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No Mercy for Motherhood:

An exploration of Mothers, Infanticide and Justice in the Old Bailey Courts

Content Warning: Violence, murder and graphic content. Reader discretion advised.

Eliza swallowed food whole, too hungry to waste time chewing. GUILTY.

Eliza had fainting fits, knocking her fully unconscious. GUILTY. *of Manslaughter.*

Eliza called out for a razor to cut her own throat open. GUILTY. *of Manslaughter.*

These are not the same women. They paid the same price.

After the New Poor Law was passed in 1834, the harsh inclusion of the Bastardy clause, led the courts of London to bustle with uncomfortable chatters about unmarried women, poverty and an overall increase in infanticide cases. In a time where the fear of “illegitimate” children ran rampant, what was the courtroom experience like for women in the mid 1800’s who were being charged and tried with infanticide? And, was there a pattern in the socio economic background of these women? Originally, the former research inquiry was underpinned with the expectation of finding, and piecing together meaning, directly from the oral testimonials of the accused women. However, it takes not more than a glance of the eye to realize this critical narrative experience is

absent. In 71 cases in this time period recorded by the the Old Bailey Court database, all but around four do not directly include the accused women's defense from their *own* perspective. Instead, what is overwhelmingly found is an eerie re-telling of a story that was not someone else's to tell— a collection of witnesses' "perhaps," "maybes," and "I think's" taken as fact at the city's epicenter of privilege and socially hierarchical discrimination. This paper, then, seeks to evaluate not just the courtroom atmosphere, but the journey taken by these accused women to this moment of silence on the stand. Using three proceedings from the Old Bailey from women in their 20's who were charged as guilty, the small but impactful archival material reveals how the implementation and stigma of the New Poor Law, legislation founded in class-based prejudice, worked in a vicious cycle to skew the scales of justice in the legal system. This paper will first look at the interplay between New Poor Law and each defendant's relevant experience to the workhouse. Then, it will analyze how the courtroom atmosphere is developed and the sociopolitical factors in the sentencing decisions of each woman.

The New Poor Law, at its heart, was a panopticon of shame disguised as legalese. In an attempt to salvage the lower class, it played the exact opposite side of the coin — pushing the poor further into economic and social despair while simultaneously criminalizing vulnerable women in the lower classes. In her article "Sin of the Age': Infanticide and Illegitimacy in Victorian London, Ann Higginbottom comments on the cross-over between the New Poor Law's aid curtailment, and its direct link to lower class women facing shame. She metaphorically notes how the infant at the womens breast was their stigma and curse (Higginbottom 1989, 332). These instances of shame did not spare the following case studies. Eliza Higgins, a 21 year old girl, would eagerly work just about any job she could get. 16 months she worked for Mrs. Mary Ann Wix as a domestic servant cleaning around the home, but she admitted herself to a workhouse in

St. Luke, Chelsea for the purpose of being confined. What is unknown in her narrative, as is in most of these cases, is who the father of these children are. Looking at the role of domestic workers specifically, the unrecognized sexual abuse that went on within the walls of these homes poses questions about supposed illegitimate children and the silencing of women in the workplace. While it is unclear whether this is applicable to Ms. Higgins, it is of consideration in looking at how authoritative figures from a higher socioeconomic level could manipulate shame despite being an active member in the child rearing process — and, knowingly forcing women into silence, rejection and bearing the brunt of loneliness that came with having an “illegitimate” child. Reputation and shame equally found its way into Ms. Eliza Colley’s story. As a girl of 21, she was in the needleworking business with her sister Emma. The girls made 20 to 30 shillings a week together, enough to live just the two of them on Caledonia Road before Eliza became an inmate of the Islington Workhouse. When Eliza came back to her home with a baby girl in her arms, taking the child to the Foundling Asylum was out of the question for her. She, instead, insisted on the child’s admittance to the Hornsey Asylum. In her piece, *“Victorian Women, Unwed Mothers and the London Foundling Hospital,”* Jessica Sheetz-Nguyen comments on the particularized nature of the Foundling Hospital, specifically the binary way in which women were perceived as “prostitutes” or of a diminished reputation upon bringing their children here (Nguyen 2012, 5). The ignominy trailing behind the New Poor Law was not limited to the realm of domestic workers. Harriet Longely, aged 23 at her trial, had spent her confinement in the Vagrancy Ward of the Maidstone Gaol and later traveled to the Marylebone Workhouse located in the center of London to seek relief where was immediately denied. Longely’s case depicts two critical emblems of shame as a byproduct of the New Poor Law: vagrancy and the cycle of poverty. Being a vagrant during this time period alone left a bitter taste in the mouths of the

elites, however, the combination of the vagrancy stigma with the addition of generational poverty is unique to Ms. Longely's case. In her proceeding, the defence counsel asks a witness about Longely's status as an illegitimate child, to which the witness on stand responded that she has "always understood so (...) the mother was totally unable to make any provision for her." What is one to do where by law, opportunity is limited and room for advancement is close to none? While it is not mentioned, if Longely was an illegitimate child then it is highly possible her mother endured the same kinds of workhouse experiences — a fate in a society that was nearly inevitable. Higginbotham notes how this solitude can induce fear, stating that some women lacking a network of family and friends, may have had confusion about the state of pregnancy (Higginbotham 327). Additionally, a commentary can be made on what it was like to be begging on the move as someone with a newborn child. Traveling from Maidstone gaol to the Marylebone workhouse is a long distance. A trek someone wouldn't willingly take if it wasn't their only hope. Unfortunately, hope from the lower class was a scoundrel to the higher class who often decided the heavy weight of the lower class experience was not worth alleviating.

Eliza Higgins' child was found on its right side, six feet below the railing of a clothing factory in Hill Street. Eliza Colley's child was found face down in a dirt track. Harriet Longely turned herself in for throwing her child in a river. This is what the proceedings tell the people of London. What the supposed attentive witnesses and neighbors came to conclude. But, they are not the words of these three women. Looking at silence during the trial is something that can not be looked at in solitude. One must consider the kinds of tension brought into play by witness testimonials — or, the selected testimonials chosen for publication. In Higgin's case, this tension built from the police sergeant who confronted her of the crime and showed up to her home. He found Colley calling for a razor to cut her throat after her baby had passed but didn't care to

mention this, until he was cross-examined by an unknown defence who is not recorded in her proceeding. In fact, when the police sergeant was interrogated, he didn't even fully admit that Colely was in a distressed state, he diminished her experience by saying she was "apparently" in a distressed state. Here, it's evident the tactics used by state workers to deplete women's mental health and pass it off as hysteria. For Colley, it was her own sister who also leaned into the hysteria claim during her cross-examination. When asked whether Colley was "nervous" by the defense counsel, her sister responded by saying, "Yes, so much so that she is subject to fainting fits." It may be interpreted that in these two cases, the police sergeant was using hysteria to diminish experience while Colley's sister was using it in the hopes of diminishing culpability for her sister. However, hysteria in the courtroom was a term that was ambiguous and left to the interpretation of the jury. For some, hysteria may very well be a way to dehumanize women attacking what was considered "madness" and their trauma, but for others, the term was meant to capture mental illness where a more medicalized diagnosis was not yet normalized. While hysteria was not present in Longely's trial, a staggering amount of medical expertise is relied on to come to a decision of fact. One of the witnesses called to the dock was the surgeon conducting an examination on Longely child. He openly admits that he did not conduct the post mortem examination, but contended that from external observation that child had died from drowning. Interestingly, these medical experts don't talk in absolute terms. They used words such as "sufficient appearance," and "I think." In society where the medical community is revered for their status as experts, how is it that the justice system settled for these supposed experts' uncertainty?

It is worth remembering that the Old Bailey was, and still is, the central criminal court of London. A place where only the most serious offences were heard and tried. Aside from this,

the actual publication of the Old Bailey Proceedings are notorious for being shorter versions of the trial, where only bits and pieces are kept in. But who, what kinds of people, get to decide what stays and what goes? Were the accused women's voices intentionally left out? Or, were they confined to a social silence knowing their words may not mean much against the deafening voices of the elites around them. Dr. Joanne Chilman offers a chilling description of the kinds of women that were given leeway in Bastardy cases in Hull in her article, "Bastardy Before the Courts in 19th-Century Hull." In her research, she found that bastardy was inherently linked with prostitution, or of "having a sexual promiscuity" that was in turn used to cultivate judgements in the absence of appearance, language and demeanor. (Chillman 2020). It is unlikely that these three women arrived in their Sunday best clothing, demure and easy on the eye for the middle and high class sitting in on the trial. This is key to understanding what London in the Victorian era prioritized. What business would one of the highest criminal courts have in utilizing its facilities, people and money on lower class individuals that the state has clearly demonstrated a lack of care for? These courts were not seeking justice. They were not seeking retribution or to "fix" the problem of illegitimacy. They were, instead, seeking to make an example of the lower class — a grandiose statement that the state would not waste their efforts on the poor, but would invest just enough power to let the lower class know they would always be under the vigilance of the law. Of society.

Eliza Higgins was to serve six years of Penal Servitude. Eliza Colley was to serve 10 years of Penal Servitude. Harriet Longely was transported. A guilty sentencing brands each of the presented case studies. Despite the harsh testimonials of the witnesses, interestingly, the jury did not flat out sentence these women to death. In fact, the jury strongly recommended all three women to mercy. According to the Old Bailey website, this kind of sentencing is one that arises

from cases where the offender was particularly young, possessed of a good character, or where no violence was intended. Further, the jury sometimes recommended a specific punishment, such as whipping or transportation — a sentence that Longely underwent. In analyzing the digital record of Longely past what's detailed in her proceeding at the Old Bailey, she is the only woman in this case whose voice is heard after being transported to Van Diemen's Island in Australia. In the archival material provided by the Tasmanian Library, we gather but a mere sentence from her where she states, "... my child in the river. It was 2 weeks and 3 days old. I was out of work at the time. I could not support the child." This sentence is revolutionary in the exploration of silence in the London courts. Longely was able to utter her reality in Australia, but the thought of doing so in her hometown was not an option. This moment pinpoints the crux of tragedy and motherhood that often plagued these infanticide cases. Women were socially muzzled and incapable of voicing their truths even if it cost them their life. In Ms. Eliza Higgins case, the sentencing specifically states that the jury "expressed their opinion that the bastardy laws had a strong tendency to increase this class of crime." This clearly shows a discrepancy between individuals on stand, judge and the jury's moral ethos. It is clear the jury of laypeople recognised the rather harshness of the law and yet, in a supposed court valuing the word of its constituent all that is reflected is the words of the state. Higginbotham comments on this, contending that society had an ambivalent attitude toward guilt with mothers accused of infanticide, and because of this, their sentencing was treated with leniency (Higginbotham 1989, 323). While it may be that their sentence was reduced and treated with leniency by the jury, the accused women were still to serve the time allotted to them by the judge who had the last say. For these women, their punishment still included hard labour and for Longely, it meant leaving behind the only place she likely knew.

The lack of firsthand, oral testimonials from women in the mid 1800's being tried and charged for infanticide underscores how legislation influenced by the pressing social norms in the time period, here being the New Poor Law of 1834, acted as a fatal catalyst in injustice in an arena with the supposed goal of being justice preserving. The courtroom quickly manifested into a space of political, social and economic stigma that all too often played its overbearing hand in tipping the scales of justice. These legal prejudices, developed via a group of people unwilling to learn and unlearn the stigmas of their social past, enhanced punitive measures for the acts of illegitimacy. For Harriet Longely, Eliza Higgins and Eliza Colley it is possible these systems have tried to erase their narrative by shunning them to an existence of silence and deeming a part of the law. But, regardless of whether their testimonies have been locked away, the fabric of history doesn't forget a stitch — no matter how small, no matter how quiet.

Eliza Colley. Death recorded age 42.

Eliza Higgins Death recorded age 62.

Harriet Longely alias Eliza Harris. Death record *unknown*.

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