughn as twenty-three years of age at the time of her trial in July 1868. If Vaughn were twenty-three in 1868, she would have been fourteen in 1854. Though it is possible that Vaughn was married at that age, it is more likely that the newspapers were wrong about either her age or the date she originally emigrated. See “Legal Intelligence” Philadelphia Inquirer July 4 1868: 3; and “A Woman Sentenced to Death” Cincinnati Daily Enquirer July 8 1868: 1.

²⁷ For reports indicating that Vaughn’s husband had died, see the accounts referred to above in footnote eight and “History of Hester Vaughn” Cincinnati Daily Gazette (August 8 1868): 3. For newspaper accounts of the suffragists’ claim that Vaughn had been abandoned by her husband, see “Hester Vaughn” New York Times December 2 1868: 5; and “Hester Vaughn: Touching Story of an Unfortunate Woman” Saint Paul Daily Press (MN), December 8 1868: 2.

²⁸ See “Details of Eastern News” Daily Evening Bulletin (San Francisco, CA), December 30 1868: 1. It appears, however, that—for whatever reasons—her former employers did not come forward to speak on Hester Vaughn’s behalf when she initially faced trial.

Like Sarah Freeman, the African-American woman sentenced to death in Connecticut in 1842 for the crime of infanticide, Hester Vaughn's isolation from a supportive community of close friends and family played a significant role in the outcome of her case. Vaughn had no shortage of supporters, outraged at the imposition of the death sentence or the injustice of her trial. Newspapers consistently referred to the "friends" who spoke on Vaughn's behalf, but no one actually knew Vaughn well. Perpetuating prevailing ideas about a woman's inability to commit a violent crime, few people seemed prepared to admit Vaughn might actually have killed her child—or, at least, to focus attention on that aspect of her case. To the extent that Vaughn's supporters did acknowledge Vaughn's culpability in her daughter's death, it was to deflect attention away from her character and her life. They claimed that Vaughn suffered from "puerperal insanity" at the time of the offense. If Vaughn did kill her child, it was because she was insane when she did it.²⁹ The claim reinforced prevailing stereotypes that women were less rational than men. More importantly, it was, yet again, another argument that denied Vaughn any responsibility for the crime.

Casting Hester Vaughn as a victim was an effective, but problematic strategy for suffragists such as Susan B. Anthony and Elizabeth Cady Stanton. As Stanton argued, Vaughn's case exemplified all that was problematic about women's lack of access to civil and political rights. Vaughn had been represented by a male attorney, tried by an all-male jury, and sentenced by a male judge. Her fate ultimately rested in the hands of

²⁹ This view was expressed by Dr. Charlotte Lozier, for example, a female doctor from Philadelphia who had visited Vaughn in prison. See "Hester Vaughn" New York Times December 2 1868: 5.

another man, the governor, in whose election she was not entitled to participate.³⁰ Yet both Stanton and Anthony also acknowledged that Vaughn was the victim of society's sexual double standard. While Vaughn was punished for her crime, the "libertine" who seduced her was allowed to go free. But Vaughn's supporters then complicated this argument, by interpreting the fact that Vaughn chose not to name her seducer as a sign of her integrity. The unprincipled "libertine" had abandoned Vaughn at the moment of her greatest need. Yet Vaughn elected to protect the seducer and his wife from the ignominy of association with a baby-killer.³¹

Even as they were demanding equality for women in the political process and the courtroom, Anthony and Stanton appealed to particular social and cultural conceptions about women's essential differences from men to justify Vaughn's pardon. In constructing Vaughn as a victim of a male "libertine," for instance, the suffragists stripped the accused woman of agency. They failed to acknowledge that Vaughn's desire potentially played a role in her fate. Vaughn was passive and naive, not a woman who actively participated in sexual encounters. Because women were inexperienced in the ways of the world., Stanton argued, the death penalty was particularly inhumane when applied to them.³² The contradictions were not lost on observers. The Cincinnati Daily Gazette wryly noted, for instance, that women should have no claim to the same political

³⁰ Elizabeth Cady Stanton, "Editorial: Infanticide" Revolution August 6 1868; Elizabeth Cady Stanton, "Hester Vaughn" Revolution November 19 1868: 20; and "Hester Vaughn" New York Times December 2 1868: 5.

³¹ "Hester Vaughn: Touching Story of an Unfortunate Woman" Saint Paul Daily Press (MN), December 8 1868: 2.

³² "Hester Vaughn" New York Times December 2 1868: 5.

rights as men until such time as women claimed the “inalienable and equal right to be hung.”³³

Stripping Vaughn of sexual agency may have been a deliberate strategy to elicit sympathy for the accused woman’s cause. Evidence from Illinois, for example, indicates that women suspected of initiating affairs fared worse than those women represented as victims of lusty males. In May 1866, a judge at the Schuyler County circuit court sentenced Mary Weber to twenty-five years in state prison for manslaughter. She had allegedly strangled the body of her newborn son before disposing of the corpse in a privy. In comparison to sentences received by women elsewhere at the time, the punishment was severe. Ultimately, the reasons for this severity are unknown, but it is clear that Mary Weber was married. John Weber, Mary’s husband, offered little support, divorcing his wife once she was convicted and quickly remarrying. Like Hester Vaughn, Mary Weber also had few friends. When Weber applied for a pardon in 1870, John Bagby, a prominent solicitor from Rushville in Schuyler County—the town where she had committed her crime—objected to the possibility of her early release. Bagby’s rationale was the nature of Weber’s crime and her inherent immorality, as evidenced by her affair. Only with the support of the prison matron did Mary Weber finally secure an early release three years later—seven years after sentencing.³⁴

³³ Cincinnati Daily Gazette, December 8 1868: 2.

³⁴ Mary Webber, Executive Clemency Files, 1874-1911, ISA. See also L. Mara Dodge, “Whores and Thieves of the Worst Kind:” A Study of Women, Crime, and Prisons, 1835-2000 (DeKalb, IL: Northern Illinois University Press, 2002): 54-55.

Casting aspersions on a woman's fidelity or sanity often proved an effective strategy for men looking to find an easy exit from an unwanted marriage, as possibly happened in the case of Mary Weber. From the remaining evidence, it is impossible to determine if the child to which Weber gave birth was actually the result of an illicit affair: the result of a relationship with someone other than her husband. The evidence does demonstrate, however, that in Mary Weber's case, the answer was less important than the existence of the question. Clearly, the force of public opinion was against Weber, a married woman. People believed she was having an extra-marital affair, and, in this case, that was sufficient to color people's perceptions of her culpability. Indeed, the memory of this alleged affair was so sharp in some people's memories that one year later, John Bagby, the local solicitor, evoked the claim as a sufficient reason to deny Weber's early release. If Mary Weber were a victim of an unscrupulous husband, a man who cast aspersions on her fidelity rather than drawing attention to his own, this would not have been unusual for the period. It was not infrequent for husbands in the late nineteenth century to find means of having wives committed to insane asylums, or, in more extreme cases, to prison. Men usually employed such methods in order to expedite divorces, and marry someone else, as possibly happened in the case of Mary Weber. Communities tended to support a husband who accused his wife of a crime, wondering what possible motivation a husband might possess—other than self-interested ones—for bringing shame upon his family. After all, people expected a husband to control the sexual activities of his wife and the other dependents in his household. Publicly admitting

failure was embarrassing. Yet, as Weber's case suggests, husbands and fathers occasionally used this sexual double standard to their advantage.

Consider, for instance, the case of Louisa Pierce, of Wake County, North Carolina. In the fall of 1878, Louisa Pierce was found guilty of infanticide. Court records indicate Pierce was "punished" for receiving such a conviction, although the exact nature of the punishment was not specified. Witnesses at the trial included Louisa's husband; a midwife; and three local men, apparently friends the Pierce family. After Louisa's conviction and after she served her punishment, the local community discovered that the three male witnesses who had testified at Louisa's trial had lied. The twin children to whom Louisa admitted having given birth were apparently stillborn, as Louisa claimed. The prosecutor indicted the three men for conspiracy, of which the jury found all defendants guilty. The men received sentences ranging between three to ten years in the state penitentiary.³⁵

The only reason that records remain of the accusation against Louisa Pierce is because the local community decided to act against the men who made the false allegations. While locals may have been appalled by the behavior of the men—for whatever reason—Justice Smith of the North Carolina Supreme Court felt differently. Although he confirmed the convictions, he argued that nothing in law supported the confinement of the prisoners in either the state prison or a local jail. There was no longer

³⁵ *State v. John Jackson and others*, 1880 N.C. Lexis 302. Local records from Wake County of the original cases relating to Louisa Pierce, and those who framed her for the crime of infanticide, no longer exist. The details of Pierce's case, John Jackson's case, and that of Jackson's co-conspirators have, accordingly, been reconstructed from the information recorded in the Supreme Court decision.

any operative punishment, he ruled, for those found guilty of a conspiracy to commit a misdemeanor. Although the crime was revealed to everyone within the community through a narrative assigning culpability constructed within the public space of a county courtroom, the three conspirators ultimately escaped without legal punishment.

Yet the reasons that communities proved so willing to privilege the testimony of men such as John Jackson and his co-conspirators relates to the purposes fulfilled by infanticide investigations in postemancipation America, particularly in the Reconstruction South. Inquisitions into an infant's death served as investigations into households, rather than simply investigations into a woman's life. This may initially seem counterintuitive, because infanticide investigations had always targeted, and continued to target, single women. But inquisitions into untimely death also involved everyone within the community. This aspect of infanticide did not change during Reconstruction. Even as physicians assumed a more significant role in the findings of inquests, the investigative process, particularly in the South, still relied upon the contributions of everyone who knew the accused, including family members, neighbors, and friends.

But what did change during Reconstruction, particularly in the South, was the purpose of such investigations. While unmarried women were most likely to be suspected of committing infanticide, the social relationships of those women came under greater scrutiny during the Reconstruction period. Where such relationships had once protected women by embedding them within a community that knew and acted on their behalf, these same relationships now became a source of suspicion. Hester Vaughn may

have suffered due to her lack of close relationships within Philadelphia, but in the South, those related to women accused of infanticide found themselves subject to scrutiny as intense as the accused women.

The close scrutiny of families often related to the youth of the offenders during the Reconstruction period. In postemancipation North Carolina, many of the single women suspected of murdering their infants were young, usually under the age of eighteen. More importantly, however, many of them still lived at home with their parents, or they did until such time as they became pregnant and were kicked out of their homes.³⁶ These young women had much in common with their counterparts in large northern cities, most of whom were young and lived away from home at the time of the crime.³⁷ But, women accused of committing infanticide in postemancipation North Carolina differed significantly in age from many of those investigated for the same crime in the early republic and antebellum period in the South. In the new republic, for example, women such as Patience Rye, a widow with grown-up children, was not an

³⁶ See State v. Ann Eliza Davidson, 1872, #10,260, Supreme Court Original Cases, NCDAH; and State v. Ann Eliza Davidson, 1872 N.C. LEXIS 190. Ann was thrown out of home by her mother, Minerva Davis. See also “Coroners Report of September 5th 1874 [Child of Everline Harris],” Coroners’ Inquests, Northampton County (Everline Harris lived with her parents, referring to them as “papa” and “mama.”); “Inquest held over the body of an infant found dead at George Fawcett’s Farm on Eno River,” January 13 1879, Coroners’ Inquests Records, Orange County (Nancy Davis was 17 years of years of age. Although it is not clear if she was asked to leave her father’s home or if she chose to leave, Nancy Davis ensured that she was not present at her father’s home when she eventually gave birth.) Both cases are at NCDAH.

³⁷ See, for instance, State v. Mary Davis (alias Virginia Harris), March Term 1873, Superior Court Criminal Files, Hartford County, CSA. Davis was an African-American servant working in Hartford, Connecticut, who stuffed her newborn infant’s corpse in a barrel of wastepaper in the cellar of her employer’s home. The only witnesses called at the inquest and trial were three African-American servants also working in the home, two women and one male. The jury found Davis guilty of manslaughter and sentenced her to eighteen months in the county jail.

atypical suspect.³⁸ Nor was another white woman Betsey Crabtree, a single woman with sufficient funds to hire an enslaved African-American male, with whom she was accused of fathering a child.³⁹ Although we cannot determine the exact ages of these women, the fact that Rye was a widow, and Crabtree a woman of some independent, albeit limited financial means, suggested they were older than those females typically investigated for infanticide in the postemancipation South.

The importance of this age difference between women suspected of committing infanticide in the antebellum era and Reconstruction is clearly illustrated when considering the witnesses questioned in each time period. In 1808, Patience Rye's daughter, Rachel Rye, provided evidence in the inquest about her mother's involvement in a case of infanticide.⁴⁰ So too did Kesiah Berman, in the September 1810 investigation into the death of an infant, suspected to be the child of Sarah Berman of Randolph County, North Carolina.⁴¹ Even when they did not directly testify, the evidence of daughters was significant. At an inquisition held in November 1825 into the death of an infant born to Eliza Howell of Northampton County, Eliza's daughter Jane testified that she knew the dead baby belonged to her mother as the corpse was wrapped in an apron that Jane had made for her sister—another of Eliza's children—Mary Howell.⁴²

³⁸ State v. Patience Rye, September Term 1808, Criminal Action Papers, Richmond County, NCDAH.

³⁹ State v. Elisabeth Crabtree, September Term 1821, Criminal Action Papers, Orange County, NCDAH.

⁴⁰ State v. Patience Rye, September Term 1808, Criminal Action Papers, Richmond County, NCDAH.

⁴¹ State v. Sarah Berman, October Term 1810, Criminal Action Papers, Randolph County, NCDAH.

⁴² State v. Eliza Howell, Spring Term 1826, Criminal Action Papers, Northampton County, NCDAH.

In postemancipation North Carolina, parents often served as the principal witnesses. If a parent had not thrown their pregnant child out of home, he or she was the one most likely to have been present when the alleged crime occurred.⁴³ More often than not, the questioning assumed a more accusatory purpose; one aimed not solely at the suspect but at those responsible for her upbringing, particularly the young woman's father. It was rare, however, that jurors were seeking to establish that fathers had been directly involved in the crime. Rather, jurors in coronial inquests questioned about what had been happening in their homes; the individuals with whom their daughters had been conversing; and their daughter's recent behavior. In doing so, communities sought to ensure that white men had been keeping their households in order. A young, unmarried pregnant daughter, especially a white girl pregnant with a black child, implied a father had lost control of his household, an alarming prospect to white males in postemancipation North Carolina. In the Reconstruction South, white men sought to assert their superiority over African-Americans by demonstrating their capacity to be both better fathers and better husbands than black males. White fathers who failed to keep wayward daughters in line threatened this gendered construction of superiority, one that was integral to articulating and reinforcing ideas of racial difference.⁴⁴

⁴³ See, for instance, "Coroners Report of September 5th 1874 [Child of Everline Harris]," Coroners' Inquests, Northampton County, NCDAH, in which the parents of Everline Harris were the only witnesses to provide evidence attesting to the fact that the child was born dead.

⁴⁴ For examples of such inquiries, see State v. Ann Eliza Davidson, 1872, #10,260, Supreme Court Original Cases; State v. Ann Eliza Davidson, 1872 N.C. LEXIS 190; "Coroners Inquest on the Body of an infant child at Hickory Tavern, 21st Jan. 1873, said infant being the child of Julianna Lynn," Miscellaneous Records, Catawba County; "Coroners Report of September 5th 1874 [Child of Everline Harris]," Coroners' Inquests, Northampton County; "Inquest held over the body of an infant found dead at George Fawcett's Farm on Eno River," January 13 1879, Coroners' Inquests Records, Orange County and State v. Martha

Similarly, white males who failed to keep wayward wives in order challenged southern conceptions of white superiority. Logic such as this also shaped the outcome in the case of Wake County woman Louise Pierce, wrongly convicted and punished for infanticide on the basis of testimony from three white men, whom the community initially chose to believe instead of the midwife who had attended Louise's birth. In falsely accusing Louise Pierce of infanticide, John Jackson and his co-conspirators challenged the authority of Louise's husband, suggesting that he was incapable of maintaining control over his wife. That same logic, namely the importance of maintaining the absolute authority of a white husband over his household, then explains the extraordinary reaction of the community to the fraud conducted by the conspirators and the severity of the sentences ordered by the Wake County Superior Court. Jackson and his friends had dared to usurp control of another man's household.⁴⁵

Some postemancipation infanticide investigations resulted in outcomes that were fairly benign, if not unusual. Such was the case in June 1874, when the Coroner convened a jury of twelve men in Northampton County to investigate a rumor of an alleged infanticide. Although no body could be found, the Coroner—or someone within the community who had alerted him—had heard an infant had been “born and concealed” to Elen Bryan. Strictly speaking, the Coroner had no legal authority for calling an inquest, because the statute dictated that an investigation into sudden and untimely deaths

Matthews, 1872, #10,131, Supreme Court Original Cases; all at NCDAH. See also State v. Martha Matthews, 1872 N.C. LEXIS 15.

⁴⁵ State v. John Jackson and others, 1880 N.C. Lexis 302.

could only be performed in the presence of the corpse. Only a Justice of the Peace could convene an inquest without a body. These legal complications may have informed the outcome of the inquest, members of which concluded the infant had been stillborn. After hearing from four witnesses, all of whom were female and who included the suspect, the jury accepted the conclusion of the midwife. The child had been born dead, although no one, including the mother, seemed to have any idea where the corpse had gone. Given that the inquest was convened almost five weeks after the child had died, one could only assume that someone, or something, had thoroughly disposed of the body.⁴⁶ It is unclear if Elen Bryan was married, or not, or the degree of respect she was accorded by the local community. About the only thing that is certain is that she was white, a fact indicated by the absence of the word “colored” rather than the explicit presence of something signifying her whiteness. Ultimately, the reasons for the outcome in Bryan’s case—like that of so many others—are simply unknown, unrecoverable to the contemporary historian. In a sense, however, final outcomes, even if they can be determined, remain insignificant. The ritual of the inquest in many cases had already served to imply guilt, if not to prove it.

⁴⁶ See “Coroner’s Report of June 11th 1874 [Infant of Elen Bryan]” Coroners’ Inquests, Northampton County, NCDAH. For examples of inquests in which the outcomes favored the women under investigation, see “Coroners Inquest on the Body of an infant child at Hickory Tavern, 21st Jan. 1873, said infant being the child of Julianna Lynn,” Miscellaneous Records, Catawba County; “Coroners Report of September 5th 1874 [Child of Everline Harris],” Coroners’ Inquests, Northampton County; and “Inquest held over the body of an infant found dead at George Fawcett’s Farm on Eno River,” January 13 1879, Coroners’ Inquests Records, Orange County; all at NCDAH. The extent to which these outcomes could be considered benign, however, depended upon the degree of scrutiny to which the family had been subject as part of the inquisition.

Communities employed the inquest and the courtroom as public spaces in which to construct and reinforce conceptions of white male superiority in investigations into infant death beyond the geographic boundaries of the southern states. In early January 1865, the body of a dead infant was found concealed on a property in Middletown in the far west of Illinois, a town not far from the Iowa border. The child was identified as belonging to Mary Long, a woman who had recently moved to Illinois from Missouri. Accordingly, few people knew Mary Long well, a fact that was revealed in testimony at the investigation into the infant's death. Locals had assumed, for instance, that Long was married. As a woman "in the family way," people expected her to be married—and were surprised to discover that she was not. Another reason the community had reached this conclusion is that Long had been residing with a local man by the name of Joseph Thornburg. The community had assumed that Long was a member of Thornburg's family, but a dead baby had altered that perception.⁴⁷

As in North Carolina, the people of Middletown, Illinois used the inquest process, newspapers, and the subsequent trial as a forum in which to publicly articulate and reinforce conceptions of white male superiority within the region. The case certainly attracted attention in the newspapers, with the Macomb Eagle—the newspaper printed in the county seat—deeming the incident sufficiently sensational to reprint the entire record of the inquest. The timing of the case was particularly significant in terms of interpreting

⁴⁷ See "Coroner's Report of an Inquest on the Body of a Child found dead in Middletown [Child of Mary Long]" January 6 1865, Coroners' Inquests Files, McDonough County; People v. Mary Long, March Term 1865, Circuit Court Files, McDonough County; "Infanticide" Macomb Weekly Journal January 13 1865: 3; "Circuit Court" Macomb Weekly Journal March 31 1865: 3; "Horrible Infanticide" Macomb Eagle January 14 1865: 3; and "Mary Long..." Macomb Eagle April 1 1865: 3.

its meanings. Prior to the Civil War, Illinois's laws virtually barred the entry of all African Americans into the state. But by 1865, when Mary Long stood trial for infanticide, the country was in a state of enormous change. Although Illinois's laws excluding blacks from entry into and free movement within the state did not change until after the passage of the fourteenth amendment in 1868, the tumult of the Civil War and Reconstruction had certainly extended into the Midwest, threatening established ideas about white male superiority. Further, it was surely no coincidence that the white outsider Mary Long, was from Missouri, a state that had always had particularly fluid definitions of black and white.⁴⁸ Within this context, the inquest, subsequent trial, and associated newspaper reports, served as means for people within the community to negotiate changing ideas of both race and gender.

Although infanticide statutes targeted women, investigations into infant death also provided a means for communities, particularly in the South, to extend control over the lives of men, particularly African-American men. Southerners exploited inquisitions into and trials for infanticide as opportunities to parade the spectacle of an African-American household in disarray before the community. Such was the case with an incident involving a black man, Nat Caldwell, of Dewese Township in Mecklenburg County in May 1872. The state indicted two women along with Caldwell, Ann Eliza Davidson—the mother of the deceased infant, and Ann's mother, Minerva Davidson. The surviving narrative does not reveal the exact nature of the relationship between Nat and Ann—why,

⁴⁸ For an analysis of the fluidity of boundaries between black and white, enslaved and free in antebellum Missouri, see Kelly Kennington, "River of Injustice: St. Louis's Freedom Suits and the Changing Nature of Legal Slavery in Antebellum America" PhD Dissertation, Duke University, 2009.

for instance, he helped her allegedly kill her newborn child. But what is clear from remaining records is the sense of discord that reigned under Caldwell's roof. Nat was married, yet for some reason he invited the young Ann to come and stay with him, his wife and their three young children, after Ann became pregnant. His wife then became jealous or just plain sick of Ann's presence in her household, forcing Caldwell to find somewhere else for Ann to live. Minerva Davidson also hovered over the narrative as the enraged mother, as one who cast her daughter out of the family home upon discovery of Ann's pregnancy. The contrast was stark. The male head of the household, Nat Caldwell, could not control the domestic discord under his roof, yielding to the demands of his wife to get rid of Ann. Minerva Davidson, in comparison, exercised uncompromising authority.⁴⁹

The case of Nat Caldwell and Ann Eliza Davidson reverberated so loudly within the local community because it so profoundly disrupted conventional gender roles. That disruption, in turn, threatened the stability of the racial boundaries white southerners struggled to maintain. White North Carolinian men did not expect women, especially African-American females, to assume authority over households in postemancipation America. Minerva Davidson's very existence was, therefore, outright unnerving. Even more frightening was the extent of the control she exercised over her household. Just like any responsible white man, Minerva washed her hands of her disgraced daughter, casting

⁴⁹ State v. Ann Eliza Davidson, 1872, #10,260, Supreme Court Original Cases, NCDAH; and State v. Ann Eliza Davidson, 1872 N.C. LEXIS 190. For a case in which a white man had trouble controlling the actions of his wife, leading other men in his family to intervene, see State v. Francis Thorp and State v. Peter Goodwin, Fall Term 1874, Granville County Criminal Action Papers, NCDAH. For a discussion of the Thorp and Goodwin cases, see Edwards, Gendered Strife and Confusion, 160-161.

Ann out of the family home. The comparison to Minerva Davidson is Nat Caldwell, the seemingly weak-willed African-American male. As heads of households, men protected their dependents, their wives, children, and when necessary, other women living under their roof. But the actions of Nat Caldwell provided evidence of what white southern males suspected: that African-American men did not have the capacity to keep their households in order. First, Caldwell's wife challenged his authority. Minerva Davidson then allegedly forced Caldwell to make arrangements to kill Ann's newborn infant; a demand that Caldwell tried to refuse, but, yet again, was unable to do so. The possibilities represented by Minerva, a single African-American woman in charge of her own household, must have been horrifying to the white southern community. Although the narrative of the case suggested Minerva was not present at the time of the crime, the community indicted her along with Nat and Ann because of her alleged involvement in the crime.

The irony of the tightly controlled policing of gender and racial boundaries practiced by southerners in the Reconstruction era is that this same policing of gender boundaries was, in many ways, exactly that which white, female suffragists so desired. First-wave feminists imagined a world in which male sexuality—both black and white—was tightly controlled and contained. Such well-policed sexuality would relieve the plight, so they argued, of low-income women such as Hester Vaughn, who were forced into abortions or infanticide because men refused to honor their obligations as men. Both white, northern suffragists, and white male southerners were committed to a vision of

white manhood in which men protected white women from what each considered the sexual excesses of males.

Although they shared a similar goal, white northern suffragists and white southern males differed in two important areas. First-wave feminists such as Elizabeth Cady Stanton and Susan Anthony identified all men—black and white—as potential threats to women’s “virtue.” Only political empowerment, they argued, would lead to women’s economic and social empowerment. From this position, women could then effect the changes enabling them to control and reinforce particular gendered boundaries that curtailed male sexual behavior. Although women would not attain the vote until 1920, these same attitudes continued to shape and inform the approach of female reformers well into the Progressive era.

White male southerners, in turn, identified black males as the primary threat to white female sexuality. The construction within the South of African-American males as threats to white female virtue was predicated on the conception of particular gender roles. White females were helpless, dependent upon the protection of white men. African-American females, by comparison, did not deserve this same protection. The prevalence of these beliefs, used to justify the ongoing policing of female, and black, intimate behaviors, had effects that lasted far beyond the end of Reconstruction. The construction and circulation of infanticide narratives—the ongoing performance of these stories within the public arenas of the inquisition and the courtroom—served as means of reinforcing and re-articulating the contemporary conceptions of race and gender that had emerged within the wake of the Civil War.

Conclusion

In January 1892, Caroline Ship enjoyed the less than illustrious honor of being the first woman hanged for murder by official sanction of the state in North Carolina since the end of the Civil War. As at most public executions throughout the country, locals in Gaston County made something of a day out of the event. Families and couples turned up with blankets to sit on, and freshly cooked food to eat. Those who got there early secured the best spots from which to watch the action. Ship's hanging must, therefore, have been something of a disappointment. Although she discoursed at length before she died, she did so primarily to protest her innocence. In the end, it took only twenty minutes for her to die—a mercifully short length of time for Ship, if somewhat less interesting for the onlookers.¹

The onlookers on that day in January 1892 may not have realized they were witnessing something even more extraordinary. Caroline Ship was only one of a handful of women—black or white—ever executed by official sanction of the state for the crime of infanticide in the nineteenth-century United States. While the exact details of her crime remain lost in the recesses of time, newspapers report that Ship was a white woman. Whoever she was, whatever she had done, Caroline Ship had managed to inspire a whole lot of hatred, or perhaps just run into a lot more bad luck. North Carolina has only executed three women since Ship's death, none of them for infanticide. Indeed,

¹ "Died on the Gallows" Los Angeles Times January 23 1892: 5.

Caroline Ship is the only woman—since North Carolina became a state—ever executed for the crime.

Throughout my research, people have frequently asked me what it is that I study. My somewhat imperfect response, typically “infanticide in the nineteenth-century United States” or a variation thereof, has inspired a range of reactions from historians and non-historians alike. Some people gasp, while others are titillated or alternately horrified by the gory details. Most, however, have expected stories like that of Caroline Ship, of women swinging from the gallows, while a gawking public looks on. Modern understandings about women, gender, and motherhood shape responses to Ship’s story. People expect that late nineteenth-century Americans should have been horrified because our contemporary understandings of gender mean that communities are shocked at stories of murdering mothers today.

Yet Caroline Ship’s story demonstrates just how imperfectly contemporary ideas about gender—and race—do shape responses to historical events. Ship’s narrative, or what little remains of it, is an anomaly precisely because she did meet the hangman’s noose. Although communities throughout America began to regulate female sexuality more closely after the Civil War, this did not necessarily translate into harsher sentencing practices than those in place during the early republic and antebellum period. Indeed, as the Progressives demonstrated in Chicago, sympathy for the plight of ‘fallen’ women remained high, at least in urban areas, well into the early years of the twentieth century. These sympathies, as historian Michael Willrich has shown, shaped the processes of the municipal-based legal system to the specific concerns of women and children.

By tracing changes in local legal processes—not outcomes—in relation to infant death in Connecticut, Illinois, and North Carolina from the Revolution to the end of Reconstruction, this dissertation has sketched the emergence of modern ideas about gender and race in American society and culture during the nineteenth century. In so doing, I have examined the ways in which community-based narratives both constituted and were informed by nationally-produced and widely circulating ideas about motherhood, illegitimacy, and infanticide during this same period. After the Civil War, I argue, the professionalization of both the law and medicine pushed local understandings of infanticide to the margins. Rather than responding to cases based on factors individual to each case, communities employed universal concepts such as race and gender. People judged women and African Americans on the basis of presumed innate characteristics that belonged to all women because they were women, and/or to all African Americans because they were racially distinctive. By gradually adopting these universalizing categories of assessment, communities—both consciously and unconsciously—assisted in embedding these newly emerging constructions of race and gender within the law and government. Inquests and court dates had always served as a means for communities to publicly self-police and regulate the behavior of others within the community. But during Reconstruction—and continuing beyond—these publicly generated narratives of infanticide, created in inquests, newspaper reports, and courtrooms, functioned as highly visible public arenas in which communities articulated newly developed conceptions of race and gender.

Infanticide has provided a unique lens for pursuing a project tracing the evolution of contemporary constructions of race and gender in America. Inquest records provide insight into one of the most locally based legal processes that persisted throughout the nineteenth century. The nature of sudden death—its untimeliness, its immediacy, and its decay—drew everyone within the community into investigations. Laws that precluded the enslaved from testifying in court against white people, for instance, had no application within the context of an inquest. Information from anyone and everyone was critical. Although the processes for determining the value of particular information changed over time, communities remained committed to involving everyone—male, female, black, white, enslaved and free—within the investigative process for as long as possible. In this way, records of inquisitions into the deaths of all infants—not only those that resulted in indictments for infanticide—have provided an extraordinary window into the importance of local legal processes in nineteenth-century America.

My dissertation has also demonstrated the critical importance of women, and African-Americans, to the construction of nineteenth-century legal narratives. As I illustrate, women—particularly midwives—constituted a fundamental element of post-Revolutionary and pre-Civil War inquests. Indeed, although midwives—unlike jurors—were not legally obliged to be present at an inquest unless called as a witness, it is doubtful that the jurors could have reached a conclusion assigning fault (or not) with any certainty, without first consulting the local midwife. The subsequent decline of women's involvement as persons with expert knowledge in inquests during the postemancipation period illuminates, by contrast to the pre-Revolutionary period, just exactly how

significant women's earlier contributions were. As women were gradually marginalized as expert witnesses within the forum of the inquest, professional doctors in the United States assumed greater control of the female body. Physicians analyzed, categorized, and clinically examined women's bodies. Although the increasing involvement of medical doctors in the inquest process saved some women from the accusations of overzealous or misguided jurors, the greater reliance on physicians contributed to greater policing of female sexuality and women's bodies during the postemancipation period, particularly in the South. Indeed, the increased involvement of physicians post-Civil War inaugurated a trend that continued well beyond Reconstruction and into the twentieth century.

Like midwives, physicians relied upon the capacity of touch in order to make sense of the female body. Touch, like smell, sight, and sound played a vitally important part in nineteenth-century legal processes, particularly inquests. As historians such as Mark Smith have argued, sensory perception has played a significant—and often overlooked role—in historical development. For community members, as for midwives and doctors, sensory perception—the smell of a decaying corpse, the cries of a newborn infant, the sight of milk leaking from a woman's breasts—provided the evidence that jurors needed in order to make assessments about cause of death, and guilt or innocence. But as both medicine and the law professionalized, what was at stake was who determined the meanings and value of those sensory perceptions. In particular, battles over precisely this issue pervaded the discourse of race in the second half of the nineteenth-century, as laypeople and physicians alike turned to such pseudo-sciences as phrenology seeking explanations for racial difference.

From the early modern period, investigations into infant death had served as a form of ritual: a public means of negotiating overlapping and conflicting narratives to construct yet another story, one acceptable for the purposes of law. Even after the Revolution, the public inquisition remained embedded not only within statute, but within the local legal practice of the early republican and antebellum periods. During the Civil War, evidence suggests that Americans maintained a commitment to local understandings of the ‘rule of law’ with one community in Florida even demanding that a passing regiment convene a military tribunal for the purposes of trying a local woman for the crime of infanticide. The same commitment endured into Reconstruction, before the dynamic between community, victim, and accused was severed permanently in the late nineteenth century and early twentieth century by the gradual elimination of the office of elected Coroners—particularly in large cities—and the appointment of state officials.

It was Reconstruction, however, that had marked the beginning of these changes for the most fundamental of local legal processes—the inquest. As the law and medicine professionalized, women, African-Americans, and even the opinions of local white males were pushed to the margins. Where jurors had once weighed competing narratives from a range of sources, the newly professional expertise of the medical physician meant that his opinion served as the sole determinant of the outcome of the inquest. Doctors, in turn, had begun to use a language to describe the human body that alienated women from the communities in which they lived. Where people had once related to suspects as individuals, they now assessed the accused on the basis of broad understandings of categories such as race and gender. For women and African Americans, Reconstruction

opened with the promise of expanded civil and voting rights. As liberating as these rights were for those who received them—primarily African-American males—they corresponded with fundamental changes in the nature of local legal processes that successfully marginalized everyone—men, women, white and black—from a unique means of direct participation in the forms of law and government that had once shaped their daily lives.

Appendix A

An Act 'to prevent the Destroying and Murthering of Bastard Children,' as passed in British Parliament, May 1624 (21 James I, c. 27).

Whereas many lewd Women that have been delivered of Bastard Children, to avoid their Shame, and to escape Punishment, do secretly bury or conceal the Death of their Children, and after, if the Child be found dead, the said Women do alledge, that the said Child was born dead; whereas it falleth out sometimes (although hardly it is to be proved) that the said Child or Children were murdered by the said Women, their lewd Mothers, or by their Assent or Procurement:

II For the Preventing therefore of this great Mischief, be it enacted by the Authority of this present Parliament, That if any Woman after one Month next ensuing the End of this Session of Parliament be delivered of any Issue of her Body, Male or Female, which being born alive, should by the Laws of this Realm be a Bastard, and that she endeavour privately, either by drowning or secret burying thereof, or any other Way, either by herself or the procuring of others, so to conceal the Death thereof, as that it may not come to Light, whether it were born alive or not, but be concealed: In every such Case the said Mother so offending shall suffer Death as in case of Murther, except such Mother can make proof by one Witness at the least, that the Child (whose Death was by her so intended to be concealed) was born dead.

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