The Journal of the Gilded Age and Progressive Era (2023), **22,** 163–183
doi:10.1017/S1537781422000615

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

"There Is Nothing So Sacred as Human Life": Infanticide and the State in Maine, 1877–1917

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Abstract

From 1877 to 1896, Maine courts sentenced six women accused of infanticide to imprisonment for life. This harsh punishment was in stark contrast to the more lenient punishments given infanticides elsewhere. A close look at these cases through court documents, newspaper accounts, pardon petitions, and attorney general reports suggests that the trials marked a shift in the justice system in Maine as the state increasingly asserted its control over the communities' response to crime. Historically, women's expertise with regard to women's bodies provided a place for them within the local legal system. Under the purview of the state's attorneys general, the state increasingly assumed control over the detection, adjudication, and punishment of crime. While community members responded to crime with attention to the individual and the circumstances, the state called for the universal application of the written law regardless of the context and claimed that swift and inevitable retribution was necessary to protect all. This shift from the local to the state had a particular impact on women and their role within the community. Long accustomed to arbitrating issues surrounding pregnancy, women found their power to do so subverted and replaced by middle class professionals in distant urban locations.

Keywords: criminal justice; women's community; infanticide; rural community; reproductive politics

In the winter of 1896, Rose Dolley, "a country girl born and bred," stood trial for infanticide in Cumberland County, Maine. Rose was eighteen and single. She had, she confessed, strangled her three-week old son and left him half buried in the snow. The prosecutor, County Attorney Charles A. True, opened the proceedings as he addressed "men of experience,"

> This case is a sad one; a hard one and I do not conceal this fact which has affected both you and myself … but murder is an awful crime and old and young, weak and strong, are entitled to the protection of the law… . There is nothing in this world so sacred as human life …[1]

Nevertheless, at the end of the first day of her testimony and in spite of her confession, the *Daily Kennebec Journal* reported Rose had "in her present friendless and perilous condition … won the sympathy of scores of people and scarcely had the crowd begun to disperse than she was surrounded by a group of ladies, each of whom tried to outdo the others in speaking kind words of encouragement to the unfortunate girl." Surrounded by sympathy, Rose burst into tears.[2]

This was not the first encounter Rose had had with sympathetic strangers, and her story leading up to the trial highlights the support rural women offered one another. Susan Gray Osterud observes, "Although rural women were legally and materially subordinated to men within farm families, they were also central to the kinship system and mode of production on which rural society was founded… . Emphasizing those aspects of the rural in which they had a legitimate place … [t]hey extended the norms of reciprocity which governed relationships among kin to their neighborhoods and the entire community."[3]

Like many other "country girls" in Maine in the late nineteenth century, Rose Dolley left home to enter domestic service but was not left on her own.[4] When the owner of and a fellow worker in the boarding house where she worked noticed she was pregnant, the two women confronted her with their suspicions, and then took her to Portland to find a doctor who would deliver her free of charge and a temporary home in which to deliver.

While hired help in rural areas were often treated like kin, Rose soon found that even complete strangers offered her support. When scarlet fever closed the home, she returned to her home town of Windham with her son but, after she arrived and was afraid to face her mother, she chose to knock on the door of a stranger. The woman who answered the door not only invited her in to spend the night but also paid her train fare back to Portland. In the city, Rose knocked on the door of yet another stranger, a woman who had, Rose was told, lost an infant and might be willing to take care of hers. That woman too invited her in and hearing Rose's story, agreed to take care of the child. As the woman later testified in the trial, Rose "seemed to love her baby and she asked me if I wouldn't take good care of him. I said, 'He shall have the best care while he is with me.'"[5]

Rose's trial for murder in the face of the broad support that she received from the community draws our attention to the Maine criminal justice system and its treatment of infanticide. In five trials from 1877 to 1896, Maine courts sentenced six women to life in the Maine State Prison for the crime.[6] These life sentences were in striking contrast to the mild punishment meted out for infanticide elsewhere. Historian Ian C. Pilarczyk notes, "Studies have repeatedly demonstrated that nineteenth-century courts exhibited leniency and compassion toward women accused of infanticide, with concomitantly low prosecution rates in the Unites States, the United Kingdom, and elsewhere in Europe."[7] Constance Backhouse finds in her review of court cases in Canada that "most judges and juries refused to convict the female perpetrators of infanticide, even in cases of gruesome and indisputable evidence."[8] Studies in Ohio, Pennsylvania, New York, and Virginia have also found that women in the nineteenth century, if convicted of infanticide, served an average of three months in prison.[9] While Maine's population shared the compassion expressed elsewhere it was not exhibited in Maine's courts. How can we explain this anomaly?

Historians have agreed that there was a spike in infanticide at the end of the nineteenth century. They have linked the rise to demographic changes linked to industrialization, limited access to abortion, and changing expectations of children.[10] This surge in infanticides, however, was not met with harsh convictions elsewhere and so fails to explain the anomaly of the cases in Maine. For this, I argue, we must look more closely at the Maine communities and their relation to the state. In rural Maine, as these cases make

clear, communities were defined in two different ways. One was geographic: Maine law defined the rights and responsibilities of individuals within town boundaries. The other was gender: women, responding to the social, cultural, and economic gendered divisions of the nineteenth century, created bonds within and across geographic lines.

The trials—covered in great detail in the press—both facilitated and marked a shift in the justice system in Maine as the state increasingly asserted its control over the communities' response to crime. In the process of assuming control over the detection, adjudication, and punishment of crimes, the state facilitated the integration of the community into middle class modernity and, in doing so, undermined rural women's customary role in policing each other's reproductive lives.[11] That the state did so by highlighting the vulnerability of infants foreshadows future efforts to manipulate women's reproductive rights for other political ends.

Maine may have been one of the last states to make the transition from local to state criminal justice, but historians have noted similar transitions throughout the United States. Elizabeth Dale, in her *Criminal Justice in the United States, 1789-1939*, asserts that the history of criminal justice in the United States is not a simple story of the rise of the state. "Instead," she claims, "it is an account of how three sovereigns—national, local, and popular—struggled to determine who could define and enforce justice." She traces the tension between the state and community as governments strove to rationalize a local criminal justice system that was "decentralized, rested on local community norms, and … under significant popular control."[12] Local justice, she observes, was unique in that it "allowed jurors to carve out personalized verdicts that weighed common knowledge of the participants and the community's sense of justice more heavily than the law."[13] In contrast, state leaders, Laura Edwards asserts in her study of the legal culture in the antebellum South, "tended to see law in scientific terms as an internally consistent set of universally applicable principles … [and] favored a hierarchical institutional structure, with authority located in trained professionals at the top of the structure to ensure uniformity." By the 1850s, almost every state had succeeded in rationalizing its laws and appellate court decisions but "in practice, their goals [for uniformity and rationality] were not fully realized until after the Civil War."[14]

The shift from the community to the state undermined the authority of women who had, since colonial times, played a central role in determining cases that required knowledge of women's bodies. As Linda Kerber asserts:

> Juries of matrons were summoned to exercise their skills as midwives in cases in which female felons 'pled their belly' and called upon their pregnancies to postpone death sentences, or in which widows were suspected of feigning pregnancy in order to enable a fictive heir to inherit the estate or as inspectors of women's bodies in cases of infanticide or witchcraft.[15]

While women had no other official position in the courts beyond appearing as witnesses, both Dale and Edwards emphasize the role they played in enforcing local justice norms.[16] The purpose of the law, they argue, was to keep the peace by maintaining the social order, "keeping everyone—from the lowest to the highest—in their appropriate places, as defined in specific local contexts." As a result, it "raised collective interests over those of any individual."[17] In rural communities where mutuality was necessary for survival, keeping the peace ensured that no individual grudge festered in such a way as to disrupt the whole community. "Everyone participated in the identification of offenses, the resolution of conflicts, and the definition of law," Edwards writes. "Even those without rights … had direct access to local law."[18] Dale concurs noting, "In the early years of the

nineteenth century some of the excluded were able to influence the process of judgment in local courts in a variety of ways."[19]

Maine state law emphasized both the community's collective interest and women's roles in supporting it. There were over 500 townships in Maine and Maine's settlement law required that each township support those in need who had a settlement in the town. The town required first however that "the father, mother, grandfather, grandmother, children and grandchildren, by consanguinity, living within the state and of sufficient ability shall support persons chargeable in proportion to their respective ability." Faced with the responsibility to support all its members if the family did not, the community paid careful attention to family relations and to who did and did not belong. In this, women played a critical role.[20]

In addition, the law made clear women's legal responsibilities with regard to issues surrounding reproduction. It required that "if any woman shall conceal her pregnancy and shall willingly be delivered in secret by herself of any issue … which shall by law be a bastard," she should pay a fine of not more than $100 or be imprisoned for not more than three months. And if the infant were born dead and no one had seen the stillbirth, the woman was held responsible for its murder.[21] The law also required that a single woman be accompanied in her delivery in order to claim child support. The father of the child could be required to support the child, but only if she named him as she was giving birth. Called upon by law to participate, it is not surprising that Maine women were actively engaged in observing and reporting on single women's reproductive lives.

Women's shared experience of reproduction could, no doubt, influence their perspective on the community's response to infanticide and may account for the absence of infanticide cases in Maine prior to the Civil War. In her study of abortion and traditional female health networks in Ireland in the first half of the nineteenth century, Cara Delay writes, "Here we find leniency and understanding rather than condemnation, verifying that early twentieth-century communities were sympathetic towards and supportive of women's attempts to control their fertility, even when those attempts included abortion." Infanticide may be one step beyond abortion, but her argument that the shared experience of childbirth, breastfeeding, and childcare created a bond of sympathy among women is likely still applicable.[22]

The Transition from Local to State

Maine's transition to a professionalized criminal justice system occurred in the aftermath of the Civil War. Laura Edwards has noted how "reconstruction-era policies profoundly transformed legal institutions and legal culture throughout the nation." She advises historians, however, to expand their view for "many of the profound changes in legal culture did not happen at the federal level."[23] In Maine, a major demographic shift created an impetus for such a change. Some 73,000 men served in the war; as many as 10,000 never returned. Meanwhile, Maine's farms were in decline. As those in rural areas moved out of the state, Canadians and others moved in to work in the rapidly expanding mills.[24] The demographic shift challenged both the rural communities and the state, albeit in different ways.

With a declining population, still struggling to pay off war debts, Maine communities found it difficult to fulfill their settlement requirements to support their residents. At the same time, families, many of whom had lost their only male support, struggled to support their own. This struggle was reflected in the infanticide cases. In every case the father of

the single mother had died, leaving the families without male support. In every case but one, the infants were two weeks or older and acknowledged by other community members. This suggests that the single women were not motivated by shame, but were driven by poverty and, perhaps, as was true for Rose, had taken time to try to find a way to support their infants.[25] In two cases the grandmother of the child was the accused, in another the mother was assisted by her lover, and in yet another, two sisters were convicted together. The infanticides were, in other words, a family affair.

As families and towns faced the challenges posed by a declining population, those governing the state faced the challenge of keeping order amongst an increasingly diverse population. Many who came to work in the mills were French speaking and Catholic. Kenneth Palmer writes of the influx of French Canadians who were "unevenly distributed" in the state, congregating "in industrial areas." He notes that if it were not for this in migration, Maine's "population might have declined sharply after 1860."[26] Under these conditions the local system of justice—relying as it did on familiarity with the individuals and the circumstances involved—was too arbitrary for those who supported economic growth and the protection of property in the city. As Lawrence M. Friedman observes, "The city is the place where people confront strangers most continuously [and] where their lives, property and health are most at hazard.… A society that is heavily urban and industrial … has little tolerance for violent crime. Crime is bad for business and bad for the social order."[27] A new justice system was needed—one that could respond to crime in the city by setting an example, making clear to everyone the cost of disobeying the law. As the attorney general noted in 1878, "It is an axiom that the certainty of punishment, rather than its severity, is what deters from the commission of the crime." Other attorneys general agreed.[28]

Maine's transition occurred as its rural communities were in the process of being drawn into a national economy integrated by a new professional class whose members relied on status, rather than geography, to unite them.[29] Writing of poet and activist Elizabeth Oakes Smith, born in Yarmouth, Maine, in 1806, Adam Tuchinsky notes,

> The patriarchal world of Oakes Smith's rural youth, with all of its attendant dependency, authority, and reciprocity, was giving way to a more urban world characterized by anonymity, individuality, and autonomy … In its place emerged a … political economy and a cultural framework that that rested principally upon the values of individualism, contract, and rational self-interest.[30]

Historians of the social transformations that accompanied this economic shift have focused more on the family and the rising middle class than on the communities from which they emerged. Central to this transformation, they argue, was the transformation of the family from an economic unit, in which individual members were integrated into different community networks depending on gender and age, to a unit separated from the outside world. This new family was to offer a respite and, through a protected and "sentimentalized motherhood," provide youth with the values that would prepare them for competition in the public world.[31]

The infanticide cases explored here, however, suggest that through the end of the nineteenth century, the community continued to be at least as important as the family to the women involved. No "private realm" separated families and individuals from the rest of the community. The boundaries that existed in the community—embedded in the settlement laws—separated those who did from those who did not belong.[32] Michael Grossberg has observed that in the course of the nineteenth century the power of the head

of the household, the patriarch, shifted to members of the civil court. In his path-breaking book *Governing the Hearth* he argues that judges, especially the appellate jurists, seized the institutional authority to govern the home and thus "substantially rearranged the balance of power within the home."[33] I argue that at the end of the nineteenth century, at least in Maine, court officials seized the institutional authority to govern the community, and thus rearranged the balance of power within the community.

The agents of this new system were the attorneys general who, beginning in 1855, were elected by the legislature and tasked to attend all capital crimes, collect and maintain statistics on all criminal charges, and report annually to the legislature on "any changes and improvements in criminal law as seem needful."[34] At first, the legislature dismissed the importance of the position, even considering abolishing it all together, but over time, as the attorneys general accumulated statistics and first-hand experience of all capital trials, they gained authority within the legislature as experts of the criminal justice system. Gradually, they succeeded in shifting the balance of power in the courts from the local juries to state professionals.[35] Under their watchful eyes, the practice of investigating, adjudicating, and meting out punishment in criminal trials was transformed. [Figure 1]

Identification and Investigation

The need for diligence in investigating possible infanticides is suggested by the fact that in the first fifty years of statehood, Maine courts did not sentence any women to the Maine State Prison for the crime. This was true in spite of the fact that it is highly unlikely that no infanticides were committed in the state prior to 1877. Constance Backhouse observed in her study of court cases in Canada, "the overwhelming conclusion is that in the nineteenth century infanticide was viewed as a rather common feature of daily life."[36] The judge in the first successful trial in Maine admitted, "I was distressed at the time … by outside suggestions that this particular class of murder was not generally supposed to be … uncommon."[37] Scattered evidence suggests he had reason for this belief. In fact, two women had admitted to infanticide in court just four years before the first trial discussed here. In 1873, Hannah Littlefield admitted that she had left her newborn son to die in the privy where it had been delivered, and that she had heard him cry as she left. Her case was

Year	Name	Age (of Infant)	Residence	Sentence
1877	**Sophronia J. Libby	*22 (3 weeks)*	*Bethel*	*Life, Pardoned in 2 years*
1877	*Iantha A.E.Morgan*	*18 (3 weeks)*	*Bethel*	*Life, Pardoned in 2 years*
1880	*Sally Morrissey*	*23 (newborn)*	*Portland*	*Life, Pardoned in 3 years*
1882	**Mary Glynn*	*46 (11 Months)*	*E. Hampden*	*Life, Died in Prison 1912*
1882	*Sarah Whitten*	*22 (2 weeks)*	*Alfred*	*Life, Pardoned in 2 years*
1896	**Ellen Dolley*	*46 (3 weeks)*	*Windham*	*Life, Pardoned in 9 years*

Figure 1. Infanticides Investigated in Maine 1877-1896. Data gathered from the annual reports of the Attorney General for the State of Maine. Unless otherwise noted, all the towns listed are in the state of Maine.
*Married woman accused of murdering her grandchild.
**Married woman accused of assisting the birth mother in infanticide.

thrown out, however, due to an irregularity in the constitution of the grand jury.[38] That same year Lucy Ann Mink went on trial for murdering her lover. "She claimed," the *Daily Eastern Argus* reported, "to have had a child by him, which is said to have died under suspicious circumstances soon after birth." Later on, in the witness stand, Mink was "sharply cross-examined about the birth and death of a baby three years ago. She said she did not know how long it lived and on being pressed as to the time thought it might have been an hour … " When asked if she had her fingers around its throat when it died, she answered, "Couldn't say that I did."[39] It is striking that, in spite of this possible prevalence of infanticide, in over fifty years not one woman was successfully convicted of murder for infanticide in Maine.

We can understand this when we consider the local system of justice in which neighbors reported on and then judged other neighbors as they made decisions as jurors under the watchful eye of fellow community members. Neighbors would have known that the women were perilously poor, and that it was their responsibility as community members to provide support. Under the circumstances, they may have considered overlooking a suspicious death having been persuaded, as the judge in the first case suspected, "that the mother's well- being was more important than the child's life."[40] The judge, for his part, reported, "My heart is sore for these women, but it is because of their crime, and not because of its detection and punishment. That is necessary for the safety of other defenseless babes. Unless the people of this county are willing to see crimes of this sort multiply, they must take care that they don't escape punishment."[41]

The best way to avoid charging a woman with infanticide was to not call attention to the death of an infant in the first place. At a time when the infant mortality rate was high, it was difficult to determine when an infant's death should cause suspicion. For over a century, Maine had relied on the law, which, in essence, required that single women be attended as they gave birth.[42] In 1869, however, taking what would be one of the first steps in removing women from the criminal justice system, the Maine Supreme Court overturned that law in the case of Margaret Kirby. Kirby was an illiterate single woman in Portland convicted of concealing the birth and death of an infant who, had it survived, would have been a "bastard." In colonial times, Kirby's conviction under a centuries' old British law would have led to her hanging. In Maine in 1869, even though a doctor had determined that the body of the infant had already begun to decompose in utero, the court followed the (amended) law and sentenced her to three years in prison and a $100 fine. Kirby appealed her sentence and the Supreme Court Justices unanimously upheld her appeal. To prove that her child had been born dead, they asserted, Kirby did not have to have a witness present at its birth. The fact that the infant had been stillborn could be attested to by medical examiners after the fact. "What good can come of publicity until investigation is desired? Who shall call upon her and require her explanation? Must she answer the first over-curious, meddlesome, inquisitive scandal monger or be subjected to the penalty?" they asked rhetorically.[43]

In spite of the Supreme Court decision, and in line with their longstanding practice of keeping an eye on single pregnant women, the women surrounding the infanticides that followed continued in their "over-curious, meddlesome, inquisitive" behavior. In every one of the infanticide cases discussed here (and those that followed) it was women who named the mother to the authorities and provided specific details of her life. [44]

For the attorneys general who were gaining authority, this was not enough. They urged the Legislature to replace this informal observation with professional investigation. In their annual reports they did not always offer the same recommendations for improving the criminal justice system, but there was one on which they all agreed. The local system of

coroners' juries, tasked with "inquiring into the cause [and manner] of death," was "worthless."[45] It was critical, they argued, to bring professional expertise to bear on the identification and investigation of all deaths.

The office of the coroner derived from British common law under which an appointed member of the community, informed of a suspicious death, picked a jury "of six good and lawful men of the neighborhood" to "inquire into the cause and manner of death." The jury was required to look at the body but could also summon witnesses and demand expert testimony. Although the system operated in every state in the nineteenth century, it was a system which seemed, concluded two historians, "to have always operated … in a kind of obscurity."[46]

For those who wished to prosecute all crimes impartially, the community coroner posed a particular challenge. Beginning with Josiah Hayden Drummond in 1861, the attorneys general repeatedly called for a change in—if not abolishment of—the coroner system. Having once noted that the public was "at great expense every year to pay the costs of unsuccessful prosecutions," he argued two years later:

> It is well known that in nearly all cases of suspected homicide great difficulty is experienced in collecting proof. Especially where the evidence is circumstantial. The coroner's inquest affords the best opportunity of ascertaining facts as they have then recently transpired. It should be attended by some person in behalf of the government to gather all the facts and circumstances bearing on the case. This cannot be well done by those unskilled in legal proceedings. But as the practice now is, it rarely happens that any person connected to the proceedings has any experience in criminal prosecutions. Consequently, it becomes very difficult and often impossible for the prosecuting officer to obtain the proofs that actually exist.[47]

Sixteen years later Lucius Emery concurred, "I doubt if coroners' inquests upon dead bodies are of sufficient use to justify the expense… . These inquests determine nothing … I think the State can safely abolish the whole antiquated machinery."[48]

In spite of repeated calls for change, the coroner system persisted, but the attorneys general successfully pushed for additional resources to investigate crimes. Emery was particularly successful. In 1876, he gained the legislature's permission to "detail officers from any part of the state to investigate the facts of such cases." A year later, the year of the first successful infanticide trial, he gained approval to call upon the expertise of medical experts and to appoint special officers to investigate a murder.[49] There was an almost immediate uptick in successful prosecutions. "This year has been quite prolific in murder trials compared with the preceding year," Emery noted with satisfaction.[50]

The very fact that there would be an official outside investigation of the first infanticide case caused sisters Iantha Morgan and Sophronia Libby to turn against the woman who had taken Iantha in and assisted her at her birth, thus highlighting the potential dangers of participating in a female support network of childcare and informal adoption.[51]

The sisters' struggle for survival is clear from the decisions they made in the decade before the trial. Between 1860 and 1864, their two older brothers were killed in the Civil War and their father died, leaving their mother with five children to support. In 1868, at age seventeen, Sophronia married James Libby and moved to Locke's Mill, five miles away from her home in Windham. Five years later her sister, Iantha, then thirteen, moved in with the married couple, no doubt to save the sisters' mother the expense of Iantha's support. James, who worked in the mill and had by then two children to support, did not welcome Iantha into his household. When Iantha became pregnant, she moved in with

neighbors, the Crockers, who lived a quarter of a mile away. The two sisters continued to see each other daily and others noticed that the married sister continued to provide the unmarried sister with food only when James was away. Mrs. Crocker assisted Iantha in her delivery and for the next two weeks Iantha greeted various community members from her childbed at the Crockers'. Charles Crocker told the court that he had seen the mother and son on the bed two or three times and told Iantha her son "was smart and might be president someday." Another Crocker bought the child flannel at the store at Iantha's request and another came to check on its health. Mr. Martin, a selectman of Bethel, visited her and "told her she must take care of the child." When the baby was found dead in a shallow grave in a quarry, the sisters and the Crockers scrambled to blame one another.[52]

According to the sisters, Mrs. Crocker had wanted to adopt the baby and had asked Iantha "not to nurse the child because it would make trouble when Iantha went away." When Mrs. Crocker ran out of milk for the baby, she appealed to the town for support but without success. After the hungry infant cried all night, she gave him rum out of a spoon and then, in desperation, allowed the sisters to take it away.[53] He died soon thereafter.

The Crockers countered that Iantha never wanted the baby and that her brother-in-law refused to let it into his house. When he cried, Charles Crocker reported, Iantha said she wanted to "kill the brat." He chided her "not to talk that way, to take care of it," but then the sisters took the baby from the Crocker home and disposed of it.[54]

The sisters were found guilty, and thus served as a warning to others that the practice of informal adoption in hard economic times could be dangerous. The attorney general, however, was satisfied. He commended the county attorneys who "superintended the preparation of the cases for trial and are entitled credit for their faithfulness and efficiency. The sheriffs and other officers were efficient and zealous. The prisoners in each case were ably defended and all their legal rights fully protected by watchful and competent counsel."[55]

Adjudicating: Attention to the facts

Once having succeeded in indicting a woman for infanticide, the state then had to ensure that the jury, drawn from the community, would not be swayed by her circumstances to acquit but would instead pay strict attention to the law and the facts. Historians concur that local juries rarely followed the letter of the law. Roger Lane notes of local justice, "jurors were the unpredictable wild cards in the system … the twelve men in the box often undermined careful precedents and black letter law, by in effect finding excuses to punish folks they thought had earned it and to free those who had not on the basis not of the evidence but of their own moral judgment."[56] The men of the jury may not have had the same sympathy for the infanticide as the women of the community, but they would have been fully aware that a woman had not received the support that she was entitled to.

As the infanticides went to trial, court officials insisted, time and again, that the jury was *not* to succumb to sympathy. They admitted, in every case, the desperate condition of the women involved but insisted that considering the plight of the women was not jurors' responsibility. As Prosecuting Attorney General Emery reported in the case of Iantha and Sophronia, he might not have prosecuted the sisters "had not the sense of duty been stronger than that of sympathy … it was a distressing case. The poor women had killed the child in desperation arising from poverty and shame … but the fact of killing was proved and the jury could do no less than render the verdict that they did."[57] And Judge Barrows, who presided over the trial, told the jury, "The prerogative of mercy … belongs not to us

but to another department… . We are at liberty to act only upon the law, and the facts, as they are laid before us."[58] At the end of the trial the judge congratulated "the people of the County of Oxford that they have sent here for jurors men who are capable of doing their duty as jurors … and who will not trifle with their oaths and consciences because their minds are led to a conclusion which through pity they regret."[59]

The call to duty for the state would have had particular resonance with many men who had so recently served in the Civil War and found their commitment to their families in conflict with their commitment to the state. As one wrote to his mother, "I cannot tell you how great is my anxiety for you. I cannot satisfy myself that I am doing right in staying in the army. Does my duty demand that I stay here? Or ought I to come home? If I knew just what my duty was I would try and be content to do it."[60]

While prosecutors cautioned against sympathy, when community members wrote to the governor petitioning for the women's pardons, they argued that the facts were more complex, that one needed to look at both the context and the individual to understand the crime. Community members emphasized the network of relationships in which the women were embedded and the challenges that the women faced in their efforts to support their children. The pardon petition for Sophronia—signed by over 250 including a deputy sheriff, a registrar of deeds, and the selectmen of both Greenwood and Bethel—claimed she was "the mother of two children who need her care and that the evidence of her guilt [was] very weak in the opinion of many if not most of those who were present at the trial."[61]

Sally Morrisey, who delivered in a privy in Portland, was described in the newspaper as a "disreputable woman, mother of three illegitimate children." Nevertheless, seventy-three community members—some of whom had originally reported her to the police—urged the governor to consider the circumstances. She was, they noted, "under the influence of intoxicating liquors to such a degree as to be almost irresponsible for her act" and added, "has the sympathy of the community who have known her and the circumstances of her crime." County Attorney Charles Libby agreed, "I do not think it was a case of deliberate infanticide but as I remember … the girl was in drink and was delivered in a privy where she came for another purpose than confinement." He added, "Her mother is entitled to much sympathy for the manner in which she has labored to support the children … "[62]

Sarah Whitten, convicted of chloroforming her child and throwing him into the Kennebunk River, did so, petitioners argued, at the insistence of her lover. The *Kennebec Daily Journal* observed that he "exercised a wonderful influence over the woman, being desirous of destroying all evidence of his criminal intimacy with her."[63] The paper reported that although Sarah had "not borne an enviable reputation," community members knew "she had been keeping company for some time with Richard Day" who "has led a wild life, and it is said had a questionable, but not criminal, character." Knowing he was "a rather tough character for one of his years … people had no hesitation in believing the story of the Witten women [sic], to the effect that he advised her to drown the child."[64] Sarah showed resourcefulness in escaping observation until after her baby was born, enlisting help from the father, and finding work following the infant's death. Nevertheless, Nathan Dane, former treasurer for the state, wrote that, "she was not considered an evil disposed girl but rather easily influenced. From the best information I can obtain I infer her discharge would merit the approval of the majority of the citizens of Alfred, possibly most of them." And, indeed, close to 150 requested her pardon.[65]

Community sympathy, however, had its limits. The sympathy for the women involved in the infanticide cases extended only so far. It depended on the relation between people,

connected by their dependence on one another as defined by custom and the state settlement law. Those who did not belong to the community, for whom there was no obligation to provide support, did not receive the same sympathy.

When Rose Dolley, who had confessed to strangling her son and leaving him in a snowy wood, admitted that it was her mother, not she, who had killed the child, the court officers collected a purse of over fifty dollars for Rose and the deputy sheriff took her home until she "could recover the awful physical and mental strain she had undergone and plan for the future."[66] The *Daily Eastern Argus* concluded, "To say that [her] acquittal … met with nearly universal public approval is putting the matter very mildly for it is doubtful if any person charged with the gravest crime recognized by law ever had more completely the sympathy of the community. Even in the days when the girl stood within the dark shadow of apparently absolute guilt … "[67]

For Rose's mother, however, there was no such sympathy. While the newspapers recognized that she had the appearance of "a hardworking woman who has never enjoyed the luxuries of life but has had a hard struggle for existence," they accused her of having misplaced values.[68]

> The error of her daughter and ITS DEPLORABLE RESULTS did not appeal to her as it would to a more enlightened woman. On the contrary… . Instead of endeavoring to lighten the burden of remorse and shame which her daughter was carrying she only added to it with her bitter reproaches… . An intelligent woman or one with proper moral tendencies would have found some way to overcome such a difficulty, but Mrs. Dolley did not possess those qualities.[69]

It should be noted that although Rose was born in Windham, her mother was from England. While Iantha, Sophronia, Sarah, and Sally were all pardoned within three years, Rose's mother served almost eleven years before she was released.

If sympathy was lacking for Mrs. Dolley due to her "unenlightened response to Rose" (and perhaps her Englishness), another grandmother sentenced for life was arguably driven to her actions through the absence of any sympathy or support. Mary Glynn was an Irish immigrant living in East Hampden. In 1881, Mary's fifteen-year-old daughter had a baby. Within a number of months Mary's husband died leaving her as the sole provider for her daughter Mary, grandson Patrick, and two other daughters aged five and three. Her family situation did not go unobserved. As the newspaper reported in Feb. 1882, "About a week ago, parties called at the station house and informed Marshal Reed that the fifteen-year-old daughter of Mary Glynn of Hampden had a baby about eleven months old and that the infant had suddenly disappeared in a manner that aroused suspicion of foul play." Mary told the officers who came to investigate that she had given the baby to a Mrs. Bragg. Mrs. Bragg, however, denied ever having helped her. She hadn't seen Glynn, she told the officials, for fifteen or eighteen years.[70]

It is probable that Glynn had served as a domestic in Bragg's household, as domestic service was the most common job for young Irish women. The intimacy of the relationship perhaps allowed Glynn to imagine support that was not available to her. Glynn told the officers that Bragg had brought new clothes for the child and dressed it. She reassured her daughter after taking the child that she had brought her grandson to the orphan's home where there were "a lot of children and cradles and women," and that she had left him asleep in a cradle.[71]

While Glynn had imagined a sympathetic response, in reality she found none. It took the grand jury fifteen minutes to determine that Mary should stand trial for murder. [72]

Found guilty and sentenced for life, she attracted little community support for her release. She died after thirty years in prison at the age of seventy-six.[73]

Sentencing: The Certainty of Punishment

Once found guilty, the state argued, the women must be given the same punishment as the men, for all murder was to be treated the same, and the punishment for murder was prison for life. As Judge Barrows—involved in two of the trials—made clear, "There must not be one law for man and another for a woman else must peace and well-being of society suffer in consequence."[74]

Ironically, the very circumstances that led to the crime, the one that may have tempted the community to overlook the suspicious death, were what helped the court convict the women of premeditated murder. If a woman were poor and thus had reason to kill her baby, then it followed that she had killed deliberately, with malice aforethought. In other words, if poverty drove her to get rid of her infant, she had to be charged with murder—for manslaughter (with its lesser sentence) was only for those who had not intended to kill.[75]

The defendants in the infanticide trials, the prosecutors argued again and again, had to be punished to the full extent of the law to make sure that others would learn the consequences. Even insanity was not an excuse. Mary Glynn's trial was "constantly interrupted by the frantic demonstrations of the prisoner who talked and wept at turns, requiring the united efforts of two or three officials to keep her quiet." She claimed her husband had put a curse on her because she had not cared for him in his last illness.[76] For Attorney General Cleaves this offered one more opportunity to push for the firm application of the law. If, he argued, the insanity plea were allowed to prevail,

> we might as well sweep from existence our courts of justice, expel the jury from the jury box, and abandon all attempts to enforce the criminal laws of the State … If insanity exists in this case it exists in every case of brutal murder, and the only thing necessary to be done hereafter in order to escape punishment will be for the accused to go before a jury and declare that at the moment of inflicting the fatal blow he or she was acting under an insane delusion.[77]

While the governor and council, in response to the petitioners, pardoned all but one of the six women involved in these infanticide trials, the attorneys general and judges strove to postpone the pardons as much as possible. As Attorney General Emery warned in response to the first petition for Sally Morrissey, "To pardon her now would shake the confidence of the people in the firm steady enforcement of the law against crime."[78]

Aftermath

The "swift and inevitable retribution" was to serve as an example and deter others. As Barrows warned in the first trial, "Unless the people of the county are willing to see crimes of this sort multiply, they must take care that they don't escape unpunished."[79] But in the two decades following the first infanticide convictions, from 1896 to 1917, twelve more infants met a suspicious death. In these cases, as in those before, community women continued to keep an observing eye on single women and to report any suspicious disappearance of an infant to the officials. They also provided support where necessary,

invited women who were strangers to them into their homes, and discriminated against those who did not belong.[80]

While the women continued in their practice of attending and supporting single women in their deliveries, [81] there was one change of note. While in the earlier cases, only one infant died as a newborn, in the later cases seven—more than half—did. The reason is not clear. Was there an increased fear of investigation, forcing families to act quickly? Had the middle-class shame with regard to out-of-wedlock pregnancy taken hold in the rural areas? Whatever the reason, the newborn deaths were harder to prosecute in spite of the state's intention to protect the innocent.

For example, Mareba Soper was a widow living with her mother Mrs. Nettie Gray in Penobscot, when "suspicion was aroused in the neighborhood that Mrs. Soper had given birth to an illegitimate child and the child unlawfully met its death in the Gray's house." The baby had been delivered by a doctor who, as required by law, filed a birth certificate even though the women had asked him to keep the birth secret. Neighbors, hearing about the birth certificate, made a call at the home to see the baby—and found the baby gone. They reported their suspicions to the authorities. The mother and daughter claimed the baby died a natural death but the body had been "secretly disposed … in order to keep quiet so far as possible the fact of the birth of the child." The grand jury returned no indictment. "It is very doubtful," the attorney general reported, "if any further evidence can be found to show that the crime suspected was actually committed."[82]

Even as community women continued to engage with single pregnant women as they had before 1896, the state's response to convicted women changed dramatically. Although the courts continued to sentence men to life in prison for murder, not one of the women charged with infanticide between 1896 and 1917 received a life sentence. Of the nine convicted, only six were sentenced to the Maine State Prison, all but one for five years or less.[83] One explanation for this dramatic shift in the punishment for female infanticides lies in the fact that at the turn of the century Maine, in line with a national reform movement, implemented a number of criminal justice reforms that were both flexible and highly gendered. Plea bargaining, indeterminate sentencing, and parole made sentencing flexible and at the same time, placed decision-making squarely in the hands of professionals who could decide what charges to bring and what sentence to offer as well as when to release a convict. In addition, the creation of alternatives to prison as well as an acceptance of pleas of not guilty by reason of insanity allowed prosecutors the latitude to treat women differently from men.[84] [Figure 2]

While the reforms brought flexibility, they also limited community involvement.[85] As in other states, community members could apply for the pardon of anyone confined in a jail or a prison.[86] Throughout the nineteenth century both women and men in Maine signed petitions and wrote letters requesting pardons in great numbers. These pardon requests were so successful that in 1892, the prison warden reported that a full one-third of all prisoners in the history of the prison had been pardoned. Among the first infanticides, only one, Mary Glynn, died in prison; four were released within three years. Under the state's reforms, however, parole gradually replaced the pardon system. With parole it was the prison officials, and not the community, that requested and thus took the initiative for early release, and prison officials were inclined to base their decisions not on a person's place in the community but on his or her behavior in prison. With indeterminate sentencing and shorter sentences in general there was less incentive for community members to organize a pardon petition drive. Of the later infanticides, only one woman was pardoned, and that was at the request of town officials who requested that Sarah Tapley be released because she was pregnant.[87]

Year	Name	Age (of Infant)	Residence	Sentence
1903	*Mary Happy*	*30 (2 weeks)*	*Lowell, MA*	*30 days in jail*
1905	*Susie Collins*	*19 (newborn)*	*Blaine*	*2 years*
1905	**Fannie Collins*	*40 (newborn*	*Blaine*	*Not indicted*
1905	**Nettie Gray*	*45 (newborn*	*Penobscot*	*Not indicted*
1905	*Lena M. Bean*	*23 (6 weeks)*	*Portland*	*Not guilty-Insanity*
1908	*Nellie Crocker*	*22 (newborn)*	*Guilford*	*Not indicted-Insanity*
1909	***Ella Hutchinson*	*24 (3 months)*	*Bangor*	*Not Indicted-Insanity*
1910	**Sarah Tapley*	*44 (newborn)*	*Bridgewater*	*5 years, pardoned after 5 months, pregnant*
1911	***Grace E. Royce*	*24 (newborn)*	*Augusta*	*20 years*
1912	**Ada Dodge*	*20 (1 week)*	*Princeton*	*3 years*
1912	*Leona May Marshall*	*21 (1 week)*	*Princeton*	*3 years*
1917	*Zenaida Gobiel*	*29 (2 weeks)*	*Quebec, CA*	*5 years*
1917	*Lulu Wyatt*	*20s (newborn)*	*York Harbor*	*Women's Reformatory*

Figure 2. Infanticides Investigated in Maine 1903-1917. Data gathered from the annual reports of the Attorney General for the State of Maine.Unless otherwise noted, all towns listed are in the state of Maine.
*Married women accused of infanticide.
**Married women accused of assisting the birth mother in infanticide.

No development was more critical to the loss of community control in infanticide cases, however, than the creation of the Reformatory for Women in Skowhegan in 1915.[88] Earlier court officials had called for "swift and inevitable retribution" and for fitting the punishment to the crime and not the individual who perpetrated it. The Women's Reformatory, however, treated all women the same regardless of their crime. Whether they had committed infanticide, as Lulu Wyatt a "negro laundress" had, or had been "lewd and lascivious," the state committed them all to the reformatory where they were confined until the matrons in the reformatory determined that they had achieved "increased moral strength" and "an economic independence" and could be placed in a "safe-guarded environment."[89]

It was still women who were in charge of women in the reformatory, but they were professional women of the middle class whose values, as reflected in the reformatory's policies, were different from the values of the women in the rural communities. When inmates were released they were not returned to their communities unless they were going to their immediate families. As the reformatory's biennial report noted, "When she appears to have reformed and has had sufficient training to make herself supporting, [she is] placed on parole. During this time she is kept under close observation by the parole officer and every effort is made to protect her from wrong influence."[90]

And while poverty had been a major cause of infanticide, and the matrons had claimed they were training women to be self-supporting, economic independence was clearly not a priority for the matrons as it would have been for the community. As the report noted:

> From choice all would prefer to work in mills or factories on account of the increased wage available and because they feel more free. For that very reason we do not want them in the mills or factories. It can only mean harm for one of this class to have all the money they can spend. Freedom is something they have not yet fully learned to use.[91]

The matrons instead placed the women as domestic servants in families of "moderate means" who would "take them in as one of the family where they could be closely observed."[92] When the women who were released from the reformatory chose to marry, if they chose to marry, they had to seek permission not from their families but from the matrons. In the space of forty years the control and comfort of young women by women in the community was displaced by the control and comfort provided by middle-class women from the city—those who had the interests of the middle class and not the rural communities at heart. The community network, as described by Osterud, was breached, if not broken.

Conclusion

Between 1877 and 1896 Maine courts sentenced six women to life in prison for infanticide, in sharp contrast to the lenient sentences meted out for infanticide elsewhere not only in the United States but also in Europe. Every trial was widely covered in detail in the press—and in every case the prosecutor and judges drew attention to the "poor defenseless babes." One can only assume that these high-profile cases served to gain public support for the state's call for impartial and consistent justice for all. Women's reproductive rights and the plight of the "defenseless babe" have often served as a basis for political maneuvers. In any event, the infanticide cases make clear how the state succeeded in shifting control over capital crimes from the community to the state, and what was at stake for women and the justice system.

The harsh sentences Maine's courts meted out for infanticide may have been an anomaly, but the community relationships that the trials reveal were not. Historians have noted how often rural women's mutual aid offered within families was extended to a larger community network and how their collective sense of justice conflicted with that of the state.[93] As states gained control, the professionalized criminal justice systems disrupted rural women's networks and undermined women's and the community's influence on the justice system. If we are to investigate the increasing role of the state as William Novak has urged us to do, we must pay attention to both gender and locality.[94]

Legal scholar Marina Angel has reflected on the necessity of having juries representative of the whole population. Citing the short story, "Jury of Her Peers," that was based on a trial in the rural Midwest, Angel discusses the "biases built into our current laws and perceptions of facts," and stresses the importance of integrating the perspectives of women and other outsiders into the legal system.[95] It was not until 1975 that the Supreme Court determined that the "voluntary exclusion of women from all juries was unconstitutional."[96] By that time, criminal justice reforms had placed the vast majority of decisions in criminal cases in the prosecutors' hands and the jury had become a "totally sanitized panel of people who knew nothing, had heard nothing, suspected nothing, understood nothing" and treated the accused as a "complete stranger."[97] Today, less than 4 percent of all criminal trials are decided by a jury.

While Maine residents can still appeal to the governor for a pardon, there is no culture within the communities of seeking pardons and very few people—women or men—even know they have such a right. Instead, prisoners in every state must rely on a parole board—whose members are more concerned with a prisoner's good conduct and proof of reformation than his or her acceptance by the community.[98] That the community might have a role in an inmate's release is rarely, if ever, considered.

As a society, we are increasingly made aware of the injustices of our legal system.[99] Without a doubt, the local justice in Maine at the end of the nineteenth century had serious flaws—most importantly, not extending the sympathy given to community members to those who were different or "from away." It nevertheless worked to ensure that everyone was subordinated to the need to keep the peace. The state law that replaced it was established to protect individual rights. And as Laura Edwards notes, those "excluded from the category of people with rights—white women, African Americans, and the poor—found it difficult to make themselves heard and their concerns visible within the body of state law."[100] As recent events have made clear, that remains a serious problem today.

Acknowledgments. I want to acknowledge first and foremost Edward Schriver, who first introduced me to the story of Rose Dolley. A heartfelt thanks as well to my husband, Paul Schroeder—editor extraordinaire—to my anonymous reviewers for their crucial insights, and to my two communities of writing women who offered critique and encouragement: Betsy Beattie and Carol Toner; and Mary Freeman, Lucretia Grindle, An Nguyen, Jennifer Pickard, and Emma Schroeder.

Notes

1 *Daily Eastern Argus* (Portland), Jan. 30 and 31, 1896.

2 *Daily Kennebec Journal* (Augusta), Jan. 30, 1896.

3 Nancy Gray Osterud, *Bonds of Community: The Lives of Farm Women in Nineteenth-Century New York* (Ithaca, NY: Cornell University Press, 1991), 2. For a comprehensive exploration of rural women's reciprocal relationships in Maine, see Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard Based on Her Diary, 1785-1812* (New York: Random House, 1990).

4 Rudi Batzell and Sarah Coffman note in their study of Chicago that "domestic servants were the occupational group most likely to commit infanticide in the nineteenth century." They cite the isolation and close observation that domestic servants were subject to in the city. Rose was pregnant by her fiancé who died before they could marry. Rudi Batzell and Sarah Coffman, "Infanticide and Abandonment in the Industrial Metropolis: Gender, Reproduction and Capitalism in Chicago, 1870–1911," *Gender & History* 32 (Oct. 2020): 581–601.

5 Mrs. O'Hara's Affidavit, State v. Rose Dolley, Cumberland County, 1896.

6 Two women who were sisters were tried together. I identified the cases by referring to the annual reports for the attorneys general who were required to report on every capital case under review that year. Only three other women in the history of the state had been given life sentences—all for the murder of adults. Edward Schriver, "Female Felons at a 'Man's Prison': 1864-1885," unpublished. In possession of the author.

7 Ian C. Pilarczyk, "'So Foul a Deed': Infanticide in Montreal, 1825-1850," *Law and History Review* 30 (May 2012): 579 and 580.

8 Constance B. Backhouse, "Desperate Women and Compassionate Judges: Infanticide in Nineteenth-Century Canada," *University of Toronto Law Journal* 34 (Autumn 1984): 475.

9 Michelle Oberman, "Understanding Infanticide in Context, Mothers Who Kill, 1870-1930 and Today," *Journal of Criminal Law and Criminology* 92 (Spring/Summer 2002): 707–37. See also Jeffrey S. Adler, "Halting the Slaughter of the Innocents: The Civilizing Process and the Surge of Violence in Turn-of-the-Century Chicago," *Social Science History* 25 (Spring 2001): 29–52; Randolph Roth, "Child Murder in New England," *Social Science History* 252 (Spring 2001): 101–47; Kenneth H. Wheeler, "Infanticide in Nineteenth-Century Ohio," *Journal of Social History* 31 (Winter 1997): 407–18; Elna Green, "Infanticide and Infant

Abandonment in the New South: Richmond, Virginia, 1865-1915," *Journal of Family History* 24 (Apr. 1999): 187–211; Ellen Wright, "Unnatural Mothers: Infanticide in Halifax, 1850-1875," *Nova Scotia Historical Review* 7 (1987): 12–29.

10 See, for example, Roth, "Child Murder in New England."

11 The role of women in local criminal cases can be seen in the petition for the pardon of Dr. Call, imprisoned for abortion in 1837. Thirty-nine people offered affidavits, over one-third of them women. Of the 615 people who signed petitions requesting the pardon, almost half were women. Pardon Papers of Dr. Moses Call, 1837. Maine Executive Council Papers, Maine State Archives, hereinafter MECP.

12 Popular justice referred to extra-legal actions which were, according to Dale and others, less common in the Northeast. Elizabeth Dale, *Criminal Justice in the United States, 1789-1939* (New York: Cambridge University Press, 2011), 3 and 136.

13 Elizabeth Dale, *Criminal Justice in the United States, 1789-1939* (New York: Cambridge University Press, 2011), 30. On the changing nature of the jury see, for example, Linda Kerber, *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship* (New York: Hill & Wang, 1998); Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993); Roger Lane, *Murder in America: A History* (Columbus: Ohio State University Press, 1997).

14 Laura F. 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), 29, 20, and 33. For an investigation into how prosecution of infanticides shifted after the Civil War in the South see Felicity Turner, "Rights and the Ambiguities of Law: Infanticide in the Nineteenth-Century South," *Journal of the Civil War Era* 4 (Sept. 2014): 350–72.

15 Kerber, *No Constitutional Right*, 130. See also James C. Oldham, "'On Pleading the Belly': A History of the Jury of Matrons," *Criminal Justice History* 6 (1985): 1–64 and Sara M. Butler, "More Than Mothers: Juries of Matrons and Pleas of the Belly in Medieval England," *Law and History Review* 37 (May 2019): 353–96.

16 It wasn't until 1973 that all states granted women the right to serve on juries. See Kerber, *No Constitutional Right,* 128–39.

17 Edwards, *The People and Their Peace*, 7.

18 Edwards, *The People and Their Peace*, 7.

19 Dale, *Criminal Justice,* 40.

20 G. Wilmot Carruthers, *Maine Pauper Laws: Statutes and Decisions* (Brewer, ME: L.H. Thompson, 1940), 8. For more on Maine's settlement laws, see J.E. Hankins, "A Cage for John Sawyer: the Poor of Otisfield, Maine," *Maine History* 34 (Fall 1994): 96–115.

21 *Laws of Maine* 1821, ch. II, sec. 9.

22 Cara Delay, "Kitchens and Kettles: Domestic Spaces, Ordinary Things, and Female Networks in Irish Abortion History, 1922-1949," *Journal of Women's History* 30 (Winter 2018): 21.

23 Laura F. Edwards, *A Legal History of the Civil War and Reconstruction: A Nation of Rights* (New York: Cambridge University Press, 2015): 9.

24 Earl Shuttleworth, *Maine Calling*, Maine Public, Jan. 9, 2020.

25 The mother of the one infant killed at birth had, the newspaper noted, three "illegitimate" children *Daily Eastern Argus* (Portland), Oct. 21, 1878.

26 Kenneth T. Palmer, *Maine Politics* (Lincoln: University of Nebraska Press, 2009), 12 and 14. According to David Vermette, in the last thirty years of the nineteenth century, the French-speaking and Catholic Franco population of New England grew by a factor greater than five. By 1900, one out of every ten New Englanders was Franco. David Vermette, *A Distinct Alien Race: The Untold Story of Franco-Americans, Industrialization, Immigration, Religious Strife* (Montreal: Baraka Books, 2018), 107.

27 Lawrence M. Friedman, *A History of American Law,* 2nd ed. (New York: Simon and Schuster, 1985), 590. Sam Mitrani identifies a similar response from property owners that led to the development of the police force in many states. *The Rise of the Chicago Police Department: Class and Conflict, 1850-1890* (Urbana and Chicago: University of Illinois Press, 2013).

28 *Report of the Attorney General of the State of Maine*, 1878 (Augusta: Sprague & Sons, 1878), 8.

29 Robert Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967).

30 Adam Tuchinsky, "'Woman and Her Needs': Elizabeth Oakes Smith and the Divorce Question," *Journal of Women's History* 28 (Spring 2016): 43–44.

31 Michael Grossberg provides the framework for understanding this modern republican family and its relation to the state. He argues that the end of the eighteenth and early nineteenth centuries saw the

emergence of a new idea of family, a "republican approach to domestic relations" that replaced the "hierarchically organized, interdependent colonial society in which the family was an integral part" with a new republican ideal in which "families began to shed their public, multifunctional forms and stand apart in an increasingly segregated, private realm of society." Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 5 and 6.

32 It should be noted that Maine was a predominantly white state. Its indigenous peoples were isolated on their reservation lands while the small number of Maine African Americans were covered by the settlement laws. See H.H. Price and Gerald E. Talbot, *Maine's Visible Black History: The Chronicle of Its People* (Gardiner, ME: Tilbury House, 2006).

33 Grossberg, *Governing the Hearth*, xi–xii.

34 *Report of the Attorney General of the State of Maine, 1869* (Augusta: Owen & Nash, 1870), 3. Previously the attorney general had been appointed by the governor.

35 Beginning in 1859, the attorneys general successfully urged the legislature and the courts to, among other things, formalize the method of drawing juries and to ensure that the judge, and not the jury, determine the law in criminal cases. As a result of their lobbying, Maine was the first state to allow defendants to testify on their own behalf and one of the first to allow husbands and wives to testify against one another. See *Report of the Attorney General of the State of Maine, 1859* (Augusta: Stevens & Sayward, 1860), 4, and *Report of the Attorney General of the Stat of Maine, 1860* (Augusta: Stevens & Sayward, 1861), 5. *Report of the Attorney General of the State of Maine, 1871* (Augusta: Owen & Nash, 1872), 3, and *State v. Wright* 35 Maine 328 as quoted in Mark DeWolfe Howe, "Juries as Judges of the Criminal Law," *Harvard Law Review* 52 (1939): 597, n57. See also Albert W. Alschuler and Andrew G. Deiss, "A Brief History of the Criminal Jury in the United States," *The University of Chicago Law Review* 61 (Summer 1994): 867–928.

36 Backhouse, "Desperate Women and Compassionate Judges," 475.

37 William G. Barrows to Governor's Executive Council, Nov. 17, 1878. Pardon Papers Sophronia J. Libby, *MECP, 1878 #646.*

38 The newspaper reported that the "man responsible" was not only married but also a bigamist. Littlefield was a domestic servant. *Daily Eastern Argus* (Portland), May 20, 1873; State of Maine v. Hannah A Littlefield, York County, September Term, 1873; *Daily Kennebec Journal* (Augusta), May 19 and 20, 1873.

39 This was the second of Mink's infants that died under suspicious circumstances. Mink was found not guilty of murder of her lover. *Daily Kennebec Journal* (Augusta), Oct. 13, 1873, 2; and *Daily Eastern Argus* (Portland), May 19, 1873, 2 and 3. See also *Daily Kennebec Journal,* Oct. 8, 1873, 2.

40 *Oxford Democrat* (Paris, ME), Apr. 10 1877.

41 *Daily Eastern Argus* (Portland), Nov. 2, 1878.

42 See above. Maine inherited its law from Massachusetts.

43 *State of Maine v. Margaret Kirby*; 57 Me. 30. For a history of the 1624 English law that preceded, 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), ch. 1.

44 For example, in 1878, Sally Morrissey gave birth in a privy in Portland. She threw the infant into a cellar and returned the next day to conceal the body in the back of a coal bin. Sally's neighbors "noticed she was in that delicate condition which women like to be in who love their lords" and when they saw that she was no longer pregnant reported the fact to the police. *Daily Eastern Argus* (Portland), Oct. 21, 1878. In 1881, Sarah Whitten's employer, Mrs. Traves, noticed that Sarah "acted in an uneasy manner" as she read an article in the evening paper that provided a description of the woman seen near where "the body of a child about six weeks old … had been found." When Sarah announced she would spend the night with friends, Mrs. Traves watched her depart, noticed that she went in the opposite direction from where her friends lived, and reported her suspicions to her husband. Together they went to the police. *Daily Eastern Argus* (Portland), July 21, 1881.

45 *Report of the Attorney General of the State of Maine, 1889* (Augusta: Burleigh & Flynt, 1889), 10 and 11; *Report of the Attorney General of the State of Maine, 1899-1900* (Augusta: Kennebec Journal, 1901), 13.

46 Even a handbook on coroners published in 1881 described the information available as "scanty" and "scattered." Massachusetts was the first state to abolish the position, which it did in 1877. New York was next in 1915. It was not until the 1990s that "most states had either gotten rid of the coroner altogether and replaced this office with a medical examiner, or required a medical examiner to assist the coroner." Lawrence M. Friedman and Paul W. Davies, "California Death Trip," *Indiana Law Review* 36 (2003): 18, 21, and 23.

47 *Report of the Attorney General,* 1859, 4; *Report of the Attorney General,* 1861, 5.

48 He proposed that the state attorneys and sheriffs take depositions and that the decision to prosecute rest solely with the attorney general. *Report of the Attorney General, 1877* (Augusta: Sprague & Sons, 1878), 8.
49 *Report of the Attorney General of the State of Maine, 1876* (Augusta: Sprague, Owen & Nash, 1877), 6 and 5.
50 *Report of the Attorney General, 1877,* 5 and 6.
51 For a discussion of this informal child care network, see Mazie Hough, *Rural Unwed Mothers, 1870-1950: An American Experience* (London: Pickering & Chatto, 2010), 21.
52 *Oxford Democrat* (Paris, ME), Apr. 10, 1877.
53 *Oxford Democrat,* Apr. 3 and 10, 1877.
54 *Oxford Democrat*, Apr. 10, 1877.
55 *Report of the Attorney General, 1877, 6.*
56 Roger Lane, *Murder in America: A History* (Columbus: Ohio State University Press, 1997), 193.
57 Lucilius A. Emery, "On the matter of petition for pardon of Sophronia J. Libby," Apr. 29, 1878; Barrows, "To My Dear Sir," Nov. 17, 1878, Pardon Papers for Sophronia J. Libby, # 646, 1878, MECP.
58 William G. Barrows to Governor's Executive Council, Nov. 17, 1878. Lucilius A. Emery, "On the matter of petition for pardon of Sophronia J. Libby," Apr. 29, 1878; Barrows, "To My Dear Sir," Nov. 17, 1878, Pardon Papers for Sophronia J. Libby, # 646, 1878, MECP.
59 *Oxford Democrat* (Paris, ME), Apr. 10, 1877.
60 Frank L. Lemont, "Letter from Frank L. Lemont to J.S. Lemont, Dec. 9, 1862" (1862). Paul W. Bean Civil War Papers. Item 27. http://digitalcommons.library.umaine.edu/paul_bean_papers/27 (accessed Mar. 21, 2022).
61 Judge Barrows cautioned the Governor's Executive Council responsible for considering pardon requests to pay no attention to the large number of signatures on the petition. "As a general thing," he wrote the council, "I should lay no stress upon the size of the petition. It depends almost entirely on the ability and zeal of counsel and friends." Pardon Papers of Sophronia J. Libby.
62 The petitions also pointed out that Morrissey had not been tried by a jury as her case was decided on a demurrer—that is, the defense attorney admitted the facts but claimed they were insufficient to convict her. When the demurrer was rejected, Sally was found guilty on the facts that had been admitted. Pardon papers of Sally Morrissey, aka Sarah Welch, #543, 1883, MECP.
63 *Daily Eastern Argus* (Portland), Aug. 3, 1881.
64 *Daily Eastern Argus* (Portland), Aug. 4, 1881.
65 Letter from Nathan Dane to the Governor & Council, Sept. 9, 1884. Pardon Papers of Sarah F. Whitten, #662, 1885, MCEP.
66 *Daily Eastern Argus* (Portland), Jan. 31, 1896.
67 *Daily Eastern Argus* (Portland), Jan. 31, 1896.
68 Ellen Dolley was a widow who took in boarding babies to support her four children still at home.
69 *Daily Eastern Argus* (Portland), Jan. 31, 1896.
70 *Bangor Daily Whig & Courier*, Feb. 26, 1882.
71 *Bangor Daily Commercial*, Feb. 26, 1882.
72 *Bangor Daily Commercial*, Feb. 26, 1882.
73 Lewis Bunker Rohrbach, *Maine State Prisoners, 1824-1915* (Rockport, ME: Picton Press, 2001), 91.
74 *Lewiston Evening Journal*, Aug. 27, 1885.
75 Malice aforethought is the "distinguishing state of mind which may render an unlawful homicide murder at common law." Steven H. Gifis, *Law Dictionary*. 2nd ed. (Woodbury, NY: Barron's Educational Series, 1984), 280–281.
76 *Bangor Daily Commercial*, Feb. 26, 1882.
77 *Bangor Daily Commercial,* Aug. 27, 1882.
78 Pardon Papers of Sally Morrissey.
79 *Daily Eastern Argus* (Portland), Apr. 10, 1877. In a later letter objecting to her pardon, he wrote: "That Libby justified in her own mind on the ground that her sister ought not to be driven to the poor house on account of the worthless little bastard I believe. But if our laws are to give any protection to the defenseless and to those not personally capable of being useful to their fellow, the punishment should be something more than minimal." Undated letter to Governor and Council, William G. Barrows. Pardon Papers Sophronia J. Libby.
80 In 1903, Mary Happy, alias Mary Massad, delivered in an almshouse and then, when the infant was two weeks old, went to the Maine Central Station. There, instead of taking the train she knocked on the door of a

house nearby—and spent several hours with two women who watched her child when she left the house several times. *Report of the Attorney General*, 1903–1994 (Augusta: Kennebec Journal, 1905), 3. In 1917, Lulu M. Wyatt "an ignorant negress working as a laundry girl at York Harbor" gave birth without medical attendance to an "illegitimate" child. As the attorney general noted, "No one was with her during her travail and all that was known of the incident was that groans of the respondent and cries of an infant were heard by other servants in the adjoining room … " *Report of the Attorney General, 1917-1918* (Augusta: Burleigh & Flynt, 1918), 132.

81 Every woman but two was assisted in her delivery, and the two who delivered alone were a married woman and a woman of color. See above #81.

82 *Report of the Attorney General of the State of Maine, 1905-1906* (Augusta: Burleigh & Flynt, 1906), 7.

83 Only one, Grace Royce, a married woman, was sentenced for twenty years. See Figure 1.

84 Two of the women were found not guilty by reason of insanity and committed to an insane asylum. That this was a gendered process is suggested in the case of Lena Bean who admitted to having left her baby in a locked house for two weeks while she went to visit friends. When asked why she did so, she answered, "she had no way to look out for the baby and had to dispose of it." Where once this might have been proof of malice aforethought, and cause for a conviction of murder, the court deemed her "mentally deficient and not responsible for her acts" and committed her to the Maine Insane Hospital. *Report of the Attorney General, 1905-1906*, 2.

85 Within the prison, the wardens could take a variety of new disciplinary actions. They could now limit the number of letters and visitors a prisoner could receive.

86 Pardon was commonly used in every state, but Maine's pardon system was unusual in that the pardon request was made not to the governor alone but to the governor and his council. See Carolyn Strange, *Discretionary Justice: Pardon and Parole in New York from the Revolution to the Depression* (New York: New York University Press, 2016).

87 Annette Vance Dorey, *Maine Mothers Who Murdered, 1875-1925: Doing Time in State Prison* (Lewiston, ME: Van Horn Vintage Press, 2012), 116.

88 Maine was not alone in this development of alternatives for women. For an overview, see Estelle B. Freedman, *Their Sisters' Keepers: Women's Prison Reform in America, 1830-1930* (Ann Arbor: University of Michigan Press, 1981). It should be noted that throughout the nineteenth century there were never more than seven women in the state prison at any one time. Most often there were three or four, committed primarily for manslaughter or adultery. There were more women in the county jails scattered across the state, but their confinement was relatively short. In the Reformatory's first year it housed forty-one women. Three years later it housed seventy. Dorey, *Maine Mothers*, 234.

89 *Second Biennial Report of the Reformatory for Women at Skowhegan* (June 1919 and June 1920), 8 and 6.

90 *Second Biennial Report of the Reformatory for Women at Skowhegan* (June 1919 and June 1920), 6.

91 *Second Biennial Report of the Reformatory for Women at Skowhegan* (June 1919 and June 1920), 12.

92 *Second Biennial Report of the Reformatory for Women at Skowhegan* (June 1919 and June 1920), 12.

93 For example, see Ulrich and Osterud, cited above, as well as Jane Adams, "Resistance to 'Modernity'; Southern Illinois Farm Women and the Cult of Domesticity," *American Ethnologist* 20 (Feb. 1993): 89–108; Mary Neth, *Preserving the Family Farm: Women, Community, and the Foundations of Agribusiness* (Baltimore, MD: Johns Hopkins University Press, 1995); Jane Pederson, "Gender, Justice, and a Wisconsin Lynching, 1889-1890," *Agricultural History* 67 (Spring 1993): 65–82; Felicity Turner, "Contradictions of Reform: Prosecuting Infant Murder in the Nineteenth Century United States," *Law & Hist. Rev.* 39: 277–97 (May 2021).

94 William Novak, "The Myth of the 'Weak' American State," *American Historical Review* 113 (June 2008): 752–72.

95 Marina Angel, "Criminal Law and Women: Giving the Abused Woman Who Kills a Jury of Her Peers who Appreciates Trifles," *American Criminal Law Review* 22 (Winter 1996): 148 and abstract.

96 Angel, "Susan Glaspell's Trifles and *A jury of Her Peers:* Woman Abuse in a literary and legal Context," *Buffalo Law* Review 45 (Oct. 1997): 826. For a full history of women's right to serve on juries, see Linda K. Kerber, *No Constitutional Right,* 128–220.

97 Lawrence M. Friedman, *Crime and Punishment*, 248.

98 Dashka Slater, "How to Get Out of Prison" *New York Times Sunday Magazine* Jan. 5, 2019: 32–37, 49–53.

99 See for example Bryan Stevenson, *Just Mercy: a Story of Justice and Redemption* (New York: Spiegel & Grau, 2014) and Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (Jackson, TN: New Press, 2010).
100 Edwards, *The People and Their Peace*, 9.

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Cite this article: Mazie Hough (2023) "'There Is Nothing So Sacred as Human Life': Infanticide and the State in Maine, 1877–1917," *The Journal of the Gilded Age and Progressive Era* **22,** 163–183. https://doi.org/10.1017/S1537781422000615