

Pardoning Infanticide in Late Medieval France

SARA McDOUGALL

A miracle story from medieval France, set vaguely in third-century Rome, offers the following account of a horrific act of infanticide. A noble widow, renowned for her charity and piety, was tempted by the devil into committing incest with her son. As a result of this forbidden union, she conceived. Overwhelmed with shame, she concealed her pregnancy and performed penance in secret. When the infant was born, however, the devil led her into even more terrible sin: She killed the newborn, drowning it in a latrine. Too ashamed to confess her transgressions, she devoted herself to ever greater acts of penance and charitable works, and acquired an enhanced reputation for holiness.

But the devil, eager to ensure the damnation of this unconfessed soul, sought her downfall. He disguised himself as an astrologer-scholar and demonstrated his talents to the emperor. Having obtained the emperor's confidence, the devil then denounced the widow as the worst of sinners, an incestuous and infanticidal mother. The emperor was reluctant to believe that a woman so seemingly good could be so evil, but agreed that if she confessed, or if the accusation could be proven against her, she would be executed. Summoned before the emperor, the woman obtained a delay, prayed to the Virgin Mary for help, and sought an

Sara McDougall is an associate professor of history at John Jay College of Criminal Justice and the CUNY Graduate Center <smcdougall@jjay.cuny.edu> The author gratefully acknowledges, first and foremost, the help of Gautham Rao and the anonymous reviewers, as well as her co-editor Felicity Turner. She also thanks Michelle Armstrong-Partida, Carole Avignon, Sara Beam, Véronique Beauland-Barrard, Rudi Beaulant, Judith Bennett, Peggy Brown, Sara Butler, Naama Cohen-Hanegbi, Yanay Israeli, Anne Lefebvre-Teillard, Conrad Leyser, Susan McDonough, Alexandra Pfau, Charlotte Pichot, Franck Roumy, Sara Ritchey, Quentin Verreycken, and James Whitman, as well as Peggy McCracken and the University of Michigan's Institute for the Humanities, where she completed this article as Norman Freehling Visiting Professor. All errors are the author's own.

audience with the pope. Kneeling before him, she finally confessed, sobbing. The pope, moved by her total contrition, absolved her. He urged that she continue to seek the Virgin's aid and offered as consolation his promise that the Virgin would save her. When she made her appearance before the emperor's court the Virgin stood beside her. The devil, unable to compete with the mother of God, vanished. With no one present to accuse her, the penitent sinner was saved.¹

However popular this story may have been—and it was quite popular—one might easily assume that it offers no useful evidence for the actual ideology and practice of the medieval French judicial system. After all, it is commonplace that medieval Western Europe was a strict and often brutal patriarchy. It is therefore easy to imagine that its laws must have been both forged and deployed as a weapon to further oppress already oppressed women. It is known that Christian doctrine condemned extramarital sex, incest in particular. The murder of an innocent, and especially an unbaptized infant, moreover, was a deplorable tragedy, the work of the devil. Indeed, it could even pollute the community as a whole. Such pollution, if left uncorrected, risked bringing down divine punishment, plague, or famine.² One might suppose, therefore, that an infanticidal mother, especially one who had killed her newborn infant to conceal evidence of her having engaged in illicit sex, must suffer and die for her sins. Such an act would have been “a crime punishable by death in fifteenth-century Europe, and one that was rarely pardoned. . . Women found guilty of infanticide were regularly executed by drowning or burning, a crueller method of death than the hanging or beheading employed for regular capital offences.”³

1. Gautier de Coincy, “De une noble fame de Rome,” in *Miracles de Nostre Dame*, ed. Frederic Koenig, 4 vols. (Geneva: Droz, 1961), 2:130–57. There are many other versions of this story, in sermons and miracle collections from Jacques de Vitry, Etienne de Bourbon, Vincent de Beauvais, and others. For miracle stories involving incest see further Elizabeth Archibald, “Mothers and Sons,” in *Incest in the Medieval Imagination* (Oxford: Oxford University Press, 2001), 104–44; and Didier Lett, “l’inceste père-fille à la fin du moyen âge: un crime, un péché,” *Sociétés & Représentations* 42 (2016): 15–30.

2. Claude Gauvard, *‘De grâce especial’: Crime, état et société à la fin du moyen âge*, 2 vols. (Paris: Éditions de la Sorbonne, 1991), 2:827, “le meurtre contre l’enfant touche bien au sacré depuis le moment où celui-ci est conçu.” Didier Lett, *Les enfants au Moyen Âge Ve-XVe siècle* (Paris: Hachette, 1997); Charlotte Pichot, “Avortement et infanticide dans les Pays de Loire moyenne et le Poitou à la fin du Moyen Âge,” mémoire de Master 2, Poitiers, 2013, see especially ch. 1, at 20–26.

3. Peter J. Arnade and Walter Prevenier, *Honor, Vengeance, and Social Trouble: Pardon Letters in the Burgundian Low Countries* (Ithaca, NY: Cornell University Press, 2015), 106. Wolfgang Müller, *The Criminalization of Abortion in the West: Its Origins in Medieval Law* (Ithaca, NY: Cornell University Press, 2012), 9, 215–16. For similar understandings of infanticide in medieval France, see also Yves Brissaud, “L’infanticide à la fin du moyen

But this was not so. The aim of this article is to challenge that assumption. Infanticidal mothers, perhaps even especially those pregnant from illicit sex, regularly escaped execution and had a significant place among the pardoned. This was true first of all because that was how justice essentially worked in late medieval France: There was a general reluctance to carry out executions.⁴ Unwed and infanticidal mothers were not exceptions to this rule. This was also true because of the interplay of justice with a number of social and cultural norms: mercy, female agency (or rather the perceived lack thereof), the overwhelming power of both divine and demonic agency by contrast, and finally, gender and honor, because honor could serve as a justification for killing perpetrated by women much as it could for killing perpetrated by men.

My claims in this article should in some ways come as no surprise. Historians are well aware that royal pardons played a considerably important role in the medieval judicial system.⁵ It is not news that religious and secular officials alike could be merciful in their expression of judicial authority, mitigating punishment or granting absolution or pardon, even to the worst of criminals. Failure to show mercy, after all, might result

âge, ses motivations psychologiques et sa répression,” *Revue historique du droit français et étranger* 2 (1972): 229–56, 238; Sylvie Laurent, *Nâître au Moyen Âge: de la conception à la naissance: la grossesse et l'accouchement* (Paris: Léopard d'Or, 1989), 155–67, at 157; Jacqueline Hoareau-Dodinau, “La vie avant la vie: La femme enceinte dans les lettres de rémission,” *Mémoires de la Société pour l'Histoire du Droit et des Institutions des anciens pays bourguignons, comtois et romands* 58 (2001): 205–27; Alexandra Pfau, “Crimes of Passion: Emotion and Madness in French Remission Letters,” in *Madness in Medieval Law and Custom*, ed. Wendy Turner (Leiden: Brill, 2012), 97–122; Alexandra Pfau, “Madness in the Realm: Narratives of Mental Illness in Late Medieval France” (PhD diss., University of Michigan, 2008); and for a broader study of abortion as well as infanticide and their criminalization see also Wolfgang Müller's first book, *Die Abtreibung. Anfänge der Kriminalisierung, 1140–1650* (Cologne, Weimar, and Vienna: Böhlau, 2000). For the idea that the crime of maternal infanticide was particularly difficult to accept and rarely pardoned see Gauvard, *De grâce*, 657–59, also especially 822–26; Claude Gauvard and Gilbert Ouy, “Gerson et l'infanticide: défense des femmes et critique de la pénitence publique, ms. London, BL Add. 29279, f. 19v-20v,” in “*Riens ne m'est seur que la chose incertaine*,” *Études sur l'art d'écrire au Moyen Âge offertes à Éric Hicks par ses élèves, collègues, amis et amis*, ed. Denis Billotte and Jean-Claude Mühlethaler (Geneva: Slatkine, 2001), 44–66.

4. On the death penalty in France see above all Claude Gauvard, *Condamner à mort au Moyen Âge Pratiques de la peine capitale en France XIIIe-XVe siècle* (Paris: Presses universitaires de France, 2018), see especially 19–54, 237–66.

5. On pardons in general, see most recently Quentin Verreycken, “The Power to Pardon in Late Medieval and Early Modern Europe: New Perspectives in the History of Crime and Criminal Justice,” *History Compass* 17 (2019): e12575. For medieval France see Gauvard, *De grâce*.

in divine retribution for the cruel or unjust judge.⁶ Nor is it news that infanticidal mothers counted among those pardoned in medieval France.

Nevertheless, scholars have not fully grasped the significance of this culture of pardoning. They generally assume that pardons for infanticidal mothers were exceptional, that most women found guilty of this crime would have received the death penalty. This article challenges that idea. There are only a relatively small number of known pardons for infanticidal mothers as compared with the vast swath of pardons for other kinds of killing and crimes perpetuated, by and large, by men. But that relatively small number of pardons does not in fact mean that women who confessed to killing infants were less likely to obtain pardon.⁷ Nor does it mean that these women were necessarily more likely to be executed. It does not even mean, as Wolfgang Müller claims, that the women at greatest risk of execution for infanticide were the marginal, “foreign maidservants or adulterous or older single women.”⁸

Instead, as this article demonstrates, there are good reasons to suspect that pardoning, rather than punishing, was the *de facto* method of dealing with maternal infanticide in medieval France. And more than that: this held true even, or perhaps especially, when the infanticide was perpetrated by a woman pregnant outside marriage. To understand how this could be requires a careful review of the historiography on the subject, reconsideration of the relevant laws and legal practices, and a critical reassessment of our sources and their meaning.

There is no question that medieval laws menaced those found guilty of infant murder with execution. But it is not correct to assume that these laws were necessarily enforced. And when we turn to the sources of legal practice from late medieval France, we find accounts that echo the tale of the pious widow of third-century Rome to a remarkable degree. Miracles, as Robert Bartlett has so evocatively demonstrated, had an important place in medieval justice.⁹ This held true for mothers pregnant from illicit sex

6. Gauvard, *De grâce*; see also James Whitman, *The Origins of Reasonable Doubt* (New Haven, CT: Yale University Press, 2016), ch. 1 and 2.

7. As will be explained in more detail, it is not known how these numbers compare with broader rates of prosecution and sentencing, or with actual rates of killing.

8. Müller, *Criminalization*, 9.

9. Robert Bartlett, *The Hanged Man: A Story of Miracle, Memory, and Colonialism in the Middle Ages* (Princeton, NJ: Princeton University Press, 2006). Certainly miracles were quite open to interpretation, and were not always interpreted in ways that favored the accused. One example of this is found in an episode of the life of the sixth-century Saint Brice. After his election as bishop of Tours, Brice, disliked by his parishioners, and more importantly, under a curse from his mighty predecessor Saint Martin, was falsely accused of impregnating the woman who did his laundry. He managed to make the infant speak, who affirmed that Brice was not his father, and also carried hot coals as proof of his

who killed their own infants. Indeed, it may have been especially true for them.

In 1390, for example, Colette Wardavoir, approximately 15 years old, became pregnant after having sex with an unnamed man.¹⁰ She concealed her pregnancy from her parents, fearing their anger, gave birth in a privy, and, like the incestuous widow of the miracle tale this article began with, threw the newborn into the latrine. The infant cried out and Colette fled, frightened that the sound had woken the others in her household. Luckily, someone did hear the sound of crying, and the infant was rescued, baptized, and lived. The salvation of this baby was deemed a miracle.¹¹ But what of Colette, who had so cruelly attempted to murder her newborn infant? She had taken sanctuary, and showed great contrition. In light of her repentance, as well as her youth and the miraculous survival of the infant, she was pardoned by the king.¹²

A miracle similarly features in the resolution of another infanticide prosecution 4 years later, in 1394.¹³ According to the confession of Perrenelle Horrie, she lived in the town of Châteauneuf in the county of Angoulême, in western France, and had been married at approximately 16 years of age to a young man who stayed with her for 2 years but then disappeared, leaving her impoverished. When she was 22 years of age or thereabouts, another man pursued her, seducing her with promises that he would support her and even marry her.¹⁴ This was a promise that he did not honor when she told him that she was pregnant. Ashamed, desperate, and tempted

innocence. Despite this, Brice was denounced as a lying magician and cast out of his bishopric. See, for example, Jacobus de Voragine, *The Golden Legend: Readings on the Saints*, ed. William Granger Ryan (Princeton, NJ: Princeton University Press, 2012), 2:687–88.

10. National Archives of France, Paris, Trésor des Chartres, JJ138 #272 (not foliated, paginated as p.326) Many of the late medieval royal letters of remission and other records from the royal chancery are now found on “himanis,” a site that allows for some limited but nevertheless remarkable word searching through the registers. Certainly it promises to transform our ability to understand these pardons and the other documents in the registers. Additional registers can be found at the Bibliothèque virtuelle des manuscrits médiévaux (BVMM) under Paris, Archives nationales: <https://bvmm.irht.cnrs.fr/recherche/rechercheParVille.php>.

The pardon cited here can be found at <http://himanis.huma-num.fr/himanis/index.php/ui/show/chancery/275/336?feedback=1> (accessed June 5, 2020).

11. “. . . et que ledit enfant a prit bapteme et encore vit en bonne prosperite et que en ce cas appert evident miracle et grace divine. . .”

12. “simplesse et ignorance” made her susceptible to seduction, she is pardoned because of the miracle and because of her “jeunesse.”

13. JJ147 #240 f.109v-110r (1394).

14. He had told her that because her husband had been absent for 4 years, they could presume that he had died and that she could legally remarry, a rather specious legal claim. See Sara McDougall, *Bigamy and Christian Identity in Late Medieval Champagne* (Philadelphia: University of Pennsylvania Press, 2012).

by the devil, she gave birth in secret, killed the newborn, and buried it in a garden. Somehow, it is now known how, her crime was discovered, and she was arrested and imprisoned. She confessed on interrogation, and was condemned to execution by drowning in the Charente River.¹⁵ Perrenelle and her brothers, who belatedly had come to her aid, all prayed to the Virgin Mary for deliverance. These prayers were heard. When she was bound and thrown into the river, her hands came untied and she floated to safety. “Many said” this was a miracle of the Virgin.¹⁶ The attempt to execute her was abandoned and she was returned to prison. Nor did it end there. Upon petition, King Charles VI granted her a full pardon, restoring all confiscated property and shielding her from any further legal proceedings linked to her crime, requiring only that she perform a penitential pilgrimage to Notre-Dame-du-Puy, and that she provide proof that she had done so to the seneschal of Angoulême.¹⁷ Additional royal pardons of this kind will be discussed subsequently, but first the world in which they were granted and the reasons scholars have misunderstood them will be re-examined.

1. Infanticide Medieval Style?

There was an era in which infanticidal mothers pregnant from illicit sex were cast as emblematic villains, the worst kinds of perpetrators of infant murder, but this era was not the Middle Ages. In France it began in the sixteenth century. Alfred Soman, the great master of the early modern records of the Parlement of Paris, describes the law of that brutal post-medieval time: “The crime designated ‘infanticide’ (*homicide de son enfant*) was uniformly of one type (which either excluded or absorbed all other forms of child murder): a woman conceived a child illegitimately, concealed her pregnancy, gave birth in secret, and then killed her baby or deliberately let it die in a desperate attempt to suppress the evidence of her

15. This is the only example I have found of an infanticide punished by drowning. On gender and executions, and on executions for infanticide see further at notes 36 and 76.

16. “. . . et disent plusieurs que ce estoit miracle de dieu et de la vierge marie.”

17. Pascal Texier, “Pèlerinages imposés et perception de l’espace: La France centrale des xiv et xv siècles,” in *Pèlerinages, échanges et cultures: actes du 74e congrès de la Fédération des Sociétés Savantes du Centre de la France, 25 au 27 mai 2018 à Saint-Léonard-de-Noblat*, eds. Fédération des sociétés savantes du Centre (Saint-Léonard-de-Noblat: Connaissance et sauvegarde de St. Léonard, 2019), 113–28. Xavier Rousseaux, “Le pèlerinage judiciaire, pratique sociopolitique, économique et religieuse dans les villes de Pays-Bas (Nivelles, XVe-XVIIe siècle),” in *Un Moyen Âge Pour Aujourd’hui Mélanges offerts à Claude Gauvard*, ed. Julie Claustre, Olivier Mattéoni, and Nicolas Offenstadt (Paris: Presses universitaires de France, 2010), 258–69.

shame and dishonor.”¹⁸ Other scholars speak in similar terms. Maternal infanticide was, as W. David Myers writes, “a particular kind of crime that haunted the imagination and morals of Europeans from 1500 to 1800.” Or to quote Stephanie Chamberlain, “no other early modern crime better exemplifies cultural fears about maternal agency than does infanticide.”¹⁹

But the Middle Ages had other demons. The very idea of studying “infanticide” in medieval France is an exercise in anachronism, or rather anachronisms. They had no name for such a crime, or such a criminal.²⁰ There was no Latin or French word for infant-killer or the killing of an infant.²¹ Third-century Church Father Tertullian used the term “infanticide” (“*infanticidium*”) in response to allegations that Christians practiced child sacrifice. Thereafter the term vanishes until the time of François Rabelais in his *Pantagruel*, published in French in 1532,²² and in the seventeenth century the term first appears in English.²³ Neither medieval Roman Law nor canon law used this word.²⁴ The vocabulary of infant

18. Alfred Soman, “Anatomy of an Infanticide Trial: The Case of Marie-Jeanne Bartonnet (1742),” in *Changing Identities in Early Modern France*, ed. Michael Wolfe (Durham, NC: Duke University Press, 1997), 248–72. Justine Semmens, “A Thin Line Between Love and a Crime: Marriage, sexuality, and the courts in Counter Reformation France” (PhD diss., University of Victoria, forthcoming), calls into question some of Soman’s findings.

19. Stephanie Chamberlain, “Fantasizing Infanticide: Lady Macbeth and the Murdering Mother in Early Modern England,” *College Literature* 32 (2005): 75.

20. On medieval ideas about infanticide and abortion in general, see Peter Biller, *The Measure of Multitude: Population in Medieval Thought* (Oxford: Oxford University Press, 2000); and Müller, *Criminalization*, ch. 1.

21. See further Pichot, “Avortement,” 36. There is some Old-English terminology mentioned in Marilyn Sandidge, “Changing Contexts of Infanticide in Medieval English Texts,” in *Childhood in the Middle Ages and the Renaissance*, ed. Albrecht Classen (Berlin: de Gruyter, 2011), 291–306, at 291.

22. On Tertullian, see most recently Julian Barr, *Tertullian and the Unborn Child: Christian and Pagan Attitudes in Historical Context* (Routledge, 2017); Tertullian, Ad nat. 1.15, Apol. 2 (v.197). Tertullian also wrote about the dangers of making too much of virginity, including that it might lead pregnant women who wanted to pass as virgins to abort fetuses or kill infants, *De virginibus velandis* 14.4 ed E. Dekkers, CCSL, 2:1224; Rabelais, *Cinquième Livre*, ed. Charles Marty-Laveaux, c. 11, at 46: “la perversité des femmes adulteres, venefiques, infanticides.”

23. Sandidge, “Changing Contexts,” 291, gives no source. See further, Kesselring, “Bodies”; Mark Jackson, “The Trial of Harriet Vooght: Continuity and Change in the History of Infanticide,” in *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550–2000* (Aldershot: Ashgate, 2002), 1–17, at 10–11.

24. Alexandre Mimouni, “La notion d’infanticide en droit canonique médiéval,” conference presentation, Fifteenth International Congress of Medieval Canon Law, Paris, July 2016.

murder instead employed a range of vague and overlapping terms that often had unclear meaning.²⁵

Most importantly for my argument, medieval French laws, sacred and secular, make few explicit references to infanticidal unwed mothers.²⁶ Instead, they consider *any* killing of an infant, by any person. Single mothers were rarely singled out. Where discussed, infant or child murder fell normally under the umbrella of homicide. Condemnations included a wide range of imagined perpetrators and actions, accidental and intentional. These included violence committed against pregnant women that led to a stillbirth, smothering of infants by parents or by wet nurses, and the death of infants by drowning or fire. It also was a subcategory of the crime of parricide (killing one's own kin).²⁷

As Claude Gauvard has argued, the clearest lesson to draw from the existing sources on infanticide in late medieval France is that the death of a child was viewed with a special horror.²⁸ Indeed, the role of illicit sex in shaping responses to infanticide should not be overemphasized. It was not only single mothers who were suspected of being - or denounced as - child killers. There were older women, and men, suspected of witchcraft and malicious use of magic. There were Jews, the most notorious

25. Terms vaguely used to describe harm to fetuses, infants, and pregnant women include "necare" "percussio," (*encis*) "oppressio," and "aborsus." See Pichot, "Avortement," 19–64; Maaïke van der Lugt, "l'animation de l'embryon humain dans la pensée médiévale," in *Formation et animation de l'embryon dans l'Antiquité et au Moyen Âge*, ed. L. Brisson, M.H. Congourdeau, and J.L. Solère (Paris: Vrin, 2008), 233–54; Anne Lefebvre-Teillard, "Infans conceptus. Existence physique et existence juridique," *Revue historique du droit français et étranger* 72 (1994): 499–525; and Müller, *Criminalization*, ch. 8 and 9.

26. There are some earlier medieval canons, largely from penitentials, that explicitly condemn women who abort or kill to conceal illicit pregnancy. See, for example, the ninth-century Regino of Prüm, *De synodalibus causis*, 2.62; Burchard of Worms, *Decretum*, 17.54; and Ivo of Chartres, *Decretum*, ed. Martin Brett, 9.102, 103A (S), http://imaging.mrc-cbu.cam.ac.uk/ivo/decretum/ivodec_9_1p0.pdf. On this and other early law on abortion see M.J. Elsackers, "Reading Between the Lines: Old Germanic and Early Christian Views on Abortion" (PhD diss., University of Amsterdam, 2010).

27. Müller, *Criminalization*, see especially ch. 1–4; and Pichot, "Avortement," ch. 1, at 19–64.

28. Gauvard, *De grâce*, 826. This seems quite correct. Gauvard's assumption of the rarity of remissions for child killing, meanwhile, is problematic. We have no clear sense of how many there were or if they had any relationship to the rate of actual convictions or even investigations of child killing. She links "la rareté des rémissions concernant les infanticides et les avortements" (823) to the value placed on infant life, and although infant life was clearly valued, it is not clear what the rarity of remissions means or if they were in fact all that rare relative to the rate of prosecutions or executions for infanticide. On children in the Middle Ages see further Lett, *Enfants*; and Nicholas Orme, *Medieval Children* (New Haven, CT: Yale University Press, 2001).

supposed baby-killers of the later Middle Ages, and also animals, but especially enemy forces, soldiers, and mercenaries. The popular depiction of the Massacre of the Innocents in late medieval France, as Gauvard and Pichot emphasize, reflected the value placed on infant life. It was used to critique not just the Biblical Herod, but also evil kings of their own era, and the marauding soldiers who inflicted suffering on the “innocent.”²⁹

As all this indicates, there is no doubt that in medieval France the killing of infants was regarded as “heinous.”³⁰ But we must be careful not to allow anachronistic assumptions to color our reconstructions of how people understood and responded to infant murder. We know that infant death was deplored. But we do not in fact know if killing infants was—or even if it was perceived as—a crime most often committed by women pregnant out of wedlock, expectant mothers who killed their infants out of fear of being excluded from their social group as consequence for the pregnancy.³¹ Nor do we know for certain that the majority of those who were executed were “marginalized persons such as foreign maidservants or adulterous or older single women.”³² Such acts of infanticide may—or may not—have occurred frequently. At present, we as scholars can only speculate.³³ We can only speculate, too, as to the rate of prosecution, execution, and even pardon.³⁴

We must not, of course, assume that what was true of the sixteenth century was also true earlier. The early modern period is a perilous guide to the Middle Ages, although prosecutions of the kind Soman describes as happening in the sixteenth century did take place in the Middle Ages. In the early 1970s French legal historian Yves Brissaud went looking for records of women accused of killing their infants, and he found them.

29. Gauvard, *De grâce*, 826; and Pichot, “Avortement,” ch 1.

30. Arnade and Prevanier, *Honor*, 106.

31. Brissaud, “l’Infanticide”; John Boswell, *The Kindness of Strangers: The Abandonment of Children in Western Europe from Late Antiquity to the Renaissance* (New York: Pantheon Books, 1988); Gauvard, *De grâce*, 657–59, 823–26; Gauvard and Ouy, “Gerson”; Laurent, *Nâitre*, 155–67, at 157; Hoareau-Dodinau “La vie,” 205–27; Müller, *Criminalization*; and Pichot, “Le refus,” 2016.

32. Müller, *Criminalization*, 9.

33. Brissaud, for example, claims infanticide was common, whereas Boswell and Gauvard argue it was rare.

34. Müller argues that executions were rare, only inflicted upon the marginal (see Introduction, in Müller, *Criminalization*, especially at 9 and again at 215–16), Arnade and Prevanier suggest that executions were common: *Honor*, 106. On the need to reconsider some “female crimes” such as witchcraft or infanticide, and their potential mislabeling as such, and the need for more information on early modern crime in general before we try to make these categorizations, see Garthine Walker, *Crime, Gender, and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), 4.

But he found them in a surprising source base: not in records of prosecution and punishment, but the letters of royal pardon.³⁵

These pardons spared women from what could have been a terrible fate. Although scholars still struggle to interpret the meaning of different kinds of execution, gender clearly had a role. Women were typically executed by drowning, burning, or burial alive, although some women were hanged, as Gessler and Gauvard discovered.³⁶ Burning was the punishment most often associated with infanticide in the examples that I have seen. This was also the impression that Brissaud had, based on the survey that he conducted.³⁷ Moreover, even if spared execution, women might spend years incarcerated in deadly prisons, or struggle to survive in exile, with any property they had left behind being confiscated. This was harsh, indeed, but the reality is that little is known about how this scenario occurred, or how often it occurred, especially as concerned infanticide.

At present there are only scattered documentary traces of investigations and prosecutions of infant murder from medieval France. Scholars have generally located at most one or two investigations while engaged in a larger study of justice in a given region.³⁸ There are good indications, however, that more work in local archives will provide a clearer sense of the possibilities. Certainly Rudi Beaulant has made discoveries of tremendous importance in this regard, having found several investigations of suspicious infant death or stillbirths, cases in which both men and women alike were the suspected perpetrators, as recorded in the exceptionally rich records of late medieval Burgundy.³⁹

35. It was in this way that focused study of infanticide in medieval France began, with the pioneering work of Brissaud: “L’infanticide.”

36. See Gauvard, *Condamner*, ch.1 part f: “une petite nombre des femmes”; and Jean Gessler, “Mulier suspensa. A délit égal peine différente?” *Revue Belge de philologie et d’histoire* 18 (1939): 974–88; for a critique of Gessler’s interpretation, see Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France* (Leiden: Brill 1993), 96–98. See also Patricia Turning, “‘And Thus She Will Perish.’ Gender, Jurisdiction, and the Execution of Women in Late Medieval France,” in *Death in the Middle Ages and Early Modern Time: The Material and Spiritual Conditions of the Culture of Death*, ed. Albrecht Classen and Connie Scarborough (Berlin and New York: de Gruyter, 2016), 311–37.

37. Brissaud “Infanticide,” 248–50; see also Müller, *Criminalization*, 200–208.

38. Isabelle Mathieu, “Un infanticide à Argentré en 1470,” *Bulletin de la société et d’archéologie et d’histoire de la Mayenne* 27 (2006): 337–41; Véronique Beaulande-Barraud, “La grosse mère, la marâtre et la fillette : une enquête pour meurtre d’enfant en 1459,” *Bibliothèque de l’école des chartes* 170 (2012): 377–420; Johan Picot, “Un exemple de justice seigneuriale en Basse-Auvergne: l’enquête pour infanticide de Beaumont (1336),” *Criminocorpus*, 2014; Julie Pilorget, “Foles femmes et larronesses. Figures de la délinquance féminine en Picardie à la fin du Moyen Age,” *Société des Antiquaires de Picardie* 70 (2015): 639–58, 713–14; and Arnade and Prevenier, *Honor*, 107.

39. Rudi Beaulant and I are currently working together on these cases.

But for now, scholars struggle to qualify and quantify the handling of infant killings in medieval France. Nevertheless, that has not prevented them from maintaining the supposition that the unwed infanticidal mother would have been punished especially harshly, and only rarely pardoned. But rather than assuming that there are scores of executions as yet undiscovered by scholars, or assuming that unwed mothers were already, as was so clearly the case in subsequent centuries, the targets of special and more punitive attention, we should explore what happens when we take stock of what evidence we do have.

It is possible that there may have been many more executions for infanticide that we have yet to find. It is also possible that there are not that many more. We must remember that executions were probably rather rare. Medieval law and legal practice were marked by a certain reluctance to carry out the death penalty. Elizabeth Papp Kamali has demonstrated this in her recent *Felony and the Guilty Mind in Medieval England*, showing a high acquittal rate and relatively few convictions.⁴⁰ We know of still fewer executions, and a far greater tendency to banish or otherwise punish the convicted felon.⁴¹ Claude Gauvard, in her book on the death penalty in late medieval France, affirms that executions were rare and that banishment or other penalties were the preferred modes of punishment.⁴² William Chester Jordan complicated that picture by mining judicial account books for references to expenses related to what looks like a considerable amount of public punishment and execution, but on the whole it does seem that execution was rare.⁴³ And quite often investigations did not result in any punishment. Suspects frequently took flight and sought sanctuary or self-imposed banishment. Pardons and other sources refer to escapes from prisons so often as to suggest complicity of the jailers at very least.⁴⁴ Sentences might also be overturned on appeal. There was, moreover, always the possibility of pardons and amnesties. Judicial officers who sentenced people to death therefore knew that this sentence might not be necessarily carried out. However often medieval law

40. Elizabeth Papp Kamali, *Felony and the Guilty Mind in Medieval England* (Cambridge: Cambridge University Press, 2019).

41. See, for example, Barbara Hanawalt, *Crime in East Anglia: Norfolk Gaol Delivery Rolls, 1307–1316* (Norfolk Record Society, 1976), 20.

42. Gauvard, *Condamner*, 19–54, 237–66; for women, see especially 46–51; for similar findings from a regional study, see Isabelle Mathieu, *Les justices seigneuriales en Anjou et dans le Maine à la fin du Moyen Âge* (Rennes: Presses Universitaires de Rennes, 2011), 595–96.

43. William Chester Jordan, “Expenses Related to Corporal Punishment,” in *Prowess, Piety, and Public Order in Medieval Society: Studies in Honor of Richard Kaeuper*, ed. Craig Nakashian and Daniel Franke (Leiden: Brill, 2017), 286–300.

44. Gauvard, *Condamner*; Quentin Verreycken, *Pour nous servir en l’armée - Le gouvernement et le pardon des gens de guerre sous Charles le Téméraire, duc de Bourgogne (1467–1477)* (Louvain: Presses universitaires de Louvain, 2017).

condemned extrajudicial killing, it also found ways to overlook, condone, or pardon it.

I suggest that women accused of killing their children were not exceptions to this general rule, not least because women constituted a tiny fraction of those prosecuted and punished in medieval judicial practice.⁴⁵ Working from Brissaud's list of executions and incorporating every other reference I could find in chronicles and court records, I have only been able to locate twenty executions, from the twelfth through the late fifteenth centuries, and from across France. But even some of these relatively few executions were not necessarily carried out. Sometimes the account of an execution is quite tangential, as in some thirteenth-century records of depositions claiming to have witnessed the execution of a woman condemned for killing her infant. These depositions were collected in an effort to prove that local authorities had long held the power to execute those found guilty of serious crimes, as part of a jurisdictional dispute.⁴⁶ It is probably safer to assume on the basis of these depositions that such an execution could have happened, but not that it did happen. In other examples, we read that a woman was sentenced to execution but we do not know if the execution was actually carried out. There must be more, but we should not necessarily assume that there were that many.

On the other hand, it does seem plausible that women pregnant outside marriage were quickly suspected, or blamed, upon the discovery of an infant corpse.⁴⁷ Sara Butler has suggested as much in her analysis of infanticide prosecution in Medieval England: "there is good reason to believe that single mothers were significantly more likely to stand accused of infanticide than was anyone else."⁴⁸ Indeed, when someone in a medieval community discovered the corpse of an infant, it is quite possible that suspicion, or accusation, would fall soonest on the priest's mistress, the abandoned wife, or the poor foreign serving maid. Nevertheless, we must be careful not to assume, as Müller, Arnade and Prevenier, and others do, that because such women were more likely to be suspected, they were also more likely to be executed, and less likely to be pardoned.⁴⁹

45. In essence, we find women in medieval French society punished by their families and neighbors, their husbands, sexual partners, employers, or strangers. The courts were primarily used as a venue for men to use against and for other men.

46. Roger Grand, *Les "Paix" d'Aurillac* (Paris: Sirey, 1945) 51–165; Roger Grand, "Justice criminelle, procédures et peines dans les villes aux XIIIe et XIVe siècles," *Bibliothèque de l'école des chartes* 102 (1941): 51–108, at 101.

47. The question of infanticide as family planning in medieval Europe, which Peter Biller addresses in his *Measure of Multitude: Population in Medieval Thought* (Oxford: Oxford University Press, 2000), remains an extremely important topic for future research.

48. Sara Butler, "Child Murder," 69.

49. Müller, *Criminalization*, 9.

As it currently stands, therefore, the previous scholarship's portrayal of infanticide in medieval France depends on three precarious assumptions: first, that medieval infanticide pardons reflect the same obsession with the restraining of illicit female sexuality thought to have predominated in sixteenth-century justice; second, that illicit pregnancy had much the same significance and consequences in the Middle Ages as in the far darker period that followed; and third and finally, that unwed infanticidal mothers would have been unlikely recipients of royal pardon, and that the relatively few pardons for infanticide compared with for other kinds of killing is somehow indicative of this. But these assumptions misrepresent the sources, and they misrepresent, too, the values at the core of late medieval French justice, because medieval prosecution of crime always went hand in hand with the possibility of penance and pardon, no matter how serious a crime.⁵⁰ And a woman's sexual transgressions did not necessarily make her less worthy of royal pardon, even if she killed her infant to conceal the sin.

All told, there is little evidence that maternal infanticide perpetrated by unwed mothers regularly met with brutal punishment. Of course, absence of evidence is not evidence of absence. It *could be*, as Brissaud and others have assumed, that the medieval reality was every bit as harsh as the sixteenth-century reality, even if the available sources do not reflect this. Nevertheless, it is best to build out interpretations on the foundation of what is known, not on what is not known. And the evidence that is available points to a medieval orientation toward mercy for these mothers. The vast bulk of that evidence comes from royal pardons, which (despite their use by Brissaud and others to indicate intolerance and harsh treatment) are by their nature evidence of mercy. Moreover, mercy features heavily in other sources, both legal and more broadly, as well. Certainly it dominates in medieval theology and in the miracle tales that were so important in medieval culture and society.

If we shake off the reflexive assumption that infanticidal single mothers must have been especially reviled and punished, we begin to see the medieval world in a different light. Various theological and cultural traditions argued against executing women.⁵¹ Medieval chronicles depict the killing of a woman by a violent mob, or even formal judicial execution for treason,

50. Gauvard, *Condamner*; Robert Jacob, *La grâce des juges. L'institution judiciaire et le sacré en Occident* (Paris: Presses universitaires de France, 2014). See further below.

51. Sophie Cassagnes-Brouquet, "L'intervention du genre dans l'événement. Les massacres parisiens de 1418 et le meurtre d'une femme," in *Genre et événement*, ed. Marc Bergère and Luc Capdevila (Rennes: Presses universitaires de Rennes, 2006); Karen Sullivan, "The Judge and the Maiden: Justice and Pity at the Pyre," *Cahiers de recherches médiévales et humanistes*, 2013. <http://journals.openedition.org/crm/13085>; DOI: 10.4000/crm.13085.

as excessively cruel and terrible.⁵² Many a medieval romance has a beautiful adulterous queen bound to the stake and about to be burned, only to be rescued or spared.⁵³ Indeed, royal or no, young and beautiful women bound to the stake would have reminded medieval audiences of the many images of tortured female martyrs and falsely accused saints so frequently reproduced on the walls of churches and in so much of their visual culture.⁵⁴

Moreover, the widely proclaimed notion of female irresponsibility in this respect actually counted in women's favor. The incapacity of women to reason as fully as men, however insulting in principle, and however debilitating in general as women sought to make their way in medieval society, nevertheless had some advantages when it came to determinations of criminal responsibility. As I have argued elsewhere, for offenses such as bigamy and adultery, and as Hannah Skoda suggested for infanticide in the fourteenth-century Parisian secular court records, notions of female weakness as applied in church and secular court practice contributed to these women being punished with relative leniency, as being thought to be less responsible for their behavior than men.⁵⁵

2. Problems with Pardons

For all those reasons, it is prudent not to assimilate ideas and practices surrounding infanticide in the Middle Ages into the centuries that followed. The largest obstacle in our way to understanding the meaning of infanticide in medieval France lies in a fact about the sources: Our largest body of evidence for this topic is the royal pardons. Natalie Davis famously described such pardons as "fiction in the archives," narratives crafted with forgiveness in mind, discourses in which an account of wrongdoing casts events

52. Cassagnes-Brouquet, "L'intervention."

53. Peggy McCracken, *The Romance of Adultery: Queenship and Transgression in Old French Literature* (Philadelphia: University of Pennsylvania Press, 1998), 52–83.

54. Gauvard (*Condamner*, 48) sagely warns that we cannot really know if a king would have necessarily been more clement when judging a female culprit, but it is nonetheless worth considering the many different kinds of sources that suggest why clemency would have felt particularly appropriate for the right kinds of women.

55. Hannah Skoda, *Medieval Violence: Physical Brutality in Northern France, 1270–1330* (Oxford: Oxford University Press, 2013), 228: "Infanticide ... often was treated leniently owing to the assumption that women were unable to control their emotions and could slip easily into insanity... Nevertheless, infanticide did not always meet with leniency: e.g. a woman was buried alive for this crime in the 1300s in Ozouer-la-Ferrière, a parish of Saint-Maur-des-Fossés, Tanon, 334; this was a particularly tragic case, as her husband was accused of murdering his mother-in-law."

in the best possible light to therefore seem to merit mercy. Davis remains essential reading and rereading.⁵⁶ Pardons cannot be treated as faithful accounts of events, but rather as plausible accounts of what might make a crime seem more forgivable. But even here great caution is necessary, because for medieval France, while we have thousands of pardons that were granted, I know of no surviving traces of pardons that were refused by the ruler, and scholars have so far found only scattered evidence of local challenges to pardons that, after being granted, were rejected as false, or as unacceptable on the grounds that the crimes in question were somehow unpardonable.⁵⁷ And despite the proclamation of lists of technically unpardonable crimes, all crimes could be pardoned, and were.⁵⁸ This raises serious difficulties for interpretation. Perhaps most importantly, it is not actually known to what extent the telling of a good tale of justified killing, or the claim to have otherwise led a blameless life, actually mattered in whatever decision-making process authorities engaged in when granting pardon or not. Additionally, these pardons must also be interpreted with particular care in efforts to assess crime rates or the severity of crime.⁵⁹

Once again, records of pardons are almost all of what scholars of medieval France have to work with at present. What is known about abortions, stillbirths, and the killing or death of infants in France, is known overwhelmingly from the accounts offered by those who confessed to their involvement as part of an effort to obtain royal pardon. That was a complex endeavor that involved finding advocates to present and to prepare the request, written up in the appropriate combination of narrative and legalese, and quite likely, this all cost money. The fact that pardons were considered

56. Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers* (Stanford: Stanford University Press, 1987).

57. Gauvard, *Condamner*, 202–9; Pascal Texier, “La part de l’ombre de la rémission. Remarques sur les requêtes en rémission et leurs rédacteurs,” in *La Part de l’ombre. Artisans du pouvoir et arbitres des rapports sociaux (viii^e-xv^e siècle)*, ed. Jacques Péricard (Limoges: PUL, 2014), 183–206; Claude Gauvard, *Violence et ordre public au moyen âge* (2005), 245–64; and Leah Otis-Cour, “Les limites de la grâce et les exigences de la justice: l’entérinement et le refus d’entériner les lettres de rémission royales d’après les arrêts du Parlement de Toulouse à la fin du Moyen Age,” in *Recueil de mémoires et travaux publiés par la société d’histoire du droit et des institutions des anciens pays de droit écrit* 16 (1996): 73–89.

58. Arson, rape, and other technically “unpardonable” crimes could be pardoned nonetheless, see Verreycken, “The Power,” 6; and Gauvard, *Condamner*, 202–9.

59. For example, infanticide had a larger role in late medieval French pardons than was found in subsequent centuries, although it still represented still a tiny fraction of the overall thousands of fourteenth- and fifteenth-century pardons granted mostly to men for their acts of homicide and other violence. Compared with in sixteenth- and seventeenth-century France, scholars have found many more pardons for this “female crime,” but far fewer records of prosecution and punishment.

necessary does indicate that the killing of an infant was regarded as a serious crime, as was theft and killing more generally. But the same fact also unmistakably indicates that the killing of an infant, like theft, and like other kinds of killing, was pardonable.⁶⁰

In fact, paradoxical though it may seem, even if illicit pregnancy might well have made a woman more likely to be accused or investigated for infant murder, her status as a sexual sinner who killed to conceal that sin would not necessarily have made her offense seem worse than other kinds of murder. If anything, her plight might have made her actions in a way more understandable than a senseless or gratuitous act of violence against a child. Killing an infant to conceal an illegitimate birth may have been regarded as an understandable, if deplorable, justification, because killing in an effort to keep secret an illicit relationship could be presented as motivated by a wish to protect honor, both a woman's own honor, and the honor of her family.

As Gauvard and Arnade and Prevenier have argued, killing to protect or defend honor was a pardonable crime in theory.⁶¹ This and other previous scholarship has associated the mitigating factor of honor in homicide trials with male behavior: public violent disputes, or the killing of an adulterous wife or her lover. Yet pardons for infanticide perpetrated by—or for—women pregnant from illicit sex also share in the use of the language of honor: “to conceal her shame and protect her honor” (“*a covrir sa honte et garder son honneur*”).⁶² Scholars working with pardons have noticed the inclusion of fear of dishonor in these examples, but they have most often interpreted these phrases as evidence of the real gravity of illicit pregnancy, not as a strategic use of the language of honor to obtain pardon.⁶³ But perhaps claiming to kill an infant in an attempt to defend honor had a similar mitigating function as claiming to kill a man because he called your sister a whore. The women, or their advocates, chose to use this language of honor and shame over and over, and that could mean that they thought it would, in fact, mitigate the gravity of the offense that had been committed.

There are, moreover, additional reasons to think that pardoning was considered an appropriate response. If we return to the prescriptive sources, we can find a heavy dose of mercy in the laws of both ecclesiastical and secular officials, norms that we can also see reflected in their applications of their laws.

60. Gauvard, “Grâce et exécution capitale: les deux visages de la justice royale française à la fin du Moyen Âge,” *Bibliothèque de l'école des chartes* 153 (1995): 275–90, at 279–80.

61. Arnade and Prevenier, *Honor*, 1–13; and Gauvard, *De grâce*, see especially 802–22.

62. JJ160f74v #96.

63. Laurent, *Nâitre*, 155–56; and Gauvard, “Honneur des femme et femme d'honneur,” *Francia* 28 (2001): 156, 159–91.

I begin with the most important piece of canon law to address the intentional killing of an infant, a letter from Pope Alexander III dated 1168–69.⁶⁴ As this text explains, in the second half of the twelfth century, in the county of Flanders, a single mother took her newborn son to the man she claimed was the father. The man denied paternity, and the mother, in despair, killed her newborn. The count of Flanders banished this woman for 7 years as punishment. The mother, horrified by her own action and inspired by crusading zeal, decided to undertake a pilgrimage to Jerusalem to atone for her sin. First, she went to Benevento to present her case to Alexander III, to confess her sins to him and to ask that he assign penance. The pope rejected her idea of pilgrimage to Jerusalem as futile and potentially harmful. Moved by her tears, he decided that her banishment could be lifted. Instead, she should be placed in a convent in Flanders, and dedicate herself to a life of penitential enclosure. However, the pope did not oblige the unhappy woman to do so. He stipulated that if she was not able or willing to maintain a life of celibacy, she should be given permission to marry instead.

To the modern reader, this is a rather remarkable response by a pope to a woman who confessed to illicit sex and intentional killing of her own child. It might be assumed that the decision was intended and taken as an exception, but in fact, it is never treated as such, not in the decision rendered by the pope, or in the subsequent handling of the case in canon law. Alexander's letter is the only text in the most important and influential canon law collection of the Middle Ages to explicitly address the intentional killing of an (illegitimate) infant by its mother. It was not the exception, it was the rule, or at least the only guidance that religious law offered.⁶⁵

64. X 5.10.1, *Corpus Iuris Canonici*, ed. Friedberg, 2:792; see further Holzmann, "Die Register Papst Alexanders III. in den Händen der Kanonisten," *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 30 (1940): 13–87; and JL 10607. Arguably even more important in terms of the extent to which it appears in subsequent texts and commentary is the handling of a priest who caused his mistress to miscarry. X 5.12.20, see further Müller, *Criminalization*, 25, 53–56.

65. It is the first of the three decretals under the rubric of "de his, qui filios occiderunt," the second does not allow a husband to separate from his wife and remarry if she has killed their infant, and the third addresses parents who smother their children in their sleep by rolling over on them in the bed, "overlying." On Alexander III and infanticide see further Anne Duggan, "Alexander ille meus: the Papacy of Alexander III," in *Alexander iii*, 46; PL 200, 849–52 no. 975 at 850; and Diana Webb, *Medieval European Pilgrimage* (New York: Palgrave, 2002), 56: Alexander III in 1171 advised the archbishop of Uppsala to send persons guilty of parricide, infanticide, incest, and bestiality to "visit the shrines of the apostles Peter and Paul, that in the sweat of their brow and labour of the road they may avoid the wrath of the heavenly judge and earn His mercy."

Other canon law sources display the same attitude. Take for example the standard gloss, or commentary, provided by thirteenth-century jurist and cardinal Bernard of Parma. For him, the case of infanticide is not just the case of a woman overcome by rage, “*iracundiae calore ducta*”; it is the case of a woman possessed by the devil: “*diabolico furore accensa*.”⁶⁶ And in the additional commentary, there is the explanation why she, and others like her, should be given the chance to atone: “*nolo mortem peccatoris sed convertatur*,” God sought not the death of the sinner but his—or her—conversion, a change from wrongdoer to someone repentant and good.⁶⁷

For French ecclesiastical authorities, infanticide seems to have remained in the realm of penance, or left to secular authorities to prosecute.⁶⁸ Local legislation issued by bishops in France, and across medieval Europe, regularly decreed that all involved in the death of an infant or harm to a child, accidental or intentional, through suffocation, or by negligent exposure of an infant to the dangers of water or fire, should appeal directly to the bishop for penance. A local priest could not absolve so grave an offense.⁶⁹ Mothers are certainly sometimes the subject of these texts, but so are women in general, or parents, as well as all manner of other persons.⁷⁰

66. Decretalium Gregorii Liber V 1692, in *Corpus juris canonici emendatum et notis illustratum*. Gregorii XIII. pont. max. iussu editum. Romae: In aedibus Populi Romani, 4 vols. 1582.

67. *Ibid.*, 688: “interfecit” Sic indi c prox. De poena istius habes C.eod.tit l. unica. Secundum canones non ita puniuntur quia Deus non vult mortem peccatoris, sed ut convertatur, & c 26.a.6.agnovimus & 23.q.ult. his a quibus (Ezekiel 33:11).

68. This is an interesting contrast to in England, where abortion and infanticide were prosecuted in ecclesiastical courts as well as in secular courts. It may well be that these kinds of cases were also handled by French church courts, but there is no evidence of it at present. On church court (and secular court) prosecutions in England see especially Sara Butler, “A Case of Indifference? Child Murder in Later Medieval England,” *Journal of Women’s History, Special Issue: Domestic Violence in History* 19 (2007): 59–82.

69. Véronique Beauland-Barraud, *Les péchés les plus grands: Hiérarchie de l’Église et for de la pénitence, France, Angleterre, XIIIe-XVe siècle* (Rennes: Presses universitaires de Rennes, 2019).

70. The joint endeavor of Rowan Dorin and Christine Barralis has revolutionized scholars’ ability to search through synodal statutes. <https://cosyn.hypotheses.org/author/rdorin>. I have only found one French synodal statute that explicitly condemns mothers pregnant from fornication who abort or kill: Joseph Avril, ed., *Les Statuts synodaux français du XIII siècle 4: Les Statuts synodaux de l’ancienne province de Reims* (Paris: CTHS, 1995), 246: Noyon (1280–85) (57) “De inquisitione conceptionis in fornicatione. Nonnullae siquidem mulieres Medee vestigiis inherentes, conceptos in fornicatione partus per se et per alios sue culpe conscios procurant fieri abortivos, natos etiam perimunt vel exponunt.” Some women who, following in the footsteps of Medea, the infant conceived outside marriage they or those knowing of the sin attempt to abort it, or even kill or abandon it if it is born. In England, by contrast, there seems to have been an emphasis on the

Whereas a few collections made distinctions between accidental and intentional killing, many others did not. Both the provider of an abortifacient and the negligent wet nurse were enjoined to seek episcopal remedy. The welfare of all infants was of great concern, and all Christians were potential culprits. As Richard Helmholz explains: “negligent infanticide was to be punished as well as intentional killing. Lack of desire to kill was cause for mitigation in the degree of punishment, not reason for absolution.”⁷¹ This broad condemnation of involvement in infant death complied, as Helmholz points out, with the general principles found in canon law.⁷²

Turning next to secular law, in principle, anyone found guilty of killing a child could be executed. Several French collections of customary law set limitations on this punishment when addressing cases in which parents, women, or mothers are suspected of killing their infants by suffocation or overlaying.⁷³ But at the same time, in principle, parents who harmed their children, like all parricides, were considered to have committed graver offense than the killers of a stranger. And anyone who harmed children, intentionally or not, might also fall foul of laws that placed great value on infants and children, even before birth. Those who caused a pregnant woman to abort or miscarry, through potions or violence, also risked criminal prosecution and execution, and sought pardon to escape these penalties.⁷⁴ In short, the letter of secular law harshly condemned all manner of infant death.

culpability of mothers in particular in infant death from accident or negligence. See Danielle Griego, “A Mother’s Guilt: Female Responses to Child Death in High and Late Medieval England,” in *Literary Cultures and Medieval and Early Modern Childhoods*, ed. Naomi Miller and Diane Purkiss (New York: Palgrave, 2019), 261–74.

71. Helmholz, “Infanticide,” 375–90.

72. Helmholz cites “X 5.10.3 “de infantibus autem qui mortui reperiunter cum patre et matre et non apparet, utur a patre vel a matre oppressus sit ipse vel suffocatus, vel propria morte defunctus, non debent inde securi esse parentes, nec etiam sine poena.” See for example, Hostiensis, *Commentaria in Libros Decretalium* (Venice, 1581) who so concludes X 5.10.3 no. 1: “Qui non adhibet omnem diligentiam quam potest in levi saltem culpa est.”

73. French secular laws such as the *Etablissements de Saint Louis* sometimes stipulate that such offenders could be sentenced to execution only upon the second offense, possibly a way to address the considerable difficulty of proving intentional killing in the absence of obvious proof or a confession. See further Pichot, “Avortement,” 54–64; for synodal statutes and cases reserved to the bishop for absolution see Beaulande, *Les Péchés*, 68, 93, 111, 121, 131–37.

74. Pichot, “Avortement,” ch.1, 71–130 and appendix for examples; Müller, *Criminalization*, 174–76, 233–34. There are several pardons for accidental or negligent killing of an infant (or pregnant woman, or of causing a miscarriage or stillbirth by rape or attempted rape) perpetuated by men and women, and in every decade for which we have records. Violent fathers all too often feature among these, in pardons that portray the father

Nevertheless, all child killing, however harshly condemned in principle, might be resolved via penance, by compensation paid to the bereaved family, or by fines levied by the court that prosecuted the accused. We may never be able to arrive at a clear statistical account of how often offenders received mercy. We do not know the rates of prosecution, even, let alone anything like numbers of actual alleged killings, let alone actual rates of suspicious infant death. But the possibility that there might be pardon, or absolution, or that the investigation might be dropped altogether, was real. The kind of justice practiced in medieval Europe was one that encompassed both harsh punishment and mercy. Even the worst of criminals could be pardoned.⁷⁵ But infanticidal unwed mothers were not necessarily counted among that “worst.”

The French pardon letters, like the medieval laws reviewed, do not just involve Alfred Soman’s “one type” of “a woman [who] conceived a child illegitimately, concealed her pregnancy, gave birth in secret, and then killed her baby or deliberately let it die.” Women were not alone among the pardoned. Men also sought pardon for different kinds of involvement in the death of an infant.⁷⁶ Moreover, the infants in question were not just those conceived illegitimately. Children of legitimate unions figured as well.⁷⁷ Nor were all their deaths the kind of deliberate killing that Soman describes. The advocates for penitent culprits regularly claimed that they had acted out of fear, poverty, temporary madness, and every other emotion that the devil might instill in a human soul.

accidentally killing an infant or child while beating his wife. See at note for examples of men accused of killing infants or provoking stillbirths or abortions.

75. See notes 57 and 58.

76. JJ66f.263v #626 (1332), JJ98f.105r #306 (1365), JJ110f.68v #117 (1376), JJ110f.196r #341 (1397), JJ119f.159r #246 (1381), JJ124f.191r-191v #337 (1384), JJ133f.7v #18 (1388), JJ145f.40 #89 (1393), JJ146f.154#294 (1394), JJ148f.20v#36 (1395), JJ155f.73#126 (1400), JJ155f.142 #231 (1400), JJ158f.158v#293 (1404), JJ159f.87#315 (1405), JJ160f.286v#413 (1406), JJ164f.42r #72 (1409), JJ200f.65r (1467), JJ200f.72 #132 (1467), JJ196f.164v (1470), JJ195f.328v #1445 (1475), JJ206f.229v #1063 (1477), JJ206f.105r #455 (1479), JJ206f.105r #455 (1479), JJ206f.156 #696 (1480/1), JJ207f.35r #73 (1480), JJ211f.159 #279 (1485), JJ225f.139#652 (1489), JJ227f.247 #478 (1497), JJ233f.54#130 (1499), JJ234 f.206v #378 (1499). There are likely many more; this list includes only those cited by Pichot, Müller, Gauvard, and Brissaud, as well as several additional records of pardons that I found while working through the “himanis” collection of digitized letters. All are on himanis.org and the BVMM except JJ225–JJ234, which are available on microfilm at the national archives in Paris. For a useful English comparison, see Sara Butler, “Abortion by Assault. Violence against Pregnant Women in Thirteenth- and Fourteenth-Century England,” *Journal of Women’s History* 17 (2005): 9–31.

77. On this, see especially Pfau, “Madness,” 234–37, and Pichot, “Avortement,” 108–30.

3. Pardoning the Infanticidal Mother

What, then, is the history of maternal infanticide in medieval France as we know it, taking stock of what sources there are: the laws, stories, the few records from local investigations and prosecutions, and the royal and ducal pardons? It is a history of pardons above all, pardons and penance, with only scattered references or examples of execution or other punishment.

The women who received pardon could be young or old, married or unmarried, adulteresses or widows.⁷⁸ They could be of high or low status, living with their parents or in service. For some it was their first pregnancy; others already had children, some legitimate, some not. The pardon requests most often claim the women had given birth alone, in the most dire and terrifying of circumstances, and therefore with fewest chances for the successful birth of an infant. In other cases, women gave birth with the help of their kin: mothers or other family members. Some confessed to giving birth to an infant who lived long enough to receive baptism, others claimed stillbirth, and still others confessed that although the infant had been born alive, they either had not tried to baptize the baby or had tried and failed before it died. Many of those who killed claimed to have done so in the first desperate moments after giving birth, some killed their infants days or even months later.⁷⁹ These all obtained pardon.

There are too many pardons to detail here, but it is instructive to consider at least a few more examples. According to one woman's confession, for example, she had surrendered her body to the demands of the man she hoped to marry, who lived with her in her father's home. Guillemette Lelasuier, a "poor girl" of 20 years of age or thereabouts, had wanted to marry a servant called Jehan Coquechart, had sex with him, and became pregnant. Well before 9 months had passed, she fell in a ditch and the next day gave birth, but kept the infant squeezed between her legs until her family and the other people staying with them had left the house, so she could keep the birth a secret. At that point, she claimed, she wanted

78. Working from other scholars' references to royal pardons and digging through the magnificent resource, <http://himanis.huma-num.fr/himanis/>. I have found just over 100 records of pardons for infanticide and related offenses from between the mid-fourteenth and the late fifteenth centuries (largely infant murder but also some abortion, miscarriage, and stillbirth), and there are likely more.

79. Most of the cases I have found, particularly those involving illicit pregnancy, concern what is now called "neonaticide." For an example of a mother who killed her daughter several weeks after she gave birth, when, according to her confession, the putative father refused to help with supporting the child, see JJ 208 f.27r #48.

to baptize the infant but it had already died, because it had been born too prematurely. The king pardoned her nevertheless, in 1482.⁸⁰ That same year he also pardoned a widow, Anne l'Abbesse, already the mother of "many little children." Her pardon letter explained that she had, after baptizing her newborn infant, smothered the baby in her bedsheets to make sure that her family did not discover her with a newborn infant whose presence would have offered irrefutable evidence of her having had illicit sex with a young man whose name, like the place in which she lived, was left blank on the pardon.⁸¹

Presented with the confessions of infanticidal, even incestuous, mothers, the Valois kings regularly granted pardons. Annette de Boussen, for example, confessed not just to illicit sex but also to incestuous illicit sex with her brother, and of having killed her newborn infant to conceal the crime, acting "out of great shame and fear of her mother and father," and "tempted by the devil."⁸² When the corpse of a baby girl was found in a neighbor's garden a few days later, she fled to sanctuary, and obtained royal pardon in 1382. Spared any further criminal prosecution, she was sentenced to 2 months in prison on a penitential fast.

Some of the royal pardons for men and women who confessed to involvement in illicit pregnancy or infant murder do offer indications that other culprits had been executed. It is difficult to tell if their offenses were regarded as somehow worse, or what other factors contributed to the infliction of capital punishment. To give one such example, in 1481, Guillaume Langlois sought pardon for his involvement in an infanticide. A married man, he had been having a sexual relationship with a woman staying in his house, Raouline Pacquet. He claimed that she had concealed the pregnancy even from him, and that she had buried their newborn daughter in his garden, only telling him afterwards. According to Guillaume's request for pardon, although this is not known for certain, Raouline had been executed, and this had happened at least in part because this was not her first offense; she had aborted a previous pregnancy.⁸³ Guillaume denied any involvement in the death of the infant, but rather

80. JJ210 f.14r #19.

81. JJ210 f.35v-36r #62.

82. JJ121 #172 f.92v. <http://himanis.huma-num.fr/himanis/index.php/ui/show/chancery/241/188?feedback=1>, "honte & grant vergoingne, & de la cremeur de ses dis pere & mere. . .par temptacion de lennemy." See also Brissaud, "L'infanticide," 238.

83. JJ206 f.156 #696. I have found no traces of any legal proceedings for her, but Pierre Charbonnier assumes that she was executed, because the pardon said as much. See Charbonnier, "Les limites du pardon des violences dans les lettres de rémission du xve siècle," in *La violence et le judiciaire: Du Moyen Âge à nos jours. Discours, perceptions, pratiques* (Rennes: Presses universitaires de Rennes, 2008).

than risk prosecution, he had fled and sought pardon, as did a few other men in similar circumstances. Lest it be assumed, however, that the woman necessarily had more responsibility, in a reverse situation, there are the pardons sought by two young women who confessed to incestuous sex and abortion, it was their fathers who were condemned to execution. In 1453, the daughter who sought pardon claimed that her father had raped her and forced her to abort her fetus.⁸⁴ In 1474, another young woman sought pardon because she had been imprisoned and investigated after her father, she claimed, had forced her to drink an abortifacient, and he had been sentenced to execution and had appealed his case to Parlement.⁸⁵ Abortion or infanticide compounded by a prior offense, or especially by incest, may well have made execution a more likely outcome than in other cases. But even with these examples, the fate of those described in the royal grants of pardon as instigators and condemned to death is not known. Nor is the fate of the suppliants in these cases who had presented themselves as accomplices, often as quite unwilling or unknowing accomplices, known. All that is known for certain is that the king granted pardon in the records available.

Conclusion

That there was room for mercy and for the miraculous in medieval justice should not in the end be surprising. The miraculous escape of Christian apostles and saints from captivity or from attempted execution featured prominently in medieval Christian religious devotion and iconography. The fact that Jesus had been subjected to trial and execution mattered a good deal also. Divine intervention in temporal affairs was taken seriously. If an attempted execution failed, and if it were claimed that saints, or the Virgin Mary, had intervened to spare the guilty, this could mean an end to efforts to execute that person. This could happen even for seemingly rather unsympathetic persons. As Robert Bartlett wrote in his account of a “notorious Welsh brigand,” or rebel, executed in 1289 for homicide and other offenses, the executed man, thought dead, returned to life and

84. JJ184 f.208v #303. Consent is of course an issue of critical importance to this subject, and one I hope to address in future research. Many of the pardons claim that sex took place against the woman’s wishes, or that she was seduced with false promises. These claims could have been strategic or they “just” reflect the sad reality of widespread sexual exploitation and abuse in medieval France. Certainly many women who admitted to consensual—or at least less obviously coerced—illicit sex also obtained pardons.

85. JJ195 f.268r #1201 (1474).

this resuscitation was attributed to Thomas of Cantilupe, Bishop of Hereford and future saint.⁸⁶

But it was not just a matter of miracles. However vicious and violent medieval society was in many respects, when it came to criminal punishment, there was a shared reluctance to execute, to condemn, and to carry out sentences, among judges and juries and extending to anyone involved in a criminal prosecution.⁸⁷ Dangers of hellfire menaced not only those who wrongfully condemned the innocent, but also those who failed to recognize the role of divine intervention and the essential place of mercy in exercising justice.

Showing mercy to sinners was, moreover, an important mechanism of rulership for popes and kings, and for religious and secular authorities more broadly. It was a mighty weapon in a ruler's arsenal to have the power to condemn to death, but to choose instead to show mercy to those who confessed and sought pardon. It could increase royal income, but could also demonstrate the extent of a ruler's power, and could enforce and uphold the patriarchal social order. This grace was shown to both the worst sorts of criminals, and to those who confessed to less egregious, if still serious, crimes. The place of women on this spectrum of wrongdoing, and infanticidal mothers in particular, remains unclear. In general, justice as exercised against women in medieval France might more accurately be thought of as paternalistic rather than viciously patriarchal: women were a recognized category of vulnerable persons whom those in power had a special obligation to help.

Even women who killed their newborn infants could be shown mercy, and were. It should not be assumed that the sinning unwed mother who concealed her pregnancy and killed her infant was counted among those worst offenders in the medieval imagination. To make this assumption is to mistake the nature of medieval patriarchy and the function of religious ideas of good and evil. This assumption fails to recognize, too, the role of honor and shame as mitigating factors in acts of violence, even when committed by a mother against her own infant, conceived out of wedlock or otherwise. Mothers of illegitimate children who sought royal pardon regularly claimed that they had concealed pregnancies and killed because they wanted to protect their honor and that of their family, and that they feared violence or condemnation from their kin. They admitted that they had concealed pregnancies from their employers and neighbors, and in some cases from their cuckolded husbands, even though doing so endangered the lives of their infants, and their own lives. This scenario was morally wrong, but

86. Bartlett, *The Hanged Man*.

87. Whitman, *Origins*.

not unforgivable. It was morally wrong, but in a way understandable, that these women had killed their infants. They should suffer imprisonment or be sent on pilgrimages or they should spend some time atoning for their involvement in the death of an infant. But there was no absolute necessity to drown them or burn them so that the social order could be maintained. In the medieval handling of maternal infant murder, Christian notions of penance, mercy, and redemption predominate.

The sinning mother who killed her illegitimate child had to atone; but so did any man or woman who had any involvement in the death of an infant, a miscarriage, or a stillbirth. Both intentional and unintentional killing of an infant could lead to criminal prosecution. It remains unclear if unwed mothers were more likely to be prosecuted. Certainly, they appear to dominate among those pardoned for involvement in the suspicious death of an infant, but more research is needed to confirm this supposition. There could be many more pardons for men involved in infant death that have yet to be identified. What is clear is that the life of a child was sacred, and that both pregnant mothers and young children had special legal protections. Those who harmed them could face considerable legal as well as spiritual consequences. But at the same time, perpetrators could also, after penance and confession, reintegrate into society. This patriarchal system oppressed women mightily, but did not need to inflict harsh judicial punishment upon them to maintain social order. And just as the Virgin Mary saved the life of the incestuous noblewoman of Rome who killed her newborn infant to protect her honor, so, too, did French kings grant pardon to the women who confessed to killing their illegitimately conceived infants, and who sought royal grace.