The Contradictions of Reform: Prosecuting Infant Murder in the Nineteenth-Century United States

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At some time in 1851, an Irish immigrant, Catherine Dunn, faced the New London Superior Court. Dunn's alleged crime: murder. It seems she had left her newborn infant on the banks of the Connecticut River, and the child drowned when the tide came in. No record exists of the court proceedings. Therefore, nothing more is known of the case other than its outcome and Dunn's punishment. Connecticut law provided that if convicted of murder, the accused could be hanged.[1] But Dunn's offense was different, because she was a mother and the victim was her own, newborn infant. Courts generally approached infanticide—broadly understood as the killing of an infant child by its mother—as a crime distinct from other forms of murder, such as homicide. Culturally specific ideas about the emotional and mental fragility of women, particularly mothers of young children, shaped social and legal responses to the crime, thereby informing sentencing. Therefore, penalties varied ranging from capital punishment to short terms of incarceration, depending on the perceived severity of the offense. But such an apparent lack of retribution for those who escaped hanging did not mean that communities tolerated infanticide and child murder. Indeed, reports in the popular press regularly condemned the crimes, characterizing them as "horrible" and "diabolical." Even so, courts often extended consideration to mothers convicted of murdering

1. In Catharine Dunn's case, the conviction recorded was "murder two." Under the sentencing options available for such a conviction, the maximum possible penalty was life imprisonment. If convicted of murder one, then the punishment was death. See "An Act Concerning Crimes and Punishments," Title VI, Chapter 2, Sections 4–5, in *The Statutes of the State of Connecticut* (New Haven: T. J. Stafford, 1854).

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their children. That was the case with Catherine Dunn, sentenced to life in prison, not death.[2]

As I argue in this article, the legal system in Connecticut—akin to those in other states—extended considerable latitude to murdering mothers in the decades between the Revolution and the Civil War. That situation owed much to the ways in which Connecticut residents, like nineteenth-century Americans more broadly, understood law and the legal process, conceiving of both as fluid and mutable. Such flexibility proved important for mothers accused of infanticide. Statutes in Connecticut, as in most American states and territories, imposed harsh punishment for those convicted of the crime. In addition, accused women faced enormous challenges in negotiating the legal process, although in Connecticut, the state appointed guardians and/or legal counsel—educated white men—for indigent defendants. But, in practice, people saw the statutes as a loose guide to a potential range of possible punishments. Further, defendants regularly challenged unfavorable judgments and outcomes, using the levers of law to seek mercy that the written laws seemed to foreclose. As a result, women—especially mothers—generally received far more favorable outcomes than the statutory law and the popular press suggested.[3]

This article builds on a range of literature produced over the past three decades that emphasizes the significance of law as a fusion of process and practice in the nineteenth-century United States.[4] In the early decades of

2. "Horrible Case of Infanticide," *Hartford Courant*, March 14, 1866, 3; "Miscellaneous Selections," *Hartford Courant*, August 7, 1841, 2; and "A Sad Case for a Philanthropist," *Hartford Courant,* April 3, 1856, 3. For reported associations between infanticide and "uncivilized" nations, see "Chinamen in California," *Hartford Courant,* July 10, 1851, 2; "American Board of Commissioners for Foreign Missions," *Hartford Courant*, September 15, 1854, 2; "Rev. Mr. Baldwin. . . ," *Hartford Courant*, January 19, 1859, 2; and "The Chinese in America," *Hartford Courant*, April 27, 1862, 2. For the 1854 account, see "Infanticide," *Hartford Courant*, August 7, 1854: 2.

3. Two of the bestselling novels in the early nineteenth-century United States, Hannah Webster Foster's *The Coquette*, originally published in 1797, and Susanna Rowson's *Charlotte Temple*, originally published in 1791, focused on the plights of white women seduced by rakish men. The sexual encounters resulted in pregnancies and, in each case, the novel ended with the woman's death after she had given birth. The moral, in each instance, is that it was not possible for a woman to survive the ignominy of an illegitimate pregnancy. See Hannah Webster Foster, *The Coquette*, ed. Cathy Davidson (New York: Oxford University Press, 1986); and Susanna Rowson, *Charlotte Temple*, ed. Marion Rust (New York: Norton, 2011).

4. My argument builds on the body of work that has critically re-evaluated the role of white women, free blacks, and the enslaved, all assumed to be traditionally marginalized from involvement in the legal system. For early scholarship in this vein, see Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina

the nineteenth century, Connecticut residents—like those in local communities across the emerging nation—certainly understood law in that way: as something of which they constituted a vital part. Although law responded to the individual circumstances of daily life, people also expected those same contingencies and situations to inform other areas of the legal system, particularly statutes and their application. As a process, not an immutable thing, law emerged in interstitial spaces, shaped by the interaction and intersection of forces from both above and below. This understanding explains early changes to infanticide statutes that reflected changing social concerns about the morality of women's conduct and appropriate punishment. Over time, the state of Connecticut—like most others—drifted toward a legal and penal regime less focused on punishing wayward women and more invested in reform of individual conduct. That context explains why, for example, Catharine Dunn found herself sentenced to life imprisonment at Wethersfield State Prison in 1851. Modeled on Auburn Prison in New York, Wethersfield's supporters both in the United States and abroad heralded the penitentiary as a model prison, singling out for praise its focus on individual rehabilitation through silent, inner contemplation. That acclaim, however, was surely lost on Catherine Dunn, who faced a lengthy future behind bars. Although the state had stopped short of sentencing Dunn to death, the alternative must have seemed only remotely less bleak.[5] As Dunn's case illustrated, the

Press, 2009); Ariela Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton: Princeton University Press, 2000); Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1985); Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000; and Dylan Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century American South* (Chapel Hill: University of North Carolina Press, 2003). For more recent work that extends and amplifies this literature, see Sarah Gronningsater, "'On Behalf of His Race and the Lemmon Slaves': Louis Napoleon, Northern Black Legal Culture, and the Politics of Sectional Crisis," *Journal of the Civil War Era* 7 (2017): 206–41; Kelly Kennington, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (Athens, GA: University of Georgia Press, 2017); Yvonne Pitts, *Family, Law, and Inheritance in America: A Social and Legal History of Nineteenth-Century Kentucky* (New York: Cambridge University Press, 2013); Anne Twitty, *Before Dred Scott: Slavery and Legal Culture in the American Confluence, 1787–1857* (New York: Cambridge University Press, 2016); and Kimberly M. Welch, *Black Litigants in the Antebellum American South* (Chapel Hill, NC: University of North Carolina Press, 2018).

5. Petition of Catherine Dunn for release from state prison, May 1861, General Assembly Papers, Connecticut State Archives, Hartford, Connecticut (hereafter CSA); and "Connecticut Legislature," *Hartford Daily Courant*, June 14, 1861, 2. Most studies on early American prisons focus on the Pennsylvania model, which was superseded by the

emphasis on individual reform, however well intentioned, sometimes actually resulted in harsh punishments.

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In a formal legal sense, infanticide constituted a singular crime, one that historians generally recognize as originating from a 1624 Jacobean statute. A few characteristics made the law unique. First, it applied to a particular group; namely, women who gave birth to "bastard"—illegitimate—children. Second, and more significantly, the statute presumed guilt, not innocence. The law assumed that any woman who gave birth to an illegitimate child, and concealed the death of said child, was guilty of killing that child. As concealing the death of the infant foreclosed the possibility of thoroughly investigating the circumstances of its demise, this meant that the mother must have intended to kill the child. As such, the punishment was death. The law, therefore, upended the usual burden of proof, requiring an accused woman to prove that she did *not* commit the crime rather than having the accusers provide evidence that she did.[6]

"Auburn model," which was developed in the early decades of the nineteenth century. The term "Auburn model" referred to the Auburn State Penitentiary in New York where the prison system developed the model. On the "Auburn model"—a system of reform that combined working in groups during the day with silence and solitary confinement at night; see W. David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796–1848* (Ithaca: Cornell University Press, 1965); and Rebecca McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941* (New York: Cambridge University Press, 2008). Charles Dickens and Alexis de Tocqueville both visited Wethersfield State Prison to review the famed "Auburn system" in action. For de Tocqueville's assessment, see Gustave de Beaumont and Alexis de Tocqueville (trans. Francis Lieber), *On the Penitentiary System of the United States* (Philadelphia: Carey, Lee & Blanchard, 1833). For an assessment of Wethersfield Prison, see Lawrence Goodheart, *The Solemn Sentence of Death: Capital Punishment in Connecticut* (Amherst: University of Massachusetts Press, 2011), 101–4.

6. For the English law, see 21 Jac. 1, c. 27, "An Act to Prevent the Destroying and Murdering of Bastard Children" passed in British Parliament, May 1624. The law stated "That if any Woman after one Month next ensuing the End of this Session of Parliament be delivered of any Issue of her Body, Male or Female, which being born alive should by the Laws of this Realm be a Bastard, and that she endeavor privately, either by drowning, or secret burying thereof, or any other Way, either by herself or the procuring of others, so to conceal the Death thereof, that it may not come to Light whether it were born alive or not, but be concealed: In every such Case, the Mother so offending shall suffer Death as in case of Murder, except such Mother can make Proof by one Witness at the least, that the Child (whose Death was by her so intended to be concealed) was born Dead." For the development of English law in relation to infanticide see Laura Gowing, "Secret Births and Infanticide in Seventeenth-Century England," *Past and Present* 156 (1997): 87–115; Mark Jackson, *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (Manchester: Manchester University Press, 1996); Peter C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558–1803*

The Jacobean statute, although it framed subsequent understandings of what constituted infanticide, did not actually use the term, nor did most later laws pertinent to the crime adopted in the British North American colonies. Rather, communities generally understood infanticide far more broadly than the statute allowed, characterizing a range of offenses relating to the murder of young children as "infanticide." At the same time, however, the intent of the original Jacobean statute loomed large, shaping and informing understandings of "infanticide" over the centuries, and as the British law traveled across the Atlantic. That meant, for example, that the deaths of infants born to unmarried pregnant women remained subject to greater scrutiny than the deaths of infants born to married women. Even then, however, communities sometimes characterized infant murders—particularly those of a violent nature—as infanticides, with limited regard to the murderer's gender or marital status. Cultural and social ideas of infanticide, then, were elastic, an elasticity that interacted with and influenced law, legal processes, and the outcomes of court cases, including that of women such as Catherine Dunn. Indeed, by the late eighteenth century, within an evolving trans-Atlantic climate that saw a shift away from retributive justice and capital punishment toward individual reform, understandings of what constituted infanticide and its appropriate punishment were shifting both within the United States and abroad.[7]

Connecticut was not immune to these transformations, exemplifying the trends that shaped changing ideas and legal frameworks in relation to infanticide in the nineteenth-century United States. My analysis here is based on a close reading of thirty-three cases of infant murder from Connecticut, all of which occurred between 1790 and 1900. I collected

(New York: New York University Press, 1981); and Frank McLynn, *Crime and Punishment in Eighteenth-Century England* (New York: Routledge, 1989), 110–15. As these historians note, successful prosecutions for infanticide under the original Jacobean statute steadily declined over the course of the eighteenth century amid changing attitudes toward capital punishment.

7. As historians of British infanticide have noted, in his study of newborn child murder in eighteenth-century England, Mark Jackson characterized the term "infanticide" as "anachronistic" and "vague." See Jackson, *New-Born Child Murder*, 5–6. Historians of infanticide in the nineteenth-century United States, however, have argued that nineteenth-century Americans understood the term "infanticide" broadly, as one that included a cluster of crimes—such as murder and child abandonment—related to the deaths of infants even as they were aware of the formal legal requirements for ensuring a successful prosecution using an infanticide statute modeled on the Jacobean law. See, for example, Marcela Micucci, "'Another Instance of That Fearful Crime': The Criminalization of Infanticide in Antebellum New York City," *New York History* 99 (2018): 68–98; and Julie Miller, *Abandoned: Foundlings in Nineteenth-Century New York City* (New York: New York University Press, 2008), 41–42.

these cases by completing a review of all Superior Court records from four counties—Hartford, Litchfield, New Haven, and New London—with the counties selected for the completeness of their record base, the size of each county's population, and demographic diversity. Although the holdings for these counties are relatively complete, the remaining records—at least in relation to infanticide—are slim consisting, in most cases, of an indictment and a handful of related records, such as an arrest warrant. Therefore, in addition to the case files, I reviewed all petitions to the General Assembly, an enormously rich set of sources, and I analyze three of those petitions in detail here. Although this article focuses exclusively on Connecticut, the sample is selected because it is representative, drawn from a larger set of cases culled from coroners' inquests, newspaper reports, medical journals, and court cases from across the nineteenth-century United States.[8]

Connecticut's particular conflation of legislative and judicial functions meant that the state's petitions and review process was unusual, but in all other respects Connecticut's handling of infanticide cases differed little from other states. Like the other British North American colonies, Connecticut had followed England in handling infanticide, within the particular structures of its developing legislative and judicial systems. Established as a colony in the early decades of the seventeenth century,

8. All of the material I consulted is available within Record Group 2 (General Assembly Records) and Record Group 3 (Judicial Department) at CSA. The number of cases from Connecticut was typical for a state of its size. Infanticide was uncommon, but neither unexpected nor unfamiliar. Indeed, the number of cases involving unknown infants during this period, both within Connecticut and across the country, suggests that infanticide may have been more common than the number of recorded cases indicates. Further, the very nature of the crime presupposed secrecy. Although the sample from Connecticut does not include cases involving enslaved women, the outcomes for enslaved women charged with infanticide were often analogous to those of free black women in northeastern and mid-Atlantic states. For studies of infanticide in the United States focusing on the period between the Revolution and the Civil War, see Katie Hemphill, "'Driven to the Commission of This Crime': Women and Infanticide in Baltimore, 1835–1860," *Journal of the Early Republic* 32 (2012): 437–61; Wilma King, "'Mad' Enough to Kill: Enslaved Women, Murder, and Southern Courts," *Journal of African American History* 92 (2007): 37–56; Clare Lyons, *Sex Among the Rabble: An Intimate History of Gender & Power in the Age of Revolution, 1730–1830* (Chapel Hill: University of North Carolina Press, 2006), 95–100; Micucci, "Another Instance of That Fearful Crime"; Randolph Roth, "Child Murder in New England," *Social Science History* 25 (2001): 101–47; G. S. Rowe, "Infanticide, Its Judicial Resolution, and Criminal Code Revision in Early Pennsylvania," *Proceedings of the American Philosophical Society* 135 (1991): 200–32; Joanna B. Spanos, "Pardon or Punish? Legal and Community Interpretations of a Nineteenth-Century Infanticide," *Pennsylvania Magazine of History and Biography* 142 (2018): 163–87; and Kenneth Wheeler, "Infanticide in Nineteenth-Century Ohio," *Journal of Social History* 31 (1997): 407–18.

Connecticut had been operating under a colonial charter granted by Charles II since 1662. The charter granted Connecticut a significant degree of autonomy in managing its own affairs provided that the colony did not pass laws contrary to the interests of the British crown. The level of independence accorded to Connecticut made the charter unique among governing documents granted by the crown to early British-American colonies.[9]

In the late eighteenth century, all of the newly established American states drafted constitutions, except Connecticut. The state persisted in using the governance structure established under the charter. This meant that—pursuant to the charter—up until 1818, when Connecticut drafted its first formal constitution, the Connecticut General Assembly consisted of two houses: the council and the assembly. Approximately 200 elected members—free, white men—constituted the assembly. The council, in contrast, was much smaller, consisting of fourteen elected members from which the members elected the governor on an annual basis. Any executive authority, therefore—if any could be said to exist—rested with the fourteen members of the council, not the governor. More accurately, however, all power in Connecticut resided with the General Assembly—the legislature—rather than with the executive.[10]

The General Assembly even exercised judicial authority. At the lower level, Justices of the Peace and Superior Courts exercised judicial power. But residents unhappy with the legal process, at any stage, appealed directly—at least until 1794—to the legislature. Individuals did not have to wait until the outcome or resolution of a case to appeal. They simply sent a petition to the legislature asking the members to intervene. In 1794, the General Assembly created the state's first appellate court, the Supreme Court of Errors. The judiciary, however, did not comprise the court. Rather, the General Assembly's council constituted the court. As such, creation of the Supreme Court merely shifted the burden for reviewing individual appeals or petitions from both houses of the General Assembly to one, the council. And within the council, the governor did

9. For the most comprehensive history of Connecticut's judicial and legislative structure, see Wesley W. Horton, *The Connecticut State Constitution* (New York: Oxford University Press, 2012).

10. In 1818, when Connecticut drafted its first constitution, the constitutional convention considered granting the pardon power to the executive, as was the norm in other states. The convention elected, however, to ensure that the legislature retained the exclusive right to pardon. Today, the legislature—not the executive—still reserves that exclusive right, although since 1883 the legislature has delegated the power to a Board of Pardons. Although the executive possesses the right to grant a reprieve—to stay a punishment—it still does not possess the power to grant pardons, making Connecticut one of the few American states where the governor does not possess the power to grant pardons. See Horton, *Connecticut State Constitution*, 130.

not hold singular authority for determining the outcome of the petitions. Rather, the council, as a group, possessed the power to review petitions. Thus, prior to 1818, the unique nature of Connecticut's legislative and judicial structure created an environment in which judicial authority—such as it was—constantly shifted between the legislature and the judiciary, providing residents with a range of opportunities to pursue the best possible resolutions to their cases.[11]

This structure may seem confusing and unnecessarily complicated, but in the early decades of the nineteenth century, Connecticut residents did not view the three functions of the state—judicial, legislative, and executive—as separate. Fluidity within the legislative and judicial functions—what might be considered in today's context to be a blurring of boundaries—constituted the norm rather than the exception. Across the emerging nation people in local communities often turned to the legislature or the executive or some combination of both if they were displeased with the outcome of a court case and wanted their voices heard. Such fluidity provided opportunities for those accused of crimes such as infanticide. For white women and African Americans, both enslaved and free —those who otherwise experienced difficulty in negotiating the legal system—that room to move proved particularly important.

Like the larger governance structure in the state, Connecticut's statutory law in relation to infanticide at the beginning of the nineteenth century remained deeply influenced by the original 1624 English law in relation to the crime. The 1796 Connecticut "Act for the Punishment of Murder," for example, stipulated clearly that any person found guilty of murder should be punished with death. The act, however, included a special stipulation specific to women who gave birth to "bastard" children. Akin to the Jacobean Act that formed the basis for Connecticut law, the state statute provided for the presumption of guilt if a woman concealed the death of a newborn, illegitimate child. Indeed, unless the accused woman could prove otherwise by presentation of a witness attesting the infant had been born alive, the statute assumed malevolent intent. That is, the law presumed that a mother had murdered her newborn child. As such, the law criminalized the keeping of a secret. Concealment constituted the crime.[12]

11. Ibid., 8–14.

12. For the English law, see 21 Jac. 1, c. 27, "An Act to Prevent the Destroying and Murthering of Bastard Children." For the relevant Connecticut statute, see "An Act for the Punishment of Murder," *Acts and Laws of the State of Connecticut in America* (Hartford: Elisha Babcock, 1786), 162. The 1796 Connecticut law varied minimally from the Jacobean law quoted in full in footnote six. For a discussion of the development of English law and early American law in relation to infanticide, see Hoffer and Hull,

As harsh as the law seemed, it had remained virtually unchanged in Connecticut—as it had in most other American states—since the seventeenth century. The reason for this, as Cornelia Hughes Dayton, has noted, is that whereas the colony—and later, the state—prosecuted women pursuant to the statute, the legal system rarely executed women as a result of the application of the law. This outcome was not necessarily the result of a low number of convictions. Rather, it demonstrated the fluidity in Connecticut's legal system, even as a colony. As people understood statute as a guideline rather than a hardline statement about the law, the colony—and the newly emerged state—proved reluctant to convict the accused of the crime given that a conviction attracted the death penalty. If juries did, nonetheless, convict women of infanticide, then judges proved reluctant to pronounce the death sentence.[13]

But in Connecticut this pattern changed in 1808, in response to the controversy generated by the case of Clarissa Ockry. At first glance, the case was like so many others across the nation, making it unremarkable. Ockry was young and unmarried. She worked as a servant in close contact with others, which meant that concealing a pregnancy and disposing of a newborn infant posed particular challenges. The case became, however, a flashpoint for debates relating to capital punishment and the role of the legal system in Connecticut in the early years of the nineteenth century.

In September 1807, Ockry, a free black woman, gave birth, in secret, to an illegitimate infant daughter. It remains unclear whether the child was born dead or alive. For a prosecution under the statute, however, the distinction was unimportant. Ockry had tried to conceal the birth; therefore, the truth was not easily discernible. That was what mattered. As no witnesses were present at the birth, Ockry was unable to produce a witness who could attest that the child had been born dead, as was required pursuant to a strict and unyielding application of the infanticide statute. Confusing matters further, Ockry "confessed" to the crime while incarcerated. Ockry believed that in doing so, she might ensure a better outcome at trial, an outcome that would not result in the death penalty. But Ockry

Murdering Mothers. For an analysis of early developments in Connecticut law in relation to infanticide, see Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, & Society in Connecticut, 1639–1789* (Chapel Hill: University of North Carolina Press, 1995), 210–13.

13. For examples of early cases in which grand juries did not find a true bill, see *State v. Hannah Gardiner*, July Term 1794, New Haven County, Superior Court Files; and *State v. Julia Anderson*, December Term 1804, New Haven County, Superior Court Files, CSA.

gambled poorly. In January 1808, when she faced the New London Superior Court, a jury found her guilty of infanticide.[14]

The jury's reason for the strict adherence to "the letter of the law" is unknown, and—given the circumstances—somewhat surprising. In January 1808—prior to trial—Connecticut lawyer, jurist, and former member of the state assembly, Zephaniah Swift addressed all of the grand jurors in his capacity as presiding judge of the court. In the Superior Court, the grand jury assessed if capital cases—that is, cases in which the defendant faced the death penalty if convicted—should proceed to trial. Swift reminded them that it was their responsibility to balance two competing interests. The state, he acknowledged, did hold a vested interest in regulating the conduct of unwed mothers, particularly in relation to their illegitimate children. But the extant infanticide law focused on the punishment of the mothers of illegitimate children. In contrast, the fathers—those who seduced vulnerable women—remained unknown and unpunished. In his remarks, Swift contended that Connecticut possessed a distinguished history of interpreting the infanticide statute liberally. That is—given that a conviction under the law attracted the death penalty—jurors generally required the same standard of proof necessary for a murder conviction. In practice, juries required a body, not merely an accusation that an infant had been born alive, killed, and the body concealed. Even then, Swift argued, because of the difficulties of proving intent—that a mother meant to kill her newborn infant—juries generally erred on the side of caution, opting not to find women guilty rather than indirectly sentence the accused to certain death.[15]

14. *State v. Clarissa Ockry*, February Term 1808, Superior Court Files, New London County; CSA; and Petition to the Connecticut General Assembly on behalf of Clarissa Ockry, May 2 1808, Crimes & Misdemeanors, Series II:IV, 92–95, CSA. For a discussion of the case in the broader context of seventeenth and eighteenth century prosecutions for infanticide, see Lawrence B. Goodheart, "Changing Legal Culture in the Early Republic: Connecticut, Neonaticide, and the Case of Clarissa Ockry," *Connecticut History* 53 (2014): 3–15.

15. For the role of the grand jury in Connecticut's Superior Court at this time, see Dwight Loomis & Joseph G. Calhoun, *The Judicial and Civil History of Connecticut* (Boston: Boston History Company, 1895), 178. For Zephaniah Swift's instructions to the jury, see "From *The Courier*," *Connecticut Courant*, February 17, 1808, 1. In a September 1796 letter to David Daggett, speaker of the council and later a judge in the Connecticut Supreme Court, Zephaniah Swift argued for the importance of establishing "general principle[s]" in law, "applicable to all cases." He criticized the Connecticut judiciary, particularly members of the Superior Court, for seemingly deciding every case on the basis of the individual circumstances presented. This argument seems to contradict what Swift argued in relation to Ockry's case in 1808, but it is important to note that in January of 1808, Swift seemed to suggest that the "general principle" established by the law to date was one that had proved forgiving of the conduct of women, rather than punitive. See Elizabeth

Swift's instructions to the grand jury comported with his view of the legal system more generally. Widely respected at the time throughout Connecticut and the United States, Swift is acknowledged today as the earliest author of a specifically American legal treatise, *A System of the Laws of the State of Connecticut*. Although Swift's treatise focused on Connecticut, he prefaced his analysis with a range of broader commentaries about the role of law in general. In the 1796 treatise, Swift characterized law as a set of "rules" used to frame and interpret human "action." Swift contrasted that approach with one that considered law as a set of rules for dictating human conduct. Although Swift's treatise enjoyed high esteem and wide circulation, what Swift described was how he saw law operating around him, both within Connecticut and—importantly, given Swift's reputation within early American legal circles—beyond. That is, Swift's *System* was both prescriptive and descriptive of law in early nineteenth century America.[16]

But Swift's instructions to the grand jury did not reach the jurors who tried Ockry or the judge who oversaw her trial. They were not widely circulated, and published, until mid-February after Ockry's sentencing. Those jurors found Ockry guilty of infanticide, and the judge sentenced Ockry to hang. Once news of the sentence became public, an outcry followed. One of the first indications that public sentiment favored Ockry appeared in the February pages of the *Connecticut Courant*, later the *Hartford Courant*. On its front page, the newspaper printed Zephaniah Swift's charge to the jury —originally reprinted in the New London *Courier*—in which Swift articulated his view that society needed to balance the demands of justice with those of mercy. Although Ockry's crime, and trial, occurred in Norwich, New London, the *Courant*'s report introduced Ockry's circumstances to a broader audience. In doing so, the newspaper also tied Ockry's fate to the fortunes of the newfound state.[17]

At its next session of the legislature, in early May 1808, the legislature responded to the sense of public outrage. Firstly, the General Assembly voted to change the existing infanticide statute. The new law uncoupled the death penalty from a conviction for infanticide. What this meant was that had the new London Superior Court tried and sentenced Ockry in mid-May of 1808, she would not have been sitting in a Norwich jail

Forgeus, "An Unpublished Letter of Zephaniah Swift," *New England Quarterly* 11 (1938): 180–86, at 185.

16. Zephaniah Swift, *A System of the Laws of the State of Connecticut*, Vol. 1 (Windham, CT: John Byrne, 1796), 5.

17. Ibid.

awaiting execution. Once the Assembly amended the law, Ockry's supporters filed a petition on her behalf.

The petition filed by Clarissa Ockry's counsel, Asa Spaulding, spoke to the limitations of the infanticide statute. In the petition, Ockry did not deny that her child died, nor did she deny the fact of her confession. But, the petition claimed, "good" people who came to visit her in jail—concerned for the well-being of Ockry's soul in the afterlife, and less motivated by more immediate concerns for Ockry's continued earthly existence—prompted Ockry to admit she played a part in her child's death. And while they were "good" people, who sat with Ockry in prayer, Ockry did not know them. At her trial, only one witness—a woman, Mrs. Eames—testified on Ockry's behalf. Eames testified that Ockry knew of her pregnancy and shared that information with others, preparing for the birth of her newborn child. In infanticide cases, such preparation often proved a successful defense against the charge as it refuted the law's underlying presumption of guilt. But in Ockry's case the testimony of one woman had been insufficient. The petition argued that if members of the jury had been able to hear from additional witnesses, all of whom Ockry listed by name, to support Mrs. Eames's evidence, they may have reached a different verdict at Ockry's trial.[18]

At the conclusion of its May sitting, two weeks after it changed the infanticide statute, the legislature acted on Clarissa Ockry's individual petition. Aware that executing Ockry at that point in time represented the height of hypocrisy—she would have been executed pursuant to a law that no longer existed—the Connecticut General Assembly voted to commute Ockry's death sentence to 6 months in the local jail. But the

18. Petition to the Assembly on behalf of Clarissa Ockry, Crimes & Misdemeanors, Series II:IV, 92a—92d, CSA. The race of Mrs. Eames, and the other witnesses listed by Ockry, is unknown, although that factor may have been significant. As the law framed concealment—the keeping of a secret as the crime—those accused of infanticide under the statute sought to demonstrate that they had prepared for the birth of the child and told others around them about their pregnancy. Visible signs of an expectant murder included the preparation of linens or clothing for a newborn child. This often served as a successful defense to the crime. See Gowing, "Secret Births and Infanticide in Seventeenth-Century England." For assessments of how the accused framed petitions for mercy in the early decades of the nineteenth-century, see Irene Quenzler Brown and Richard D. Brown, *The Hanging of Ephraim Wheeler: A Story of Rape, Incest, and Justice in Early America* (Cambridge, MA: Belknap Press, 2003); and Edwards, *The People and Their Peace*, 60–61. For an assessment of the exercise of clemency by the executive, rather than the legislature, in an historical context, see Carolyn Strange, *Discretionary Justice: Pardon and Parole in New York from the Revolution to the Depression* (New York: New York University Press, 2016).

legislature had taken too long with its deliberations. In Ockry's case, the commutation merely stayed death. She died in jail within a week.[19]

Although the changes to the law arrived too late to aid Clarissa Ockry, the amendments were, nonetheless, significant. The most significant transition was the elimination of the presumption of guilt that existed if a woman concealed the death of her newborn child. The law no longer assumed malevolent intent if a woman concealed the death of her newborn. Rather, intention—that a mother intended to kill her newborn infant—had to be proven. This amendment was a significant departure from existing law. In addition, although concealment of a newborn infant's death remained a crime, the legislature extended the range of possible punishments for those found guilty of the crime. Those punishments varied from a fine to public displays of remorse; namely, standing on the gallows for an hour with a rope around one's neck. Importantly, death no longer constituted a punishment if the only crime for which a jury convicted a woman was concealment of her newborn infant's corpse. A jury could impose the death penalty for infanticide, but only if evidence existed to ensure a conviction for murder. In the case of murder, the burden of proof was different, and the bar was higher.[20]

The statute, however, remained gender-specific, applying only to women, not men. Further, the law's continued focus remained on women who gave birth to illegitimate children, mothers whom the law characterized as "lewd and dissolute." Nonetheless, the case of Clarissa Ockry served as a significant turning point in relation to nineteenth-century infanticide law in Connecticut. The public outcry over her case and over the harsh sentence she faced prompted legislative reform. In this way, therefore, Ockry's trial illuminates clearly a direct causal relationship between how the legal process operated at the local level, and change to the law at the legislative level.

That change occurred, however, because of the mutability of law generally in Connecticut at the time. It happened quickly, inspired directly by social events. But the peculiar nature of Connecticut's judicial and legislative structure made such changes easy. In order to appeal her conviction,

19. "An Act to prevent the destroying and murdering of bastard children" passed by Connecticut General Assembly, May 1808, as reprinted in *Hartford Courant*, June 29, 1808, 1.

20. In succeeding decades, judges sentenced defendants pursuant to the amended law, with the full range of punishments executed. These included a term of incarceration, a fine, and sentencing a woman to standing on the gallows for an hour. See, for example, *State v. Charlotte Baldwin*, January Term 1817; *State v. Catharine Jones*, August Term 1820; and *State v. Catharine O'brian*, August Term 1825; all in New Haven County, Superior Court Criminal Files, CSA.

Ockry—or her guardian—needed to approach the General Assembly. This responsiveness to Ockry's plight was a function of a peculiarly flattened lawmaking structure, one that nimbly adapted to the requests of individual petitioners and the demands of the constituency on a broader scale. In other American states, where the executive—the governor— not the legislature, considered petitions for mercy, individual petitioners received prompt replies, usually in their favor. Rarely, however, did a single case prompt such rapid and significant legislative change.

The mutability of the legal processes in the early decades of the nineteenth century—the ability of individual petitioners to secure outcomes that benefited themselves—is clearly illustrated in the case of a white woman, Anna Gilbert, accused of killing her infant daughter Maryanne with an axe in early April of 1813. Although the details of her offense horrified people, Gilbert's case followed the conventional patterns in such matters. Initially, Gilbert faced a justice's court shortly after neighbors accused her of the crime. The justice found sufficient evidence for Gilbert to stand trial. Subsequently, he remanded her to the local jail. In New Haven, where Gilbert awaited trial, the next scheduled session of the Superior Court was in August of that year. Gilbert, therefore, needed to wait at least 5 months in jail before she even faced a grand jury. In all of these ways, Gilbert's case was typical, like that of Clarissa Ockry and many other women accused of infanticide throughout the new nation. Such seemingly lengthy waits for trial, for example, constituted the norm in the early nineteenth century. In most states, the Superior (or Circuit) Court convened in each county only two to three times a year. When the court did meet, a grand jury first determined if sufficient evidence existed for a trial by petit jury to proceed. If the grand jury decided that there was no case to answer, it meant that the defandant would have spent months waiting in jail for a trial on charges that were eventually dismissed or abandoned.[21]

Unlike most women who faced trial for infanticide, however, Anna Gilbert possessed a distinct advantage. She was married. Accordingly, her husband, Trueman Gilbert, took up her case. Little detail can be gleaned about Trueman Gilbert from census records and local histories, but he moved swiftly to protect his wife. According to Trueman Gilbert, a local "officer"—acting on the instructions of the justice—arrested Anna, shortly after the justice determined that Anna should face trial at the Superior Court. Yet somehow, Trueman persuaded that same officer to avoid committing Anna to the local jail. For almost 2 months Anna

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

remained in limbo, under arrest and in the custody of an "officer," but not yet incarcerated. Those 2 months provided Trueman with time, in which he drafted a petition—a request—to the Connecticut General Assembly. Trueman's petition did not dispute that Anna had killed his infant daughter. As such, the petition affirmed—in writing—Anna's guilt, almost guaranteeing a guilty verdict should she face trial. Rather, Trueman's petition signaled the potential defense. Anna, Trueman suggested, was "not of sound mind" at the moment of the crime. Indeed, he directly linked Anna's loss of reason to the experience of childbirth, and argued that Anna's sickness had continued unabated. To incarcerate his wife while she suffered in that condition, Trueman argued, would cause him great "distress." Trueman also noted that incarcerating Anna while she was ill might endanger her life. The General Assembly acquiesced, directing the local Justice to bail Anna Gilbert until such time as the Superior Court heard her case. When Anna Gilbert did finally face the grand jury in August of 1813, the jury found that there was no case to answer. Anna Gilbert was never tried by the Superior Court for the crime of infanticide.[22]

The language of Trueman Gilbert's petition to the Assembly is revealing as it illuminates how people constructed pleas for mercy in nineteenth-century Connecticut. First, Gilbert framed the petition by focusing on himself and the "distress" he suffered, rather than as a request to aid his wife, the person accused of the crime. Gilbert then shifted the petition's focus. He did not defend his wife's actions, but did provide an explanation previewing the arguments that the court might hear in August. What Gilbert was also doing, either explicitly or implicitly, was previewing the petition that the Assembly might have expected to receive if the case against Anna Gilbert proceeded. If the Superior Court did find Anna Gilbert guilty, the sentencing guidelines in Connecticut proved generally inflexible. Any woman found guilty of infant murder faced the death penalty, or, at the very least, a lengthy prison sentence. By providing an explanation for his wife's actions even before she faced trial, Gilbert foreshadowed the basis on which he might later draft a successful appeal to the legislature.[23]

22. Ibid.; and Petition to the Connecticut General Assembly on behalf of Anna Gilbert, Crimes & Misdemeanors, Series II:IV, 85–86, CSA.

23. For a similar set of petitions from the late eighteenth century—also in relation to infanticide—see *State v. Hannah Bishop*, August Term 1791, Superior Court Files, New Haven County; *State vs. Saul Foster*, August Term 1791, Superior Court Files, New Haven County; and "Petition of Hannah Bishop, the wife of John Bishop, and [Petition of] Saul Foster. . .," May 1791, Crimes & Misdemeanors, II:IV, 72–73; all at CSA. Like the petition drafted by Trueman Gilbert on behalf of his wife Anna, this lengthy petition provided a detailed list of particulars in which the accused outlined the details of their defense previewing what they anticipated presenting in court. Like Gilbert, the assembly directed the

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After 1818, when Connecticut drafted its first constitution, the state redistributed legislative, executive, and judicial power. The constitution renamed the council "the senate," and the new constitution provided for independent election of the governor. In addition, the state, for the first time, provided for the establishment of an independent judicial branch, specifically the Supreme Court of Errors. The General Assembly retained the power to appoint judges, but those appointed to the Supreme Court received what were effectively lifetime appointments.[24]

In spite of these changes, the General Assembly retained a hold on the ability to respond to individual petitions, particularly at the appellate level. Further, residents retained the power to directly petition the legislature. That is, discretionary power to commute or reduce sentences remained with the General Assembly. But all petitions had to be reviewed and voted upon by both the House and the Senate. Therefore, although the assembly retained the authority to aid individual women, the process for doing so had become more cumbersome. Further, as the Constitution endeavored to establish a more distinct "separation of powers" between the legislature and the judiciary, the legislature became more and more reticent—over time—about interfering with the outcomes of individual cases, including those involving women convicted of infanticide. Although it took some decades for the independence of the judiciary to evolve, legislators began to respect the independence of the legal process. Therefore, they reviewed fewer convictions over time. In this regard, Connecticut proved exemplary, but not unique. In most American states, legislatures and the executive grew reluctant to interfere in the judicial process.[25]

The increasing reluctance of the legislature to interfere in other than the most grave cases—those involving the death penalty—is illuminated in a review of cases from the antebellum period. In October 1842, for example, the New Haven Superior Court found Sarah Freeman guilty of murdering her newborn daughter by throwing the infant into the privy. The judge sentenced Freeman to death. Like Clarissa Ockry, Freeman—or rather, Freeman's court-appointed counsel—petitioned the Connecticut General Assembly for a reprieve from the death sentence. After some debate about the exact length of the sentence that Freeman should serve for the

local Justice of the Peace to bail the accused, thereby enabling them to circulate within the community before they faced trial. Like Anna Gilbert, the grand jury in the case elected not to indict, ensuring that neither stood trial for the crime of which they were accused.

24. Horton, *Connecticut State Constitution*, 14–17.

25. Ibid.

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crime, the state legislature eventually settled on 10 years in the State Prison, saving Freeman from the hangman's noose.[26] The Connecticut Assembly spared her because her case acted as a lightning rod for an important debate of the antebellum period, that about capital punishment.[27] Legislators opposed to the death penalty in Connecticut used Freeman's plight as an illustration of the evils of capital punishment.[28] The *Hartford Courant* editorialized on the issue, describing legislative sympathy for Freeman as indicative of the "canker eating its way into the body politic." The newspaper characterized the disease as a form of pity for the criminal, one buttressed by a belief in the underlying capacity of people to reform.[29] In that regard, Sarah Freeman had many supporters and opponents, but none of them knew her personally. Certainly no one protested the 10-year sentence that Freeman received, which—along with that of Catharine Dunn—remains the harshest sentence received by a woman convicted of infanticide in Connecticut during this period.

There was, of course, another fact of which everyone involved in Sarah Freeman's case was all too acutely aware. Sarah Freeman—like Clarissa Ockry—was black, although not a single page in the indictment or any newspaper reports, or even the requests for clemency made mention of

26. *State v. Sarah Freeman*, October Term 1842, Superior Court Files, New Haven County; and Petition of Sarah Freeman for Commutation of Punishment, May Session 1843, General Assembly Papers—African American; both at CSA. Note here that the prison records are incorrect, recording only the original sentence.

27. For general discussions of the movements against the death penalty in America, centered in the New England states during the antebellum period, see Howard Allen and Jerome Clubb with Vincent Lacey, *Race, Class, and the Death Penalty: Capital Punishment in American History* (Albany: State University of New York Press, 2008), 47–66; Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002); and Louis Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776–1865* (New York: Oxford University Press, 1989). For changing public attitudes towards the use of capital punishment for women, see Marlin Shipman, *"The Penalty is Death": U.S. Newspaper Coverage of Women's Executions* (Columbia: University of Missouri Press, 2002). For debates about the death penalty in Connecticut during this period, see Goodheart, *Solemn Sentence of Death*, 100–131.

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

29. See "Capital Punishment," *Hartford Courant*, May 24, 1843, 2.

this. The only person who referred to skin color was Freeman herself, when she noted—in her petition to the General Assembly—that her seducer was a white man. By setting up an implied contrast between her race and that of her seducer, Freeman was indirectly referencing her own race, but as a fact, Freeman's race remained unstated. Yet everyone involved with or even vaguely interested in Freeman's case in antebellum Connecticut would have been aware of her race, indicated as it was by her name.[30] When she stood before everyone at the initial inquest, the Justice of the Peace Court—and later in the Superior Court—the fact would have been inescapable. It was not spoken about, but this did not mean that no one knew of it. Freeman's race, after all, was what probably prompted Chief Justice William's characterization of her as a "brute beast," an observation the judge made when sentencing Freeman.[31]

Interpreting the outcome of Sarah Freeman's case through the lens of race, therefore, seems straightforward. The extent of racial animus demonstrated toward free African Americans in Connecticut during the antebellum period is well documented, most famously in the Prudence Crandall case. In 1831, Crandall—a white woman from Rhode Island educated in a Quaker school—opened a private school for girls in Canterbury, Connecticut. The institution committed to providing the same educational opportunities to young women as Crandall had received. That is, in the Quaker tradition—although not a Quaker herself—Crandall committed to providing females with access to the same curriculum as young men. In 1832, Crandall admitted the school's first African-American student, Sarah Harris. White parents refused to re-enroll their daughters in the school when they realized that those daughters would be sharing classrooms with black students. Crandall persisted, opting to teach only the students who did enroll: young black women. But the school continued to face attacks on multiple fronts. In 1833, the state legislature passed the so-called "Black Law," which made it difficult—if not impossible—for Crandall to enroll African American students from outside the state in her school. In addition to making Crandall and her students feel unwelcome, the law threatened the financial viability of the fledgling institution and of those who endeavored to support it. Further, the local community also extensively vandalized the school. Ultimately, the impact of the Black Law and the violence forced Crandall to end her experiment. She closed the school and left the state. Although Connecticut was one of few American states never to criminalize inter-racial marriage, the efforts

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

31. "Superior Court—Sentence of Sarah Freeman," *Hartford Courant*, October 24, 1842, 2.

of Prudence Crandall to establish an integrated school—or, beyond that, a segregated school solely for African Americans—demonstrated the commitment of Connecticut residents to affirming the status of free blacks as second-class citizens.[32]

Although this example of racial hatred is the most well-known, it is still a mistake to assume that the fact of Sarah Freeman's race—and this fact alone—determined the outcome in her case. As tempting as it may be to interpret the cases of Sarah Freeman and Clarissa Ockry solely through the lens of race—the outcome in both cases is most easily explained by the fact that the women were black—this is not the only explanation for the possible outcomes. First, the sample size in Connecticut during this period, at least for cases of infanticide, is simply too small to draw any broad, overarching conclusions about the singular role of race. Second, not every case involving black women resulted in the imposition of the death penalty. In September 1832, for example, Rue and Betsey Benedict faced the New London Superior Court, charged with murder. The surviving inquest records suggest that Rue strangled her newborn child, with her mother, Betsey, complicit in the cover-up of the alleged crime. The grand jury, however, found there was insufficient evidence to prosecute. A trial against the two women did not proceed.[33]

Further, the outcome in the case of Sarah Freeman is not markedly different from that of Catharine Dunn, who was white. Like Freeman, the judge sentenced Dunn to a life sentence in the state prison, a sentence than no one appealed at the time. Only after Dunn had spent a decade in prison did her supporters petition the state legislature in 1861. Unlike the petitions drafted on behalf of Clarissa Ockry in 1808 and Sarah Freeman in 1843, there was no broader social context in which Dunn's sentence might be critiqued or condemned. The particulars of the petition for Catharine Dunn made no reference to the harshness, or otherwise, of statutory law. Indeed, there was no reference to law at all in Catherine Dunn's petition. Rather, the petitioners implored the legislature to exercise

32. For the "Black Law," see "An act in addition to an Act entitled "An Act for the admission and settlement of Inhabitants of Towns," May 24 1833. For discussion of Prudence Crandall's case and the Black Law, see Kabria Baumgartner, *In Pursuit of Knowledge: Black Women and Educational Activism in Antebellum America* (New York: New York University Press, 2019), 13–45; and Donald E. Williams, Jr., *Prudence Crandall's Legacy: The Fight for Equality in the 1830s, Dred Scott, and Brown v. Board of Education* (Middletown, CT: Wesleyan University Press, 2014), 81–97.

33. "Inquest on the Body of an Infant," September 7, 1832, New London County, Superior Court Files: Inquests; *State v. Rue & Betsey Benedict*, September Term 1832, New London County, Superior Court Files; both at CSA. See Nancy Hathaway Steenburg, *Children and the Criminal Law in Connecticut, 1635–1855* (New York: Routledge, 2005), 154.

clemency based on Dunn's individual circumstances. After 10 years in prison, the petition claimed, Dunn's health was fragile. Her mind was weakened. Dunn's release was necessary so that she could die a free woman. As it had so often in the past, the General Assembly reviewed the petition, granting the request, yet the legislature's seeming magnanimity in this case should not be overstated. Dunn's sentence remained the harshest imposed on a woman for any case of infant murder in nineteenth-century Connecticut.[34]

Like Sarah Freeman—and Clarissa Ockry before her—Catharine Dunn's life became trapped in a larger net. The ongoing and deeply polarized debates about the merits of capital punishment that flourished in the reforming climate of antebellum Connecticut shaped Dunn's sentence in ways that are not immediately obvious. In 1846, in its efforts to address concerns that only those worthy of death should be executed, the General Assembly reformed the statute relating to murder. The legislature split the charge in two, with "murder one" attracting the death penalty and "murder two"—considered a less heinous variation of the first—attracting a sentence of life in prison. In practice, prosecutors generally charged defendants with both crimes, leaving it in the hands of the jury to decide on what charge the accused should be found guilty. Counterintuitively, such a change made it easier for jury members to convict, as they did not have to live with the knowledge that death was the certain outcome for those convicted of murder. Therefore, Dunn benefited from reforms aimed to save women—and men—from the scaffold. Yet, at the same time, the punishment illustrated the contradictions of changes to the penal system that focused on individual reform rather than retribution for immoral behavior, with the sentence condemning her to a long and lonely life in prison.

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After the Civil War, the Connecticut legal system—like those in other American states—professionalized at an exponential rate. That professionalization took place in an environment where states centralized power at the legislative level, and statutes regulating both conduct and action proliferated. Zephaniah Swift's imagined environment in which judicial and legislative spheres remained firmly separate had finally emerged, at least in relation to infanticide cases.

Within this climate, new dangers emerged for women across the nation, especially as they remained excluded from exercising many of the same civil rights as men. Many of these dangers related to a proliferation of

34. Petition of Catherine Dunn for release from state prison, May 1861, General Assembly Papers, Connecticut State Archives, Hartford, Connecticut; and "Connecticut Legislature," *Hartford Daily Courant*, June, 14 1861, 2.

laws that regulated access to information about conception and pregnancy, and criminalized actions relating to preventing or ending unwanted pregnancies. In Connecticut, for example, the legislature criminalized access to birth control in 1875, compounding and extending long-standing statutory prohibitions on access to abortion. Four years later, the state established the Office of the Coroner, supported by a system of medical examiners. That legislation redistributed the authority for investigations into suspicious and untimely deaths—where an inquiry into the death of an infant began—from a legal forum to a medical one. Although these laws responded to a range of emerging concerns within Connecticut, it is important to note that they cemented the emerging power of the white, male-dominated medical profession within the governance structure of the state. In cases of suspicious infant death, for example, by the late nineteenth century it was the norm—rather than the exception—to have at least two physicians in attendance at the inquest. Finally, the consolidation of the medical examiner as the primary arbiter of whether or not a crime had occurred elevated the role of the medical professional, empowering physicians to make a range of decisions that had a significant impact on women's lives. These statutory changes transformed all unattended childbirths—even those involving married women—into acts that elicited suspicion.[35]

But even as the state promulgated a regulatory framework that imbued the medical profession with such wide-ranging authority, the legal process persisted, particularly at the local level, remaining responsive to the individual circumstances of accused women's lives. Although professional physicians placed women's pregnant bodies under greater scrutiny, the legal system proved remarkably resilient in its flexibility. That flexibility enabled communities to focus on individual reform, rather than becoming trapped within the broad, overarching, immutable structures of the state. The law's fluidity, even as regulatory frameworks solidified, proved a legacy of ongoing shifts in social, cultural, and legal ideas about understandings of and appropriate punishments for infant murder.

35. For laws in relation to abortion, see "Offenses Against the Person: Abortion, Miscarriage" Title 19, Secs. 1411–12; for the laws in relation to "obscene" material, see "Offenses Against Humanity and Morality: Obscene Literature: Title 19, Sec. 1537; for laws prohibiting birth control see "Offenses Against Humanity and Morality: Use of drugs or instruments for the purpose of preventing conception," Title 19, Sec. 1539; and for laws establishing the Office of the Coroner and the Medical Examiner in each county, see "Coroners," Chapter 124; all in the *General Statutes of State of Connecticut, Revision of 1887*, Vol. 1 (Hartford: Case, Lockwood, & Brainard Co., 1887). For a useful summary of state-based anti-abortion and anti-contraceptive laws passed in the mid to late to late nineteenth-century, see Martha J. Bailey, "'Momma's Got the Pill': How Anthony Comstock and *Griswold v. Connecticut* Shaped US Childbearing," *American Economic Review* 100 (2010): 98–129.