

# **‘Sometimes the worst happens’: Newspaper Reportage of Infanticide and the Law in England and Wales since 1922**

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## **ABSTRACT:**

Across the twentieth century, the media has arguably remained the most significant forum for discussions of infanticide and how the crime should best be dealt with in England and Wales. Whereas in the early twentieth century debates in the press, as in Parliament, concentrated on whether or not there was any real need for a specific Infanticide Act to be passed, since this legislation was introduced 1922 the focus for media commentators has shifted explicitly or implicitly onto whether the Act is fit for purpose: should it be retained, reformed, or abolished altogether? Central to this is the enduring representation in England and Wales of the infanticidal woman as an offender who does not fit neatly into more established (and invariably misogynistic) tropes of female offenders and has often been depicted as a tragic rather than malevolent figure, despite the distressing and taboo nature of the crime. With rare exceptions, newspaper articles have thus for over a century tended to emphasise the ways such defendants should be seen as deserving of ‘special’ treatment that sets them apart from other women charged with homicide.

## **KEYWORDS:**

(Please supply up to 5 keywords for your Chapter)

1. newspapers
2. infanticide
3. women
4. crime
5. mental health

## Main Body:

### Introduction

In February 1965, Peggy Edwards, a prominent county councillor for the Liberal Party in Derbyshire who had a longstanding commitment to social justice issues, wrote a column for the women's page of *The Guardian*.<sup>1</sup> Her article began with a vivid description of visiting a friend in hospital who became acutely distressed and seriously ill a week after giving birth, convinced she was at risk of killing the baby: as Edwards arrived at the maternity ward she was greeted with 'quite desperate sobbing, which...turned to a crescendo of screams'.<sup>2</sup> Alleging that postpartum mental illness was all too common, the article was intended to draw reader's attention to what Edwards described as the ongoing deficiencies in the treatment of infanticide cases that came before the courts, arguing vehemently that 'some alteration in the law on these cases is long overdue'.<sup>3</sup> In her opinion, the Infanticide Act 1938 was by now seriously outdated, and this represented a positive danger to vulnerable women and their infants rather than a just solution to the problem of these distressing cases.<sup>4</sup> As Sarah Crook has demonstrated, maternal distress was an increasingly influential topic in postwar Britain, and could be deployed in the service of a variety of different personal and professional agendas. While it does not seem to have led to any lasting interventions or triggered significant interest in the subject, Edwards' article is fascinating not only when seen as part of the broad range of interventions Crook describes, but also in its own right as an example of

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<sup>1</sup> For an example of Edwards' wide-ranging concerns, see recorded footage of her speech at the Liberal Party conference at Dundee in September 1985 on homelessness: Media Archive of Central England, 'Central News East: 18.09.1985: Liberal Party Conference - Homeless Version 2'.

<sup>2</sup> Peggy Edwards, 'Infanticide' *The Guardian* (London, 26 February 1965) 10.

<sup>3</sup> Edwards, 'Infanticide'.

<sup>4</sup> See Infanticide Act 1922 (12 & 13 Geo. 5 c 18) and the amending Infanticide Act 1938 (1 & 2 Geo. 6 c 36) that remains in force as of 2022. Following the Coroners and Justice Act 2009, infanticide has also become a defence to charges of manslaughter as well as murder.

how a national broadsheet represented actual or potential infanticide cases during this period.<sup>5</sup>

Across the course of the twentieth century, the press has arguably remained the most significant forum for understandings of infanticide and how the crime should best be dealt with by the criminal justice system in England and Wales.<sup>6</sup> Usually, this has been through reports that focus on the circumstances of individual cases that bring these to public attention.<sup>7</sup> Prior to the First World War, debates regarding the crime in the press, as in Parliament or other forums such as medical and legal journals, had often concentrated on whether there was any real need for a specific Infanticide Act to be passed that would separate these offences out from being treated as any other case of murder, or whether the existing informal policy by the Home Office of reviewing all capital cases following a conviction was sufficient.<sup>8</sup> Opinions remained divided as late as the early 1920s between a substantial minority who believed that women accused of infanticide were treated too leniently by the courts, and a majority who believed that existing systems were inadequate if

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<sup>5</sup> Sarah Crook, 'The Uses of Maternal Distress in British Society, c.1948-1979' (PhD thesis, Queen Mary University of London 2017).

<sup>6</sup> Newspapers played a central role in shaping attitudes towards gender, sexuality and crime in England and Wales during the period covered by this chapter. See key context in Alison Oram, *Her Husband was a Woman! Women's Gender-Crossing in Modern British Popular Culture* (Routledge 2007); Adrian Bingham, *Family Newspapers?: Sex, Private Life, and the British Popular Press 1918-1978* (Oup 2009); Andrew Davies, *City of Gangs: Glasgow and the Rise of the British Gangster* (London 2013); Judith Rowbotham, Kim Stevenson, and Samantha Pegg, *Crime News in Modern Britain: Press Reporting and Responsibility, 1820 – 2010* (Basingstoke 2013); Adrian Bingham and Martin Conboy, *Tabloid Century: The Popular Press in Britain, 1896 to the present* (Peter Lang 2015); Jessica Butler, 'Representations of Paternal Child Killers in the English National Press, 1900 to 1939' (PhD thesis, University of Liverpool 2018).

<sup>7</sup> In Scotland, 'infanticide' does not exist as a separate criminal offence but was and is still dealt with as murder or culpable homicide; in Northern Ireland, between 1922 and 1938 the English Act was held to apply, but is now dealt with under the Infanticide Act (Northern Ireland) 1939, a statute almost identical to the [English] 1938 Act.

<sup>8</sup> Margaret L Arnot, 'Understanding Women Committing Newborn Child Murder in Victorian England' in Shani D'Cruze (ed), *Everyday Violence in Britain, 1850–1950: Gender & Class* (Longman 2000); Tony Ward, 'Legislating for human nature: Legal responses to infanticide, 1860-1938' in Mark Jackson (ed) *Infanticide: Historical perspectives on Child Murder and Concealment, 1550-2000* (Ashgate 2002); Anne-Marie Kilday, *A History of Infanticide in Britain, c.1600 to the Present* (Palgrave Macmillan 2013).

not positively cruel and risked frequent miscarriages of justice.<sup>9</sup> The only point of agreement between supporters of these two broad factions– which could not be easily divided along lines of gender, class, faith, region, political alignment, or profession – was a unifying conviction that infanticide was a ‘special’ crime deserving of particular attention and responses.<sup>10</sup> However, following the relatively abrupt passage of the Infanticide Act 1922, the focus for interwar commentators shifted entirely onto whether the law was fit for purpose or needed further amendment. Since the 1950s, a further element has been introduced to this discussion: the question of whether the Infanticide Act should simply be abolished outright, with critics arguing that the statute is based on medical, legal, and cultural understandings of motherhood that are at best outdated and at worst actively harmful.<sup>11</sup> Central to these ongoing conversations, which have been resurrected at several points without ever securing a resolution, is the enduring representation in England and Wales of the infanticidal woman as a criminal who does not fit neatly into more established (and often overtly misogynistic) tropes of female offenders,<sup>12</sup> and where they have often been depicted as a tragic rather than malevolent figure. While not wishing to suggest that the current media, judicial and cultural treatment of infanticide cases in either England or Wales simply replicates that of earlier periods, and with due acknowledgment of the historical specificity of such cases tried since the turn of the millennium,<sup>13</sup> the legacy of these precedents and attitudes remains extremely powerful. By examining the reportage of such cases in the press – both the broadsheets and

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<sup>9</sup> Shirley A Smith, *‘Out of Sight, out of Mind’: Infanticide, Baby Farming and Abortion in South and West Wales, 1870-1922* (Rowanvale Books Ltd 2021); Daniel J R Grey, ‘Discourses of Infanticide in England, 1880-1922’ (PhD thesis, Roehampton University 2008).

<sup>10</sup> Daniel J R Grey, ‘Parenting, Infanticide, and the State in England and Wales, 1870–1950’ in Hester Barron and Claudia Siebrecht (eds), *Parenting and the State in Britain and Europe, 1870–1950: Raising the Nation* (Palgrave Macmillan 2017) at 79-83.

<sup>11</sup> See especially Karen Brennan & Emma Milne’s essay in this collection.

<sup>12</sup> Lizzie Seal, *Women, Murder and Femininity: Gender Representations of Women Who Kill* (Palgrave Macmillan 2010).

<sup>13</sup> Emma Milne, *Criminal Justice Responses to Maternal Filicide: Judging the Failed Mother* (Emerald Publishing Limited 2021).

the tabloids – over the course of a century, the enduring power of this legacy comes into stark focus.

### **Drawing and re-drawing the line: The first 50 years of the Infanticide Act (1922-1972)**

Reports of suspicious infant deaths, sometimes simply the mention of an unknown infant's body being discovered in a town or countryside with no further identification possible, sometimes where there was a clear link to a suspect, were a routine feature of the nineteenth and early twentieth century press across England, Wales, and Ireland.<sup>14</sup> In those instances where there were sufficient grounds for an indictment and criminal trial, the reportage of both local and national newspapers in these regions was liable to follow such stories all the way to the assize court, potentially generating very substantial coverage of a case. While it is almost impossible to reconstruct the decision-making process that led (invariably anonymous) individual reporters to pursue writing about particular events beyond the generic assumption of 'newsworthiness', any homicide was almost guaranteed to generate substantial interest from the reading public, and consequently to improve sales: it was therefore logical for Victorian and Edwardian journalists to try and provide as much detail in their articles as was possible regarding these crimes.<sup>15</sup> Infanticide trials were thus likely to be a reasonably familiar narrative for English and Welsh newspaper readers to come across in this period,

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<sup>14</sup> Elaine Farrell, *'A most diabolical deed': Infanticide and Irish society, 1850-1900* (Manchester University Press 2013); Grey, 'Discourses'; Smith, *'Out of Sight, out of Mind'*. In Scotland, 'Trials of new-born child murder rarely made the pages of newspapers beyond a few lines outlining the accused, the verdict and the sentence'. See Tim Siddons, 'Suspected New-born Child Murder and Concealment of Pregnancy in Scotland, c.1812-c.1930' (PhD thesis, University of Edinburgh 2014) (n83) 20.

<sup>15</sup> Judith Flanders, *The invention of murder: How the Victorians revelled in death and detection and created modern crime* (HarperPress 2011); Cathryn B A Wilson, 'Mad, sad, or bad?: newspaper and judicial representations of men who killed children in Victorian England, 1860-1900' (PhD thesis, University of Essex 2012); Rowbotham et. al, *Crime News in Modern Britain*; Alice Smalley, 'Representations of Crime, Justice, and Punishment in the Popular Press: A Study of the *Illustrated Police News*, 1864-1938' (PhD thesis, Open University, 2017).

even if remarkably few such cases ended in conviction on the capital charge, and the small number that did so were still liable to be reported very sympathetically.<sup>16</sup> For instance, when 22-year-old laundress Alice Cleaver was convicted for the murder of her three-month-old son at the Central Criminal Court in 1909, the *Daily Mail* and *Daily Telegraph* were each careful to note that both the judge and the jury emphatically recommended her to mercy despite the legal requirement to pass sentence of death: outraged readers who had been following the trial nonetheless wrote in to the *Daily Mail* demanding that the law be changed.<sup>17</sup>

By 1922, however, the context of infanticide reporting in England and Wales had changed somewhat. The pattern of explicitly sympathetic reporting, and a willingness by commentators to suggest a degree of (usually temporary) mental disturbance in the woman charged that did not necessarily correspond with either legal or medical definitions of criminal insanity were both still firmly present in such articles, representing a cultural consensus that dated back to at least 1860 if not before.<sup>18</sup> Yet despite the feverish concern exhibited by a range of conservative commentators – including journalists – during the 1920s and 1930s about the dangers posed by the ‘modern woman’ in the wake of the Great War, infanticide remained entirely absent from such debates.<sup>19</sup> Moreover, while crime reporting remained a staple of interwar newspapers, as part of broader formatting changes to the press

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<sup>16</sup> Daniel J R Grey, ‘“Agonised Weeping”: Representing Femininity, Emotion and Infanticide in Edwardian Newspapers’ (2015) 21 *Media History* 468.

<sup>17</sup> ‘Murder Trial Pathos’, *Daily Mail* (London, 10 March 1909) 4; ‘Death-Sentence Scene’, *Daily Telegraph* (London, 10 March 1909) 14. See also letters to editor in ‘Girl Mother’s Ordeal’, *Daily Mail* (London, 12 March 1909), 8 and ‘The Cleaver Case’, *Daily Mail* (London, 15 March 1909) 10, and further details in Grey, ‘Agonised Weeping’.

<sup>18</sup> Daniel J R Grey, ‘“The Agony of Despair”: Pain and the Cultural Script of Infanticide in England and Wales, 1860–1960’ in Rob Boddice (ed), *Pain and Emotion in Modern History* (Palgrave Macmillan 2014). This overlapped with - yet was also distinct from - other discourses that might be applied to women who killed their children: see Alison C Pedley, *Mothers, Criminal Insanity and the Asylum in Victorian England: Cure, Redemption and Rehabilitation* (Bloomsbury forthcoming).

<sup>19</sup> On interwar debates over the ‘modern woman’ see Billie Melman, *Women and the Popular Imagination in the Twenties* (Macmillan 1988); Lucy Bland, *Modern Women on Trial: Sexual Transgression in the Age of the Flapper* (Manchester University Press 2013); Charlotte Wildman, *Urban Redevelopment and Modernity in Liverpool and Manchester, 1918-1939* (Bloomsbury 2016).

such as the standardised inclusion of photographs across the tabloids, articles about crime not only tended to be shorter than they had been before 1914, but also invariably focused on the most sensational cases.<sup>20</sup> Even in specialist publications like the *Illustrated Police News*, there was a reduction in the space allocated to crime reporting, which likewise followed the broad media turn away from accounts of ‘everyday crime’ to briefer and more sensationalised articles.<sup>21</sup>

It is likely that regarding infanticide, this impact on crime reporting was compounded by the passage of the new Act, and an assumption this had removed the longstanding controversy surrounding the fact that murder convictions mandated an automatic death sentence that, in these cases, was almost guaranteed to be commuted to penal servitude.<sup>22</sup> While the 1922 Act was based in large measure on an unsuccessful Bill from 1909 that had been derailed by the constitutional crisis that erupted around the Liberal Party’s ‘People’s Budget’ between 1909 and 1911, its rapid resurrection and passage was the result of concerted organisation and lobbying by several influential women activists, among them the wife of the Prime Minister, Margaret Lloyd George, whose personal and professional connections included the highest levels of the new Labour government.<sup>23</sup> Their interest in changing this law resulted from the extensive local and national press coverage given to the June 1921 trial and conviction of Edith Mary Roberts, a 21-year-old factory worker from Hinkley, for the murder of her newborn child.<sup>24</sup> As Nicola Goc has demonstrated, Roberts’ local newspaper, the *Leicester*

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<sup>20</sup> Bingham, *Family Newspapers?*; Bingham and Conboy, *Tabloid Century*; Butler, ‘Representations of Paternal Child Killers’.

<sup>21</sup> Smalley, ‘Representations of Crime, Justice, and Punishment in the Popular Press’.

<sup>22</sup> See context in Anette Ballinger, *Dead Woman Walking: Executed Women in England and Wales, 1900-55* (Ashgate 2000) and Lizzie Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge 2014).

<sup>23</sup> Daniel J R Grey, ‘Women’s policy networks and the Infanticide Act 1922’ (2010) 21 *Twentieth Century British History* 441.

<sup>24</sup> The National Archives (henceforth TNA) ASSI 11/43. See 7 June 1921 (unpaginated); TNA ASSI 12/115. *R. v. Roberts*; TNA ASSI 13/51. *R. v. Roberts*; TNA HO 144/1749/419784.

*Mercury*, ran an extensive campaign on her behalf even as it simultaneously published other sensationalised and gruesome stories of infanticide in the East Midlands.<sup>25</sup> In contrast to these other stories, Roberts' conviction at the Leicester Assizes and subsequent, unsuccessful attempt to appeal against her sentence (both reported in detail) was represented as a self-evident miscarriage of justice and tapped into a wellspring of popular sympathy.<sup>26</sup> A demonstration calling for her immediate release attracted over 500 protestors and included speeches to the crowd from serving magistrates who shared their view of the case as unjust.<sup>27</sup> However, the extensive coverage bestowed on Roberts' case was unusual, even if the sympathetic tone of the reportage was not. Much less attention was given to the case of Emma Temple, a 19-year-old domestic servant, who was the first woman tried under the new Act in October 1922.<sup>28</sup> This was partly due to Temple having pleaded guilty to infanticide at the Lincoln Assizes rather than going through a full trial for murder, meaning publishable details of the case were confined to a few local press reports of preliminary hearings (although these were quite extensive) before the magistrates who committed her for trial at the assizes.<sup>29</sup> However, part of the reason is also the likelihood that the press – and, significantly, the judge who heard the case – seem to have assumed that this law would henceforth mean the controversies of previous decades related to infanticide would be avoided. Both *The Times* and the *Pall Mall Gazette*, along with several provincial newspapers from across England and Wales, ran short articles that quoted from Mr Justice Lush's sentencing of Temple to just four months imprisonment, including his observation that this 'most wise and humane piece of legislation' now avoided a murder trial and thus the

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<sup>25</sup> Nicola Goc, *Women, Infanticide and the Press, 1822-1922: News narratives in England and Australia* (Ashgate 2013) at 145-169.

<sup>26</sup> Roberts was released after serving just 12 months imprisonment. See TNA HO 144/1749/419784. Note on file 6 June 1922.

<sup>27</sup> *Leicester Mercury*, (Leicester, 19 July 1921) 5.

<sup>28</sup> TNA ASSI 11/43. See 30 October 1922 (unpaginated); TNA ASSI 12/119; TNA ASSI 13/52.

<sup>29</sup> 'Tattershall Sensation', *Skegness Standard* (Skegness, 27 September 1922) 8; 'Tattershall Murder Charge', *Lincolnshire Standard and Boston Guardian* (Lincoln, 30 September 1922) 12; 'Tattershall Murder Charge', *Skegness Standard* (Skegness, 4 October 1922) 6.

possibility of a capital conviction: something that he believed could only be an improvement from previous years.<sup>30</sup>

In fact, the deliberately vague definition of ‘newly born’ that had been decided on by politicians and civil servants in the wording of the Infanticide Act 1922 as a way to bypass the interminable wrangling over where the fairest age limit lay, continued to be a source of problems.<sup>31</sup> In the first place, not all judges were as enamoured of the new law as Mr Justice Lush: the Recorder of the Central Criminal Court, Sir Ernest Wild, complained to the Grand Jury in January 1925 that he believed the Act was ‘beneficent but badly drafted’, believing that a Grand Jury could not find for infanticide if a Bill had already been presented for murder.<sup>32</sup> Following Wild’s instructions that one of the four women charged with killing their child should definitely have been charged with infanticide rather than murder, the Grand Jury rejected that indictment and instead charged the defendant under the 1922 Act.<sup>33</sup> Conversely, in October 1929 Mr Justice Humphreys complained at the opening of the Liverpool Assizes that juries had become far too willing to immediately conclude a potential case fell within the auspices of the Act, which he believed was not only dangerous but went against the spirit of the legislation.<sup>34</sup>

Neither Wild nor Humphreys was unique, even if many (perhaps most?) commentators approved of the 1922 Act. High-profile cases such as that of Mary O’Donoghue in 1927 had underscored these ongoing differences in opinion not only within the judiciary, but beyond it,

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<sup>30</sup> ‘New Infanticide Act’, *The Times* (London, 31 October 1922) 9; ‘Humaner [sic] Law’, *Pall Mall Gazette* (London, 31 October 1922) 12.

<sup>31</sup> Grey, ‘Women’s policy networks’.

<sup>32</sup> ‘The Infanticide Act’, *The Times* (London, 14 January 1925) 16.

<sup>33</sup> *Ibid.*

<sup>34</sup> ‘Judge on charges of infanticide’, *The Times* (London, 30 October 1929) 5.

about what could, or should, count as ‘infanticide’.<sup>35</sup> O’Donoghue, a 24-year-old waitress, had become pregnant while on a visit home to her family in County Kerry, and immediately returned from Ireland to work in London, moving jobs twice in ten weeks before being discovered by a colleague while in labour.<sup>36</sup> When released from St Pancras Infirmary, O’Donoghue secured lodgings on Euston Road and found a new job as a cook nearby, but when she asked her landlady to look after the baby was told this was impossible, and she did not have the funds to pay for foster care or to purchase food.<sup>37</sup> Shortly after bathing and dressing him on the morning the new job started, O’Donoghue strangled her son and hid his body under the bed before leaving for work.<sup>38</sup> Medical witnesses disagreed during the trial over whether her mental state could amount to not being criminally responsible though agreeing she had been suffering from depression, but attempts to mount an insanity defence were ultimately unsuccessful and she was found guilty of John O’Donoghue’s murder.<sup>39</sup> Although her death sentence was commuted by the Home Office to penal servitude for life within 24 hours, in accordance with the strong recommendation of both the judge and the jury, O’Donoghue’s lawyers appealed on the grounds that she should instead have been convicted for infanticide. The Court of Appeal demurred, ruling that her conviction must be upheld since a child of 35 days old could not possibly count as ‘newly born’ and was thus too old fall within the confines of the Infanticide Act.<sup>40</sup> Indeed, Mr Justice Avory took the opportunity as part of upholding the conviction to clarify a misunderstanding included in the

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<sup>35</sup> TNA CRIM 1/414; TNA MEPO 3/1630; *R. v. O’Donoghue* (1927) 28 Cox CC 461; *R. v O’Donoghue* (1928) 20 Cr. App. R. 132; ‘A Case for Mercy’, *Daily News* (London, 14 October 1927) 10; ‘Strangled Baby. Sentence of Death on Waitress’, *News of the World* (London, 16 October 1927); ‘Court of Criminal Appeal’, *The Times* (London, 8 November 1927) 5; ‘Tragedy of a Mother’, *Daily Herald* (London, 8 November 1927) 7.

<sup>36</sup> For essential context see Jennifer Redmond, ‘In the family way and away from the family: examining the evidence in Irish unmarried mothers in Britain, 1920s–40s’ in Elaine Farrell (ed), *She said she was in the family way: pregnancy and infancy in the Irish past* (Institute of Historical Research 2012).

<sup>37</sup> ‘Death Sentence on Waitress’, *The People* (London, 16 October 1927) 4.

<sup>38</sup> TNA CRIM 1/414. Statement made under caution of Mary O’Donoghue, 24 September 1927.

<sup>39</sup> ‘A Case for Mercy’, *Daily News* (London, 14 October 1927) 10.

<sup>40</sup> *R. v. O’Donoghue* (1927) 28 Cox CC 461; *R. v O’Donoghue* (1928) 20 Cr. App. R. 132; Court of Criminal Appeal’, *The Times* (London, 8 November 1927) 5.

appeal (and that had been reproduced in at least one law textbook during the 1920s), which erroneously believed he had ruled a case in 1924 involving a 3-week-old baby came under the Act.<sup>41</sup> The ruling was widely reported across provincial newspapers as well as in the national press and in the law reports, and it is worth noting that – very unusually in infanticide cases – sufficient interest had been generated by O’Donoghue’s trial for both the *Daily Mail* and the *Evening News* to later run short articles in March 1929 to alert their readers that she was about to be released from prison on license.<sup>42</sup>

Similar confusion and concern was generated by the 1936 case of Brenda Hale, a middle-class 24-year-old farmer’s wife from Welwyn in Hertfordshire, described as a devoted wife and mother.<sup>43</sup> Both the consultant who attended Hale at and after both of her confinements, and the governor of Holloway Prison (who in his other role as medical officer had assessed her mental state while being held on remand) were in agreement that Hale had been suffering from puerperal insanity after the birth of each of her children, a diagnosis roughly equivalent to contemporary postnatal depression or psychosis.<sup>44</sup> Although very few nineteenth-century sufferers had harmed themselves or their children, as Hilary Marland has observed, the condition – accounting for 10% of women’s asylum admissions – had long been closely associated with infanticide.<sup>45</sup> In many respects, the new Infanticide Act 1922 and its wording formally enshrined this perceived link between puerperal insanity and child homicide. During a short period one morning when she and her younger child were left alone, Hale cut the

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<sup>41</sup> ‘What IS A “Newly Born” Child?’, *The Times* (London, 22 November 1927) 5.

<sup>42</sup> *Daily Mail* (London, 19 March 1929); *Evening News* (London, 19 March 1929).

<sup>43</sup> TNA CRIM 1/850; TNA DPP 2/357; ‘“Devoted Mother” Hears First Mercy Verdict’, *Daily Mirror* (London, 22 July 1936) 17; ‘Infanticide’, *The Times* (London, 22 July 1936) 13; ‘New Verdict in Mother’s Trial for Murder’, *The Daily Telegraph* (London, 22 July 1936) 9; ‘Not Responsible in Law’, *Illustrated Police News* (London, 30 July 1936) 6.

<sup>44</sup> TNA CRIM 1/850. See deposition of Charles Harold Medlock; TNA DPP 2/357. Report of JCM Matheson, 13 July 1936.

<sup>45</sup> Hilary Marland, *Dangerous Motherhood: Insanity and Childbirth in Victorian Britain* (Palgrave Macmillan 2004).

baby's throat and her own with a razor. As with Mary O'Donoghue, albeit for different reasons, this was a case where – even by the standards of infanticide trials – sympathy was both explicit and unanimous in the press and in the courtroom. Since her son had been three weeks old when he died, in the wake of O'Donoghue's trial it seemed dubious whether the jury would be allowed to convict for infanticide rather than murder, despite the testimony for the defence of Lord Dawson of Penn, the president of the Royal College of Physicians, that most doctors would agree 'newly born' to include infants up to a month old even if the 1922 Act did not set a specific date.<sup>46</sup> Instead, without leaving the witness box to confer, the jury immediately announced that she was 'not guilty of murder but guilty of the act charged, for which she was not responsible in law', seemingly because they believed the wording of the normal 'guilty but insane' verdict to imply culpability.<sup>47</sup>

The jury's decision and apparently unique verdict prompted the presiding judge, Mr Justice Humphreys, to include in his summing up the hope that Parliament might intervene to set a specific time limit for what constituted a 'newly born child' under the framework of the 1922 Act.<sup>48</sup> Taking up the suggestion, Lord Dawson consulted with other medical colleagues to draft and introduce what became the Infanticide Act 1938, eventually replacing the 'newly born' requirement entirely with a period of 12 months after the woman had given birth, and including specific reference to the balance of her mind being left disturbed by lactation, as well as parturition itself: the bill passed without opposition.<sup>49</sup>

The line having thus been re-drawn for what might or might not count as 'infanticide' in law, there it remained, despite periodic concerns that the 1938 Act was not fit for purpose or that

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<sup>46</sup> 'Not Responsible in Law', *Illustrated Police News* (London, 30 July 1936) 6.

<sup>47</sup> 'New Verdict in Mother's Trial for Murder', *The Daily Telegraph* (London, 22 July 1936) 9.

<sup>48</sup> 'Spared Hearing Verdict of Murder', *Daily Herald* (London, 22 July 1936) 9.

<sup>49</sup> Ward, 'Legislating for human nature'.

potentially ‘deserving’ cases might still be excluded.<sup>50</sup> Newspaper articles on infanticide cases both during and well after the Second World War continued to regularly emphasise the vulnerable and tragic (but also potentially recoverable) position of the women involved. For instance, Marian Collins, the 27-year-old wife of a schoolteacher from Newport, was charged with killing her 10-week-old son Geoffrey in September 1959.<sup>51</sup> A short report of her trial in the *Western Mail* simultaneously emphasised Collins’ physical and mental fragility in the period shortly before the crime – suggesting her health had been permanently damaged by influenza and she was still recovering from the shock witnessing a severe traffic accident – as well as gesturing to her happy marriage, noting that her husband had returned home on the day of Geoffrey’s death in his lunch hour to help with feeding the baby.<sup>52</sup> At a period of changing attitudes towards ‘good fatherhood’, this would have stood out for readers and the court as an example of particularly involved and supportive paternal care.<sup>53</sup> Nothing about this situation fit with the ‘traditional’ stereotype of a single young woman left penniless and abandoned by an uncaring lover to deal with the shame and pain of an illegitimate pregnancy, driven to madness as a result, but this short article nonetheless portrayed Collins as deserving of deep sympathy and a tragic victim of circumstances. Convicted at the Monmouthshire Assizes of infanticide, Collins was told by the judge that ‘you are in need of help and treatment rather than punishment’ and placed on probation for two years, subject to the condition that she became a voluntary patient at a psychiatric hospital.<sup>54</sup>

### **Continuity and controversy (1973-2004)**

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<sup>50</sup> Grey, ‘Parenting, Infanticide, and the State’.

<sup>51</sup> ‘Mother who killed her baby son “needs help”’, *Western Mail* (Cardiff, 4 November 1959) 10.

<sup>52</sup> *Ibid.*

<sup>53</sup> Laura King, *Family Men: Fatherhood and Masculinity in Britain, 1914-1960* (Oxford University Press 2015)

<sup>54</sup> ‘Mother who killed her baby son “needs help”’, *Western Mail* (Cardiff, 4 November 1959) 10.

It was possible that either the introduction in England and Wales of the Homicide Act 1957, which introduced to English law the concept of ‘diminished responsibility’ as a partial defence for murder, or the abolition in 1968 of capital punishment, might have also led to a reconsideration of whether the Infanticide Act 1938 was still warranted.<sup>55</sup> After all, assertions that the circumstances of the crime meant that infanticide should be an offence punishable by imprisonment rather than the death penalty, and that such cases did not necessarily correspond with existing ‘insanity’ definitions were longstanding complaints, and these had actively fuelled demands for a change in the law over several decades before 1922.<sup>56</sup> Yet for many people, the Act still clearly served a distinct purpose, something underlined by very similar laws being passed in Ireland, Canada, and several states in Australia during the postwar years that were explicitly and closely modelled on the English Act.<sup>57</sup>

Tellingly, the Report of the Royal Commission on Capital Punishment in 1953 specifically recommended leaving the Infanticide Act untouched by any further reforms.<sup>58</sup> Even those commentators who suggested in the 1970s that it might be possible to amend or abolish the Infanticide Act did so cautiously, and such suggestions, such as those by the Butler Committee on Mentally Abnormal Offenders (1975) or by the Criminal Law Revision Committee (1980) were in practice either rejected outright or ignored.<sup>59</sup> The Royal College of Psychiatrists, reporting the findings of their Working Group on Infanticide in 1978 as part of

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<sup>55</sup> Homicide Act 1957 (5 & 6 Eliz. 2 c 11). The concept of ‘diminished responsibility’ had been introduced much earlier in Scotland, first outlined during the 1867 trial of Alexander Dingwall for the murder of his wife: Dingwall was instead convicted of culpable homicide. See *H.M. Advocate v Dingwall* (1867) 5 Irvine 466.

<sup>56</sup> James Gregory, *Mercy and British Culture, 1760-1960* (Bloomsbury 2021) 139.

<sup>57</sup> See for instance Kirsten Johnson Kramer, *Unwilling Mothers, Unwanted Babies: Infanticide in Canada* (UBC Press 2005); Karen M. Brennan, ‘“Traditions of English Liberal Thought”: A History of the Enactment of an Infanticide Law in Ireland’ (2013) 50 *Irish Jurist* 100; Karen M. Brennan, ‘Murderous Mothers & Gentle Judges: Paternalism, Patriarchy, and Infanticide’ (2018) 30 *Yale Journal of Law and Feminism* 140; Arlie Loughnan, *Self, Others and the State: Relations of Criminal Responsibility* (Cambridge University Press 2020) 165-192.

<sup>58</sup> Home Office, *Report of the Royal Commission on Capital Punishment* (Cmd 8932, 1953) 961.

<sup>59</sup> Crook, ‘The Uses of Maternal Distress’, 219.

preparation for the Criminal Law Committee hearings, in fact were careful to explain that, although its members were uncomfortable with aspects of the Infanticide Act 1938 (especially the references to lactation), unless the most sweeping reforms suggested by the Butler Committee were adopted – thus removing the need for it entirely – then it was essential that the Act be retained, subject to minor amendments that would if anything slightly *increase* the number of potential cases it could deal with.<sup>60</sup>

Just as had been true of the early and mid-twentieth century, cases from the 1970s through to the 2000s could be and often were reported – even just briefly in terse summaries of fewer than a hundred words – with clear sympathy by the authorities that was implicitly or explicitly echoed by the press, as demonstrated by the short report from the *Lynn Advertiser* in January 1973. In an article less than 60 words and on the front page of this issue of the local paper, it recorded that 19-year-old Louise Woodward, who had given birth to her baby while at an allotment, had pleaded guilty to infanticide at Norwich Crown Court.<sup>61</sup> Sentencing her to two years’ probation, Mr Justice Melford abjured her to ‘Go away and make the most of these unhappy circumstances’.<sup>62</sup> The outcome in this case was not unusual, but should be seen as part of a pattern of lenient judicial treatment that was increasingly standardised over the course of the late twentieth century: no woman convicted of infanticide in England and Wales between 1979 and 1988 seems to have received a custodial sentence.<sup>63</sup> This was a fact specifically referenced by the Court of Appeal in 1989 when reviewing the case of 17-year-old Joan Sainsbury, who had been sentenced to 12 months’ detention in a young offender’s institution after pleading guilty to infanticide.<sup>64</sup> Sainsbury had become

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<sup>60</sup> Robert Bluglass, ‘Infanticide’ (1978) 2 *Bulletin of the Royal College of Psychiatrists* 139.

<sup>61</sup> ‘Girl put on probation’, *Lynn Advertiser* (Norfolk, 16 January 1973) 1.

<sup>62</sup> *Ibid.*

<sup>63</sup> Arlie Loughnan, *Manifest Madness: Mental Incapacity in Criminal Law* (Oxford University Press 2012) 224.

<sup>64</sup> *R v Sainsbury* (1989) 11 Cr App R (S) 533.

pregnant at 14 and had given birth in ‘squalid conditions’ and without assistance at the flat of her boyfriend Lee Clarke, who had similarly confessed to manslaughter of their son. A short article about Clarke’s conviction in *The Times* noted that the couple had intended to abandon the baby at a hospital in Bath, but ‘could not afford the bus fare and were afraid of being seen’.<sup>65</sup> In amending Sainsbury’s sentence to a probation order, the Court specifically argued that ‘The sentencer was wrong to say that the welfare of society demanded a custodial sentence; the mitigating factors were overwhelming’.<sup>66</sup>

Despite the very substantial legislative, social, cultural, economic and political changes – particularly those that impacted specifically on women’s lives, such as the enactment of laws against sex discrimination, the expansion of reproductive rights, and the increase in educational and work opportunities – in England and Wales from the mid-1970s onwards, infanticide trials and their representation were still strongly influenced by attitudes and precedents that had been established much earlier in the twentieth century. Although abortion had been legalised in England, Scotland and Wales since 1967, and contraception and birth control advice was finally incorporated and made available to all (regardless of age or marital status) from 1974 onwards, these important changes do not seem to have significantly impacted on the ways that infanticide was either reported in the news or dealt with by the courts, even though both of these developments had – at least in theory – significantly reduced the likelihood of unwanted pregnancies being carried to term, and thus could have been interpreted as making such cases less deserving of sympathy than they had been in previous decades.<sup>67</sup> Just as Karen Brennan has demonstrated with regards to Ireland, shared

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<sup>65</sup> ‘Man threw newborn into river’, *The Times* (London, 15 November 1989).

<sup>66</sup> *R v Sainsbury* (1989) 11 Cr App R (S) 533.

<sup>67</sup> Abortion Act 1967 c 87. On the tensions between abortion law and current healthcare practice, see Sally Sheldon, ‘British Abortion Law: Speaking from the Past to Govern the Future’, (2016) 79 *Modern Law Review* 283. Birth control was intended for married couples only until the passage of the National Health Service (Family Planning) Act 1967 c 39 expanded access for women. See Caroline Rusterholz, *Women’s medicine: Sex,*

social norms and ideas about what represents the most ‘just’ outcome in suspected infanticide cases have remained central to determining processes and outcomes in England and Wales.<sup>68</sup> It is difficult to determine exactly when probation orders (often accompanied by the requirement for psychiatric treatment) started to displace prison sentences in infanticide cases, but this process had certainly been underway by the late 1940s.<sup>69</sup> The thirteenth updated edition of the influential forensic medicine textbook *Glaister’s Medical Jurisprudence and Toxicology*, published in 1973, continued to devote relatively substantial space (specifically a 26-page chapter) to setting out the complicated case law and tests necessary to interpret in suspected infanticide cases, arguing that this remained one of the most difficult questions for a medical witness to resolve.<sup>70</sup>

Crucially, a series of cases in the mid- and late 1990s also meant that concerns about infanticide and the most fair and appropriate way to deal with these offences were suddenly the subject of high-profile news coverage in England and Wales even though none of these were prosecuted under the Infanticide Act, but as other types of homicide – indeed, one of these trials actually took place in the United States, though it involved a British defendant. Although these events ran in parallel to stories or trials that were dealt with under the 1938 Act, they are nonetheless mentioned here because all of them received voluminous coverage in the British press, and, in the American case, several newspaper articles revolved around the legal differences between how infanticide cases were dealt with in the two jurisdictions. In 1994, Caroline Beale, a 30-year-old civil servant living in London, was arrested at JFK airport in New York when attempting to board a flight back to the UK with her partner and

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*family planning and British female doctors in transnational perspective, 1920–70* (Manchester University Press 2020).

<sup>68</sup> Karen Brennan, ‘Social norms and the law in responding to infanticide’ (2018) 38 *Legal Studies* 480–499.

<sup>69</sup> Grey, ‘“The Agony of Despair”’.

<sup>70</sup> Edgar Rentoul and Hamilton Smith, *Glaister’s Medical Jurisprudence and Toxicology*, 13<sup>th</sup> ed. (Churchill Livingstone 1973) 399–424.

friends: the dead body of a baby girl was discovered hidden in a plastic bag carried underneath her coat.<sup>71</sup> She had told nobody that she was pregnant, and claimed that the baby had been stillborn when she gave birth in her hotel bathroom while her partner slept, hiding the body in the plastic bag she then carried with her. The New York authorities, however, argued that the baby had been born alive before dying from suffocation, and that the concealment of her pregnancy and even delivery from friends and family strongly suggested premeditation.<sup>72</sup> Charged with second-degree murder, Beale spent 14 months held on remand at Riker's Island prison before a full psychiatric report was completed, and later entered a plea bargain which required her to confess to her daughter's manslaughter as a condition of being released.<sup>73</sup> On returning to England, Beale resumed her job in the Department of Health and was attending the Maudsley Hospital for ongoing mental health treatment.<sup>74</sup> As Julie Wheelwright has suggested, 'The media [...] remains fascinated with the macabre details and the haunting question of motive in such cases'.<sup>75</sup> Transatlantic coverage of Beale's case over these three years was extensive, and in the British press (both broadsheet and tabloid) overtly sympathetic, as exemplified by one *Daily Mail* headline: 'The Torturing of Caroline Beale'.<sup>76</sup> It is revealing that the *Daily Mail*, a right-wing tabloid which has traditionally tended to emphasise sensationalised reporting and – in cases relating to crime – the need for severe punishment of offenders, chose instead to focus in their substantial coverage on elements of the case that portrayed Beale as a victim of her circumstances and being treated with inappropriate harshness. Much turned on the fact that had Beale's situation occurred in England, she would have been charged under the Infanticide Act, but the United States was

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<sup>71</sup> Julie Wheelwright, 'A moment as mother', *The Guardian* (London, 13 May 1995) A13 & 16

<sup>72</sup> Rebecca Mead, 'The Imaginary Infant', *New York Magazine* (New York, 18 December 1995) 36-41.

<sup>73</sup> Charles Laurence, 'So just why did it take them so long?' *The Daily Telegraph* (London, 8 March 1996) 13.

<sup>74</sup> Caroline Davies, "I just knew I had to bring my dead baby back home", *The Daily Telegraph* (London, 19 August 1997), 11.

<sup>75</sup> Julie Wheelwright, "'Nothing in between": modern cases of infanticide' in Mark Jackson (ed) *Infanticide: Historical perspectives on Child Murder and Concealment, 1550-2000* (Ashgate 2002) 271.

<sup>76</sup> Frances Hardy and George Gordon, 'The Torturing of Caroline Beale', *Daily Mail* (London, 19 May 1995) 30-31.

(and remains) unusual in that there are no equivalent laws to separate this from other types of homicide.<sup>77</sup> Practically no British commentators considered this to be an improvement on the English and Welsh process, the notable exception being the journalist Yvonne Roberts, who suggested in the *Sunday Telegraph* that unlike the Infanticide Act's problematic constructions of womanhood, 'American rules are clearer, unconfused by prejudices or unproven beliefs about biological destiny'.<sup>78</sup> Reporting could thus often take an overtly nationalistic line which implied such controversies would never occur in the British criminal justice system. Indeed, criticisms of the American approach by not only the British media, but also comments by Caroline Beale's father complaining her treatment was 'barbaric' provoked the sentencing judge in her case, Robert Hanophy, to issue an emphatic defence of the US system that explicitly criticised the 1938 Act:

I believe that any law that grants a blanket exemption from prosecution or punishment to those people who kill their children are under the age of one is a law that is primitive and uncivilised. Granting parents a law to kill their children harkens to uncivilised times. I say to our friends in Britain, God bless America.<sup>79</sup>

New York State's Commission on Judicial Conduct later reprimanded Hanophy, arguing that in making these remarks, along with other sharply critical comments on the political situation in Northern Ireland at the same time, he had overstepped the bounds of his role.<sup>80</sup> Responding directly to Hanophy's assessment in an article for *The Times*, British law lecturer Gary

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<sup>77</sup> Margaret Spinelli, 'Infanticide and American criminal justice (1980–2018)' (2018) 22 *Archives of Women's Mental Health* 173.

<sup>78</sup> Yvonne Roberts, 'The case for the American prosecution', *The Sunday Telegraph* (London, 10 March 1996) 5.

<sup>79</sup> Gary Slapper, 'Mothers and madness', *The Times* (London, 19 March 1996), 33.

<sup>80</sup> James Bone, 'US judge rebuked for attack on Britain', *The Times* (London, 12 April 1997) 19.

**Commented [ME1]:** I would have thought that having an infanticide offence is the more unusual?

**Commented [DG2R1]:** I've left this as is for now, as my understanding is that \*most\* countries do have a different judicial treatment of infanticide or some statutory equivalent, with India and the USA being exceptions in that regard? This was Margaret Spinelli's point in her short article here from 2018.

Slapper argued that in fact, denying infanticide its status as a ‘special’ defence or charge ‘...is to wish to return to principles of law regarded here as intolerably primitive in the 1920s.’<sup>81</sup>

Reading the extensive newspaper reports of Beale’s case (only some of which can be touched on here) strongly suggests that the public and the media in England and Wales emphatically shared that view. This can only have been reinforced by a high-profile series of controversies between 1999 and 2005 in which four women – Donna Anthony, Sally Clark, Angela Cannings, and Trupti Patel – were accused of the murder of their children, partly on the basis of evidence given by influential paediatrician Sir Roy Meadow, who believed repeated instances of Sudden Infant Death Syndrome (SIDS) within the same household were in themselves suspicious: his arguments were widely reported in the media and, as Victoria Bates has shown, likely helped shape the overall landscape of child protection at the time.<sup>82</sup> Patel was acquitted at her trial, while Clark, Cannings, and Anthony all had their murder convictions overturned on appeal as unsafe.<sup>83</sup> Between the seventeenth and mid-twentieth centuries, medical jurisprudence had routinely demonstrated what Rachel Dixon has described as ‘positive uncertainty’ regarding infanticide: an acknowledgment that forensic science struggled to provide definitive answers in cases of suspicious infant death and that offered the courts a degree of flexibility in how they approached individual cases.<sup>84</sup> The discrediting of Meadow, and the substantial media coverage of these four women’s

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<sup>81</sup> Slapper, ‘Mothers and madness’.

<sup>82</sup> Victoria Bates, ‘Three is Murder: The Rise and Fall of Munchausen Syndrome by Proxy Experts’ (2019) 104 *History* 189.

<sup>83</sup> Jo Revill and Gaby Hinscliff, ‘Call for an end to cot death court anguish: As Trupti Patel is cleared of killing her babies, experts urge overhaul of way bereaved mothers are treated’, *The Guardian* (London, 15 June 2003) 8; *R v Clark (Sally)* [2003] EWCA Crim 1020; [2003] 4 WLUK 399 ; *R v Cannings (Angela)* [2004] EWCA Crim 1; 1 WLR 2607; *R v Anthony (Donna)* [2005] EWCA Crim 952; [2005] 4 WLUK 144.

<sup>84</sup> Rachel Dixon, *Infanticide: Expert Evidence and Testimony in Child Murder Cases, 1688-1955* (Routledge 2022).

experiences emphatically reinscribed this uncertainty for the general public as well as for the medical and legal professions in early twenty-first century England and Wales.<sup>85</sup>

#### **‘The mitigation in this case...is overwhelming’: Consensus maintained (2005-2022)**

Although the cases of Clark, Cannings, Patel, and Anthony had been charges of murder rather than infanticide, they definitively shaped how newspaper readers responded to stories of suspected baby killing – indeed, journalist Cassandra Jardine explicitly drew this connection in a 2008 article for *The Telegraph* that focused on concerns about the case of Chaha’oh Niyol Kai-Whitewind, who had been convicted some years earlier of the murder of her 12-week-old son Bidziil, the youngest of her three children.<sup>86</sup> There had been no attempt to mount a defence of infanticide in this case: instead, Kai-Whitewind had vehemently denied suffocating her son, insisting his death had been from natural (unexplained) causes and refusing to give evidence during her trial at Birmingham Crown Court in 2003.<sup>87</sup> Medical experts called to give evidence had disagreed about what conclusions could be drawn regarding his death, but Kai-Whitewind had said to a health visitor she was depressed and, though she had resisted terminating the pregnancy, had told people previously he had been conceived after being raped, as well as that she had struggled to bond with him.<sup>88</sup> While rejecting her appeal against the sentence, on the grounds that there had been sufficient evidence available to the jury beyond that provided by medical witnesses to ensure that the conviction was safe, the judges argued that this case highlighted deficiencies in the

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<sup>85</sup> Gary Slapper, ‘Mothers, madness and medieval justice’, *The Times* (London, 4 February 2003) 3 [s2].

<sup>86</sup> Cassandra Jardine, ‘Has Sally Clark’s case changed attitudes to infant death?’ *The Telegraph* (London, 11 March 2008) <https://www.telegraph.co.uk/news/uknews/1581407/Has-Sally-Clarks-case-changed-attitudes-to-infant-death.html> accessed 5 August 2022

<sup>87</sup> Owen Bowcott, ‘Mother loses murder appeal’, *The Guardian* (London, 4 May 2005) <https://www.theguardian.com/uk/2005/may/04/ukcrime.children> accessed 5 August 2022

<sup>88</sup> *R v Kai-Whitewind (Chaha’oh Niyol)* [2005] EWCA Crim 1092; [2005] 2 Cr. App. R. 31; [2006] Crim. LR 348.

Infanticide Act on two key points.<sup>89</sup> The first of these was the question of whether the wording of the Act should be reformed to take into account ‘circumstances subsequent to the birth, but connected with it, such as the stresses imposed on a mother by the absence of natural bonding with her baby’.<sup>90</sup> The second concern was that it could not be applied to a woman who refused to accept that she had killed her child and so would not cooperate in providing evidence that the balance of her mind had been disturbed at the time.<sup>91</sup> When the Law Commission reviewed the existing laws on unlawful killing the following year, including the Infanticide Act, they directly addressed the points that had been raised by the Court of Appeal.<sup>92</sup> Although noting the issues posed by the 1938 Act (not least of which the outdated language and potentially essentialist tropes about madness and motherhood it contains), the Commission agreed that this should be retained, albeit subject to rewording to remove references to ‘lactation’ and to expand the time period allowable from 12 months to 2 years after giving birth.<sup>93</sup> While these proposals were not taken up by the government, these recommendations underline the ongoing importance of the Act and the general consensus that approved of it, even if some newspapers ran actively misleading headlines about the appeal judgement in *Kai-Whitewind* which implied that critics (including senior judges) were advocating its abolition rather than its amendment and expansion.<sup>94</sup>

This consensus and the significant sympathy shown to the accused has remained a key feature of newspaper articles about infanticide published in England and Wales since 2006. This can even be the case where extreme violence was used towards the baby, a situation that can lead

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<sup>89</sup> ‘Jury to decide dispute between experts’, *The Times* (London, 11 May 2005), 57

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> Law Commission, *Murder, Manslaughter and Infanticide* (Law Com No. 304, 2006).

<sup>93</sup> *Ibid.*

<sup>94</sup> Maxine Frith, ‘Scrap outdated infanticide law, say judges’ *The Independent*, 4 May 2005

<https://www.independent.co.uk/news/uk/crime/scrap-outdated-infanticide-law-say-judges-5345949.html>  
accessed 9 August 2022

to awkward and contradictory shifts in tone and overall message within the confines of a single article as the reportage veers between gruesome and distressing details on the one hand, and depictions of the guilty mother as vulnerable, tragic, and mentally unwell on the other. The press coverage of the case of 24-year-old care worker Babita Rai in Hampshire, which was reported across both national and local newspapers, is a particularly striking example of this paradox.<sup>95</sup> Rai had been six months pregnant when she arrived in the UK in 2017 from Nepal, a migrant with poor English and desperate to conceal her condition from her family she was joining in England, who held traditional Nepalese views stigmatising sex and motherhood outside marriage.<sup>96</sup> Giving birth in a local park in Aldershot at night in May 2017, Rai inflicted catastrophic head injuries on the baby almost immediately after giving birth, and hid the body in the undergrowth where it was discovered some days later: despite an extensive police investigation to try and locate the child's mother, she was not identified and arrested until March 2020.<sup>97</sup> Nonetheless, Mr Justice Johnson argued when passing judgment that 'the mitigation in this case, as in many cases of its type, is overwhelming', sentencing her to a two-year community order including 30 days of rehabilitation activity with mental health professionals.<sup>98</sup> In addition to the suggestion Rai was suffering from Post-Traumatic Stress Disorder (PTSD), reportage also touched on the implications of the global COVID-19 pandemic for the progress of the case, suggesting that the delay this may have

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<sup>95</sup> Martin Robinson, 'Nepalese care worker, 24, who gave birth to secret baby girl in darkness behind a Hampshire park tree, killed her by crushing her skull and abandoned the body is spared jail after court heard she felt "intolerable shame at being an unwed mother"', *Daily Mail* (London, 26 July 2021) <https://www.dailymail.co.uk/news/article-9826239/Care-worker-mother-24-spared-jail-killing-newborn-crushing-skull.html> accessed 8 August 2022

<sup>96</sup> Pramod R Regmi, Padam P Simkhada, and Edwin R. van Teijlingen, "'Boys Remain Prestigious, Girls Become Prostitutes': Socio-Cultural Context of Relationships and Sex among Young People in Nepal' (2010) 2 *Global Journal of Health Science* 60.

<sup>97</sup> Kelly-Ann Mills, 'Young mum accused of murdering newborn daughter after hiding pregnancy from colleagues' *Daily Mirror* (London, 5 May 2021) <https://www.mirror.co.uk/news/uk-news/young-mum-murdered-newborn-daughter-24042959> accessed 8 August 2022

<sup>98</sup> Claire Hayhurst, 'Woman handed community order for infanticide of newborn daughter' *Evening Standard* (London, 26 July 2021) <https://www.standard.co.uk/news/uk/hampshire-aldershot-none-winchester-crown-court-hampshire-police-b947683.html> accessed 30 July 2021

caused and the additional COVID restrictions imposed on prisoners, especially combined with factors such as Rai's limited English proficiency and migrant status, had rendered her experience of time spent on remand an especially gruelling ordeal.<sup>99</sup> Despite the obvious potential for articles to focus negatively on the violence of the crime or implicit and explicitly racist depictions of Rai's status as a migrant woman of colour (features of the case which might always have been targeted but have arguably become even more likely in the British media since 2016, in the wake of often explicitly anti-migrant sentiments galvanised by the controversial vote to leave the European Union), newspaper discussions of her case followed standard, primarily sympathetic, patterns regarding infanticide.<sup>100</sup> The descriptions of Rai's case in the press, and the response to it by judge and jury, sit in stark contrast to recent instances where the plea of infanticide has been rejected and the woman on trial has instead been convicted of murder. In 2017, Rachel Tunstill secretly gave birth at her flat in Burnley and stabbed her newborn daughter to death, claiming to her partner and medics that she had suffered a miscarriage. The baby's body was later discovered wrapped in a bag and hidden in a bin.<sup>101</sup> Convicted of murder and sentenced to 20 years' imprisonment, the Court of Appeal ruled that Tunstill was entitled to a retrial as the judge had refused to allow the jury to consider whether she was entitled to the partial defence of infanticide.<sup>102</sup> At the subsequent retrial in 2019, however, the jury at Liverpool Crown Court rejected this, and she was again convicted of murder. Despite the acknowledgement that she had been 'suffering from some

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<sup>99</sup> Elisa Menendez, 'Woman who killed secret baby after giving birth in park spared jail' *Metro* (London, 26 July 2021) <https://metro.co.uk/2021/07/26/woman-who-killed-secret-baby-after-giving-birth-in-park-spared-jail-14990537/> accessed 30 July 2021. Research suggests this is indeed liable to have been experienced by prisoners as a harsher environment than 'normal' prison: see Matthew Maycock, "'Covid-19 has caused a dramatic change to prison life": Analysing the impacts of the Covid-19 pandemic on the pains of imprisonment in the Scottish Prison Estate' (2022) 62 *The British Journal of Criminology* 218.

<sup>100</sup> Eva Połomska-Kimunguyi, 'Echoes of Empire: racism and historical amnesia in the British media coverage of migration' (2022) 9 *Humanities and Social Science Communications* <https://doi.org/10.1057/s41599-021-01020-4> accessed 10 August 2022.

<sup>101</sup> Tanveer Mann, 'Mother, 26, stabbed newborn to death because she thought she would harm her career', *Metro* (London, 8 June 2017) <https://metro.co.uk/2017/06/08/mother-26-stabbed-newborn-to-death-because-she-thought-she-would-harm-her-career-6694738/> accessed 3 January 2023

<sup>102</sup> *R. v Tunstill (Rachel Julie)* [2018] EWCA Crim 1696; [2018] 2 Cr. App. R. 31.

degree of mental disorder' at the time of the crime, both the press and the judge's summing up emphasised her apparent lack of remorse.<sup>103</sup>

## Conclusions

In July 2022, it was reported that 25-year-old Lauren St George had been convicted of infanticide at the Old Bailey.<sup>104</sup> Her 10-day-old daughter Lily-Mai, born prematurely, had died in 2018 from multiple injuries caused after being released to the care of her parents. Both hospital staff and social services had raised safeguarding concerns about the baby's welfare, and shortly before her death a legal gateway meeting had been requested to review next steps. The jury deliberated for several hours before finding her guilty of infanticide.<sup>105</sup> In his summing up, Mr Justice Spencer thanked the jury for the sensitive way they had dealt with such a distressing case. He told Saint George that he believed she had 'suffered and continued to suffer', and that this would be taken into account when later passing sentence, which would be a suspended one.<sup>106</sup> Spencer was also careful to note that verdicts of infanticide traditionally emphasised sympathy for tragic circumstances over the prospect of punishment.<sup>107</sup>

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<sup>103</sup> Lynda Roughley, 'Mum who stabbed newborn baby girl to death with scissors is jailed for life - for the second time', *Manchester Evening News* (Manchester, 6 February 2019) <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/rachel-tunstall-retrial-liverpool-bumley-15789927> accessed 3 January 2023

<sup>104</sup> James Beal, "'Suffering mother" convicted of killing her baby', *The Times* (London, 26 July 2022); Kaya Terry, 'Mother, 25, found guilty of shaking her 10-week-old baby girl to death after she was discharged from hospital against doctors' advice will not be sent to prison so she can "rebuild her life"', *Daily Mail* (London, 25 July 2022) <https://www.dailymail.co.uk/news/article-11046629/Mother-guilty-death-baby-daughter-shaking-10-week-old-violent-attack.html> accessed 7 August 2022; 'Depressed mum spared jail for killing daughter', *Western Mail* (Cardiff, 26 July 2022), 10.

<sup>105</sup> The presiding judge directed the jury to dismiss charges of murder and manslaughter against her partner, 25-year-old Darren Hurrell, arguing there was no evidence of his involvement in Lily-Mai's death.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

Comparing newspaper articles on infanticide written in England and Wales in the early 1920s with those written in the 2020s, even given the significant changes over time to the medium in format and style (not least of which being the jump from print to smartphone screen accessibility), and accounting for the respective genre conventions of tabloid and broadsheet, the similarity in tone and often content is nonetheless overt and striking. Despite the very substantial differences between these two periods, a century apart – not least of which are the dramatic shift in cultural, legal, economic, social, medical and political contexts – the small number of women charged with infanticide in England and Wales in the early twenty-first century are described in extremely (perhaps even disturbingly?) similar ways to defendants from preceding decades.<sup>108</sup> While debates have continued at periodic intervals since the Second World War over whether the Infanticide Act 1938 should be retained or not, especially in light of the fact that its quasi-medical language was already increasingly out of step with scientific understanding in the interwar years, women accused of killing their infants are usually still seen by the press, the criminal justice system, and the general public as a ‘special’ type of criminal. Although some individual cases of infant homicide stand out for their representation in the media as being monstrous rather than deserving of sympathy, these remain very much an exception rather than the general rule and are usually those cases in which the charge of infanticide has been rejected by the jury, and the mother has instead been convicted of murder. Instead, just as was the case in the 1920s, articles about infanticide in the early twenty-first century tend to emphasise the previous good character of the mother, her vulnerability (whether this might be in terms of health, marginalised status, or other factors), and suggest that they were suffering from serious mental illness at the time they

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<sup>108</sup> As Brennan and Milne note in the introduction to this volume, the use of infanticide as a charge seems to be reducing in England and Wales.

committed the crime, regardless of whether or not this might fit with accepted medical or legal definitions for mental disturbance.

While the term 'respectability' has long fallen out of favour since the 1970s, the fundamental attributes and accompanying social judgments that this description formerly encompassed, and the strong likelihood that women in England and Wales charged with or found guilty of infanticide will still be interpreted by the press, the courts and the general public as fitting positively into this framework have not gone away. In cases where there does not seem to have been any obvious sign of violence directed towards the baby, both historical and contemporary newspaper articles were and are likely to note the difficulty of determining the cause of death in infants, and question whether the death might be from natural causes or an accident rather than resulting from the action (or inaction) of the mother. Arguably, in the wake of Angela Cannings and Sally Clark's convictions being quashed, lingering public awareness of these as a miscarriage of justice, and the resulting furore over contested medical expertise, concerns about the possibility of physicians 'getting it wrong' have perhaps become even *more* likely to be raised since 2002 than they were in previous decades as they are now an integral part of the public perception of these cases rather than confined to debates between lawyers and physicians.

The overwhelming impression from reviewing such press reportage over a century is of a national ongoing consensus in England and Wales about the 'special' nature of infanticide; the context and experiences of the 'typical' woman charged with the crime; and demonstrates broad agreement with a core cultural script about how it should best be dealt with that emphasises mental health interventions. Such newspaper articles and their influence on public understandings of infanticide were, and are, double-edged, inherently riven with

contradictory ideas. Some of these aspects are potentially beneficial for the women written about, but others rely on conformity with ‘good girl’ narratives, implicit or sometimes explicit sexism, and a troubling biological essentialism, as well as denial of agency. For this reason, it is crucial to remain alert to the enduring power and legacy of earlier twentieth-century representations when reading about contemporary infanticide cases. As the cultural critics Rosalind Gill and Katie Toms have powerfully concluded in their study of the visibility of feminism in the British media, ‘There may be a “feminist zeitgeist” yet the tenacity of anti-feminist ideas remains striking, even in this new moment, and postfeminism, sexism and misogyny are also trending now’.<sup>109</sup>

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<sup>109</sup> Rosalind Gill and Katie Toms, ‘Trending now: Feminism, Postfeminism, Sexism and Misogyny’ in Cynthia Carter, Linda Steiner and Stuart Allan (eds) *Journalism, Gender and Power* (Routledge, 2019) 112.